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Wednesday  
April 7, 1993

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**Briefings on How To Use the Federal Register**  
For information on briefings in Independence, MO, and  
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of this issue.



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	4. An introduction to the finding aids of the <b>FR/CFR</b> system.
<b>WHY:</b>	To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

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<b>WHERE:</b>	Office of the <b>Federal Register</b> , 7th Floor
	Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)
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**Electronic Bulletin Board**

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# Rules and Regulations

Federal Register

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Wednesday, April 7, 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.

## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

#### 7 CFR Part 400

#### Application for Crop Insurance; Regulations for the 1993 and Succeeding Crop Years; the Crop Insurance Application

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) amends the General Administrative Regulations by adding a general statement to the application making applicants aware of their responsibility to comply with "Sodbuster and Swampbuster" provisions of the Food Security Act of 1985.

**EFFECTIVE DATE:** April 7, 1993.

**FOR FURTHER INFORMATION CONTACT:** Mari L. Dunleavy, Acting Director, Regulatory and Procedural Development, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250; Telephone (202) 254-8314.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of the regulations affected by this rule under those procedures. The sunset review date established for these regulations is October 1, 1997.

Kathleen Connelly, Acting Manager, FCIC, has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of \$100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, state, or local governments, or a

geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Kathleen Connelly also certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons. The action will not have a significant economic effect on a substantial number of small entities, or on the farmers served by this totally voluntary crop insurance program because this action does not require significant actions on their part. This action imposes no additional burden on the insured farmer, does not require participation in the program, or increase what is currently paid to gain insurance protection. Further, this action requires of the reinsured company or sales and service contractor what is considered normal and customary in the ordinary conduct of business. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act and no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), FCIC is required to submit to the Office of Management and Budget (OMB) any required collection of information. Pursuant to this requirement, FCIC has submitted the crop insurance application (FCI-12) contained in this rule to OMB for approval.

Amendments to the Food Security Act of 1985 (Pub. L. 99-198) specifically require that, in order to be eligible for Federal Crop Insurance benefits, an

applicant must comply with all conservation requirements (Sodbuster/ Swampbuster). Therefore it is determined that this amendment conforms the regulation to the statutory requirements.

Accordingly, pursuant to 5 U.S.C. 553, as this rule is interpretive, good cause is found to make this rule final upon publication.

#### List of Subjects in 7 CFR Part 400

Crop insurance.

#### Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the General Administrative Regulations (7 CFR part 400) by amending subpart D to read as follows:

1. The authority citation for 7 CFR part 400, subpart D continues to read as follows:

#### Subpart D—Application for Crop Insurance; Regulations for the 1993 and Succeeding Crop Years

**Authority:** 7 U.S.C. 1506, 1516.

1 a. The heading for subpart D is revised to read as set forth above.

2. Section 400.38 is amended by revising all text that appears before the "Collection of Information and Data (Privacy Act)" statement, as follows:

#### § 400.38 The crop insurance application.

United States Department of Agriculture

Federal Crop Insurance Corporation

Crop Insurance Application

Continuous Contract

1. Name of Applicant

2. Applicant's Authorized Representative

3. Street or Mailing Address

4. City and State

5. ZIP Code

[ ] [ ]- [ ] [ ] [ ]- [ ] [ ] [ ] [ ]

6. State County

[ ] [ ] [ ] [ ] [ ]

7. Contract Number

8. County

## 9. State

[ ] [ ] [ ] [ ] [ ] [ ]

10. Identification Number

[ ] [ ] [ ] [ ] [ ]

11. SSN TAX

## 12. Type of Entity

13. Is Applicant Over 18: Yes \_\_\_\_\_  
No \_\_\_\_\_

## If No, Date of Birth

A. The applicant subject to the provisions of the regulations of the Federal Crop Insurance Corporation (herein called "Corporation"), hereby applies to the Corporation for insurance on the applicant's share in the crop(s) shown below planted or grown, whichever is applicable, on insurable acreage as shown on the county actuarial

table for the above-stated county. The applicant elects from the actuarial table the coverage level and, where applicable, a price election, amount of insurance or plan of insurance. The premium rate and applicable production guarantee or amount of insurance per acre shall be those shown on the applicable county actuarial table filed in the service office for each crop year.

14. Effective crop year

15. Crop

16. Type, class, plan of ins.

17. Price election or amount of ins.

18. Level election

19

20.

21.

(A)

(P)

## For agency use only

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## N S I O T—F U R

23. Crop(s) NOT insured the first year:

B. This application is hereby accepted by the Corporation except that the Corporation may reject the application on the basis that (1) the Corporation has determined that the risk is excessive under the provisions of the individual crop insurance regulations; (2) any material fact is concealed or misrepresented or fraud occurs in the application; or submission of the application; (3) the applicant is indebted to any United States Government Agency and that indebtedness is delinquent; (4) the applicant is indebted for crop insurance coverage provided by any company reinsured by the Corporation and that indebtedness is delinquent; (5) the applicant previously had crop insurance terminated for violation of the terms of the contract or the regulations, or for failure to pay the applicant's indebtedness; (6) the applicant is debarred by any United States Government Agency; or (7) the applicant has failed to provide complete and accurate information to material requests this application.

Rejection shall be accomplished by depositing notification thereof in the United States mail, postage paid to the above address. Unless rejected as provided above, or the time for filing applications has passed at the time this application is filed, the contract shall be in effect for the crops and crop years specified and shall continue for each succeeding crop year until cancelled or terminated as provided in the contract. This accepted application, the insurance policy(ies), the applicable appendix(es), and the provisions of the county actuarial table showing the insurable and uninsurable acreage coverage levels, premium rates, and where applicable, the production guarantees,

amounts of insurance, or plans of insurance shall constitute the contract. No term or condition of the contract shall be waived or changed except in writing by the Corporation.

24. [ ] Applicant does not have like insurance on any of the above crops.

25. [ ] Previous Carrier:

26. [ ] Policy Number:

27. [ ] Applicant's Signature

28. [ ] Date

[ ] [ ] [ ] [ ] [ ] [ ]

29. Code No.

30. Witness to Signature

31. Location of Farm Headquarters

32. Address of Your Service Office

Phone: \_\_\_\_\_

Phone: \_\_\_\_\_

I am aware and agree to comply with all requirements regarding the conservation provisions of the Food Security Act of 1985 (the Act) Sodbuster/Swampbuster provisions. I understand that I must be in compliance with the Act including reporting requirements to the applicable ASCS office for a crop insurance indemnity to be paid. I also understand that if I have not met these requirements, or if ASCS determines that I am out of compliance, an indemnity payment will not be made on this policy. Any graduated sanctions imposed by any agency under the Act must be paid in full prior to receipt of any of any indemnity paid.

Signature of Insured \_\_\_\_\_

Date \_\_\_\_\_  
Agent's Initials \_\_\_\_\_

See Reverse Side of Form for Statement Required by Privacy Act of 1974.

33. Page \_\_\_\_ of \_\_\_\_ pages

\* \* \* \* \*

Done in Washington, DC, on April 1, 1993.  
Kathleen Connelly,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 93-8107 Filed 4-6-93; 8:45 am]

BILLING CODE 3410-00-M

## 7 CFR Part 400

## General Administrative Regulations; Food Security Act of 1985, Implementation; Denial of Benefits

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) amends the General Administrative Regulations to be consistent with language found in the Food and Security Act of 1985 as amended by the Food, Agriculture, Conservation, and Trade Act of 1990.

**EFFECTIVE DATE:** April 7, 1993.

**FOR FURTHER INFORMATION CONTACT:** Mari L. Dunleavy, Acting Director, Regulatory and Procedural Development, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250. Telephone (202) 254-8314.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of the regulations affected by this rule under those procedures. The sunset review date established for these regulations is October 1, 1997.

Kathleen Connelly, Acting Manager, FCIC, has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of \$100 million or more; (b) major increases in costs or prices for consumers, individuals industries, federal, state, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Kathleen Connelly also certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons. The action will not have a significant economic effect on a substantial number of small entities, or on the farmers served by this totally voluntary crop insurance program because this action does not require significant actions on their part. This action imposes no additional burden on the insured farmer, does not require participation in the program, or increase what is currently paid to gain insurance protection. Further, this action requires of the reinsured company or sales and service contractor what is considered normal and customary in the ordinary conduct of business. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act and no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The lack of general conformity existing in FCIC's regulations

concerning denial of benefits and graduated sanctions has resulted in considerable duplication of effort between FCIC, other USDA agencies, and the insurance industry. The revised provisions will provide greater conformity with the language found in the Food Security Act of 1985 and should eliminate unnecessary confusion. The rule also addresses graduated sanctions which may be imposed on an insured who fails to meet the requirements of the sodbuster and swamphuster provisions contained in the Food Security Act of 1985.

Amendments to the Food Security Act of 1985 (Pub. L. 99-198) allow graduated sanctions and cause FCIC's present regulation Subpart F of 7 CFR part 400 to no longer conform to the statutory requirements because the sanctions required by FCIC's regulation impose a stricter penalty. Additionally, it has been determined that the requirement of obtaining the AD-1026 prior to the sales closing date is unmanageable and requires much additional paperwork and effort on the part of both the insured and the agent. Therefore it is determined that this amended relieves an unnecessary restriction and conforms the regulation to the statutory requirements.

Accordingly, pursuant to 5 U.S.C. 553, as this rule is interpretive and relieves a restriction, good cause is found to make this rule final upon publication.

#### List of Subjects in 7 CFR Part 400

Crop insurance.

#### Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the General Administrative Regulations (7 CFR part 400) by amending subpart F to read as follows:

#### Subpart F—Food Security Act of 1985, Implementation; Denial of Benefits

1. The authority citation for 7 CFR part 400, subpart F continues to read as follows:

Authority: 7 U.S.C. 1501 *et seq.*

2. Section 400.47 is amended by removing paragraphs (d) and (e); redesignating paragraphs (f), (g), (h), and (i) as paragraphs (d), (e), (f) and (g); and revising paragraph (a) to read as follows:

#### § 400.47 Denial of crop insurance.

(a) Any person convicted under Federal or State law of planting, cultivating, growing, producing,

harvesting or storing a controlled substance in any crop year will be ineligible for crop insurance during that crop year and the four succeeding crop years.

(1) The insurance of such person insured by FCIC who found to be ineligible under paragraph (a) of this section will be null and void, and any indemnity paid on such insurance must be returned in full to FCIC. Any premium paid for insurance coverage declared null and void will be returned, less a reasonable amount for expenses and handling not to exceed 20 percent of the premium paid.

(2) Any person ineligible for crop insurance under the provisions of paragraph (a) of this section may make application for crop insurance for the crop year following the applicable period of ineligibility by submitting a new application. The previous application and policy of insurance will be cancelled.

\* \* \* \* \*

3. Section 400.49 is revised to read as follows:

#### § 400.49 Certification.

Each applicant for insurance under the Federal Crop Insurance Act, as amended, is required to certify on Form AD-1026 (Highly Erodible Land and Wetland Conservation Certification) that such applicant will not produce an agricultural commodity on highly erodible land or converted wetland during the applicable crop year unless such production is exempt in accordance with the provisions at 7 CFR 12.5. Failure of the applicant to certify with the appropriate agency in a timely manner or to remain in compliance may result in denial of crop insurance and certain benefits associated with the crop insurance program.

4. Section 400.50 is added to subpart F to read as follows:

#### § 400.50 Graduated sanctions.

A person who is determined under 7 CFR 12.4 to be ineligible for certain United States of Agriculture (USDA) benefits as the result of producing an agricultural commodity on highly erodible land and/or production of an agricultural commodity on a wetland may regain eligibility for crop insurance if the appropriate agency determines the person qualifies for a good faith exemption, or if any sanction imposed upon that person has been satisfied.

Done in Washington, DC on April 1, 1993.  
 Kathleen Connelly,  
*Acting Manager, Federal Crop Insurance Corporation.*  
 [FR Doc. 93-8108 Filed 4-6-93; 8:45 am]  
 BILLING CODE 3410-08-M

#### Agricultural Marketing Service

##### 7 CFR Parts 1001 and 1002

[DA-93-02]

#### Milk in the New England and New York-New Jersey Marketing Areas; Order Suspending Certain Provisions

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Suspension of rule.

**SUMMARY:** This action suspends for the months of March through November 1993 the provisions of the seasonal production incentive payment plans of the New England and New York-New Jersey Federal milk orders that require 20 cents in March, 30 cents in April, and 40 cents in May and June to be deducted from payments to producers. The suspensions are necessary to increase the cash flow of dairy farmers this spring when some of them will be facing financial difficulties. The suspensions were requested by cooperative associations representing producers who provide much of the milk supply for the two markets.

**EFFECTIVE DATE:** March 1, 1993 through November 30, 1993.

##### 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:

Prior document in this proceeding:

Notice of Proposed Suspension: Issued February 17, 1993; published February 23, 1993 (58 FR 10993).

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 action would not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on dairy farmers and will have no impact on regulated handlers.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and

the criteria in Executive Order 12291, and has been determined to be a "non-major" rule.

This suspension of rules has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This 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 the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and of the orders regulating the handling of milk in the New England and New York-New Jersey marketing areas.

Notice of proposed rulemaking was published in the *Federal Register* on February 23, 1993 (58 FR 10993) concerning a proposed suspension of certain provisions of the orders. Interested persons were afforded opportunity to file written data, views, and arguments thereon. Three comments were received and they are summarized in the statement of consideration.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that for the months of March through November 1993 the following provisions of the orders do not tend to effectuate the declared policy of the Act:

1. Paragraphs (c) and (d) of § 1001.62 and
2. Paragraphs (d) and (e) of § 1002.61.

#### Statement of Consideration

The action suspends for the months of March through November 1993 the provisions of the New England and New York-New Jersey 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 during 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 the month of 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 their milk production to more closely reflect fluid milk demand patterns.

The suspensions were requested on behalf of twelve cooperative associations representing over 70 and 40 percent of the producers associated with the New England and the New York-New Jersey orders, respectively. The cooperative associations proposing the suspensions are Agri-Mark, Inc., Atlantic Dairy Cooperative, Inc., Chateaugay Cooperative Marketing Association, Inc., Conesus Milk Producers Cooperative Association, Inc., Dairylea Cooperative, Inc., Eastern Milk Producers Cooperative Association, Inc., Franklin-St. Lawrence Cooperative, Inc., Konhokton Milk Producers Cooperative Association, Inc., Middlebury Milk Producers Cooperative Association, Inc., St. Albans Cooperative Creamery, Inc., Sullivan County Dairy Association, Inc., and Upstate Milk Cooperatives, Inc.

Proponents contend the suspensions are needed because of the decline in blend prices paid to producers anticipated by the cooperatives for the spring months of 1993. The proponents stated that the expected blend prices, if adjusted by the "Louisville plan" deductions, would 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 proponents explained that the further reduction of pay prices to

producers this spring due to the operation of the seasonal incentive plans, 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 problems expected from the drop in milk prices in the coming spring. The proponents indicated 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.

Three comments were filed by interested parties in response to the invitation in the notice proposing this action. Crowley Foods, Inc. and Oneida-Lewis filed comments in support of the proposed action. The Oneida-Lewis comments stated that blend prices are expected to fall below \$11.00 for the next three months at a time when income is needed to meet large expenses that come with spring. The comments pointed out that the action would have no impact on handlers' income or expenses.

Comments opposing the suspension were received from Allied Federated Cooperatives (Allied), a federation of 29 bargaining and marketing local cooperatives, comprised of nearly 1,500 or 9 percent of the 16,800 dairy farmers supplying these markets. The comments claimed that low farm prices and seasonality are two separate issues and that low farm gate prices will not be helped by removing the seasonality provisions.

Allied's opposing comments stated that market statistics indicate that a seasonal incentive program is still needed. Commentors argued that producers have been successful in decreasing swings in production between the spring and fall months from 1965 to 1985. The comments claimed that the Louisville Plan has been a part of that success. However, the comments pointed out for the years of 1990 and 1992, statistics show movement toward a greater seasonality problem. The Allied comments added that keeping the plan in place helps address the problem of seasonality while farmers as a group do not lose money, nor is any new money generated, by the Louisville Plan.

The blend prices paid to producers under the orders are predicted to decline during the spring months of 1993. The further reduction of pay prices to producers this spring due to the 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 any financial problems farmers may have from the reduction in milk prices in the coming spring. Normal seasonal price variations will result in increased prices in the fall months, when the seasonal payment plans would operate to enhance prices to producers. Therefore, producers who have made an effort to shift production from spring to fall should benefit from higher prices in the coming fall months.

It is evident that there is widespread support for this action among producers supplying these two markets. Proponents note that the position of some dairy farmers is such that they cannot afford to take lower returns in the spring in exchange for higher prices in the fall.

Therefore, the seasonal incentive plans of the two markets are hereby suspended for the months of March through November 1993. It is unlikely that dairy farmers who have made a long-term effort to shift production from spring to fall will abandon such a production pattern because of the expected seasonal variation in prices over the remainder of 1993.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and assure orderly marketing conditions in the marketing areas in that the action lessens the regulatory impact of the orders on dairy farmers and will have no impact on regulated handlers;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given to interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. One comment was filed in opposition to this action and the issues raised therein are dealt with in the statement of consideration.

Therefore, good cause exists for making this order effective less than 30 days from the date of publication in the Federal Register.

#### List of Subjects in 7 CFR Parts 1001 and 1002

##### Milk marketing orders.

*It is therefore ordered*, That the following provisions in 7 CFR parts 1001 and 1002 are suspended from March 1 through November 30, 1993.

#### PART 1001—MILK IN THE NEW ENGLAND MARKETING AREA

1. 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.

##### § 1001.62 [Amended]

2. Sections 1001.62 (c) and (d) are suspended for the period March 1 through November 30, 1993.

#### PART 1002—MILK IN THE NEW YORK-NEW JERSEY MARKETING AREA

##### § 1002.61 [Amended]

3. Sections 1002.61 (d) and (e) are suspended for the period March 1 through November 30, 1993.

Dated: April 1, 1993.

**Kenneth C. Clayton,**

*Acting Assistant Secretary, Marketing and Inspection Services.*

[FR Doc. 93-8116 Filed 4-6-93; 8:45 am]

**BILLING CODE 3410-02-M**

#### 7 CFR Part 1011

##### [DA-92-32]

#### Milk in the Tennessee Valley Marketing Area; Temporary Revision of Supply Plant Delivery Requirements

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Temporary revision of rule.

**SUMMARY:** This revision temporarily eases a supply plant shipping requirement that at least 40 percent of the producer milk physically received at a supply plant be shipped to a distributing (bottling) plant in order to qualify the supply plant for pooling under the Tennessee Valley order. The revision reduces the shipping requirement to 30 percent during the months of March 1993 through July 1993. This action is necessary in order to prevent some uneconomic movements of milk in order to pool some of the milk received at a proprietary supply plant that recently became associated with this market.

**EFFECTIVE DATE:** March, 1, 1993 through July 31, 1993.

##### FOR FURTHER INFORMATION CONTACT:

Clayton H. Plumb, Chief, Order Formulation Branch, USDA/AMS/Division, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, 202-720-6274.

**SUPPLEMENTARY INFORMATION:** Prior document in this proceeding:

Notice of Proposed Temporary Reduction of Supply Plant Shipping

Percentage: Issued November 16, 1992; Published November 23, 1992 (57 FR 54948).

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 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 certain milk handlers and would tend to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

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

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

This final 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 temporary revision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the provisions of § 1011.13(e)(3) of the Tennessee Valley order.

Notice of proposed rulemaking was published in the *Federal Register* (57 FR 54948) concerning the reduction of the supply plant shipping requirements of the order for the months of March 1993 through July 1993. The public was

afforded the opportunity to comment on the proposed notice by submitting written data, views and arguments by December 23, 1992. One comment in support was received.

#### Statement of Consideration

In order for a supply plant to maintain its pool status, the Tennessee Valley order requires such plants to ship to pool distributing plants a minimum of 60 percent of the total quantity of milk physically received at the supply plant during the months of August through November and January and February and 40 percent in each of the other months. The order also provides authority for the Director of the Dairy Division to increase or decrease this supply plant shipping requirement by up to 10 percentage points if such a revision is necessary to obtain needed shipments or to prevent uneconomic shipments.

Armour Food Ingredients Company (Armour), a proprietary supply plant operator that recently became pooled under this order, requested the revision. Armour asserts that its Springfield, Kentucky, plant can meet the 60 percent shipping requirement during the fall months of the year by supplying the fluid milk plant operated by Southern Belle Dairy at Somerset, Kentucky. Armour indicated that they would have difficulty meeting the 40 percent shipping requirement in the spring, since milk production increases and distributing plants need a lesser proportion of the market's milk supply. The handler claimed that this could result in some of their producers not having their milk pooled or Armour would have to engage in some inefficient and uneconomic hauling of milk to pool this milk.

Comments in support of this action were received from Southern Belle Dairy Company, Inc., (Southern). Southern stated that their organization operates a fluid milk plant located in Somerset, Kentucky, and that Southern receives supplemental milk from Armour. Southern stated that milk production for Kentucky and the region where the supplemental milk is produced has increased about 3 percent above last year and is expected to increase further. Southern stated that as this occurs Southern will need less of the Armour milk and that Armour will need to move milk to manufacturing plants in order to qualify their supply plant for pooling.

After consideration of all relevant material, including the proposal set forth in the aforesaid notice, and other available information, it is hereby found and determined that the percentage set

forth in § 1011.13(e)(3) should be decreased from 40 percent to 30 percent to prevent uneconomic shipments of milk from supply plants to distributing plants under the Tennessee Valley order.

It is hereby found and determined that 30 days' notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest in that:

(a) This temporary revision is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area for the months of March 1993 through July 1993;

(b) This temporary revision does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of the proposed temporary revision was given interested parties and they were afforded opportunity to file written data, views, or arguments concerning this temporary revision. No comments in opposition were received.

Therefore, good cause exists for making this order effective less than 30 days from the date of publication in the *Federal Register*.

#### List of Subjects in 7 CFR Part 1011

Milk marketing orders.

*It is therefore ordered*, That the following provision in 7 CFR part 1011 is temporarily revised from March 1, 1993 through July 31, 1993.

#### PART 1011—MILK IN THE TENNESSEE VALLEY MARKETING AREA

1. The authority citation for 7 CFR part 1011 continues to read as follows:

*Authority: Secs. 1-19, 48 Stat. 31, as amended (7 U.S.C. 601-674).*

#### § 1011.13 [Amended]

2. In paragraph (e)(3) of § 1011.13, the phrase "40 percent" is temporarily revised to read "30 percent" for the period of March 1, 1993, through July 31, 1993.

Dated: April 1, 1993.

W. H. Blanchard,  
Director, Dairy Division.

[FR Doc. 93-8117 Filed 4-6-93; 8:45 am]  
BILLING CODE 3410-02-M

#### NUCLEAR REGULATORY COMMISSION

#### 10 CFR Part 72

RIN 3150-AE15

#### List of Approved Spent Fuel Storage Casks: Additions

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending its list of approved spent fuel storage casks to add one spent fuel storage cask to the list of approved casks. This amendment will allow holders of power reactor operating licenses to store spent fuel in this approved cask under a general license.

**EFFECTIVE DATE:** May 7, 1993.

**ADDRESSES:** Copies of the environmental assessment and finding of no significant impact are available for inspection and/or copying for a fee at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Single copies of the environmental assessment and the finding of no significant impact are available from the individuals listed under the next heading below.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gordon E. Gunderson, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3803, or Mr. James F. Schneider, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504-2692.

**SUPPLEMENTARY INFORMATION:****Background**

The NRC published a notice of proposed rulemaking in the *Federal Register* on June 26, 1992 (57 FR 28645). The comment period closed on September 9, 1992, but was subsequently reopened, as discussed below. The proposed rule would have amended 10 CFR 72.214 to include two additional spent fuel storage casks (i.e., the Transnuclear, Inc., TN-24 cask and the Pacific Sierra Nuclear Associates, VSC-24 cask) on the list of approved spent fuel storage casks that power reactor licensees may use under the provisions of a general license.

Subsequent to the expiration of the September 9, 1992 public comment period, the NRC took steps to implement the provision of § 2.790(c) of its regulations (41 FR 11808 (1976)) that provides that information submitted to NRC in a rulemaking proceeding which subsequently forms the basis for a final rule will not be withheld from public disclosure by NRC. Accordingly, on January 21, 1993, additional information, which was previously categorized as vendor proprietary information, was placed in the Public Document Room (PDR) and all Local Public Document Rooms. The additional information made available in the PDR related only to the VSC-24 cask. The

second cask (TN-24) will be covered separately in a subsequent notice. In addition, the comment period for the June 26, 1992, proposed rule on the VSC-24 cask was reopened to provide opportunity for public comment on the additional information (January 21, 1993; 58 FR 5301). This comment period expired on February 22, 1993. Further NRC rulemaking activities are planned for the TN-24 cask which is, therefore, not covered in this notice of final rule.

Section 218(a) of the Nuclear Waste Policy Act of 1982 (NWPA) includes the following directive: "The Secretary (of DOE) shall establish a demonstration program in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the (Nuclear Regulatory) Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission." After subsequent DOE technical evaluations and based on a full review of all available data, the Commission approved dry storage of spent nuclear fuel in a final rule published in the *Federal Register* on July 18, 1990 (55 FR 29181). The final rule established a new subpart K within 10 CFR part 72 entitled "General License for Storage of Spent Fuel at Power Reactor Sites."

Irradiated reactor fuel has been handled under dry conditions since the mid-1940's when irradiated fuel examinations began in hot cells. Light water reactor fuel has been examined dry in hot cells since approximately 1960. Some of these fuels have been stored continuously in hot cells under dry conditions for approximately two decades. Experience with storage of spent fuel in dry casks is extensive. (54 FR 19379 (1990)). Further, as discussed below, the United States has extensive experience in the licensing and safe operation of independent spent fuel storage installations (ISFSI's). At the beginning of 1993 five site specific licenses for dry cask storage had been issued. They are: Virginia Power's Surry Station, issued July 2, 1986; Carolina Power and Light's (CP&L) HB Robinson Station, issued August 13, 1986; Duke Power's Oconee Station, issued January 29, 1990; Public Service of Colorado's Fort St. Vrain facility, issued November 4, 1991; and Baltimore Gas and Electric's (BG&E) Calvert Cliffs Station, issued November 25, 1992. All have commenced operation and loaded fuel with the exception of BG&E. Two

hundred and fifty-two assemblies are in storage at Virginia Power, 56 assemblies are in storage at CP&L, 96 assemblies are in storage at Duke Power, and 1482 fuel elements are in storage at Public Service of Colorado; BG&E anticipates loading fuel later in 1993.<sup>1</sup>

As a result of the growing use of dry storage technology experience, NRC has gained over 25 staff years of experience in the review and licensing of dry spent fuel storage systems. To further support the NRC technical staff, the agency draws upon the knowledge and experience of outside scientists and engineers recognized as experts within their respective fields in the performance of the independent safety analysis of the systems and components submitted by applicants for dry cask licenses or certification. Reviews of numerous applications, seeking either site-specific ISFSIs, certificates of compliance or approval of a topical report, have been conducted over the past 7 years.

Section 133 of the NWPA states, in part, that "the Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under section 218(a) for use at the site of any civilian nuclear power reactor." This directive was implemented on July 18, 1990 (55 FR 29181) by the publication in the *Federal Register* of a final rule establishing a new subpart L within 10 CFR part 72 entitled "Approval of Spent Fuel Storage Casks." As a result of that 1990 rulemaking, four dry casks were listed in § 72.214 of subpart K as approved by the NRC for storage of spent fuel at power reactor sites under a general license.

The final rule adds one additional spent fuel storage cask, the VSC-24 cask, to the list of approved casks in § 72.214. The cask being approved, the VSC-24 cask, is discussed in further detail below. In addition, based on public comments, the Safety Evaluation Report (SER) and Certificate of Compliance for the VSC-24 were modified. Each modification is discussed below as part of the "Analysis of Public Comments" section of this *Federal Register* notice.

Pacific Sierra Nuclear Associates (PSNA) submitted a "Topical Report on the Ventilated Storage Cask System for Irradiated Fuel" for their VSC-24 cask in February 1989. (VSC means "ventilated storage cask." Twenty-four (24) refers to the number of individual spent fuel assemblies which the VSC-24

<sup>1</sup> EIA Service Report SR/CNEAF/92-01 Spent Fuel Discharges from U.S. Reactors 1990, March 1992.

is designed to hold.) The NRC completed its review and issued its Safety Evaluation Report (SER) in April 1991 approving the Topical Report for referencing in a site-specific license application. PSNA later submitted its approved Topical Report in the form of a "Safety Analysis Report for the Ventilated Storage Cask System" in November 1991 requesting certification for use under a general license. The NRC conducted additional evaluations and issued a draft Certificate of Compliance and draft SER, dated April 1992, in support of the Notice of Proposed Rulemaking published in the Federal Register on June 26, 1992. Based on further staff review and analysis of public comments, with this final rulemaking, NRC is approving the VSC-24 cask for use under a general license and is simultaneously issuing a final Certificate of Compliance and SER.

The paramount objective of 10 CFR part 72 is protecting the public health and safety, by providing for the safe confinement of the fuel and preventing the degradation of the fuel cladding. The review criteria used by the NRC for review and approval of dry cask storage under 10 CFR part 72 consider the following: Siting, design, quality assurance, emergency planning, training, and physical protection of the fuel. Included in the review of a specific system, either for a certificate of compliance or a site-specific license, are the following: Earthquakes, high winds, tornados, tornado driven missiles, lightning, and floods. In addition, applicants must demonstrate to NRC's satisfaction that their proposed dry cask system will resist man-made events such as explosions, fires and drop or tipover accidents.<sup>2</sup>

The VSC-24 cask, when used in accordance with the conditions specified in its Certificate of Compliance, meets the requirements of 10 CFR part 72. This conclusion is reached after a detailed evaluation of the VSC-24 cask by the NRC as documented in the NRC staff's SER. Thus, use of the VSC-24 cask, as approved by the NRC, provides adequate protection of the public health and safety and the environment. Holders of power reactor operating licenses under 10 CFR part 50 will be permitted to store spent fuel in this cask under a general license. A copy of the Certificate of Compliance is available for public inspection and copying for a fee at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

<sup>2</sup> The design bases for these events and accidents are contained within 10 CFR part 72.

#### Public Responses

In response to the June 26, 1992, and January 21, 1993, Federal Register notices, 232 comments were received from individuals, public interest groups, environmental groups, associations, industry representatives, Congressional representatives, and States. Although a number of the comments were received after the respective September 9, 1992 and February 22, 1993 comment closure dates for the two notices, NRC has considered comments received including those received after the comment closure dates.

As a part of this rulemaking action, NRC received requests for further opportunity to comment and in particular, for NRC to hold a public hearing to review the merits of this action. One request was from Frank J. Kelley, Attorney General of the State of Michigan, dated December 30, 1992, which requested a public hearing. Chairman Selin responded by letter of January 25, 1993, and proposed a transcribed public meeting with the Attorney General to discuss the dry spent fuel cask approval process, to answer questions, and to provide opportunity for interested members of the public to present comments. That public meeting was held on February 23, 1993, from 9:30 a.m. until 12 noon in Lansing, Michigan. The Attorney General, his staff, representatives of the NRC staff, and approximately one hundred interested citizens attended the meeting. The meeting was transcribed and the transcript of that meeting, including questions and comments of the Attorney General and citizens attending and participating in the meeting, has been considered by the NRC and is included in the analysis of comments. Additional written comments received within five working days subsequent to the meeting have also been considered by the NRC and are included in the analysis of comments below. (See comment response number 57 for information on NRC's response to request for a hearing.)

A number of comments were related to disposal of high-level waste, use of dry cask storage technology in general, or use of the VSC-24 cask specifically by Consumers Power Corporation at the Palisades Nuclear Generating Station. Examples of each include:

—Consumers Power Company knew years in advance that the day would come when their spent fuel pool would be full. They should have planned ahead of time for this day. Consumers Power should be required to build a new spent fuel pool, store

their waste elsewhere, or to shut down the plant at Palisades;

—Concern was expressed that the review process might become unreasonably delayed and without approval for additional storage capacity, the Palisades plant ultimately will be forced to shut down, a result that would have serious economic consequences for southwestern Michigan.

—The Federal government's failure to resolve questions about the permanent storage of nuclear wastes leaves both the plant and public with limited options: additional storage in pools, additional storage in dry casks or plant shutdown. The federal government has an obligation to resolve the issue of permanent or interim storage. It would be difficult to overstate the need for dispatch in doing so, as hundreds of American communities will eventually face this problem.

—Ten years ago, there was an erroneous assumption that the search for and construction of a final resting place for high-level waste would be much swifter than it has been. A "demonstration" program required by law was supposed to have been for temporary storage. Because of the societal and technical obstacles which radioactive waste disposal presents, even a temporary "demonstration" program is likely to have much longer-term implications. Temporary dry cask storage in Michigan should not become de facto permanent disposal.

—It is not fair to the public of Michigan to link Consumers Power Company's attempts to continue the safe storage of its nuclear fuel with the insistence by others that we shut down Palisades and every other nuclear plant in the country.

These comments deal with broad policy and program issues relating to the storage and disposal of high-level radioactive waste including the Department of Energy's repository program. However, commenters will find a summary of relevant information on many of these broad issues in the responses to comments set out in response numbers 41, 52, 61, and 69 in the following analysis of comments.

Many of the comment letters contained comments that were similar in nature. These comments have been grouped as appropriate and addressed as single issues. The NRC has identified and responded to 75 separate issues that include the significant points raised by each commenter.

Many commenters discussed topics that were not the subject of this

rulemaking and thus were not specifically addressed by the staff as a part of this final rulemaking action. These comments expressed opposition to the use of dry cask storage and included suggestions such as the following:

- (1) Nuclear plants generating radioactive waste should be shut down;
- (2) The production of radioactive waste should be stopped when the existing spent fuel pool (and off-load-reactor capacity) is full;
- (3) A formal hearing should be required at each site using dry storage casks;
- (4) The Palisades Nuclear Plant should be shut down;
- (5) The embrittlement of the reactor pressure vessel at Palisades dictates that the plant be shut down and no additional spent fuel generated;
- (6) The use of nuclear power should be stopped and existing sites cleaned up;
- (7) The use of storage only casks at Palisades is a violation of public trust; and
- (8) A research and development program should be conducted on productive uses of spent fuel and on alternative energy sources.

Finally, many commenters expressed concern over the ability of dry cask storage designs to safely store spent fuel. The following responses to these comments reflect a small but important portion of NRC's review of health, safety, and environmental aspects of the VSC-24 cask, to ensure that the cask is designed to provide protection of the public health and safety and environment under both normal conditions and severe, unlikely, but credible accident conditions. Dry cask storage systems are massive devices, designed and analyzed to provide shielding from direct exposure to radiation, confine the spent fuel in a safe storage condition, and prevent releases to the environment. They are designed to perform these tasks relying on passive heat removal and confinement systems without moving parts and with minimal reliance on human intervention to safely fulfill their function for the term of storage. The designs include margins of safety under both normal and accident conditions to provide additional assurance of protection for the public health and safety, the common defense and security and the environment.

#### Analyses of Public Comments

*A. A number of commenters raised issues relating to cask handling and the*

#### *ability of the cask to withstand drop and tipover accidents.*

**1. Comment.** Some commenters expressed concern about the operational safety of the VSC-24 cask relating to loading the multi-assembly sealed basket (MSB) into the ventilated concrete cask (VCC) and retrieving it. Particularly, the commenters contended that the loading procedure of placing the MSB transfer cask (MTC) on top of the VCC is precarious and the procedure for retrieving the MSB from the VCC is not clearly explained. One commenter indicated that there are unreviewed safety issues associated with handling equipment including the lifting cables, lifting yoke, lugs, and transfer vehicle, that need further review. Another commenter asked about the training and oversight of personnel performing these activities. Another asked, that if the transfer cask is on top of the VCC in the fuel handling building and a seismic event occurs causing tipover, would this type of event be considered in a § 50.59 evaluation?

**Response.** Use of the VSC-24 cask system inside the fuel handling building (including use of the MTC to load and retrieve the MSB from the VCC) would be conducted in accordance with the 10 CFR part 50 reactor operator's license. These cask handling operations, including loading, retrieval and training, must be evaluated by the general licensee, as required by 10 CFR 72.212(b)(4), to ensure that the procedures are clear and can be conducted safely. The MTC and MSB have been evaluated against the criteria for controlling heavy loads found in NRC publication NUREG-0612 ("Control of Heavy Loads at Nuclear Power Plants") and American National Standards Institute (ANSI) N14.6, "Special Lifting Devices for Shipping Containers Weighing 10,000 Pounds or More." The lifting yoke associated with the MTC is a special purpose device designed to ANSI N14.6 criteria to ensure that the yoke can safely lift the wet MTC containing the MSB out of the spent fuel pool and can safely lift the dry MTC and MSB to the top of the VCC.

Specific requirements for lifting yokes, cables, and lugs have been identified in the Certificate of Compliance and SER and are not unreviewed safety issues. Part 72 requires that, prior to the use of a cask under the general license, the licensee determine whether activities related to storage of spent fuel under the general license involve any unreviewed safety questions or change to the facility technical specifications, as provided under 10 CFR 50.59. Load handling

activities and possible load drop events and structural and radiological consequences are necessary evaluations under 10 CFR 50.59.

For example, the utility's specific analyses for load handling activities at the Palisades plant illustrate the type of mandatory evaluation by the cask user that NRC requires before the VSC-24 cask can be used under 10 CFR part 72, subpart K. Among others, one specific event analyzed is the evaluation of the drop of a loaded MTC onto the VCC with tipover of the MTC onto the load distribution system in the track alley area. This analysis would encompass the tipover scenario described above by the commenter who questioned whether it would be part of a utility's § 50.59 evaluation. The result of this analysis shows that the MSB would not fail and that, while local yielding of the transfer cask may occur, the transfer cask would not fail and could be lifted back to the pool for recovery of all spent fuel in the cask.

**2. Comment.** One commenter questioned whether, if the MTC were lifted up by the MSB, the weight of the loaded MSB and the MTC would bear on the MSB welds. Another commenter questioned whether the MSB lifting rings could support the weight of the MSB and MTC.

**Response.** The weight of the MSB and the MTC could be supported by the MSB structural weld and the rings. The weld has been analyzed for this situation and was found to meet the design criteria of paragraphs 4.2.1.1 and 4.2.1.2 of ANSI N14.6, 1986. This standard, which is considered conservative, is specifically written for special lifting devices for shipping containers of radioactive materials. This situation of lifting both the MSB and MTC will not occur under normal operating conditions. However, if it does occur, as discussed above, the weld and the rings can support the weight of the MSB and MTC.

**3. Comment.** One commenter noted that tiles at the bottom of the VCC could break when the MSB is lowered onto them.

**Response.** There are numerous ceramic tiles arranged on the base of the VCC which serve as a separator between the flat bottom surface of the MSB and the parallel surface of the VCC liner to prevent the possibility of localized corrosion. Although these tiles could break, there is a substantial margin of safety to prevent breakage. However, if some breakage occurs, the tiles will still perform their function of providing a slight gap between the MSB and the VCC. Although it is not necessary, the Certificate of Compliance has been

revised to include a statement that the operating procedures for handling the MSB over the VCC should include the consideration for reducing the likelihood of fracturing the ceramic tiles by impact load.

4. *Comment.* One commenter questioned why the NRC allows an 80 inch lift height when a drop of over 18 inches may cause enough damage to compromise shielding. Another commenter indicated that the operation of moving the VSC-24 cask from the heavy haul trailer across a piece of "bridge steel" to the storage pad sounded dangerous. One commenter also stated that if the MSB is not centered inside the VCC, possible damage could occur to the coating of the VCC liner or the ceramic tiles on the bottom of the VCC.

*Response.* The NRC evaluated a possible drop of the cask and has established conditions limiting the lift height for the VSC-24 cask. These conditions include a requirement to inspect the cask after any tipover or drop from a height greater than 18 inches, and the prohibition against lifting the VSC-24 cask to a height greater than 80 inches. The purpose of the 80 inch lift condition is to ensure that the MSB maintains its confinement capability even in the event of a drop of the VSC-24 cask. The MSB has been designed to meet the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel (B&PV) code under Service Level D conditions and a drop of 80 inches should only result, at most, in denting of the MSB shell. The purpose of the inspection for any drop from a height greater than 18 inches is to ensure that the shielding is not compromised and that any damage is immediately identified and repaired. On-site transport procedures with auxiliary equipment such as the "bridge steel" described in the Safety Analysis Report (SAR) have been reviewed and are considered to be appropriate to the design, suitable for use and to meet safety requirements which are not part of the regulations in 10 CFR part 72. Possible damage to the ceramic tiles was discussed in the response to Comment Number 3. Finally, damage to the coating of the VCC liner would not have safety significance because the liner is not a confinement boundary and does not contribute significantly to shielding. The principal purpose of the VCC liner is to provide an inner form for the concrete during fabrication.

5. *Comment.* One commenter indicated that if there were a problem with a VSC-24 cask, it could not be removed to the fuel handling building because that is not allowed when the

temperature is below 0 °F, and that the temperature in Michigan and Wisconsin is often below 0 °F.

*Response.* The purpose of restricting VSC-24 cask movement to ambient temperatures above 0 °F is to prevent the possibility of brittle fracture of the MSB in the event of a drop accident. There is a 50 °F margin of safety because the MSB material maintains ductile properties at a test temperature of -50 °F. If a situation for return to the fuel handling building arises while the ambient temperature is below 0 °F, a key option would be for the licensee to determine that the actual MSB material temperature is above 0 °F. In that event movement of the MSB could be accomplished safely without concern for brittle fracture. The MSB would most likely be above 0 °F because of the heat produced by the stored spent fuel. Another option available to a licensee would be not to move the MSB until an ambient temperature above 0 °F is reached.

6. *Comment.* Some commenters stated that a cask tipover accident while the VSC is on the pad was not considered, even though this type of accident was considered for other casks. Some commenters also noted that drop evaluations of the MSB were performed for only one orientation, although the NRC requires multiple drop orientations for other designs.

*Response.* A cask tipover accident was not specifically performed for the VSC-24 cask. However, PSNA performed an engineering analysis of cask drops from both vertical and horizontal positions which represent more severe accidents than a tipover. Therefore, NRC concluded it was not necessary to perform a tipover analysis. With respect to drop orientation, the MSB was analyzed for both vertical and horizontal drop orientations.

7. *Comment.* One commenter asserted that the design of the MSB is such that it is susceptible to buckling under certain off-normal and accident conditions. The commenter further indicated that this is a departure from previous spent fuel cask design and licensing criteria which allow no buckling of the basket structure.

*Response.* The NRC believes that this commenter refers to the fuel basket and not the MSB shell. The MSB basket structure was analyzed and the NRC concluded that buckling would not be a safety concern as discussed below. The critical load for buckling was calculated for a single storage tube and compared to the actual load under a vertical deceleration of 124 g that would result from a drop of 80 inches. The results of the analysis indicate that there is a

safety factor of 5 for a tube against buckling. Because of the conservative approach in analyzing a single fuel storage tube rather than the entire basket, the NRC believes that a higher safety factor would exist for the basket assembly. Thus, the NRC is not departing from previous design and licensing criteria.

8. *Comment.* Some commenters noted that the NRC allowed PSNA to use Electric Power Research Institute (EPRI) report NP-4830 in their VSC-24 cask SAR, but did not allow vendors of metal casks to reference this report in their SAR's.

*Response.* The concept set forth in EPRI Report No. NP-4830 is to provide for consideration of the cask reinforced concrete bearing pad behaving as a pad on an elastic foundation. In previous structural reviews of cask systems, the bearing pad has been very conservatively assumed to be infinitely rigid. The response of the pad to a dropped or overturned cask has an influence on the magnitude of the force the spent fuel support system and confinement envelope must resist. The NRC identified various issues related to the details of the concept and its application by the applicant.

Rather than relying on the EPRI report, NRC independently calculated the stresses experienced by the MSB during a drop accident. Based on these independent calculations, NRC confirmed that the design of the MSB will provide an ample margin of safety during a drop accident. Therefore, NRC concluded that the design of the MSB was acceptable and that there was reasonable assurance that the confinement integrity will be maintained even if the postulated drop accident does occur.

In order to provide additional information on the application of the concept of an elastic bearing pad to spent-fuel casks, the NRC has initiated a contract to conduct drop tests of casks from heights in the 18 to 80 inch range. This should provide test data that would be used to assess the capability of the specific computational techniques contained in EPRI NP-4830 to predict the behavior of dropped casks. Following this testing, the NRC will consider the issue of the applicability of the EPRI report, including its applicability to a postulated drop of a steel cask on concrete pads.

9. *Comment.* The effect of a dynamic load factor (DLF) on the MSB was not considered nor was it shown to be insignificant.

*Response.* The effect of a DLF was considered and found to be significant. The applicant applied a maximum

possible DLF of 2.0 to the average decelerations acting on the MSB. As a result of using a DLF of 2.0, the decelerations were increased from 62 g to 124 g and 22 g to 44 g respectively, for the vertical and horizontal orientations. As noted above in comment response number 8, although NRC staff did not endorse the methods used by the vendor to determine these loads, the NRC independently concluded that these design loadings are acceptable.

**10. Comment.** One commenter provided a calculation of the results of a hypothetical accident involving a VSC-24 cask. The conditions of the hypothetical accident were a cask tipover while the cask was under maximum internal pressure. The results indicated that the welds of the MSB would be overstressed.

**Response.** The NRC reviewed this calculation and based on that review, concluded the calculation did not state the consequences of the hypothetical accident. Most importantly, the size and configuration of the welds assumed in the calculation understated the strength of the welds and their ability to withstand the hypothetical event. The strength of these welds, which meet ASME Boiler and Pressure Vessel Code criteria, has been thoroughly analyzed by the applicant and the NRC. Although a cask tipover was not specifically performed for the VSC-24 cask, a horizontal drop accident, more severe than a tipover, was analyzed as a bounding case. This analysis demonstrated that, under the conditions of a horizontal drop while the MSB is under maximum internal pressure, the welds would not be overstressed.

*B. A number of commenters raised issues relating to releases of radioactivity from surface contamination and leakage from the casks under normal and accident conditions.*

**11. Comment.** Some commenters expressed concern that there would be a small release of radioactive particulates from the MSB exterior surface during off-normal conditions and that the radioactive releases from storage casks, when combined with other releases from the reactor, would exceed dose limits at the reactor site boundary.

**Response.** The NRC interprets this comment to mean that during off-normal conditions there is the potential for release of radioactive contamination from the exterior surface of the MSB. The consequences of any release of contamination from the MSB exterior surface (whether normal or off-normal) is evaluated in the SAR. However, the

Certificate of Compliance, in Section 1.2.5, "Maximum MSB Removable Surface Contamination" contains specifications for limiting the amount of radioactive contamination permitted on the external surface of the MSB. These specifications are conservative, and are based, in part, on equivalent criteria used for the safe transportation of radioactive material (see 10 CFR 71.87(i)). Hence, compliance with them will ensure that off-site dose limits of the NRC's regulations will be met for normal and off-normal conditions alike. The general licensee must also use the cask in accordance with the reactor operating license and the Certificate of Compliance. The general licensee is also responsible for complying with other Commission regulations regarding radioactivity release limits. Therefore, potential releases from the MSB when combined with routine releases from the reactor should not exceed dose limits at the site boundary.

**12. Comment.** Commenters indicated that casks placed close to the shore of Lake Michigan represent a serious threat to the environment, especially to the Great Lakes which have 20 percent of the world's surface fresh water.

**Response.** A utility's use of the VSC-24, for the storage of spent fuel in casks at a reactor site, would not have a significant impact on the environment. This finding is supported by the NRC safety and environmental evaluations for the VSC-24 cask, including the applicant's demonstration of compliance of the cask with NRC requirements, as well as by the 1990 rulemaking on dry cask storage and the 1984 and 1989 waste confidence proceedings. While the VSC-24 cask is being approved for use under a general license, it can only be used by a licensee provided the reactor site parameters (e.g., average ambient temperature, seismic accelerations, flood water velocity, fires and explosions, etc.), are enveloped by the cask design basis, as specified in the SAR and SER. Proper use of a certified storage cask at any site (whether near Lake Michigan, a river, a bay, or an ocean) with site parameters that are bounded by the cask design, would not have a significant impact on the environment.

**13. Comment.** Some commenters expressed concern that extremes in temperatures and humidity would cause dry casks to leak.

**Response.** The VSC-24 cask design was analyzed for possible effects of extremes in temperature and humidity. These analyses showed no leakage will occur as a result of temperature or humidity extremes. The thermal analysis presented in the SAR and the

NRC evaluation documented in section 4.0 of the SER considered temperature extremes for both hot and cold conditions. Based on this analysis, the NRC concludes no breach of the MSB confinement barrier or leakage from the MSB will occur.

**14. Comment.** Some commenters speculated that a catastrophic release of radiation may occur from a possible explosion caused by spontaneously flammable uranium hydride in the presence of oxygen. It is postulated that the temperature inside the cask will be hot enough to rupture fuel rods which will, in turn, cause the presence of hydrogen to create uranium hydride.

**Response.** The NRC does not believe that an explosion inside a storage cask caused by flammable uranium hydride in the presence of oxygen is credible for the following reasons. Oxygen gas is not expected to be present because all casks are designed to have an inert atmosphere. Further, the formation of uranium hydride is not credible due to the lack of a significant source of hydrogen. Finally, all casks are designed so that the internal temperature will not cause the fuel rods to rupture.

Therefore, the conditions necessary for this scenario to occur would not exist.

**15. Comment.** The SER states that there is no credible chain of events that could spread contamination from the MSB. Only air-coolant loss due to blockage was considered. Commenters indicated that the SER should also consider the effect of flooding of the hot cask and steam explosion. A concern was also expressed regarding the structural integrity of the pads which may, in the case of Palisades, be built on a sand dune area that shifts.

**Response.** The SER for the VSC-24 cask did consider the effects of flooding as well as air-coolant loss due to blockage of the vents. The analysis showed the release of contamination from the exterior surface of the MSB due to flooding is possible but the resultant contamination would not be significant. Steam explosions involving water contacting molten metal are not credible under dry spent fuel storage conditions. In addition, explosions due to steam forming under flooding conditions are not considered credible due to the fact that if steam were to be formed, it would be released non-violently through the vents.

With respect to the comment on structural integrity of the pads, the certificate of compliance requires, per 10 CFR 72.212(b), that written evaluations be performed by the licensee prior to cask use to establish that cask storage pads and areas have been designed to adequately support the

static load of the stored casks. Consequently, the structural integrity of the pads would have to be evaluated and verified before the licensee could use the VSC-24 at the Palisades site or at any site.

16. *Comment.* A number of comments related to gaseous releases from dry storage casks. Commenters asked the following questions. What happens to gaseous components of the decay chain? Are they released to the environment? If not, is pressure buildup over time being considered? A commenter expressed the opinion that casks should have individual radionuclide emission monitoring. An issue was raised about the effects of release of krypton-85 ( $Kr-85$ ) gas on electric conditions in the atmosphere.

*Response.* The gaseous components of the decay chain are expected to be retained within the matrix of the spent fuel or within the fuel rod. In the case of pinhole leaks in the fuel rod cladding, the MSB is designed as a secondary confinement barrier to retain gaseous products. Therefore, because no gaseous components are released to the environment, no routine monitoring of effluent from the outlet vents is required. The primary reason for requiring the use of ASME section III instead of other standards is to ensure the confinement of fission products.

Pressure build-up of gaseous components in the MSB is not significant due to the age of the fuel and integrity of the fuel rod cladding; however, the MSB has been analyzed for a hypothetical condition in which all the fuel rods rupture. The resulting pressure within the MSB is negligible. The purpose of maintaining an inert atmosphere in the MSB cavity is to ensure that fuel rod cladding degradation does not occur, thereby preventing gross fuel rod cladding rupture. In addition to ensuring that new pin hole leaks do not develop in the fuel clad during the storage period, the licensee is responsible for monitoring the environment within the MSB prior to its opening to ensure that no unplanned release of radioactive material takes place. The amount of  $Kr-85$  that could be potentially released from dry cask storage is so small that it would not significantly affect the physics or chemistry of the atmosphere.

*C. A number of comments were received that focused on monitoring, surveillance, and inspection activities associated with dry cask storage of spent fuel, particularly as they relate to the VSC-24 cask.*

17. *Comment.* Some commenters suggested that, with respect to the VSC-24 cask, the NRC did not enforce 10 CFR

72.122(h)(4) which reads, "Storage confinement systems must have the capability for continuous monitoring in a manner such that the licensee will be able to determine when corrective action needs to be taken to maintain safe storage conditions," and 10 CFR 72.122(i) and 10 CFR 72.128(a)(1) which require monitoring of systems and components that are important to safety over anticipated ranges of normal and off-normal operation. Also, one commenter suggested that because the VSC-24 cask requires surveillance to ensure that the vents are not blocked, the requirement that the cooling system must be a passive system (10 CFR 72.236(f)) is violated.

*Response.* NRC approval of the VSC-24 cask system is not inconsistent with 10 CFR 72.122(h)(4), 72.122(i) or 72.128(a)(1). Although the cited sections of 10 CFR part 72, subpart F, refer to "monitoring" or "continuous monitoring," they do not specify the details for particular monitoring programs to allow the NRC to require monitoring programs that are appropriate for the particular storage system design. The NRC has and will consider continuous monitoring where it believes continuous monitoring is needed to determine when corrective action needs to be taken. To date, under the general license, NRC has accepted continuous pressure monitoring of the inert helium atmosphere as an indicator of acceptable performance of mechanical closure seals for dry spent fuel storage casks.

The NRC does not consider such continuous monitoring for the VSC-24 cask double weld seals to be necessary because: (1) There are no known long-term degradation mechanisms which would cause the seal to fail within the design life of the MSB and (2) the possibility of corrosion has been included in the design (See SER Section 5.3.1). These conditions ensure that the internal helium atmosphere will remain. Therefore, an individual continuous monitoring device for each MSB is not necessary. However, the NRC considers that other forms of monitoring casks including periodic surveillance, inspection and survey requirements, and application of preexisting radiological environmental monitoring programs of part 50 licensees during the period of use of the MSB canisters with seal weld closures can adequately satisfy the requirements of 10 CFR 72.122(h)(4).

With respect to the issue of instrumentation and control systems to monitor systems which are important to safety (10 CFR 72.122(i)), the user of the VSC-24 cask will, as provided in

Chapter 14 of the SER and in Section 1.3.1 of the Certificate of Compliance, be required to verify by a temperature measurement, the cask thermal performance on a daily basis to identify conditions which threaten to approach cask design temperature criteria. The cask user will also be required to conduct a daily visual surveillance of the cask air inlets and outlets as required by Chapter 14 of the SER and Section 1.3.1 of the Certificate of Compliance.

While the MSB and VCC are considered components important to safety that comprise the VSC-24 cask design, they are not considered operating systems in the same sense as spent fuel pool cooling water systems or ventilation systems which may require other instrumentation and control systems to ensure proper functioning. Hence, due to this passive design, temperature monitoring and surveillance activities are appropriate and sufficient for this design, they assure adequate protection of the public health and safety, and meet the requirements of § 72.122(i).

18. *Comment.* Several commenters expressed concern related to the inlet and outlet vents, on the VSC-24 cask, which are necessary to allow cooling of the storage container by natural circulation. Some commenters also questioned the adequacy of the surveillance requirements for the VSC-24 cask and suggested that electronic continuous monitoring and recording of air outlet temperature should be required on each cask. Specific concerns include:

- (a) Vent blockage by bugs, webs, snow, and ice;
- (b) Frequency of vent outlet surveillance for blockage;
- (c) Drive-by or walk-through inspection is inadequate to observe outlet blockage; and
- (d) Critical temperatures associated with the VSC should be monitored.

*Response.* The NRC is requiring, as part of the VSC-24 Certificate of Compliance, that surveillance and measurement of the thermal performance of the cask be conducted by the licensee on a daily basis. The licensee is responsible for establishing the specific method of measurement; the licensee can measure the inlet and outlet air annulus temperatures, or it could also measure the MSB surface temperature, the VCC inner wall temperature or perform other appropriate measurements. The method selected by the licensee must provide a positive indication of the approach of

materials to cask design temperature criteria.

In addition, analyses of safety margins of components important to safety show that even assuming surveillance were not conducted at the required daily frequency, and both the inlet and outlet vents were blocked for a 30 hour period, there would still be no loss of safety function or any immediate threat to the health and safety of the public. This conclusion is based on the adiabatic heatup thermal analysis of the VSC-24 cask, which assumes that all vents are blocked, and no heat is rejected by the cask. The concrete and cladding temperature criteria that could be exceeded under this conservative analysis, assuming complete blockage, signify the onset of very slow degradation mechanisms, not an imminent loss of safety function.

The NRC also agrees with the comment that visual surveillance of exterior air inlets and outlets may be inadequate and may not lead to a positive determination of blockage because the design includes screens placed over the vents to prevent wildlife from entering the VCC. Consequently, the NRC has revised the Certificate of Compliance surveillance requirement to make the integrity of the screens be part of the visual surveillance. A physical examination of the vent is required if its associated screen shows any evidence of breach.

**19. Comment.** One commenter suggested that approval of the VSC-24 cask should be denied because the snow shield was eliminated and that the analysis of air flow of the VSC took it into consideration.

**Response.** The snow shield was eliminated because it was not considered effective in resolving the problem of vent blockage by snow. A visual surveillance requirement is considered more effective in addressing the issue of vent blockage by snow. The Certificate of Compliance has been revised to add a daily surveillance requirement, as discussed in Comment 18, which would include checking for snow blockage during periods of snow accumulation. In addition the inclusion of a snow shield in the original design actually decreased air flow and therefore, its removal increases the thermal efficiency of the cask.

**20. Comment.** One commenter questioned how the condition of the inlet vents is checked for damage after the lifting arms are inserted into the air inlets for transfer.

**Response.** Lifting the VSC-24 cask using the hydraulic roller skid, which involves insertion of lifting arms into the air inlets, has been analyzed. The

results indicate that the shear and bearing capacities of the concrete surrounding the air inlet vents (per American Concrete Institute (ACI) criteria 349-85) are not exceeded and no damage is expected. Therefore, there is no need to inspect vents for damage following use of the hydraulic roller skid.

**21. Comment.** The general licensee must have specific plans for the constant and careful monitoring of the casks and for the safeguarding of the waste to prevent catastrophic accidents or terrorism.

**Response.** In accordance with 10 CFR 72.212(b)(5), each reactor licensee must have a physical security organization and program to detect intrusion into the protected area including acts of terrorism, and to take any corrective action. The physical security program, as well as environmental monitoring and radiation protection programs for each reactor facility, provide the necessary monitoring for the casks and safeguarding of the spent fuel. Thus, the licensee will be able to determine when corrective action needs to be taken to maintain safe storage conditions to protect the public health and safety. (Also see response to Comment Number 33 below).

*D. A number of commenters raised technical issues related to the thermal analysis of the VSC-24 cask and thermal performance of the cask under normal, off-normal, and accident conditions.*

**22. Comment.** One commenter questioned whether NRC intends to establish 75 °F as a standard ambient temperature criteria for all storage casks and expressed concern that this temperature may not be applicable for the majority of power reactor sites.

**Response.** The NRC does not intend to establish 75 °F, or other standard ambient condition criterion, for all cask designs. The cask vendor establishes ambient temperature criteria on which the cask is designed. In the case of the VSC-24 cask, PSNA chose 75 °F. Each reactor licensee can then only use those casks which have design bases that envelop the reactor site ambient temperatures. For example, if a power reactor site has an average annual ambient temperature greater than 75 °F, then that reactor licensee cannot use a cask with a 75 °F ambient design temperature.

**23. Comment.** One commenter questioned how heat transfer for the VSC-24 cask is affected by the fact that there are no provisions for centering the MSB inside the VCC.

**Response.** Heat transfer for the VSC-24 cask is not significantly affected by

lack of centering of the MSB inside the VCC. Therefore, no precise centering of the MSB inside the VCC is needed. However, the physical arrangement of the system restricts lateral movement and does not allow the MSB to be far from center as it is lowered into the VCC.

**24. Comment.** One commenter raised the concern that the VCC concrete temperatures do not comply with the ACI-349 temperature criteria.

**Response.** The NRC has accepted deviations from the ACI-349 Code, Appendix A.4 for the concrete temperature criteria. However, while accepting the deviation, the NRC has identified a specified maximum thermal expansion coefficient for fine and coarse aggregates in the concrete which allows operation at higher temperatures. The selection of specific fine and coarse aggregates in the concrete prevents microcracking between the cement and aggregates in the anticipated temperature range of the VCC. Thus, deviation from the ACI-349 temperature criteria is not a cause for concern and does not compromise safety.

**25. Comment.** One commenter claimed that NRC has used the unsupported assumption that 48 hours is sufficient time to reach thermal equilibrium for the irradiated fuel assemblies (high level radioactive waste) that have been removed from water storage and sealed in the metal canister.

**Response.** The commenter refers to the time period allowed for a loaded VSC-24 cask system to reach thermal equilibrium conditions. For the purpose of thermal equilibrium, the VSC-24 cask system is considered to be placed in service when the concrete cask cover plate is installed.

It should be noted that the Certificate of Compliance has been changed to require that the inlet and outlet air temperatures, for all VSCs placed in service, be measured until the cask reaches initial thermal equilibrium. Furthermore, a daily measurement of the thermal performance of the VSC-24 cask is required. Therefore, any reference to assumed 48 hour thermal equilibrium is covered by the enhanced surveillance requirements. The 48 hour period was selected to provide a basis for baseline measurements. There is no safety significance if thermal equilibrium is achieved in a shorter or longer time.

**26. Comment.** One commenter noted that in chapter 9 of the SER, the NRC staff found it necessary to impose a pre-operational test to verify the heat removal capacity of the VSC-24 cask system. The commenter claimed that

this was required because predicted fuel clad temperatures are a "mere" 4 °F below their design criteria on a 75 °F ambient day. It was further asserted that with a predicted fuel clad temperature of 4 °F below design criteria for the off-normal condition limit, even a successful pre-operational test would not assure that the design criteria is met within the bounds of statistical uncertainty, particularly since the calibration of their temperature sensing equipment has a tolerance of plus or minus 1 °F.

**Response.** The NRC has imposed a test to benchmark the heat removal capacity for the first VSC-24 cask placed in-service. However, the 4 °F margin stated on page 9-4 of chapter 9 of the SER cited by the commenter, is a typographical error. The correct margin is 24 °F, as stated on page 4-7 of the SER. This 24 °F margin is the difference between the maximum allowable fuel clad temperature and the calculated fuel clad temperature, assuming an average annual ambient temperature of 75 °F for normal continuous conditions. For off-normal conditions involving higher ambient temperatures, a maximum fuel clad temperature of 708 °F was calculated assuming an ambient temperature of 100 °F. This temperature is 4 °F below an acceptable fuel clad temperature criterion of 712 °F. The NRC accepted this margin on the basis of the following conservative factors applied in the off-normal case analyzed in the SAR:

a. The calculation assumes steady state conditions. It would take several days of sustained 100 °F ambient temperature to approach the calculated fuel clad temperature value of 708 °F.

b. The fuel temperature criterion is based on prevention of fuel failures due to long-term degradation mechanisms. Short term variations in the average temperature, such as when the daily summer average temperatures exceed 85 °F, have no effect on the long term degradation mechanisms that affect the fuel cladding. Therefore, the annual average 75 °F temperature would be a more realistic condition to use in the calculation than the 100 °F temperature actually used in the calculation.

c. Heat conduction in the axial direction is treated conservatively because little credit is taken for heat transfer out of the ends of the MSB canister.

d. Fuel clad temperature is treated conservatively because a peak heat generation rate rather than an average was used in the calculation.

These conservative factors used in the calculation of fuel clad temperatures provide reasonable assurance that the

actual temperature will be lower than the calculated temperature, considering uncertainties, and therefore this 4 °F margin below the fuel clad temperature criterion is acceptable.

**27. Comment.** One commenter questioned whether cladding failures would affect the temperature of the MSB or the VCC and the heat removal capacity of the VSC-24 cask. Another asked why helium was used to fill the cask. The only helium cooled reactor in the country, Ft. St. Vrain, was operational merely 15% of the time.

**Response.** Fuel cladding failure is not expected to occur because the VSC-24 cask is designed to maintain an inert helium atmosphere inside the MSB to prevent fuel cladding failure. However, fuel cladding failure would neither affect the temperature of the MSB or VCC nor affect the heat removal capacity of the VSC-24 cask. The temperature of the MSB and the VCC depends on the heat generated by the fuel in the MSB, which is not affected by a fuel cladding failure. In addition, heat removal capacity of the VSC-24 cask depends on the airflow on the outside of the MSB which also is unaffected by fuel conditions inside the MSB. Helium was chosen because it is inert and it has good heat transfer characteristics. The fact that the Ft. St. Vrain reactor used helium as a coolant did not contribute to its operational problems.

**28. Comment.** One commenter wanted clarification of "approximately 24 kW," when referring to the heat source loaded into the first MSB for tests conducted by the licensee to verify heat removal capacity of the VSC system. The commenter also indicated that the Certificate of Compliance is overly restrictive in requiring a 24 kW heat load for the first cask because some reactors do not have spent fuel assemblies which could make up the 24 kW heat load. The commenter recommended that the requirement be changed to require that the first cask be loaded with a heat load as high as practicable (but not to exceed 24 kW) to verify the calculated heat removal capability. Another commenter asked why not test the cask with artificial thermal loads rather than with spent fuel.

**Response.** The intent of the language, "approximately 24 kW" was to provide some flexibility to a potential user because there is no way to ensure that the first fuel placed in the cask will have a heat load of exactly 24 kW that was used in the thermal analysis. The purpose of the test is to measure the cask performance and establish baseline data. Following loading and

temperature testing of the cask with a 24 kW loading, the licensee would be able to load fuel at lower thermal ratings without the need to provide NRC with separate temperature test data and additional analysis since the 24 kW heat loading is a bounding analysis. However, because the cask vendor has not provided thermal analyses at lower heat loadings, the NRC believes that if a licensee's first fuel loading has a heat load less than 24 kW, the licensee should conduct both a temperature measurement and a thermal analysis. The purpose of conducting both the analysis and the measurement is to measure system performance and to establish baseline data for the expected inlet and outlet temperature difference. The Certificate of Compliance has been revised to this effect and the word "approximately" has been deleted. With respect to the issue of artificial thermal loads, the NRC will accept alternate heat loads other than spent fuel and the Certificate of Compliance has been revised accordingly. A licensee could use such an artificial heat source to test an initial cask at a bounding heat load of 24 kW prior to loading fuel.

**29. Comment.** One commenter noted that Page 4-1 of the SER for the VSC-24 cask states that the applicant will remove any cask from service which has inlets and outlets blocked. It should say "or" instead of "and."

**Response.** The statement refers to a proposal made by the applicant and is correct as quoted on page 4-1. However, the NRC did not accept this proposal because the applicant did not provide acceptable evidence that the cask will be adequately cooled in the event of a full blockage of either all inlets or outlets. Sections 1.3.1 and 1.3.4 of the Certificate of Compliance require that a VCC be removed from service whenever either all inlets or all outlets are found to have blockage for 24 hours and the concrete temperature criterion of 350 °F has been exceeded. This conclusion is also stated on page 4-1 of the SER.

**30. Comment.** One commenter noted that Table 4.1-1 of the November 1991 SAR for the VSC-24 cask fails to state what the temperature difference would be if all inlets were blocked over a long term.

**Response.** The commenter is correct. However, a temperature criterion of 350 °F has been established for the concrete cask. Calculations indicate that a temperature of 350 °F could be reached after 30 hours if either all inlets or all outlets are blocked. If this situation is identified, the licensee must demonstrate that accident temperature criteria have not been exceeded or is required to take the cask out of service.

NRC notes that reaching 350 °F is not an unsafe condition with respect to the containment integrity of the MSB or the stored fuel. Rather it is a criterion for deciding whether to take the VCC out of service. This action is highly conservative, since only the onset of very slow degradation occurs if the concrete temperature reaches 350 °F. As discussed below, in response to Comment Number 31, a conservative adiabatic heatup analysis determined that it would take 7 days to reach unacceptable fuel clad temperatures. The NRC considers that within this time frame, the licensee's enhanced daily surveillance program, which must include a component that verifies the thermal performance of the cask, would identify the blockage and allow sufficient time for necessary corrective actions to be taken.

**31. Comment.** One commenter indicated that the safety evaluation for the tipover of the VCC only considered the structural aspects of the accident and ignored the thermal consequences. The issue raised was that the VSC-24 cask uniquely requires a vertical orientation to adequately remove heat and that heat removal in the horizontal configuration is degraded even if all vents are unblocked which should not be assumed.

**Response.** Thermal consequences of a VSC-24 cask tipover were considered and are bounded by the adiabatic heat-up analysis performed for the cask. Adiabatic heat-up is not affected by orientation, either horizontal or vertical. The adiabatic analysis determined that it would take approximately seven days to reach unacceptable fuel clad temperatures. The NRC considers that within this timeframe the licensee would take necessary corrective actions to return the cask to an upright position.

**32. Comment.** One commenter stated that an analysis based on Diffusion Controlled Cavity Growth (DCCG) has been the only method accepted by the NRC to determine the maximum allowable fuel cladding temperature. The commenter further stated that it was not apparent that an analysis based on DCCG had been performed in evaluating maximum cladding temperature for the VSC-24 cask.

**Response.** The NRC agrees that DCCG is the only current method acceptable to the NRC to determine maximum allowable fuel clad temperature. The VSC-24 cask was evaluated by this method. See Section 5.3.3 of the SER.

**E. A number of commenters expressed concern about emergency planning and response to contingencies.**

**33. Comment.** Some commenters expressed concern that no evacuation

plan was required. They also stated that there is a lack of contingency planning for catastrophic events. They noted these events could include but would not be limited to:

- a. Direct or indirect lightning strikes on the casks;
- b. Plane crash into the casks;
- c. Sabotage;
- d. Earthquakes;
- e. Fire; and
- f. Emergency planning for cask malfunctions.

A commenter wanted the utility to notify either state or local government before loading casks to make sure local services were aware and would know how to respond if necessary under the emergency plan.

**Response.** The Code of Federal Regulation, 10 CFR parts 50 and 72 requires that nuclear plant structures, systems and components important to safety shall be designed and appropriately protected against dynamic effects, including the effects of tornado-driven missiles, that may result from events and conditions outside the nuclear power unit. This includes the effects of possible airplane crashes.

The licensee's site evaluation for a nuclear plant also considers the effect of nearby transportation and military activities. A licensee proposing to use the VSC-24 cask is required to evaluate and verify that the SER for the facility encompasses the design basis analysis performed for the VSC-24 or any certified cask. Generally, a cask's inherent design will withstand tornado missiles and other design loads and thus, also provides protection against the collision forces imposed by light general aviation aircraft (i.e. 1500-2000 pounds) which constitute the majority of aircraft in operation today. NUREG-0800, Section 3.5.1.6 "Standard Review Plan for Light Water Reactors", contains methods and acceptance criteria for determining if the probability of an accident involving larger aircraft (both military and civilian) exceeds the acceptable criterion. It is incumbent upon the licensee to determine whether or not the reactor site parameters are enveloped by the cask design basis as required by 10 CFR 72.212(b)(3). This would include an evaluation demonstrating that the requirements of § 72.106 have been met.

NRC reviewed potential issues related to possible radiological sabotage of storage casks at reactor site independent spent fuel storage installations (ISFSIs) in the 1990 rulemaking that added subparts K and L to 10 CFR part 72 (55 FR 29181). NRC regulations in 10 CFR part 72 establish physical protection

and security requirements for an ISFSI located within the owner controlled area of a licensed power reactor site. Section 72.212(b)(5) requires that the spent fuel in the ISFSI be protected against the design basis threat for radiological sabotage using provisions and requirements comparable to those applicable for other spent fuel at the associated reactor subject to certain additional conditions and exceptions described in 10 CFR 72.212. Each utility licensed to have an ISFSI at its reactor site is required to develop security plans and install a security system that provides high assurance against unauthorized activities which could constitute an unreasonable risk to the public health and safety. The security systems at an ISFSI and its associated reactor are similar in design features to ensure the detection and assessment of unauthorized activities. All alarm annunciations at the ISFSI are monitored by the security alarm stations at the reactor site. Response to intrusion is required. Each ISFSI is periodically inspected by NRC and annually audited by the licensee to ensure that the security systems are operating within their design limits. The validity of the threat is continually reviewed, with a formal evaluation every six months by the NRC.

An adequate evacuation plan exists for the use of certified casks because of the fact that the existing reactor emergency plan covers the entire site. In addition, contingency planning for the events described above exists because these events are covered within the emergency plans of the reactor facilities which will use the cask. In accordance with 10 CFR 72.212(b), the reactor licensee must review the emergency plan to ensure it provides adequate protection. The licensee's emergency plan provides for responsive action if an event has happened which has the possibility of creating an emergency or after an actual emergency has occurred. Through communications between the utility and governments, the contents of the emergency plan and the actions to be executed by each entity for various situations are understood. In addition, the utility is required to conduct a periodic emergency exercise involving the utility and government agency staff.

**34. Comment.** One commenter stated that there was no contingency for accidents except to reload the spent fuel back into the cooling pool which may not be possible due to lack of pool storage space or impact on the spent fuel due to the accident.

**Response.** Because of the design features, as well as the procedures and requirements discussed elsewhere in

this response and the associated safety analysis, the likelihood of an accident occurring which will require removal of the spent fuel from the cask is very small. However, even if such an unlikely accident occurs, the cask design is required to have capability to permit retrieval. (10 CFR 72.122(l)). NRC does not require a licensee to maintain a reserve capability in the spent fuel pool. Many licensees may do so, however, and they would, therefore, have the option of returning the fuel to the pool in the unlikely event of an accident requiring removal of fuel from the cask. In addition, licensees will have other options available to cover this unlikely contingency including temporary storage in a spare storage cask or use of an existing certified transportation cask. Licensees would have to consider these, and other available options, in the unlikely event an accident occurs requiring removal of the fuel.

*F. Other comments which do not specifically fit those categories above follow below. These comments deal with a broad range of other technical and procedural issues.*

35. *Comment.* There are outstanding safety issues that the NRC expects to resolve in the first test.

*Response.* The NRC SER addresses all significant safety issues, and there are no outstanding safety issues about the VSC-24 cask that remain unresolved. Accordingly, the first test does not involve any safety issue. Its purpose, rather, is to benchmark the heat removal capability of the VSC-24 cask.

36. *Comment.* One commenter asked that a requirement to submit a report to the NRC within 15 days of the test and evaluation of the first cask and prior to construction of the second cask be added to the VSC-24 cask Certificate of Compliance. Also the report and subsequent NRC review should be placed in NRC's Public Document Room.

*Response.* A letter report summarizing the results of the thermal test and evaluation of the first cask placed in service will be submitted to the NRC and placed in the Public Document Room. The licensee may, at their own financial risk, fabricate additional casks prior to using the first cask. If the first cask does not perform as specified, the NRC would prevent use of the other casks or modify conditions on how they could be used.

37. *Comment.* It is unacceptable from a public health and safety standpoint to conduct the first full scale test of a VSC-24 cask at a reactor site because it places the power plant workers, the public, and the environment at risk. Two

commenters stated that the VSC-24 had not been tested to the full range of climatic conditions.

*Response.* Although the volume of data that is available to support certification of the VSC-24 cask does not include results of full scale tests, the available data is more than sufficient to show that the use of the VSC-24 cask by a licensee will not place power plant workers, the public, or the environment at any undue risk. Also the conditions of use for the VSC-24 cask in the Certificate of Compliance ensure adequate protection of the workers, the public, and the environment. Further, the VSC-24 cask has been designed and will be fabricated to well established criteria of the ASME B&PV and ACI codes. In addition, it uses construction materials which have well known and documented properties to provide the necessary structural strength and radiation shielding to meet regulatory requirements. While the NRC has not relied on testing of the VSC-17 cask (a smaller version of the VSC-24 cask design) for approval of the VSC-24 cask, the VSC-17 cask has been tested by DOE at its Idaho National Engineering Laboratory. The report "Performance Testing and Analysis of the VSC-17 Ventilated Concrete Cask," EPRI TR-100305, dated May 1992, concluded that the VSC-17 cask can be safely used at reactor sites. While the VSC-24 cask approval does not rely on the VSC-17 cask, the designs are similar and many parallels in design and function can be drawn. DOE testing of the VSC-17 demonstrates that ventilated storage cask technology can provide safe storage of spent fuel. Thus, in view of the above, although the commenter's observation that the VSC-24 had not been fully tested under climatic conditions is technically correct, the cask has been designed for ambient temperature extremes from -40 °F to +100 °F and meets the ASME and ACI requirements.

38. *Comment.* One commenter noted that Consumers Power does not have a plan to remove spent fuel stored under general license from the reactor site as required by 10 CFR 72.218.

*Response.* The licensee is not required to have a plan to remove spent fuel stored on site under the general license until an application to terminate the reactor operating license is submitted to the NRC. This requirement is found in 10 CFR 72.218(b) and 10 CFR 50.54(bb).

39. *Comment.* One commenter noted that the NRC does not specifically require inspections against 10 CFR 72.236(j)-(m). Questions were raised regarding quality assurance problems encountered during the inspection of

systems currently in operation, and during the construction of the first five casks, that are expected to be placed in service. Another question was raised pointing out that the vendor did not use weld inspectors qualified/certified to American Weld Society D.1.1.

*Response.* The NRC ensures compliance with 10 CFR 72.236 (j) and (k) through inspections, and ensures compliance with 10 CFR 72.236 (l) and (m) through the cask approval process. This process will identify different areas that may need correction, but that is the purpose of an inspection program. If a violation of the requirements is detected, the NRC can impose penalties, or even stop work. The NRC takes note of the fact that problems noted by the commenters were identified as a result of NRC's inspection program during the construction of specific casks. This experience reemphasizes the need for close and continuing quality surveillance under vendor and user QA programs during all VSC-24 and other cask construction activities. The NRC will continue to conduct the inspections of construction activities in accordance with NRC's Inspection Procedures in conjunction with vendor's quality assurance (QA) program, specifications, drawings, etc. to ensure quality work. As to the specific point of the qualification of welds and inspectors, the NRC notes that the welds referenced were not structural welds and, as allowed by the vendor's fabrication specifications, do not have to be qualified to the same extent as a structural weld.

40. *Comment.* Concern was expressed that the measurement of actual effectiveness of a technology in delivering stated requirements must be demonstrated empirically, and that the NRC has not demonstrated the goal of this technology, defined acceptance criteria, or specified how compliance is demonstrated. Some commenters also expressed concern that the review of the concrete cask was not done at the same level as that performed for metal casks and that no independent computer analyses were performed for the design event review. Some commenters noted that the review requires more than limited computer models.

*Response.* For the issue of acceptance criteria, the NRC has established specific requirements in 10 CFR part 72 that must be met in order to obtain a Certificate of Compliance for a cask. The details of the review and bases for the NRC concluding that the cask meets the requirements of 10 CFR part 72 are provided in the SER. The goal of dry cask storage technology is to store spent fuel safely. That goal, and the

effectiveness of the technology, previously has been demonstrated empirically and experimentally. Different cask designs may require different types of analysis to demonstrate their safety, and therefore different review methods may be appropriate to reach that conclusion. In each case the level of review performed is that needed to provide assurance of adequate protection of the public health and safety.

**41. Comment.** Some commenters claimed that part 72, subpart K was originally intended to apply to metal casks only. Concrete cask systems were not addressed in the original rulemaking.

**Response.** As discussed below, both the language and history of subpart K show that it applies to any NRC-approved dry cask storage system including concrete casks systems, and commenters are therefore mistaken in their view that it was intended for metal casks only.

Subpart K applies "to casks approved under the provisions of this part" which includes casks approved by NRC under 10 CFR part 72, subpart L. Subpart L contains NRC's approval conditions "for NRC spent fuel storage casks designs" which would include concrete casks. None of the approval conditions in subpart L requires that the cask must use a metal cask design.

Additionally, there is information on concrete storage technologies in the subpart K rulemaking record that would not support limiting it only to metal casks. Specifically, the Commission's notice of proposed rulemaking (NPRM) for subpart K referenced the Canadians' use of "concrete casks called silos" in describing "the knowledge and experience of dry spent fuel storage in concrete casks." 54 FR 19379-80 (May 5, 1989). The proposed rule also referenced DOE's demonstration of dry storage in sealed storage casks (SSC) which it described as "an above-ground, steel-lined, reinforced concrete cylinder or cask." Id. Further, it cited experience gained from spent fuel storage "in stainless steel canisters stored inside concrete modules at the H.B. Robinson 2 site \* \* \*." Id. If the Commission had intended to limit subpart K to metal casks, it would not have included data from other dry storage technologies in the record supporting its action.

Although the Commission has not previously approved concrete storage systems (or casks) under subpart L, it expressly noted such systems might be approved (and thereby included in subpart K) in the future. In particular, the Commission gave the following explanation for not approving certain

concrete module designs in the final subpart K rule:

A major reason that these spent fuel storage systems (e.g., NUHOMS; Modular Vault Dry Store), which are being considered by the Commission for use under a general license, are not being approved at this time is that they have components that are dependent on site-specific parameters and, thus, require site-specific approvals. 55 FR 29181 (July 18, 1990).

Moreover, the NPRM included the statement that "(t)he Commission has evaluated and approved, in specific licenses issued under 10 CFR part 72, other types of dry storage modules (and t)hese methods may be approved in the future for use under a general license." 54 FR 19382. It also noted that "(s)torage casks certified in the future will be routinely added to the listing in § 72.214 through rulemaking procedures." 54 FR 19380.

These statements collectively show the Commission specifically envisioned the possibility of future rulemaking (i.e., the procedure NRC is now using) to add concrete storage systems to the list of approved spent fuel storage casks in subpart K. Consequently, concrete storage systems can be "casks approved under the provisions of this part" for purposes of part 72, subpart K if, for example, they are not dependent on site-specific parameters and therefore do not require site-specific approvals and if they conform to the approval conditions of subpart L.

Finally, it is noteworthy that the Commission adopted subparts K and L for the express purpose of implementing certain interim storage provisions of the Nuclear Waste Policy Act of 1982 that, significantly, are not limited to metal casks. 54 FR 19379 (May 5, 1989). In particular, the Act authorized the Commission to approve by rule "one or more (storage) technologies" for use at reactor sites. (Sec. 218(a) (42 U.S.C. 10198(a))). The Act also directed the Commission to establish procedures for the licensing of "any technology" approved by the Commission under section 218. (Sec. 133 (42 U.S.C. § 10153)). Therefore, because the Act's provisions are not limited only to metal storage cask designs, it would be inconsistent with the Commission's purpose to limit the application of subparts K and L to such designs.

**42. Comment.** One commenter requested the proceeding be stopped until the NRC revises all regulatory requirements pertaining to the storage of high-level waste and spent fuel to require testing procedures which include testing to destruction.

**Response.** The NRC does not require testing to destruction or other tests if we

have confidence in the analyses which are done or if the design relies on nationally recognized codes and standards. Testing to destruction is an option that can be used to confirm design adequacy. However, destructive tests of an entire cask are not necessary to evaluate a design when other non-destructive tests or destructive testing of the components will provide the necessary information to evaluate a design.

**43. Comment.** Some commenters expressed concerns that fuel handling could be under less than ideal conditions and that storage could be under harsh environmental conditions. Sites where the VSC-24 cask is proposed for use would experience low winter temperatures, freeze-thaw cycles, high humidity, and marine conditions. Concern was also expressed that harsh environmental conditions and damage to the MSB protective coating will degrade the containers as a result of corrosion, embrittlement, cracks, fatigue and other aging effects which would affect the ability of the cask to survive over extended periods.

**Response.** Handling of fuel and loading of the cask is performed under well controlled conditions in the reactor's fuel handling building using written procedures developed in accordance with the reactor operating license. The VSC-24 system has been evaluated for the possible effects of harsh environmental conditions and the MSB has been evaluated for the possible effects of corrosion due to humid and marine environmental conditions. As a result of the corrosion analysis of the MSB, the NRC found the design acceptable with the consideration of localized corrosion mechanisms (i.e., pitting, stress corrosion cracking, crevice corrosion and galvanic corrosion) as well as general corrosion. Localized corrosive attack on the MSB surfaces is minimized by choice of materials and design features such as the ceramic tiles between the VCC liner and the bottom surface of the MSB. Furthermore, the NRC allows no credit for the attributes of the paint.

Aging issues attributed to fatigue for the MSB were evaluated according to the ASME B&PV Code, Section III, and it met acceptable standards.

Temperature extremes, such as freeze-thaw cycles which exist in the Great Lakes region, were considered in the evaluation of the VSC-24 cask. According to the conditions for cask use, the user of the VSC-24 system will perform site-specific analyses to verify that the temperature conditions assumed in the analysis bound the conditions existing at the site.

The possibility of MTC and MSB cracks was addressed as a part of ferritic material considerations. Based on guidance provided in ANSI N14.6 and NUREG CR-1815 the NRC established test and operating limits for the MTC and the MSB to preclude the possibility of brittle fracture.

Finally, the VCC is designed and fabricated to American Concrete Institute Code requirements which consider durability under extreme conditions for extended periods. The cask is also subject to annual visual surface inspections for chipping, spalling, or other surface defects. Any surface defects found can be easily corrected. The fluence of the neutron flux within the spent fuel is five orders of magnitude less than the fluence encountered within an operating reactor, and therefore embrittlement of the MSB is not of concern.

44. *Comment.* A commenter asked how the NRC will correct the problem when something goes wrong with the VSC-24 cask. In the event of a tipover or drop of a loaded VCC, the commenter believes the licensee should be required to report the incident to the NRC within 4 hours and the NRC, rather than the licensee, should determine whether the MSB and/or the VCC should be reloaded for spent fuel storage.

*Response.* The licensee is responsible for correcting problems when they occur. The NRC is responsible for ensuring that the licensee takes appropriate corrective action. These rules reflect existing regulatory practice and procedure. The regulations and Certificate of Compliance identify specific events and conditions where the licensee would have to notify the NRC.

In accordance with 10 CFR 72.216(a) the licensee is required to report cases involving any defect as a result of a tipover or a drop to the NRC within 4 hours. The licensee would also have to inspect and evaluate the MSB after any tipover or drop of 18 inches or higher. Based on that evaluation, the licensee, not the NRC, would be responsible for determining continued use of that cask. NRC's responsibility is to monitor and oversee the licensee's activities. NRC has, however, the authority to order the licensee to cease use of a cask, if that were determined to be necessary.

45. *Comment.* One commenter stated that the double seal welds at the top of the MSB do not comply with the ASME Code, Section III, Subsection NC.

*Response.* The double seal welds at the top of the MSB meet all of the ASME requirements except the volumetric inspection requirement. This inspection is not possible due to the presence of

the radioactive fuel loaded into the MSB. However, an additional margin of safety is provided because: (1) The welded joint is a double weld; (2) the weld joint has been analyzed according to ASME Section III criteria for all load conditions including accidental drop; (3) the pressure inside the canister during normal storage operations is approximately atmospheric, resulting in very low stress intensities; and (4) the confinement integrity is established by ASME code test procedures, which include dye penetrant testing of the root and cover welds of both the inner and outer welds. In addition, the NRC is requiring testing for helium leaks prior to the placing of the MSB in storage.

46. *Comment.* A number of commenters questioned the lack of transportability of casks and the apparent noncompliance with the requirement of 10 CFR 72.236(m). Several commenters expressed concern that the VSC-24 cask is not compatible with transportation requirements. Several commenters questioned how the spent fuel will be transported to a Federal Repository and what will be the additional handling cost.

*Response.* These casks are currently approved for storage of spent fuel, not off-site transportation. Therefore, there is no need for the VSC-24 cask to be compatible with transportation requirements. These casks are only moved between the fuel handling building and the storage pad at the site where the fuel will be stored. Although 10 CFR 72.236(m) states, "To the extent practicable in the design of storage casks, consideration should be given to compatibility with removal of the stored spent fuel from a reactor site, transportation, and ultimate disposition by the Department of Energy," there is no requirement that the storage cask itself be transportable off site. If the cask vendor wants to have its cask used for the transportation of spent fuel, it would have to obtain a transportation Certificate of Compliance issued by the NRC under 10 CFR part 71.

The mechanism for transporting the spent fuel from a reactor site to a Federal Repository is unknown at this time. However, it could be by truck, rail, barge, or some combination. Also, the handling costs are unknown since DOE compatibility requirements are not known and regulatory requirements at the time of transfer could be different.

47. *Comment.* One commenter pointed out the NRC indicates that the analyses presented in the SAR are "based on non-consolidated, zircaloy-clad fuel with no cladding failures." Please clarify whether there exists an inconsistency between "no cladding

failures" and the language which the NRC uses in Table 1-1, Characteristics of Spent Fuel to be Stored in the VSC-24 System, referring to Fuel Cladding as: "Zircaloy clad fuel with no known or suspected gross cladding failures."

*Response.* The NRC agrees that there is an inconsistency. Acceptability is based on zircaloy clad fuel with no known or suspected gross cladding failures. Section 1.2.1 of the Certificate of Compliance has been revised to "specify no known or suspected gross cladding failures." The intent of this specification is to rely on the cladding to safely confine the UO<sub>2</sub> fuel material within the rods to preclude operational safety problems during its removal from storage. Fuel cladding with pin hole leaks is still capable of confining the fuel and therefore is acceptable for storage. In addition the inert atmosphere and fuel clad initial temperatures provide assurance that the cladding will be protected during storage against degradation that leads to gross rupture.

48. *Comment.* Commenters stated that there is no evidence that PSN considered the effects of worst case tolerance combinations in the structural analysis.

*Response.* There are several generic areas where improper tolerance combinations could jeopardize the structural integrity of a design. These areas are:

(1) Over-tolerance of weight which could result in unallowable stress levels for some components;

(2) Improper tolerances for dynamic parts such as in machinery which could result in interference and failure;

(3) Improper tolerance for fuel positioning in the basket;

(4) Improper tolerances of parts of an assembly which could lead to induced stresses from an interference fit or the converse situation, i.e., loose tolerances which could lead to an ill-defined load path; and

(5) Improper tolerances which might cause a heat conduction path to exist or not exist.

The NRC has reviewed and verified that tolerances specified in the application would prohibit a weight which is above the load used in the calculation package. The NRC also reviewed specified dimensioning, which, when followed as required, will prohibit interference and failure of dynamic parts such as machinery or fuel positioning in the basket. The NRC reviewed the vendor's calculations to assure that the loads which were analyzed and heat conduction paths account for the range of tolerances. For these reasons, the NRC has concluded that tolerance combinations are

adequately addressed for the vendor's structural and thermal analysis.

49. *Comment.* A commenter indicated that the VSC-24 was exempted from established cladding temperature criteria for short term normal condition events, in which the maximum fuel cladding temperature limit is exceeded by as much as 170 °F.

*Response.* The VSC-24 has not been exempted from a short term temperature limit for fuel cladding. In comparing the short-term and long-term thermal hydraulic evaluation shown in Table 4.1-1 of the SAR, the short-term temperature will exceed the long-term temperature by as much as 170 °F. This higher temperature, however, is acceptable during the short-term while the fuel is dried prior to filling the MSB with an inert gas (helium), weld sealing the MSB, and final placement of the MSB in the cask for interim storage. The NRC conservatively assumed that air was present during the drain-down and dry-out periods and calculated the oxidation rate. The maximum length of fuel oxidation for defective fuel was determined. The cladding strain was estimated to be less than 1 percent. Therefore no defect extension or fuel powdering is anticipated. The short term increased temperature is desirable to ensure removal of moisture. Following dry-out and helium introduction, the temperature will drop below the long term limit.

50. *Comment.* Some of the commenters indicated that the SER for the VSC-24 cask allows  $k_{eff}$  of 0.98 and that this deviates from the normally accepted limit of 0.95 specified in NRC Regulatory Guide 1.13, Proposed Revision 2, "Spent Fuel Storage Facility Design Basis." The commenter indicated that NRC should allow other vendors to modify their cask to  $k_{eff}$  of 0.98. One commenter expressed concern that the benchmark experiments that were cited in the analysis dated to the 1970's and because of their age were considered inappropriate for use, and commented that there was a difference in the geometry between the benchmark calculations and the VSC-24.

*Response.* The  $k_{eff}$  of 0.95 is guidance and is thus, not a requirement. As such, a licensee has flexibility and may propose an alternative limit. Based upon NRC review, NRC accepted the licensee's proposed use of a  $k_{eff}$  of 0.98 for the accident case of misloading the MSB with all fresh fuel of maximum enrichment and optimum moderation conditions. This accident condition borders on the incredible since it requires a mutually exclusive condition: that is, 24 unirradiated fuel assemblies that have heat generation rates sufficient

to produce enough boiling for optimum moderation. Therefore, NRC would accept a  $k_{eff}$  of 0.98 for any cask generically for this accident case, but a  $k_{eff}$  of 0.95 would apply otherwise. The conditions of nuclear criticality, and the experiments that provide that information can be and have been measured with a high degree of accuracy, since the 1940's. The age of the data is not significant. It is desirable that the benchmark experiments represent the system under evaluation as closely as possible. The features or parameters that are important to this purpose are the fuel composition and enrichment, the geometry of the fuel assembly, i.e., rod diameter and pitch, cladding type, and any neutron absorbers in the vicinity of the fuel pins. These parameters must be properly considered in the processing of nuclear cross sections used in criticality analysis so that the benchmark experiments are used to determine a method bias, or systematic error that may result from the particular set of nuclear cross section data that are used, or from the methods used to process the cross section data. Once method bias is determined for the particular fuel parameters, the calculations are quite insensitive to the macroscopic geometry of the system.

Therefore, it is not necessary that the gross or macroscopic geometry of the benchmark experiments be similar to the VSC design as long as the method bias has been determined for the appropriate fuel parameters. The B&W critical experiments have been widely used for this purpose since they were performed using light water reactor fuel assemblies similar to those used in many light water reactors.

51. *Comment.* One commenter indicated that the Certificate of Compliance for the VSC-24 cask is unnecessarily restrictive in requiring that the MSB contain 2850 ppm boron solution while it is being loaded. This concentration of boron would keep  $k_{eff}$  less than 0.95 even if all 24 storage spaces in the MSB were loaded with fuel assemblies which average 4.2 weight percent (wt.%)  $U_{235}$ . Some nuclear power plants do not have 4.2 wt. %  $U_{235}$  fuel on site. Therefore, there is no possibility of fuel containing that concentration of  $U_{235}$  being loaded in a MSB. The commenter recommended that the Certificate of Compliance requirement for boron concentration in the MSB cavity water be changed to allow other concentrations to be used such that the boron concentration used would maintain  $k_{eff}$  less than 0.95 even if fuel assemblies containing the highest

wt. %  $U_{235}$  in the spent fuel pool were placed in the MSB.

*Response.* The NRC agrees that the boron specification in the Certificate of Compliance for the VSC-24 cask may be restrictive. The boron specification is consistent with the maximum allowable uranium enrichment (4.2 wt. %), based on the criticality analysis presented in the SAR. The Certificate of Compliance specification for boron concentration in water is a bounding condition which was chosen to limit reliance on administrative controls to determine the proper required boron concentration for each cask loading. A method like that proposed by the commenter, to determine the boron concentration required, based on the maximum initial  $U_{235}$  enrichment of fuel at each reactor site, could be considered as a future amendment to the Certificate of Compliance.

52. *Comment.* Some commenters suggested that the NRC should consider limiting the cask storage time and expressed concern that cask storage could become permanent if the DOE might not accept fuel as they are required to do. Commenters also noted that the NRC requirement that cask viability be evaluated for "at least" 20 years, does not, in itself, guarantee safety in the apparently likely event the casks remain years or decades beyond the original intended duration.

*Response.* By approval of the Certificate of Compliance, the NRC has limited the cask storage time to 20 years. After the 20-year period, the certificate can be renewed, with each renewal period not to exceed 20 years, upon demonstration of continued protection of the public health and safety and the environment. In the event that safe storage of spent fuel in a particular cask cannot be demonstrated beyond 20 years, an alternate means of storage will be required. Finally, DOE is required by the Nuclear Waste Policy Act of 1982 to accept spent fuel for ultimate disposal. As one commenter noted, DOE is proposing a new strategy in which Congress would authorize it to select a site in time to receive spent fuel for interim storage by 1998.

53. *Comment.* Commenters indicated that PSN made an error in calculating the dose rate at the gap between the MSB and MTC. PSN had 440 mrem/hr compared to NRC's calculated 4140 mrem/hr. Why weren't these discrepancies resolved? How would welders be protected?

*Response.* PSN did not make an error in their calculation. Rather, they made an error when transcribing a calculated value to an SAR table. This discrepancy is identified and resolved in the SER (pg

6-12). With respect to protection of welders, the operating procedures and radiation protection program of the licensee will include precautions so that the exposure of personnel working with the system inside the fuel handling building will be maintained within the dose limits of 10 CFR part 20.

54. *Comment.* Commenters stated that the reported dose of 130 mrem/hr for the VSC-24 cask sides is still 6 times higher than the stated limit/specification of 20 mrem/hr.

*Response.* The limit of 20 mrem/hr stated in section 1.2.4 of the Certificate of Compliance applies to the sides of the VCC, at the pad. The 130 mrem/hr value quoted in the comment refers to the maximum dose rate at the sides of the MTC when loaded with the MSB, inside the fuel handling building. Because the MSB has not been loaded into the VCC cask at this point, it is not subject to the 20 mrem/hr specification.

55. *Comment.* Commenters believed that PSN made several mistakes in calculating how much radiation might come off the surface of the VSC-24 cask. Because the VSC-24 cask has never been built, it is fair to say that no one has any definite idea of what the actual dose rates will be. In addition, some commenters noted that conclusions drawn from testing a prototype are of dubious import "when dealing with the effects of radiation."

*Response.* As stated in section 6.3 of the SER, a number of errors were discovered in the vendor's shielding analysis. An adequate explanation for these errors was offered by the vendor. However, the NRC made independent confirmatory calculations to estimate the dose levels associated with the VSC-24 system. The vendor's shielding design and expected dose rates along the surface of the VCC were determined to be acceptable based on a comparison with the independent NRC calculations. NRC agrees with the commenter that the actual dose rates from specific fuel loaded into the cask cannot be exactly determined *a priori*. However, dose calculations can readily predict expected dose rates for the VSC-24 cask with sufficient accuracy to assure that NRC limits will not be exceeded. In addition, these calculations tend to be conservative and tend to overestimate actual dose rates that would be experienced during actual operations. Prototype testing was not used in evaluation of the adequacy of the shield design for the VSC-24 cask. Finally, the licensee will conduct surveys to ensure compliance with regulatory requirements and the Certificate of Compliance.

56. *Comment.* Commenters believed that PSN benchmarking of shielding codes against measured dose rates for the VSC-24 cask was grossly in error. Further, PSN did not benchmark the SKYSHINE-II calculation method. The NRC calculated direct and air-scattered dose rates, at various distances from the cask, which were many times higher than the PSN calculated dose rates.

*Response.* PSN's benchmarking of the ANISN and QAD computer codes for dose rate calculations was found by the NRC to be incomplete because it did not address differences in dose rates calculated by the ANISN and QAD computer codes. The NRC conducted independent confirmatory calculations to estimate the dose levels associated with the VSC-24 cask system for comparison with the vendor's calculations. Based on that comparison, the NRC concluded the design provided acceptable shielding.

Although PSN did not benchmark the SKYSHINE-II calculation method, they used that method to calculate site boundary dose rates. Based on review of their calculations and independent NRC calculations, the NRC concluded that PSN had not calculated conservative neutron and gamma dose rates at the site boundary. However, even with the NRC's more conservatively calculated site boundary dose rates, the NRC concluded that general licensees using the VSC-24 cask will meet all applicable regulatory requirements.

In addition, the NRC also requires any VSC-24 user to measure the external cask surface dose rates to ensure the cask has been properly loaded and radiation monitoring to ensure compliance with regulatory requirements.

57. *Comment.* A number of commenters requested a public hearing on this rulemaking. Approximately half of the commenters requested that a full public hearing be held at each reactor facility site prior to the use of dry cask storage at that site.

*Response.* Consistent with the applicable procedure, the NRC does not intend to hold formal public hearings on the VSC-24 cask rule or separate hearings at each reactor site prior to use of the dry cask technology approved by the Commission in this rulemaking. Rulemaking procedures, used by the NRC for generic approval of the VSC-24 cask, including the underlying staff technical reviews and the opportunity for public input, are more than adequate to obtain public input and assure protection of the public health, safety and the environment. Further, in this rulemaking, NRC has taken extra steps

to elicit and fully consider public comments on the VSC-24 technology.

Section 133 of the Nuclear Waste Policy Act of 1982 authorizes NRC to approve spent fuel storage technologies by rulemaking. When it adopted the generic process in 1990 for review and approval of dry cask storage technologies, the Commission stated that "casks \* \* \* (are to) be approved by rulemaking and any safety issues that are connected with the casks are properly addressed in that rulemaking rather than in a hearing procedure." 55 FR 29181 (July 18, 1990). Rulemaking under NRC rules of practice, described in 10 CFR 2.804 and 2.805, provides full opportunity for expression of public views, but does not use formal hearings of the type requested by commenters.

In this proceeding, rulemaking clearly provided adequate avenues for members of the public to provide their views regarding NRC's proposed approval of the VSC-24 cask, including the opportunity to participate through the submission of statements, information, data, opinions and arguments. In this connection, the NRC staff prepared for public examination two separate, technical evaluations for the VSC-24 dry cask system, each time making detailed, documented findings of compliance with NRC safety, security and environmental requirements. The staff's first evaluation, prepared in March 1991, reviewed and approved the VSC-24 for reference in a site-specific application for an independent spent fuel storage installation. In May 1992, the NRC staff reviewed the VSC-24, and approved the design for purposes of initiating this rulemaking to grant a generic approval of the design. In addition, the staff conducted a third review in response to the public comments on the VSC-24 in this rulemaking, again finding compliance with NRC requirements as set forth in this notice of final rule and response to comments.

In addition to reviewing systematically and in depth the technical issues important to protecting public health, safety and the environment, the NRC has taken extra steps to obtain and fully consider public views on the VSC-24 technology, and has made every effort to respond to public concerns and questions about the VSC-24 cask's compliance with NRC safety, security and environmental requirements. The initial public comment period opened on June 26, 1992, and closed on September 9, 1992. In addition, NRC received a number of comments after the close of that period, all of which were fully considered. Subsequently, NRC extended the period

for submission of public comments until February 22, 1993. Thus, the public comment period for this rule has effectively been almost nine months. In addition, the NRC staff made every effort to consider comments received after February 22, 1993. Further, the staff proposed and participated in a public meeting near one of the nuclear plants proposing to use the VSC-24 cask (i.e., Palisades), with the Attorney General of the State of Michigan, to provide further opportunity for public input on the safety, security and environmental compliance issues in this rulemaking. NRC also participated in an earlier meeting of the Van Buren County Commission near the plant site.

Under these circumstances, formal hearings would not appreciably add to NRC's efforts to ensure adequate protection of public health, safety and the environment, and are unnecessary to NRC's full understanding and consideration of public views on the VSC-24 cask.

**58. Comment.** Commenters believed that a full democratic process is needed in this decision.

**Response.** Because this rulemaking was conducted pursuant to the procedures for approving dry storage casks for use under a general license, as required by Congress in the Nuclear Waste Policy Act of 1982, and pursuant to the public notice and comment procedures of the Administrative Procedures Act, the resulting final rule approving the VSC-24 cask is the product of a process prescribed by law.

**59. Comment.** One commenter stated that the gap between the MSB and the MTC is given as 0.5 inch in WEP-109.001.4 and as 1.0 inch in Figure 5-5 of WEP-109.w13. This commenter also stated that the dose rate was not clear.

**Response.** The difference in the referenced gap size is a consequence of changes made as a result of earlier reviews. The final design was based on the 0.5 inch gap as indicated in WEP-109.001.4. The calculation of WEP-009.0013, which uses a 1.0 inch gap, is therefore conservative for shielding calculations. Because the gamma dose is more than 30 times that due to neutrons, any small decrease in the neutron dose rate, due to a smaller gap, would not significantly change the calculated neutron and gamma dose rates used to assess occupational exposure. In addition, these calculations conservatively neglect the shielding ring which would further reduce dose rate.

**60. Comment.** Commenters expressed concern that VSC-24 casks were being built at the Palisades Nuclear Plant before approval or certification.

**Response.** The NRC granted Pacific Sierra Nuclear Associates' request for an exemption to fabricate a limited number of the casks before issuance of the Certificate of Compliance under its NRC approved quality assurance program, and at its financial risk. The NRC's finding, based on the SAR for the VSC-24 cask and the NRC's SER, concluded that beginning fabrication prior to the issuance of the Certificate of Compliance would pose no undue risk to public health and safety. Use of these casks is dependent on satisfactory completion of NRC's certification process.

**61. Comment.** Some commenters requested that the NRC prepare an environmental impact statement (EIS) and update the Generic EIS for the handling and storage of spent fuel. The EIS should be submitted to the Environmental Protection Agency (EPA) and to the State of Michigan. Some commenters also requested that action on this rule be delayed until the Wisconsin Environmental Impact Statement is complete.

**Response.** The potential environmental impacts of utilities using the VSC-24 cask (or any of the other spent fuel casks approved by NRC (10 CFR 72.214)) have been fully considered and are documented in a published Environmental Assessment (EA) covering this rulemaking. Further, as described below, the EA indicates that use of the casks would not have significant environmental impacts. Specifically, the EA notes the 30-plus years of experience with dry storage of spent fuel, identifies the previous extensive NRC analyses and findings that the environmental impacts of dry storage are small, and succinctly describes what impacts there are, including the non-radiological impacts of cask fabrication (i.e., the impacts associated with the relatively small amounts of steel, concrete and plastic used in the casks are expected to be insignificant), the radiological impacts of cask operations (i.e., the incremental offsite doses are expected to be a small fraction of and well within the 25 mrem/yr limits in NRC regulations), the potential impacts of a possible dry cask accident (i.e., the impacts are expected to be no greater than the impacts of an accident involving the spent fuel storage basin), and the potential impacts due to possible sabotage (i.e., the offsite dose is calculated to be about one rem). All of the NRC analyses collectively yield the singular conclusion that the environmental impacts and risks are expected to be extremely small.

The absence of significant environmental impacts from dry cask

storage at a reactor site is also the conclusion of other NRC EA's for previously approved dry casks analyzed in earlier rulemakings addressing part 72, and in the Commission's Waste Confidence decisions in 1984 (August 31, 1984; 49 FR 34658) and 1989 (September 29, 1989; 54 FR 39765). In the 1984 Waste Confidence decision, the Commission concluded there was reasonable assurance spent fuel can be safely stored at reactor sites without significant environmental impacts, for at least 30 years beyond expiration of NRC reactor operating licenses. The 1989 Waste Confidence decision review reaffirmed prior Commission conclusions on the absence of significant environmental impacts.

Thus, given the Commission's specific consideration of the environmental impacts of dry storage summarized above, and given the absence of any new information casting doubt on the conclusion that such impacts are expected to be extremely small and not environmentally significant, no meaningful environmental insights are likely to be gained from further preparation of either an EIS or an updated GEIS for the dry storage methodology.

The EA covering the proposed rule, as well as the finding of no significant impact (FONSI) prepared and published for this rulemaking, fully comply with the NRC environmental regulations in 10 CFR part 51. Moreover, since the Commission's environmental regulations in part 51 implement NEPA and give proper consideration to the guidelines of CEQ, they assure that the EA and the FONSI conform to NEPA procedural requirements, and that further analyses are therefore not legally required.

In connection with the EA and FONSI, it bears emphasizing that 10 CFR part 72, subpart K already authorizes dry cask storage and already approves dry casks for use by utilities to store spent fuel at reactor sites. See 10 CFR 72.214 for a listing of information on Cask Certificate Nos. 1000 through 1003. The present rulemaking is accordingly for the limited purpose of adding one more cask to the list of casks already approved by NRC. Furthermore, the cask, to be added to the NRC list by this rulemaking will comply with all applicable NRC safety requirements.

Finally, this rulemaking applies to cask use by any power reactor licensee within the United States. Therefore, it is not dependent on any one individual State's actions including preparation of a separate EIS by any State. Further, nothing in this rulemaking would preclude any State from implementing

its environmental statutes and regulations as may otherwise be permitted by law.

62. **Comment.** Commenters believed that a cost/benefit analysis should be prepared. One commenter proposed a cost comparison formula which would estimate costs associated with dry cask storage over the next 1000 years.

**Response.** A regulatory analysis, which considers both benefits and impacts of adding the VSC-24 cask to the list of NRC-approved casks under 10 CFR part 72, subpart K, was prepared in support of this rulemaking action. It was included as a part of the notice of proposed rulemaking and is also included in this final rulemaking notice. This regulatory analysis reflects the limited economic scope of this rulemaking. The 1000 year cost comparison identified above assumes 1000-year interim storage at Palisades, an assumption the NRC is not proposing or adopting in this rulemaking. The NRC Waste Confidence decisions concluded there is reasonable assurance the Federal government will begin receiving spent fuel for disposal by 2025. Thus, the likelihood of 1000-year interim storage at Palisades is extremely small.

63. **Comment.** One commenter wanted letter reports to the NRC distributed to local and state government authorities and local libraries in the vicinity of facilities using the VSC-24 cask.

**Response.** The NRC interprets this comment as applying to letter reports required by the Certificate of Compliance. Letter reports sent to the NRC are routinely placed in the Public Document Room and Local Public Document Rooms near each facility. Local Public Document Rooms are located in public, university, and special libraries. A directory of Local Public Document Rooms is published by the NRC as NUREG BR-88. The NRC would respond to State requests for copies of such reports through NRC's State Relations Program.

64. **Comment.** Commenters indicated that operating procedures, evaluation reports, and training programs should be submitted to the NRC, state and local government authorities, and placed in local libraries near such facilities.

**Response.** These documents expand on generically approved procedures in the SAR, Certificate of Compliance, or in the case of the boron determination, on national standards. In accordance with the NRC requirements, licensees are not required to submit this information to the NRC or other government authorities. Rather, this information is evaluated by the licensee and is available for inspection by the

NRC. The NRC's inspection program includes requirements to inspect these procedures.

65. **Comment.** Commenters stated that the VSC-24 is not a cask. The designer called it a cask system.

**Response.** The NRC considers it to be a cask. It is called a cask system because it consists of several components.

66. **Comment.** Commenters believe that there is poor management at Consumers Power Company. NRC Information Notice 91-56 says they still have a provisional license after 20 years. Consumers Power Company had serious quality control violations, below average operating capacity, and faulty construction at Midland.

**Response.** Although this comment is not directly related to this rulemaking, which is to provide generic approval of the VSC-24 cask design that is not dependent on site specific consideration for any one licensee, NRC notes that its Systematic Assessment of Licensee Performance (SALP) program is an integrated staff effort to collect available observations and data on a periodic basis and to evaluate licensee performance, including Consumers Power, on the basis of this information. The most recent SALP report for Palisades, covering the period January 1, 1991 through March 31, 1992, states in summary, "Overall performance at the Palisades Nuclear Power Plant was characterized by generally steady or improving results and showed a conservative and safe operating philosophy. The overall degree of management attention and effectiveness was acceptable in all areas." Finally, the Palisades Nuclear Plant was granted a full term operating license on February 21, 1991.

The SALP report for the preceding period from September 1, 1989 through December 31, 1990 provided similar conclusions and stated, "the degree of management attention and effectiveness ranged from commendable in some areas to needing attention in others. Overall, the conduct of activities was appropriately directed to assurance of safety. Management appeared proactive and effective in demonstrating a conservative operating philosophy and establishing high standards of performance in operations, maintenance/surveillance, and security."

67. **Comment.** One commenter believed that the Certificate of Compliance should list all NRC regulations controlling the use of the VSC-24 cask for the storage of spent fuel.

**Response.** The Certificate of Compliance contains a general reference

to the provisions of 10 CFR part 72, which includes in subpart K, the regulations relevant to the storage of spent fuel under a general license. A specific reference to each regulation section is, therefore, unnecessary.

68. **Comment.** One commenter was favorable to the VSC-24 cask stating that it was cost-effective, made in the U.S.A., additional shielding could be added at low cost if required, the welded closure requires no monitoring, and risk is minimized by weld sealing the MSB in the reactor fuel handling building. Another commenter noted that this rulemaking is a positive action which should decrease cost and increase the safety of storing fuel. Another commenter noted the Palisades spent fuel pool is closer to Lake Michigan than the cask pad, both in terms of distance and elevation. The storage of spent fuel in a pool requires active systems for shielding, cooling and reactivity control. The VSC is passive, requiring no pumps, valves, or heat exchangers.

**Response.** None required.

69. **Comment.** Commenters believed that it is not acceptable to increase the number of approved cask designs. The goal must be the function of the cask itself to contain radioactivity in high concentrations and prevent it from dispersing into the biosphere as well as to shield workers and others from radiation exposure. Some suggested that alternative actions to dry cask storage should be considered.

**Response.** The NRC, in implementing the Nuclear Waste Policy Act of 1982, has an obligation to approve the use of casks for the storage of spent fuel, provided these casks meet applicable regulatory requirements. The NRC agrees with the commenter that these casks should contain radioactivity and protect workers, the public, and the environment. The previous rulemaking of 1990 (55 FR 29181) found that spent fuel stored in dry storage casks designed to meet the NRC regulatory requirements can contain radioactivity safely. This rulemaking adds one cask design, which meets the safety requirements previously developed. The previous responses to comments, as well as the detailed safety and environmental analyses underlying this rulemaking, and described elsewhere in this notice, all reveal that the VSC-24 cask will conform to the NRC requirements, and that its use should not pose the potential for significant environmental impacts.

The principal alternatives available to the NRC would be procedural in nature, whereby dry cask spent fuel storage could be approved under other existing

or new parts of title 10, Code of Federal Regulations. Regardless of the method selected to approve such dry cask spent fuel storage, all would have similar environmental impacts.

The NWPA directed that the NRC approve one or more technologies, that have been developed and demonstrated by DOE, for the use of spent fuel storage at the sites of civilian nuclear power reactors without, to the extent practicable, the need for additional site-specific review. The NWPA also directed that the NRC, by rulemaking, set forth procedures for licensing the technology. Regulations for accomplishing this are in place. Therefore, the no action alternative is not acceptable.

Alternative spent fuel storage technologies exist. However, at this time, the NRC considers them neither sufficiently demonstrated nor practicable for use under the general license provisions of subpart K of 10 CFR part 72 without additional site-specific reviews. If other storage technologies become more amenable to this type of action, they could be considered at a later time.

**70. Comment.** Commenters expressed concern that Pacific Nuclear, Inc., the original designer and manufacturer of the VSC-24 cask system, had ended its involvement with the cask. Reasons cited included the issue of liability, negligence issues that might surface in the future with the cask, the fact that the original designers divested themselves due to concern about the cask, and who would be responsible in the event of leakage. Commenters also questioned whether NRC had attempted to ascertain the reason for the divestiture action by Pacific Nuclear to discover if the reason related to safety of the cask, liability, or any other consequences.

**Response.** NRC is not aware of any safety, negligence, liability or legal concerns which prompted Pacific Nuclear, Incorporated to divest itself from the VSC-24 cask. The key individual involved in the design and development of the VSC-24 was also involved in the design and development of a new modular horizontal concrete spent fuel storage system (NUHOMS design) and formed a new company, Pacific Sierra Nuclear, for the commercial manufacture and marketing of the VSC-24 storage system. NRC focuses its efforts on assuring safety and environmental protection through reviews of applications for licenses and safety analysis reports. If a new company applies for a certificate of compliance, that new company must meet all NRC requirements as would any existing company. Through NRC's

review and independent evaluation of the applicant's safety evaluation report and through this rulemaking action, NRC will assure that the cask meets part 72 requirements and can be used by individual nuclear power plant licensees with full assurance of protection of the public health and safety and the environment. The NRC has experienced no difficulty obtaining safety information or answers to its questions from either firm, either before, or after the divestiture.

Following the divestiture, Pacific Nuclear sent a letter containing comments on the VSC-24 design. The staff satisfactorily resolved and answered these comments with a letter; both the Pacific Nuclear and NRC letters are available in the Public Document Room. The issues contained in this exchange of letters and all other safety issues related to the design of the VSC-24 are described in the staff's SER.

**71. Comment.** A commenter noted that Consumers Power's comments to the NRC during this rulemaking indicate that they do not have the kind of fuel that was specified in the Certificate of Compliance for the casks at Palisades. They noted it is hard to believe that the NRC does not know what kind of fuel it is licensing the cask for, but noted that appeared to be the case. The commenter further noted that any approval given by the NRC would have to be site specific and not generic and therefore, this would require a hearing.

**Response.** The type of fuel that is being approved for storage in the VSC-24 cask is specified in the vendor's Safety Analysis Report as well as in the Certificate of Compliance and SER prepared by the NRC staff. NRC regulations require the vendor to specify the type of spent fuel to be stored in the cask before NRC approval, and NRC thoroughly reviewed the vendor's SAR and spent fuel specifications and made them appropriate items for public comment in this rulemaking.

Commenters are therefore mistaken in saying the type of fuel to be stored in the VSC-24 cask is not known.

The kind of fuel to be loaded into and stored in the VSC-24 cask at Palisades, should Consumers Power proceed with use of the VSC-24 cask, must be acceptable fuel for storage in the cask and must meet the Certificate of Compliance specifications mentioned above for acceptable fuel which may be stored in the cask. In this regard, the Certificate of Compliance and SER have been clarified to specifically identify the fuel assembly classes acceptable for storage in the VSC-24 cask and to identify limits for physical dimensions, weight, burnup, decay power, and

radiation source term for other fuels that may be stored in the VSC-24 cask. NRC regulations prohibit Consumers Power from using the VSC-24 cask in violation of the Certificate of Compliance spent fuel specifications, and Consumers Power must perform written evaluations before using the cask that verify all Certificate of Compliance conditions are met.

As is evident from this and other responses to public comments, this rulemaking provides NRC approval for storage of spent fuel in the VSC-24 at any site in accordance with the generic conditions and specifications in the Certificate of Compliance. As noted, it does not constitute a site-specific approval of the VSC-24 cask for use by Consumers Power at the Palisades plant.

**72. Comment.** A number of commenters requested that the comment period be extended principally citing the fact that NRC had released a large volume of highly technical material associated with the VSC-24 cask and that the 30 day reopening of the comment period which NRC had provided was not a sufficient time for review and comment on the material. Commenters also questioned why the information was not released earlier.

**Response.** NRC is not granting an additional extension to the comment period. First, the new information that was released is only an increment to that previously disclosed. In addition, most of the individual pages released are computer output printouts, the results of which were previously available in various documents made available at the beginning of the public comment period. In the *Federal Register* Notice (January 21, 1993; 58 FR 5301) announcing the comment period extension, NRC made clear the limited, incremental character of the technical information. The information of the cask vendor being disclosed at this time added detail to the information NRC previously placed in the Public Document Room at the outset of this rulemaking. It complements and supplements the design information already disclosed, providing further detail on such matters as the vendor's design calculations (often in the form of computer runs) and specific data inputs for models used by the vendor for such calculations, as well as cask design details such as reinforcing steel sizing and shield lid thickness. The information being disclosed therefore provides additional specificity for the public about the technical information that was considered by the NRC staff in preparing the principal NRC documents underlying this rulemaking. These documents include the proposed

Certificate of Compliance for the cask and the associated NRC staff SER and related EA, which were previously placed in the NRC Public Document Room at the outset of this proposed rulemaking.

Second, the initial public comment period opened on June 26, 1992, and closed on September 9, 1992. The comment period was reopened on January 21, 1993 and ended on February 22, 1993. In addition, at the public meeting held with the Michigan Attorney General on February 23, 1993, NRC assured that comments received within five working days after that meeting would be considered. Although the comment periods have closed, NRC has considered all comments received. Thus, the public comment period for this rule has effectively been almost nine months which the NRC believes constitutes more than sufficient time for this type of rulemaking.

**73. Comment.** One commenter questioned the validity of neglecting gamma dose at the nozzles.

**Response.** The referenced Case 5 calculates the dose rate as the MSB is lowered into the VCC during transfer. Dose is estimated at the point of maximum exposure, that is, at the outlet vent and the top of the VSC. Under these circumstances, the entire distribution of radioactive material in the spent fuel assemblies contributes to the dose in a transient fashion. The assumption that the source is directly from the active fuel which is aligned with the air exhaust is conservative, since it is the highest and is sustained for a short period of time. Other MSB/VCC relative positions during transfer would yield smaller dose rates. Calculations demonstrated that the dose rate from gamma-emitting radioactive material in the nozzle is three orders of magnitude less than the dose rate from the active fuel section.

**74. Comment.** A commenter noted that the geometry for dose calculations was based on an earlier design and not on the latest configuration.

**Response.** The changes in design referred to by the commenter were slight repositionings of the inlet air duct. The reorientation involves minor changes of both the horizontal and vertical orientation of the duct but does not change the circuitous path which contributes to radiation protection. In addition, the analysis does not take credit for the 0.5-inch steel liner of the duct which would offset any small changes in dose due to reorientation of the duct. Therefore, the design changes do not result in a significant change in the radiation dose rate calculations.

**75. Comment.** Commenters asked who would be responsible for oversight of fuel stored in casks after decommissioning of the reactor, shipment of the fuel off-site, and for decommissioning of the casks after stored fuel was shipped off-site.

**Response.** In accordance with 10 CFR 50.54(bb), all operating nuclear power reactor licensees are required, no later than 5 years prior to the expiration of the operating license, to provide the NRC, for review and approval, the licensee's program to manage and provide funding for the management of all irradiated fuel. NRC's review of the licensee's fuel management program will be undertaken as part of continued licensing under the provisions of part 50 and part 72 of the Commission's regulations.

With respect to decommissioning, the licensee may select a decommissioning alternative that will:

1. Allow storage of spent fuel in the spent fuel pool, in which case the licensee will be required to maintain its part 50 license;
2. Allow storage of fuel in a certified cask under the provisions of part 72 as long as the part 50 license remains in effect; or
3. Allow storage in an on-site independent spent fuel storage installation under the site-specific licensing provisions of part 72.

For any of the above alternatives, the licensee will be responsible for safe storage of spent fuel during the period of storage, for later shipment off-site for further storage or disposal and for final decommissioning of the reactor spent fuel pool, dry storage cask or ISFSI to a level permitting unrestricted release of the site and facility. The requirements for decommissioning are provided in 10 CFR part 72.30, which defines decommissioning planning, financial assurance and recordkeeping provisions.

#### Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, the Commission has determined that this rule is not a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. This final rule adds an additional cask to the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites without additional site-specific approvals by the Commission. The environmental assessment and finding of no significant

impact on which this determination is based is available for inspection at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Single copies of the Environmental Assessment and the Finding of No Significant Impact are available from Mr. Gordon E. Cundersen, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3803.

#### Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget approval number 3150-0132.

#### Regulatory Analysis

On July 18, 1990 (55 FR 29181), the Commission issued an amendment to 10 CFR part 72, which provided for the storage of spent nuclear fuel under a general license. Any nuclear power reactor licensee can use these casks if: (1) They notify the NRC in advance; (2) the spent fuel is stored under the conditions specified in the cask's Certificate of Compliance; and (3) the other conditions of the general license are met. As part of the 1990 rulemaking, four spent fuel storage casks were approved for use at reactor sites, and were listed in 10 CFR 72.214. That rulemaking envisioned that storage casks certified in the future could be routinely added to the listing in § 72.214 through rulemaking procedures. Procedures and criteria for obtaining NRC approval of new spent fuel storage cask designs were provided in 10 CFR 72.230.

The alternative to this proposed action is to withhold certification of these new designs and to consider the granting of a site-specific license to each utility that applied for permission to use these new casks. This alternative would be more costly and time consuming because each site-specific license application would require a specific review. In addition, withholding certification would ignore the rulemaking procedures and criteria in 10 CFR part 72, subparts K and L, for the addition of new cask designs. Further, it is in conflict with the Congressional direction in sections 133 and 218 of the Nuclear Waste Policy Act of 1982 to establish procedures for the licensing of technologies for the use of spent fuel storage at the sites of civilian nuclear power reactors without, to the extent practicable, the need for

additional site reviews. Also, this alternative would exclude new vendor cask designs from the approved NRC list under subpart K without cause and would arbitrarily limit choice of cask designs available to power reactor licensees under the general license.

This final rulemaking will eliminate the above problems. Further, this action will have no adverse effect on the public health and safety.

The benefit of this final rule to nuclear power reactor licensees is to make available a greater choice of spent fuel storage cask designs which can be used under a general license. However, the newer cask designs may or may not have an advantage over the existing designs in that power reactor licensees may or may not prefer to use the newer casks. The new cask vendors with casks to be listed in § 72.214 benefit by being able to obtain NRC certificates once for a cask design which can then be used by many power reactor licensees under the general license. Vendors with cask designs already listed may be adversely impacted in that power reactor licensees may choose a newly listed design over an existing one. However, the NRC is required by its regulations and NWPA requirements to establish a procedure and to consider applications to certify and list approved casks. The NRC also benefits because it will be able to certify a cask design based on one generic safety and environmental review, for use by multiple licensees. This final rulemaking has no significant identifiable impact or benefit on other government agencies.

Based on the above discussion of the benefits and impacts of the alternatives, the NRC concludes that the requirements of the final rule are commensurate with the Commission's responsibilities for protection of the public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory; thus, this action is recommended.

#### Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that this rule, will not have a significant economic impact on a substantial number of small entities. This amendment affects only licensees owning and operating nuclear power reactors and cask vendors. The owners of nuclear power plants do not fall within the scope of the definition of "small entities" set forth in section 601(3) of the Regulatory Flexibility Act, 15 U.S.C. 632, or the Small Business Size Standards set out in regulations

issued by the Small Business Administration at 13 CFR part 121.

#### Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule, and, thus, a backfit analysis is not required for this final rule, because this amendment does not involve any provisions which would impose backfits as defined in § 50.109(a)(1).

#### List of Subjects in 10 CFR Part 72

Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 72.

#### PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86-373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97-425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100-203, 101 Stat. 1330-235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100-203, 101 Stat. 1330-232, 1330-236 (42 U.S.C. 10162(b), 10168(c)(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97-425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100-203, 101 Stat. 1330-235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97-425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.214, Certificate of Compliance 1007 is added to read as follows:

#### § 72.214 List of approved spent fuel storage casks.

\* \* \* \* \*  
Certificate Number: 1007  
SAR Submitted by: Pacific Sierra Nuclear Associates  
SAR Title: Safety Analysis Report for the Ventilated Storage Cask System  
Docket Number: 72-1007  
Certification Expiration Date: May 7, 2013.  
Model Number: VSC-24

Dated at Rockville, MD, this 1st day of April 1993.

For the Nuclear Regulatory Commission.  
James H. Sniezek,  
Acting Executive Director for Operations.  
[FR Doc. 93-8112 Filed 4-6-93; 8:45 am]  
BILLING CODE 7590-01-P

#### FEDERAL ELECTION COMMISSION

##### 11 CFR Part 110

[Notice 1993-14]

#### Transfers of Funds from State to Federal Campaigns

AGENCY: Federal Election Commission.

ACTION: Final rule: Announcement of effective date.

**SUMMARY:** On January 8, 1993 the Commission published the text of revisions to its rules governing transfers of funds from state to federal campaigns. 58 FR 3474 (January 8, 1993). The new rule prohibits the transfer of funds from state to federal campaign committees. The Commission announces that this new regulation will be effective July 1, 1993. Further information is provided in the supplementary information that follows:

**EFFECTIVE DATE:** July 1, 1993.

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463, (202) 219-3690 or (800) 424-9530.

**SUPPLEMENTARY INFORMATION:** Today, the Commission is announcing the effective date of its new rule prohibiting transfers of funds from state to federal campaigns. See 11 CFR 110.3(c)(6). Section 438(d) of title 2, United States Code, requires that any rule or regulation prescribed by the Commission to carry out the provisions of title 2 be transmitted to the Speaker of the House of Representatives and the President of the Senate thirty legislative days before it is finally promulgated. These regulations were retransmitted to Congress on January 5, 1993. Thirty legislative days expired in both the House of

Representatives and the Senate on March 18, 1993.

The new rule at 11 CFR 110.3(d) prohibits transfers of funds or other assets from a candidate's campaign committee or account for any nonfederal election to his or her principal campaign committee or other authorized committee for a federal election. The rule applies to transfers from any nonfederal campaign committee, including campaign committees for any state or local office. This notice uses the terms "nonfederal" and "state" interchangeably, so that, where the term "state campaign committee" is used, it includes campaign committees for any state or local office.

The effective date for this new rule is July 1, 1993. This effective date reflects a change from the implementation plan outlined by the Commission in its January 8, 1993 Retransmission Notice. 58 FR 3474 (January 8, 1993). The Retransmission Notice indicated that the Commission expected to be able to make the rule effective on April 1, 1993. However, in early March, it became apparent that the legislative review period would not expire in time for the Commission to make the rule effective on April 1 as originally intended.

If the Commission were to follow its usual procedure of making the rule effective as soon as possible, the effective date would be sometime during the second or third week of April. This could have an adverse effect on special elections scheduled during that time period. Consequently, the Commission decided to revise its plan for implementing the rule. See 58 FR 14310 (March 17, 1993). Under the revised plan, the effective date for the rule is July 1, 1993.

The Retransmission Notice also indicated that the Announcement of Effective Date would explain how the Commission will apply the rule during the 1994 election cycle. The rule prohibits all transfers from state to federal committees after July 1, 1993. Campaign committees that transfer funds before July 1, 1993 and use those funds for special elections held before that date are not affected by the rule announced today. Those transfers are governed by the Commission's prior rule at 11 CFR 110.3(c)(6).

Campaign committees that transfer funds before July 1, 1993 in anticipation of an election held after that date have not violated the rule announced today. However, in order to prevent active commingling of federal and nonfederal campaign funds in the candidate's federal campaign account, any funds or assets transferred from a nonfederal committee that remain in the federal

campaign account on July 1, 1993 must be removed from that account before July 31, 1993. Committees should use the identification method described in 11 CFR 110.3(c)(5)(ii) to determine which nonfederal funds are still in the campaign account as of July 1, 1993 and must be removed. Failure to remove those funds before July 31, 1993 is a violation of the rule announced today.

#### Announcement of Effective Date

11 CFR 110.3(d), as published at 58 FR 3474-76, is effective July 1, 1993.

Dated: April 2, 1993.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 93-8080 Filed 4-6-93; 8:45 am]

BILLING CODE 6715-01-M

## FEDERAL HOUSING FINANCE BOARD

### 12 CFR Part 960

[No. 93-17]

#### Affordable Housing Program Maximum Subsidy Limitations

AGENCY: Federal Housing Finance Board.

ACTION: Interim final rule.

**SUMMARY:** The Federal Housing Finance Board (Board) is amending its regulation governing the Affordable Housing Program (AHP) to revise the maximum subsidy requirements applicable to projects receiving subsidized advances or other assistance from the Federal Home Loan Banks (Banks) under the AHP.

**DATES:** This rule is effective April 7, 1993. Comments must be received by the Board on or before June 7, 1993.

**ADDRESSES:** Send comments to: Executive Secretariat, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006. Comments will be available for public inspection at this address.

#### FOR FURTHER INFORMATION CONTACT:

Diane E. Doriis, Deputy Director, Affordable Housing & Community Investment Division, Housing Finance Directorate, (202) 408-2576; Sharon B. Like, Attorney-Advisor, Office of Legal & External Affairs—Legal Division, (202) 408-2930, Federal Housing Finance Board, 1777 F Street, NW., Washington, D.C. 20006.

#### SUPPLEMENTARY INFORMATION:

##### I. Statutory and Regulatory Background

###### A. Statutory Requirements

Section 10(j)(1) of the Federal Home Loan Bank Act (Act) provides that,

pursuant to regulations promulgated by the Board, each Bank shall establish an Affordable Housing Program (AHP) to subsidize the interest rate on advances to members engaged in lending for long-term, low- and moderate-income, owner-occupied and affordable rental housing at subsidized interest rates. 12 U.S.C. 1430(j)(1). The Act provides that the Board's regulations shall permit Bank members to use subsidized advances received from the Banks to: (A) Finance homeownership by families with incomes at or below 80 percent of the median income for the area; or (B) finance the purchase, construction, or rehabilitation of rental housing, at least 20 percent of the units of which will be occupied by and affordable for very low-income households for the remaining useful life of such housing or the mortgage term. *Id.* section 1430(j)(2).

The Act further requires, among other things, that the Board's regulations establish uniform standards for subsidized advances under the AHP and subsidized lending by member institutions supported by such advances, including maximum subsidy limitations. *See id.* section 1430(j)(9)(F). In addition, the Act provides that the Board's regulations coordinate activities under the AHP with other federal or federally-subsidized affordable housing activities to the maximum extent possible. *Id.* sec. 1430(j)(9)(G).

##### B. Initial AHP Regulation—28 Percent Maximum Subsidy Rule

The Board's initial AHP regulation, see 12 CFR part 960 (55 FR 7479 (March 2, 1990)), implemented the statutory requirement for maximum subsidy limitations by limiting the subsidy on any single project to that amount necessary to reduce the target household's housing expenses to not less than 28 percent of gross monthly income. See 12 CFR 960.9 (1990). The 28 percent requirement was selected because it is a widely accepted "front ratio" in the mortgage qualification process. Because many of the households targeted by the AHP currently spend more than half of their income on housing, 28 percent was considered a significant reduction in housing expenditures, while still representing a fair and substantial portion of income being contributed toward the household's housing costs. (See 56 FR 8688, 8689 (March 1, 1991)).

##### C. Current AHP Regulation—20 Percent Maximum Subsidy Rule

The Board adopted a final AHP regulation (the current AHP regulation), which modified portions of the initial regulation, in 1991. See 12 CFR part 960

(1991) (56 FR 8688 (March 1, 1991)). Many commenters on the AHP regulation had urged that the maximum subsidy rule be changed because the requirement was too rigid and would hamper the AHP's effectiveness in serving the needs of very low-income households. See 56 FR 8689 (March 1, 1991). The final regulation revised the maximum subsidy rule by lowering the proportion of gross monthly income that must be spent on housing from 28 percent to 20 percent. See 12 CFR 960.9 (1991). Specifically, § 960.9 of the current regulation provides that:

(a) A Bank shall not offer subsidized advances and other subsidized assistance to members in excess of that amount needed to reduce the monthly housing cost (excluding utilities) for targeted households in the targeted income group to 20 percent of the household's gross monthly income. In projects where other forms of federal, state, local, or private subsidized assistance are being used in conjunction with the AHP, the total amount of subsidy provided shall not exceed this amount.

(b) A member receiving a subsidized advance shall extend credit to qualified borrowers at an effective rate of interest discounted at least to the same extent as the subsidy granted to the member by the Bank. 12 CFR 960.9.

Section 960.13 of the current regulation implements the requirement for coordination with other affordable housing programs in section 10(j)(9)(G) of the Act, see 12 U.S.C. 1430(j)(9)(G), by providing that the Board and the Bank shall coordinate activities under this part, to the maximum extent possible, with other federal, state, or local agencies and non-profit organizations involved in affordable housing activities. 12 CFR 960.13.

## II. Analysis of Interim Final Rule

### A. Problems of Coordination With Other Housing Programs

Application of the 20 percent maximum subsidy requirement has made coordination of the use of the AHP with certain federal and state affordable housing programs difficult. In some cases, projects have been unable to accept funding from both the AHP and the other housing program because the housing payments that households would be required to make under the AHP maximum subsidy rule would exceed the maximum payment permitted to be charged under the other program.

For example, the Department of Housing and Urban Development's (HUD) Section 8 rental assistance

program requires beneficiaries to pay as rent, including utility costs, the greater of 10 percent of gross monthly income, 30 percent of adjusted monthly income, or the portion of welfare payments that are specifically designated to meet a household's monthly housing costs. 42 U.S.C. 1437A(1). The Farmers Home Administration (FmHA) has similar monthly payment requirements under its migrant farm labor housing program. *id.* section 1486. Adjustments to income include deductions for every child in the family, certain medical expenses, child care costs, and other specific costs. *id.* section 1437a(5). In some cases, 20 percent of gross monthly income under the AHP is greater than 30 percent of adjusted income under the other programs. Those projects where the minimum 20 percent housing payment required under the AHP would exceed the maximum payment permissible under these other programs will have difficulty coordinating the various funding sources to make the minimum and maximum payment requirements of the various programs work.

### B. Ineligibility of Low-Income Households for AHP Assistance

In addition, application of the 20 percent maximum subsidy rule under the AHP has resulted in a number of low- and very-low income households—the intended beneficiaries of the AHP—who would otherwise meet the AHP statutory criteria, becoming ineligible for AHP assistance because such households would fail to pay at least 20 percent of their gross monthly income for housing costs (excluding utility costs). For example, certain projects that would provide below-market interest rate loans or direct subsidies to very low-income elderly households who own their homes free of debt but need repair or rehabilitation funds are not eligible for AHP assistance under the current AHP regulation. Because the households make no mortgage payments, their monthly housing costs would not be at least 20 percent of their gross monthly income.

Similarly, applicants requesting direct subsidies for very low-income households for downpayment and closing cost assistance to purchase moderately-priced homes have been determined to be ineligible for AHP assistance. These projects are designed to limit the amount of the household's mortgage payments so that the household has available income remaining for the payment of food, clothing and employment-related expenses. However, because the household's monthly housing costs are

intentionally limited, such costs would not be at least 20 percent of the household's gross monthly income, as required under the current AHP regulation.

A third area where ineligibility for AHP assistance has arisen involves households who invest their labor to reduce their housing costs. Households at the lower end of the economic scale often find it difficult to aggregate the capital for downpayment and closing costs. Ongoing housing expenses of homeownership are often burdensome for these households. To respond to these problems, programs have been created which allow people to use their time and energy participating in home building and rehabilitation activities to acquire equity or solve problems of habitability. These approaches are known as self-help or sweat equity programs. The consequence is to lower the capital requirement for downpayment and closing costs. More importantly, mortgage payments are lower, at times pushing housing costs below 20 percent of gross monthly income, thus causing the household to become ineligible for AHP assistance under the current maximum subsidy rule.

### C. Conflicting Treatment of Utility Costs

By not recognizing utility expenses as part of a household's total housing expenses, the AHP's 20 percent rule makes it difficult for the AHP to be used with certain other federal and state housing programs and treats households whose rent includes all utilities more favorably than households who have to pay separately for utilities.

For example, as explained above, the HUD Section 8 program requires rental households to pay a portion of their income as rent, which includes utilities or a reasonable utility allowance. Since the AHP's 20 percent payment does not cover utility expenses in addition to rent, in areas of the country with high utility expenses, the AHP's 20 percent rule actually requires rental households to pay more than 30 percent of their income for their total shelter costs. This payment may be a higher percentage of income paid for rent and utilities than HUD permits under the Section 8 program.

In addition, some rental and multifamily homeownership projects that involve common ownership of some elements of the project include all or some utility costs in the regular rent or homeowner operating assessments or fees charged to the households. Other similar projects require households to pay all utilities separately from such rent or homeowner assessments or fees.

Since utility costs can actually comprise a large proportion of a family's total housing expense, in order to treat all AHP eligible households equitably, the estimated cost of utilities should be included as an allowable housing expense to which the 20 percent rule is applied.

**D. Noncompliance With 20 Percent Rule and Recapture Requirements**

Through their monitoring of AHP funded projects, some of the Banks have determined that a number of projects otherwise eligible under the AHP statutory criteria have used AHP funds to assist households that are paying less than 20 percent of their gross monthly income on rental or homeownership housing costs. Under § 960.8 of the current AHP regulation, improperly used subsidies must be recaptured and made available by the Bank for future projects. See 12 CFR 960.8.

From a practical standpoint, enforcement of the recapture provision of the AHP regulation for such improperly used subsidies would contravene a fundamental purpose of the AHP, which is to provide housing for low- and moderate-income households that meet the statutory income eligibility requirements. Ultimately, recapture of funds could result in the displacement of low-income residents from the AHP projects. Or, it could result in a substantial hardship by recapturing funds from non-profit housing developers and harming residents of modest means whom they might otherwise serve.

**E. Interim Final Rule Amendments to Current Regulation and Request for Public Comments**

The limitations of the 20 percent rule discussed above have led a number of AHP project sponsors, member institutions, Bank Affordable Housing Advisory Councils and Bank Community Investment Officers, as well as other housing advocates, to request that the Board modify or eliminate the maximum subsidy rule. However, the Board is subject to the statutory constraint that its regulation must establish maximum subsidy limitations. See 12 U.S.C. 1430(j)(9)(F). The 20 percent rule was adopted to comply with this statutory requirement.

Currently, the Board is in the process of reviewing the AHP regulation and plans to offer further clarification of its provisions at a later date. However, the Board has determined that the difficulties caused by the 20 percent rule warrant more immediate attention. Accordingly, the Board is publishing

this interim final rule to amend the 20 percent rule.

In addition, the Board is requesting comments from the public on alternative ways in which it can meet the statutory requirement for maximum subsidy limitations. The Board recognizes that, in addition to a minimum housing cost-to-income ratio requirement set forth in the interim final rule, there may be other alternative solutions that would ensure that a project is not over-subsidized.

The amendments to the 20 percent rule adopted in this interim final rule are discussed in more detail below.

**1. Section 960.9(a)—General Rule**

Section 960.9(a)(1) of the interim final rule revises the current AHP regulation to provide that, instead of applying to all AHP projects, the 20 percent maximum subsidy rule shall apply as a general rule, subject to specific exceptions set forth in new § 960.9(b) of the interim final rule.

The current regulation does not define monthly housing costs paid by homeowner or rental households, and excludes utility expenses from such costs. For the reasons discussed in II.A.-D. above, the Board has determined that reasonable estimates of utility costs should be counted toward monthly housing costs, whether those costs are included in rental payments or homeowner or rent assessments, or are paid separately. New § 960.9(a)(2) of the interim final rule defines monthly housing costs as:

(i)(A) For homeowner households, mortgage principal and interest payments, real property taxes, homeowner's insurance, and a reasonable estimate of utility costs excluding telephone service; or

(B) For rental households, rent payments, and where they are not already included in rent payments, a reasonable estimate of utility costs excluding telephone service; and

(ii) For households in condominium, cooperative, mutual housing or other projects involving common ownership, those portions of any regular operating assessment or fee allocated for principal and interest payments, taxes, insurance and a reasonable estimate of utilities attributable to the household's share of the common area and/or the individual unit.

For this purpose, reasonable estimates of utility costs may be the utility allowances approved for any federal, state or local government housing subsidy program used in the AHP project. For example, reasonable utility cost estimates may be the utility allowances approved by HUD for rental

units of similar type and size, such as the utility allowances under: the Section 8 rental assistance program, see 42 U.S.C. 1437(f), 24 CFR 813.102; the public housing program, see 42 U.S.C. 1437(d), 24 CFR 965.470; or the section 236 mortgage insurance program, see 12 U.S.C. 1715z-1f(1), 24 CFR 236.2. Utility rate information or average utility consumption data by unit type and size obtained from a local utility supplier, as well as actual utility costs for occupied projects, also may be used to estimate reasonable utility costs.

New § 960.9(a)(3) of the interim final rule provides that a household is only required to meet the 20 percent requirement at the time it initially purchases or occupies a unit. This limitation, which was discussed in the preamble to the current AHP regulation, see 56 FR 8688, 8693 (March 1, 1991), was originally applied only to homeownership projects, and is now codified and extended to rental projects in the interim final rule.

**2. New Section 960.9(b)—Alternative Maximum Subsidy Requirements**

New § 960.9(b) of the interim final rule sets forth several alternative maximum subsidy requirements to the general 20 percent maximum subsidy rule, which are intended to address the problems discussed in II.A.-D. above.

New § 960.9(b)(1) of the interim final rule provides that the 20 percent rule shall not apply where a rental housing project receiving AHP funding also receives funds from a federal or state rental housing program that requires qualifying households to pay as rent a certain percentage of their monthly income or a designated amount, provided that the rental household meets the housing payment requirements of the other program. This provision responds to the problems of coordination with other housing programs discussed in II.A. and C. above.

New § 960.9(b)(2) of the interim final rule provides that the 20 percent rule shall not apply where the total AHP funding ultimately benefiting a qualifying very low-income homeowner household already owning and occupying his or her home is \$10,000 or less per qualifying homeowner household (adjusted annually according to the Consumer Price Index for All Urban Consumers, as published by the Bureau of Labor Statistics), and where the AHP funds are used to rehabilitate the homeowner's dwelling unit. This provision responds to the problems of ineligibility for AHP assistance discussed in II.B. above. The \$10,000 cap per very low-income owner-

occupying household was chosen to assure that the homeowner beneficiaries of the AHP could qualify for assistance to undertake rehabilitation of major components of their home even if they had reduced their monthly housing expense by paying off their mortgage and had no debt.

New § 960.9(b)(3) of the interim final rule provides that for all other qualifying homeowners that are not very low income, the 20 percent rule shall not apply where the total AHP funding ultimately benefiting the qualifying homeowner household at a particular project is \$5,000 or less per qualifying homeowner household (adjusted annually according to the Consumer Price Index for All Urban Consumers, as published by the Bureau of Labor Statistics). This provision responds to the problems of ineligibility for AHP assistance discussed in II.B. above. The \$5,000 cap per household was chosen to assure that the homeowner beneficiaries of the AHP could qualify for assistance to undertake rehabilitation of their homes even if they had reduced their monthly housing expense by paying off their mortgage and had no debt.

In addition, the maximum subsidy amount assures that households could qualify for downpayment and closing cost assistance and maintain modest total housing costs. The competitive nature of the AHP has so far helped to control the per household AHP cost at an average of \$3,624, and it is fully expected that the competitive pressures will help maintain reasonable average per household AHP costs in the future.

The two amounts of maximum subsidy assistance were chosen to differentiate between two categories of homeowners. The higher \$10,000 amount responds to the special nature of the need for significant rehabilitation of very low-income, owner-occupied housing. Often, such homeowners have little or no debt on their property, usually due to their longevity in the property. At the same time, due to a lack of financial resources, these homeowners have deferred the maintenance, improvement or replacement of major components of the dwelling unit. To prevent further deterioration leading to inhabitability or loss of the dwelling unit, rehabilitation must be undertaken. In these cases, it is not unusual for the need to include a new roof, structural repairs and weatherization. For these reasons, a higher maximum subsidy amount was established for this category of homeowner.

New § 960.9(b)(4) of the interim final rule provides that the 20 percent rule shall not apply where AHP funding is

received by a household which is participating in a self-help, sweat equity or similar housing program that requires the household to contribute its skilled or unskilled labor, working cooperatively with others, to construct or rehabilitate the housing in which the household resides or other program participants live. This provision responds to the problems of AHP assistance ineligibility discussed in II.B. above. Households would qualify for this exception if they are performing construction or rehabilitation activity that is valued at \$2,000 or more per household (adjusted annually according to the Consumer Price Index for All Urban Consumers, as published by the Bureau of Labor Statistics), and the program involves supervision by skilled builders or rehabilitators of the work performed.

### 3. Section 960.9(c)

Section 960.9(c) of the interim final rule is a redesignation of § 960.9(b) in the current regulation, and retains the language of this former provision.

## III. Notice and Public Participation

### A. Administrative Procedure Act

For the reasons further discussed below, the Board is not required by the Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.*, to publish a general notice of proposed rulemaking for this interim final rule. However, the Board considers comments from the public helpful in formulating clear and effective regulations. Accordingly, the Board is requesting public comment on this interim final rule. The Board will consider any public comments received on this interim final rule in developing a final rule on maximum subsidy limitations.

Publication of notice of a proposed rulemaking is not required because the Board finds that there is good cause that notice and comment procedure is contrary to the public interest in this instance. *See id.* section 553(b)(B). As discussed in more detail in II.A.-D. above, application of the 20 percent maximum subsidy rule in the current AHP regulation has caused significant operational problems for the AHP. Specifically, the current maximum subsidy rule has resulted in difficulties of coordination with certain other federal and state affordable housing programs whose maximum household payment requirements conflict with the AHP 20 percent payment requirement. The 20 percent rule also has resulted in households who are the AHP's intended beneficiaries and would otherwise meet the Act's AHP criteria but for the 20

percent rule, becoming ineligible for AHP assistance. In addition, there has been an inequity in accounting for utility costs between the AHP and other assistance programs used with AHP projects, which has had an adverse effect on the intended beneficiaries of the AHP.

Accordingly, the Board is issuing this interim final rule in order to remedy these problems immediately so that the AHP will operate more effectively and reach the ultimate beneficiaries it is intended to serve. Compliance with the public procedure requirements of APA section 553 is contrary to the public interest because it would hamper the Board's ability to rectify these problems in a timely fashion so that the AHP can continue to serve its intended beneficiaries.

Implementation of the interim final rule without prior public notice will not create a hardship for those households and projects subject to the rule because, as discussed in more detail in II.E. above, the new rule relieves some of the restrictions of the current 20 percent rule.

The Board therefore finds good cause that compliance with notice and comment procedures in adoption of this interim final rule would be contrary to the public interest. *See id.*

### B. Effective Date

The APA provides generally that a substantive rule shall be published by an agency not less than 30 days before its effective date, except (i) a substantive rule which grants or recognizes an exemption or relieves a restriction, or (ii) as otherwise provided by the agency for good cause found and published with the rule. *See id.* section 553(d)(1), (3).

For the reasons stated in III.A. above, the Board finds that under APA section 553(d)(1), *id.* section 553(d)(1), this interim final rule may be effective upon publication without a 30-day delay in the effective date because the rule relieves a restriction. In addition, for the reasons stated in III.A. above, the Board finds that under APA section 553(d)(3), *id.* section 553(d)(3), there is good cause that this interim final rule be effective upon publication.

## IV. Regulatory Flexibility Act

The Board is not required by the Regulatory Flexibility Act (Reg Flex Act), 5 U.S.C. 601 *et seq.*, to prepare a regulatory flexibility analysis for this interim final rule. The Reg Flex Act requires that a regulatory flexibility analysis be prepared whenever an agency promulgates a proposed or final rule after being required by APA section

553, *id. sec. 553*, to publish a general notice of proposed rulemaking. See 5 U.S.C. 603(a), 604(a). The Board is not required to publish a general notice of proposed rulemaking for this interim final rule because the Board has found good cause that notice and comment is contrary to the public interest in the adoption of this interim final rule. See *id. sec. 553(b)(B)*, and III.A. above. Accordingly, the Board is not required to prepare such an analysis for this interim final rule.

#### List of Subjects in 12 CFR Part 960

Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements.

Accordingly, title 12, chapter IX, subchapter E, part 960, Code of Federal Regulations, is hereby amended as follows:

#### SUBCHAPTER E—AFFORDABLE HOUSING

#### PART 960—AFFORDABLE HOUSING PROGRAM

1. The authority citation for part 960 continues to read as follows:

**Authority:** Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 10, 47 Stat. 731, as amended (12 U.S.C. 1430); sec. 21B, as added by sec. 511, 103 Stat. 394 (12 U.S.C. 1441b).

2. Section 960.9 is revised to read as follows:

#### § 960.9 Maximum subsidy.

(a) **General.** (1) Except as provided in paragraph (b) of this section, a Bank shall not offer subsidized advances and other subsidized assistance to members in excess of that amount needed to reduce the monthly housing costs (as defined in paragraph (a)(2) of this section) for targeted households in the targeted income group of 20 percent of the household's gross monthly income. In projects where other forms of federal, state, local, or private subsidized assistance are being used in conjunction with the AHP, the total amount of subsidy provided shall not exceed this amount.

(2) For purposes of paragraph (a)(1) of this section, monthly housing costs are defined as:

(i) (A) For homeowner households, mortgage principal and interest payments, real property taxes, homeowners' insurance, and a reasonable estimate of utility costs excluding telephone service; or

(B) For rental households, rent payments, and where they are not already included in rent payments, a reasonable estimate of utility costs excluding telephone service; and

(ii) For households in condominium, cooperative, mutual housing or other projects involving common ownership, those portions of any regular operating assessment or fee allocated for principal and interest payments, taxes, insurance and a reasonable estimate of utilities attributable to the household's share of the common area and/or the individual unit.

(3) A household subject to the 20 percent requirement set forth in paragraph (a)(1) of this section is only required to meet such requirement at the time it initially purchases or occupies a unit.

(b) **Alternative maximum subsidy requirements.** (1) The requirements in paragraph (a) of this section shall not apply where a Bank provides subsidized advances or other subsidized assistance to a member for a rental housing project, which project also receives funds from a federal or state rental housing program that requires qualifying households to pay as rent a certain percentage of their monthly income or a designated amount, provided that the rental household meets the housing payment requirements of the other program.

(2) The requirements in paragraph (a) of this section shall not apply where the total amount of Bank subsidized advances or other subsidized assistance ultimately benefiting a qualifying very low-income homeowner household who already owns and occupies his or her dwelling unit is \$10,000 or less per qualifying homeowner household (adjusted annually according to the Consumer Price Index for All Urban Consumers, as published by the Bureau of Labor Statistics), and where such AHP assistance is used to rehabilitate the homeowner's dwelling unit.

(3) The requirements in paragraph (a) of this section shall not apply where the total amount of Bank subsidized advances or other subsidized assistance ultimately benefiting a qualifying homeowner household that is not very low income at a particular project is \$5,000 or less per qualifying homeowner household (adjusted annually according to the Consumer Price Index for All Urban Consumers, as published by the Bureau of Labor Statistics).

(4) The requirements in paragraph (a) of this section shall not apply where a Bank provides subsidized advances or other subsidized assistance ultimately benefiting a qualifying household which is participating in a self-help, sweat equity, or similar housing program that requires the household to contribute its skilled or unskilled labor valued at a minimum of \$2,000 per qualifying household (adjusted annually according

to the Consumer Price Index for All Urban Consumers, as published by the Bureau of Labor Statistics), working cooperatively with others, to construct or rehabilitate the housing in which the household resides or other program participants live, and that involves supervision by skilled builders or rehabilitators of the work performed.

(c) A member receiving a subsidized advance shall extend credit to qualified borrowers at an effective rate of interest discounted at least to the same extent as the subsidy granted to the member by the Bank.

By the Federal Housing Finance Board

Dated: March 26, 1993.

Daniel F. Evans, Jr.,

Chairman.

[FR Doc. 93-8055 Filed 4-6-93; 8:45 am]

BILLING CODE 6725-01-M

#### DEPARTMENT OF TRANSPORTATION

#### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 92-NM-202-AD; Amendment 39-8505; AD 93-04-03]

**Airworthiness Directives; General Dynamics Convair Model 340, 440, and C-131B through C-131H (Military) Series Airplanes, Including Those Modified for Turbo-Propeller Power**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects the applicability statement for the above-captioned Airworthiness Directive that was published in the *Federal Register* on March 15, 1993 (58 FR 13701). This correction adds clarifying information to the applicability of the rule. In all other respects, the original document is correct.

**DATES:** Effective April 19, 1993.

The incorporation by reference of certain publications listed in the regulation is approved by the Director of the *Federal Register* as of April 19, 1993 (58 FR 13701, March 15, 1993).

**SUPPLEMENTARY INFORMATION:** Final Rule Airworthiness Directive (AD) 93-04-03, amendment 39-8505, applicable to all General Dynamics Convair Model 340, 440, and C-131B through C-131H (military) series airplanes, was published in the *Federal Register* on March 15, 1993 (58 FR 13701). That AD requires an inspection of both horizontal stabilizers and vertical stabilizer attach fittings, and rework of the fittings, if necessary; as well as a

hardness test of the stabilizer taper pins and split sleeve bushings, and replacement of these items, if necessary.

The applicability of AD 93-04-03 indicated that it applied to "all" models of the subject airplanes. Use of the phrase "all models" implies that the applicability extends to all derivatives of those models as well; in the case of AD 93-04-03, it extends to models that have been modified for turbo-propeller power. Although the applicability statement in the notice that preceded the final rule included wording specifically referring to the inclusion of turbo-propeller-powered models, the applicability of the final rule did not include this information.

To ensure that there is no confusion on this point among affected operators, this document revises the applicability statement of AD 93-04-03 to include this informational material. The applicability of the AD now reads as follows:

"Applicability: Model 340, 440, and C-131B through C-131H (military) series airplanes, all serial numbers, certificated in any category, including those modified for turbo-propeller power."

Since none of the regulatory information has been changed, the entire final rule is not being republished.

Issued in Renton, Washington, on April 1, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-8060 Filed 4-6-93; 8:45 am]

BILLING CODE 4010-13-P

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 150

#### Revision of Federal Speculative Position Limits

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Interim final rulemaking.

**SUMMARY:** The Commodity Futures Trading Commission ("Commission") has long established and enforced under its rulemaking authority speculative position limits for futures contracts on various agricultural commodities. On April 13, 1992, the Commission proposed to amend these rules.

Based upon its consideration of the comments received and upon its independent analysis, the Commission is promulgating interim final rules amending Federal Speculative position limits. These interim amendments, as

promulgated herein, generally maintain the current speculative position limit levels for the delivery months and increase limit levels for the deferred months, providing differing levels for single month and all-months-combined limits. Moreover, as proposed, speculative position limits for both futures and options thereon are being combined into a single limit. In addition, the interim final rules continue to provide an exemption for spread positions within the same crop-year at the level proposed by the Commission. In this regard, the Commission, for further clarification, has added a definition of "crop year" which enumerates the first new crop delivery month for each commodity on which there are Federal speculative position limits.

The interim final rules adopted by the Commission differ from the proposed rules by increasing the position limit levels to less than originally proposed and by phasing-in the implementation of these increases in two steps; the first to take effect in sixty days and the second to take effect as of March 31, 1994. The originally-proposed speculative position limit levels remain pending. The Commission is reopening the comment period on the originally proposed levels elsewhere in this issue of the *Federal Register*. The Commission will make a final determination on these levels after having had an opportunity to observe the impact of these two interim, phased increases.

**EFFECTIVE DATE:** The interim final rules will become effective on June 7, 1993.

#### FOR FURTHER INFORMATION CONTACT:

Blake Imel, Deputy Director, or Paul M. Architzel, Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K St. NW., Washington, DC 20581, (202) 254-3201 or 254-6990, respectively.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

###### A. Statutory Framework

Speculative position limits have been a tool for the regulation of the futures markets for over a half-century. During this time, the Congress consistently has expressed confidence in the use of speculative position limits as an effective means of preventing unreasonable or unwarranted price fluctuations. See H.R. Rep. No. 421, 74th Cong., 1st Sess. 1 (1935); See also, H.R. Rep. No. 624, 99th Cong., 2d Sess. 44 (1986).

In this regard, section 4a(1) of the Commodity Exchange Act ("Act"), 7 U.S.C. 6a(1), states that:

[e]xcessive speculation in any commodity under contracts of sale of such commodity for future delivery made on or subject to the rules of contract markets causing sudden or unreasonable fluctuations or unwarranted changes in the price of such commodity, is an undue and unnecessary burden on interstate commerce in such commodity.

Accordingly, section 4a(1) of the Act provides the Commission with the authority to:

fix such limits on the amount of trading which may be done or positions which may be held by any person under contracts of sale of such commodity for future delivery on or subject to the rules of any contract market as the Commission finds are necessary to diminish, eliminate, or prevent such burden.

#### B. Regulatory Framework

Currently, the Commission directly administers speculative position limits on futures contracts for most of the domestic agricultural commodities enumerated in section 2(a)(1) of the Act. See, 17 C.F.R. Part 150.<sup>1</sup> Since its creation, the Commission periodically has reviewed its policies pertaining to speculative position limits.<sup>2</sup>

In 1987, the Commission completely revised Federal speculative position limits. 52 FR 38914 (October 20, 1987). As part of these revisions, the Commission added Federal speculative

<sup>1</sup> Commission Rule 1.61, 17 CFR 1.61, requires that, absent an exemption, exchanges adopt and enforce speculative position limits for all contract markets which are not subject to Commission-set limits. In addition, Commission Rule 1.61 permits exchanges to adopt and enforce their own speculative position limits for those contracts which have Federal speculative position limits, as long as the exchange limits are not higher than the Commission's.

<sup>2</sup> Initially, for example, the Commission redefined "hedging" (42 FR 42748 (August 24, 1977)), raised speculative position limits in wheat (41 FR 35060 (August 19, 1976)), and in 1979 issued its Statement of Policy On Aggregation of Accounts and Adoption of Related Reporting Rules ("1979 Aggregation Policy"), 44 FR 33839 (June 13, 1979).

Subsequently, the Commission modified and updated speculative position limits by issuing a clarification of its hedging definition with regard to the "temporary substitute" and "incidental" tests (52 FR 27195 (July 20, 1987)), and guidelines regarding the exemption of risk-management positions from exchange-set speculative position limits in financial futures contracts. 52 FR 34633 (September 14, 1987). Moreover, in 1988, the Commission promulgated Commission Rule 150.3(a)(4), an exemption from speculative position limits for the positions of multi-advisor commodity pools and other similar entities which use independent account controllers. The Commission subsequently amended Commission Rule 150.3(a)(4), broadening its applicability to commodity trading advisors and simplifying and streamlining the application process. 56 FR 14308 (April 12, 1991).

Most recently, the Commission solicited public comment on, and subsequently approved, an exchange request for an exemption for futures and option contracts on certain financial instruments from the Commission Rule 1.61 requirement that speculative position limits be specified for all contracts. 56 FR 51687 (October 15, 1991).

position limits for soybean meal and soybean oil, which previously were not included because of an historical anomaly. The Commission also amended the structure and levels of the Federal speculative position limits. It restructured speculative position limits by establishing them by contract market, rather than generically by commodity. Although the Commission proposed generally to increase limit levels progressively from the spot month limit, which were not proposed to be increased, to a higher individual-month limit with a yet-higher all-futures combined limit, the rules as promulgated generally did not provide for such stepped increases. Instead, the rules as amended generally maintained the existing structure of a uniform spot and single month level with an increase only for the all-months-combined level.<sup>3</sup>

#### C. History of this Rulemaking

In 1991, the Commission received four petitions for rulemaking, the first from the Chicago Board of Trade ("CBT"), the second from the New York Cotton Exchange ("NYCE"), the third from the Kansas City Board of Trade ("KCBT") and the fourth from the Minneapolis Grain Exchange ("MGE"). These petitions requested that the Commission amend its rules to increase Federal speculative limits in the CBT corn, wheat, oats, soybeans and soybean oil and meal futures contracts, in the NYCE's cotton No. 2 futures contract, and in the KCBT's and MGE's wheat futures contracts. The CBT also requested that the Commission expand the current exemption for spread

<sup>3</sup> Not all Federal limits were promulgated with an identical spot month and single month limit. Generally, in promulgating these limits, the Commission noted that the applicable data supported a range of possible solutions. Those commenting on the grain and soybean complex limits expressed a strong preference for retaining the existing structure for limits, in part, in an attempt to promote greater liquidity in the back months. As the Commission noted:

"[t]he 'telescoping' feature of this structure-raising the single month level from the spot month level concerned many commenters . . . . In general, the commenting exchanges objected on the grounds that 'telescoping' could be conducive to unnecessary and artificial price aberrations.

"In contrast, those commenting on the proposed speculative position limits in cotton did not object to the higher single month limit level." 52 FR 38916.

In light of the strong preferences expressed by the commenters, at that time, and the range of acceptable solutions which the data supported, the Commission acceded to the views of the commenters, adopting final rules for the grains and soybean complex which did not have the stepped increase between the spot month limit and the single month limit. However, the Commission's experience monitoring both Federal and exchange-set limits with stepped increases, as it expected, has been favorable, with none of the adverse

positions between months within the same crop-year to an exemption for spread positions between any months, outside of the spot month, regardless of the crop year and to increase the overall level of this exemption.<sup>4</sup> The CBT separately sought Commission approval for increases to the exchange-set speculative position limits on these commodities.<sup>5</sup>

The CBT and NYCE petitions were discussed at the April 22, 1991, meeting of the Commission's Agricultural Advisory Committee. On August 2, 1991, the Commission published in the *Federal Register* notice of the Petitions for Rulemaking of the CBT and the NYCE and requested public comment on them.<sup>6</sup> 56 FR 37049. This notice requested public comment on six issues, including the general issues of the relative costs and benefits of increasing the limits, the appropriateness of the current and requested speculative position limits, and any adverse effects which could be anticipated from increasing the limits. Thirty-six comments were filed with the Commission in response to this request.

Subsequently, on April 13, 1992, the Commission proposed several revisions to the structure of Federal speculative position limits. 57 FR 12766. The comment period on the proposed amendments, which originally expired on June 12, 1992, was reopened and extended until August 3, 1992. 57 FR 27202 (June 18, 1992).

The Commission proposed three revisions to Federal speculative position limits. First, the Commission proposed to unify speculative position limits for

consequences hypothesized by the opposing commenters occurring.

<sup>4</sup> Specifically, the CBT and NYCE Petitions requested that the speculative position limits for these commodities be raised in the single month and all-months categories. The petitions, with the exception of CBT oats, did not ask that the spot month limits be changed. The CBT and NYCE supported their Petitions for increased speculative position limits based on the growth in volume of trading and on an increased frequency of large speculative positions near single month limits in individual futures months in these commodities since the limits were last amended in 1987. Both the KCBT's request of an increase consistent with the increases requested by the CBT, and the MGE's request of an increase in the all-months limit from six million bushels to nine million bushels were based upon concerns of competitive parity.

<sup>5</sup> Separately, the CBT has proposed to amend its speculative position limits for futures contracts consistent with the amended limits requested in its Petition for Rulemaking, and separately, to double its limits for options on futures contracts in the above-referenced commodities. Those exchange-set option speculative position limits currently have no corresponding Federal limits. CBT speculative limits for options establish separate levels for outright positions in each type or quadrant of option—long puts, short puts, long calls and short calls—as well as various spread positions between options and futures. Currently the levels of these

both futures and options thereon, reasoning that, because price movements in the two markets are highly related, the unified system more readily reflects the economic reality of a position in its totality. Moreover, unified speculative limits provide the trader with greater flexibility. Further, traders should find such a unified speculative position limit easier to use and to understand. Finally, as a consequence of the simpler structure, unified speculative position limits would be easier to administer, resulting in more accurate and timely market surveillance. These benefits would accrue without imposing additional regulatory burdens on traders. See, 57 FR 12769.

Secondly, the Commission proposed to maintain spot-month limits at their current levels and to expand the levels for the single-month and all-months limits by amounts consistent with the increased level, at the time of the proposal, of each market's combined open interest in futures and delta-adjusted options. In particular, the Commission proposed to establish such limits by placing greater reliance on the percentage of the average open interest which the limit represents. Accordingly, the Commission proposed to set the levels of speculative position limits at ten percent of the average combined futures and delta-adjusted option open interest, up to open interest levels of 25,000 contracts. Thereafter, speculative position limit levels would increase at a marginal rate of 2.5 percent. In addition, the Commission proposed a

outright limits are 600 futures-equivalent contracts in corn, wheat and soybeans, and 720 in soybean meal, 540 in soybean oil and 400 in oats. A futures-equivalent option position is one in which the absolute number of options is adjusted to reflect the option's risk factor using the delta coefficient. This delta coefficient, which lies between -1 and 1, indicates the expected relationship between changes in the option premium and changes in the price of the underlying future.

The KCBT also proposed to increase its outright position limits for each quadrant of wheat options from 600 to 1200 future-equivalent contracts and to increase the limits for certain types of futures/option and option/option spread positions. The NYCE proposed to increase its limits applicable to certain option/option and future/option spread positions in its cotton No. 2 contracts.

These proposed amendments to the various exchanges' futures and option speculative position limit rules are currently under advisement pending completion by the Commission of this rulemaking proceeding. See, Section 4(a)(e) of the Act.

<sup>6</sup> The Petitions of the KCBT and the MGE were submitted to the Commission following publication in the *Federal Register* of the request for public comment.

minimum speculative position limit level of 1,000 contracts. See, 57 FR 12770.

These limit levels are as follows:

CURRENT AND PROPOSED FEDERAL SPECULATIVE POSITION LIMIT FOR SELECTED NON-DORMANT CONTRACTS IN CONTRACTS OR CONTRACT EQUIVALENTS<sup>1</sup>

	Current futures limits (Net long or short)			Current option limits by quadrant <sup>3</sup> (Net long or short)	Proposed unified futures/option limits (Net long or short)			
	Spot month	Single month	All months		Spot month	Single month <sup>2</sup>	All months	
CBT Corn .....	600	600	2400	600	600	5500	9000	
CBT Soybeans .....	600	600	2400	600	600	3500	5500	
CBT Wheat .....	600	600	1800	600	600	3000	4000	
CBT Soybean oil .....	540	540	1620	540	540	3000	4000	
CBT Soybean meal .....	720	720	2160	720	720	3000	4000	
CBT Oats .....	400	400	400	400	600	1000	1500	
KCBT Hard winter wheat .....	600	600	1800	600	600	2000	3000	
MGE Spring wheat .....	600	600	1200	600	600	1000	1500	
NYCE Cotton No. 2 .....	300	450	900	300	300	2500	3500	
MCE Corn .....	600	600	600	600	600	600	600	
MCE Wheat .....	600	600	600	600	600	600	600	
MCE Soybeans .....	600	600	600	600	600	600	600	

<sup>1</sup>Unlike current Commission Rule 150.2, which establishes limit levels in terms of bushels, bales, tons, or pounds of the commodity, this table expresses all limits in terms of futures contract equivalents. The symbol "CBT" means Chicago Board of Trade, "KCBT" means Kansas City Board of Trade, "MGE" means Minneapolis Grain Exchange, "NYCE" means New York Cotton Exchange, and "MCE" means MidAmerica Commodity Exchange.

In the case of commodities traded on the MCE, the number of contracts are expressed in terms equivalent to the larger size delivery units which are traded on the CBT. In addition pursuant to exchange rules, the spot month limit noted for MCE soybean meal decreases to lower levels as the delivery month progresses.

Dormant or otherwise non-existent contracts which are not set out in this table include NYCE cotton #1; KCBT gulf wheat, soybeans, and corn; MGE durum wheat, corn, oats, and soybeans; and Chicago Rice and Cotton Exchange ("CRCE") wheat, corn, and cotton. The limits for these contracts are proposed to be deleted. In addition, MGE white wheat, MCE soybean meal, and MCE oats are not shown in this table, but are included in the proposed regulations.

<sup>2</sup>The single month futures limit is increased under current rules to two times the amount to the extent that excess is part of a spread between months of the same future within the same crop year, and excluding the spot month. However, the single month limit is proposed to be increased to the all months level provided that the excess is a futures/futures, option/futures or options/option spread relating to the option and underlying future, within the same crop year and excluding the spot month.

In addition, under current exchange rules, higher single month future limits are in effect for positions representing delta-neutral spreads between futures and options, pursuant to the exemption stated in Paragraph 150.3.

<sup>3</sup>Exchange-set speculative limits are specified by individual type or quadrant (i.e., long calls, short calls, long puts and short puts) and apply for each quadrant to all months. Higher limits are specified for delta neutral option/option and option/future spread positions within the same crop year.

In proposing these limits, the Commission noted that:

its large trader data indicates that limits based on open interest as described above should accommodate the normal course of speculative positions in agricultural markets. The levels derived using this method of analysis generally are consistent with the largest exchange-set speculative limits approved by the Commission under Rule 1.61 for contract markets in agricultural commodities at corresponding levels of open interest. However, the Commission, based on its surveillance experience and monitoring of exchange and Federal speculative position limits, is satisfied that the levels indicated by this methodology, although near the outer bounds of the levels which have been approved previously, nevertheless will achieve the prophylactic intent of Section 4(a) of the Act and Commission Rule 1.61, thereunder. (Footnote omitted).

57 FR 12771.

Finally, the Commission proposed to amend the intra-crop year spread exemption by revising the exemption's limit levels to equal the all-months level, as petitioned. The Commission did not propose to extend this exemption to positions which are spread between two crop-years based upon the potential for the separate legs of an inter-crop year spread to act more independently and the greatly lessened need for any specific inter-month spread in light of the proposed increases to the speculative position limits. 57 FR 12772.

#### D. Comments Received

Sixty-three comments were received by the Commission. These commenters included 3 futures exchanges; a broad-based futures industry association, 4 futures commission merchants; 26 commodity pool operators, commodity

trading advisors or associations of such entities; 20 groups or firms representing agricultural interests and 8 individual agricultural producers and one exchange member. In addition, the proposed rules were a topic of discussion at the October 19, 1992 meeting of the Commission's Agricultural Advisory Committee.

By and large, commodity pool operators, commodity trading advisors, and futures commission merchants strongly favored the amendments. Some agricultural interests, including agricultural processors and their representatives and participants in the cotton industry, either supported or recommended specific changes to particular aspects of the proposals. Similarly, the exchanges, and others, opposed particular aspects of the proposed rules. Most agricultural producers and their representative

organizations strongly opposed any increase to these speculative position limits.

Many of the commodity pool operators and commodity trading advisors opined that the current limits were a significant constraint on further development of these futures and options markets. They argued that increasing speculative position limits will lead to greater liquidity in the markets, increasing their over-all efficiency. The existence of the limits, in their view, placed these markets at a competitive disadvantage to other regulated and non-regulated markets, foreign and domestic, which do not have such limits. Moreover, these comments suggested that they were unaware of problems in foreign markets which do not impose speculative position limits.

These commenters also pointed to the growth in the futures and the underlying cash markets as supporting increases to speculative position limits. They argued that in light of the growth in the futures and options markets since 1987, the proposed absolute increases to speculative position limits were not really increases, but merely adjustments to maintain the relative parity of the limits to open interest in the markets.

Finally, commodity pool operators and commodity trading advisors commented that fears of increased price volatility as a result of their trading were unfounded. They noted that any market user lacks incentive to trade positions which are beyond the market's capacity. As one commenter stated:

no creditable academic research supports such perceptions that an increase in limits would entail potential for price volatility or aberrations. Moreover, commodity trading advisors and pool operators clearly have no incentive to take positions in excess of a market's capacity to provide liquidity. Taking such positions is counter to the interests of a CTA and its clients because they would be the primary victims of any market impact caused by the initiation of large illiquid positions. Other market participants would ordinarily be able to benefit at the expense of the CTA and its clients in these circumstances. The consequences of such trading would be devastating to CTAs because they are compensated in large measure by performance-related fees and are often evaluated on the basis of past performance records \* \* \*.

Not all of those supporting the proposed rules were commodity pool operators or trading advisors. Among those supporting increases to speculative position limits were several producer organizations and a merchant involved in the cotton trade. These commenters stated the view that the increase to speculative position limits

would add liquidity, thereby enhancing price discovery to the commercials. As one of these commenters stated:

A cotton merchant's business relies heavily on the ability to hedge. To do this efficiently, a liquid market is necessary and this liquidity comes from the speculative base. Increased speculative participation will facilitate and increase hedging opportunities and increase the efficiency of the market.

As a futures market participant, I realize that the commodity futures industry has changed over the last decade. The individual investor has now joined the commodity pools. In order for these pools to continue to trade cotton, they need increased position limits. The cotton futures market must evolve with the futures market industry and speculative limit increases are necessary to retain the vital role speculators play in the marketplace.

Other agricultural interests favored increasing speculative position limits, but not as proposed by the Commission. One commenter, an association of grain and oilseed merchandisers and processors, stated that it:

Generally supports the concept of raising the federal speculative position limits on grains and oilseeds contracts. We believe that an increase in these limits may provide needed liquidity, facilitating the management of risk for both long and short hedgers.

Nevertheless, this commenter opined that it was concerned:

about how these limit increases will affect those contracts with low average daily volume such as the oats and soybean contracts where excessive speculative activity could undermine the process of price discovery. These contracts are examples of the problems arising when limits are based solely on open interest with no consideration given to average daily volume.

In contrast, most agricultural producers and their representative organizations, opposed any increase to speculative position limits. One commenter, typical of many, opined that in "our opinion \* \* \* raising the limits will increase the volatility of our cash grain markets." Several of these commenters also opposed short selling and any trading by speculators. Many of these commenters also opined that more data and study were necessary to demonstrate that these increases are necessary and appropriate, and to understand the potential impact on price volatility, if any, from increases to speculative position limits. Another commenter, expressing these reservations, stated that—

volatility not related to the underlying factors such as supply, demand, crop condition, and weather, but rather to computerized charts and arcane systems is not a virtue. Of paramount importance for this industry is a wheat futures and options market large enough and the individual traders in the

market small enough that no block trade can skew the market away from its original purpose of price discovery and risk transfer.

The concept of grouping speculators together in pools or funds under a unified management seems to confound that original purpose. Power placed in the hands of a few entities provides opportunities that programs may be designed to manipulate the wheat markets in ways which reduce hedging effectiveness.

Generally, the exchanges opposed particular aspects of the proposals. The CBT, for example, stated that it supported the "general direction" of the proposed changes, but objected to the Commission's proposal, specifically, on the basis that the "proposed unified futures and options limits in all months combined result in a lower overall exposure on one side of the market than the Board of Trade's proposed separate futures and options limits would allow." Several other commenters agreed with this view, suggesting that the combined futures/option limit resulted in a lower over-all limit than separate limits would permit.

The CBT further suggested that the Commission should delete Federal limits altogether, and should not bring limits on options under Federal limits. In addition, the CBT objected that the unified limit, when applied to the MidAmerica Commodity Exchange "result[s] in a 67 percent decrease in total exposure in a single month for MCE Corn." Finally, the CBT "strongly opposed the Commission's continued prohibition on the exemption for inter-crop year spreads," stating that, "in the majority of cases, inter-crop year spreads have a predictable relationship."

The KCBT and MGE strongly opposed basing speculative position limits on the open interest in their markets. Both of these exchanges commented that wheat contracts traded on the CBT, KCBT, and MGE traditionally had the same speculative position limits. Both the KCBT and MGE objected to the disparity among the speculative position limits of the various wheat contract markets which was proposed by the Commission. Both exchanges argued that disparate speculative position limits would put the smaller exchanges at an undue competitive disadvantage.

Both commenters maintained that despite the disparity in the level of average open interest among the three exchanges, other factors supported levels of speculative position limits for the smaller exchanges equivalent to the levels set for similar contracts traded on the CBT. Accordingly, the KCBT stated that:

[t]he chief consideration behind expanded limits for a futures contract with physical delivery is the breadth and liquidity of the underlying cash market \* \* \* [T]he fundamentals of the cash market underlying the Kansas City contract are more supportive of the increased limits than are the relevant statistics for the Chicago contract. This means that if increased limits are approved for Chicago, there is no regulatory reason why the same limits should not be approved for Kansas City.

In addition to its reliance upon a broader and deeper underlying cash market than that underlying the CBT wheat contract, the MGE also opposed disparate treatment among the exchanges on the basis that there is no adverse regulatory history regarding trading on the MGE at current speculative position limits.

Accordingly, the MGE argued that:

[t]here could be no more telling refutation of the thinking underlying this proposal than the fact that the MGE has not suffered even a hint of difficulty as a result of its current speculative position limits. Absent any indication of trouble in its market and lacking any indication that the proposal would solve any of these non-existent problems, a proposal to reduce MGE's position limits appears precipitate and arbitrary. This is particularly so as the MGE's ability to monitor the positions of its traders and to deter manipulation has only improved since the current position limits were put in place. [Emphasis omitted].

Many commenters supported the Commission's proposal in general, but opposed particular aspects of it. However, commenters were also divided in their views on these specific issues. For example, an association representing agricultural processors and a commodity pool operator/commodity trading advisor agreed with the CBT in opposing unified futures and options limits because of their "different risk profiles." The commodity pool operator also noted unfavorably that the Commission's unified limits resulted in lower over-all limits than the CBT proposed separate limits.

Other commenters, however, strongly supported the Commission's proposed unification of futures and option limits. One commenter, an option trader, favored the Commission's proposal, stating that it—

will help to solve an ongoing problem seen in options on futures trading which is the relative low level of position authority granted to the "delta-neutral" trader. Your approach will rationalize the process by allowing sufficient limit authority to the option trader thereby removing the costly necessity of continually reconfiguring positions by "conversion" and "reverse conversion" spreads in an attempt to remain within the arcane "quadrant" regulations.

The business of the option trader is mainly the arbitrage of large risk positions into risk neutral positions through offsets in options and futures. My experience shows that these "neutral" spreads are kept in inventory for a considerable length of time. This is due to the propensity of speculators and commercials to be net buyers of calls and net sellers of puts. The resulting positions are often not unwound until option expiration. It is not unusual to see a large option trader effectively blocked out of further business because of inventoried neutral spreads which now must count against the quadrant limitations.

Your proposal, if adopted, will add liquidity to the options and futures market and will tend to decrease the net risk present in these markets \* \* \*.

On a similar note, an association of agricultural processors lauded the increased flexibility of unified limits, stating:

Unifying or combining the trading limits on both futures and options contracts seems to be very reasonable \* \* \*. With the flexibility created by futures and options contracts allowing traders to move freely between the two markets, new and exciting forms of hedging are evolving \* \* \*. If speculative limits are unified, more certainty of market movement should be achieved \* \* \*.

An association representing all segments of the managed futures industry agreed that the reasons stated by the Commission for unifying futures and options speculative position limits "including the harmonization of limits calculations with the methods employed by exchanges and greater ease of application by traders, are compelling." And a general farm organization supported unified futures and option limits, stating that unified limits:

properly recognize the functional relationship between futures and options contracts. Expansion of the definition of "long position" and "short position" to include the delta-adjusted futures-equivalent of put and call options will better capture the true market share of any particular speculative position.

Similarly, a commodity pool operator supported the Commission's analysis, agreeing that unified limits are "easier to use, understand and administer," and agreeing that "price movements in the futures and options markets are closely related."

A second specific issue dividing commenters was the application of the spread exemption only to intra-crop year positions. The CBT "strongly" opposed the proposed intra-crop year spread exemption, disagreeing with the Commission's conclusion that the individual legs of an inter-crop year spread may act independently and

therefore behave more like outright, rather than spread, positions. The CBT countered that:

in the majority of cases, inter-crop year spreads have a predictable relationship. The rare instances where this relationship does not hold are usually caused by drought or some other unpredictable event, the severity of which one only becomes known near the end of one crop year and the beginning of the next. In this circumstance, the Commission's proposal is likely to magnify the difference in cash market fundamentals between the two crop years by limiting the liquidity spread traders are able to provide in the futures markets. This occurs because the contrasting cash market conditions usually become known to the market near the end of the crop year. Since spread traders have few, if any, remaining old crop contract months to spread into near the end of the crop year, the amount of liquidity they are able to provide is severely restricted at a crucial time.

Many commenters agreed with the CBT's view that no distinction between intra- and inter-crop year spreads should be made. These commenters contended that such a distinction, besides being unnecessary, could reduce the overall benefit of including a spread exemption in the rules. One commenter, for example, stated that:

[w]ithout equalizing the intra and inter-crop levels, the liquidity which spread traders bring to the market can diminish in contract months near the end of a crop year compared to the contract months near the beginning of the crop year. This harms market efficiency and price discovery. We believe equalizing the limits for intra and inter-crop year spreads is warranted.

Other commenters, however, agreed with the Commission's position that the individual legs of an inter-crop year spread position may act more like outright positions. As one commenter noted:

While the speculator may not agree, a hedger realizes fully that an inter-crop year spread is in fact nothing more than a double speculation. All of the underlying market movers are normally different between old crop and new crop wheat. Limiting speculation differently for inter-crop and intra-crop spreads is logical and based upon sound reasoning.

Many commenters expressed the concern that the increasing speculative position limits would result in greater price volatility. Several of these commenters contended that, to the extent that expanding speculative position limits results in increased price volatility, the Commission should impose alternative means of restricting trading. In this regard, several commenters suggested that limits on intra-day trading should be considered in conjunction with raising speculative position limits. In this regard, one

commenter suggested that the Commission limit "the amount of net position accumulation that a trader could amass during any one 15 minute trading interval." This commenter reasoned that such a rule would:

Spread the trading activity (and thus the price discovery activity) over more of the trading day. Such a restriction on trading activity would not prevent a trader from amassing or disposing of a limit position in a single day. It would, however, restrict the ability of a single trader to manipulate or unduly influence prices in a concentrated time period.

Similarly, a second commenter noted that the Commission should place a limitation on the amount of trading which a single speculator could undertake during the last fifteen minutes of a trading session.

Taking a slightly different tack, several commenters, representing various agricultural interests, recommended that the Commission proceed, but in a more cautious manner. In particular, they recommended that to the extent the Commission proceeds with raising speculative position limits, it do so on a limited, or test basis. In particular, one commenter recommended that:

it would seem prudent to at least implement new limits for one commodity on a trial basis. During this trial period, the Commission could monitor the movement of the futures market relative to supply and demand data underlying the market for the test commodity. This observation period would provide a better basis for making permanent changes in speculative limits.

A second commenter proposed an alternative to a one-commodity trial. This commenter suggested that the Commission approve, for a one-year period, expanded speculative position limits for all contract markets but at an amount less than that proposed by the Commission. It reasoned that:

[t]he Commission idea of basing speculative limit levels on open interest history has merit, but we feel that the increases proposed are too big at this time. We feel that the Commission should halve the recommended increases in speculative limits. Then, after a proper review of factors, such as increased volatility, CFTC would be in a better position to determine whether the price discovery system was being distorted by these larger speculative trading limits. If price distortion is not evident, then limits could be increased to the levels proposed by CFTC.

As discussed above, many commenters advocated taking additional time to study the need for, and the possible effects of, increasing further speculative position limits. In their view the trial implementation of

expanded speculative limits would provide such an additional opportunity.

## II. The Interim Final Rules

The Commission has considered increasing Federal speculative position limits for over two years, including two separate occasions for public comment regarding these issues.<sup>7</sup> In addition, these issues have been the subject of discussion at several meetings of the Commission's Agricultural Advisory Committee.

Based on its consideration of the comments received, both in response to the Notice of Petition of Rulemaking and Notice of Proposed Rulemaking, and based upon its independent analysis growing out of a long history of direct administration of Federal speculative limits and over ten-years of oversight of exchange-set speculative position limits, the Commission is adopting interim amendments to Federal speculative position limits. These interim final rules, and in particular, the modifications made to the rules as proposed, are discussed in greater detail below.

### A. Implementation of Revised Structure and Levels of Limits

As detailed in the Notice of Proposed Rulemaking, the Commission, based upon its ten years experience of oversight of exchange-set speculative limits as well as its even longer history directly administering the Federal limits, proposed to set the level of both the single month and the all-months-combined limits at ten percent of the combined markets' delta-adjusted open interest. For those markets with a combined open interest greater than 25,000, the level would have increased at a marginal rate of 2.5 percent. In addition, the Commission proposed a minimum speculative limit level of 1,000 contracts. See, e.g., 57 FR 12770.

However, as discussed above, several commenters suggested that the Commission proceed with these proposals cautiously. They reasoned that a trial program would provide the Commission with an opportunity to observe the adverse effects, if any, on the market of these proposals during their implementation. Such a trial would also give the Commission an opportunity, in conjunction with the adoption of any final rules, to take any

<sup>7</sup> In this regard, one commenter complained that this period constituted, "an unacceptable delay" and advocated that the Commission grant sole responsibility to establish and monitor speculative position limits in these markets to the exchanges. Other commenters, in contrast, commended "the painstaking diligence with which the Commission has encouraged presentation of all pertinent evidence concerning its proposal."

remedial actions which may be appropriate should the concerns of various commenters regarding increased price volatility resulting from these actions prove to be correct.

The Commission previously has introduced significant regulatory initiatives incrementally, with great success. The Commission's three-year pilot program for the introduction of exchange-traded options is a good example of the successful phased introduction by the Commission of a sweeping regulatory initiative. Under this program, the Commission steadily expanded the initial limited trading in such instruments as it became apparent that it could do so prudently. See, 46 FR 54500 (Nov. 3, 1981).

Although the Commission believes that the proposed amendments clearly would have "achieve[d] the prophylactic intent of section 4(a) of the Act and Commission rule 1.61" while addressing the need for the regulated futures markets to remain competitive with other, less regulated markets, it is also mindful that a significant number of commenters remain concerned regarding the effect, if any, that the proposed changes might have had on the hedging and price-basing utility of these markets. In light of these continuing concerns, and the Commission's past experience with the phased-introduction of various regulatory initiatives, the Commission has determined that changes to speculative position limits should be undertaken incrementally.

Specifically, the Commission is adopting interim amendments to Federal speculative positions limits in two steps. Subsequently, it will consider adopting fully the proposed limits as final a year after the second-interim step is implemented. Because it is implementing this expansion of speculative position limits in a cautious manner, the Commission believes that it is preferable to permit all of the contract markets to participate in the phased expansion of speculative position limits, as recommended by one commenter, rather than limiting it to one or two selected contracts.

The first step will combine futures and option limits, for the reasons explained below, at their current levels. This will not increase the over-all exposure that a speculator may hold in the market but should provide significant relief by permitting far greater flexibility in the composition of the positions which may be held. For some traders, this increased flexibility will result in a higher effective limit. This transition period will permit the exchanges and traders alike to become

accustomed to the use of a unified futures and option limit in these commodities.

Approximately one year later, in March 1994, the speculative position limits will increase halfway to the level proposed by the Commission in the Notice of Proposed Rulemaking. At that time, as provided in a separate notice published elsewhere in this issue of the *Federal Register*, the comment period on the originally-proposed speculative position limit levels, reopens. These proposed limit levels are included above.

The comment period will close on April 30, 1995, approximately one year after the second interim increase to speculative position limits became effective. The Commission expects that within sixty days following the close of the comment period it will consider adopting those originally-proposed levels as final rules. This approach will provide the Commission with an opportunity to observe the effect on the market, if any, of these interim changes before adopting the originally-proposed limit levels as final. In light of the time that is being provided for further observation and study of the originally-proposed levels and the effect of the interim increases, the Commission will adhere strictly to this timetable in its consideration of whether to adopt as final the proposed levels.

In this regard, the Commission also is directing the Division of Economic Analysis to report to it on the progress of the implementation of each of the two interim increases in Federal speculative position limits and the observed effects these increases may have, if any, on the markets. These reports must be forwarded to the Commission no later than one year after the implementation date of each increase. Accordingly, a report on the first step must be forwarded to the Commission by March 31, 1994 and on the second by March 31, 1995. If after the second report, the staff's recommendation is to increase the limits to the levels originally-proposed and if the Commission concurs, the Commission would take expeditious action to implement those levels.

These reports, using already available data, should consider the staff's surveillance experience with these changes to the speculative position limits, including the level of speculative participation in the markets, possible changes in liquidity, in bid-ask spreads and in price fluctuations. They should also consider the effect, if any, on commercial use of the market after increased speculative position limits are in effect. In addition, the second report

should include a recommendation to the Commission regarding the advisability of adopting as final rules the originally-proposed levels.

#### B. Structure of Position Limits

As discussed above, commenters differed on the advisability of unifying futures and option limits. For example one commenter expressed concern about the different risk exposures of options and futures positions. Nevertheless, the Commission remains convinced, for the reasons stated in the Notice of Proposed Rulemaking, that a structure of unified limits is appropriate, and "that the benefits of revising the structure of Federal speculative position limits to include unified futures and option limits outweigh any potential inconvenience from so doing."<sup>8</sup> Accordingly, because such positions would be netted automatically under a unified speculative position limit, the Commission is removing and reserving Rule 150.3(a)(2) which exempts from Federal speculative position limits positions in option contracts which offset the futures positions. In addition, the Commission is amending Rule 150.2 to include option positions on a futures-equivalent basis within the applicable speculative position levels and is amending Rule 150.1 by adding definitions of "futures-equivalent," "long" position and "short position."<sup>9</sup>

In this regard, the Commission received no adverse comment regarding the technical aspects of its proposed rules to unify futures and option limits. As discussed in the Notice of Proposed Rulemaking, unified limits require a degree of continual monitoring. In this regard, the Commission notes in particular, that "futures-equivalent" is defined as an option contract which has been adjusted by the previous day's risk factor, or delta coefficient for that option. The Commission is hereby reiterating, however, that, as it stated in

<sup>8</sup> 57 FR 12769. Several commenters objected to the Commission's proposal because it requires the Commission's direct administration of option speculative position limits, in addition to futures limits, in the enumerated commodities. In proposing to unify these limits, however, the Commission has been careful not to unnecessarily increase regulatory burdens as a consequence of its action. Accordingly, the Commission did not propose any modification to existing reporting, or other, burdens. 57 FR 12769, n. 9. Moreover, the Commission already is involved in monitoring option positions for compliance with certain spread exemption provisions which are now permitted under Commission rules. As previously noted, one aspect of the unified structure is to simplify compliance with these existing provisions.

<sup>9</sup> Such long positions are defined to include, for options, long calls and short puts, and for futures, long futures. Short positions mirror the long positions.

the Notice of Proposed Rulemaking, it will adhere to the convention that traders will be deemed to be in compliance where, although the previous day's delta coefficient is typically used in determining compliance, a favorable change in the delta coefficient during a trading session causes a position to come into compliance if adjusted by that day's delta, rather than the previous day's delta coefficient.<sup>10</sup> See, 57 FR 12769, n.7.

#### C. Parity of Speculative Position Limit Levels

As proposed, the speculative limits for the KCBT and the MGE wheat, and the MGE oats, contracts diverged from that of the CBT. Previously, speculative position limits for all three contracts had been nearly the same.<sup>11</sup> In proposing differing limits, the Commission had relied upon the difference in the level of open interest among the three contract markets. However, the Commission also stated that speculative position limits, especially for the spot month, appropriately could be based upon an analysis of current deliverable supplies and the history of various spot month expirations. 57 FR 12770.

In light of the breadth and liquidity of the cash markets underlying the KCBT and the MGE wheat, and the MGE oats, contracts, the Commission is persuaded that there would be little regulatory harm in maintaining the parity of limits among the exchanges. In so doing, the Commission notes that it is rare to have more than one successful contract trading on the same commodity. Moreover, as the MGE commented, the smaller exchanges have had a history of meeting their regulatory responsibilities at position limits comparable to those of the CBT. Accordingly, the Commission has determined that initially it will set the speculative position limits at the same level for the applicable wheat and oats contracts. Of course, if experience

<sup>10</sup> Exchanges which use deltas for exchange-set speculative position limits are required to publish the delta coefficient on a daily basis under Commission Rule 16.01, 17 C.F.R. 16.01 (1991). Not all exchanges currently publish delta coefficients for every contract market in which there are Federal speculative position limits. The proposed rule was based upon the assumption that those contract markets which do not currently publish delta coefficients will undertake to do so. Although the Commission specifically requested comment on the burden that this might place on any exchange which currently does not calculate and publish the delta coefficient, none commented on this issue.

<sup>11</sup> Specifically, the spot month and individual month limits for each of these three markets is 600 contracts. The all-months limit for the KCBT and CBT is 1800 contracts and for the MGE spring wheat is 1200 contracts.

during the phase-in of these interim rules suggests otherwise, the Commission may determine to set divergent, final limits.<sup>12</sup>

Based upon the above determinations regarding the implementation, structure

and levels of speculative position limits, the limits originally-proposed remain pending and the Commission is adopting interim final rules, as follows:<sup>13</sup>

**COMPARISON OF CURRENT FUTURES AND OPTION LIMITS FOR OUTRIGHT POSITIONS WITH THE LEVELS FOR COMBINED POSITIONS WHICH WILL BE EFFECTIVE UNDER REVISIONS TO PART 150 OF THE COMMISSION'S REGULATIONS**

Contract market	Individual nonspot months					All months combined				
	Current limits <sup>1</sup>		Combined futures/options <sup>2</sup> (in futures equivalents)			Current limits <sup>1</sup>		Combined futures/options <sup>2</sup> (in futures equivalents)		
			Phase 1	Phase 2	Pending proposed limits			Futures	Options	Phase 1
<b>Chicago Board of Trade (CBT)</b>										
Corn .....	600	600	1200	3400	5500	2400	600	3000	6000	9000
Soybeans .....	600	600	1200	2400	3500	2400	600	3000	4300	5500
S. meal .....	720	720	1440	2200	3000	2160	720	2880	3400	4000
S. oil .....	540	540	1080	2000	3000	1620	540	2160	3100	4000
Oats .....	400	400	800	900	1000	400	400	800	1200	1500
Wheat .....	600	600	1200	2100	3000	1800	600	2400	3200	4000
<b>MidAmerica Commodity Exchange (MCE)</b>										
Corn .....	600	600	1200	1200	1200	600	600	1200	1200	1200
Wheat .....	600	600	1200	1200	1200	600	600	1200	1200	1200
Soybeans .....	600	600	1200	1200	1200	600	600	1200	1200	1200
<b>Kansas City Board of Trade (KCBT)</b>										
Wheat .....	600	600	1200	2100	3000	1800	600	2400	3200	4000
<b>Minneapolis Grain Exchange (MGE)</b>										
Spring wheat .....	600	600	1200	2100	3000	1200	600	2400	3200	4000
White wheat .....	600	600	1200	1200	1200	600	600	1200	1200	1200
<b>New York Cotton Exchange (NYCE)</b>										
Cotton .....	450	300	750	1600	2500	1200	300	1500	2500	3500

<sup>12</sup> The levels set for the MidAmerica Commodity Exchange ("MCE") in the first step are being carried over to the second step, as well, adjusted slightly from those which were proposed. Despite the Commission's determination to keep the levels of the KCBT and the MCE's wheat contracts the same as the CBT's, the Commission believes that increasing the MCE's limits to the CBT's levels is not appropriate in light of the special relationship of the MCE to the CBT, the primary market in these

contracts. Based upon the level of open interest of trading in the MCE contracts, the Commission does not believe that trading on the MCE will be constrained by maintaining these limits, separate from those of the CBT, at these levels. The Commission would consider exemptive relief for MidAmerica changers should that or other similar relief appear to be necessary, during the phase-in period.

<sup>13</sup> The new limits specified under Part 150 will apply to combined net long or short combined positions in futures and options where options are calls, and short puts and short positions will include short futures, short calls, and long puts. Again, with the exception of the MCE, the limits are expressed in terms of the contract size traded on each exchange.

Again, shown in the table are limits for outright positions. There would be no limit on spreads between futures and options which have the same contract month. For option/option, option/future, or futures/futures spreads between months within the same crop year, the applicable limit in any one month would be that shown in the table for all months combined.

<sup>12</sup> The levels set for the MidAmerica Commodity Exchange ("MCE") in the first step are being carried over to the second step, as well, adjusted slightly from those which were proposed. Despite the Commission's determination to keep the levels of the KCBT and the MCE's wheat contracts the same as the CBT's, the Commission believes that increasing the MCE's limits to the CBT's levels is not appropriate in light of the special relationship of the MCE to the CBT, the primary market in these

contracts. Based upon the level of open interest of trading in the MCE contracts, the Commission does not believe that trading on the MCE will be constrained by maintaining these limits, separate from those of the CBT, at these levels. The Commission would consider exemptive relief for MidAmerica changers should that or other similar relief appear to be necessary, during the phase-in period.

<sup>13</sup> The Commission has specified that the final rules will become effective sixty days from their promulgation in order to give the exchanges an opportunity, where necessary, to amend exchange speculative position limits rules to bring them into compliance with the Commission's revisions, see Section 4a(e) of the Act, 7 U.S.C. 6a(e).

**D. Spread Exemptions.**

Historically, the reason for including the spread exemption in the structure of speculative position limits was the relatively low limit for individual month limits, especially in comparison to the all-months limits. Generally, individual months limits were set at the same level at the spot month limits in these contracts. Accordingly, the spread exemption may have been an important means for traders to exceed the relatively low individual month limit.

As the Commission noted in the Notice of Proposed Rulemaking, however, the "increases to the individual month limits being proposed herein, in general, should diminish the need for such an exemption." 57 FR 12772. Despite the expected lessened need for any spread exemption, the Commission proposed to continue the exemption in its current form, which applies to spreads within the same crop year, but at a level equal to the all-months limit, as petitioned by the CBT.

The Commission remains unconvinced that the exemption for inter-month spreads should be modified at this time to permit generally such spreads across crop-years in excess of the speculative position limits which are being greatly expanded herein. The Commission remains concerned that, depending upon conditions in the underlying cash market, the separate legs of inter-crop year spreads may act more like separate outright positions than a spread within the same crop-year. In light of the increases to the limits being adopted herein, the Commission believes that such a modification of the spread exemption should be undertaken cautiously and only after greater experience with the increased limits and based upon a demonstrated need for such additional relief. Accordingly, the Commission is adopting, as final, an exemption permitting the separate legs of positions which are spread against other months within the same crop year, in total or in combination with outright positions in the same month, to equal the all-months level. Of course, the level of the outright positions cannot exceed the single month limit, nor does this exemption apply to positions within the spot month.

In addition, the Commission, to provide greater certainty and for ease of reference, is adopting a definition of "crop year." The Commission previously did not define "crop year," nor did it propose such a definition in conjunction with these revisions, instead relying on its informal usage in various Commission statistical

compilations and on the general industry understanding of when new crop years begin. In this regard, the Commission's monthly "Commitments of Traders" publication has long provided statistical information based, in part, on crop years as identified by the Commission. However, codification of this long-accepted Commission usage of crop year within these rules should provide greater certainty and ease of reference to the public.

Accordingly, for purposes of these rules, the Commission is specifying that for the following commodities, the first delivery month of the "crop-year" is as follows:

Commodity	Beginning delivery month
corn .....	December.
cotton .....	October.
oats .....	July.
soybeans .....	September.
soybean meal .....	October.
soybean oil .....	October.
wheat (spring) .....	September.
wheat (winter) .....	July.

These beginning delivery months were, and are, tailored to, and consistent with, new-crop production in those regions which are tributary to the delivery points on the futures contracts in these commodities.

**III. Related Matters****A. The Regulatory Flexibility Act**

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that agencies, in promulgating rules, consider the impact of these rules on small entities. The Commission has previously determined that large traders are not "small entities" for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* 47 FR 18618 (April 30, 1982). These speculative position limits affect only the largest speculative traders in a particular contract market. Accordingly, the Acting Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action herein proposed will not have a significant economic impact on a substantial number of small entities. However, the Commission invited comments from any firms or other persons which believe that the promulgation of these rules might have a significant impact upon their activities. No comments were received regarding this issue.

**B. Paperwork Reduction Act**

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, ("PRA") 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 previously submitted these rules in proposed form and their associated information collection requirements to the Office of Management and Budget. The Office of Management and Budget approved the collection of information associated with these rules on January 12, 1993 and assigned OMB control number 3038-0013 to these rules. The burden associated with this entire collection, including these final rules, is as follows:

Average Burden Hours Per Response.....	1.03
Number of Respondents.....	165
Frequency of Response.....	3.82

The burden associated with these specific final rules is as follows:

Average Burden Hours Per Response.....	1.00
Number of Respondents.....	155
Frequency of Response.....	3.00

Copies of the OMB approved information collection package associated with this rule may be obtained from the Office of Management and Budget, Paperwork Reduction Project, Washington, D.C. 20503.

**List of Subjects in 17 CFR Part 150**

Agricultural commodities, Bona fide hedge positions, Position limits, Spread exemptions.

In consideration of the foregoing, pursuant to the authority contained in the Commodity Exchange Act, and, in particular sections 2(a)(1), 2(a)(2), 4a, 4c, 5, 5a, 6b, 6c, and 15, 7 U.S.C. 2, 4, 4a, 6a, 6c, 7, 7a, 12a, 13a, 13a-1, and 19, the Commission hereby amends part 150 of chapter I of title 17 of the Code of Federal Regulations as follows:

**PART 150—LIMITS ON POSITIONS**

1. The authority citation for part 150 is revised to read as follows:

**Authority:** 7 U.S.C. 6a, 6c and 12a(5).

2. Section 150.1 is amended by adding new paragraphs (f), (g), (h) and (i) to read as follows:

**§ 150.1 Definitions.**

\* \* \* \* \*

(f) *Futures-equivalent* means an option contract which has been adjusted by the previous day's risk factor, or delta coefficient, for that option which has been calculated at the close of trading and published by the applicable exchange under § 16.01 of this chapter.

(g) *Long* position means a long call option, a short put option or a long underlying futures contract.

(h) *Short* position means a short call option, a long put option or a short underlying futures contract.

(i) For the following commodities, the first delivery month of the "crop year" is as follows:

Commodity	Beginning delivery month
corn .....	December.
cotton .....	October.
oats .....	July.
soybeans .....	September.
soybean meal .....	October.

Commodity	Beginning delivery month
soybean oil .....	October.
wheat (spring) .....	September.
wheat (winter) .....	July.

3. Section 150.2 is revised to read as follows:

#### § 150.2 Position limits.

No person may hold or control positions, separately or in combination, net long or net short, for the purchase or sale of a commodity for future delivery or, on a futures-equivalent basis, options thereon, in excess of the following:

Contract	Unit of limit	As of [insert effective date of rule]			As of March 31, 1994		
		Spot month	Single month	All-months	Spot month	Single month	All-months

#### CHICAGO BOARD OF TRADE

Corn .....	Million bushels .....	3	6	15	3	17	30
Oats .....	Million bushels .....	3	4	4	3	4.5	6
Soybeans .....	Million bushels .....	3	6	15	3	12	21.5
Wheat .....	Million bushels .....	3	6	12	3	10.5	16
Soybean oil .....	60,000 pounds .....	540	1,080	2,160	540	2,000	3,100
Soybean meal .....	100 tons .....	720	1,440	2,880	720	2,200	3,400

#### MIDAMERICA COMMODITY EXCHANGE

Corn .....	Million bushels .....	3	6	6	3	6	6
Oats .....	Million bushels .....	2	2	2	2	2	2
Soybeans .....	Million bushels .....	3	6	6	3	6	6
Wheat .....	Million bushels .....	3	6	6	3	6	6
Soybean meal .....	100 tons .....	400	400	400	400	400	400

#### MINNEAPOLIS GRAIN EXCHANGE

Hard red spring wheat .....	Million bushels .....	3	6	12	3	10.5	16
White wheat .....	Million bushels .....	3	6	6	3	6	6
Oats .....	Million bushels .....	3	4	4	3	4.5	6

#### NEW YORK COTTON EXCHANGE

Cotton No. 2 .....	Hundred bales .....	300	750	1,500	300	1,600	2,500
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#### KANSAS CITY BOARD OF TRADE

Hard winter wheat .....	Million bushels .....	3	6	12	3	10.5	16
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4. Section 150.3 is amended by removing and reserving paragraph (a)(2) and by revising paragraph (a)(3) to read as follows:

#### § 150.3 Exemptions.

(a) \* \* \*

(3) Spread or arbitrage positions between single months of a futures contract and/or, on a futures-equivalent basis, options thereon, outside of the spot month, in the same crop year; *provided however*, That such spread or arbitrage positions, when combined with any other net positions in the single month, do not exceed the all-months limit set forth in § 150.2; or \* \* \* \* \*

Issued in Washington, DC, this 30th day of March, 1993, by the Commission.

Jean A. Webb,

*Secretary of the Commission.*

[FR Doc. 93-8134 Filed 4-6-93; 8:45 am]

BILLING CODE 6351-01-M

#### DEPARTMENT OF ENERGY

##### Federal Energy Regulatory Commission

##### 18 CFR Parts 101 and 201

[Docket No. RM92-1-000]

##### Order No. 552; Revisions to Uniform Systems of Accounts to Account for Allowances Under the Clean Air Act Amendments of 1990 and Regulatory-Created Assets and Liabilities and to Form Nos. 1, 1-F, 2 and 2-A

Issued March 31, 1993.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Final rule.

**SUMMARY:** This final rule adopts accounting requirements for: Allowances for emission of sulfur dioxide under the Clean Air Act

Amendments of 1990; and assets and liabilities created through the ratemaking actions of regulatory agencies. The final rule also adopts new reporting schedules and revises other schedules to be used by jurisdictional companies in reporting information on allowances and regulatory assets and liabilities.

**EFFECTIVE DATE:** The final rule is effective January 1, 1993. The information collection provisions, however, will not become effective until approved by the Office of Management and Budget. Notice of this date will be published in the *Federal Register*.

**FOR FURTHER INFORMATION CONTACT:** Gregory A. Berson, Office of Chief Accountant, Federal Energy

Regulatory Commission, 810 First Street, NE., Washington, DC 20426, (202) 219-2603.

Michael Bardee, Office of General Counsel, Federal Energy Regulatory

Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208-0626.

**SUPPLEMENTARY INFORMATION:** In addition to publishing the full text of this document, excluding Appendix A (revised pages for FERC Form Nos. 1, 1-F, 2 and 2-A) and Appendix B (list of commenters), in the *Federal Register*, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, 941 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208-1397. To access CIPS, set your communications software to use 300, 1200 or 2400 bps, full duplex, no parity, 8 data bits, and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208-1781. The full text of this rule, excluding Appendices A and B, will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3104, 941 North Capitol Street NE., Washington, DC 20426.

Before Commissioners: Elizabeth Anne Moler, Chair; Jerry J. Langdon, Martin L. Allday, and Branko Terzic.

## Final Rule

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### I. Introduction

On December 2, 1991, the Commission issued a notice of proposed rulemaking (NOPR) proposing to amend its Uniform Systems of Accounts (USoA) for public utilities, licensees and natural gas companies to establish: (1) Uniform accounting requirements for allowances, arising from Title IV of the Clean Air Act Amendments of 1990 (CAAA),<sup>1</sup> for emission of sulfur dioxide; and (2) generic accounts to record assets and liabilities created through the ratemaking actions of regulatory agencies.<sup>2</sup>

Sixty-seven parties filed comments on the NOPR. The comments filed by a number of parties were untimely, but the Commission will consider these untimely comments in this proceeding, given the absence of any undue prejudice or delay.

In response to the comments received, the Commission has decided to adopt a final rule generally consistent with the NOPR, but with several significant changes. The major accounting proposals retained from the NOPR include: The classification of allowances in new inventory Accounts 158.1 and 158.2; the valuation of most allowances at historical cost; the use of the weighted average cost method for determining the cost of allowances issued from inventory; the expensing of allowances in new Account 509; and the use of several new accounts for regulatory assets and liabilities.

The major changes from the accounting proposed in the NOPR include: the use of fair value in the valuation of allowances traded between affiliates; and the elimination of the NOPR's two-step process of accounting for regulatory assets and liabilities in favor of a one-step process that is more consistent with past practices.

The Commission also is adopting new reporting schedules and revising other schedules to be used by jurisdictional companies in reporting information on allowances and regulatory assets and liabilities in four of its Annual Reports (FERC Form Nos. 1, Annual Report of Major public utilities, licensees and others (Form 1); 1-F, Annual Report of Nonmajor public utilities and licensees (Form 1-F); 2, Annual Report of Major natural gas companies (Form 2); and 2-

<sup>1</sup> Pub. L. No. 101-549, Title IV, 104 Stat. 2399, 2584 (1990).

<sup>2</sup> FERC Statutes and Regulations, Regulations Preambles ¶ 32,481 (1991), 56 FR 64567 (Dec. 11, 1991).

A, Annual Report of Nonmajor natural gas companies (Form 2-A).<sup>3</sup> These new and revised schedules incorporate the final rule's changes and are contained in Appendix A.<sup>4</sup>

As the Commission stated in the NOPR, the objective in adopting this final rule is to provide useful financial and statistical information to regulatory agencies and other users of the financial statements by establishing sound and uniform accounting and reporting requirements for allowance transactions and for regulatory assets and liabilities. The final rule is not intended to promote or discourage particular CAAA compliance strategies or to prescribe the ratemaking treatment for allowances. The final rule is intended to be "rate neutral."

### II. Public Reporting Burden

The Commission believes that any additional annual reporting burdens for collection of information resulting from this rule will be minimal. The Commission notes that usual business practices would require utilities to account for and report allowance transactions and regulatory assets and liabilities even in the absence of the rule. By adopting the rule, the Commission gives certainty as to how utilities should account for and report such transactions and thereby facilitates the usefulness of utility financial statements to all users.

Send comments regarding this burden estimate or any other aspect of the Commission's collection of information, including suggestions for reducing this burden, to the Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, DC 20426 (Attention: Michael Miller, Information Policy and Standards Branch, (202) 208-1415), and to the Office of Information and Regulatory Affairs of the Office of Management and Budget (Attention: Desk Officer for Federal Energy Regulatory Commission).

### III. Discussion

#### A. Effect On Ratemaking

The Commission stated in the NOPR that the proposed rules were not intended to prescribe the ratemaking treatment for allowances and would not bar regulatory commissions (including this Commission) from adopting any

<sup>3</sup> The current versions of these forms bear the following OMB approval numbers: Form 1, No. 1902-0021; Form 1-F, No. 1902-0029; Form 2, No. 1902-0028; and Form 2-A, No. 1902-0030.

<sup>4</sup> Appendix A is not being published in the *Federal Register*, but is available from the Commission's Public Reference Room.

particular ratemaking treatment.<sup>5</sup> The proposed rules were intended to be "rate neutral."

**Comments.**<sup>6</sup> The Iowa Working Group<sup>7</sup> and the North Carolina Staff support the goal of rate neutrality. The North Carolina Staff argues, for example, that the USofA should provide information about economic events affecting a utility, and not direct those economic events by prescribing certain ratemaking practices.

Similarly, EPA asks the Commission to reiterate that this rulemaking addresses only accounting, not ratemaking. However, EPA also encourages the Commission to issue a policy statement in a separate proceeding on allowance ratemaking.

The Ohio Staff argues that the NOPR's proposed accounting may not in fact be "rate neutral." As an example, the Ohio Staff asserts that the NOPR's proposal to classify allowances as inventory suggests that allowances should be included in rate base in an amount equal to the twelve-month average balance of allowances, instead of the balance on a date certain, as is typical for plant-in-service. The Ohio Staff asks the Commission to reiterate its goal of rate neutrality in both this order and the general instructions of the USofA. The Ohio Staff also recommends that the description of Account 158.1, Allowance Inventory, state that the Commission is not requiring nor recommending any particular rate base or ratemaking treatment.

EEI and others<sup>8</sup> urge the Commission to develop a ratemaking framework coincident with the development of accounting rules. EEI argues that doing so would allow the accounting rules to be developed more meaningfully. Wisconsin Public Service argues that a ratemaking framework will give utilities guidance in developing compliance plans and assist states in developing their own ratemaking frameworks.

EEI and others<sup>9</sup> ask the Commission to state that utilities will be allowed to recover prudently incurred costs as operating expenses and that unused

allowances bought for operations are to be included in rate base. Similarly, Centerior argues that the final rule should be consistent with the goal of full recovery of all prudently incurred compliance costs. Florida Power & Light asserts that, at a minimum, the Commission should state that it intends the proposed new accounts to be commensurate to existing accounts for ratemaking purposes.

EEI, Central & South West and Gulf States ask the Commission to state that the economic value of allowances should be reflected in pricing when allowances are used in sales for resale, affiliate trades and power pool operations. Gulf States argues that this recovery is needed in order to fairly compensate retail customers who often will experience significant rate increases to pay for scrubbers or low sulfur coal. Centerior argues that the Commission should indicate that nothing in the final rules is intended to preclude a utility's ability to recover the economic value of allowances.

Deloitte & Touche recommends the initiation of a generic proceeding on ratemaking issues in order to remove some of the uncertainty about when utilities may recover prudently-incurred compliance costs. Deloitte & Touche argues that differences in regulatory certainty about the recoverability of the costs of some compliance methods, e.g., fuel switching compared to buying allowances, could hinder least cost planning and the development of the allowance market. Deloitte & Touche states that existing Commission policies would require wholesale power sales to be priced at the seller's costs, including allowances obtained at zero cost, even though state regulators are unlikely to allow utilities to dispose of allowances without recompense.

Pennsylvania Power & Light asks the Commission to resolve the ratemaking for allowances in this rulemaking or in a separate generic rulemaking, instead of case-by-case. Pennsylvania Power & Light argues that a generic rulemaking would allow all interested parties, and not just the parties to individual rate filings, to participate in resolving the rate issues.

Duke Power also argues that this proceeding should address ratemaking issues. Duke Power argues that most state commissions look to generally accepted accounting principles (GAAP)<sup>10</sup> as reflected in the USofA to provide a framework for cost recovery.

NRECA urges the Commission to undertake the task of allocating compliance costs and cost savings between ratepayers and stockholders and among classes of ratepayers of multi-jurisdictional utilities. NRECA states that, because of possible regulatory tension among the state commissions in such situations, the Commission is uniquely able to perform this task.

**Commission Response.** The Commission understands the need for the eventual development of a ratemaking framework for allowances, but declines to prescribe such a framework in this final rule. The NOPR did not propose a ratemaking framework and did not solicit comments on that subject. Most commenters did not address the subject. Moreover, the bulk of the cost of allowances and compliance will be within the ratemaking jurisdiction of the various States and not this Commission. There is not likely to be a single ratemaking framework appropriate in each and every ratemaking jurisdiction for utilities subject to this Commission's accounting jurisdiction.

The Commission does, however, have accounting jurisdiction over almost the entire industry involved with allowances and this rulemaking was initiated to meet the need for timely action on accounting issues. As stated in the NOPR, this rule is intended to provide useful financial and statistical information to users of a utility's financial statements by establishing uniform accounting and reporting requirements for allowance transactions. The rule is "rate neutral" in that the prescribed accounting will reflect the economic effects of whatever ratemaking treatment is granted. The rule does not dictate or favor one particular rate treatment over another. The Commission sees no need to expand the scope of this accounting rule for the rate issues raised by the commenters. The ratemaking treatment for allowances will be dealt with in other forums.

#### B. Allowance Classification

##### 1. General Rule

The NOPR proposed to classify allowances in two new inventory accounts in the "Current and Accrued

in incorporates the accounting profession's consensus at a particular time as to which economic resources and obligations should be recorded as assets and liabilities, which changes in assets and liabilities should be recorded, when these changes should be recorded, how the assets and liabilities and changes in them should be measured, what information should be disclosed and how it should be disclosed and what financial statements should be prepared.

<sup>5</sup> FERC Statutes and Regulations ¶ 32,481 at 32,572.

<sup>6</sup> All of the commenters are listed in Appendix B to this order. Abbreviations for the commenters are also listed in Appendix B.

<sup>7</sup> The Iowa Working Group consists of the Iowa Utilities Board, the Iowa Office of the Consumer Advocate, Interstate Power Company, Iowa Power and Light Company, Iowa Public Service Company, Iowa Southern Utilities, Iowa Electric Light and Power Company and Iowa-Illinois Gas and Electric Company.

<sup>8</sup> Florida Power & Light, Gulf States and Wisconsin Public Service.

<sup>9</sup> Cincinnati Gas & Electric, Con Edison, Gulf States and Wisconsin Electric.

<sup>10</sup> GAAP is a technical term in financial accounting. GAAP encompasses the conventions, rules and procedures necessary to define accepted accounting practices at a particular time. GAAP

Assets" section of the Balance Sheet: Account 158.1, Allowance Inventory and Account 158.2, Allowances Withheld. The NOPR explained that using these new accounts might avoid preconceptions that could arise about the nature of allowances if existing accounts were used. The NOPR stated that the new accounts would not dictate any particular ratemaking treatment and thus would be consistent with the goal of establishing "rate neutral" accounting.

*Commenters supporting the NOPR.* NARUC and the Florida Commission support the creation of the new accounts. The Florida Commission states that the new accounts are theoretically supportable and compatible with foreseeable ratemaking treatments in Florida.

APPA also supports the new accounts, stating that separate accounts for allowances will facilitate regulatory review of allowance trading and use. APPA states that the new accounts would maintain account specificity in formula rates and avoid lengthy interrogatories to identify such costs.

*Exceptions for State ratemaking.* The Illinois Commission argues that utilities with primary rate jurisdiction at the state level should be allowed to modify the Commission's accounting to conform to state requirements. The Illinois Commission asserts that state regulators may wish to allow recovery of allowance costs through a fuel clause and that such recovery in Illinois is allowed only for costs cleared through Account 151. The Illinois Commission argues that costs recorded in the new accounts may not be recoverable in the fuel clause in Illinois absent a change in state law.

Similarly, EEI and others<sup>11</sup> assert that utilities should be allowed to use the accounting required by a state commission of primary jurisdiction instead of the Commission's accounting rules. Kentucky Utilities argues that federal and state jurisdictional differences should be minimized, whenever possible, in order to avoid the need for "two sets of books." Kentucky Utilities asserts that maintaining multiple records for similar items would add to the burden of recording and reporting accounting transactions.

*Classification as fuel.* A number of commenters propose to classify allowances in a new subaccount of Account 151, Fuel Stock, primarily because this treatment would allow fuel

clause recovery of allowance costs.<sup>12</sup> Delmarva Power, for example, argues that the cost of allowances will be a necessary part of the cost of fuel stock. Potomac Electric states that the fuel clause should be used for all compliance costs, including all gains and losses from allowance trades, because the least cost approach to CAAA compliance combines fuel switching and allowance purchases.

EEI argues that using the fuel clause would avoid the frequent and costly rate cases otherwise needed to track possibly volatile and unpredictable costs and benefits. EEI asserts that using a new subaccount within an existing account could avoid possibly expensive renegotiations and litigation over existing contracts.

PSI Energy argues that using fuel subaccounts for allowances would not violate the goal of rate neutrality because regulatory commissions will thoroughly review any proposed ratemaking for allowances, even if allowance costs are recorded in fuel subaccounts. Similarly, Wisconsin Public Service argues that fuel subaccounts could accommodate a regulatory decision to treat allowances differently from fuel for ratemaking purposes.

Centerior supports classifying allowances in existing Account 151, Fuel Stock. According to Centerior, the Commission has offered no concrete evidence that using the existing inventory account for fuel would suggest a predisposition to a particular ratemaking treatment.

The North Carolina Staff opposes the use of fuel inventory accounts for allowance costs, arguing that allowances are not fuel and are not closely enough related to fuel to be recorded in fuel accounts. The North Carolina Staff asserts that the integrity of the fuel inventory accounts should not be compromised simply to facilitate certain ratemaking procedures.

The Wisconsin Municipal Group<sup>13</sup> argues that allowance costs are ineligible for fuel clause treatment and that the Commission should not waive

its regulations to allow such treatment. The Wisconsin Municipal Group asserts that allowance costs have nothing to do with the cost of fuel and, thus, should not be recovered through the fuel clause.

*Classification as plant cost.* Con Edison asserts that allowance costs relate more to plant than fuel. Con Edison states that allowances bought or sold by a utility result principally from, or are a trade-off for, plant capital expenditures. Con Edison states that the need for allowances could be reduced by fuel switching, but even this alternative is a trade-off against plant capital expenditures.

Wisconsin Electric argues that allowances should be classified as plant costs in existing Account 303, Miscellaneous Intangible Plant, which includes "the cost of patent rights, licenses, privileges and other intangible property necessary or valuable in the conduct of utility operations \* \* \*." In support, Wisconsin Electric asserts that an allowance is an intangible item with an undetermined life (since it may be used in any year after issuance). Wisconsin Electric argues that inventory accounts, on the other hand, generally include physical materials that will be used within the next year.

Duke Power questions whether allowances should be classified in a work-in-progress account similar to Account 107, Construction Work In Progress, or Account 120.1, Nuclear Fuel In Process. Duke Power argues that a work-in-progress account would allow for the accrual of carrying costs for what could be sporadic expenditures for allowances.

*Other classifications.* Virginia Power argues that allowances should be classified based on the economics of the underlying transaction. Virginia Power argues, for example, that the cost of allowances obtained in fuel-related trades should be included in the invoice price of fuel in Account 151, Fuel Stock. Virginia Power cites the example of a coal supplier who bundles allowances with a sale of high sulfur coal. Virginia Power argues that using these allowances is integral to burning this particular coal and that the accounting for, and the costs of, the allowances and the coal should not be separated.

AEP proposes classifying allowances in existing accounts based on the ratemaking for each utility, e.g., whether allowances are treated for ratemaking purposes as plant-related or fuel-related. Under this approach, AEP argues, utilities could recover allowance costs under existing account-specific formula rates without renegotiating contracts or

<sup>11</sup> Allegheny Power, American Gas Association, Commonwealth Edison, Con Edison, Kentucky Utilities and PacifiCorp.

<sup>12</sup> EEI, American Gas Association, Allegheny Power, Baltimore Gas & Electric, Cincinnati Gas & Electric, Central & South West, Consumers Power, Delmarva Power, IES Industries, Ohio Edison, Penn Power, PJM, Potomac Electric, PSE&G, PSI Energy and Wisconsin Public Service.

<sup>13</sup> The Wisconsin Municipal Group consists of many of the wholesale customers of Wisconsin Electric Power Company, Wisconsin Power & Light Company, Wisconsin Public Service Corporation, and Northern States Power Company (Wisconsin). The group is made up of 43 municipalities, 4 cooperatives, and 2 municipal electric companies, which in turn are made up of an additional 32 municipalities.

litigating to obtain Commission approval.

Coopers & Lybrand argues that a utility that is allocated allowances exceeding those needed for current year emissions has excess allowances that can be sold immediately or carried forward for future use or sale. Coopers & Lybrand asserts that only these excess allowances should be recorded as assets, with income recognized in the year they are allocated but not used, since they represent a probable future economic benefit. Coopers & Lybrand argues that using an inventory account is inappropriate because allowances are more analogous to financial instruments. Coopers & Lybrand supports the creation of new accounts, but believes they should more appropriately reflect the marketable nature of allowances.

The Michigan Staff recommends requiring utilities to maintain records for Accounts 158.1 and 158.2 by affected generating unit, if known. The Michigan Staff argues that this information will permit matching of allowances to expenditures incurred to reduce emissions and thus facilitate favorable ratemaking and tax treatment.

*Long-term asset classification.* NYDPS and others<sup>14</sup> propose the creation of a separate inventory account for allowances that cannot or will not be used in the current year, with allowances being reclassified to current assets when they are estimated to be used in the current year. NYDPS argues that this approach comports with GAAP and specifically with Accounting Research Bulletin No. 43, which defines a current asset as one "expected to be realized \* \* \* or consumed during the normal operating cycle [generally one year]."<sup>15</sup> NYDPS argues that regulators may be reluctant to permit rate base inclusion of allowances not usable until years later.

Arthur Andersen, AICPA and Gulf States support the creation of an account similar to the account for nuclear fuel. Arthur Andersen argues that many purchased allowances will not be used in the current operating cycle and, thus, under Accounting Research Bulletin No. 43, are not a current asset and cannot be treated as inventory.

<sup>14</sup> Price Waterhouse, EEI, Allegheny Power, Atlantic Electric, Gulf States and Potomac Electric.

<sup>15</sup> Accounting Research Bulletin No. 43, *Restatement and Revision of Accounting Research Bulletins*, Ch. 3, ¶ 4, in *Accounting Statements—Original Pronouncements* (1991).

*Allowances purchased for speculation.* AICPA and others<sup>16</sup> argue that allowances purchased for speculative purposes, instead of as a hedge against price increases on allowances needed for operational purposes, should be recorded in Account 124, Other Investments.

*Commission response.* In the NOPR, the Commission stated that the purpose of this rule is to provide guidance, uniformity and consistency in accounting and reporting for allowance transactions.<sup>17</sup> As reiterated above, this rule is not intended to prescribe the ratemaking treatment for allowances or bar regulatory commissions from adopting any particular ratemaking treatment.

The Commission will not adopt the recommendation of a number of commenters that utilities should be allowed to use the accounting required by a state commission of primary jurisdiction, instead of the Commission's accounting rules. Uniform accounting is a linchpin of effective regulation of the public utility industry.<sup>18</sup> The Commission does not think it is in the public interest to allow the use of alternative accounting practices because of diverse state ratemaking practices.

Upon reviewing the comments, the Commission finds that the proposed new allowance accounts (Accounts 158.1 and 158.2) will best meet the stated objectives. Although allowances have characteristics that could support several different classifications, including classification as fuel or financial instruments, allowances are distinguishable from any of these. Allowance usage is only one of several possible components of a utility's overall CAAA compliance strategy; the cost of each component should be classified separately from the cost of other components (e.g., capital and operating costs for scrubbers, fuel costs from fuel-switching, purchased power costs). Because allowances are so different from the other categories, the

<sup>16</sup> Arthur Andersen, Deloitte & Touche, EEI, Atlantic Electric, Centerior, Commonwealth Edison, Florida Power & Light and PSI Energy.

<sup>17</sup> FERC Statutes and Regulations ¶ 32,481 at 32,574.

<sup>18</sup> S. Rep. No. 621, 74th Cong., 1st Sess. (1935) (accompanying the bill which became Parts II and III of the Federal Power Act) states: "Section 301 [of the Federal Power Act] requires every licensee and every public utility subject to the act to keep its accounts in the manner prescribed by the Commission: it thus takes a long step in the direction of the uniform accounting which is so essential in the electric industry. The authority of the Commission over the accounts of companies under its jurisdiction extends to the entire business of such companies."

Commission believes they warrant their own account classification.

Classifying allowances into new accounts will enhance the usefulness of a utility's financial statements by readily providing users of those statements with information about allowances. Combining allowances in existing accounts developed for other assets would make full financial disclosure more difficult.

Classifying allowances in new accounts is also consistent with the goal of prescribing unbiased, "rate neutral" accounting. The commenters who argue against using new accounts suggest that account classification influences ratemaking. They propose classifying allowances in existing accounts for, e.g., fuel, in order to facilitate a desired ratemaking result. It is not the Commission's intention to dictate any particular ratemaking result through this accounting rule. The Commission's objective is to provide sound and uniform accounting that will accommodate whatever ratemaking treatment is ultimately found appropriate in each ratemaking jurisdiction.

The Commission does not believe that using new accounts would preclude rate recovery or cause utilities to incur unnecessary litigation costs in order to recover their allowance costs. The use of existing accounts could improperly permit utilities to recover allowance costs under automatic adjustment mechanisms or under pre-existing contracts without a regulatory determination that allowance costs should be recovered in such ways. The use of existing accounts may wrongly deny utilities, their customers and their regulators the opportunity to address the ratemaking treatment of allowances.<sup>19</sup>

Some commenters argue for account classification based on the ratemaking for each utility or the "economics" of the underlying transaction.<sup>20</sup> While the

<sup>19</sup> Some commenters argue for the creation of an allowance recovery clause, like a fuel clause, that would transfer the costs and benefits from the sales and use of allowances to ratepayers. Others argue for and against fuel clause recovery. The Commission declines to address these arguments here because the scope of this rulemaking is limited to accounting issues.

<sup>20</sup> Virginia Power argues, for example, that allowances acquired in a package with high sulfur coal should be classified as a component of the cost of fuel, since they are an integral part of burning this particular coal. This argument, however, oversimplifies the analysis by ignoring other factors that also may affect a utility's CAAA compliance strategy. These other factors include the number of allowances already held by the utility, the degree to which the utility is controlling emissions (e.g., with scrubbers), and the utility's intended use of the allowances (e.g., for current or future year compliance or for speculation).

Commission agrees that accounting should accommodate the ratemaking process and reflect the economic substance of transactions,<sup>21</sup> the accounting adopted in this final rule will accomplish these goals yet provide consistent and uniform accounting treatment of allowances. Also, separating allowance costs from the other costs of a transaction will offer easy access to useful information on allowances by utility managers, regulators and other readers of utility financial statements. Conversely, inconsistent account classification based on the particulars of each transaction would not provide the uniform accounting essential to the Commission's regulation of utilities<sup>22</sup> and would impede access to useful information on allowances.

The Commission rejects the argument that the relationship between allowances and power generation justifies classifying allowances as fuel. Fuel is not the only determinant of allowance usage. Utilities will use allowances based on their SO<sub>2</sub> emission levels. Emission levels, in turn, reflect a number of factors, including the use and effectiveness of a utility's pollution control equipment, its generating efficiency and mix at any given time and its load dispatching practices. Even if a direct relationship could be shown between the amount of fuel burned and the utility's emissions, the accounting result would necessarily be the same as that provided by the rule, i.e., allowances would be charged to expense based on the amount of SO<sub>2</sub> emissions. The Commission sees no advantage, from an accounting standpoint, in classifying allowances as fuel.

On the other hand, the comments suggest that the major benefit to utilities in classifying allowances as fuel is that it will facilitate rate recovery of allowance costs (e.g., through fuel adjustment clauses, account-specific formula rates, and other rate recovery mechanisms). However, as explained above, facilitating rate recovery is not a valid basis for classifying allowances in the fuel accounts.

Another issue raised by commenters is whether to use separate classifications for current and long-term allowances. They assert that allowances that will not be used during a utility's normal operating cycle (generally one year) are long-term assets, not current inventories. While the Commission

generally agrees that some allowances may not be used during a utility's normal operating cycle and are therefore long-term in nature, the Commission does not find it necessary to create new accounts for separate classification of such allowances. Instead, the Commission will require that current and long-term allowances be classified separately on the balance sheet for reporting purposes only. Reclassification for reporting purposes will achieve the correct balance sheet categorization of non-current allowances without imposing additional accounting burdens on utilities.<sup>23</sup>

The Michigan Staff asks the Commission to require utilities to maintain Accounts 158.1 and 158.2 by affected generating unit. The Commission notes that although allowances are initially allocated based on the emission levels of specific generating units, allowances can be used for any unit owned or operated by the same person. The Commission does not perceive the merits of classifying allowances by affected generating unit and declines to require this approach. Nothing in this rule, however, would prohibit a utility from maintaining any additional level of detail deemed necessary in subsidiary records, including information on allowances by affected generating unit.

A number of commenters assert that the prescribed accounting must first be consistent with GAAP for non-regulated enterprises and then reflect the effects of regulation in accordance with Statement of Financial Accounting Standards No. 71 of the Financial Accounting Standards Board (FASB).<sup>24</sup> The Commission disagrees. To carry out its responsibilities under the Federal Power Act (FPA) and the Natural Gas Act (NGA), the Commission has been given authority to prescribe accounting and financial reporting requirements for

<sup>23</sup> Reclassification only for balance sheet purposes is not unique. The USofA already provides for reclassification at the balance sheet date for certain accounts. For example, see Account 164.1, Gas Stored Underground-Current, and paragraph A of Account 166, Advances for Gas Exploration, Development, and Production, 18 CFR part 201 (1992). For allowances, the Commission is simply requiring use of the same account numbers for both current and non-current allowances.

<sup>24</sup> FASB, Statement of Financial Accounting Standards No. 71, *Accounting for the Effects of Certain Types of Regulation* (1982), in *Accounting Statements—Original Pronouncements* (1991). Since 1973, the Securities and Exchange Commission has recognized FASB as the designated organization in the private sector responsible for establishing accounting and reporting standards. FASB's purpose is to establish and improve standards of financial accounting and reporting for the guidance and education of the public, including issuers, auditors and users of financial information.

jurisdictional companies.<sup>25</sup> The Commission, for ratemaking and other purposes, needs financial statements that allow it to determine the current cost of service and to monitor past performance under approved rates.<sup>26</sup> If GAAP conflicts with the accounting and financial reporting needed by the Commission to fulfill its statutory responsibilities, then GAAP must yield. GAAP cannot control when it would prevent the Commission from carrying out its duty to provide jurisdictional companies with the opportunity to earn a fair return on their investment and to protect ratepayers from excessive charges and discriminatory treatment.

Having said this, the Commission notes that its accounting rules are, with limited exceptions, consistent with GAAP.<sup>27</sup> Any exceptions are necessary, in the Commission's view, to provide for appropriate recognition of assets, liabilities and equity capital, and for proper matching of revenues and costs. The Commission's authority to prescribe the accounting needed or appropriate for regulatory purposes under the FPA and NGA is unambiguous. Thus, while the Commission believes the accounting prescribed in this rule is generally consistent with GAAP for non-regulated entities, any differences from GAAP are needed or appropriate in order for the Commission to fulfill its statutory duties. For these reasons, the Commission declines to explicitly adopt FASB pronouncements as requirements subsumed in the USofA, as some commenters seem to suggest.

A number of commenters urge the Commission to segregate allowances obtained for speculative purposes from those obtained for compliance purposes. Although the NOPR stated that speculative allowances should not affect inventory pricing since they do not relate to utility operations,<sup>28</sup> it did not propose separate account classification for such allowances. EEI and others recommend that speculative allowances be classified as investments in Account 124, Other Investments, with any gains or losses on disposition recorded

<sup>25</sup> See Sections 301, 302 and 304 of the FPA, 16 U.S.C. §§ 825, 825a and 825c (1988), and Sections 8, 9 and 10 of the NGA, 15 U.S.C. §§ 717g, 717h and 717i (1988). See also 15 U.S.C. § 791(b) (1988).

<sup>26</sup> See Notice of Inquiry on Accounting for Phase-In Plans, FERC Statutes and Regulations ¶ 35,521 at 35,666-67, 53 FR 20496 (1988).

<sup>27</sup> See Statement of Policy on Post-Employment Benefits Other Than Pensions, 61 FERC ¶ 61,330 at 62,201 (1992).

<sup>28</sup> FERC Statutes and Regulations ¶ 32,481 at 32,579.

<sup>21</sup> See e.g., Termination of Inquiry on Accounting for Phase-In Plans, FERC Statutes and Regulations ¶ 35,524, 57 FR 13064 (1992).

<sup>22</sup> E.g., *id.* at n.1.

"below-the-line."<sup>29</sup> The commenters assert that separate account classification is needed to avoid inappropriate costing of allowances used for compliance purposes and to distinguish speculative allowances for ratemaking purposes. The Commission agrees and will require that allowances obtained for speculative purposes be accounted for as investments in Account 124. Any costs or benefits incurred or realized through transactions involving speculative allowances, including gains or losses on disposition of such allowances, should be charged or credited to Account 421, Miscellaneous Nonoperating Income, or Account 426.5, Other Deductions, as appropriate. As with other aspects of this final rule, however, this accounting treatment would not be dispositive of the ratemaking treatment for such costs and expenses.

## 2. Withheld Allowances

As noted in the NOPR, section 416 of the CAAA requires EPA to withhold 2.8 percent of the annual allocation of allowances, for the purpose of sale or auction by EPA.<sup>30</sup> The Commission proposed that, since the utility cannot use these withheld allowances, they should be accounted for separately from other allowances in Account 158.2, Allowances Withheld.

**Comments.** NARUC, the Florida Commission and the Georgia Commission support the NOPR's proposed accounting treatment. The Ohio staff also agrees with using a separate account for withheld allowances.

**AICPA, Deloitte & Touche, Price Waterhouse and Gulf States** oppose the creation of Account 158.2. AICPA argues that the account would add recordkeeping and reporting requirements but may not improve the usefulness of the information provided. Price Waterhouse argues that the distinction between this account and Account 158.1, Allowance Inventory, is not important enough to warrant separate accounts and that any needed information can be obtained from the proposed reporting requirements.

**Commission Response.** The Commission believes that Account 158.2 is needed to distinguish between allowances that are eligible for the utility's use and those that are not. Allowances withheld by EPA may never

<sup>29</sup>"Below-the-line" accounts contain amounts that are not operating income or expenses and, therefore, are not generally included in rates.

<sup>30</sup>FERC Statutes and Regulations ¶ 32,481 at 32,582.

be available for the utility's use<sup>31</sup> and should not be included with allowances that are available for use. Also, only those allowances available for the utility's use should enter into the determination of the weighted average cost of allowances used during a period. In the Commission's view, the minimum amount of recordkeeping needed to maintain a separate account for withheld allowances is worth the benefits of improved information and the simplification of monthly computations of allowance inventory cost.

## 3. Existing Contracts

Since the NOPR proposed to create new accounts for allowances, the Commission invited comments on whether and, if so, how the proposed regulations should apply to existing contracts expressly based on the existing accounts in the USofA, e.g., account-specific cost-of-service formula rates or joint operating agreements.<sup>32</sup>

**Comments.** NARUC and the Florida Commission support application of the final rule to such contracts, arguing that contractual relationships should not dictate the accounting requirements of the USofA. The Michigan Staff agrees, stating that existing contracts should be amended to reflect the costs and benefits realized from allowances.

The NC Municipal Agency argues that the final rule should not affect the determination of rate matters under existing agreements. The Agency argues that attempting to apply this rule to existing account-specific contracts would likely pose a substantial risk of unpredictable and improper outcomes, including the risk of disturbing the economic balance underlying existing formulas or agreements. The Agency argues that, if the final rule applies to existing contracts, and the Commission decides to account for allowances by revising accounts already included in existing agreements, the Commission should state that its revision of those accounts will "reopen" all affected rate agreements. If this were done, the Agency argues, the affected parties could then reaffirm or renegotiate their arrangements or, if needed, seek a Commission resolution of disputed issues.

NRECA argues that the final rules should not apply automatically to

existing contracts with account-specific rates. NRECA argues that to do so would be tantamount to retroactive ratemaking.

The Georgia Commission argues that, for existing wholesale formula rates, the Commission could mandate a cost recovery framework allowing recovery of costs recorded in new accounts that would have been included in the formula if the accounts existed when the contracts were executed. The Georgia Commission argues that, otherwise, these contracts will need to be modified.

Several commenters recommend avoiding complications with existing contracts by classifying allowances in existing accounts, instead of new accounts. AEP argues that, in order for utilities to recover allowance costs under existing account-specific formula rates without renegotiations or litigation, allowances should be classified in existing accounts based on the ratemaking adopted for each utility. Atlantic Electric and Gulf States ask the Commission to use existing accounts in prescribing a cost recovery framework for existing formula rates. PSI Energy asserts that, to ease the transition for companies with existing account-specific contracts, allowances should be recorded in subaccounts of existing accounts. If the Commission uses new accounts, AEP and Gulf States ask the Commission to automatically amend existing commission-approved contracts.

If new accounts are used for allowances, EEI, Duke Power, PSI Energy, Southern Company and Virginia Power argue that, for existing contracts intended to recover system average costs, the Commission should specify that the return of and return on the prudently incurred costs of complying with the CAAA should be included in the determination of costs to be recovered, even though the costs are recorded in new accounts not listed in the contracts. EEI and Southern Company assert that, when pricing mechanisms are intended to recover the cost of specific units instead of system average costs, the final rule should allow economic value to be charged in appropriate instances.

The Ohio Staff recommends that the parties to existing contracts should be required to keep sufficient information on allowance trades so that when an order is issued, amounts can be reclassified in the new accounts.

**Commission Response.** As an initial matter, the Commission holds that allowance-related costs should be accounted for as prescribed in this rule even if service is provided under an existing contract. In light of the need for

<sup>31</sup>Withheld allowances will be offered by EPA for sale or auction. Any allowances not sold or auctioned will revert to the utility from which they were withheld. When such allowances become available for the utility's use, they should be transferred to Account 158.1.

<sup>32</sup>FERC Statutes and Regulations ¶ 32,481 at 32,576.

accounting uniformity and consistency, the fact that service is being provided under existing contracts does not warrant an exception from this rule.

The more fundamental issue raised by the commenters is whether the Commission, in this rulemaking, should seek to resolve all uncertainty on the ratemaking for such costs under existing contracts. The Commission believes that issuing an edict in this rulemaking on the recovery of allowance costs under existing contracts would not be in the public interest. Trying to resolve all uncertainty about ratemaking for allowance costs under existing contracts would contravene the Commission's "rate neutrality" intent and, on the record here, would likely generate considerable confusion. If the Commission in this proceeding were to order the automatic inclusion of allowance costs in existing contracts, there could be unintended effects on cost determinations and responsibilities under existing contracts. At least at this time, the better course is for affected parties, if necessary, to renegotiate their contracts to provide for a consensual treatment of the costs and benefits of allowances, and to file such changes pursuant to part 35 of the Commission's regulations.

#### C. Valuation of Allowances

##### 1. General Rule—Historical Cost

The Commission proposed in the NOPR to measure the value of allowances, as a general rule, based on historical cost.<sup>33</sup> The NOPR defined historical cost as the amount of cash or its equivalent paid to acquire an asset, i.e., its historical exchange price. Under this approach, allowances obtained from EPA at no cost to the recipient would be recorded at zero cost, while purchased allowances would be recorded at their historical exchange price.

*Support for the NOPR.* Many commenters support the use of historical cost.<sup>34</sup> The Department of Energy states, for example, that historical cost satisfies accounting disclosure needs, yet allows for independent ratemaking treatment for allowances. APPA asserts that any cost basis other than historical cost may lead to miscalculation of rate base. APPA argues that recording allowances at fair value could unjustifiably overstate a

utility's assets and operating expenses. The American Gas Association states that historical cost is appropriate for valuing all allowances and is consistent with valuations used for most other regulated assets, including inventory.

Wisconsin Public Service states that using measures other than historical cost would raise verification issues because the allowance market is unlikely to be highly developed by the time allowances must be initially recorded. Wisconsin Public Service asserts that other measures would likely require utilities to record significant assets and offsetting regulatory liabilities. Wisconsin Public Service asserts that the confusion caused by recording large assets and offsetting liabilities for allowances would outweigh any benefits derived.

Deloitte & Touche supports the use of historical cost for allowances awarded by EPA at zero-cost, stating that this approach is consistent with GAAP. Deloitte & Touche also states, however, that these allowances will have significant economic value, based on the market price for traded allowances. Deloitte & Touche asserts that using historical cost for a valuable economic asset such as zero-cost allowances might not present users of financial statements and regulators with useful and relevant financial information. Thus, Deloitte & Touche urges the Commission to undertake a study of this issue.

*Decline in value of allowances.* GPU argues that if historical cost is used, the final rule should address the issue of market value declines. GPU proposes that the excess of cost over market which is deemed significant and permanent should not be written off to the income statement, but should remain on the balance sheet and be expensed when charged to ratepayers in the ratemaking process or determined to be uncollectible.

Atlantic Electric asserts that technological advances could reduce the value of allowances held in inventory and argues that this event should be given accounting recognition. Atlantic Electric believes that the accounting should reflect the "lower of cost or market."

*Allowances from overcompliance.* The Ohio Staff asserts that the NOPR did not adequately address the accounting for allowances freed up by overcompliance, i.e., whether the cost of overcompliance should be reflected in the cost of allowances. The Ohio Staff asks: what is the cost of allowances freed up by overcompliance; how should the costs be determined; and where should these allowances be recorded?

*Indirect costs.* The Ohio Staff suggests that the cost of purchased allowances should include costs directly related to purchasing specific allowances. The Ohio Staff asserts that costs not directly related to purchasing specific allowances should be expensed in the period in which they are incurred. Similarly, Atlantic Electric asserts that certain "handling" and administrative costs incurred in acquiring allowances should be included in allowance costs. Pennsylvania Power & Light asserts that allowance costs should include the costs of acquiring, maintaining and disposing of allowances, e.g., broker fees, incentive bonuses and selling commissions.

*Fair value.* AEP supports using fair value instead of historical cost when doing so is needed to allocate compliance costs equitably to all ratepayers. AEP agrees with using historical cost for purchased allowances but argues that using this method for allowances allocated by EPA at zero cost may send the wrong signal to regulators, i.e., that allocated allowances always should be valued at zero. AEP asserts that this approach, if used for ratemaking, could distribute compliance costs inequitably between ratepayers and could discourage allowance trades between affiliates in least cost compliance strategies and among non-affiliates in a power pool.

AEP asserts that using historical cost for allocated allowances is contrary to Accounting Principles Board (APB) Opinion No. 29<sup>35</sup> and a recent FASB exposure draft on accounting for contributions.<sup>36</sup> According to AEP, both documents support the use of fair value in accounting for assets received in nonmonetary transactions.

Coopers & Lybrand argues that allocated allowances should initially be recorded at current market value, with credits to operating expenses, and thereafter "marked to market."<sup>37</sup> Coopers & Lybrand agrees with recording purchased allowances at cost, but proposes that they also be later "marked to market," i.e., valued at

<sup>33</sup> FASB, Accounting Principles Board Opinion No. 29, *Accounting for Nonmonetary Transactions, in Accounting Standards—Original Pronouncements* (1991).

<sup>34</sup> FASB Exposure Draft on *Accounting for Contributions Received and Contributions Made and Capitalization of Works of Art, Historical Treasures and Similar Assets*, File Reference No. 096-B (October 1990).

<sup>35</sup> Coopers & Lybrand actually applies its recommendation only to "excess" allowances, i.e., allowances allocated in a given year but not needed to offset the recipient's emissions in that year. Coopers & Lybrand argues that no accounting recognition is needed for allowances used to offset emissions in the year in which the allowances are allocated.

<sup>33</sup> FERC Statutes and Requirements ¶ 32,481 at 32,576-77.

<sup>34</sup> Department of Energy NARUC, the Florida Commission, the Georgia Commission, the Illinois Commission, AICPA, Arthur Andersen, Baltimore Gas & Electric, Centerior, Central & South West, Con Edison, Delmarva Power, Gulf States, Virginia Power, Wisconsin Electric, Wisconsin Public Service, APPA and the American Gas Association.

current market price. Coopers & Lybrand asserts that this method would prevent utilities from recognizing the gain on sale of unused allocated allowances, accumulated over time, entirely in the period of the sale. Coopers & Lybrand argues that this method also provides the most relevant information about the utility's available allowances at each reporting date and about gains and losses incurred during the reporting period. Coopers & Lybrand states that the "marked to market" method depends upon the development of a market which will allow fair value to be determined within reasonable limits.

**Rate considerations.** EEI agrees with using historical cost for purchased allowances and states that most EEI members agree that allowances allocated by EPA at no cost should be recorded at zero cost. EEI and others<sup>38</sup> argue, however, that the economic value of allowances should be reflected in the pricing of allowances used in sales for resale and in the operation of power pools. EEI asserts that utilities should be allowed to recover a fair share of the cost from wholesale customers in order to properly compensate retail customers, many of whom will face rate increases to pay for scrubbers or low sulfur coal. EEI argues that this is particularly important for allowances allocated by EPA at zero cost. EEI states that, while these ratemaking issues may be deemed beyond the scope of this rulemaking, the Commission should at least discuss this generally so that utilities will know the likely results as they choose compliance strategies.

**Commission response.** The great majority of the commenters generally favored using historical cost for both allocated allowances and purchased allowances. For the reasons given in the NOPR and those cited by the commenters, the Commission believes that historical cost is the appropriate measure of the accounting value of allowances. Historical cost is the primary measurement used in the USoFA, as well as GAAP, for recording intangibles and most other utility assets.<sup>39</sup> Historical cost also is readily ascertainable, verifiable and free from bias, and provides useful information to regulators, investors and other users of

a utility's financial statements. The characteristics of historical cost make it especially appropriate for use in regulatory accounting.

The use of historical cost for accounting purposes, however, is not intended to control or prejudge the ratemaking valuation of allowances. The Commission's determination in this rule applies only to the accounting for allowances.

To the extent that using historical cost for a valuable economic asset such as zero-cost allowances is perceived as limiting the usefulness and relevance of utility financial statements, utilities can alleviate this concern by disclosing the economic value of allowances in the footnotes to their financial statements. This final rule allows, but does not require, disclosure of such information in this way, if utility management considers disclosure desirable.

Certain commenters supported valuing allowance inventories at the "lower of cost or market," i.e., requiring utilities to write-down their allowance inventories to net realizable value to reflect permanent changes in the value of allowances. The Commission declines to adopt this recommendation. At least in the near term, the historical cost of allowance inventories will be less than market value for most utilities, due to combining zero-cost allowances with the cost of purchased allowances in the inventory pool. However, even if the historical cost of allowances were to exceed market value, it does not necessarily follow that rates would be set on a basis less than historical costs. Thus, at least for now, any need for writing down allowance inventories will be decided case-by-case. If an asset is impaired, and rate recovery is not assured, the write-off should be recorded in Account 426.5, Other Deductions.

Several commenters assert that the accounting valuation of allowances should include costs directly related to purchasing specific allowances, e.g., broker fees and selling commissions. The Commission believes that significant, directly-assignable acquisition costs should be included in the historical cost of the allowances. In theory perhaps all indirect costs of acquiring inventory should be added to the inventory's purchase price. However, the effort involved in identifying and allocating relatively small amounts of indirect costs would probably exceed the benefits derived from more precise costing. Also, such allocations would probably involve the use of arbitrary assumptions and make compliance determinations more controversial and not necessarily more

accurate. Thus, the Commission will limit the inclusion of such costs to significant, directly-assignable costs of acquiring allowances. Other costs incident to acquiring allowances should be charged to an appropriate functional expense account when incurred.

The Ohio Staff asks whether the cost of freeing up allowances by overcomplying, e.g., installing scrubbers or switching fuels, should be reflected in the historical cost of allowances. The answer is no.<sup>40</sup> The cost of allowances should include only the historical cost of acquiring the allowances themselves, not the additional costs incurred for overcompliance. Although compliance costs may relate indirectly to allowances, e.g., by "freeing up" allowances or affecting a utility's decision to buy allowances or the price a utility is willing to pay for allowances, overcompliance costs are not part of the cost of the allowances themselves.<sup>41</sup> Because the money spent for overcompliance relates most directly to the item(s) acquired, e.g., the scrubber or the higher cost fuel, the cost of overcompliance should be accounted for in the cost of the item acquired. There is no need, from an accounting perspective, to assign any part of the cost of overcompliance to allowances.

AEP asserts that using historical cost for allowances allocated by EPA is contrary to APB Opinion No. 29 and a FASB exposure draft on accounting for contributions.<sup>42</sup> The Commission does not believe that allocated allowances are within the scope of the FASB exposure draft, since the draft applies only to voluntary transfers, while EPA has a statutory duty to transfer the allocated allowances as prescribed by the CAAA. Moreover, the exposure draft cited by AEP, as since revised and re-proposed by FASB, would not apply to "transfers of assets from governmental units to business enterprises," an exemption

<sup>38</sup> Allegheny Power, Iowa-Illinois, PacifiCorp, PJM and Wisconsin Public Service.

<sup>39</sup> "Historical cost" should not be confused with "original cost." Original cost, when used in connection with plant, is the cost to the first person devoting the property to public service. Historical cost is the acquisition cost of assets. The historical cost of purchased plant for a public utility would be the sum of the original cost and any related acquisition adjustments. See 18 CFR Parts 101 and 201, Account 114, Plant Acquisition Adjustments.

<sup>40</sup> See FERC Statutes and Regulations ¶ 32,481 at 32,577 n. 38 ("The cost of any such [compliance] investments or expenditures would be accounted for independent of the allowances obtained as a result of such investments or expenditures, in the accounts already established for such costs in the USoFA.")

<sup>41</sup> For example, if a utility paid \$500 for an allowance, its historical cost would be \$500. Installing a scrubber in order to "free up" this allowance would not increase the cost of the allowance itself. Although overcompliance may add to the utility's options, e.g., to sell the allowance or save it for future needs, overcompliance does not affect the cost of the allowance itself.

<sup>42</sup> The Commission notes that AICPA, in its comments, disagrees with AEP's interpretation of APB Opinion No. 29. According to AICPA, allowances do not qualify as nonreciprocal transfers eligible for fair value accounting treatment under APB Opinion No. 29 because the CAAA impose a reciprocal obligation on utilities to limit their sulfur dioxide emissions.

which appears to apply to allowances.<sup>43</sup> But, even if allowances are within the scope of APB Opinion No. 29 or the FASB exposure draft, the Commission believes for the reasons stated above that general GAAP is not controlling in this proceeding.

Coopers & Lybrand argues that "excess" allocated allowances, *i.e.*, those not needed for current year emissions, should be recorded at fair value and later "marked-to-market." The Commission declines to adopt this recommendation in this accounting rule as not needed for sound accounting. Cooper & Lybrand's method differs from the historical cost method solely in the timing of the recognition of compliance costs and gains and losses on disposition of allowances. If compliance costs and gains or losses are recognized in different periods for ratemaking purposes than for accounting purposes, the provisions on regulatory assets and liabilities adopted below will capture the economic effects of such rate actions.

Finally, the Commission rejects the argument that fair value should be used for accounting purposes in order to facilitate the use of fair value for ratemaking purposes. If fair value is used for allowances in ratemaking but not in accounting, the rule adopted herein can accommodate this result through the recognition of regulatory assets and liabilities. In any event, prescribing or prejudging the ratemaking treatment for allowances is beyond the scope of this accounting rulemaking. In conclusion, for all the reasons stated above, the Commission adopts the use of historical cost as the accounting measure of allowances.

## 2. Cost Allocation for Package Purchases

For allowances obtained in a package with other commodities, *e.g.*, fuel or electricity, the NOPR proposed to determine the historical cost of the allowances based on their fair market value at the time of purchase.<sup>44</sup> The NOPR also proposed to allocate the purchase price for a stream of allowances on the basis of fair value or, if fair value cannot be determined, on a present value basis using a discount rate based on the rate on ten-year U.S. Government bonds, *i.e.*, a risk-free interest rate.

*Allowances acquired as part of a package.* NARUC, the Florida Commission and the Georgia Commission support the use of fair

value in determining the historical cost of allowances obtained as part of a package. NARUC, Delmarva Power and the Michigan Staff also suggest an optional method based on allocating the package's historical cost in proportion to the ratio of each item's fair market value to that of all items. In support, the Michigan Staff argues that using fair value only for the allowance part of the package may distort the cost allocation.

Cincinnati Gas & Electric opposes the adoption of a mandatory valuation method for determining the value of allowances obtained in a package. Cincinnati Gas & Electric asserts that the value of allowances should be determined in each case based on the facts and circumstances of the case.

*Stream of allowances.* The Ohio Staff agrees with the proposed method of allocating costs for a stream of allowances. Allegheny Power states that, if fair value cannot be determined for a stream of allowances, the present value method is an acceptable method unless the contract specifies a different cost allocation.

EEI and others<sup>45</sup> argue that the Commission should not prescribe present value or any other method as the sole alternative to fair value. EEI argues that, if fair value cannot be determined, the facts and circumstances of each trade should be reviewed to determine which method most accurately allocates the cost of individual allowances in a stream of allowances. EEI also states that FASB has begun an inquiry into present value accounting and argues that it would be premature to adopt a present value approach until FASB's inquiry is completed. PSI Energy argues that, without market data, and because there have been no trades to determine reasonable methods for allocating future costs, mandating a single method may be inappropriate.

Atlantic Electric asserts that, if the use of present value is required, the final rule should describe how to account for the difference between the purchase price and the present value.

*The discount rate.* AICPA argues that using a risk-free interest rate in a present value analysis ignores significant market and interest-rate risks. AICPA contends instead that utilities should be required to use any interest rate that properly reflects prevailing risk (*e.g.*, the incremental borrowing rate). Price Waterhouse argues that a company-specific incremental rate should be used when

prescribed by GAAP. Arthur Andersen supports using the utility's incremental borrowing rate or its authorized rate of return as the discount rate.

EEI and Allegheny Power assert that the discount rate should correspond to the time period of the stream of allowances and propose using a company's incremental borrowing rate for the applicable years. EEI argues that this is the discount rate used in other present value calculations under FASB Statement No. 13<sup>46</sup> and is more relevant to the circumstances of each utility.

PSI Energy and Deloitte & Touche argue that utilities should be allowed more flexibility in determining the discount rate. PSI Energy argues that participating in the allowance trading market will pose risks and that these risks will not be properly reflected in a risk-free rate. PSI Energy also states that using a risk-free rate would conflict with the discounting theory used in making financial decisions.

Detroit Edison supports using a discount rate based on Moody's Long-Term A grade bond yield or a similar average yield. Detroit Edison agrees that using a rate that achieves uniformity and comparability among public utilities is beneficial but opposes the use of a risk-free rate.

*Commission Response.* The use of fair value in determining the historical cost of allowances acquired as part of a "package" was supported by most of those who commented on this aspect of the NOPR. The Commission finds this approach appropriate and, with the clarifications below, will adopt the use of fair value as the measure of allowances acquired as part of a "package."

The NOPR proposed to determine the historical cost of allowances acquired as part of a package based on the fair market value of only the allowances. NARUC and others suggest an optional method using the ratio of the allowances' fair market value to the total fair market value of all elements of the package. The fair market value of allowances could be determined in at least three ways: by comparing the price of the "package" with and without the allowances; by direct reference to market prices; and by use of the ratios suggested by NARUC. Of the three, direct reference to market prices will be most readily determinable and easiest to verify. This method would be easier for utilities to use and regulators to verify than a ratio-based method, since the

<sup>43</sup> FASB Exposure Draft on *Accounting for Contributions Received and Contributions Made*, File Reference No. 121-A at 2 (November 1992).

<sup>44</sup> FERC Statutes and Regulations ¶32.481 at 32, 577-78.

<sup>45</sup> Atlantic Electric, Commonwealth Edison, Con Edison, Detroit Edison, PSI Energy, Virginia Power and Wisconsin Electric.

<sup>46</sup> FASB, *Statement of Financial Accounting Standards No. 13, Accounting for Leases* (1976), in *Accounting Statements—Original Pronouncements* (1991).

former focuses on the fair value of only the allowances and the latter addresses the fair value of all components of a package. Moreover, these two methods would produce the same result in most cases, differing only in the presumably infrequent case in which the transfer price differs from the sum of the fair market values of all components of the package. In the more likely case in which the transfer price equals the sum of the fair market values, a ratio-based approach would lead to unnecessary effort in documenting the fair value of non-allowance components of package trades and unduly complicate the determination of allowance values. Thus, the Commission declines to require the use of a ratio-based method in all cases. Instead, the Commission will adopt the NOPR's method as the primary method. However, if reliable market prices for allowances are not available, or if the sum of the fair market values for all parts of the package is determined and does not equal the transfer price, then an alternative method may be used. In such a circumstance, the utility proposing to use an alternative method will be required to make a sufficient showing in support of its decision to use an alternative method.

Several commenters objected to the required use of present value when fair value cannot be determined, instead recommending the use of contractually-specified amounts or amounts determined based on the circumstances of each case. The Commission disagrees. A primary objective of this rule is to provide uniform accounting for allowances. Permitting utilities unlimited discretion in choosing the method for valuing allowances would be contrary to that objective. The Commission believes that, in the absence of fair value, it is necessary to prescribe a uniform method that is both objective and reflective of the value of allowances on the date of their acquisition.<sup>47</sup> The present value approach reasonably achieves these goals, is rational and systematic and reflects the higher value of an allowance usable today compared to one usable only in the future. Although other measures may be more precise in particular circumstances, the gain in objectivity and uniformity more than offsets any possible loss in precision. Therefore, the Commission will limit the measure of the historical cost of allowances acquired as part of a package

<sup>47</sup> When contractual values approximate fair market value, they may be used as the measure of fair market value. Only in the absence of fair value must present value be used.

to present value, if fair value is not determinable.

A number of commenters challenge the proposed use of the interest rate on ten-year U.S. Government bonds in present value determinations. They argue that utilities should be allowed to use a rate that better reflects the risks involved in trading allowances as well as each utility's particular circumstances. They also assert that the discount rate should correspond to the time period of the stream of allowances. The Commission finds merit in these arguments. Accordingly, the final rule will provide for the use of the utility's incremental borrowing rate instead of the interest rate on ten-year U.S. Government bonds.<sup>48</sup> Incremental borrowing rates, while not as objective as government bond rates, will correspond more closely to the rate utilities will use in considering allowance purchases and will better allocate the cost of the purchases. Incremental borrowing rates also are widely accepted by the accounting profession and used in a number of present value determinations, including the valuation of receivables and payables, leases, and plant abandonments.

Prescribing the use of present value at this time is not premature even though FASB is still conducting an inquiry on present value measurement. The FASB inquiry relates to whether discounted present value should be used as the measure of assets and liabilities that will be realized through future receipts or payments. In contrast, the Commission is simply prescribing the use of present value as a technique for allocating the actual historical cost of a purchase among allowances of different vintages.<sup>49</sup> Therefore, the present value measurement adopted in this rule is different from the determination at issue in the FASB inquiry.

### 3. Allowance Trades Between Affiliates

The NOPR proposed that a company obtaining allowances from an affiliate should record as its cost the inventory cost of the affiliate that first obtained the allowances.<sup>50</sup> The NOPR stated that any

<sup>48</sup> The incremental borrowing rate is the interest rate that, at the time of the allowance acquisition, the utility would have incurred to borrow sufficient additional funds to purchase the allowance(s) for the amount of time the utility expects to hold the allowances.

<sup>49</sup> Atlantic Electric asks how to account for the difference between the purchase amount and the present value. There will not be a difference, however, since the present value calculation merely allocates the total purchase amount among the acquired assets by vintage.

<sup>50</sup> FERC Statutes and Regulations ¶ 32,481 at 32,578.

difference between this cost and the sale price should be recognized as an equity contribution between affiliates and recorded in Account 211, Miscellaneous Paid-in Capital.

*Comments.* NARUC, the Florida Commission and the Georgia Commission support the Commission's proposal, so long as records allow state regulators to determine the proper ratemaking treatment.

EEI and others<sup>51</sup> argue that allowances traded between affiliates should be valued at fair value. These commenters raise many different arguments. For example, EEI and certain others<sup>52</sup> argue that the proposed rule would discourage affiliate trades, contrary to the decision by Congress to exempt allowance trades from the jurisdiction of the Securities and Exchange Commission (SEC).<sup>53</sup> Southern Company and AEP argue that the proposed accounting would undo the Congressional intent to allow affiliates to transfer allowances on a basis other than cost.

Allegheny Power asserts that affiliate trades are scrutinized by the Commission, various state commissions, internal and external auditing groups, and the SEC. Allegheny Power argues that trades at less than fair value would raise prudence questions.

Allegheny Power asserts that open market trading by affiliates would be more costly, less efficient and possibly less reliable than intra-system trading. Similarly, EEI argues that affiliates trading on the open market would incur unnecessary transaction costs. EEI and Centerior argue that the proposed rule would impair the ability of affiliated utilities to engage in least cost compliance planning. Southern Company argues that if affiliates cannot transfer allowances between themselves at fair value, they may not be able to maintain allowance reserves on a system-wide basis and might increase the number of allowances that each utility holds.

Pacificorp asserts that, unless fair value is used for affiliate trades, full cost recovery is not possible and the allowance market will not develop. The Illinois Commission argues that the proposed accounting, by discouraging affiliate allowance trades, may impede

<sup>51</sup> Coopers & Lybrand, Price Waterhouse, Chicago Board of Trade, Allegheny Power, Atlantic Electric, Central & South West, Con Edison, Consumers Power, the Iowa Working Group, GPU, Gulf States, IES Industries, Kentucky Utilities, NRECA, Pacificorp and Virginia Power.

<sup>52</sup> Allegheny Power, Atlantic Electric, AEP, Central & South West and Southern Company.

<sup>53</sup> See Section 403(j) of the CAAA, 42 U.S.C. § 7651b(j).

the establishment of an active allowance market.

The Chicago Board of Trade argues that using current market value would properly make affiliates indifferent between trading on the open market or with an affiliate. The Board argues that using a valuation method other than market value could encourage affiliates to trade with each other on a non-competitive basis instead of on the open market. The Board asserts that affiliate trades deprive other interested parties of the public price signals needed to help minimize compliance costs.

The Iowa Working Group argues that the NOPR's proposed accounting could lead to cross-subsidization within multi-state companies. The Group asserts that, in seeking least cost compliance, holding companies or affiliated utilities may overcontrol emissions at one company's unit to avoid making reductions at another company's unit. The Group states that, when the allowances freed up by overcontrol are transferred from the first company to the second one, the use of zero-cost accounting could result in the first company subsidizing the second one.

The Group also argues that the proposed accounting may lead to cross-subsidization between a holding company's regulated and unregulated operations. The Group states that, under the NOPR's proposed accounting, a holding company could transfer allowances at zero-cost from a regulated company to an unregulated affiliate. The Group asserts that the unregulated affiliate could realize below-the-line profits by selling such allowances.

AICPA, Coopers & Lybrand and Deloitte & Touche argue that using original cost for allowances acquired from affiliates is inconsistent with GAAP, which, according to AICPA, usually does not distinguish between assets acquired from affiliates and those acquired externally in similar trades. AICPA asserts that the Commission should use its enforcement powers to determine the appropriateness of affiliate trades.

The Environmental Defense Fund, Centerior, Ohio Edison and Penn Power argue that affiliate trades should be treated the same as non-affiliate trades, *i.e.*, an allowance obtained from an affiliate should be valued at the sale price, not the seller's original cost. The Environmental Defense Fund asserts that the oversight of state regulators, especially if trades are between affiliates in two different states, should assure that prices reflect market value.

APPAs states that fair market value could be used for affiliate trades if proper reporting measures assure that

the market is disciplined by full and timely disclosure of market price information. APPA argues that if detailed information, including price and terms, is not available on all allowance trades, affiliates should be required to transfer allowances at historical cost.

NYDPS supports using historical cost for trades between an unregulated entity and an affiliated regulated utility, but supports using fair value for trades between two affiliated regulated utilities. NYDPS argues that trades between affiliated regulated utilities, unlike trades involving an unregulated affiliate, are subject to adequate state and federal oversight and present less risk of manipulation, since regulators will likely allocate any profit transfers to ratepayers' benefit. If fair value is used for trades between regulated affiliates, NYDPS proposes that a discount (*e.g.*, five to ten percent of market value) be applied to the derived market value, to recognize economies resulting from avoiding market transaction costs.

NRECA asks the Commission to clarify that the term "affiliate" is being used in the corporate legal sense and does not include entities whose only relationship is that of co-owners of a generating plant.

*Commission Response.* The great majority of commenters disagree with the NOPR's proposed accounting for affiliated transactions. These commenters argue that the proposed accounting may: discourage affiliate trades; unnecessarily raise the cost of acquiring allowances; impair system-wide least cost planning; raise prudence questions even when parties have acted prudently; provide misleading price signals to the allowance market; result in cross-subsidization between affiliates; and conflict with GAAP.

The Commission finds these arguments persuasive and, as explained below, has decided not to adopt the proposed accounting for affiliate transactions. The Commission believes that the cited deficiencies can be avoided by requiring the same accounting for affiliate transactions as for non-affiliate transactions. Thus, the Commission will require that all allowance transactions, including transactions with affiliates, be accounted for in the same manner, *i.e.*, the purchase price (historical cost) of an allowance will be the attribute used for accounting valuation regardless of whether the allowance is purchased from an affiliate or non-affiliate.

However, since affiliate transactions are by definition less than arm's length, the Commission will require certain

additional safeguards for allowance transactions between affiliates. As support for accounting entries used to record purchases from and sales to affiliates, the Commission will require the transacting utilities to maintain enough information to allow ready identification, analysis, and verification of the market value of allowances at the time of the transaction, as well as other relevant information supporting the reasonableness of the exchange price.<sup>54</sup> The burden of proving the fairness of any value assigned to the allowances will rest with both the selling and purchasing utility. These safeguards, along with safeguards inherent in existing accounting practices (*e.g.*, consolidated income statements for affiliates) and in ratemaking prudence reviews, should prevent abusive affiliate trades intended to inflate assets or improperly benefit shareholders.

NYDPS proposes the application of a Commission-determined discount to the market value of allowances acquired from affiliates, to recognize economies resulting from avoiding market transaction costs. The Commission finds this refinement unnecessary. As explained above, the final rule allows the inclusion of market transaction costs in the historical cost of allowances. If savings in market transaction costs are achieved by trading with affiliates, the Commission believes the book cost of the allowances should reflect such savings. However, sufficient information on market transaction costs for non-affiliate trades should be obtainable without the need to establish an arbitrary percentage at this time. The Commission has adequate authority to correct any abuses that may occur in this regard.

In response to NRECA's request for clarification of the term "affiliate," the Commission intends the term to mean companies or persons that directly, or indirectly through one or more intermediaries, control, or are controlled by, or are under common control with, the accounting company. This is the same definition contained in Definition 5 of the USofA.<sup>55</sup>

#### 4. Allowance Futures

In the NOPR, the Commission distinguished between hedge transactions and speculative transactions and proposed to treat a trade as a hedge transaction only when the utility, at the time it entered into a futures contract, designated the

<sup>54</sup> If the allowance market is not highly active, a range indicative of the current market value could be inferred from the prior and subsequent transaction prices that are available.

<sup>55</sup> 18 CFR part 101, Definition No. 5.

transaction in contemporaneous documents as one entered into for hedging purposes.<sup>56</sup> The Commission proposed to defer the costs or benefits of hedging transactions in Account 186, Miscellaneous Deferred Debits, or Account 253, Other Deferred Credits, and to include such amounts in Account 158.1, Allowance Inventory, when the related allowances were acquired, sold or otherwise disposed of. The Commission proposed to record the costs or benefits of speculative transactions in Account 421, Miscellaneous Nonoperating Income, or Account 426.5, Other Deductions.

**Comments.** EPA supports the inclusion of accounting rules for allowance futures, stating that the rules will facilitate utilities' use of allowance futures to manage risk associated with the allowance market.

NARUC, the Florida Commission, the Georgia Commission, the Illinois Commission and APPA support the proposed accounting treatment for allowance futures. NARUC proposes extending the same rules to "forward contract" trades outside of the organized exchanges, while the New York Mercantile Exchange proposes extending the rules to energy futures and options (e.g., on crude oil and natural gas). The Ohio Staff agrees with the proposal to defer costs or benefits from hedging trades and include such amounts in inventory when the allowances are acquired, sold or otherwise disposed of. NRECA emphasizes that allowances held for investment purposes should be segregated in a separate account from allowance inventory held for operating purposes.

AICPA, Arthur Andersen, Deloitte & Touche and Price Waterhouse generally support the NOPR's proposal but assert that the deferred amounts should be recorded in the allowance accounts, not in Accounts 186 and 253. AICPA argues that deferral in the allowance accounts comports with FASB Statement No. 80.<sup>57</sup> Coopers & Lybrand argues that the proposed accounting for futures contracts should be replaced by a reference to FASB Statement No. 80.

Similarly, EEI and others<sup>58</sup> cite FASB Statement No. 80 and argue that the costs or benefits of hedging transactions

should be included in inventory as the costs or benefits occur, and not deferred until the transaction is complete. In support, Atlantic Electric asserts that this approach would allow the average price of allowances in inventory to reflect hedging costs regardless of when specific allowances are included in inventory. Atlantic Electric questions whether the NOPR's proposed accounting conforms to the accounting for hedging of other assets, e.g., fuel supplies.

The Wisconsin Municipal Group asserts that the proposed accounting could cause ratepayers to bear the risk of a hedging trade by paying a return on allowances included in rate base, while shareholders would receive any gain on the trade. The Group asserts that this could occur because the gain or loss on a hedging trade would be recorded in below-the-line Accounts 421 and 426.5, while the allowances would be recorded in Accounts 158.1 or 158.2 and might be included in rate base. The Group asserts that a procedure should be adopted for allowances used in hedging trades to ensure that these allowances will not be included in rate base.

The California Commission asserts that all costs of both hedging and speculation should be recorded in a non-operating subaccount of Account 421. The California Commission argues that distinguishing hedging from speculation would be neither feasible nor purposeful. Instead, the California Commission argues, the proposed accounting would further burden the regulatory process by requiring regulators to evaluate a utility's designation of a trade as either hedging or speculation, to ensure that the utility is only passing on reasonably incurred costs and not siphoning off gains that should be used to reduce its revenue requirement. The California Commission argues that its proposal would discourage utilities from playing in the futures market and avoid unnecessary accounting and regulatory complexities.

Detroit Edison argues that utilities should not be required to designate a transaction as one entered into for hedging purposes. Detroit Edison asserts that utilities should be presumed to enter into futures contracts for the purpose of hedging rather than speculating.

AICPA and others<sup>59</sup> argue that allowances purchased for speculative purposes should be recorded in Account 124, Other Investments. EEI, Atlantic

Electric, Commonwealth Edison and Florida Power & Light also assert that any gains or losses on disposition of these allowances should be recorded in Account 421, Miscellaneous Nonoperating Income.

**Commission Response.** The Commission will limit the scope of the final rule on hedge accounting to allowance futures traded on an organized exchange. Futures trading is an established, standardized practice for which uniform accounting requirements are practical. There are numerous other methods of hedging (e.g., forward contracts) that do not enjoy the same level of standardization as futures contracts and therefore may require different accounting.<sup>60</sup> FASB is reviewing the accounting in these areas and the Commission finds it appropriate in this instance not to go beyond the limited hedge accounting rules adopted herein until FASB's review is completed.

The Commission agrees with certain commenters that Account 124, Other Investments, should be designated as the proper account for recording allowance futures transactions entered into for speculative purposes. However, the Commission is not convinced that other changes are needed in the proposed accounting for futures transactions. From an informational standpoint, there is considerable benefit in requiring deferral of the costs and benefits of futures trading in Account 186 or Account 253 until the futures contract is closed. Further, the amounts of the accounting charges and credits resulting from the Commission's method should be the same as would be produced under FASB Statement No. 80, and would merely be displayed differently on the balance sheet. The Commission fails to see how this difference in display creates a conflict with GAAP. Also, since the Commission is requiring the use of a weighted average cost method in determining the cost of allowances issued from inventory, the costs and benefits from futures transactions, unless deferred as proposed in the NOPR, could affect the income statement before the cost of the related allowances is expensed. This potential mismatch is avoided if separate deferrals in Accounts 186 and 253 are required.

<sup>56</sup> FERC Statutes and Regulations ¶ 32,481 at 32,578-79.

<sup>57</sup> FASB Statement of Financial Accounting Standards No. 80, *Accounting for Futures Contracts*, ¶ 8, in *Accounting Statements—Original Pronouncements* (1991).

<sup>58</sup> AEP, Atlantic Electric, Baltimore Gas & Electric, Centerior, Cincinnati Gas & Electric, Commonwealth Edison, Delmarva Power, Gulf States, Pennsylvania Power & Light and PSI Energy.

<sup>59</sup> Arthur Andersen, Deloitte & Touche, EEI, Atlantic Electric, Centerior, Commonwealth Edison, Florida Power & Light and PSI Energy.

<sup>60</sup> In fact, according to a FASB Research Report on hedging (FASB, *Hedge Accounting: An Exploratory Study of the Underlying Issues* (1991)), more than 75 different hedging products exist today.

## 5 Allowances Acquired Through Exchanges

The Commission proposed in the NOPR to account for allowances received in exchanges based on the inventory value of the allowances given up.<sup>61</sup> For example when no monetary consideration (or "boot") is involved, the value of allowances received in an exchange would equal the inventory cost of the allowances given. When a utility pays boot in an exchange, the value of the acquired allowances would be the sum of the inventory cost of the allowances given up and the boot paid.

**Comments.** NARUC, the Georgia Commission and the Ohio Staff support the proposed rules. The Florida Commission also supports the proposed rules, so long as utility records allow a detailed review of individual transactions, including an identification of transactions between affiliated companies.

PSI Energy and the Ohio Staff state that the proposal is consistent with GAAP, specifically with APB Opinion No. 29, "Accounting for Nonmonetary Transactions." PSI Energy asserts that the final rule should refer to APB Opinion No. 29 as the accounting rule for allowance exchanges.

Delmarva Power & Light supports the proposed rule but notes that the NOPR is silent regarding an exchange involving dissimilar nonmonetary assets. Delmarva asserts that when an exchange of dissimilar nonmonetary assets occurs, the accounting should be based on the fair values of the assets involved.

Price Waterhouse opposes the NOPR's proposal to base the value of allowances obtained in an exchange on the inventory cost of the allowances given in exchange, plus any boot paid. Price Waterhouse argues that APB Opinion No. 29 requires that such exchanges be accounted for based on fair value.

AEP opposes the use of historical cost in accounting for allowances acquired through exchanges, citing the same concerns it raised against using historical cost generally.

**Commission Response.** The Commission has carefully analyzed the comments on allowance exchanges and believes that there is no need to modify the original proposal. To the extent, if any, that GAAP would require the use of fair value in accounting for an exchange when this rule would require the use of historical cost, the Commission deviates from GAAP for reasons stated above. If ratemaking does not follow the accounting for exchanges,

the economic effects of any differences can be adequately provided for by recording regulatory assets and liabilities, as discussed below.

### D. Inventory Method

#### 1. Weighted Average Cost Method

The NOPR proposed to use a weighted average cost method for determining the cost of allowances issued from inventory.<sup>62</sup> The Commission stated that this method provides a rational, systematic and objective measure of the cost of allowances used or sold during a period and mitigates the effect of price changes on income and inventory balances. The Commission also stated that if a utility was required to use another inventory method for ratemaking purposes, any differences in allowance inventory values and expense amounts for rate and accounting purposes would be accounted for as regulatory assets and liabilities.

**Comments.** A number of commenters support the use of the weighted average cost method.<sup>63</sup> The Florida Commission notes that this method comports with the method used in Florida for fuel inventory pricing. The Illinois Commission states that the weighted average cost method prevents utilities from manipulating allowance costs and that such manipulation could cause fluctuations in the expensed allowances as well as in gain or loss recognition. APPA states that the weighted average cost method will cause the least seasonal variation in unit cost.

AICPA argues that the Commission should adopt an averaging method (e.g., weighted average cost) and require use of that method unless a utility demonstrates that another method better reflects the cost of the allowances. Similarly, Deloitte & Touche suggests modifying the rule to express a preference for the weighted average cost method, but allow the use of other methods when appropriate.

The Ohio Staff supports using the weighted average cost method now, but recommends that the Commission reconsider the issue after the Internal Revenue Service rules on the tax treatment of allowances. Alternatively, the Ohio Staff suggests allowing companies to change costing methods if required.

The North Carolina Staff argues that a utility should be allowed to use, for accounting purposes, the inventory

method used by most of its regulatory jurisdictions (or the jurisdictions controlling most of the utility's revenues). The North Carolina Staff argues that this approach would reduce the amount of regulatory assets and liabilities, so long as most of the jurisdictions use the same method.

EEI and many others<sup>64</sup> oppose the mandatory use of a particular inventory method. They argue instead that utilities should be allowed to use any method that is consistent with GAAP, best fits the utility's activity in acquiring and using allowances and is allowed by the primary ratemaking jurisdiction. EEI argues that this approach would avoid unnecessary use of regulatory assets and liabilities.

Several commenters assert that the Commission does not prescribe a single inventory method for materials and supplies or fuel and should not do so for allowances. Virginia Power, for example, notes that Account 154, Plant Materials and Operating Supplies, allows the use of a "cumulative average, first-in-first-out [FIFO], or such other method of inventory accounting as conforms with accepted accounting standards consistently applied."<sup>65</sup> Iowa-Illinois states that it uses the last-in-first-out (LIFO) method for coal inventories and argues that, since allowance usage will track fuel usage, allowance and fuel usage should be valued similarly. Baltimore Gas & Electric argues that the Commission should require only that the inventory method used for allowances be consistent with the method used for the related fuel inventory.

Florida Power & Light argues that, while the weighted average cost method is appropriate for fungible inventories such as fuel, where it is impossible to distinguish between fuel bought at different prices and stored in the same tank, allowances are individually serialized and can be distinguished from each other. Florida Power & Light argues that EPA has proposed to require specific identification of allowances and that the Internal Revenue Service is likely to require specific identification. Florida Power & Light argues that the use of different inventory methods for

<sup>61</sup> FERC Statutes and Regulations ¶ 32,481 at 32,579-82.

<sup>62</sup> NARUC, the California Commission, the Florida Commission, the Georgia Commission, the Illinois Commission, PSI Energy and APPA.

<sup>63</sup> Allegheny Power, the American Gas Association, Baltimore Gas & Electric, Centerior, Central & South West, Cincinnati Gas & Electric, Commonwealth Edison, Con Edison, Consumers Power, Florida Power & Light, Gulf States, Iowa-Illinois, Kentucky Utilities, PacifiCorp, Wisconsin Electric, Atlantic Electric, Delmarva Power, IES Industries, NYSEG, Ohio Edison, PG&E, FJM, Penn Power, Pennsylvania Power & Light, Potomac Electric, PSE&G, Southern Company, Virginia Power and Wisconsin Public Service.

<sup>64</sup> 18 CFR Part 101, Account 154, Plant Materials and Operating Supplies.

accounting, tax and environmental purposes would result in unwarranted administrative burdens without discernible benefits to utilities or their ratepayers.

Allegheny Power argues that the specific identification method is appropriate for allowances because it can prevent distortions in the valuation of allowances charged to retail customers. Allegheny Power argues, as an example, that if a company buys allowances for a specific nonaffiliated trade, the cost of those allowances should be allowed to follow that trade and not affect the costs charged to regular customers. Allegheny Power argues that companies may also buy allowances for future needs, and that the average cost method can cause current ratepayers to pay for allowances that will not benefit them.

AEP and Arthur Andersen assert, contrary to the NOPR,<sup>66</sup> that the use of different inventory methods for accounting and ratemaking purposes does not require accounting for differences in inventory values and expense amounts as regulatory assets and liabilities, so long as the ratemaking method is allowed by GAAP. Southern Company argues that recording regulatory assets and liabilities for all differences between inventory values for accounting and ratemaking purposes is unnecessary, costly and administratively burdensome. Cincinnati Gas & Electric argues that such accounting could confuse users of financial statements, with no apparent gain in usefulness or clarity.

EEI and others<sup>67</sup> assert that differences between two generally accepted accounting methods (e.g., when a state commission and this Commission require different methods) are not regulatory assets under FASB Statement No. 71.

Ohio Edison and Penn Power assert that the proposal to use regulatory assets and liabilities to reflect differences in inventory methods in an unnecessary complication and that concerns continue to be raised by the SEC and accountants about the collectability of regulatory assets. They argue that, while these concerns are often baseless, their existence demonstrates the perception of higher risk associated with such assets.

Atlantic Electric argues that the Commission must assess the effects of allowances valued at present value on

the weighted average cost method. Atlantic Electric asserts that amortization of inventory costs can be distorted by commingling costs of allowances associated with future use with costs of allowances with more current application.

AICPA and Deloitte & Touche dispute the NOPR's statement that "there is no need, for inventory purposes, to separately identify which allowances were used \* \* \*." They argue that serialization of allowances would better enable independent auditors to confirm the existence of allowances and the completion of trades, and allow utilities to design effective internal control and tax systems for allowances.

The Ohio Staff recommends that if EPA adopts serialization, utilities should be required to maintain records detailing the cost associated with each serial number.

*Commission Response.* Based on careful consideration of the comments, the Commission has decided to adhere to its proposal to require the use of a single inventory method, the weighted average cost method, for allowance inventory accounting. While there is merit in the recommendation of some commenters to allow the use of any inventory method that complies with GAAP and is used for ratemaking purposes, such benefits are outweighed by the need to limit management's discretion in determining income and inventory balances and by the benefits of having a uniform accounting method.

The weighted average cost method has the advantage of objectivity in that it limits management discretion in determining income and inventory balances. By comparison, the other common inventory methods (specific identification, LIFO and FIFO) provide management greater flexibility to manipulate inventory and income balances by timing purchases and sales of allowances and by specifying which allowances are transferred or used.<sup>68</sup> While the Commission has allowed utilities to use these other methods for certain inventories, the allowance inventory will differ from other inventories, in that some allowances will be received at zero cost from EPA and others will be purchased at market price. This cost dichotomy does not exist for other inventories and magnifies management's ability to alter income and inventory balances under inventory methods other than weighted average cost method. The latter method is needed in this instance to prevent the accounting manipulation made possible

by the unique disparity of allowance costs.

Also, the uniformity gained by requiring all utilities to use a single inventory method produces other valuable benefits. Many utilities operate in more than one rate jurisdiction and it is possible that all such jurisdictions will not use the same method to price inventory issuances for ratemaking purposes. However, a single inventory method is essential for accounting purposes. For example, if one jurisdiction uses LIFO for ratemaking purposes and another uses FIFO, the principles of sound accounting would militate against the use of both methods in the utility's inventory accounting or the adoption of different inventory pools for each jurisdiction.

Moreover, such jurisdictional differences are likely to occur, and require the use of regulatory asset and liability accounts, regardless of the method the Commission prescribes for accounting purposes. Thus, the use of regulatory asset and liability accounts cannot be avoided merely by allowing utilities to select the accounting method they find desirable.

Apart from multi-jurisdictional conflicts, the use of a uniform inventory method will also help ensure comparability of financial data within the industry. Different inventory methods can substantially alter a utility's apparent financial performance and, even if the method used is disclosed, make comparisons to other utilities needlessly difficult.

The Commission disagrees with the commenters who assert that, based on FASB Statement No. 71, the use of different inventory methods for ratemaking and accounting purposes would not give rise to regulatory assets and liabilities under the USofA so long as both methods are allowed by GAAP. Regulatory assets and liabilities are defined differently under the final rule than under FASB Statement No. 71. In relevant part, the final rule defines regulatory assets and liabilities as arising from specific revenues, expenses, gains, or losses that would have been included in net income determinations in one period under the USofA's general requirements but for it being probable that such items will be included in a different period(s) for purposes of developing the rates the utility is authorized to charge for its utility services. The final rule, however, requires the use of a single inventory method for allowances—weighted average cost. Thus, under the final rule's definition of regulatory assets and liabilities, the use of a different inventory method for ratemaking

<sup>66</sup> FERC Statutes and Regulations ¶ 32,581 at 32,581-82.

<sup>67</sup> American Gas Association, Baltimore Gas & Electric, Centerior, Central & South West, Commonwealth Edison, Gulf States, Pennsylvania Power & Light, PJM and Wisconsin Public Service.

<sup>68</sup> See FERC Statutes and Regulations ¶ 32,481 at 32,579-80.

purposes could produce regulatory assets or liabilities, even if the other method is allowed by GAAP. Under FASB Statement No. 71, on the other hand, regulatory assets represents differences between the way costs are recognized for regulatory purposes and the way costs are recognized for enterprises in general. Several inventory methods are acceptable under GAAP for industries in general. Thus, under FASB's definition of regulatory assets and liabilities, the use of different inventory methods for rates and accounting would not produce regulatory assets and liabilities so long as both methods are allowed by GAAP.

Some commenters appear to misunderstand how the Commission intends the weighted average cost method to be applied when allowances in inventory are of different vintages. Proposed General Instruction 21(D) stated:

Inventory included in Accounts 158.1 and 158.2 must be accounted for on a vintage basis using a weighted-average method of cost determination. Allowances usable but not used in the current year must be carried forward to the next vintage year inventory with the appropriate recognition of their inventory cost in the next vintage year's weighted-average cost.

Therefore, the application of this method would not commingle or distort costs of currently usable allowances with the cost of allowances usable only in future years. The only time that the cost of different vintages are combined in the same inventory cost pool is when a currently usable allowance is not used and is therefore available for use in the succeeding year(s).

As to the Internal Revenue Service (IRS) rules on the tax treatment of allowances, the Commission notes that in Revenue Procedure 92-91 (issued November 6, 1992) the IRS issued guidance on certain federal income tax consequences of the allowance program. Nothing in that guidance is directly on point with respect to inventory methods and, in any event, the tax treatment would not dictate the appropriate financial accounting treatment. To the extent there are timing differences between the tax recognition and the financial accounting, the USofA provides for appropriate recognition of the tax effect of such differences.

As to the comments on serializing allowances, the Commission does not dispute that serialization would help independent auditors to confirm the existence of allowances and the completion of trades, and help utilities to design effective internal control and tax systems for allowances. In fact, the Commission would encourage the use of

serial numbers for such purposes. For reasons stated above, however, the Commission is adopting a weighted average cost inventory method, which does not require specific identification or cost information by each allowance's serial number.

## 2. Vintaging of Allowances

The Commission proposed in the NOPR to require the grouping of allowances in inventory by vintage, *i.e.*, by the year in which the allowances are first eligible for use.<sup>69</sup> Under this approach, only those allowances usable during the current year (including allowances carried over from prior years) would be included in determining the weighted average cost of the vintage.

**Comments.** Vintaging is supported by Delmarva Power, NARUC, the California Commission, the Florida Commission, the Georgia Commission, the Illinois Commission, the Ohio Staff and APPA.

Consumers Power opposes vintaging, arguing that the Commission has not required vintaging for any other inventory account. Consumers Power asserts that vintaging of allowances will impose an unnecessary administrative burden.

The Wisconsin Municipal Group also opposes vintaging, arguing that vintaging is inconsistent with the NOPR's statements that all allowances are fungible. The Wisconsin Municipal Group asserts that the weighted average cost of the allowances expensed should be calculated using all allowances in inventory.

**Commission Response.** The Commission will retain the vintaging requirement in the final rule. Vintaging is essential for proper costing of allowances used or otherwise disposed of during each year. An allowance not yet eligible for use does not have the same value as an allowance currently eligible for use. To include as-yet-unusable allowances with the weighted average cost of currently usable allowances would, in the Commission's view, produce distorted costing.

## E. Expense Recognition of Allowances

### 1. Timing of Recognition

The Commission proposed in the NOPR to require utilities to charge to expense on a monthly basis the number of allowances, including fractional amounts, corresponding to the amount of sulfur dioxide emitted.<sup>70</sup> The Commission noted that this method

results in the recognition of expenses during the period in which the related energy is produced and used and matches costs to the revenues received for production, thus accurately reflecting the results of operations during each period.

**Comments.** Many commenters supported the proposal for monthly allowance expense accrual.<sup>71</sup> EEI comments that this approach is consistent with the principle of accrual accounting.

Arthur Andersen recommends that the cost basis used for expense recognition should be recalculated on a weighted average cost, year-of-eligible-use basis each month in determining the monthly expense amount.

Florida Power & Light agrees that allowances should be expensed on a monthly basis, but argues that the expensing should be based on management's annual compliance plan. Florida Power & Light argues that, since months are integral parts of an annual period and not discrete periods, monthly costs should reflect the relative portion of the total anticipated annual allowance expense according to the compliance plan.

Coopers & Lybrand recommends replacement of the NOPR's proposal with a reference to APB Opinion No. 28, "Interim Financial Reporting."<sup>72</sup> Coopers & Lybrand argues that APB Opinion No. 28 provides sufficient guidance on costs and expenses for interim reporting purposes.

APPA states that, for some utilities with generating units using alternative monitoring systems, emission data may not be available when the utility closes its expense records for a given month. APPA asserts that these utilities should be allowed to rely on estimates based on fuel sampling and use, with a year-end true-up coinciding with the extended allowance recording period adopted in EPA's regulations. Similarly, Delmarva Power asserts that allowances should be charged to expense monthly based on an estimate of the number of allowances used each month, with a year-end true-up to actual usage.

EPA notes that whenever emission data are missing or unavailable, a utility must calculate emissions consistent with estimates prescribed by EPA. EPA asserts that allowance expensing should

<sup>69</sup> FERC Statutes and Regulations ¶32,481 at 32,582.

<sup>70</sup> FERC Statutes and Regulations ¶32,481 at 32,583.

<sup>71</sup> NARUC, the Florida Commission, the Georgia Commission, the Illinois Commission, the Ohio Staff, EEI, Centerior, Cincinnati Gas & Electric, Commonwealth Edison, Consumers Power, Gulf States, Pennsylvania Power & Light, PSI Energy and APPA.

<sup>72</sup> APB Opinion No. 28, *Interim Financial Reporting, in Accounting Statements—Original Pronouncements* (1981).

be based on whatever data (including data substituted for missing data) are used to determine emissions and allowance obligations under the Clean Air Act. EPA argues that this result would properly correlate a utility's allowance accounting with its actual allowance obligations and costs.

**Commission Response.** The Commission will adopt the proposal to require utilities to charge to expense on a monthly basis the cost of allowances, including fractional amounts, corresponding to the amount of sulfur dioxide emitted. As suggested by Arthur Andersen, the cost basis used for expense recognition should be recalculated on a weighted average cost, year-of-eligible-use basis each month. The Commission recognizes that in some instances actual emission data may not be available when the utility closes its expense records for a given month. The use of reasonable estimates in such circumstances, with true-ups to actual data in the month the facts become known, is acceptable for financial reporting purposes.

## 2. Account Used for Recognition

The Commission proposed in the NOPR to require utilities to record the expense of allowances in a new account entitled Account 509, Allowances.<sup>73</sup> The Commission stated that classification in Account 509 would properly recognize the nature of allowances as part of the cost of production, but would not require any particular ratemaking treatment.

**Comments.** The proposed rule is supported by Arthur Andersen, NARUC, the Florida Commission, the Georgia Commission and the Ohio Staff.

The Illinois Commission does not oppose the creation of Account 509 but argues that utilities should be allowed to modify this requirement to conform to the accounting mandated by state regulators. The Illinois Commission argues that it may wish to allow fuel clause recovery of allowance expenses and, to do so, may have to require utilities to record allowance expenses in Account 501, Fuel. Similarly, Duke Power argues that mandating the use of an account other than Account 501 will preclude many companies from recovering allowance costs through fuel clauses under existing statutes.

EEI and many other commenters<sup>74</sup> support the recognition of allowance

expense in a new subaccount within Account 501. Iowa-Illinois argues, for example, that using a new subaccount of Account 501 would facilitate fuel clause recovery because many fuel clauses, including those in Iowa-Illinois' retail jurisdictions, limit recoverable costs to those included in specific accounts. PSI Energy argues that using a subaccount of Account 501 would not dictate any particular ratemaking treatment or violate the goal of rate neutrality because state commissions will thoroughly review the rate treatment of allowances.

AEP opposes the creation of a new account, instead supporting the use of existing accounts such as Account 501 or Account 506, Miscellaneous Steam Power Expenses. AEP argues that short term sales are generally priced at full recovery of fuel costs plus partial recovery of O&M costs, so that using existing accounts, particularly Account 501, may allow recovery from short-term energy buyers of the full fair value of the allowances used for the sale.

Virginia Power argues that the cost of using allowances obtained in fuel-related trades should be recognized in Account 501. As an example, Virginia Power describes a sale of high sulfur coal bundled with allowances, in which the allowances are needed because burning the high sulfur coal will generate substantial emissions.

APPAs opposes the use of Account 501 for allowances. APPA argues that allowances should be held in a separate account to facilitate correct rate mechanisms such as formula rates. APPA argues that the recovery of allowances in rates will be a distinct and separate issue, so that allowances should not be treated as part of an aggregate figure.

**Commission Response.** The Commission will adopt Account 509, Allowances, as the proper account for recording allowance expenses. Most of the commenters opposing the use of Account 509 argue that the use of other existing accounts would facilitate rate recovery. However, as explained above, the Commission intends for this accounting rule to be rate neutral, i.e., to not favor one particular rate treatment over another. Using a new account will best accomplish this objective. Furthermore, the use of a separate account for expensing allowances will simplify access to useful information on a utility's allowance program.

<sup>73</sup> FERC Statutes and Regulations ¶ 32,481 at 32,583.

<sup>74</sup> Allegheny Power, Baltimore Gas & Electric, Central & South West, Cincinnati Gas & Electric, Commonwealth Edison, Consumers Power, Delmarva Power, Gulf States, IES Industries, Iowa-

## 3. Allowance Inventory Shortages

The NOPR proposed that if a utility emits more sulfur dioxide than it has allowances in inventory, the utility should accrue in inventory (Account 158.1) the estimated cost of obtaining the needed allowances.<sup>75</sup> The utility would charge Account 158.1 for the estimated cost of the needed allowances and credit the proper liability account. Any difference between the estimated and actual cost of allowances would be charged to Account 158.1.

**Comments.** Consumers Power, NARUC, the Florida Commission and the Georgia Commission support the proposed rules. The Ohio Staff generally agrees with the proposed rule but recommends that any estimated amounts charged to the allowance inventory account should be designated as estimates. The Ohio Staff also recommends that utilities be required to keep records supporting the cost estimates.

A number of commenters argue that the cost of meeting an allowance inventory shortage should be expensed immediately, along with the related liability, instead of being charged to inventory.<sup>76</sup> AICPA argues that any difference between actual and estimated costs should be charged to expense rather than Account 158.1.

**Commission Response.** The Commission will adopt the accounting proposed in the NOPR. The Commission proposed using Account 158.1 for recording allowance accruals, instead of direct expensing, to be consistent with the use of the weighted average cost method of costing allowances issued from inventory, and to ensure the completeness of information reported to the Commission annually on utility allowance programs.

To clarify the Commission's intent, however, there should be no delay in expensing the estimated cost of allowances when a utility has fewer allowances than it needs for its emissions to date. When accruals are required, Account 158.1 effectively becomes a clearing account in which the monthly cost of accrued allowances is charged and credited in the same month. In such cases, the use of Account 158.1 will provide auditable information needed to complete the required reporting schedule. Likewise, when differences between the estimated cost of allowances and the actual cost

<sup>75</sup> FERC Statutes and Regulations ¶ 32,481 at 32,583.

<sup>76</sup> AICPA, Arthur Andersen, Deloitte & Touche, EEI, Atlantic Electric, Baltimore Gas & Electric, Commonwealth Edison, Gulf States, Iowa-Illinois and Pennsylvania Power & Light.

become known, the adjustments should be made through Account 158.1 and Account 509 within a single month. With these clarifications, the proposed accounting meets the commenters' concerns on expensing allowance costs in the proper period and at the same time ensures the completeness of data for Account 158.1.

#### 4. Penalties

The Commission stated in the NOPR that, if a utility incurs a fine or penalty as a result of noncompliance with the CAAA, the USofA requires the fine or penalty to be recorded in Account 426.3, Penalties, a below-the-line account.<sup>77</sup>

**Comments.** Commenters agreeing with the proposed treatment include Consumers Power, NARUC, the California Commission, the Florida Commission, the Georgia Commission and the Illinois Commission.

EEI and Allegheny Power propose the designation of penalty accounts both below and above the line.<sup>78</sup> Allegheny Power asserts that the NOPR assumed that penalties are not recoverable in rates, an assumption that Allegheny Power argues may not be true depending on the circumstances and on regulatory decisions.

EEI and Florida Power & Light assert that penalties imposed for noncompliance should be reviewed to determine the cause of the noncompliance. They argue that if a utility has acted prudently to meet emission limits and events outside its control caused the noncompliance, the penalty should be allowed in cost-of-service.

The North Carolina Staff opposes the creation of an above-the-line account for CAAA-related penalties. The North Carolina Staff asserts that designation of an above-the-line account could encourage a utility to record penalties in that account without prior regulatory approval, due to its belief that the costs should be recovered in rates. The North Carolina Staff asserts that such actions not only may misclassify such costs, but also would make it more difficult to ascertain the utility's total penalties.

**Commission Response.** The Commission continues to believe that the proper account to use for all fines and penalties incurred through noncompliance with the CAAA is Account 426.3, Penalties. However, the use of this account is not intended to preclude a ratemaking body from

considering any amounts recorded therein for ratemaking purposes. The Commission notes, however, that IRS Revenue Procedure 92-91, discussed above, states that the \$2,000 per ton penalty imposed under the CAAA is not deductible for Federal income tax purposes.

#### F. Gain or Loss on Disposition of Allowances

The NOPR proposed a two-step process for accounting for gains and losses on the sale, exchange, or other disposition of allowances. The first step would be to recognize the gain or loss in income, in either of two new above-the-line accounts: Account 411.8, Gains from Disposition of Allowances, or Account 411.9, Losses from Disposition of Allowances. The second step would be to recognize the economic effect of regulators' actual or expected ratemaking treatment of the gain or loss, by recording entries in new generic accounts for regulatory assets and liabilities: Account 182.3, Other Regulatory Assets; Account 244, Other Regulatory Liabilities; Account 407.3, Regulatory Debits; and Account 407.4, Regulatory Credits.

**Comments.** NARUC, the Florida Commission, the Georgia Commission, the Illinois Commission and the Ohio Staff support the proposed treatment. NARUC states that the proposed treatment would allow gains and losses to remain in the new accounts for regulatory assets and liabilities pending a ruling by state regulators.

The Michigan Staff proposes an accounting treatment for using the gain from allowance sales to offset expenditures made to reduce sulfur dioxide emissions. Under this proposal, the net gain from allowance sales would first be recorded as a deferred credit in a new clearing account. The utility's management then would decide how to use the funds. If the funds are passed on to stockholders and/or ratepayers, the clearing account would be reduced and Account 244, Other Regulatory Liabilities, would be credited. If the funds are used to offset expenditures made to reduce emissions, the clearing account would again be reduced, but the credit entries would be made in the affected plant, deferred debit, or operating expense accounts. The Michigan Staff argues that this treatment would encourage utilities to finance emission reductions with the funds generated from allowance sales.

Allegheny Power argues that the accounting for gains and losses on disposition of allowances should allow for deferrals with subsequent amortization over the expected benefit

period and/or in accordance with regulatory direction. Allegheny Power analogizes to previous investment tax credit programs.

PSI Energy, Detroit Edison and Atlantic Electric oppose the two-step process of first recording gains or losses in income and then accounting for the regulatory treatment of such gains or losses. PSI Energy asserts that this process could distort the income statement by accounting for a single transaction as two offsetting amounts in the income statement. PSI Energy suggests instead that the economic effects of the regulatory treatment of allowance-related gains or losses should be accounted for under the provisions of FASB Statement No. 71.

AICPA and Arthur Andersen argue that the proper accounting for a gain on sale of allowances is as follows: (1) If there is uncertainty as to the regulatory treatment, the gain should be deferred pending resolution of the uncertainty; (2) If there is certainty as to the regulatory treatment, the gain should be accounted for consistent with FASB Statement No. 71, to the extent a regulatory liability results; and (3) If the gain, or any part thereof, accrues to shareholders, that amount should be recognized as income currently and recorded in Account 421, Miscellaneous Nonoperating Income. AICPA argues that a loss should be recognized currently and recorded in Account 421, unless a regulatory asset is established under FASB Statement No. 71.

A number of commenters proposed the designation of accounts both above and below the line for gains and losses on allowance trading.<sup>79</sup> Price Waterhouse argues that provision should be made for below-the-line recognition when circumstances warrant. EEI argues that below-the-line accounts are needed because state regulators may not always follow the procedure proposed by the Commission. Centerior argues that using only above-the-line accounts unfairly prejudices future ratemaking with a bias toward allocating these amounts solely to customers.

A number of commenters see no need to create new accounts for gains and losses on disposition of allowances and instead suggest modifying existing accounts, both above and below the line, to accommodate gains and losses

<sup>77</sup> FERC Statutes and Regulations ¶ 32,481 at 32,583.

<sup>78</sup> "Above-the-line" accounts contain amounts that reflect operating income and expenses and are generally included in rates.

<sup>79</sup> Price Waterhouse, EEI, Allegheny Power, Baltimore Gas & Electric, Centerior, Florida Power & Light, GPU, Iowa-Illinois, PacifiCorp and Pennsylvania Power & Light.

on allowance trades.<sup>80</sup> PJM and PSE&G assert, for example, that new accounts are not needed because the Commission has stated that the sale of allowances is the same as the sale of any other asset.

AEP argues that the final rule should prescribe accounting for sharing gains and losses between ratepayers and shareholders. AEP argues that when a commission's past precedent indicate that gains will be shared between ratepayers and shareholders, the latter's portion of the gain should be initially recorded below-the-line to avoid subsequent reclassification.

Deloitte & Touche argues that a gain accruing to the benefit of shareholders should be credited directly to Account 421, Miscellaneous Nonoperating Income, rather than first being credited to Account 411.8, Gains from Disposition of Allowances. Otherwise, Deloitte & Touche states, the same gain could be reported twice in the income statement.

**Commission Response.** Upon considering the comments on this issue, the Commission has decided to simplify the proposed accounting for gains and losses on disposition of allowances. The NOPR proposed a two-step process under which a utility would first recognize these gains and losses in its income statement and then account for the economic effects of the regulatory treatment by recording a regulatory liability or asset. The Commission now considers this two-step process unnecessary and undesirable. Instead, the Commission will adopt, in large part, the suggestions of AICPA and Arthur Andersen.

Gains on dispositions of allowances should be accounted for as follows. First, if there is uncertainty as to the regulatory treatment, the gain should be deferred in Account 254, Other Regulatory Liabilities, pending resolution of the uncertainty. Second, if there is certainty as to the existence of a regulatory liability, e.g., if regulators have ordered the gain to be passed onto ratepayers over several years, the gain will not be recognized in income. Instead, it will be credited to Account 254, with subsequent recognition in income when reductions in charges to customers occur or the liability is otherwise satisfied. Third, all other gains will be credited to Account 411.8, Gains from Disposition of Allowances.

Losses on disposition of allowances that qualify as regulatory assets should be charged directly to Account 182.3, Other Regulatory Assets. All other

losses should be charged to Account 411.9, Losses from Disposition of Allowances.

The Commission declines to adopt the suggestion of several commenters that it provide for below-the-line recognition of gains or losses on disposition of allowances (other than gains or losses relating to speculative investments, as discussed above). The USofA does not, and should not, require each transaction to be shown above or below the line based upon whether customers or stockholders bear the expense or receive the benefits of the transaction. Instead, the nature of the transaction determines whether it is shown as utility operating income (above-the-line) or as other income and deductions (below-the-line). With enactment of the CAAA, allowance transactions are expected to become an integral part of utility operations, especially if the market for allowance trading develops as intended. The above-the-line classification required herein does not dictate how gains and losses on dispositions of allowances should be apportioned between ratepayer and stockholders, but merely reflects the fact that allowance transactions are a part of utility operations.

#### *G. Regulatory Assets and Liabilities*

The Commission proposed in the NOPR to provide accounting for regulatory assets and liabilities, i.e., assets and liabilities created through the ratemaking actions of regulatory agencies and not specifically provided for in other accounts. The NOPR proposed to create four new accounts for regulatory assets and liabilities: Account 182.3, Other Regulatory Assets; Account 244, Other Regulatory Liabilities; Account 407.3, Regulatory Debits; and Account 407.4, Regulatory Credits. The first two are balance sheet accounts; the latter two are income accounts.

As proposed, Account 182.3 would include costs incurred and charged to expense which have been, or are soon expected to be, authorized for recovery through rates and which are not specifically provided for in other accounts. Regulatory assets would be recorded by charges to Account 182.3 and credits to Account 407.4. Amounts in Account 182.3 would be amortized to Account 407.3 over the appropriate rate recognition period.

Account 244 would include liabilities imposed by the ratemaking actions of regulatory agencies and not specifically provided for in other accounts. Included in Account 244 would be revenues or gains realized and credited to income that the company is required, or is

expected to be required, to use to reduce future rates. Regulatory liabilities would be established by credits to Account 244 and debits to Account 407.3. Amounts included in Account 244 would be amortized to Account 407.4 over the appropriate rate recognition period.

#### **Support for the NOPR**

National Fuel Gas, the Florida Commission and the Ohio Staff support the proposed rule. The Ohio Staff states that the proposed treatment will provide uniformity in the way utilities report the economic effects of regulatory actions and will facilitate review of regulatory assets and liabilities.

#### **Support for the Status Quo**

Virginia Power and PSI Energy oppose any change in current accounting practices for regulatory assets and liabilities. Virginia Power argues that the accounting practices used over the years have worked well and should be considered GAAP for regulated entities. PSI Energy argues that the USofA already provides sufficient guidance and accounts for regulatory assets and liabilities and that financial reporting rules ensure the itemization in financial statements of significant regulatory assets or liabilities.

#### **Procedural Objections**

A large number of commenters urge deletion of this issue from this proceeding and initiation of a separate rulemaking on regulatory asset and liabilities.<sup>81</sup> Many of these commenters assert that the issue of regulatory assets and liabilities is too important and complex to be included in a rulemaking on accounting for allowances.

Pennsylvania Power & Light and Wisconsin Electric argue that this proceeding should address only those regulatory assets and liabilities related to allowances and that other regulatory assets and liabilities should be considered in a separate rulemaking.

AICPA, Arthur Andersen and Deloitte & Touche argue that the following issues should be exempted from the final rule pending further study: whether FASB instructs regulated enterprises to account for certain effects on income taxes only on the balance sheet, not on the income statement; whether deferred returns from phase-in plans and other similar deferrals should be reported below-the-line; and whether some items

<sup>80</sup> Baltimore Gas & Electric, Commonwealth Edison, GPU, Ohio Edison, PJM, PSE&G and Penn Power.

<sup>81</sup> AICPA, Arthur Andersen, Coopers & Lybrand, Deloitte & Touche, EEI, Central & South West, Commonwealth Edison, Con Edison, Detroit Edison Duke Power, Gulf States, Kansas City Power & Light, Kentucky Utilities, PJM, Potomac Electric, PSE&G and Wisconsin Public Service.

are classified in a way unique to the regulatory process and are not accounted for as proposed in the NOPR.

#### General Substantive Objections

AEP argues that, according to FASB, regulatory assets and related deferred income taxes should be reflected only on the balance sheet. PSI Energy argues that the income statement presentation of phase-in plans should be specifically excluded from the final rule.

AEP also argues that, if a utility is deferring significant costs, *e.g.*, through a phase-in plan, and is accruing a return on the unrecovered balances, the NOPR may wrongly move the credit for the deferred return from below-the-line to above-the-line. AEP argues that this result would distort both operating and non-operating income and is contrary to the regulatory intent to provide the credit as compensation to investors, not as a reduction of the cost of service.

Centerior argues that a new account is needed for the deferral of return through a carrying charge because crediting such amounts to Account 407.4, an above-the-line account, would be inconsistent with past Commission practice.

Centerior argues that the Commission has consistently required the carrying charge to be credited to Account 421, Miscellaneous Nonoperating Income, a below-the-line account.

EEI argues that the Commission should allow certain regulatory assets and liabilities, such as the gross-up of portions of previously-recorded AFUDC, to be classified with the plant accounts. EEI also argues that certain costs should be presented separately from other regulatory assets and liabilities. EEI states, for example, that the net phase-in costs capitalized in each period or the net amount of previously allowable phase-in costs recovered during each period should be reported as a separate item of other income or expense in the income statement.

#### Applicability of Accounts 407.3 and 407.4

EEI argues that utilities should be allowed to use accounts other than 407.3 and 407.4 if state regulators have previously allowed such use. EEI argues that if state regulators have allowed the use of other accounts, the requirement to use Accounts 407.3 and 407.4 should apply only prospectively. Allegheny Power and Kansas City Power & Light assert that use of the new accounts should not be required if the commission with primary ratemaking jurisdiction requires the use of other accounts.

Southern Company argues that the new accounts should apply only to new

regulatory assets and liabilities.

Southern Company asserts that the new accounts could lead to cost recovery problems under existing contracts and joint ownership agreements under which costs previously deferred are now being amortized to an account reflected in formulary billings. Southern Company argues that a change in account classification would jeopardize cost recovery and could require costly renegotiation of contracts and agreements.

AEP argues that, if Accounts 407.3 and 407.4 are adopted, these accounts should not apply to deferred income taxes. AEP argues that the needed information is not always available for individual book/tax timing differences, especially those involving plant-in-service. AEP argues that identifying the proper accounts in which deferred taxes should be recorded can be difficult or impossible.

Several commenters argue that regulatory assets and liabilities should be recorded in income statement accounts reflecting the nature of the underlying transactions, regardless of when the transactions are recognized.<sup>82</sup> The American Gas Association, for example, asserts that financial statement readers are more interested in the nature of a company's transactions than in the differences between GAAP for non-regulated and regulated businesses. The Association asserts that, when necessary, utilities and regulators can determine the effect of regulation for ratemaking purposes and that these differences should not be the focus of the statements.

#### Effect on Coverage Ratios

EEI, AEP, Gulf States and Virginia Power assert that using new Accounts 407.3 and 407.4 will distort the computation of coverage ratios under SEC rules. They assert that, under the standard coverage formula, the adjustments to income taxes would be added back to determine earnings for coverage purposes, but the related adjustments to the regulatory asset and liability income statement accounts would not be added back.

#### Defining Regulatory Assets and Liabilities

A number of commenters argue that regulatory assets and liabilities should be defined more consistently with FASB Statement No. 71.<sup>83</sup> They argue, for

<sup>82</sup> American Gas Association, Baltimore Gas & Electric, Columbia Gas, Con Edison, Virginia Power and Wisconsin Public Service.

<sup>83</sup> AEP, AICPA, Arthur Andersen, EEI, Centerior, Commonwealth Edison, Consumers Power, the Georgia Commission, NARUC, the North Carolina

example, that the USofA should allow recognition of regulatory assets and liabilities only when rate recovery is probable, *i.e.*, likely to occur, not just reasonably expected. Otherwise, they argue, utilities might have to report the same transactions under two sets of accounting principles.

NARUC notes that Account 182.3 includes regulatory assets related to the amortization or normalization of certain costs, and suggests that the account be clarified to include only those regulatory assets "related to the amortization of specific and significant non-recurring or infrequent operating or maintenance expense items \* \* \*." In support, NARUC states that the word "normalization" is ambiguous. The North Carolina Staff similarly argues that, in any ratemaking decision, regulators may adopt several adjustments to set rates at an average, or "normal" level, but not to provide for recovery of a specific cost in a period other than the one in which it would be recognized for accounting purposes. The North Carolina Staff argues that, contrary to the implication in the NOPR, it would be inappropriate to record a regulatory asset or liability for such adjustments.

#### Inconsistent Classification

Many commenters note that proposed Account 182.3, Other Regulatory Assets, is classified as a deferred asset while proposed Account 224, Other Regulatory Liabilities, is classified as a current liability. A number of commenters argue that regulatory assets and liabilities should both be classified in deferred accounts.<sup>84</sup> Others propose the establishment of both current and deferred accounts for both regulatory assets and liabilities.<sup>85</sup> Still others find either of these two approaches acceptable.<sup>86</sup> The American Gas Association and Con Edison argue that the classification of a regulatory asset or liability as current or deferred should be determined by GAAP.

**Commission Response.** The Commission now believes that, although separate accounts for regulatory assets and liabilities should still be established in this rulemaking, the two-step process described in the NOPR is not generally necessary and in some instances may

Staff, Price Waterhouse, PSI Energy and Virginia Power.

<sup>84</sup> AEP, Baltimore Gas & Electric, Centerior, Delmarva Power, PacifiCorp, PJM, Ohio Edison, Penn Power and Wisconsin Electric.

<sup>85</sup> Allegheny Power, Central & South West, PG&E, Virginia Power, Price Waterhouse and Potomac Electric.

<sup>86</sup> EEI, Cincinnati Gas & Electric, Commonwealth Edison, Gulf States, IES Industries, NYSE&G, PSI Energy and Wisconsin Public Service.

contribute to inappropriate results. Based upon the comments received, the Commission will make certain changes in the accounting required for regulatory assets and liabilities.

For consistency in the balance sheet presentation of regulatory assets and liabilities, the Commission will renumber proposed Account 244, Other Regulatory Liabilities, to Account 254. Account 254 will be in the deferred credits section of the balance sheet, thus paralleling the placement of Account 182.3, Other Regulatory Assets, in the deferred debits section of the balance sheet.

The Commission will require that deferred returns and/or carrying charges accrued on regulatory assets and liabilities be credited to Account 421, Miscellaneous Nonoperating Income, or charged to Account 431, Other Interest Expense, as appropriate. Both of these accounts are below-the-line. This change, recommended by several commenters, is needed to conform the required accounting treatment to the accounting used in recording deferred returns and/or carrying charges in other circumstances.

The Commission will also redefine regulatory assets and liabilities to use terms more similar to those used in FASB Statement No. 71, in order to avoid unnecessary differences between financial statements issued for regulatory purposes and general purpose financial statements. The term "probable," as used in the definition adopted herein for regulatory assets and liabilities, refers to that which can reasonably be expected or believed on the basis of available evidence or logic but is neither certain nor proved.<sup>87</sup>

Finally, to reduce other possible conflicts with current practices, the Commission will modify the proposed text of the accounts for regulatory assets and liabilities. Under the originally-proposed accounting for regulatory assets and liabilities, all entries to Accounts 182.3 and 244 (now 254) would have been through charges or credits to Accounts 407.3 and 407.4. Also, the proposed accounting would have required current expense (revenue) recognition consistent with the USofA requirements as determined without regard to the creation of regulatory assets and liabilities; whereas, the current practice is generally not to

recognize the expense (revenue) but to capitalize the cost (or recognize a liability). The proposed accounting would therefore, have affected income statement accounts even though net income was not affected (i.e., a liability would be recorded along with an equal regulatory asset or an asset would be recorded along with an equal regulatory liability). Although net income would not have been affected, the NOPR's proposed accounting could have distorted various financial ratios, such as pre-tax interest coverage calculations. Thus, the Commission will adopt Accounts 407.3 and 407.4, as modified, to provide for separate income and expense recognition only in appropriate situations, such as for the net amount capitalized for phase-in plans in each period and the net amount of previously capitalized allowable costs recovered during each period.

#### H. Reporting Requirements

Based on the proposed accounting for allowances and regulatory-created assets and liabilities, the NOPR proposed to require new schedules and changes to existing schedules in the Annual Reports (Forms 1, 1-F, 2 and 2-A) filed by electric utilities, licensees and natural gas companies. Of particular note, the NOPR proposed a new schedule for reporting the number and cost of allowance transactions, to include a utility's beginning- and end-of-year balance of allowances; acquisitions by issuance and returns from EPA; acquisitions by purchases and transfers; relinquishments by charges to expense; relinquishments by sales and transfers; net sales proceeds; and gains and losses.

#### Allowance Trading Information

EPA supports the NOPR's proposal to require reporting of allowance trades, asserting that the information will be helpful to other regulators and traders in the allowance market. The Ohio Staff also supports the proposed reporting requirements and asks that utilities additionally be required to report market-related information, e.g., each allowance trade, the parties thereto and the corresponding amounts. The Ohio Staff asks the Commission to compile the market information and make it available to all state commissions.

The Iowa Working Group argues that market price and contract term data must be collected and made available because of the planned or expected use of fair value for certain accounting purposes (e.g., inter-affiliate trades) and ratemaking purposes. The Group asks the Commission to compile a database on allowance prices and contract terms

for all jurisdictional utilities beginning in 1994, for two years or until the private market takes over this function. The Group proposes that the Commission require quarterly filings of price and contract term information, and compile the information in a publicly available database, omitting the names of the traders.

APPA argues that the proposed reporting requirements are not adequate for purposes of determining fair market value at the time of a given trade. APPA argues that the Commission should require full and timely public disclosure of the details on allowance trades, including market price information, APPA and the NC Municipal Agency assert that such information will promote a vigorous allowance market by minimizing uncertainties about reasonable prices and terms. APPA argues that the availability of price information also will discipline the market by facilitating public inspection of trades by utilities, brokers, regulators and consumer advocates. APPA asks the Commission to consider using an electronic bulletin board to collect information as each transaction closes, requiring identification of the purchaser and seller, quantity, price, vintage, and terms and conditions.

EEI and others<sup>88</sup> argue that information on allowance trades should be kept confidential. EEI argues, for example, that EPA does not require the parties to disclose the price in private sales. AEP asserts that, if a public market does not develop, trading information will be private and, if disclosed, could adversely affect future trading possibilities. PSI Energy asserts that, while the information in the proposed reporting requirements will be needed for an active trading market and informed regulatory decisions, there are more appropriate, less detailed means of acquiring the information, e.g., through market-driven mechanisms such as brokers, newsletters or futures contracts on the Chicago Board of Trade. Virginia Power, Consumers Power and Pennsylvania Power & Light argue that information on allowance trades should be reported in aggregate, not by the specifics of each trade. These commenters and others express concern generally about the scope of information sought on allowances, and suggest conforming this reporting requirement to the requirements for nuclear fuel materials, materials and supplies or the monthly cost and quality of fuels.

<sup>87</sup> Webster's New World Dictionary of the American Language, 2d college ed. [New York: Simon and Schuster, 1982] at 1132. This is the meaning referred to in FASB Concepts Statement No. 6, *Elements of Financial Statements*, ¶ 25 n.18 and ¶ 35 n.21, (1985) (superseding FASB Concepts Statement No. 3), in *Accounting Statements—Original Pronouncements* (1991).

<sup>88</sup> AEP, Centerior, Consumers Power, Detroit Edison, Gulf States, Iowa-Illinois, PJM, PSE&G, Virginia Power and Wisconsin Electric.

### Technical Changes

Consumers Power asserts that Instruction No. 2 for page 228, Allowances, requiring that all allowance acquisitions be recorded at historical cost, is not consistent with proposed General Instruction 21, prescribing the use of fair value for the acquisition of allowances eligible for use in different years. Consumers Power argues that Instruction No. 2 should be expanded to address reporting for allowances usable in future years.

Consumers Power also argues that lines 31-36 and 42-46 of page 228, requiring data on Net Sales Proceeds and Gains or Losses by the period in which the allowances are first eligible for use, are not need for analyzing the activity of the allowances account and should be eliminated.

Consumers Power asserts that lines 37-40 of page 228, requiring data on allowances withheld, do not provide for any reduction in withheld allowances sold at EPA's direct sales or auctions. Consumers Power recommends the addition of a line for sales to reduce the Allowances Withheld amount to what is available to the utility.

The Wisconsin Municipal Group argues that page 228 should be amended to show the calculation of the weighted average cost of allowances.

Pennsylvania Power & Light seeks clarification of a possible inconsistency on the Statement of Cash Flows, pages 120 and 121 of FERC Form 1.

Pennsylvania Power & Light notes the proposed identification, in the section for investment activities, of the net increase (decrease) in allowances and assumes that this item includes only allowances held for speculation.

Pennsylvania Power & Light argues that a similar line should be included in the section on operating activities for allowances held for the utility's use.

AEP proposes raising the level below which a utility, for reporting purposes, may aggregate minor items in Account 182.3, Other Regulatory Assets, and Account 244, Other Regulatory Liabilities. The Commission proposed in the NOPR to allow grouping of items equal to less than five percent of the year-end balance or amounts less than \$50,000, whichever is less. AEP proposes changing \$50,000 to \$100,000, in order to avoid excessive reporting detail on immaterial amounts.

Pennsylvania Power & Light asserts that page 232, Other Regulatory Assets, and page 278, Other Regulatory Liabilities, should include an additional column for Balances at Beginning of Year, to match similar presentations elsewhere in FERC Form 1.

Washington Gas recommends expanding the proposed instructions to Form Nos. 2 and 2-A, to clarify that the amortization period for regulatory assets and liabilities need not be disclosed when regulators have not issued a final order establishing the appropriate rate recovery period.

Baltimore Gas & Electric and Florida Power & Light argue that the proposed reporting of regulatory assets and liabilities in FERC Forms 1 and 2 is inconsistent with the proposed accounting for those assets and liabilities. Baltimore Gas & Electric asserts that, under the proposed accounting, regulatory assets and liabilities may be created and extinguished only by entries to new accounts 407.3 and 407.4. Baltimore Gas & Electric asserts, however, that the proposed pages in Forms 1 and 2 would require disclosure of the offsetting income statement accounts used to set up and amortize regulatory assets and liabilities.

The Michigan Staff recommends revising the proposed instructions for Account 244, Other Regulatory Liabilities, in Part 201 to delete the reference to the disposition of allowances, unless it is anticipated that natural gas companies will own allowances as part of their regulated business. The Michigan Staff asserts that if a natural gas company did acquire allowances, consideration should be given to recording their cost in Account 121, Non-utility Property.

*Commission Response.* Upon considering the comments on allowance trading information generally, the Commission has decided to adhere, for now, to the approach proposed in the NOPR. Requiring annual reporting of allowance trading information strikes a balance between those commenters seeking confidentiality for trading data and those seeking more extensive disclosure than was proposed in the NOPR.

The Commission does not agree that the reporting requirements will create a competitive burden for utilities required to file data on revenues from allowance sales and costs of allowance purchases. The Commission is not persuaded that such utilities will be at a competitive disadvantage. Also, such price data is needed by regulators in setting rates and in determining the fair value of allowances and may be helpful to market participants considering allowance trading.

On the other hand, the Commission does not yet perceive a definite need to increase the reporting requirements for allowance trading. While more frequent reporting of allowance trading, e.g.,

monthly reporting, might prove useful to market participants, other sources may develop to meet any such need and, if so, would obviate the need for more frequent reporting to this Commission. For example, the data and information available from EPA auctions, the Chicago Board of Trade and other sources might exceed the information the Commission is requiring.

For this reason, the Commission will adopt the proposed reporting requirements on allowance trading. In doing so, however, the Commission acknowledges that the issue of the quality and timeliness of data available to regulators and market participants may need to be revisited, depending on how other sources of market information develop.

The Commission has carefully reviewed the other comments on the Annual Report forms and believe that only minor changes are required in the NOPR's proposals. The Commission will: (1) Add a line in the Net Cash Flow from Operating Activities section of the Statement of Cash Flows (page 120) to show the net increase or decrease in allowance inventories; and (2) clarify that the line for the net increase or decrease in allowances shown in the Net Cash Flows from Investment Activities section (page 121) applies only to allowances held for speculation. Also, on pages 228 and 229, the Commission will insert the lines for net sales before the line that shows end-of-year balances. Finally, the Commission will make other minor changes to conform the reporting forms to the accounting changes adopted above.<sup>89</sup>

### IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)<sup>90</sup> requires rulemakings either to contain a description and analysis of the effect the proposed rule will have on small entities or to certify that the rule will not have a substantial economic effect on a substantial number of small entities. Because most public utilities and gas companies do not fall within the RFA's definition of small entities,<sup>91</sup> the Commission certifies that this rule will not have a "significant economic

<sup>89</sup> As noted above, Appendix A consists of facsimiles of the revised forms, incorporating the final rule's changes. Appendix A is not being published in the *Federal Register*, but is available from the Commission's Public Reference Room.

<sup>90</sup> 5 U.S.C. 601-12 (1988).

<sup>91</sup> 5 U.S.C. 601(3) (1988) (citing section 3 of the Small Business Act, 15 U.S.C. 632 (1988). Section 3 of the Small Business Act defines a "small-business concern" as a business which is independently owned and operated and which is not dominant in its field of operation. 15 U.S.C. 632(a) (1988).

impact on a substantial number of small entities."

#### V. Environmental Statement

Commission regulations require that an environmental assessment or an environmental impact statement be prepared for any Commission action that may have a significant effect on the human environment.<sup>92</sup> The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment.<sup>93</sup> No environmental consideration is necessary for the promulgation of a rule that is clarifying, corrective or procedural or that does not substantively change the effect of legislation or regulations being amended.<sup>94</sup> Because this final rule is merely procedural, no environmental consideration is necessary.

#### VI. Information Collection Statement

The regulations of the Office of Management and Budget (OMB)<sup>95</sup> require that OMB approve certain information and recordkeeping requirements imposed by an agency. The information collection requirements in this final rule are contained in FERC Form No. 1, "Annual Report of Major public utilities, licensees and others" (OMB approval No. 1902-0021); FERC Form No. 1-F, "Annual Report of Nonmajor public utilities and licensees" (OMB approval No. 1902-0029); FERC Form No. 2, "Annual Report of Major natural gas companies" (OMB approval No. 1902-0028); and FERC Form No. 2-A, "Annual Report of Nonmajor natural gas companies" (OMB approval No. 1902-0030).

The Commission uses the data collected in these annual reports to carry out its audit program and continuous review of the financial conditions of regulated companies. Public utilities and gas companies are required to file these forms annually.

The Commission believes that the final rule will facilitate the Congressional objective of encouraging public utilities to choose the least-cost method of complying with the CAAA's more stringent emission limitation requirements. The dissemination of this information will assist all parties in assessing the costs of implementing alternative compliance strategies. By requiring uniform and consistent accounting and reporting, the final rule will make available to regulatory

agencies, public utilities, and the general public, comparable financial and statistical information about allowances established under the CAAA. This information should prove useful in evaluating the cost of compliance with the CAAA, thereby aiding regulatory agencies in their ratemaking activities and promoting an efficient market for allowances, without significantly increasing the reporting burden for public utilities.

The Commission also believes that the addition of new accounting and reporting requirements for regulatory assets and liabilities will provide useful information without significantly increasing the reporting burden for public utilities and gas companies. Regulatory assets and liabilities exist only because of the economic effects of regulation. Regulated entities and the general public have a need for information on the nature of such items and will benefit from uniform and consistent accounting and reporting of such items.

Kansas City Power & Light disagrees with the NOPR's statement that the proposed two-step accounting for regulatory assets and liabilities would provide useful information without significantly increasing the reporting burden. Kansas City Power & Light argues that the accounting proposed in the NOPR would require it to hire an additional person to do recordkeeping but that the proposed level of detail would not be useful to the utility or its stockholders.

In response, the Commission notes that the final rule does not adopt the NOPR's two-step process. Instead, the accounting for regulatory assets and liabilities adopted in the final rule is simpler and more consistent with past practices than the accounting proposed in the NOPR. Compared to the NOPR, the final rule will reduce the burden of accounting for and reporting regulatory assets and liabilities and should satisfy Kansas City Power & Light's concern. With these changes, the Commission believes even more strongly that the final rule's treatment of regulatory assets and liabilities is justified by the gain in useful information for regulators and the public.

The final rule has been submitted to OMB for its review. Interested persons may obtain information on the information collection requirements of the final rule by contacting the Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, DC 20426 (Attention: Michael Miller, Information Policy and Standards Branch, (202) 208-1415). Comments on the requirements of the final rule can be

sent to the Office of Information and Regulatory Affairs of OMB (Attention: Desk Officer for Federal Energy Regulatory Commission).

#### VII. Effective Date

This rule is effective January 1, 1993. The information collection provisions, however, will not become effective until approved by OMB.

#### List of Subjects

##### 18 CFR Part 101

Electric power, Electric utilities, Reporting and recordkeeping requirements, Uniform system of accounts.

##### 18 CFR Part 201

Natural gas, Reporting and recordkeeping requirements, Uniform system of accounts.

In consideration of the foregoing, the Commission amends parts 101 and 201, chapter I, title 18, Code of Federal Regulations, as set forth below.

By the Commission.

Lois D. Cashell,  
Secretary.

#### PART 101—UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR PUBLIC UTILITIES AND LICENSEES SUBJECT TO THE PROVISIONS OF THE FEDERAL POWER ACT

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

Authority: 16 U.S.C. 791a-825r, 2601-2645; 31 U.S.C. 9701; 42 U.S.C. 7101-7352, 7651-76510.

2. In part 101, Definitions 30 through 38 are redesignated as 31 through 39 and new Definition 30 is added to read as follows:

#### Definitions

\* \* \* \* \*

30. *Regulatory Assets and Liabilities* are assets and liabilities that result from rate actions of regulatory agencies. Regulatory assets and liabilities arise from specific revenues, expenses, gains, or losses that would have been included in net income determination in one period under the general requirements of the Uniform System of Accounts but for it being probable:

A. that such items will be included in a different period(s) for purposes of developing the rates the utility is authorized to charge for its utility services; or

B. in the case of regulatory liabilities, that refunds to customers, not provided for in other accounts, will be required.

\* \* \* \* \*

<sup>92</sup> Regulations Implementing National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Statutes & Regulations ¶30,783 (1987).

<sup>93</sup> 18 CFR 380.4.

<sup>94</sup> 18 CFR 380.4(a)(2)(ii).

<sup>95</sup> 5 CFR 1320.12.

3. In part 101, General Instructions, paragraph 21 is added to read as follows:

\* \* \* \* \*

### General Instructions

\* \* \* \* \*

**21. Allowances.**

A. Title IV of the Clean Air Act Amendments of 1990, Public Law No. 101-549, 104 Stat. 2399, 2584, provides for the issuance of allowances as a means to limit the emissions of certain airborne pollutants by various entities, including public utilities. Public utilities owning allowances, other than those acquired for speculative purposes, shall account for such allowances at cost in Account 158.1, Allowance Inventory, or Account 158.2, Allowances Withheld, as appropriate. Allowances acquired for speculative purposes and identified as such in contemporaneous records at the time of purchase shall be accounted for in Account 124, Other Investments.

B. When purchased allowances become eligible for use in different years, and the allocation of the purchase cost cannot be determined by fair value, the purchase cost allocated to allowances of each vintage shall be determined through use of a present-value based measurement. The interest rate used in the present-value measurement shall be the utility's incremental borrowing rate, in the month in which the allowances are acquired, for a loan with a term similar to the period that it will hold the allowances and in an amount equal to the purchase price.

C. The underlying records supporting Account 158.1 and Account 158.2 shall be maintained in sufficient detail so as to provide the number of allowances and the related cost by vintage year.

D. Issuances from inventory from inventory included in Account 158.1 and Account 158.2 shall be accounted for on a vintage basis using a monthly weighted-average method of cost determination. The cost of eligible allowances not used in the current year shall be transferred to the vintage for the immediately following year.

E. Account 158.1 shall be credited and Account 509, Allowances, debited so that the cost of the allowances to be remitted for the year is charged to expense monthly based on each month's emissions. This may, in certain circumstances, require allocation of the cost of an allowance between months on a fractional basis.

F. In any period in which actual emissions exceed the amount allowable based on eligible allowances owned, the utility shall estimate the cost to acquire

the additional allowances needed and charge Account 158.1 with the estimated cost. This estimated cost of future allowance acquisitions shall be credited to Account 158.1 and charged to Account 509 in the same accounting period as the related charge to Account 158.1. Should the actual cost of these allowances differ from the estimated cost, the differences shall be recognized in the then-current period's inventory issuance cost.

G. Any penalties assessed by the Environmental Protection Agency for the emission of excess pollutants shall be charged to Account 426.3, Penalties.

H. Gains on dispositions of allowances, other than allowances held for speculative purposes, shall be accounted for as follows. First, if there is uncertainty as to the regulatory treatment, the gain shall be deferred in Account 254, Other Regulatory Liabilities, pending resolution of the uncertainty. Second, if there is certainty as to the existence of a regulatory liability, the gain will be credited to Account 254, with subsequent recognition in income when reductions in charges to customers occur or the liability is otherwise satisfied. Third, all other gains will be credited to Account 411.8, Gains from Disposition of Allowances. Losses on disposition of allowances, other than allowances held for speculative purposes, shall be accounted for as follows. Losses that qualify as regulatory assets shall be charged directly to Account 182.3, Other Regulatory Assets. All other losses shall be charged to Account 411.9, Losses from Disposition of Allowances. (See Definition No. 30.) Gains or losses on disposition of allowances held for speculative purposes shall be recognized in Account 421, Miscellaneous Nonoperating Income, or Account 426.5, Other Deductions, as appropriate.

I. The costs and benefits of exchange-traded allowance futures contracts used to protect the utility from the risk of unfavorable price changes ("hedging transactions") shall be deferred in Account 186, Miscellaneous Deferred Debits, or Account 253, Other Deferred Credits, as appropriate. Such deferred amounts shall be included in Account 158.1, Allowance Inventory, in the month in which the related allowances are acquired, sold or otherwise disposed of. Where the costs or benefits of hedging transactions are not identifiable with specific allowances, the amounts shall be included in Account 158.1 when the futures contract is closed. The costs and benefits of exchange-traded allowance futures contracts entered into as a speculating activity shall be

charged or credited to Account 421, Miscellaneous Nonoperating Income, or Account 426.5, Other Deductions, as appropriate.

4. In part 101, Balance Sheet Accounts, Accounts 158.1, 158.2, 182.3 and 254 are added to read as follows:

**Balance Sheet Accounts**

\* \* \* \* \*

**158.1 Allowance Inventory.**

A. This account shall include the cost of allowances owned by the utility and not withheld by the Environmental Protection Agency. See General Instruction No. 21 and Account 158.2, Allowances Withheld.

B. This account shall be credited and Account 509, Allowances, shall be debited concurrent with the monthly emission of sulfur dioxide.

C. Separate subdivisions of this account shall be maintained so as to separately account for those allowances usable in the current year and in each subsequent year. The underlying records of these subdivisions shall be maintained in sufficient detail so as to identify each allowance included; the origin of each allowance; and the acquisition cost, if any, of the allowance.

**158.2 Allowances withheld.**

A. This account shall include the cost of allowances owned by the utility but withheld by the Environmental Protection Agency. (See General Instruction No. 21.)

B. The inventory cost of the allowances released by the Environmental Protection Agency for use by the utility shall be transferred to Account 158.1, Allowance Inventory.

C. The underlying records of this account shall be maintained in sufficient detail so as to identify each allowance included; the origin of each allowance; and the acquisition cost, if any, of the allowances.

\* \* \* \* \*

**182.3 Other regulatory assets.**

A. This account shall include the amounts of regulatory-created assets, not includable in other accounts, resulting from the ratemaking actions of regulatory agencies. (See Definition No. 30.)

B. The amounts included in this account are to be established by those charges which would have been included in net income determinations in the current period under the general requirements of the Uniform System of Accounts but for it being probable that such items will be included in a different period(s) for purposes of

developing the rates that the utility is authorized to charge for its utility services. When specific identification of the particular source of a regulatory asset cannot be made, such as in plant phase-ins, rate moderation plans, or rate levelization plans, Account 407.4, Regulatory Credits shall be credited. The amounts recorded in this account are generally to be charged, concurrently with the recovery of the amounts in rates, to the same account that would have been charged if included in income when incurred, except all regulatory assets established through the use of Account 407.4 shall be charged to Account 407.3, Regulatory Debits, concurrent with the recovery of the amounts in rates.

C. If rate recovery of all or part of an amount included in this account is disallowed, the disallowed amount shall be charged to Account 426.5, Other Deductions, or Account 435, Extraordinary Deductions, in the year of the disallowance.

D. The records supporting the entries to this account shall be kept so that the utility can furnish full information as to the nature and amount of each regulatory asset included in this account, including justification for inclusion of such amounts in this account.

#### 254 Other regulatory liabilities.

A. This account shall include the amounts of regulatory liabilities, not includable in other accounts, imposed on the utility by the ratemaking actions of regulatory agencies. (See Definition No. 30.)

B. The amounts included in this account are to be established by those credits which would have been included in net income determinations in the current period under the general requirements of the Uniform System of Accounts but for it being probable that: 1) such items will be included in a different period(s) for purposes of developing the rates that the utility is authorized to charge for its utility services; or 2) refunds to customers, not provided for in other accounts, will be required. When specific identification of the particular source of the regulatory liability cannot be made or when the liability arises from revenues collected pursuant to tariffs on file at a regulatory agency, Account 407.3, Regulatory Debits, shall be debited. The amounts recorded in this account generally are to be credited to the same account that would have been credited if included in income when earned except: 1) all regulatory liabilities established through the use of Account 407.3 shall be

credited to Account 407.4, Regulatory Credits; and 2) in the case of refunds, a cash account or other appropriate account should be credited when the obligation is satisfied.

C. If it is later determined that the amounts recorded in this account will not be returned to customers through rates or refunds, such amounts shall be credited to Account 421, Miscellaneous Nonoperating Income, or Account 434, Extraordinary Income, as appropriate, in the year such determination is made.

D. The records supporting the entries to this account shall be so kept that the utility can furnish full information as to the nature and amount of each regulatory liability included in this account, including justification for inclusion of such amounts in this account.

5. In Part 101, Income Accounts, Accounts 407.3, 407.4, 411.8 and 411.9 are added to read as follows:

#### Income Accounts

#### 407.3 Regulatory debits.

This account shall be debited, when appropriate, with the amounts credited to Account 254, Other Regulatory Liabilities, to record regulatory liabilities imposed on the utility by the ratemaking actions of regulatory agencies. This account shall also be debited, when appropriate, with the amounts credited to Account 182.3, Other Regulatory Assets, concurrent with the recovery of such amounts in rates.

#### 407.4 Regulatory credits.

This account shall be credited, when appropriate, with the amounts debited to Account 182.3, Other Regulatory Assets, to establish regulatory assets. This account shall also be credited, when appropriate, with the amounts debited to Account 254, Other Regulatory Liabilities, concurrent with the return of such amounts to customers through rates.

#### 411.8 Gains from disposition of allowances.

This account shall be credited with the gain on the sale, exchange, or other disposition of allowances in accordance with paragraph (H) of General Instruction No. 21. Income taxes relating to gains recorded in this account shall be recorded in Account 409.1, Income Taxes, Utility Operating Income.

#### 411.9 Losses from disposition of allowances.

This account shall be debited with the loss on the sale, exchange, or other disposition of allowances in accordance with paragraph (H) of General Instruction No. 21. Income taxes relating to losses recorded in this account shall be recorded in Account 409.1, Income Taxes, Utility Operating Income.

6. In part 101, Operation and Maintenance Expense Accounts, Account 509 is added to read as follows:

#### Operation and Maintenance Expense Accounts

#### 509 Allowances.

This account shall include the cost of allowances expensed concurrent with the monthly emission of sulfur dioxide. (See General Instruction No. 21.)

### PART 201—UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR NATURAL GAS COMPANIES SUBJECT TO THE PROVISIONS OF THE NATURAL GAS ACT

7. The authority citation for Part 201 is revised to read as follows:

Authority: 15 U.S.C. 717-717w, 3301-3432; 42 U.S.C. 7101-7352, 7651-7651o.

8. In part 201, Definitions 31 through 39 are redesignated as 32 through 40 and new Definition 31 is added to read as follows:

#### Definitions

31. *Regulatory Assets and Liabilities* are assets and liabilities that result from rate actions of regulatory agencies. Regulatory assets and liabilities arise from specific revenues, expenses, gains, or losses that would have been included in net income determinations in one period under the general requirements of the Uniform System of Accounts but for it being probable: 1) that such items will be included in a different period(s) for purposes of developing the rates the utility is authorized to charge for its utility services; or 2) in the case of regulatory liabilities, that refunds to customers, not provided for in other accounts, will be required.

9. In part 201, Balance Sheet Accounts, Accounts 182.3 and 254 are added to read as follows:

#### Balance Sheet Accounts

**182.3 Other regulatory assets.**

A. This account shall include the amounts of regulatory-created assets, not includable in other accounts, resulting from the ratemaking actions of regulatory agencies. (See Definition No. 31.)

B. The amounts included in this account are to be established by those charges which would have been included in net income determinations in the current period under the general requirements of the Uniform System of Accounts but for it being probable that such items will be included in a different period(s) for purposes of developing the rates that the utility is authorized to charge for its utility services. Where specific identification of the particular source of the regulatory asset cannot be made, such as in plant phase-ins, rate moderation plans, or rate levelization plans, Account 407.4, Regulatory Credits, shall be credited. The amounts recorded in this account are generally to be charged, concurrently with the recovery of the amounts in rates, to the same account that would have been charged if included in income when incurred, except all regulatory assets established through the use of Account 407.4 shall be charged to Account 407.3, Regulatory Debits, concurrent with the recovery of the amounts in rates.

C. If rate recovery of all or part of an amount included in this account is disallowed, the disallowed amount shall be charged to Account 426.5, Other Deductions, or Account 435, Extraordinary Deductions, in the year of the disallowance.

D. The records supporting the entries to this account shall be kept so that the utility can furnish full information as to the nature and amount of each regulatory asset included in this account, including justification for inclusion of such amounts in this account.

\* \* \* \* \*

authorized to charge for its utility services; or (2) refunds to customers, not provided for in other accounts, will be required. When specific identification of the particular source of the regulatory liability cannot be made or when the liability arises from revenues collected pursuant to tariffs on file at a regulatory agency, Account 407.3, Regulatory Debits, shall be debited. The amounts recorded in this account generally are to be credited to the same account that would have been credited if included in income when earned except: (1) All regulatory liabilities established through the use of Account 407.3 shall be credited to Account 407.4, Regulatory Credits; and (2) in the case of refunds, a cash account or other appropriate account should be credited when the obligation is satisfied.

C. If it is later determined that the amounts recorded in this account will not be returned to customers through rates or refunds, such amounts shall be credited to Account 421, Miscellaneous Nonoperating Income, or Account 434, Extraordinary Income, as appropriate, in the year such determination is made.

D. The records supporting the entries to this account shall be so kept that the utility can furnish full information as to the nature and amount of each regulatory liability included in this account, including justification for inclusion of such amounts in this account.

\* \* \* \* \*

10. In part 201, Income Accounts, Accounts 407.3 and 407.4 are added to read as follows:

**Income Accounts**

\* \* \* \* \*

**407.3 Regulatory debits.**

This account shall be debited, when appropriate, with the amounts credited to Account 254, Other Regulatory Liabilities, to record regulatory liabilities imposed on the utility by the ratemaking actions of regulatory agencies. This account shall also be debited, when appropriate, with the amounts credited to Account 182.3, Other Regulatory Assets, concurrent with the recovery of such amounts in rates.

**407.4 Regulatory credits.**

This account shall be credited, when appropriate, with the amounts debited to Account 182.3, Other Regulatory Assets, to establish regulatory assets. This account shall also be credited, when appropriate, with the amounts debited to Account 254, Other Regulatory Liabilities, concurrent with

the return of such amounts to customers through rates.

\* \* \* \* \*

[FR Doc. 93-7917 Filed 4-6-93 8:45 am]  
BILLING CODE 8717-01-M

**FEDERAL MEDIATION AND CONCILIATION SERVICE****29 CFR Part 1400****Repeal of Agency Promulgated Ethics Regulations**

**AGENCY:** Federal Mediation and Conciliation Service.

**ACTION:** Final rule.

**SUMMARY:** The Federal Mediation and Conciliation Service (FMCS) is repealing provisions of its regulations on the ethical conduct of employees. Most of the repealed provisions are superseded by Office of Government Ethics (OGE) rules establishing uniform standards of conduct and financial disclosure requirements for executive branch employees. FMCS, in accordance with OGE guidance, is not repealing provisions of the regulations concerning clearance to engage in certain outside activities.

**EFFECTIVE DATE:** April 7, 1993.

**FOR FURTHER INFORMATION CONTACT:** Eileen B. Hoffman, General Counsel, Federal Mediation and Conciliation Service, 2100 K Street, NW., Washington, DC 20427, 202-653-5305. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** In 1968, the Federal Mediation and Conciliation Service (FMCS) issued part 1400 of the regulations (29 CFR part 1400, 33 FR 5768), primarily pursuant to Executive Order 11222 (30 FR 6469) and regulations issued by the Civil Service Commission (5 CFR 735.104, 33 FR 12487). Executive Order 12674 (April 12, 1989), as modified by Executive Order 12731 (October 17, 1990), revoked Executive Order 11222 (section 501(a)) and directed the Office of Government Ethics (OGE) to "establish a single, comprehensive, and clear set of executive-branch standards of conduct that shall be objective, reasonable, and enforceable." (section 201).

OGE has now issued 5 CFR part 2635, Standards of Ethical Conduct for Employees of the Executive Branch (57 FR 35006, August 7, 1992). These standards of conduct, when they became effective on February 3, 1993, superseded agency regulations promulgated pursuant to 5 CFR part 735 and authorized agencies to issue (jointly with OGE) "[s]upplemental agency

**254 Other regulatory liabilities.**

A. This account shall include the amounts of regulatory liabilities, not includable in other accounts, imposed on the utility by the ratemaking actions of regulatory agencies. (See Definition No. 30.)

B. The amounts included in this account are to be established by those credits which would have been included in net income determinations in the current period under the general requirements of the Uniform System of Accounts but for it being probable that: (1) Such items will be included in a different period(s) for purposes of developing the rates that the utility is

regulations which the agency determines are necessary and appropriate, in view of its programs and operations, to fulfill the purposes" of part 2635 (§ 2635.105(a), 57 FR 35043). Part 2635 does not supersede and its requirements for supplemental agency regulations do not apply to regulations that an agency has authority, independent of Part 2635, to issue (§ 2635.105(c)(3), 57 FR 35044).

The FMCS is amending Part 1400 by repealing provisions of Subparts A through E that will be superseded when OGE's regulations take effect (February 3, 1993) (removal of §§ 1400.735-10, 11, 13-18, 30-35). The FMCS is considering regulations that will supplement subpart H of part 2635 (Outside Activities) (57 FR 35061-66) by requiring employees to obtain prior approval of certain outside activities. Hence, it is not removing § 1400.735-12 (Outside employment and activities) of the regulations. As permitted by § 2633.5.803 (Prior approval of outside employment and activities) (578 FR 35062), 29 CFR 1400.735-12 will remain in effect for one year after the effective date of OGE's final rule (February 3, 1993) or until the issuance of FMCS supplemental agency regulations, whichever occurs first. The FMCS is removing § 1400.735-13 (Financial interest) of the regulations. However the FMCS will be considering whether to issue supplemental agency regulations addressing the holding and acquiring of specific financial interests, as provided in paragraph (a) of § 2635.403 (Prohibited financial interests) of OGE's regulations (57 FR 35053). The FMCS will issue any supplemental regulations with OGE in a separate rulemaking.

In addition, although part 2635 does not supersede all provisions of subpart E (§§ 1400.735-50 to 1400.735-53) (Review of Statements, Disciplinary Action and Counselling Services) provision of the regulations, the FMCS is removing the entire section as unnecessary because the information and instructions contained therein regarding the ethics counseling procedures will be distributed to its employees pursuant to OGE's final rule establishing new subpart G of 5 CFR part 2638, Executive Agency Ethics Training Programs (57 FR 11886, April 7, 1992). Subpart E will therefore be superfluous.

OGE also has issued 5 CFR part 2634, Financial Disclosure, Qualified Trusts, and Certificates of Divestiture for Executive Branch Employees (57 FR 11800, April 7, 1992). Effective October 5, 1992, these regulations superseded the current executive branch

confidential reporting regulation at 5 CFR part 735, subpart D and § 735.106 and agencies implementing regulations. Therefore, the FMCS is further amending subpart D by removing §§ 1400.735-40 through 1400.735-42 (Statement of Employment and Financial Interests) of the regulations.

The FMCS has concluded that with the removal of the provisions discussed above (purpose and scope), and §§ 1400.735-1 and 1400.735-2 (Definitions) of the regulations no longer are necessary. Therefore, it also is removing these sections.

Sections 1400.735-17 (Gambling, betting and lotteries) and 1400.735-18 (General conduct prejudicial to the Government) of the regulations are not superseded by part 2635 or any other OGE regulation. However, pursuant to Executive Order 12674, OPM has issued a final rule to complement part 2635 by establishing executive branch-wide standards in these areas that will be enforceable by the employing agency (57 FR 57433, November 30 1992, to be codified at 5 CFR 735.201, 735.203). Accordingly, the FMCS is removing §§ 1400.735-17 and 1400.735-18.

This rule relates to agency management and personnel (5 U.S.C. 553(a)(2)). As such, the notice of proposed rulemaking and delayed effective date requirements of the Administrative Procedure Act do not apply (5 U.S.C. 553 (b) and (d)).

#### List of Subjects in 29 CFR Part 1400

Responsibilities and discipline, Standards of conduct.

Dated: March 18, 1993.

Bernard E. DeLury,  
Director, Federal Mediation and Conciliation Service.

Accordingly, part 1400 is amended as follows:

#### PART 1400—[AMENDED]

1. The authority citation for part 1400 is revised to read as follows:

Authority: E.O. 11222, 30 FR 6469, 3 CFR, 1965 Supp.; 5 CFR 735.104.

#### §§ 1400.735-1, 1400.735-2 [Removed]

2. Subpart A of part 1400 is amended by removing § 1400.735-1 (Introduction) and § 1400.735-2 (Definitions).

#### §§ 1400.735-10, 1400.735-11, 1400.735-13—1400.735-18 [Removed]

3. Subpart B of part 1400 is amended by removing §§ 1400.735-10 through 1400.735-11, 1400.735-13 through 1400.735-18.

#### §§ 1400.735-30—1400.735-35 [Removed]

4. Subpart C consisting of §§ 1400.735-30 through 1400.735-35 is removed.

#### §§ 1400.735-40—1400.735-42 [Removed]

5. Subpart D consisting of §§ 1400.735-40 through 1400.735-42 is removed.

#### §§ 1400.735-50—1400.735-53 [Removed]

6. Subpart E consisting of §§ 1400.735-50 through 1400.735-53 is removed.

[FR Doc. 93-8063 Filed 4-6-93; 8:45 am]

BILLING CODE 6732-01-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 100

[CGD7 93-16]

#### Special Local Regulations: Lake Worth, ICW, Mile 1022

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

**SUMMARY:** Special local regulations are being adopted for the Lake Worth Sunfest '93. This event will be held on April 30 through May 2, 1993, from 11 a.m. e.d.t. (Eastern Daylight Time) to 10 p.m. e.d.t. on April 30, and from 9 a.m. e.d.t. to 8 p.m. e.d.t. on May 1 and 2. The regulations are needed to provide for the safety of life on navigable waters during the event.

**EFFECTIVE DATES:** These regulations become effective on April 30, 1993 and terminate on May 2, 1993, from 11 a.m. e.d.t. to 10 p.m. e.d.t. on April 30, and from 9 a.m. e.d.t. to 8 p.m. e.d.t. on May 1 and 2.

**FOR FURTHER INFORMATION CONTACT:** LTJG M. Rudnigen, Coast Guard Group Miami, (305) 535-4536.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold the event was not received until February 10, 1993, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

#### Drafting Information

The drafters of this regulation are LT J. Losego, Project Attorney, Seventh

Coast Guard District Legal Office, and LTJG M. Rudningen, Project Officer, Coast Guard Group Miami.

#### Discussion of Regulations

There will be approximately 45 racers in race boats, ski boats, jet skis, and canoes, ranging in size from 12 to 17 feet, participating in the Lake Worth Sunfest '93. High-speed race boats traveling up to 120 mph, and canoes, jet skis, and water skiers, require calm waters to perform and create an extra hazard in the navigable waters. As a result, there will be a no wake zone in the Lake Worth Intracoastal Waterway between the Royal Palm Bridge and the Flagler Memorial Bridge where the event will take place.

#### 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 rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

#### Environmental Assessment

The Coast Guard has considered the environmental impact of this proposal consistent with section 2.B.2.08 of Commandant Instruction M16475.1B, and this proposal has been determined to be categorically excluded. Specifically, the Coast Guard has consulted with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service regarding the environmental impact of this event, and it was determined that the event does not jeopardize the continued existence of protected species.

#### List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

#### Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35-T0716 is added to read as follows:

#### § 100.35-T0716: Lake Worth Sunfest '93.

(a) **Regulated area:** A regulated area is established in the Lake Worth Intracoastal Waterway (ICW), between the Flagler Memorial Bridge and the Royal Palm Bridge, with the northern boundary formed by latitude 26°42'48", and the southern boundary formed by latitude 26°42'19". The eastern and

western boundaries of the regulated area are formed by the shoreline of the ICW.

#### (b) **Special local regulations:**

(1) The regulated area is a no wake zone. All transiting vessels shall operate at a speed so as to not cause a wake or at five (5) knots, whichever is slower.

(2) All vessels shall immediately follow any specific instructions given by event patrol craft and exercise extreme caution while operating in or near the regulated area. A succession of not fewer than 5 short whistle or horn blasts from a patrol vessel will be the signal for any non-participating vessel to stop immediately. The display of an orange distress smoke signal from a patrol vessel will be the signal for any and all vessels to stop immediately.

(3) After the termination of the Sunfest '93 event on each respective day, all vessels may resume normal operations.

(c) **Effective dates:** These regulations become effective on April 30, 1993 and terminate on May 2, 1993, from 11 a.m. e.d.t. to 10 p.m. e.d.t. on April 30, and from 9 a.m. e.d.t. to 8 p.m. e.d.t. on May 1 and 2. These times are effective, unless the regulated area is sooner terminated by the Patrol Commander.

Dated: March 25, 1993.

W.P. Leahy,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 93-8110 Filed 4-6-93; 8:45 am]

BILLING CODE 4910-14-M

#### 33 CFR Part 100

[CGDT 93-18]

#### Special Local Regulations: City of Miami Beach, FL

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** Special local regulations are being adopted for the Miami Beach Super Boat Race. This event will be held on May 2, 1993, from 12 noon e.d.t. (Eastern Daylight Time) until 3 p.m. e.d.t. The regulations are needed to provide for the safety of life on navigable waters during the event.

**EFFECTIVE DATES:** These regulations become effective on May 2, 1993, from 12 noon e.d.t. until 3 p.m. e.d.t.

**FOR FURTHER INFORMATION CONTACT:** LTJG M.W. Rudingen, Coast Guard Group Miami, at (305) 535-4536.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations, and good cause exists for making them effective in less than 30 days from the

date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold the event was not received until January 18, 1993, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

#### Drafting Information

The drafters of this regulation are LT Jacqueline Losego, Project Attorney, Seventh Coast Guard District Legal Office, and LTJG Mark W. Rudingen, Project Officer, Coast Guard Group Miami.

#### Discussion of Regulations

Super Boat Racing, Inc., is sponsoring a high speed power boat race with approximately thirty-five (35) race boats ranging in length from 24 to 50 feet. There will be approximately two-hundred (200) spectator craft. The race will be run in the Atlantic Ocean just off Miami Beach. The race course is an elongated oval of 14.7 miles with four corner check points and will be three-hundred (300) feet wide.

#### Federalism

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

#### Environmental Assessment

The Coast Guard has considered the environmental impact of this proposal consistent with section 2.B.2.08 of Commandant Instruction M16475.1B, and this proposal has been determined to be categorically excluded. Specifically, the Coast Guard has consulted with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service regarding the environmental impact of this event, and it was determined that the event does not jeopardize the continued existence of protected species.

#### List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

#### Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35-T0718 is added to read as follows:

**\$ 100.35-0718 City of Miami Beach, FL**

(a) **Regulated area:** A regulated area is established by a line that connects four corner check points and the start/finish line of the race course: check point #1, position 25°52'45" N, 80°06'29" W; check point #2, position 25°52'45" N, 80°06'45" W; check point #3, position 25°46'30" N, 80°07'30" W; check point #4, position 25°46'30" N, 80°07'00" W; and start/finish, position 25°47'15" N, 80°07'10" W. The regulated area also extends 200 feet outside the race course, includes the center of the race course, and includes the area between the shoreline and the race course.

**(b) Special local regulations:**

(1) Entry into the regulated area is prohibited to nonparticipating vessels, unless authorized by the Patrol Commander. At the completion of the scheduled races and departure of participants from the regulated area, traffic may resume normal operations.

(2) A succession of not fewer than 5 short whistle or horn blasts from a patrol vessel will be the signal for any nonparticipating vessel to stop immediately. The display of an orange distress smoke signal from a patrol vessel will be the signal for any and all vessels to stop immediately.

(c) **Effective dates:** These regulations become effective on May 2, 1993 from 12 noon e.d.t. until 3 p.m. e.d.t.

Dated: March 25, 1993.

**W.P. Leahy,**

*Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.*

[FRC Doc. 93-8109 Filed 4-6-93; 8:45 am]

BILLING CODE 4910-14-W

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**ENVIRONMENTAL PROTECTION AGENCY**
**40 CFR Part 52**

[MD-8-1-5429; FRL-4604-9]

**Approval and Promulgation of Air Quality Implementation Plans; Maryland; Revisions to the SIP Provisions for Carbon Monoxide**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maryland. This revision amends the Code of Maryland Air Regulations (COMAR) 10.18.03 to conform with the EPA ambient air quality standard set forth in 40 CFR 50.8 regarding carbon monoxide, and COMAR 10.18.06 to exempt stationary sources from the

requirement to incinerate carbon monoxide under certain conditions. The intended effect of this action is to approve the Maryland carbon monoxide regulations. This action is being taken in accordance with section 110 of the Clean Air Act (CAA).

**EFFECTIVE DATE:** This action will become effective June 7, 1993 unless notice is received on or before May 7, 1993, that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the *Federal Register*.

**ADDRESSES:** Comments may be mailed to Thomas J. Maslany, Director, Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107. 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; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

**FOR FURTHER INFORMATION CONTACT:**  
Kelly Scheckler, (215) 597-0545.

**SUPPLEMENTARY INFORMATION:** On December 15, 1987, the State of Maryland submitted a formal revision to its State Implementation Plan (SIP). This SIP revision request consisted of amendments to COMAR 10.18.01, General Provision, COMAR 10.18.02, Permits, Approval and Registration, COMAR 10.18.03, State Adopted National Ambient Air Quality Standards and Guidelines, COMAR 10.18.06, General Emission Standards, Prohibitions, and Restrictions, and COMAR 10.18.10, Control of Iron and Steel Production Installations of the SIP. This rulemaking notice deals only with the revisions to COMAR 10.18.03.04 and COMAR 10.18.06.04 which include SIP provisions for the control of carbon monoxide.

**Summary of the SIP Revision**

The language of COMAR 10.18.03.04 has been modified to restate the ambient air quality standard for carbon monoxide as nine parts per million (ppm) maximum for an eight hour concentration, or 35 ppm maximum for a one-hour concentration. This revision to the language of COMAR 10.18.03.04 makes it consistent with the federal language set forth at 40 CFR 50.8. In addition, Maryland revised COMAR

10.18.03.04 by repealing the secondary standard for carbon monoxide to conform with the federal repeal of this standard.

Revisions to COMAR 10.18.06.04 provide Maryland the regulatory means to exempt stationary sources from the SIP requirement to incinerate carbon monoxide emissions if those emissions are not combustible and ambient air quality standards will not be violated. To be exempted from the requirements of COMAR 10.18.06.04, a source must show by an acceptable modeling demonstration that there will be no interference with the attainment or maintenance of ambient air quality standards for carbon monoxide. In addition, the source must demonstrate that the gas mixture containing carbon monoxide will not support combustion. EPA has determined that these provisions for exempting sources from COMAR 10.18.06.04 will not conflict with nor exempt any sources from applicable New Source Performance Standards (NSPS), Lowest Available Emission Rate (LAER), and Best Available Control Technology (BACT) requirements.

EPA approval of the revision to COMAR 10.18.06.04 does not constitute pre-approval of any specific exemptions granted under this provision. Therefore, in order for any exemption granted by Maryland to be approved by EPA, it must be submitted and approved to EPA as a SIP revision. Until and unless EPA approves such an exemption as a SIP revision, the source remains subject to the federally enforceable requirements of COMAR 10.18.06.04.q

EPA is approving this SIP revision without prior proposal because the Agency views these as noncontroversial amendments and anticipates no adverse comments. This action will be effective 60 days from the date of this *Federal Register* notice 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 simultaneously 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 on June 7, 1993.

**Final Action**

EPA is approving amendments to the Maryland Air Quality Regulations, COMAR 10.18.03, State Adopted National Ambient Air Quality Standards and Guidelines, carbon monoxide and

COMAR 10.18.06.04, General Emission Standards, Prohibitions and Restrictions, carbon monoxide in areas III, and IV. The Agency has reviewed this request for revision of the federally approved SIP 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 SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

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 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, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a flexibility analysis would constitute federal inquiry into the economic reasonableness of State action. The CAA forbids EPA to base its actions concerning SIPs on such grounds.

*Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

This action to approve revisions to COMAR 10.18.03.04 and COMAR 10.18.06.04 of the Maryland SIP 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 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 must be filed in the United States Court of Appeals for the appropriate circuit by June 7, 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, Reporting and recordkeeping requirements.

Dated: March 3, 1993.

William T. Wisniewski,

*Acting Regional Administrator, Region III.*

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

#### PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401-7671q.

#### Subpart V—Maryland

2. Section 52.1070 is amended by adding paragraph (c)(92) to read as follows:

##### § 52.1070 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(92) Revisions to the State Implementation Plan submitted by the Maryland Department of the Environment on December 15, 1987.

(i) Incorporation by reference. (A) Letter from the Maryland Department of Environment dated December 15, 1987 submitting a revision to the Maryland State Implementation Plan.

(B) Amendments to the Code of Maryland Air Regulations (COMAR) 10.18.03, State Adopted National Ambient Air Quality Standards and Guidelines limited to the amendment of 10.18.03.04, carbon monoxide and COMAR 10.18.06, General Emission Standards, Prohibitions, and Restrictions, limited to the amendment of 10.18.06.04, carbon monoxide in areas III and IV. The amendments to COMAR 10.18.03.04 and 10.18.06.04 were adopted by the Maryland Department of the Environment on

November 4, 1987 and made effective on January 5, 1988.

[FR Doc. 93-8017 Filed 4-6-93; 8:45 am]

BILLING CODE 6560-50-M

#### 40 CFR Part 52

[TN-012-4121; FRL-4505-8]

#### Approval and Promulgation of Implementation Plans; Tennessee: Revised SO<sub>2</sub> Limits for the New Johnsonville Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On August 2, 1983, the State of Tennessee officially submitted the sulfur dioxide (SO<sub>2</sub>) nonattainment State Implementation Plan (SIP) for the New Johnsonville area to EPA. This submittal contained the control strategy demonstration and the SO<sub>2</sub> emission limits for sources located in the nonattainment area. Action on this submittal was delayed when the February 8, 1982, stack height regulation was challenged and portions were remanded on October 11, 1983. Several sources in the New Johnsonville area were affected by this remand. EPA promulgated new stack height regulations on July 8, 1985. Tennessee complied with the new federal regulations by demonstrating that all sources in the State met the new requirements and by developing new generic stack height regulations which became State-effective on November 22, 1987. On January 22, 1988, EPA's stack height regulations were, again, remanded.

Although the latest stack height remand has not been settled, EPA is today approving this nonattainment plan due to enforcement related issues. Also, on January 6, 1988, the State of Tennessee requested that the nonattainment area of New Johnsonville be redesignated to attainment for both the primary and secondary SO<sub>2</sub> standards. All requests for area redesignations from nonattainment to attainment must include a maintenance plan as a revision to the SIP pursuant to section 175A of the Clean Air Act Amendments of 1990 (CAAA). Action on the redesignation request is delayed pending the submittal of an approvable maintenance plan by the State of Tennessee.

EFFECTIVE DATE: This action will be effective May 7, 1993.

ADDRESSES: Copies of the material relevant to this action may be examined during normal business hours at the following locations:

Public Information Reference Unit,  
Library Systems Branch,  
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  
Environment and Conservation,  
Customs House, 4th Floor, 701  
Broadway, Nashville, Tennessee  
37243-1531.

**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:** In the  
early 1970's, Tennessee utilized the  
example region concept in establishing  
SO<sub>2</sub> emission limits for sources that  
were causing or contributing to ambient  
air violations. As a result of this  
example region concept, all power  
plants were subject to SO<sub>2</sub> emission  
limits of 1.2 lbs/mmBTU (pounds per  
million British Thermal Unit).

Tennessee Valley Authority's (TVA)  
Johnsonville Steam Plant, located in the  
New Johnsonville SO<sub>2</sub> nonattainment  
area which includes portions of Benton  
and Humphreys Counties, was one such  
facility. During this same time period,  
TVA took the position that the 1970  
Clean Air Act (CAA) did not require  
constant emission limits as the only  
mechanism for achieving the National  
Ambient Air Quality Standard (NAAQS)  
for SO<sub>2</sub>. TVA had proposed to meet the  
NAAQS through the use of intermittent  
or supplemental controls. EPA, together  
with Alabama, Kentucky, and  
Tennessee, which have TVA facilities,  
did not agree on TVA's proposal and  
required the emission limits to be  
continuously met. TVA took the issue to  
court, but, on April 19, 1976, the  
Supreme Court refused to hear the case  
and the lower court's position siding  
with EPA and the three States was  
upheld.

This resulted in TVA immediately  
being in noncompliance at most of its  
facilities. As a result, on September 28,  
1979, a consent decree was entered into  
by EPA, the Commonwealth of  
Kentucky, and various public interest  
groups (*Tennessee Thoracic Society, et  
al., and United States v. S. David  
Freeman, et al.*, Civil Action No.  
7703286-NA-CV, United States District  
Court for the Middle District of  
Tennessee, Nashville Division). The  
consent decree required that TVA install  
600 megawatts of SO<sub>2</sub> scrubber capacity  
and use a complying coal to meet an

SO<sub>2</sub> emission limit of 3.4 lbs/mmBTU.  
Modeling indicated that this SO<sub>2</sub>  
emission limit would protect the  
NAAQS. On December 22, 1980, the  
Court issued a revised consent decree  
which no longer required the  
installation of scrubbers but maintained the  
3.4 lbs/mmBTU SO<sub>2</sub> limit.

The State of Tennessee chose not to  
be a party to the consent decree and left  
the details of the final settlement to EPA  
and the other parties. Although the SIP  
contained an SO<sub>2</sub> emission limit of 1.2  
lbs/mmBTU for the Johnsonville area,  
EPA, et al., agreed through the consent  
decree that an SO<sub>2</sub> emission limit of 3.4  
lbs/mmBTU would continue to protect  
the NAAQS for SO<sub>2</sub>, so this limit  
became part of the consent decree.

EPA then began negotiations with the  
Tennessee Air Pollution Control Board  
(TAPCB) in order to get the approved  
SIP SO<sub>2</sub> emission limit of 1.2 lbs/  
mmBTU revised to 3.4 lbs/mmBTU.  
Since the limits dealt with a  
nonattainment area, all sources of SO<sub>2</sub>  
emissions had to be analyzed and  
factored into the State's attainment  
demonstration. The major SO<sub>2</sub> sources  
in the New Johnsonville nonattainment  
area are TVA's Johnsonville Steam  
Plant, Consolidated Aluminum  
Corporation (CONALCO), E.I. Du  
Nemours Du Pont (Du Pont), and Inland  
Container Corporation. There are  
numerous smaller SO<sub>2</sub> sources in the  
nonattainment area which are listed in  
the Technical Support Document for  
this SIP revision. Emission limits for all  
of the sources were developed using the  
limits contained in the consent decree,  
a modeling analysis, and current air  
quality data. The nonattainment plan  
predicted attainment of the primary and  
secondary SO<sub>2</sub> NAAQS by December 31,  
1982, and December 31, 1987,  
respectively.

Since the New Johnsonville TVA  
facility never complied with the State's  
federally approved SO<sub>2</sub> emission limit  
of 1.2 lbs/mmBTU, no net increase in  
actual SO<sub>2</sub> emissions will result from  
the approval of this new limit. In fact,  
a net reduction occurred because this  
facility had emissions in excess of 6.0  
lbs/mmBTU of SO<sub>2</sub> before the consent  
decree was filed.

#### Control Strategy Demonstration/ Modeling

The modeling techniques used in the  
demonstration supporting this SIP  
revision are, for the most part, based on  
the modeling guidance in place at the  
time that the analysis was performed  
(EPA's "Guideline on Air Quality  
Models" (1978)). Since that time, the  
modeling guidance has been changed by  
EPA (EPA's "Guideline on Air Quality

Models" (Revised), EPA-450/2-78-  
027R (1986) and Supplement A (1987)).  
The analysis supporting the control  
strategy and the Benton and Humphreys  
Counties SO<sub>2</sub> redesignation was  
included in a July 9, 1986, letter from  
Bruce Miller of EPA's Region IV Air  
Programs Branch to Joe Tikvart of the  
Source Receptor Analysis Branch and  
Tom Helms of the Control Programs  
Operation Branch. This letter outlined  
the sources and/or areas in Region IV to  
be grandfathered under the 1978 EPA  
modeling practice. More recently,  
revisions to this guidance have been  
promulgated by EPA (51 FR 32176,  
September 9, 1986, and 53 FR 392,  
January 6, 1988). Because the modeling  
analysis was substantially complete  
prior to the issuance of the revised  
guidance, EPA accepts this analysis. If,  
for some reason, the State must reassess  
this or any other analysis in the future,  
then any new modeling analysis must  
be done in accordance with the  
modeling guidance in effect at that time.

The models used for the attainment  
demonstration were the Air Quality  
Display Model (AQDM), PTMTP,  
CRSTER, and the Buoyant Line and  
Point Source Dispersion model (BLP).  
Five years (1966-1970) of  
meteorological data from the Nashville,  
Tennessee, National Weather Service  
(NWS) site was used in AQDM, to  
estimate the SO<sub>2</sub> emissions as an annual  
arithmetic average. PTMTP was used to  
determine the 3-hour and 24-hour  
average concentrations. CRSTER was  
run using the 1964 Nashville NWS data  
to calculate concentrations from single  
point sources, with the exception of  
CONALCO. The days representing  
adverse conditions were then modeled  
by PTMTP using CRSTER output  
meteorology. The wind directions were  
modified to combine the most adverse  
dispersion parameters with source  
alignments causing maximum additive  
impacts. BLP, which is designed to  
handle unique modeling problems  
associated with aluminum reduction  
plants, was used to model CONALCO.

The New Johnsonville area modeling  
analysis included two addenda. The  
first addendum resulted from a public  
hearing comment to revise the  
emissions data for some sources and to  
support the use of BLP. The second  
addendum resulted from TVA's petition  
to establish an SO<sub>2</sub> emission standard  
for their boilers based on 24-hour  
average variability, rather than the 3-  
hour average that was evaluated in the  
initial modeling. These addenda meet  
EPA requirements and are acceptable.

In the modeling submittal for each  
source, analyses were done for three  
separate emission inventories—the base

year (1977) inventory, the interim restriction (1982-1987) inventory, and the final Reasonably Available Control Technology (RACT) emissions inventory. The maximum concentrations for each analysis are listed in Table III of the Technical Support Document. The background concentration was supplied by the State. The 3-hour, 24-hour, and annual background concentrations are 15, 5, and 2  $\mu\text{g}/\text{m}^3$  (micrograms per cubic meter), respectively. Adding these values to their respective averaging times yields a total 3-hour, 24-hour, and annual concentration of 1003, 235, and 50  $\mu\text{g}/\text{m}^3$ , respectively. The modeling illustrates that the  $\text{SO}_2$  NAAQS will not be adversely affected by the  $\text{SO}_2$  sources in the New Johnsonville area. Therefore, TVA's emission limit of 3.4 lbs/mmBTU as a source specific emission limit, supported by the previously discussed modeling, is approvable. Emission limits for the  $\text{SO}_2$  sources (other than TVA) are based on RACT emission limits and these limits are listed in the State of Tennessee's Rule 1200-3-19-14, Sulfur Dioxide Emission Regulations for the New Johnsonville Nonattainment Area.

#### Stack Heights

The New Johnsonville nonattainment plan has been affected by stack height issues since it was submitted to EPA on August 2, 1983. Action was delayed on the plan due to the February 8, 1982, stack height regulations (47 FR 5864) which subsequently were challenged by the Sierra Club Legal Defense Fund, Inc.; Natural Resources Defense Council, Inc.; and the Commonwealth of Pennsylvania.

On October 11, 1983, the U.S. Court of Appeals for the District of Columbia ordered EPA to reconsider portions of the "stack height" regulations for stationary sources (*Sierra Club v. EPA*, 719 F.2d 436 (D.C. Cir., 1983)). These regulations, which implemented section 123 of the CAA, were published on February 8, 1982 (47 FR 5864). In its decision, the Court of Appeals struck down the following two provisions of these regulations:

1. The allowance of plume impaction credit; and
2. The setting of a two-stage process for State implementation.

The Court also remanded several other issues to the Agency for reconsideration:

1. The definition of "excessive concentrations;"
2. The definition of "dispersion techniques;"
3. The automatic allowance of credit for stack height increases where the

resulting stack height is at, or lower than, the formula height;

4. The allowance of credit for new sources tied into old stacks which are above the GEP height;

5. The failure to set a specific "nearby" limitation for GEP demonstrations; and

6. The requirement that sources claim credit based on the 2.5H formula to demonstrate actual reliance on that formula.

Only the first three aforementioned remanded issues affected the New Johnsonville submittal and all further action was stayed until new regulations could be promulgated.

On July 8, 1985, (50 FR 27892) EPA published stack height regulations that resolved the overturned and remanded issues of 1983. Hence, Tennessee was required to demonstrate that sources in the State could meet the new requirements and to develop regulations that complied with the federal regulations. Tennessee's regulations became State-effective on November 22, 1987. However, before EPA could process the nonattainment plan, the stack height regulations were remanded again. On January 22, 1988, the U.S. Court of Appeals for the District of Columbia issued its decision in *NRDC v. Thomas*, 838 F.2d 1244 (D.C. Cir. 1988) on the 1985 stack height regulations. Although the Court upheld most of the provisions of the rules, the following three portions were remanded to EPA for review:

1. Grandfathering pre-October 11, 1983, within-formula stack height increases from demonstration requirements (40 CFR 51.100(kk)(2));

2. Dispersion credit for sources originally designed and constructed with merged or multiflue stacks (40 CFR 51.100(hh)(2)(ii)(A)); and

3. Grandfathering pre-1979 use of the refined H+1.5L formula (40 CFR 51.100(ii)(2)).

The first issue of this remand affected the New Johnsonville area submittal and caused the SIP revision to be placed on hold.

#### Enforcement Issues

EPA has decided to act on the New Johnsonville nonattainment area plan due to potential enforcement related issues. EPA is concerned that the federally approved emission limits for this area may be inappropriate. In order to avoid any enforcement complications, Region IV believes that it is in the best interest of EPA, the State of Tennessee, and the  $\text{SO}_2$  sources in the New Johnsonville area to process the revised emission limits. However, the State and the sources may need to be

evaluated for compliance with any future revisions to the stack height regulations as a result of this litigation.

On August 8, 1990, EPA proposed approval of Tennessee's  $\text{SO}_2$  nonattainment plan (55 FR 32268) and no comments were received during the comment period.

#### Final Action

EPA's review of the Tennessee SIP revision submitted on August 2, 1983, indicates that a revision of the  $\text{SO}_2$  emission limit of 1.2 lbs/mmBTU to 3.4 lbs/mmBTU will protect the  $\text{SO}_2$  NAAQS in the New Johnsonville area.

The Agency has reviewed this request for revision of the federally-approved State Implementation Plan for conformance with the provisions of the 1990 Clean Air Act Amendments (CAAA) 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.

Therefore, EPA is today approving the revised  $\text{SO}_2$  SIP, applicable to the New Johnsonville area, with the exception of the request to redesignate areas from nonattainment to attainment for the primary and secondary  $\text{SO}_2$  standards submitted to EPA on January 6, 1988. All requests for redesignation have been put on hold until the State submits a maintenance plan pursuant to section 175A of the CAAA.

For further information on EPA's analysis, the reader may consult the Technical Support Document for this submittal, which contains a detailed review of the material submitted. This document is available at the EPA address listed in this notice.

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 June 7, 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 307(b)(2).)

This action has been classified as a Table 2 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 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.

Today's action makes final the action proposed at 55 FR 32269, August 8, 1990. As noted elsewhere in this notice, EPA received no adverse public comment on the proposed action. As a direct result, the Regional Administrator has reclassified this action from Table 1 to Table 2 under the processing procedures established at 54 FR 2214, January 19, 1989.

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

#### List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: August 6, 1992.

**Patrick M. Tobin,**  
*Acting Regional Administrator.*

Part 52 of chapter I, title 40, 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 RR—Tennessee

2. Section 52.2220 is amended by adding paragraph (c)(107) to read as follows:

#### § 52.2220 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(107) Revisions to the New Johnsonville SO<sub>2</sub> portion of the Tennessee State Implementation Plan submitted on August 2, 1983, by the

State of Tennessee through the Tennessee Air Pollution Control Board.

(i) Incorporation by reference.

(A) Revisions to the following Tennessee Air Pollution Control Regulations which became State-effective on December 13, 1982:

1200-3-3-05—Achievement

(B) Revisions to the following Tennessee Air Pollution Control Regulations which became State-effective on December 17, 1982:

1200-3-19-14—Sulfur Dioxide

Emission Regulation for the New Johnsonville Nonattainment Area

(C) Revisions to the following Tennessee Air Pollution Control Regulations which became State-effective on August 1, 1984:

1200-3-14-.01(2)—General Provisions

1200-3-14-.02(1)(a)—Non-process

Emissions Standards

(ii) Other material.

None

[FR Doc. 93-8018 Filed 4-6-93; 8:45 am]

BILLING CODE 6580-50-P

**40 CFR Parts 60, 61, 122, 264, 265, 403, and 707**

[FRL-4611-5]

#### Technical Amendments to OMB Approval Numbers

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule; technical amendments.

**SUMMARY:** EPA is publishing technical amendments to various EPA regulations with Office of Management and Budget (OMB) information collection request control numbers. EPA is also providing notice of an ongoing evaluation of the status of its regulations under the Paperwork Reduction Act (PRA).

**EFFECTIVE DATE:** This final rule is effective on April 7, 1993.

**FOR FURTHER INFORMATION CONTACT:** Sandy Farmer at (202) 260-2740.

**SUPPLEMENTARY INFORMATION:** EPA is examining the status of information collection requests (ICRs) under the PRA. As part of that review, EPA is today publishing technical amendments to update various regulations promulgated under the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act, and the Toxic Substances Control Act. The amended regulations are codified at 40 CFR parts 60, 61, 122, 264, 265, 403, and 707. EPA is publishing the current ICR control numbers issued for these regulations by OMB pursuant to the

PRA. Most of the amendments constitute insertions of a control number, generally at the end of one or more specific sections in each regulatory subpart.

This action updates certain regulations with ICRs previously approved by OMB to reflect the control numbers assigned by OMB. The ICRs were previously subject to public notice and comment prior to OMB approval. As a result, EPA finds that there is "good cause" under section 553(b)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(B)) to issue these amendments without prior notice and comment. Due to the technical nature of these amendments, further notice and public comment would be unnecessary. For the same reasons, EPA also finds that there is good cause under 5 U.S.C. 553(d)(3).

In addition, EPA has learned that OMB approvals for some ICRs may have lapsed or the ICRs may otherwise not be in conformance with the PRA. This may affect EPA's assessment of penalties for certain recordkeeping and reporting requirements. Accordingly, EPA has undertaken a review of applicable regulations for the purpose of determining whether there have been lapses or other problems in ICR approvals. EPA is also examining its pending enforcement cases to determine if any alleged violations might be affected. EPA will identify affected regulations resulting from its review and will take any other appropriate action.

#### List of Subjects

#### 40 CFR Part 60

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

#### 40 CFR Part 61

Air pollution control, Reporting and recordkeeping requirements.

#### 40 CFR Part 122

Environmental Protection, Hazardous substances, Reporting and recordkeeping requirements, Water pollution control.

#### 40 CFR Part 264

Air pollution control, Hazardous waste, Reporting and recordkeeping requirements.

#### 40 CFR Part 265

Air pollution control, Hazardous waste, Reporting and recordkeeping requirements.

**40 CFR Part 403**

Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

**40 CFR Part 707**

Environmental protection, Hazardous substances, Reporting and recordkeeping requirements.

Dated: April 1, 1993.

**Carol M. Browner,**  
Administrator.

For the reasons set out in the preamble, title 40 of the Code of Federal Regulations is amended as follows:

**PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES**

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, and 7601.

2. Subpart D is amended by adding § 60.48 to read as follows:

**§ 60.48 OMB control number.**

The information collection requirements in this subpart have been approved by the Office of Management and Budget and assigned OMB control number 2060-0026.

3. Subpart Da is amended by adding a parenthetical statement to the end of § 60.49a to read as follows:

**§ 60.49a Reporting requirements.**

\* \* \* \* \*

(Approved by the Office of Management and Budget under control number 2060-0023)

4. Subpart E is amended by adding § 60.55 to read as follows:

**§ 60.55 OMB control number.**

The information collection requirements in this subpart have been approved by the Office of Management and Budget and assigned OMB control number 2060-0040.

5. Subpart Ea is amended by adding a parenthetical statement to the end of § 60.59a to read as follows:

**§ 60.59a Reporting and recordkeeping requirements.**

\* \* \* \* \*

(Approved by the Office of Management and Budget under control number 2060-0210)

6. Subpart G is amended by adding § 60.75 to read as follows:

**§ 60.75 OMB control number.**

The information collection requirements in this subpart have been approved by the Office of Management and Budget and assigned OMB control number 2060-0019.

7. Subpart I is amended by adding § 60.94 to read as follows:

**§ 60.94 OMB control number.**

The information collection requirements in this subpart have been approved by the Office of Management and Budget and assigned OMB control number 2060-0083.

8. Subpart J is amended by revising the parenthetical statement at the end of § 60.107 to read as follows:

**§ 60.107 Reporting and recordkeeping requirements.**

\* \* \* \* \*

(Approved by the Office of Management and Budget under control number 2060-0022)

9. Subpart Ka is amended by adding § 60.116a to read as follows:

**§ 60.116a OMB control number.**

The information collection requirements in this subpart have been approved by the Office of Management and Budget and assigned OMB control number 2060-0121.

10. Subpart Kb is amended by adding a parenthetical statement to the end of § 60.115b to read as follows:

**§ 60.115b Recordkeeping and reporting requirements.**

\* \* \* \* \*

(Approved by the Office of Management and Budget under control number 2060-0074)

11. Subpart L is amended by adding § 60.124 to read as follows:

**§ 60.124 OMB control number.**

The information collection requirements in this subpart have been approved by the Office of Management and Budget and assigned OMB control number 2060-0080.

12. Subpart M is amended by adding § 60.134 to read as follows:

**§ 60.134 OMB control number.**

The information collection requirements in this subpart have been approved by the Office of Management and Budget and assigned OMB control number 2060-0110.

13. Subpart O is amended by adding a parenthetical statement to the end of § 60.155 to read as follows:

**§ 60.155 Reporting.**

\* \* \* \* \*

(Approved by the Office of Management and Budget under control number 2060-0035)

14. Subpart T is amended by adding § 60.205 to read as follows:

**§ 60.205 OMB control number.**

The information collection requirements in this subpart have been approved by the Office of Management and Budget and assigned OMB control number 2060-0037.

15. Subpart U is amended by adding § 60.215 to read as follows:

**§ 60.215 OMB control number.**

The information collection requirements in this subpart have been approved by the Office of Management and Budget and assigned OMB control number 2060-0037.

16. Subpart V is amended by adding § 60.225 to read as follows:

**§ 60.225 OMB control number.**

The information collection requirements in this subpart have been approved by the Office of Management and Budget and assigned OMB control number 2060-0037.

17. Subpart W is amended by adding § 60.235 to read as follows:

**§ 60.235 OMB control number.**

The information collection requirements in this subpart have been approved by the Office of Management and Budget and assigned OMB control number 2060-0037.

18. Subpart X is amended by adding § 60.245 to read as follows:

**§ 60.245 OMB control number.**

The information collection requirements in this subpart have been approved by the Office of Management and Budget and assigned OMB control number 2060-0037.

19. Subpart Y is amended by adding § 60.255 to read as follows:

**§ 60.255 OMB control number.**

The information collection requirements in this subpart have been approved by the Office of Management and Budget and assigned OMB control number 2060-0122.

20. Subpart AA is amended by adding a parenthetical statement to the end of § 60.276 to read as follows:

**§ 60.276 Recordkeeping and reporting requirements.**

\* \* \* \* \*

(Approved by the Office of Management and Budget under control number 2060-0038)

21. Subpart CC is amended by adding § 60.297 to read as follows:

**§ 60.297 OMB control number.**

The information collection requirements in this subpart have been approved by the Office of Management and Budget and assigned OMB control number 2060-0054.

22. Subpart DD is amended by adding § 60.305 to read as follows:

**§ 60.305 OMB control number.**

The information collection requirements in this subpart have been approved by the Office of Management

and Budget and assigned OMB control number 2060-0082.

23. Subpart GG is amended by adding § 60.336 to read as follows:

**§ 60.336 OMB control number.**

The information collection requirements in this subpart have been approved by the Office of Management and Budget and assigned OMB control number 2060-0028.

24. Subpart HH is amended by revising the parenthetical statement at the end of § 60.343 to read as follows:

**§ 60.343 Monitoring of emissions and operations.**

(Approved by the Office of Management and Budget under control number 2060-0063)

25. Subpart KK is amended by adding § 60.375 to read as follows:

**§ 60.375 OMB control number.**

The information collection requirements in this subpart have been approved by the Office of Management and Budget and assigned OMB control number 2060-0081.

26. Subpart NN is amended by adding § 60.405 to read as follows:

**§ 60.405 OMB control number.**

The information collection requirements in this subpart have been approved by the Office of Management and Budget and assigned OMB control number 2060-0111.

27. Subpart QQ is amended by adding a parenthetical statement to the end of § 60.434 to read as follows:

**§ 60.434 Monitoring of operations and recordkeeping.**

(Approved by the Office of Management and Budget under control number 2060-0105)

28. Subpart UU is amended by adding § 60.475 to read as follows:

**§ 60.475 OMB control number.**

The information collection requirements in this subpart have been approved by the Office of Management and Budget and assigned OMB control number 2060-0002.

29. Subpart AAA is amended by adding a parenthetical statement to the end of § 60.537 to read as follows:

**§ 60.537 Reporting and recordkeeping.**

(Approved by the Office of Management and Budget under control number 2060-0161)

30. Subpart DDD is amended by adding a parenthetical statement to the end of § 60.565 to read as follows:

**§ 60.565 Reporting and recordkeeping requirements.**

(Approved by the Office of Management and Budget under control number 2060-0145)

31. Subpart GGG is amended by adding § 60.594 to read as follows:

**§ 60.594 OMB control number.**

The information collection requirements in this subpart have been approved by the Office of Management and Budget and assigned OMB control number 2060-0067.

32. Subpart III is amended by adding a parenthetical statement to the end of § 60.615 to read as follows:

**§ 60.615 Reporting and recordkeeping requirements.**

(Approved by the Office of Management and Budget under control number 2060-0197)

33. Subpart III is further amended by removing the parenthetical statement at the end of § 60.616.

34. Subpart NNN is amended by adding a parenthetical statement to the end of § 60.665 to read as follows:

**§ 60.665 Reporting and recordkeeping requirements.**

(Approved by the Office of Management and Budget under control number 2060-0197)

35. Subpart NNN is further amended by removing the parenthetical statement at the end of § 60.666.

36. Subpart PPP is amended by revising the parenthetical statement at the end of § 60.684 to read as follows:

**§ 60.684 Recordkeeping and reporting requirements.**

(Approved by the Office of Management and Budget under control number 2060-0114)

**PART 61—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS**

1. The authority citation for part 61 continues to read as follows:

**Authority:** 42 U.S.C. 7401, 7412, 7414, 7416, 7601.

2. Subpart C is amended by adding § 61.35 to read as follows:

**§ 61.35 OMB control number.**

The information collection requirements in this subpart have been approved by the Office of Management and Budget and assigned OMB control number 2060-0092.

3. Subpart F is amended by adding a parenthetical statement to the end of § 61.70 to read as follows:

**§ 61.70 Reporting.**

(Approved by the Office of Management and Budget under control number 2060-0071)

4. Subpart F is further amended by adding a parenthetical statement to the end of § 61.71 to read as follows:

**§ 61.71 Recordkeeping.**

(Approved by the Office of Management and Budget under control number 2060-0071)

5. Subpart M is amended by adding a parenthetical statement to the end of § 61.145 to read as follows:

**§ 61.145 Standard for demolition and renovation.**

(Approved by the Office of Management and Budget under control number 2060-0101)

6. Subpart M is further amended by removing the parenthetical statement at the end of § 61.146.

7. Subpart M is further amended by revising the parenthetical statement at the end of § 61.153 to read as follows:

**§ 61.153 Reporting.**

(Approved by the Office of Management and Budget under control number 2060-0101)

8. Subpart O is amended by removing the parenthetical statement at the end of §§ 61.176 and 61.177.

9. Subpart P is amended by removing the parenthetical statement at the end of §§ 61.185 and 61.186.

10. Subpart V is amended by revising the parenthetical statement at the end of § 61.247 to read as follows:

**§ 61.247 Reporting requirements.**

(Approved by the Office of Management and Budget under control number 2060-0068)

**PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM**

1. The authority for part 122 continues to read as follows:

**Authority:** The Clean Water Act, 33 U.S.C. 1251 *et seq.*

**§ 122.41 [Amended]**

2. Section 122.41 is amended by removing the first parenthetical phrase.

**§ 122.41 [Amended]**

3. Section 122.41 is amended by adding the following parenthetical at the end of the section to read as follows:

(Information collection requirements are approved by the Office of Management and Budget under control number 2040-0004, 2040-0110 and 2040-0068)

**§§ 122.44, 122.48 [Amended]**

4. Sections 122.44 and 122.48 are amended by adding the following parenthetical at the end of each section to read as follows:

(Information collection requirements are approved by the Office of Management and Budget under control number 2040-0004)

**PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES**

1. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

**§ 264.120 [Amended]**

2. Section 264.120 is amended by removing the parenthetical at the end of the section.

**§§ 264.112, 264.113, 264.115, 264.116, 264.118, 264.119, 264.120 [Amended]**

3. Sections 264.112, 264.113, 264.115, 264.116, 264.118, 264.119, and 264.120 are amended by adding the following parenthetical at the end of each section to read as follows:

(Information collection requirements are approved by the Office of Management and Budget under control number 2050-0120.)

**§ 264.142, 264.144, 264.147 [Amended]**

4. Sections 264.142, 264.144, and 264.147 are amended by removing the parenthetical at the end of each section.

**§§ 264.142, 264.143, 264.144, 264.145, 264.147, 264.148, 264.149, 264.150 [Amended]**

5. Sections 264.142, 264.143, 264.144, 264.145, 264.147, 264.148, 264.149, and 264.150 are amended by adding the following parenthetical at the end of each section to read as follows:

(Information collection requirements are approved by the Office of Management and Budget under control number 2050-0120.)

6. Subpart AA is amended by revising the parenthetical statement at the end of § 264.1035 to read as follows:

**§ 264.1035 Recordkeeping requirements.**

\* \* \* \* \*

(Approved by the Office of Management and Budget under control number 2050-0050)

7. Subpart AA is further amended by revising the parenthetical statement at the end of § 264.1036 to read as follows:

**§ 264.1036 Reporting requirements.**

\* \* \* \* \*

(Approved by the Office of Management and Budget under control number 2050-0050)

8. Subpart BB is amended by revising the parenthetical statement at the end of § 264.1062 to read as follows:

**§ 264.1062 Alternative standards for valves in gas/vapor service or in liquid service: skip period leak detection and repair.**

\* \* \* \* \*

(Approved by the Office of Management and Budget under control number 2050-0050)

9. Subpart BB is further amended by revising the parenthetical statement at the end of § 264.1064 to read as follows:

**§ 264.1064 Recordkeeping requirements.**

\* \* \* \* \*

(Approved by the Office of Management and Budget under control number 2050-0050)

10. Subpart BB is further amended by revising the parenthetical statement at the end of § 264.1065 to read as follows:

**§ 264.1065 Reporting requirements.**

\* \* \* \* \*

(Approved by the Office of Management and Budget under control number 2050-0050)

**PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES**

1. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, 6935, and 6936, unless otherwise noted.

**§ 265.120 [Amended]**

2. Section 265.120 is amended by removing the parenthetical at the end of the section.

**§§ 265.112, 265.113, 265.115, 265.116, 265.118, 265.119, 265.120 [Amended]**

3. Sections 265.112, 265.113, 265.115, 265.116, 265.118, 265.119, and 265.120 are amended by adding the following parenthetical at the end of each section to read as follows:

(Information collection requirements are approved by the Office of Management and Budget under control number 2050-0120)

**§ 265.142, 265.144, 265.147 [Amended]**

4. Sections 265.142, 265.144, and 265.147 are amended by removing the parenthetical at the end of each section.

**§§ 265.142, 265.143, 265.144, 265.145, 265.147, 265.148, 265.149, 265.150 [Amended]**

5. Sections 265.142, 265.143, 265.144, 265.145, 265.147, 265.148, 265.149, and 265.150 are amended by adding the following parenthetical at the end of each section to read as follows:

(Information collection requirements are approved by the Office of Management and Budget under control number 2050-0120)

**§ 265.1035 [Amended]**

6. Subpart AA is amended by revising the parenthetical statement at the end of § 265.1035 to read as follows:

**§ 265.1035 Recordkeeping requirements.**

\* \* \* \* \*

(Approved by the Office of Management and Budget under control number 2050-0050)

**§ 265.1064 [Amended]**

7. Subpart BB is amended by revising the parenthetical statement at the end of § 265.1064 to read as follows:

**§ 265.1064 Recordkeeping requirements.**

\* \* \* \* \*

(Approved by the Office of Management and Budget under control number 2050-0050)

**PART 403—GENERAL PRETREATMENT REGULATIONS FOR EXISTING AND NEW SOURCES OF POLLUTION**

1. The authority for part 403 continues to read as follows:

Authority: Sec. 54(c)(2) of the Clean Water Act of 1977, (Pub. L. 95-217) sections 204(b)(1)(C), 208(b)(2)(C)(iii), 301(b)(1)(A)(ii), 301(b)(2)(A)(ii), 301(b)(2)(C), 301(h)(5), 301(i)(2), 304(e), 304(g), 307, 308, 309, 402(b), 405, and 501(a) of the Federal Water Pollution Control Act (Pub. L. 92-500) as amended by the Clean Water Act of 1977 and the Water Quality Act of 1987 (Pub. L. 100-4).

**§§ 403.6, 403.7, 403.8, 403.9, 403.10, 403.12, 403.13, 403.15, 403.17, and 403.18 [Amended]**

2. Sections 403.6, 403.7, 403.8, 403.9, 403.10, 403.12, 403.13, 403.15, 403.17, and 403.18 are amended by adding the following parenthetical at the end of each section to read as follows:

(Information collection requirements are approved by the Office of Management and Budget under control number 2040-0009)

**PART 707—CHEMICAL IMPORTS AND EXPORTS**

1. The authority citation for part 707 continues to read as follows:

Authority: 15 U.S.C. 2611(b) and 2612.

**§§ 707.65, 707.67, 707.70, 707.72, 707.75 [Amended]**

2. Sections 707.65, 707.67, 707.70, 707.72, 707.75 are amended by adding the following parenthetical at the end of each section to read as follows:

(Information collection requirements are approved by the Office of Management and Budget under control number 2070-0030)

**DEPARTMENT OF THE INTERIOR****Bureau of Land Management****43 CFR Public Land Order 6961**

[ID-943-4210-06; IDI-15634-01]

**Partial Revocation of Executive Order dated July 2, 1910; Idaho****AGENCY:** Bureau of Land Management, Interior.**ACTION:** Public land order.

**SUMMARY:** This order revokes an Executive order insofar as it affects 40 acres of National Forest System land withdrawn for Bureau of Land Management's Powersite Reserve No. 91 within the St. Joe National Forest. The land is no longer needed for this purpose, and the revocation is needed to permit disposal of the land through land exchange under the Arkansas-Idaho Land Exchange Act of 1992 (Pub. L. 102-584). This action will open the land to surface entry. The land has been open to mining under the provisions of the Mining Claims Restoration Act of 1955 and these provisions are no longer required. The land has been and will remain open to mineral leasing.

**EFFECTIVE DATE:** May 7, 1993.

**FOR FURTHER INFORMATION CONTACT:**  
Larry R. Lievsay, BLM Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, 208-384-3166.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. The Executive Order dated July 2, 1910, which withdrew National Forest System land for Powersite Reserve No. 91, is hereby revoked insofar as it affects the following described land:

**Boise Meridian**

T. 45 N., R. 3 E.,  
Sec. 3, SW $\frac{1}{4}$ SW $\frac{1}{4}$ .

The area described contains 40 acres in Shoshone County.

2. At 9 a.m. on May 7, 1993, the land shall be opened to such forms of disposition as may by law be made of National Forest System land, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

Dated: March 29, 1993.

**Bruce Babbitt,**  
*Secretary of the Interior.*

[FR Doc. 93-8010 Filed 4-6-93; 8:45 am]

BILLING CODE 4310-06-M

**DEPARTMENT OF TRANSPORTATION****Office of the Secretary****49 CFR Part 1**

[OST Docket No. 1; Amdt. 1-260]

**Organization and Delegation of Powers and Duties; Delegation of Authority to the Director, Office of Commercial Space Transportation****AGENCY:** Office of the Secretary, DOT.**ACTION:** Final rule.

**SUMMARY:** The Secretary of Transportation has delegated to the Director, Office of Commercial Space Transportation (OCST), certain authority vested in the Secretary by the National Aeronautics and Space Administration Authorization Act, Fiscal Year 1993 (Pub. L. 102-588). The purpose of this rulemaking is to amend 49 CFR part 1 to reflect the delegated authority.

**EFFECTIVE DATE:** April 7, 1993.

**FOR FURTHER INFORMATION CONTACT:**  
Elaine Orfanos David, Office of the Assistant General Counsel for Regulation and Enforcement, C-50, U.S. Department of Transportation, room 10424, 400 Seventh Street SW., Washington, DC 20590; (202) 366-9305.

**SUPPLEMENTARY INFORMATION:** The National Aeronautic and Space Administration Authorization Act, Fiscal Year 1993 (Pub. L. 102-588) (NASA FY 93 Authorization Act) authorizes, among other things, appropriations for various programs of NASA. In addition, the NASA FY 93 Authorization Act further amends the Commercial Space Launch Act of 1984, as amended (49 U.S.C. App. 2601 *et seq.*) (the Act), by, among other things, authorizing FY 93 appropriations for carrying out the Secretary's responsibilities under the Act and assigning to the Secretary other responsibilities in furtherance of U.S. commercial space transportation.

Specifically, section 505 of the NASA FY 93 Authorization Act authorizes, subject to appropriation of funds to the Secretary, the establishment of a grant program for U.S. commercial space transportation infrastructure development, and directs the Secretary to consult with the Department of Defense, NASA, and other appropriate Federal agencies concerning the selection of projects for grants. Section 506 of the NASA FY 93 Authorization Act directs the NASA Administrator and Secretary of Defense, as appropriate, in coordination with the Secretary, to conduct an inventory and

identify all U.S. Government-owned launch support facilities, and identify those that could be made available to non-Federal entities on a reimbursable basis.

The functions assigned to the Secretary under Executive Order 12465 (February 24, 1984) relating to commercial expendable launch vehicle activities, and those vested in the Secretary by the Act are already delegated to the Director, Office of Commercial Space Transportation (OCST), as set forth in 49 CFR 1.68. This rulemaking is necessary to delegate to the Director, OCST, the additional responsibilities assigned to the Secretary under the NASA FY 93 Authorization Act.

Because this rulemaking relates to departmental management, organization, procedure, and practice, notice and comment on it are unnecessary and it may be made effective fewer than 30 days after publication in the *Federal Register*. Therefore, this final rule is effective on the date of publication.

**List of Subjects in 49 CFR Part 1**

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

For the reasons set forth herein, part 1 of title 49, Code of Federal Regulations is amended as follows:

**PART 1—ORGANIZATION AND DELEGATION OF POWERS AND DUTIES**

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

**Authority:** 49 U.S.C. 322.

2. Section 1.68 is amended by adding a new paragraph (c) to read as follows:

**§ 1.68 Delegations to Director of Commercial Space Transportation.**

\*(\*) (c) Carry out the functions vested in the Secretary by the National Aeronautics and Space Administration Authorization Act, Fiscal Year 1993 (Pub. L. 102-588; November 4, 1992).

Issued in Washington, DC, this 26 day of March, 1993.

**Federico Peña,**

*Secretary of Transportation.*

[FR Doc. 93-8082 Filed 4-6-93; 8:45 am]

BILLING CODE 4910-02-M

**National Highway Traffic Safety Administration****49 CFR Parts 523, 525, 533, 537**

[Docket No. 91-50; Notice 3]

RIN 2127 AE42

**Light Truck Average Fuel Economy Standards Model Year 1995****AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.**ACTION:** Final rule.

**SUMMARY:** This final rule establishes the average fuel economy standard for light trucks manufactured in model year (MY) 1995. The issuance of the standard is required by Title V of the Motor Vehicle Information and Cost Savings Act. The (combined) standard for all light trucks manufactured by a manufacturer is 20.6 mpg for MY 1995. This final rule also converts certain measurements into metric units.

**DATES:** The amendment is effective May 7, 1993. The standard applies to the 1995 model year. Petitions for reconsideration must be submitted within 30 days of publication.

**ADDRESSES:** Petitions for reconsideration should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Mr. Orron Kee, Office of Market Incentives, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 (202-366-0846).

**SUPPLEMENTARY INFORMATION****I. Background**

In December 1975, during the aftermath of the energy crisis created by the oil embargo of 1973-74, Congress enacted the Energy Policy and Conservation Act. Congress included a provision in that Act establishing an automotive fuel economy regulatory program. That provision added a new title, title V, "Improving Automotive Efficiency," to the Motor Vehicle Information and Cost Savings Act (the Act). Title V provides for the establishment of average fuel economy standards for cars and light trucks.

Section 502(b) of the Act requires the Secretary of Transportation to issue light truck fuel economy standards for each model year. Standards are required to be set at least 18 months prior to the beginning of the model year. The Act provides that the fuel economy standards are to be set at the maximum feasible average fuel economy level. In

determining maximum feasible average fuel economy level, the Secretary is required under section 502(e) of the Act to consider four factors: technological feasibility; economic practicability; the effect of other Federal motor vehicle standards on fuel economy; and the need of the nation to conserve energy. (Responsibility for the automotive fuel economy program was delegated by the Secretary of Transportation to the Administrator of NHTSA (41 FR 205015, June 22, 1976)).

On October 8, 1991, NHTSA published in the *Federal Register* (56 FR 50694) a questionnaire concerning fuel economy standards for MYs 1995-1997. The comments received in response to the questionnaire are available in Docket No. 91-50.

After analyzing the responses to the questionnaire and reviewing other available data, NHTSA published a notice of proposed rulemaking (NPRM) proposing average fuel economy standards for light trucks for MYs 1995-97. 57 FR 61377 (December 24, 1992). The agency proposed to select the standards from within a range of 20.5-21.0 mpg for MY 1995, and 20.5-21.5 mpg for MYs 1996 and 1997. These ranges were based on the agency's tentative evaluation of manufacturer capabilities.

In response to the December 24, 1992 NPRM, the agency received comments from General Motors (GM), Ford, Chrysler, the American Automobile Manufacturers Association (AAMA, formerly the Motor Vehicle Manufacturers Association), Rover Group, the National Automobile Dealers Association, and about 50 organizations concerned about the continuing availability to consumers of a full range of light trucks, including, among others, the Coalition for Vehicle Choice, Consumer Alert, and the Competitive Enterprise Institute (CEI). The issues raised by the commenters are addressed below.

**II. Summary of Decision**

Based on its analysis, the agency is establishing a combined average fuel economy standard for MY 1995 at 20.6 mpg. NHTSA will reach a decision later with respect to the light truck CAFE standards for MY 1996-97. The limited time available to promulgate a final rule for MY 1995 has precluded a thorough consideration of the issues related to light truck CAFE standards for those later model years.

**III. Manufacturer Capabilities for MY 1995**

In evaluating manufacturers' fuel economy capabilities for MY 1995, the

agency has analyzed manufacturers' current projections and underlying product plans and has considered what, if any, additional actions the manufacturers could take to improve their fuel economy. A more detailed discussion of these issues is contained in the agency's Final Regulatory Impact Analysis (FRIA), which is being placed in the docket for this notice. Some of the information included in the FRIA, including the details of manufacturers' future product plans, has been determined by the agency to be confidential business information whose release could cause competitive harm. The public version of the FRIA omits the confidential information.

**A. Manufacturer Projections****1. General Motors**

As discussed in the NPRM, General Motors (GM) projected in December 1991 that it could achieve a light truck CAFE level of 20.2 mpg for MY 1995. In its February 1993 comment on the NPRM, GM revised its projection slightly downward, to 20.1 mpg. By comparison, in a mid-model year report submitted in July 1992, GM projected a MY 1992 CAFE of 20.2 mpg, and in a pre-model year report submitted in December 1992, that company projected a MY 1993 CAFE of 19.9 mpg.

GM stated in its February 1993 comment that the light truck CAFE standard for MY 1995 "should be set no higher than 20.5 mpg, and even that may be too high."

**2. Ford**

Ford projected in January 1992, and again in its February 1993 comment, that it could achieve a light truck CAFE level of 20.8 mpg for MY 1995. This projection is subject to risk factors which, according to Ford's comment on the NPRM, could reduce its CAFE level to as low as 20.4 mpg. By comparison, in a mid-model year report submitted in July 1992, Ford projected a MY 1992 CAFE of 20.2 mpg, and in a pre-model year report submitted in December 1992, that company projected a MY 1993 CAFE of 20.5 mpg.

Ford recommended in its comment on the NPRM that the agency establish the MY 1995 standard at the same level as the MY 1994 standard, 20.5 mpg.

**3. Chrysler**

Chrysler projected in December 1991 that it could achieve a domestic light truck CAFE level of 20.5 mpg for MY 1995. In its February 1993 comment on the NPRM, Chrysler revised its projection slightly upward, to 20.6 mpg. This compares to a projection of 21.2

mpg for MY 1992 in Chrysler's July 1992 mid-model year report, and 21.0 mpg for MY 1993 in Chrysler's December 1992 pre-model year report.

Chrysler commented that it supports a standard of 20.5 mpg for MY 1995 because it does not anticipate any major improvements in light truck fuel economy through new technological applications.

#### 4. Other Manufacturers

Most light truck manufacturers other than GM, Ford and Chrysler only compete in the small vehicle portion of the light truck market and are therefore expected to achieve CAFE levels well above those three companies. By way of example, in their pre-model year reports for 1993, Toyota projected a light truck CAFE of 21.8 mpg, Isuzu 21.8 mpg, Mazda 24.0 mpg, Mitsubishi 22.3 mpg, Subaru 29.3 mpg, Suzuki 28.9 mpg, and Volkswagen 21.3 mpg.

In the NPRM, NHTSA noted that two companies, Range Rover and PAS, projected MY 1992 light truck CAFE levels that are well below those of the large domestic manufacturers. In their mid-model year reports for MY 1992, Range Rover projected a CAFE level of 16.3 mpg and PAS 19.2 mpg. The agency notes that in their pre-model year reports for MY 1993, Range Rover projected a CAFE level of 15.0 mpg and PAS 28.8 mpg. Both of these companies sell a small number of light trucks in the U.S., on the order of about 5,000 vehicles or less. PAS modifies GM light trucks. That company's higher MY 1993 projection reflects the presence of dedicated and dual energy compressed natural gas (CNG) vehicles in its fleet.

One other company which has a CAFE capability below that of the large domestic manufacturers is UMC, a small domestic producer of delivery vans. That company projects selling 1,200 light trucks in MY 1993, with a CAFE of 18.8 mpg.

#### B. Possible Additional Actions to Improve MY 1992 CAFE

The agency analyzed the additional actions which manufacturers may be able to take to improve their CAFE levels above those that they currently project for MY 1993. These actions may be divided into two categories: further technological changes and product restrictions.

##### 1. Further Technological Changes

The ability to improve CAFE by further technological changes to product plans is dependent on the availability of fuel efficiency enhancing technologies that manufacturers are able to apply within the available time.

The agency's FRIA discusses the fuel efficiency enhancing technologies which are expected to be available by MY 1995. However, for MY 1995, limited leadtime is a significant constraint on the increased use of these technologies. NHTSA recognizes that the leadtime necessary to implement significant improvements in engines, transmissions, aerodynamics and rolling resistance is typically at least three years. Also, as the agency discussed in establishing its final rule for MYs 1993-94, once a new design is established and tested as feasible for production, the leadtime necessary to design tools and test components is typically 30 to 36 months. Some potential major changes may take even longer. Leadtimes for new vehicles are usually at least three years. Further, light trucks have a long model life, i.e., 8-10 years or more. If a manufacturer must make a major model change ahead of its normal schedule, this change may have a significant, unprogrammed financial impact. NHTSA notes that AAMA stated in its comment that the above leadtimes, which the agency cited in the NPRM, are more typical for passenger cars and that truck leadtimes are even longer.

Given the leadtime constraint, the agency does not believe that manufacturers can achieve significant improvements in their projected MY 1995 CAFE level by additional technological actions.

#### 2. Product Restrictions

As an alternative to technological improvements, manufacturers could improve their CAFE by restricting their product offerings, e.g., limiting or deleting production of particular larger light truck models and larger displacement engines. Such product restrictions, if made necessary by selection of a CAFE standard that is above manufacturers' capabilities, could result in adverse economic impacts on the industry and the economy as a whole.

To develop an independent indicator of the potential impacts of a standard above the maximum feasible level on GM's production, the agency estimated the loss of production associated with sufficient production restrictions to raise its CAFE by 0.5 mpg. To estimate this effect, the agency eliminated production of GM's least fuel efficient models until the desired improvement in CAFE was achieved. NHTSA stated in the NPRM that this approach tends to yield the maximum possible negative impacts, because it does not include the possibility of consumers accepting a smaller truck or engine, or switching to vehicles over 8500 pounds GVWR. Also,

it ignores the possibility of additional technological improvements to these truck fleets, or compliance through the use of credits earned in other model years.

For MY 1995, the NHTSA analysis indicates that to increase its CAFE by 0.5 mpg by restricting sales, GM could suffer a sales loss of up to 174,000 units of its projected light truck production for that year. The potential job losses under this scenario in manufacturer and supplier industries could total nearly 30,000. In addition to the adverse impact on the automotive industry, a wide range of businesses could be seriously affected to the extent that they could not obtain the light trucks they need for business use.

Also, such product restrictions could unduly limit consumer choice.

GM commented that it takes issue with NHTSA's statement that its analysis of job losses is necessarily an upper bound. That company stated that it could be that a manufacturer's product restrictions would not be done by eliminating the least fuel efficient vehicles first from its CAFE fleet, but a manufacturer could instead choose to restrict products based not only on their fuel efficiency but also their profit contributions. GM stated that this strategy could lead to larger lost sales and jobs.

Given the considerations discussed above, NHTSA concludes that significant product restrictions should not be considered as part of manufacturers' capabilities to improve their MY 1995 CAFE levels.

#### C. Manufacturer-Specific CAFE Capabilities

As discussed later in this notice, NHTSA takes "industrywide considerations" into account in setting fuel economy standards. In carrying this out, the agency has traditionally focused on the least capable manufacturer with a substantial share of light truck sales. For MY 1995, the agency has determined that GM is the least capable manufacturer with a substantial share of sales.

##### 1. GM

As indicated above, GM currently projects its MY 1995 light truck CAFE level at 20.1 mpg. It has also identified certain risks related to technology and mix which it says could reduce its CAFE level by as much as 0.3 mpg. As discussed in the FRIA, however, the agency has analyzed these potential risks and believes that they are unlikely to occur. In addition, GM has identified an additional product action it is considering which could also reduce its

CAFE. However, NHTSA believes the issues of whether GM will actually take the product action, and if so, what the fleet penetration would be for MY 1995, are too speculative to justify an adjustment to GM's CAFE capability. NHTSA notes that it is not identifying the product action because it is confidential business information.

After carefully evaluating GM's product plan, NHTSA believes that company is capable of achieving a MY 1995 light truck CAFE of 20.6 mpg. The factors explaining the 0.5 mpg difference between GM's projection and the agency's estimate of its capability are discussed below.

First, as discussed in the NPRM, GM projects that a much larger portion of its MY 1995 fleet will have four-wheel drive (4WD) than it has had in recent years, or that its competitors are projecting. The agency stated in the NPRM that it is not aware of any reason to expect that the 4WD market will continue to increase. NHTSA also stated that it believes there are alternatives to 4WD, including traction control. The agency stated that if the 4WD share of GM's light truck fleet for MY 1995 is consistent with both that company's and its competitors' historical levels, its CAFE would be 0.1 mpg higher.

GM commented that it believes its forecast of MY 1995 4WD penetration is realistic, stating that competitor's actions in the 4WD segments, the use of all-wheel drive configurations and market data for future years support its projections. GM also argued that traction control is not an alternative to 4WD trucks since it has little benefit for off-road applications.

The agency continues to believe that it is unlikely that the 4WD market share will increase appreciably for the fleet in general or for GM over the timeframe between now and MY 1995. Since the mid-1980's, the 4WD share of total light truck sales for each model year has consistently fallen within the range of 32-35 percent. No data have been presented to the agency which demonstrate that this share will significantly change by MY 1995. The agency notes that, while it agrees that traction control isn't an alternative to 4WD for off-road applications, it would be a viable alternative for on-road use for many consumers. No evidence has been presented to the agency which shows that there will be increased need or demand for more 4WD or off-road vehicles.

As discussed in the FRIA, since NHTSA believes that GM's MY 1995 product plan overstates the percentage of 4WD vehicles that it will sell, the agency has adjusted that company's

CAFE projection to reflect a more realistic share. In making this adjustment, the agency assumed that GM's 4WD percentage for MY 1995 will be the same as for MY 1985, the model year in which GM had its highest 4WD share ever. NHTSA also refined the analysis presented in the FRIA to more accurately reflect the particular vehicles that GM is likely to sell more of and less of. This adjustment has the effect of increasing GM's MY 1995 CAFE projection by more than 0.2 mpg.

GM's MY 1995 product plan also indicates decreased sales of certain fuel-efficient vehicles. NHTSA does not believe that the magnitude of this decrease is realistic, since it believes that GM will make efforts to maintain market share. The agency has adjusted GM's MY 1995 projection to reflect a more likely market share of these vehicles. This adjustment has the effect of increasing GM's MY 1995 CAFE projection by 0.1 mpg.

NHTSA stated in the NPRM that the GM fleet leads the other manufacturers in every engine performance calculation carried out by the agency and that GM's performance levels are detrimental to its fuel economy performance. The agency indicated that if GM's light truck fleet for MY 1995 were closer to the values achieved by other manufacturers for the various performance measurements, GM's CAFE values might be improved by between 0.3 and 0.4 mpg.

GM commented that it disagrees with the agency's assessment in the NPRM that GM's CAFE could be boosted 0.4 mpg by lowering engine performance. That company stated that it believes that NHTSA's performance adjustment was based on an incorrect sales weighted analysis of GM's performance levels compared to its competitors. GM stated that a manufacturer's average performance level, like many other vehicle attributes such as average weight or engine displacement, is a function of the mix it sells. That company stated that when its mix is compared to its competitors' mix, GM's performance levels do not appear to be out of line with other manufacturers.

As discussed in the FRIA, the agency has evaluated GM's comment concerning comparative performance levels. NHTSA has also reviewed revised MY 1995 fleet projections submitted by GM and Ford, which resulted in reduced fleet average values for almost all performance measures. In light of these adjustments, NHTSA has concluded that the performance level of the GM fleet is only slightly greater than its competitors and that the value of a CAFE adjustment if GM were to reach comparable levels of performance is

only about 0.1 mpg. The agency believes that GM can make a small improvement in its MY 1995 light truck CAFE by bringing its performance levels more in line with its competitors, which would improve its CAFE by slightly over 0.1 mpg.

NHTSA also believes that there are other opportunities available to GM to make small improvements in its MY 1995 light truck CAFE. While there is insufficient leadtime to make any major technological changes, GM could slightly increase the penetration of some engine and transmission technology improvements that are not projected for full implementation. Among other things, that company could pull some projected MY 1996 programs forward to introduction for mid-MY 1995. The agency believes that these actions would enable GM to improve its CAFE by almost 0.1 mpg.

By adjusting GM's MY 1995 product plan to reflect all of the factors stated above, NHTSA has concluded that GM is capable of achieving CAFE of 20.6 mpg.

## 2. Ford

As indicated above, Ford currently projects its MY 1995 light truck CAFE level at 20.8 mpg. It has also identified certain risks which it says could reduce its CAFE level by as much as 0.4 mpg. As discussed in the FRIA, NHTSA has evaluated the risks identified by Ford and believes that a risk factor of 0.2 mpg is reasonable. Taking account of risks, NHTSA has concluded that Ford can achieve CAFE of at least 20.6 mpg.

## 3. Chrysler

As indicated above, Chrysler currently projects its MY 1995 light truck CAFE level at 20.6 mpg. After evaluating Chrysler's product plan, NHTSA has concluded that Chrysler can achieve CAFE of at least 20.6 mpg.

While NHTSA has focused its analysis on GM, the least capable manufacturer with a substantial share of sales, the agency does not believe that company's capability is significantly below that of Ford and Chrysler. As indicated above, Ford projects a MY 1995 CAFE of 20.8 mpg, subject to risks, and Chrysler projects a MY 1995 CAFE of 20.6 mpg.

NHTSA has concluded that Ford and Chrysler can achieve CAFE levels of at least 20.6 mpg. The agency believes that the ability of Ford and Chrysler to improve their CAFE levels above their projections is small. In particular, the factors that led NHTSA to conclude that GM can achieve a CAFE of 0.5 mpg above its projection are generally not applicable to Ford and Chrysler.

#### IV. Other Federal Standards

In determining the maximum feasible economy level, the agency must take into consideration the potential effects of other Federal standards. The following section discusses other government regulations, both in process and recently completed, that may have an impact on fuel economy capability.

##### A. Safety Standards

As discussed in the FRIA, NHTSA has evaluated several safety rulemakings for their potential impacts on light truck fuel economy in MY 1995. These include revisions to FMVSS Nos. 208, *Occupant Crash Protection*; 214, *Side Impact Protection*; 216, *Roof Crush Resistance*; 108, *Lamps, Reflective Devices and Associated Equipment*; and 201, *Occupant Protection in Interior Impacts*. In addition, the agency is considering whether to propose a safety standard to improve rollover protection.

##### 1. FMVSS 208

On March 26, 1991, NHTSA published (56 FR 12472) a final rule requiring automatic restraints on trucks with a gross vehicle weight rating of 8500 pounds or less and an unloaded vehicle weight of 5500 pounds or less. These requirements phase-in at the following rate for each manufacturer: 20 percent of light trucks manufactured from September 1, 1994 to August 31, 1995; 50 percent of light trucks manufactured from September 1, 1995 to August 31, 1996; 90 percent of light trucks manufactured from September 1, 1996 to August 31, 1997; and all light trucks manufactured on or after September 1, 1997. Thus, the requirement will affect 20 percent of MY 1995 light trucks. Although light truck manufacturers may comply, as passenger car manufacturers have in the past, with the automatic restraint requirements by using automatic belts or air bags, NHTSA expects that essentially all light truck manufacturers will comply by using air bags.

To encourage the use of more innovative automatic restraint systems (primarily air bags) in light trucks, during the first four years of the phase-in (i.e., through MY 1998) manufacturers may count each light truck equipped with such a restraint system for the driver's position, and a dynamically tested manual safety belt for the right-front passenger's position, as a vehicle complying with the automatic restraint requirements. Beginning with MY 1999, however, all light trucks are required to provide automatic restraints for both the driver and right-front passenger positions.

Title II of the Intermodal Surface Transportation Efficiency Act of 1991 requires NHTSA to amend its automatic restraint requirements to mandate that 80 percent of MY 1998, and all MY 1999 light trucks be equipped with driver and passenger-side air bags. Since NHTSA expects that essentially all manufacturers will rely on air bags for compliance with the light truck automatic restraint requirements, this provision should have a negligible substantive impact, and will not affect MY 1995 fuel economy capabilities.

In the FRIA for the light truck automatic restraint rulemaking, NHTSA estimated weight increases per vehicle ranging from 15.3 pounds for a driver's-side air bag to 35.7 pounds for both driver and right-front passenger air bags (including "secondary weight," i.e., weight added for supporting structure, etc.). Fuel economy would be reduced by about 0.05 to 0.11 mpg.

The automatic restraint weight estimates provided by the manufacturers were generally consistent with those previously developed by the agency. NHTSA calculates that the manufacturers' estimates translate into fuel economy penalties of 0.04–0.08 mpg for MY 1995. These weight effects are reflected in the manufacturers' fuel economy projections, so there is no need for NHTSA to add an explicit adjustment to their projections to consider the impact of this standard.

##### 2. FMVSS 214

On June 14, 1991, NHTSA published (56 FR 27427) a final rule extending the "quasi-static" test requirements of FMVSS 214 to trucks, multipurpose vehicles, and buses with a GVWR of 10,000 pounds or less. On July 13, 1992, NHTSA published (57 FR 30917) a final rule establishing a brief phase-in for the requirements of this rule. Manufacturers must meet the requirements for all of their light trucks as of September 1, 1994. The "quasi-static" requirements have the effect of requiring each side door to be designed to mitigate occupant injuries in side impacts. It measures performance in terms of the ability of each door to resist a piston pressing a rigid steel cylinder against it. Manufacturers generally comply with the standard by reinforcing the side doors with metal beams or rods.

In the FRIA accompanying the rule, NHTSA estimated that the requirements of FMVSS 214 would result in an average weight increase of 24.8 to 26.7 pounds (including secondary weight). This weight increase could result in a fuel economy degradation of 0.1 mpg.

The weight estimates provided by the manufacturers for quasi-static side

impact protection translate, according to NHTSA calculations, into fuel economy penalties of approximately 0.04–0.06 mpg for MY 1995. These weight effects are included in the manufacturers' fuel economy projections, so there is no need for NHTSA to add an explicit adjustment to their projections to consider the impact of this standard.

The agency is also considering other regulatory requirements to protect light truck occupants in side impacts. The agency addressed a number of possible requirements in an ANPRM published on August 19, 1988 (53 FR 31716).

In addition, on June 5, 1992, pursuant to the Intermodal Surface Transportation Efficiency Act of 1991, NHTSA published (57 FR 24009) an ANPRM concerning whether passenger car dynamic side impact protection requirements should be extended to light trucks. Since any additional requirements in this area would take effect after MY 1995, there will be no impact on MY 1995 fuel economy capabilities.

##### 3. FMVSS 216

On April 17, 1991, NHTSA published a final rule (56 FR 15510) amending FMVSS 216, *Roof Crush Resistance*, to extend its requirements to light trucks with GVWRs of 6,000 pounds or less. Previously, the standard applied only to passenger cars. The effective date of the rule is September 1, 1994.

FMVSS 216 is intended to reduce deaths and injuries due to the crushing of the roof into the passenger compartment in rollover crashes. This standard established strength requirements for the forward portion of the roof to increase the resistance of the roof to intrusion and crush.

The agency believes that this requirement will have a negligible impact on light truck manufacturers' MY 1995 fuel economy capabilities. Most light trucks already meet the standard. NHTSA calculates that the manufacturers' weight impact estimates translate into fuel economy penalties of about 0.003–0.030 mpg for MYs 1995–97. These weight effects are included in the manufacturers' fuel economy projections.

##### 4. FMVSS 108

On April 19, 1991, NHTSA published (56 FR 16015) a final rule requiring new light trucks to be equipped with center high-mounted stoplamps (CHMSLs). The effective date is September 1, 1993. With an estimated weight effect of about one pound, this rule will have a negligible CAFE effect.

## 5. FMVSS 201

On February 8, 1993, NHTSA published (58 FR 7506) a notice proposing to amend FMVSS 201 to require passenger cars and light trucks to meet a new in-vehicle component test to provide protection when an occupant's head impacts upper interior components (such as A-pillars and side rails) during a crash. The estimated weight effect for light trucks for this proposed requirement averages six to nine pounds per vehicle. However, since this proposed requirement would not become effective until after MY 1995, it will have no effect on MY 1995 CAFE capabilities.

## 6. Rollover Prevention

### The Intermodal Surface

Transportation Efficiency Act of 1991 required NHTSA to publish an ANPRM or NPRM by May 31, 1992 to provide "protection against unreasonable risk of rollovers of passenger cars, multipurpose passenger vehicles, and trucks with a gross vehicle weight rating of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less." On January 3, 1992, NHTSA published (57 FR 242) an ANPRM announcing that the agency is considering whether to propose a safety standard to reduce the casualties associated with rollovers of passenger cars, pickup trucks, vans, and utility vehicles. In addition, on September 29, 1992, NHTSA published a notice (57 FR 44721) announcing the availability of a document describing the agency's planned rulemaking effort, data analyses, and physical research to address the problem of rollover crashes and resulting injuries and fatalities.

Since NHTSA has not yet proposed any requirements in this area, it will not have an impact on MY 1995 CAFE capabilities.

## B. Revised Emissions Standards

The Clean Air Amendments of 1990 (CAA) impose more stringent exhaust emissions standards on light trucks. Standards are also becoming tighter in California. Under the CAA, new standards begin phasing-in, starting with MY 1994 for trucks with GVWRs up to 6,000 pounds. The phase-in provides for compliance by 40 percent for MY 1994, 80 percent for MY 1995, and 100 percent for MY 1996 and afterwards. For light trucks over 6,000 pounds GVWR, more stringent standards begin to take effect in MY 1996. Fifty percent of these vehicles must comply with the new standards in MY 1996; all light trucks over 6,000 pounds GVWR must meet the new standards for MY 1997 and later.

Current standards for exhaust emissions will tighten substantially under the CAA. Over the "full useful life" of a vehicle, emissions standards will be 0.80 grams/mile for total hydrocarbons, and will range (depending on vehicle and test weight) from 0.31 to 0.56 grams/mile for non-methane hydrocarbons, from 4.2 to 7.3 grams/mile for carbon monoxide, from 0.8 to 1.53 grams/mile for oxides of nitrogen, and from 0.10 to 0.12 grams/mile for particulate matter.

The CAA also require EPA to establish standards for carbon monoxide emissions at 20 degrees Fahrenheit. These standards take effect beginning with MY 1994. Further, for all gasoline-fueled motor vehicles, the CAA require EPA to promulgate regulations covering evaporative emissions (1) during operation ("running losses") and (2) over two or more days of non-use.

In their questionnaire responses, none of the auto companies provided substantial detail on the possible impacts of these standards on MY 1995-97 light truck fuel economy capabilities. GM stated, "The total impact of the Clean Air Act Tier I and the California emissions standards on truck fuel economy is unknown at this time. \* \* \* Although not quantified, preliminary indications are that there will be some lost opportunities to improve fuel economy when redesigning our powertrains to comply with these standards."

Ford stated that, "[M]ost troublesome is the effect of compliance with the amended Clean Air Act. We project that compliance has reduced the average truck fuel economy by 0.3 mpg after inclusion of technology which has an offsetting effect \* \* \* and it negates other technology benefits."

NHTSA indicated in the NPRM and FRIA that it believes the net impact on CAFE capabilities due to changes in emissions requirements is likely to be minimal. Some of the new requirements will lead to fuel savings, while others may lead to fuel economy losses. Benefits will be obtained from enhanced evaporative controls and the "low temperature" carbon monoxide standards because manufacturers will sharpen their fuel-control systems, using techniques such as sequential port fuel injection. Slight fuel economy losses may result from tighter hydrocarbon and nitrous oxides emissions standards, particularly for larger engines.

In their comments on the NPRM, the manufacturers did not provide data indicating that new emissions requirements would have a significant

effect on MY 1995 CAFE capabilities. GM stated the following:

The impact of tighter Federal emissions standards enacted by the 1990 Clean Air Act Amendments is not expected to have a direct fuel economy impact related to engine efficiency. However, there will be weight increases on some engines if dual catalytic converters are required.

\* \* \* California TLEV emissions standards will most likely impact fuel economy. However, these impacts \* \* \* have not yet been reflected in GM's CAFE forecasts.

\* \* \* Tighter evaporative emission standards requiring larger canisters and adding purge controls will add weight to the vehicle and impact fuel economy.

In its comment, Ford stated:

Ford believes that NHTSA's list of other Federal standards that might have an impact on light truck fuel economy during MYs 1995-97 is insufficient. A more comprehensive list would include Potential Revisions to the Federal Test Procedure (FTP) such as higher speeds and accelerations and electric dynamometer true road load calibration, IM240 Short Test Requirements, Onboard Diagnostics, Cold CO Testing, Enhanced Evaporative Testing Requirements, Section 177 States, [and] Fuels or Fuel Additives such as reformulated gasoline and MMT.

At this point, Ford has not allocated resources to collectively assess the fuel economy implications, of required emission control system calibration strategies and hardware, that may be associated with the above requirements. However, it is reasonable to believe that several of these potential requirements will have a significant impact on light truck fuel economy.

NHTSA believes that the actual and potential Federal standards identified by Ford will not have any significant impact on MY 1995 light truck fuel economy capabilities. The agency's specific analysis of the impacts of each of these standards is presented in the FRIA. A summary of the agency's analysis follows:

### 1. Potential Revisions to the Federal Test Procedure

EPA has not to date proposed any revisions to the FTP, so no impact is expected for MY 1995.

### 2. IM240 Short Test Requirements

EPA has issued new inspection and maintenance test procedures to help ensure that vehicle emission controls function properly in real-world use, and has proposed new short Certification Short Test procedures. However, EPA's analyses have not indicated that there would be any impact on manufacturers' fuel economy capabilities as a result of these rulemakings.

### 3. Onboard Diagnostics

EPA has issued a final rule on onboard diagnostics that applies to MY 1994 and later passenger cars and light trucks, but EPA believes that this will not affect certification fuel economy.

### 4. Cold CO Testing

EPA has issued new low temperature carbon monoxide testing requirements which will apply to 80 percent of MY 1995 passenger cars and light trucks, but NHTSA believes that the requirements will not result in any fuel economy loss and may actually result in a slight fuel economy benefit.

### 5. Enhanced Evaporative Testing Requirements

EPA has recently issued enhanced evaporative emissions standards. Any negative impact on certification fuel economy (due to increased weights of upgraded evaporative emissions control system) would be very slight, and, in any case, this requirement does not begin to take effect until MY 1996.

### 6. Section 177 States

The term "Section 177 States" refers to states which voluntarily adopt the more stringent California emissions standards. At this time, it appears that Massachusetts, Maine, and New York are the only states that may adopt the California emissions standards by MY 1995. Moreover, this adoption may be affected by a recent Federal court decision which overturned New York's adoption of the California emissions standards. NHTSA has not received any data showing any impact on MY 1995 light truck fuel economy capabilities as a result of states other than California adopting the California emissions standards.

### 7. Fuels or Fuel Additives Such as Reformulated Gasoline and MMT

EPA has not proposed any changes in the current certification test fuel, so NHTSA does not expect any fuel economy impact for MY 1995 light trucks.

NHTSA has not made any adjustments to the manufacturers' CAFE projections to account for any impacts of changing emissions standards during MY 1995. The agency notes that Ford appears to be the only manufacturer that explicitly included a potential fuel economy loss (an average of 0.3 mpg) in its MY 1995 CAFE projection. Since Ford is not the "least capable" manufacturer and NHTSA is not basing the selection of the MY 1995 light truck CAFE standard primarily on Ford's capability, it is unnecessary to resolve whether Ford's capability should be

adjusted upward because of Ford's inclusion of this fuel economy loss in its projection.

### C. Test Weight for Light Trucks Over 6000 Pounds GVWR

The CAAA require that, beginning with MY 1996, many light trucks over 6000 pounds GVWR be tested, for emissions purposes, at the average of curb weight and GVWR. This requirement applies to one-half the "over 6000 pound" fleet in MY 1996 and all of this fleet in MY 1997.

Previously, test weights were determined based on "loaded vehicle weight," (LVW) which is defined as curb weight plus 300 pounds. Loaded vehicle weight has been the sole basis used to calculate "equivalent test weight," which is the weight used for dynamometer testing. EPA has defined the average of vehicle curb weight and GVWR to be "adjusted loaded vehicle weight" (ALVW) (see 56 FR 25739), which will be used as the basis for determining equivalent test weight for emission testing of the "over 6000 pound" test fleet described above.

ALVW is higher than the LVW, and if light trucks are tested at ALVW, there will be a loss in the estimated fuel economy.

The CAAA do not require fuel economy testing to be performed at ALVW. However, because exhaust emissions testing must be done at ALVW for light trucks over 6000 pounds GVWR, use of a different test weight system for fuel economy could require manufacturers and EPA (when conducting confirmatory tests) to test each of these trucks twice: once at its "equivalent test weight" based on LVW for fuel economy purposes and once based on ALVW for exhaust emissions purposes. Another approach would be for EPA to mandate that trucks over 6000 pounds GVWR be fuel economy tested at ALVW and for NHTSA to consider any resulting deleterious fuel economy effect in establishing CAFE standards for the affected model years. A third approach would be to have a manufacturer-specific test procedure adjustment to account for the proportion of its fleet affected by this requirement.

Domestic auto manufacturers have pointed out that testing at the higher weights would have a negative fuel economy impact. Using MY 1992 data, GM claimed a potential impact in MY 1997 of at least 0.5 mpg. Ford estimated a possible loss in MY 1997 of 0.2-0.3 mpg. Chrysler did not give a specific number but agreed that fuel economy would be lowered. Import manufacturers are unlikely to have any significant penalty from this test

procedure change because they produce few, if any, light trucks with a GVWR exceeding 6000 pounds.

In a letter dated February 18, 1992, EPA stated that NHTSA should set CAFE standards with the heavier test weight in mind and stated that dual testing would entail increased expenses. EPA also noted that EPCA requires integrated fuel economy and emissions testing, although this requirement is limited by the language "to the extent practicable."

After the EPA letter was sent, MVMA (now AAMA) indicated to EPA that requiring the heavier test weight would also increase testing expenses, by forcing separate fuel economy tests for light trucks above and below 6,000 pounds GVWR. In addition, MVMA raised concerns that changing the basis for determining fuel economy on only a portion of the light truck fleet (i.e., those above 6,000 pounds GVWR) would cause consumer confusion and affect the competitiveness of manufacturers with a higher proportion of the sales of the heavier light trucks.

In the NPRM, NHTSA requested comments on the appropriate means of handling this issue in the context of setting the MY 1995-97 light truck fuel economy standards. The agency stated that if EPA mandates fuel economy testing at ALVW, NHTSA would account for the impacts of this testing in establishing light truck fuel economy standards.

In January 7, 1993 letters to AAMA and AIAM, EPA stated:

Manufacturers should be aware of the NHTSA proposed rule on light truck average fuel economy standards \* \* \* Included in the proposal is a request for comments on the consequences of performing fuel economy testing for heavy light-duty trucks under two different equivalent test weight approaches. The EPA will consider all relevant comments made during the NHTSA proposal comment period when developing an EPA guidance document or rulemaking on this subject.

\* \* \* The EPA plans to defer to NHTSA's policy decisions on issues such as the competitiveness effects of the alternatives. Once NHTSA determines the desirable CAFE solution and puts it into place, the EPA will follow with conforming amendments to either its regulations or policy as required.

In commenting on the NPRM, GM, Ford, Chrysler, AAMA and Rover Group all supported the continuation of fuel economy testing at LVW. AAMA's comment was typical, "Retention of the LVW criteria will avoid needless test and CAFE data base complexities, avoid added customer confusion when comparing fuel economy labels and avoid creation of unrealistic competitive fuel economy rating differences."

After considering the comments on the new emissions test procedure requirements, NHTSA has concluded that the simplest and most equitable procedure for both manufacturers and the Federal government is to continue fuel economy certification using LVW values for all classes of vehicles. Although the statutory requirement on ALVW testing does not apply until MY 1996, NHTSA is making a decision on this issue now so that manufacturers will face less uncertainty in their fuel economy planning processes. NHTSA has informed EPA of its decision and, in a March 4, 1993 letter to NHTSA, EPA agreed to abide with NHTSA's decision and stated that it would undertake "the regulatory and guidance revisions needed to allow dual testing."

#### D. Phase-out of Chlorofluorocarbons

Under terms of the international Montreal Protocol, the United States and other industrialized nations have agreed to halt production of chlorofluorocarbons (CFCs) by the year 2000. In February 1992, President Bush announced that the United States would phase-out production by the end of 1995.

Both Ford and General Motors identified weight penalties for eliminating the use of CFCs in their vehicles' air conditioning systems of seven pounds or less for each MY 1995-97. NHTSA estimated that these weight additions could result in an average fuel economy penalty of 0.02 mpg. These weight effects are included in the manufacturers' fuel economy projections.

#### V. Domestic/Import Fleet Distinction

Since near the beginning of the CAFE program, NHTSA has required manufacturers to meet light truck CAFE standards separately for their domestic and import fleets. More specifically, manufacturers have been required to meet standards separately for their "captive imports" and "other" vehicles. The purpose of this requirement, which is similar but not identical to Title V's two-fleet rule for passenger cars, has been to ensure that the domestic manufacturers did not meet higher light truck CAFE standards simply by importing a large number of fuel-efficient light trucks, at the expense of U.S. jobs.

In the NPRM, NHTSA proposed to eliminate the domestic/import fleet distinction for light trucks beginning with MY 1995 and instead require that manufacturers combine all of their light truck production in calculating CAFE. The agency explained that there is no statutory requirement to separate a

manufacturer's light trucks into two fleets and that, under the market conditions of recent years, the maintenance of a distinction between captive import and other light trucks has not been necessary to discourage the importation of captive imports to the detriment of U.S. jobs. The agency noted that neither Ford nor GM currently market any imported trucks, and Chrysler's imported truck fleet is nearing the level of insignificance.

NHTSA had decided that this issue warrants further consideration. Given the time constraints associated with issuing a final rule for the MY 1995 light truck CAFE standard, the agency has decided not to eliminate the domestic/import fleet distinction as part of this final rule. The agency notes that while the domestic manufacturers supported making the proposed change, they did not indicate that it is creating any problems for them at this time.

#### VI. Metrication

Inasmuch as it is the policy of the U.S. to designate the metric system as the preferred system to measurement, NHTSA proposed to make a number of metric conversions in its fuel economy regulations. These included the following:

Section 523.5(b)(2)(iv) Running clearance of not less than 20 centimeters (presently 8 inches).

Section 523.5(b)(2)(v) Front and rear axle clearances of not less than 18 centimeters each (presently 7 inches).

Section 525.7(e)(4) Basic engine, displacement, and SAE rated net power, kilowatts (presently net horsepower).

Section 533.4(b)(2) \* \* \* 4-wheel drive, general utility vehicle means a 4-wheel drive, general purpose automobile capable of off-highway operation that has a wheelbase of not more than 280 centimeters (presently 110 inches), and that has a body shape similar to 1977 Jeep CJ-5 or CJ-7, or the 1977 Toyota Land Cruiser.

Section 537.7(c)(4)(iii) Engine displacement, liters (presently cubic inches or liters).

Section 537.7(c)(4)(v) SAE net rated power, kilowatts (presently net horsepower).

Chrysler commented that it does not oppose the switch to metric units but is concerned that the change may lead to the use of inconsistent units. It requested that consistency be maintained. It stated, as an example, that kilowatts should be used for engine output and for power absorption unit (PAU) settings. NHTSA notes that PAU settings are set forth in EPA regulations, and that it will be up to EPA to determine what metric conversions are

appropriate for its regulations. However, NHTSA does not believe that the metric conversions it proposed create any problems related to consistency. Accordingly, the agency is adopting them as proposed.

#### VII. The Need of the Nation to Conserve Energy

The United States imported 15 percent of its oil needs in 1955. The import share reached 36.8 percent in 1975, the year EPCA was passed, and peaked at 46.4 percent in 1977, at a cost of \$75 billion (stated in 1987 dollars). Although the share declined to below 30 percent in the mid-1980's, lately the United States has again become increasingly dependent on imported oil. Over 40 percent of the country's petroleum needs have been imported in every year since 1988, peaking at 44.3 percent in 1990 before slipping to 41.9 percent in 1991. In 1992, imports rose again to 43.6 percent. Sharply lower oil prices in the past decade, however, cut the value of oil imports to \$43.1 billion in 1991 (1987 dollars).

Similarly, the percentage of oil imported from OPEC sources, which peaked at 70 percent in 1977, and declined to a low of 36 percent in 1985, has been steadily rising since then, and was 53.7 percent in 1991. In 1992, OPEC's share declined slightly to 51.9 percent.

The average cost of crude oil imports jumped from \$4.08 per barrel in 1973 to \$12.52 in 1974 as a result of the oil embargo against selected countries, including the United States, by Arab members of OPEC. Additional increases in the cost of oil occurred in 1979-80, due to unrest in Iran which eliminated a substantial portion of that country's oil output), and in 1980-81, when the outbreak of the Iran-Iraq war reduced supply from the area. In 1981, the United States adopted a policy of reliance on market forces and decontrolled the price of oil. Since 1981, prices have fallen as conservation efforts continue. In 1990-91, petroleum prices were affected by the conflict in the Persian Gulf. In the beginning of 1992, the continued worldwide economic recession and high levels of crude oil production by OPEC member countries together held down oil prices. In October 1992, the refiner acquisition cost of imported crude oil was \$19.22 per barrel, three percent below the October 1991 level.

The current energy situation and emerging trends point to the continued importance of oil conservation. The United States now imports a higher percentage of its oil needs than it did during 1975, the year EPCA was passed,

and the percentage of its oil supplied by OPEC is similar to that of 1975. Oil continues to account for over 40 percent of all energy used in the United States, and 96 percent of the energy consumed in the transportation sector. Despite legislation such as the Clean Air Act Amendments of 1990 and California's strict "clean fuel" and emissions standards, gasoline will likely remain the predominant fuel in the transportation sector. Domestic oil production has declined steadily since reaching a peak of 10.6 million barrels per day in 1985 to 9.0 million barrels per day in 1992. Domestic production is expected to continue declining in 1993. While the United States is currently the world's second largest oil producer, it contains only about three percent of the world's known oil reserves. Persian Gulf countries contain 63 percent of known world reserves, and former communist countries contain 9 percent.

Long-term projections of petroleum prices, supply, and demand are now influenced by a wide range of uncertainties associated with sweeping economic and political changes in the former U.S.S.R. and in Eastern Europe, environmental issues, and the role of Middle East countries in determining the world's future oil supplies and prices, and future energy demands in populous developing countries. The Department of Energy projects that oil prices will be between \$14 and \$29 (1991 dollars) per barrel in the year 2000, and will rise to between \$18 and \$38 per barrel by 2010. DOE projects a continuing decline in domestic oil production to between 3.54 and 6.73 million barrels per day in 2010, with imports rising to between 25 percent and 64 percent of total use.

The level of petroleum imports is only one aspect of the total energy conservation picture. Under EPCA and NEPA, for example, national security, energy independence, resource conservation, and environmental protection must all be considered.

In March 1987, the Department of Energy submitted a report to the President entitled "Energy Security." NHTSA believes that the following quotation from that report represents a useful summary of the national security and energy independence aspects of the current energy situation:

Although dependence on insecure oil supplies is \* \* \* projected to grow, energy security depends in part on the ability of importing nations to respond to oil supply disruptions; and this is improving. The decontrol of oil prices in the United States, as well as similar moves in other countries, has made economies more adaptable to changing situations. Furthermore, the large

strategic oil reserves that have been established in the United States (and to a lesser extent, in other major oil-importing nations) will make it possible to respond far more effectively to any future disruptions than has been the case in the past.

The current world energy situation and the outlook for the future include both opportunities and risks. The oil price drop of 1986 showed how consumers can be helped by a more competitive oil market. If adequate supplies of oil and other energy resources continue to be available at reasonable prices, this will provide a boost to a world economy. At the same time, the projected increase in reliance on relatively few oil suppliers implies certain risks for the United States and the free world. These risks can be summarized as follows: If a small group of leading oil producers can dominate the world's energy markets, this could result in artificially high prices (or just sharp upward and downward price swings), which would necessitate difficult economic adjustments and cause hardships to all consumers.

Revolutions, regional wars, or aggression from outside powers could disrupt a large volume of oil supplies from the Persian Gulf, inflicting severe damage on the economies of the United States and allied nations. Oil price increases precipitated by the 1978-79 Iranian revolution contributed to the largest recession since the 1930's. Similar or larger events in the future could have far-reaching economic, geopolitical, or even military implications.

Based on the above, NHTSA concludes that there is a continuing need for the nation to conserve energy.

The increase in market share of light trucks points to the need for enhanced fuel economy for this class of vehicle. Light trucks are less fuel efficient and are driven more miles over their lifetime than passenger automobiles. In 1991, over half of the energy in the transportation sector was used by light-duty vehicles (automobiles and light trucks). Light trucks have steadily increased their share of petroleum use in the transportation sector. In 1973, light trucks accounted for approximately 12 percent of transportation petroleum use, a figure which increased to roughly 20 percent by 1989.

Light trucks meeting the MY 1995 standard will be more fuel-efficient than the average vehicle in the current light truck fleet in service, thus making a positive contribution to petroleum conservation.

### VIII. Determining the Maximum Feasible Average Fuel Economy Level

As discussed above, section 502(b) requires that light truck fuel economy standards be set at the maximum feasible average fuel economy level. In making this determination, the agency must consider the four factors of section 502(e): technological feasibility,

economic practicability, the effect of other Federal motor vehicle standards on fuel economy, and the need of the nation to conserve energy.

#### A. Interpretation of "Feasible"

Based on definitions and judicial interpretations of similar language in other statutes, the agency has in the past interpreted "feasible" to refer to whether something is capable of being done. The agency has thus concluded in the past that a standard set at the maximum feasible average fuel economy level must: (1) be capable of being done and (2) be at the highest level that is capable of being done, taking account of what manufacturers are able to do in light of technological feasibility, economic practicability, how other Federal motor vehicle standards affect average fuel economy, and the need of the nation to conserve energy.

#### B. Industry-wide Considerations

The statute does not expressly state whether the concept of feasibility is to be determined on a manufacturer-by-manufacturer basis or on an industry-wide basis. Legislative history may be used as an indication of congressional intent in resolving ambiguities in statutory language. The agency believes that the below-quoted language provides guidance on the meaning of "maximum feasible average fuel economy level."

The Conference Report to the 1975 Act (S. Rep. No. 94-516, 94th Cong., 1st Sess. 154-55 (1975)) states:

Such determination [of maximum feasible average fuel economy level] should take industry-wide considerations into account. For example, a determination of maximum feasible average fuel economy should not be keyed to the single manufacturer which might have the most difficulty achieving a given level of average fuel economy. Rather, the Secretary must weigh the benefits to the nation of a higher average fuel economy standard against the difficulties of individual manufacturers. Such difficulties, however, should be given appropriate weight in setting the standard in light of the small number of domestic manufacturers that currently exist and the possible implications for the national economy and for reduced competition association [sic] with a severe strain on any manufacturer. \* \* \*

It is clear from the Conference Report that Congress did not intend that standards simply be set at the level of the least capable manufacturer. Rather, NHTSA must take industry-wide considerations into account in determining the maximum feasible average fuel economy level.

NHTSA has traditionally set light truck standards at a level that can be achieved by manufacturers whose vehicles constitute a substantial share of

the market. The agency did set the MY 1982 light truck fuel economy standards at a level which it recognized might be above the maximum feasible fuel economy capability of Chrysler, based on the conclusion that the energy benefits associated with the higher standard would outweigh the harm to Chrysler. 45 FR 20871, 20876, March 31, 1980. However, as the agency noted in deciding not to set the MYs 1983-85 light truck standards above Ford's level of capability, Chrysler had only 10-15 percent of the light truck domestic sales, while Ford had about 35 percent. 45 FR 81593, 81599, December 11, 1980.

#### C. Petroleum Consumption

The maximum energy savings that could result from the MY 1995 standard can be illustrated by considering the potential effects of a standard set at different levels. Since Ford and Chrysler project MY 1995 CAFE levels of 20.6 mpg or above, a standard set at 20.6 mpg would not likely have any effect on those companies. Since GM currently projects a CAFE level of 20.1 mpg, a standard set at 20.6 mpg would encourage it to achieve a higher CAFE level. If GM achieved CAFE of 20.6 mpg rather than 20.1 mpg, while selling the same number of vehicles, there would be a 2.4 percent reduction in the gasoline consumption of the MY 1995 GM fleet.

If the agency set the standard at a level 0.5 mpg higher, i.e., 21.1 mpg and GM were able to achieve that CAFE level while selling the same number of vehicles, there would be a 4.8 percent reduction in the gasoline consumption of the GM fleet, as compared to a CAFE of 20.1 mpg. If Ford and Chrysler were able to achieve that CAFE level, there would be an additional reduction in gasoline consumption associated with their fleets.

However, if the manufacturers achieved a particular higher CAFE level only by restricting the sales of their large light trucks, consumers might tend to keep their older, less fuel-efficient light trucks in service longer or purchase still larger light trucks that are not subject to CAFE standards, i.e., light trucks with GVWRs between 8,500 and 10,000 pounds. Also, to the extent that a particular manufacturer such as GM might find it necessary to restrict sales of its large light trucks, consumers might be able to transfer their purchases of those same types of vehicles to another manufacturer which has less difficulty meeting the CAFE standard. Thus, the agency believes that the actual impacts on energy consumption of alternative higher fuel economy standards above 20.6 mpg (the level the

agency has determined to be GM's capability) would be less than theoretical calculations comparing different levels of industry-wide CAFE.

#### D. The MY 1995 Standard

Based on its analysis described above and on manufacturers' projections, the agency concludes that the major domestic manufacturers can achieve the light truck fuel economy levels listed in the following table:

Manufacturer	Approximate market share (percent, based on MY 1992)	CAFE (mpg)
GM .....	33	20.6
Ford .....	29	20.6
Chrysler .....	20	20.6

As indicated above, most light truck manufacturers other than GM, Ford and Chrysler only compete in the small vehicle portion of the light truck market and are therefore expected to achieve CAFE levels well above those companies. Only two light truck manufacturers, Range Rover and UMC, are expected to have fuel economy levels lower than the major domestic manufacturers. Since both of those companies have an extremely small market share, NHTSA concludes that setting a standard based on their capabilities would be inconsistent with a determination of maximum feasibility that takes industrywide considerations into account, as required by statute.

As indicated above, NHTSA has concluded that GM is the least capable manufacturer with a substantial share of sales for MY 1995. NHTSA also concludes that 20.6 mpg is the maximum feasible standard for MY 1995. For the reasons discussed below, this level balances the potential petroleum savings associated with a higher standard against the difficulties of manufacturers facing a potentially higher standard.

The agency believes that a 20.6 mpg light truck CAFE standard for MY 1995 will make a positive contribution to petroleum conservation by encouraging GM, which has the largest market share of any light truck manufacturer, to achieve a higher CAFE level than it currently projects while remaining within its fuel economy capability. The agency notes that the 20.6 mpg standard is 0.5 mpg higher than GM's current MY 1995 CAFE projection.

A 20.6 mpg standard will not unduly restrict consumer choice or have adverse economic impacts on the large domestic manufacturers. The current product plans of Ford and Chrysler

indicate that they expect to achieve MY 1995 CAFE levels that are 20.6 mpg or slightly higher. Therefore, they will not have to make any changes in their product plans to achieve the level of the standard.

While GM's current product plan shows an expected MY 1995 CAFE of 20.1 mpg, NHTSA's analysis indicates that company can achieve a CAFE of 20.6 mpg. As discussed above, this conclusion is based on the following assumptions: (1) the 4WD share of the market will not significantly increase between now and MY 1995, (2) GM will make successful efforts to maintain market share of certain vehicles, (3) GM can make minor changes in the performance levels of its vehicles to bring them more in line with its competitors, and (4) GM can make small improvements by increasing the penetration of some engine and transmission technology improvements that are not projected for full implementation. All of these actions are very minor and, the agency believes, within GM's capability.

NHTSA believes that a higher standard than 20.6 mpg for MY 1995 could result in serious economic difficulties for GM. While GM can achieve 20.6 mpg CAFE without significant product restrictions, such restrictions could be required to achieve a CAFE higher than 20.6 mpg. Given leadtime constraints, NHTSA believes that the first potential fuel-efficiency actions that GM or any other manufacturer would consider in response to a higher standard would consist of marketing actions. For the reasons discussed in other notices, however, the agency does not believe that marketing actions can be relied upon to significantly improve a manufacturer's CAFE. See, e.g., MY 1993-94 light truck CAFE final rule, 56 FR 13775, April 4, 1991. If such marketing actions were unsuccessful in whole or in part, GM would likely have to engage in significant product restrictions to achieve the level of a higher CAFE standard. Such product restrictions could result in adverse economic consequences for GM, its employees and the economy as a whole and limit consumer choice, especially with regard to the load-carrying needs of light truck purchasers.

As indicated above, while NHTSA has concluded that GM is the least capable manufacturer with a substantial share of sales, the agency believes that GM's capability is not significantly below that of Ford and Chrysler. Therefore, even if the agency were to set a standard above GM's capability, the standard could not be much above 20.6 mpg and still

remain within the capability of the majority of the industry.

NHTSA believes that the 20.6 mpg standard balances the potentially serious adverse economic consequences for GM that could result from a higher standard with the potential for increased petroleum savings. The agency concludes, in view of the statutory requirement to consider specified factors, that the relatively small and uncertain energy savings associated with setting a standard above GM's capability would not justify the potential harm to that company and the economy as a whole.

Consumer Alert and CEI requested that NHTSA consider the safety effects of its decision. Those commenters stated that the agency should not in any way avoid analyzing the potential safety consequences of a decision to increase the CAFE standards for light trucks. Consumer Alert and CEI cited the record of NHTSA's rulemaking concerning the MY 1990 passenger car CAFE standard, although they recognized that the safety consequences of a decision to raise the CAFE standard for light trucks may differ somewhat.

In the context of passenger car CAFE standards, NHTSA has recognized that CAFE standards could adversely affect safety to the extent that they result in significant reductions in car size and/or weight. This issue was discussed at length in the agency's notice terminating rulemaking on the MY 1990 passenger car CAFE standard. See 58 FR 6939, February 3, 1993.

An analysis of the extent to which significantly higher light truck CAFE standards could affect safety is more complex than for passenger car standards, since purchasers would have many more options for substitution (e.g., different kinds of light trucks, trucks with a high enough GVWR that they are not subject to CAFE standards, etc.). The agency notes that since light trucks are generally significantly larger and heavier than passenger cars, any safety effects of a particular weight reduction would likely be smaller than for cars.

While NHTSA recognizes that significantly higher light truck CAFE standards could adversely affect safety, to the extent that they resulted in significant reductions in light truck size and/or weight, the available evidence indicates that a MY 1995 standard of 20.6 mpg will not have any impact on safety. NHTSA notes that, in setting the light truck CAFE standards for recent model years, the agency did not include in its analyses of manufacturer capabilities any product plan actions that would significantly affect the weight, size or cost of the vehicles the

manufacturers planned to offer. The agency also notes that the average equivalent test weight of light trucks has increased from 3,805 pounds in MY 1984 to 4,169 pounds in MY 1992. Therefore, NHTSA believes that CAFE standards have not had any measurable effect on light truck weight or size.

The agency also notes that the levels of the light truck CAFE standards have not varied significantly for more than a decade. The light truck CAFE standards for MY 1987-89 and MY 1994 were set at 20.5 mpg, and, as far back as MY 1984, the standard was 20.0 mpg.

NHTSA therefore believes that the size and weight of current and planned light trucks are not significantly different from what would have occurred in the absence of CAFE standards. As discussed above, Ford and Chrysler will meet or exceed the level of the 20.6 mpg standard for MY 1995 without making any changes in their product plans. While GM will need to make some changes in its product plan to achieve a MY CAFE of 20.6 mpg, the agency does not believe that it is necessary, or likely, for that company to take actions that would have any adverse effect on safety, in order to achieve that CAFE level.

As indicated above, in determining that GM can achieve a MY 1995 CAFE level of 20.6 mpg, NHTSA adjusted GM's projected CAFE level of 20.1 mpg based on several factors. First, the agency adjusted it upward to reflect more realistic mix assumptions with respect to 4WD market share and maintaining market share of certain more fuel-efficient vehicles. Since this adjustment simply reflects the agency's judgment of what GM is likely to be able to sell, based on historical experience, the adjustment does not include or compel any actions with safety implications.

NHTSA also concluded that GM can improve its projected MY 1995 CAFE by a slight reduction in vehicle performance. This would involve changes in such things as axle ratios. The agency believes that a slight reduction in performance would not have any adverse safety consequences.

Finally, the agency concluded that GM could improve its MY 1995 CAFE by increasing the penetration of some engine and transmission technology improvements that are not projected for full implementation. This action would not result in reduced vehicle weight.

Since the 20.6 mpg light truck CAFE standard for MY 1995 will not lead to significant reductions in light truck size or weight, or shifts toward less safe vehicles, the agency concludes that it is not likely to have any impact on safety.

This final rule will not have any retroactive effect. Under section 509(a) of the Motor Vehicle Information and Cost Savings Act (the Cost Savings Act; 15 U.S.C. 2009(a)), whenever a Federal motor vehicle fuel economy standard is in effect, a state may not adopt or maintain separate fuel economy standards applicable to vehicles covered by the Federal standard. Under section 509(b) of the Cost Savings Act (15 U.S.C. 2009(b)) a state may not require fuel economy labels on vehicles covered by section 506 of the Cost Savings Act (15 U.S.C. 2006) which are not identical to the Federal standard. Section 509 does not apply to vehicles procured for the State's use. Section 504 of the Cost Savings Act (15 U.S.C. 2004) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal average fuel economy standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

## IX. Impact Analyses

### A. Economic Impacts

The agency has considered the economic implications of the standard for MY 1995 and determined that it is major within the meaning of Executive Order 12291 and significant within the meaning of the Department's regulatory procedures. The agency's detailed analysis of the economic effects is set forth in a Final Regulatory Impact Analysis (FRIA), copies of which are available from the Docket Section. The contents of that analysis are generally described above.

### B. Environmental Impacts

The agency has analyzed the environmental impacts of the MY 1995 light truck average fuel economy standard in accordance with the National Environmental Policy Act, 42 U.S.C. 4321 et seq. Copies of the Environmental Assessment are available from the Docket Section. The agency has concluded that no significant environmental impact will result from this rulemaking action.

### C. Impacts on Small Entities

Pursuant to the Regulatory Flexibility Act, the agency has considered the impact this rulemaking will have on small entities. I certify that this action will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required for this action. No light truck manufacturer subject to the standard will be classified

as a "small business" under the Regulatory Flexibility Act. In the case of other small businesses, small organizations, and small governmental units which purchase light trucks, the standard will not affect the availability of fuel efficient light trucks or have a significant effect on the overall cost of purchasing and operating light trucks.

#### D. Impact of 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 MY 1995 standard will not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

#### E. Department of Energy Review

In accordance with section 502(i) of the Cost Savings Act, NHTSA submitted a pre-publication copy of the NPRM to the Department of Energy (DOE) for review. While NHTSA did not receive any comments from DOE before the NPRM was published, that Department did submit a comment one week after publication. DOE stated that it continues to view improvements in light truck fuel economy as critical to improving transportation efficiency and reducing oil consumption in the United States. It indicated that it had reviewed the NPRM and accompanying PRIA and was "concerned that the short lead time available to manufacturers considerably restricts their actions, especially for model years 1995 and 1996." DOE recommended that NHTSA proceed with the proposed ranges for the standards for MY 1995-96 but suggested that MY 1997 be handled in a separate rulemaking to be initiated as soon as possible in 1993.

In accordance with section 502(j) of the Cost Savings Act, NHTSA also submitted this final rule to DOE for review. That Department stated that it concurs with the establishment of 20.6 mpg as the light truck CAFE standard for MY 1995. It also recommended that the Department of Transportation initiate a new rulemaking that includes model years 1998 through 2000. DOE stated that by setting the CAFE standards in a timely fashion and including model years beyond those for which manufacturers had already completed their product plans, the Department of Transportation will have considerably greater scope in estimating "technological feasibility" and "economic practicability" in determining maximum feasible average fuel economy levels. DOE stated that through this approach, it believes the

CAFE law can be used to achieve its maximum social benefit.

#### List of Subjects

##### 49 CFR Part 523

Classification, Motor vehicles.

##### 49 CFR Part 525, 533, and 537

Energy conservation, Motor vehicles.

In consideration of the foregoing, 49 CFR parts 523, 525, 533, and 537 are amended as follows:

#### PART 523—[AMENDED]

1. The authority citation for part 523 is revised to read as follows:

Authority: 15 U.S.C. 2002; 49 CFR 1.50.

2. Sections 523.5(b)(2) (iv) and (v) are revised to read as follows:

##### § 523.5 Light truck.

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(iv) Running clearance of not less than 20 centimeters.

(v) Front and rear axle clearances of not less than 18 centimeters each.

#### PART 525—[AMENDED]

1. The authority citation for part 525 is revised to read as follows:

Authority: 15 U.S.C. 2002; 49 CFR 1.50.

2. Section 525.7(e)(4) is revised to read as follows:

##### § 525.7 Basis for petition.

\* \* \* \* \*

(e) \* \* \*

(4) Basic engine, displacement, and SAE rated net power, kilowatts;

\* \* \* \* \*

#### PART 533—[AMENDED]

1. The authority citation for part 533 is revised to read as follows:

Authority: 15 U.S.C. 2002; 49 CFR 1.50.

3. Table III in § 533.5(a) is revised to read as follows:

##### § 533.5 Requirements.

(a) \* \* \*

Table III

Model Year	Combined standard	
	Captive imports	Other
1992	20.2	20.2
1993	20.4	20.4
1994	20.5	20.5
1995	20.6	20.6

\* \* \* \* \*

2. Section 533.4(b)(2) is amended by revising the definition of *4-wheel drive, general utility vehicle* to read as follows:

##### § 533.4 Definitions.

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

*4-wheel drive, general utility vehicle* means a 4-wheel drive, general purpose automobile capable of off-highway operation that has a wheelbase of not more than 280 centimeters, and that has a body shape similar to 1977 Jeep CJ-5 or CJ-7, or the 1977 Toyota Land Cruiser.

\* \* \* \* \*

#### PART 537—[AMENDED]

1. The authority citation for part 537 is revised to read as follows:

Authority: 15 U.S.C. 2005; 49 CFR 1.50.

2. Sections 537.7(c)(4) (iii), and (iv) are revised to read as follows:

##### § 537.7 Pre-model year and mid-model year reports.

\* \* \* \* \*

(c) *Model type and configuration fuel economy and technical information.*

\* \* \* \* \*

(4) \* \* \*

(iii) Engine displacement, liters;

(iv) SAE net rated power, kilowatts;

\* \* \* \* \*

Issued: April 1, 1993.

Howard M. Smolkin,

Executive Director.

[FR Doc. 93-8136 Filed 4-2-93; 2:39 pm]

BILLING CODE 4010-59-M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

RIN: 1018-AB42

**Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for *Argyroxiphium Kauense* (Ka'u Silversword)**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) determines a plant, *Argyroxiphium Kauense* (Ka'u Silversword), to be endangered pursuant to the Endangered Species Act of 1973, as amended (Act). This species is known only from 2 populations on the Island of Hawaii, totaling an estimated 540 individuals. The greatest threat to the survival of this species is the small

number of populations with its limited gene pool, depressed reproductive vigor, and population structure heavily skewed toward immature individuals. That is compounded by a requirement for cross-pollination and single flowering within the lifetime of an individual plant. Expansion of the populations beyond protective fencing is limited by predation and habitat degradation by feral animals. Because browsing differentially affects more mature plants and results in reduced seed viability, reproductive success in this species depends on continued protection of the populations against feral ungulates. With just two extant populations, the species also risks stochastic extinction from events such as lava flows and associated wildfires. This rule implements the protection and recovery provisions provided by the Act for this plant.

**EFFECTIVE DATE:** May 7, 1993.

**ADDRESSES:** The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Pacific Islands Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, room 6307, Honolulu, Hawaii 96813.

**FOR FURTHER INFORMATION CONTACT:** Robert P. Smith, Field Supervisor, at the above address (808/541-2749).

**SUPPLEMENTARY INFORMATION:**

**Background**

*Argyroxiphium kauense* was first collected above Kapapala on the south slope of Mauna Loa by Charles N. Forbes in 1911. That and another collection were both sterile and identified as *A. sandwicense* var. *macrocephalum* Gray by David D. Keck. After the first flowering and fruiting material were collected in 1956, *A. sandwicense* var. *kauense* was described by Joseph F. Rock and Marie C. Neal (1957), who named the plant after the Kau District, where it grows. Later that year, Otto and Isa Degener (1957) elevated the new variety to species rank.

All subsequent collections and confirmed sightings are from three areas: off Powerline Road in Upper Waiakea Forest Reserve (South Hilo District), at Ke a Pohina on Kahuku Ranch (Kau District), and in the general vicinity of Ainapo Trail in both Kapapala Forest Reserve (Kau District) and Kahuku Ranch. *Argyroxiphium kauense* is known to be extant at the first two of those three localities. The Ainapo population has not been seen since 1986, despite a search of the area in 1990 (William Paty, Hawaii Board of Land and Natural Resources, *in litt.*, 1990; Charles Wakida, Hawaii Division

of Forestry and Wildlife (Hawaii DOFAW), *in litt.*, 1990; Steve Bergfeld, Hawaii DOFAW, pers. comm., 1992; Jack Lockwood, U.S. Geological Survey, pers. comm., 1990). The species occurs on State and privately owned land. Due to insufficient material, the identity of an historic collection from Hualalai cannot be confirmed; it could possibly be *A. kauense* (Carr 1985, 1990; Elizabeth Powell, University of Nevada, *in litt.*, 1990; E. Powell, pers. comm., 1990).

*Argyroxiphium kauense* is a rosette shrub, usually single-stemmed, its vegetative stems about 3 to 70 centimeters (cm) (1 to 24 inches (in)) long, and flowering stems about 0.7 to 2.5 meters (m) (2 to 8 feet (ft)) long. The leaves are very narrowly sword-shaped, 3- to 4-angled in cross section, about 20 to 40 cm (8 to 16 in) long and 0.5 cm (0.2 in) wide at the middle, nearly covered with dense, silky, silvery gray hairs. The flowering stalk as many branches, each with a flowering head of 3 to 11 ray flowers each about 1 cm (0.4 in) long, and 50 to 200 disk flowers each about 0.6 cm (0.2 in) long. The white or yellow to wine-red flowers bloom in August and September. The fruits are dry and black. *Argyroxiphium kauense* is distinguished from closely related species by its narrower leaves, hairs not completely covering the leaf surface, and fewer ray flowers per head (Carr 1985, 1990).

*Argyroxiphium kauense* grows primarily in moist forest openings or bogs at about 1,600 to 2,320 m (5,300 to 7,600 ft) elevation, although plants also occur on well-drained substrates in relatively dry sites (Carr 1990; Rick Warshauer, U.S. Fish and Wildlife Service, *in litt.*, 1979; J. Lockwood, pers. comm., 1990). The substrate is 'a'a or pahoehoe lava, sometimes with wet humus, on flat to steep and irregular ground (Degener *et al.* 1976; Meyrat 1982). The vegetation is most typically dry scrub or scrub forest dominated by *Metrosideros polymorpha* ('ohi'a) with such associates as *Styphelia tameiameiae* (pukiawe), *Coprosma ernodeoides* ('aiakanene), *Dodonaea viscosa* ('a'ali'i), *Geranium cuneatum* (nohoanu), and *Vaccinium reticulatum* ('ohelo) (Hawaii Heritage Program 1991; Donald Reeser, National Park Service, *in litt.*, 1974; R. Warshauer, *in litt.*, 1979). The open bog site shares those associates but is dominated by sedges (*Oreobolus furcatus*, *Rhynchospora chinensis* ssp. *spiciformis* (kuolohia), and *Carex montis-eeka*) (Clarke 1982).

The greatest threat to the survival of this species is the small number of populations with a limited gene pool, depressed reproductive vigor, and

population structure heavily skewed toward immature individuals. That is compounded by a dependency on cross-pollination, and single flowering within the lifetime of an individual plant.

Expansion of the populations is limited by predation and habitat degradation by feral animals. Pigs (*Sus scrofa*) and goats (*Capra hircus*) were introduced to the island over a century ago. Mouflon sheep (*Ovis musimon*) and pigs have greatly reduced this species' numbers in the Ke a Pohina population over the past two decades. Outside protective fencing, feral pigs prevent seedling establishment, and pigs and mouflon sheep prevent the plants from reaching maturity (E. Powell, *in litt.*, 1985). Because browsing differentially affects more mature plants and results in reduced seed viability (E. Powell, pers. comm., 1992; pers. observation, 1991), the reproductive success of this species is dependent on continued protection of the population against feral ungulates. With just two extant populations, the species also risks stochastic extinction from events such as lava flows and associated wildfires (Kimura and Nagata 1980; Powell 1986; Linda Cuddihy, National Park Service, *in litt.*, 1990; E. Powell, pers. comm., 1990).

Federal action on this species began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the *Federal Register* (40 FR 27823) of its acceptance of the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act, and giving notice of its intention to review the status of the plant taxa named therein. *Argyroxiphium kauense* was included in that notice as endangered. As a result of that review, on June 16, 1976, the Service published a proposed rule in the *Federal Register* (41 FR 24523) to determine endangered status pursuant to section 4 of the Act for approximately 1,700 vascular plant species. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94-51 and the July 1, 1975, *Federal Register* publication.

General comments received in response to the 1976 proposal are summarized in an April 26, 1978, *Federal Register* publication (43 FR

17909). In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice in the *Federal Register* (44 FR 70796) withdrawing that portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. The Service published a notice of review for plants on December 15, 1980 (45 FR 82479), September 27, 1985 (50 FR 39525), and February 21, 1990 (55 FR 6183). In these notices, *Argyroxiphium kauense* was treated as a Category 1 candidate for Federal listing. Category 1 species are those for which the Service has on file substantial information on biological vulnerability and threats to support preparation of listing proposals.

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. On October 13, 1983, the Service found that the petitioned listing of *Argyroxiphium kauense* was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed in October of 1984, 1985, 1986, 1987, 1988, and 1989.

On August 6, 1990, the Service published in the *Federal Register* (55 FR 31860) a proposal to list *Argyroxiphium kauense* as endangered. The proposal was based primarily on information supplied by Dr. Elizabeth Powell and observations by botanists and naturalists. The Service now determines *Argyroxiphium kauense* to be endangered with the publication of this rule.

#### Summary of Comments and Recommendations

In the August 6, 1990, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final listing decision. The public comment period ended on October 5, 1990. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice was published in The

Hawaii Tribune-Herald on August 17, 1990, which invited general public comment.

Comments were received from three parties: one from a conservation organization that noted it had no information to add to the proposed rule; one from a private individual in support of listing the species, but offering no additional information; and one from a private party not favoring listing, commenting on the proposed rule, and correcting information presented in the proposed rule.

The latter respondent indicated that the Service overstated the threat of grazing by mouflon in the Ke a Pohina population, and suggested that a blight could be responsible for damage to leaf tips. This respondent also indicated that no browsing, grazing, or rooting by feral herbivores has occurred within the fenced area of the Ke a Pohina population. However, as described in Factor C under "Summary of Factors Affecting the Species," mouflon have damaged the *Argyroxiphium kauense* plants both in and out of the fenced area. One fenced population is not enough to be assured of long-term survival of a species. The numbers of plants and populations of this species are sufficiently small that, given its threats, it must still be considered endangered. The correction provided by the latter respondent has been incorporated into this final rule. The Service did not receive any information indicating that the species is more widespread or under lesser threat than previously thought.

#### Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Argyroxiphium kauense* should be classified as an endangered species. Procedures and criteria prescribed by Section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered species due to one or more of the five factors described in section 4(a)(1) of the Act. These factors and their application to *Argyroxiphium kauense* (Rock & Neal) Degener & I. Degener (Ka'u silversword) are as follows:

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

Feral and domesticated animals (goats, pigs, sheep (*Ovis aries*), and cattle (*Bos taurus*)) have altered and

degraded the vegetation of much of Hawaii, including the areas where *Argyroxiphium kauense* may have formerly grown, and where it still exists (Mitchell 1981; Scott et al. 1986; Tomich 1986; E. Powell, *in litt.*, 1985). The former range of this species may have extended in a band around the southern and southeastern flanks of Mauna Loa at about 1,830 m (6,000 ft) in elevation, as well as its northeastern flank, and possibly also included Hualalai (E. Powell, *in litt.*, 1985, 1990; E. Powell, pers. comm., 1990). The territorial government apparently built "the Kau fence" on Mauna Loa's southeast flank in the 1930s in order to keep feral goats of the lava uplands from invading the lower forests, indicating that these animals probably did impact the range of *A. kauense* (Tomich 1986). Although no specific documentation indicates that feral animals reduced the former range of this species, recent observations show that feral mouflon sheep, pigs, and goats damage and consume *A. kauense*, and mechanically disturb the adjacent ground (Clarke 1982; Stone 1985; E. Powell, *in litt.*, 1985; D. Reeser, *in litt.*, 1974; R. Warshauer, *in litt.*, 1979; pers. obs., 1991). Mouflon sheep and pigs have reduced this species' numbers considerably over the past 2 decades (Carr 1990; Clarke 1982; E. Powell, *in litt.*, 1985; E. Powell, Lani Stemmermann, University of Hawaii, and Kaoru Sunada, private florist, pers. comms., 1990).

When rooting, feral pigs knock over and uproot plants. That caused a decrease in the (then unfenced) Powerline Road population from about 1,000 plants of all size classes in 1975, to 20 plants, all immature, in 1984 (E. Powell, *in litt.*, 1985). The fence erected at that site for the Upper Waiakea Bog Plant Sanctuary did not enclose the entire population (Carolyn Corn, Hawaii DOFAW, L. Cuddihy, and L. Stemmermann, pers. comms., 1990). Pigs have severely disturbed the remainder of the bog, destroying all but one unfenced *Argyroxiphium kauense* plant (E. Powell, pers. comms., 1990, 1992). Pig rooting has thus destroyed former habitat and continues to destroy potential habitat of this species (J. Lockwood and E. Powell, pers. comms., 1990). In contrast, within the fenced Sanctuary, the population has increased from 20 to nearly 200 individuals in 8 years (E. Powell, *in litt.*, 1990; E. Powell, pers. comm., 1992). Pigs have also uprooted seedlings of *A. kauense* at the Ke a Pohina population, and have uprooted other native species at all three recently known populations (E.

Powell, *in litt.*, 1985; R. Warshauer, *in litt.*, 1979). Signs of pigs were noted at and near the Ke a Pohina population in 1991 and 1992 (S. Bergfeld, pers. comm., 1992; pers. obs., 1991).

Although abundant seedlings of *A. kauense* have been noted at sites where pigs rooting has occurred (C. Wakida, pers. comm., 1990), subsequent rooting up of seedlings outweighs the extent to which pigs temporarily provide sites for seedling establishment (E. Powell, *in litt.*, 1985, 1990).

#### B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Illegal collecting for scientific or horticultural purposes or excessive visits by individuals interested in seeing rare plants could result from increased publicity, and potentially threatens the Powerline Road population of *Argyroxiphium kauense*. The species is of some horticultural and ornamental interest (now growing at Kew Gardens), and in the past, seed was collected for propagation (Degener *et al.* 1976). However, such activity is now minimal.

#### C. Disease or Predation

Feral mouflon sheep, pigs, and goats are known to feed on *Argyroxiphium kauense* (Clarke 1982; E. Powell, *in litt.*, 1985; D. Reeser, *in litt.*, 1974; Gerald Carr, University of Hawaii, and K. Sunada, pers. comms., 1990). Grazing by mouflon either kills plants or causes them to resprout with multiple stems and greatly reduced vigor (E. Powell, *in litt.*, 1985). The Ke a pohina population of *A. kauense* declined markedly over the past 2 decades, apparently as a result of the activities of a herd of mouflon. The original 8 mouflon released by the landowner in 1968 increased to approximately 2,000 animals by 1992 (Eugene Yap, South Point Safaris, pers. comm., 1992). Although the landowner is now controlling their numbers, mouflon are still present adjacent to the Ke a Pohina population (S. Bergfeld, pers. comm., 1992; pers. obs., 1991).

In 1974, the Ke a Pohina population of *A. kauense* numbered thousands of plants, including 250 mature, flowering individuals with rosettes up to 1 m (3 ft) in diameter (Degener *et al.* 1976; K. Asherman, *in litt.*; 1985; L. Stemmermann, pers. comm., 1990). Two years later, 2,071 plants with a diameter over 8 cm (3 in) were counted at this population (Charles Lamoureux, University of Hawaii, pers. comm., 1990). In 1984, there were about 2,000 plants, but only 1 was in flower and less than 5 percent of the plants were larger than 25 cm (10 in) in diameter (E.

Powell, *in litt.*, 1985, 1990). Almost all larger (mature) plants were dead, and grazing damage was evident on plants as small as 5 cm (2 in) in diameter, even within the fence erected by the landowner to protect this species (E. Powell, *in litt.*, 1985, 1990). Mouflon had eaten the growing tips of nearly all large individuals, greatly reducing this population's potential for regeneration (G. Carr and L. Stemmermann, pers. comms., 1990). By 1991, the population had declined to approximately 340 individuals, with 4 plants in flower and less than 1 percent of the plants larger than 25 cm (10 in) in diameter (pers. obs., 1991). Browsing damage by mouflon was again evident on a number of individuals (pers. obs., 1991). *Argyroxiphium kauense*, *Machaerina*, and *Astelia* were the only species showing signs of browse damage (E. Powell, *in litt.*, 1990; pers. obs., 1991).

Only two plants are known to grow outside the fence in the Ke a Pohina area (E. Yap, pers. comm., 1992; pers. obs., 1991). Seed would be expected to blow outside the fence and germinate, as the habitat is similar on either side of the fence (pers. obs., 1991). Predation pressure from mouflon very likely confines this population to the fenced enclosure. The landowner has initiated a policy of removing mouflon from the area of the Ke a Pohina population. Because animal densities are typically very low there, game control personnel monitor the site infrequently (E. Yap, pers. comm., 1992).

Grazing damage by pigs on the leaves and stems of *Argyroxiphium kauense* and grazing damage on leaves that had regrown following grazing are documented for the Powerline Road population (Clarke 1982). Since evidence of pigs has been reported at Ke a Pohina (S. Bergfeld, pers. comm., 1992; pers. obs., 1991), predation by pigs is a potential threat to both populations of *A. kauense*. The landowner and Hawaii DOFAW completed improvements to the fence at Ke a Pohina in 1992 (S. Bergfeld, pers. comm., 1992). Therefore, feral ungulates may currently be excluded from the fenced portion of both remaining populations of this species. The degree of future threat by feral ungulates to *A. kauense* depends heavily on maintenance of fencing.

The widely scattered, unfenced Ainapo population was most likely destroyed by predation by feral goats (J. Lockwood, pers. comm., 1990). Heavy browsing damage by feral goats to the apex and lateral leaves of *Argyroxiphium kauense* was documented in 1974 at that population (D. Reeser, *in litt.*, 1974). Goats are a

potential threat to the two remaining populations of *A. kauense* (L. Cuddihy, E. Powell, C. Wakida, pers. comms., 1990).

Despite claims that alien insects threaten this species, only native pollinators and native non-pollinating insects have been confirmed as damaging seed, and only to a minor extent (Degener *et al.* 1976; Kimura and Nagata 1980; E. Powell, pers. comm., 1990). Most of the seed collections examined by Powell (*in litt.*, 1990) had negligible seed parasitism. *Tephritis* (fly) larvae primarily consume inviable seed, so that even the few collections with appreciable seed parasitism did not impact the seed set negatively (E. Powell, *in litt.*, 1990). No significant threats to *Argyroxiphium kauense* from disease are known.

#### D. The Inadequacy of Existing Regulatory Mechanisms

One population of *Argyroxiphium kauense* is located on private land. The other population is in a plant sanctuary within a State forest reserve. There are no State laws or existing regulatory mechanisms at the present time to protect or prevent further decline of these plants on private land. However, Federal listing would automatically invoke listing under Hawaii State law, which prohibits taking and encourages conservation by State government agencies. State regulations prohibit the removal, destruction, or damage of plants found on State lands. However, the regulations are difficult to enforce because of limited personnel. Hawaii's Endangered Species Act [HRS, Sect. 195D-4(a)] states, "Any species of aquatic life, wildlife, or land plant that has been determined to be an endangered species pursuant to the [Federal] Endangered Species Act shall be deemed to be an endangered species under the provisions of this chapter."

\* \* \* Further, the State may enter into agreements with Federal agencies to administer and manage any area required for the conservation, management, enhancement, or protection of endangered species [HRS, Sect. 195D-5(c)]. Funds for these activities could be made available under section 6 of the Federal Act (State Cooperative Agreements). Listing of *A. kauense* therefore activates and reinforces the protection available under State law. The Act also offers additional protection because it is a violation of the Act for any person to remove, cut, dig up, damage, or destroy any endangered plant in an area not under Federal jurisdiction in knowing violation of State law or regulation or in the course

of any violation of a State criminal trespass law.

#### E. Other Natural or Manmade Factors Affecting Its Continued Existence

The small number of populations (two) increases the potential for extinction from stochastic events. A single human-caused or natural environmental disturbance could destroy a significant percentage of the known extant individuals, or the limited gene pool may further depress reproductive vigor.

Two aspects of the reproductive system of *Argyroxiphium kauense* further exacerbate this problem: individual plants flower only once and then die, and flowers must be cross-pollinated from a different plant (Powell 1986; E. Powell, *in litt.*, 1990). If too few plants flower at the same time, or if flowering plants are too widely separated for pollination by insects, no seed will be set. The survival of these relatively small, isolated populations with already depressed reproductive vigor is therefore threatened.

The present demography of the populations, heavily skewed toward immature individuals, is of concern. Only about 3 percent of the plants in the Ke a Pohina population were of probable reproductive maturity in 1991; 66 percent of the population had a rosette diameter under 8 cm (3 in), a size far from reproductive maturity (E. Powell, pers. comm., 1992; pers. obs., 1991). An estimated 12 percent of the Powerline Road population was reproductively mature in 1992 (E. Powell, pers. comm., 1992). Powell's research on the closely related taxon, *Argyroxiphium sandwicense* ssp. *sandwicense* (Mauna Kea silversword), indicates that an estimated minimum of 20 mature plants is necessary for successful reproduction in a population (i.e., 2 individuals flowering simultaneously) (E. Powell, pers. comm., 1992). The Ke a Pohina population currently has approximately 10 individuals of probable reproductive maturity (pers. obs. 1991), putting it at risk of gradual extinction until more individuals reach maturity and reproduce successfully.

The Powerline Road population, with 25 reproductively mature plants (E. Powell, pers. comm., 1992), is only marginally above the estimated minimum level for successful reproduction. Powell's research on *A. sandwicense* ssp. *sandwicense* indicates that the abundance of large pre-flowering plants is far more critical to the survival of the population than the number of young plants (E. Powell, *in litt.*, 1990). In that taxon, a loss of 20

percent of the mature individuals can tip the balance against the survival of a population (E. Powell, pers. comm., 1992). In *A. kauense*, as with most plant species, smaller individuals have a higher natural rate of mortality than larger plants. Since larger individuals are preferentially browsed by feral animals, ensuring the reproductive success of *A. kauense* relates directly to continued protection against feral ungulates.

Ground rooted up by feral animals, as discussed in Factor A, also provides sites for invasion by more aggressive non-native plant species. Alien plants are common at the Powerline Road population and may be spreading in response to pig rooting, as is the case in other Hawaiian bogs (where weeds often spread at the expense of a related species of *Argyroxiphium*) (Clarke 1982; Loope *et al.* 1991; Medeiros *et al.* 1991; L. Cuddihy, pers. comm., 1990). While alien plants pose a potential threat, they are not a serious threat to *A. kauense* at present (Karen Asherman, The Nature Conservancy, *in litt.*, 1985; L. Cuddihy and E. Powell, pers. comms., 1990).

The reproductive potential of *Argyroxiphium kauense* is also limited by the low viability of seed from vegetatively branched individuals. Inflorescences on branched individuals are greatly reduced in comparison with those on unbranched plants. Seed collected from a number of branched plants at the Ke a Pohina population had a viability of 0 to 0.6 percent (G. Carr, pers. comm., 1991; E. Powell, pers. comm., 1992). Branched individuals account for about 50 percent of the larger individuals at the Ke a Pohina population, and all of the individuals flowering there in 1991 (pers. obs.). At the Powerline Road population, about 5 percent of the plants in 1990 were branched (E. Powell, pers. comm., 1992). In older accounts, branched individuals of *A. kauense* were reported to be very rare (Degener *et al.* 1976). Predation is known to cause branching in silverswords. The high proportion of branching in the Ke a Pohina population is very likely due to browsing by mouflon prior to fencing improvements (E. Powell, pers. comm., 1992; pers. obs., 1991). Improving the reproductive potential of *A. kauense* depends on continued protection of the two populations against feral ungulates.

Lava flows and the wildfires they ignite are a serious potential threat to both populations of *Argyroxiphium kauense* (Degener *et al.* 1976; Kimura and Nagata 1980; L. Cuddihy, *in litt.*, 1990; E. Powell, pers. comm., 1990). The larger Ke a Pohina population is located within a half mile of a 1950 flow

from the active southwest rift of Mauna Loa. In 1984, a lava flow approached the Powerline Road population, where fire is a potential threat to *A. kauense* in dry years (E. Powell, *in litt.*, 1990; L. Stemmermann, pers. comm., 1990).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to issue this final rule. Based on the Service's evaluation, the preferred action is to list *Argyroxiphium kauense* as endangered. The small number of populations and limited distribution make this species particularly vulnerable to extinction and/or reduced reproductive vigor from stochastic events. Expansion of the populations is limited by predation and habitat degradation by feral animals. Because browsing differentially affects more mature plants and results in reduced seed viability, reproductive success in this species is dependent on continued protection of the populations against feral ungulates. The low remaining number of individuals, poor species reproductive potential, population structure skewed toward immature individuals, and vulnerability to destruction by lava flows and wildfires indicate that the species is in danger of extinction throughout all or a significant portion of its range; it therefore fits the definition of endangered as defined in the Act. The determination of endangered status for this species thus appears warranted. Critical habitat is not being designated for this species for reasons discussed in the "Critical Habitat" section of this rule.

#### Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for this species. Such a determination would result in no known benefit to *Argyroxiphium kauense*.

One of the two extant populations is on State land; State agencies can be alerted to the presence of the plant without the publication of critical habitat descriptions and maps. As discussed under Factor B in the Summary of Factors Affecting the Species, *Argyroxiphium kauense* could be threatened by taking. The publication of precise maps and descriptions of critical habitat in the Federal Register and local newspapers as required in a proposal for critical habitat would

increase the degree of threat to this plant from take or vandalism and, therefore, could contribute to its decline and increase enforcement problems. The listing of this species as endangered publicizes the rarity of the plant and, thus, can make it attractive to researchers, curiosity seekers, or collectors of rare plants. All involved parties and landowners have been notified of the importance of protecting the habitat of this species.

Protection of the species' habitat will be addressed through the recovery process. There are no Federal activities within the currently known habitat of this plant. Therefore, the Service finds that designation of critical habitat for *Argyroxiphium kauense* is not prudent at this time, because such designation would increase the degree of threat from vandalism, collecting, or other human activities and because it is unlikely to aid in the conservation of the species.

#### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) of the Act requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No Federal involvement is known that would affect this species, as all known populations are on State or privately owned land.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 for endangered plants set forth a series of general prohibitions and exceptions that apply to all endangered plant species. With respect to *Argyroxiphium kauense*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal with respect to any endangered plant for any person subject to the jurisdiction of the United States to import or export; transport in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale this species in interstate or foreign commerce; remove and reduce to possession the species from areas under Federal jurisdiction; maliciously damage or destroy the species on any area under Federal jurisdiction; or remove, cut, dig up, damage, or destroy the species on any other area in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued because *Argyroxiphium kauense* is uncommon in cultivation and is very rare in the wild.

Requests for copies of the regulations concerning listed plants and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 432, Arlington, Virginia 22203-3507 (703/358-2104; FAX 703/358-2281).

#### National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment or Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

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#### Author

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50167, Honolulu, Hawaii 96850 (808/541-2749).

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

**Regulation Promulgation**

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

**PART 17—[AMENDED]**

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order, under the family Asteraceae to the List of Endangered and Threatened Plants:

**§ 17.12 Endangered and threatened plants.**

\* \* \* \* \*

(h) \* \* \*

Species	Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name				
Asteraceae—Aster family:					
<i>Argyroxiphium kauense</i>	Ka'u Silversword	U.S.A. (HI)	E	497	NA
					NA

Dated: March 24, 1993.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93-8075 Filed 4-6-93; 8:45 am]

BILLING CODE 4310-55-M

**50 CFR Part 17**

**RIN 1018-AB75**

**Endangered and Threatened Wildlife and Plants; *Amaranthus pumilus* (Seabeach Amaranth) Determined To Be Threatened**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The Service determines *Amaranthus pumilus* (seabeach amaranth) to be a threatened species under the authority of the Endangered Species Act of 1973, as amended (Act). This annual herb is limited to populations in New York, North Carolina, and South Carolina.

*Amaranthus pumilus* is threatened throughout its range by beach stabilization structures, beach erosion and tidal inundation, beach grooming, herbivory by insects and feral animals, and, in certain limited circumstances, by off-road-vehicles (ORVs). This action extends Federal protection under the Act to seabeach amaranth.

**EFFECTIVE DATE:** May 7, 1993.

**ADDRESSES:** The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Asheville Field Office, U.S. Fish and Wildlife Service, 330 Ridgefield Court, Asheville, North Carolina 28806.

**FOR FURTHER INFORMATION CONTACT:** Ms. Nora Murdock at the above address (704/665-1195).

**SUPPLEMENTARY INFORMATION:**

**Background**

*Amaranthus pumilus*, described by C. S. Rafinesque (1808) from material collected in New Jersey, is an annual plant in the Amaranth family. Germination takes place over a relatively long period of time, generally from April to July. Upon germinating, this plant initially forms a small unbranched sprig, but soon begins to branch profusely into a clump, often reaching a foot in diameter and consisting of 5 to 20 branches. Occasionally a clump may get as large as a yard or more across, with a hundred or more branches. The stems are fleshy and pink-red or reddish, with small rounded leaves that are 1.3 to 2.5 cm in diameter. The leaves are clustered toward the tip of the stem, are normally a spinach-green color, and have a small notch at the rounded tip. Flowers and fruits are relatively inconspicuous, borne in clusters along the stems. Flowering begins as soon as plants have reached sufficient size, sometimes as early as June, but more typically commencing in July and continuing until the death of the plant in late fall. Seed production begins in July or August and reaches a peak in most years in September but continues until the death of the plant.

Weather events, including rainfall, hurricanes, and temperature extremes, and predation by webworms have strong effects on the length of seabeach amaranth's reproductive season. As a result of one or more of these

influences, the flowering and fruiting period can be terminated as early as June or July. Under favorable circumstances, however, the reproductive season may extend until January, or sometimes later (Bucher and Weakley 1990, Weakley and Bucher 1991, Radford et al. 1968).

*Amaranthus pumilus* is endemic to Atlantic coastal plain beaches, where it is currently known from 13 populations in New York, 34 populations in North Carolina, and 8 populations in South Carolina. The species occurs on barrier island beaches, where its primary habitat consists of overwash flats at accreting ends of islands and lower foredunes and upper strands of noneroding beaches. It occasionally establishes small temporary populations in other habitats, including sound-side beaches, blowouts in foredunes, and sand and shell material placed as beach replenishment or dredge spoil. Seabeach amaranth appears to be intolerant of competition and does not occur on well-vegetated sites. The plant acts as a sand binder, with a single large plant being capable of creating a dune up to 6 decimeters high, containing 2 to 3 cubic meters of sand, although most are smaller (Weakley and Bucher 1991). As stated by Weakley and Bucher (1991):

Seabeach amaranth appears to need extensive areas of barrier island beaches and inlets, functioning in a relatively natural and dynamic manner. This allows it to move around in the landscape, as a fugitive species, to occupy suitable habitat as it becomes available.

Historically, seabeach amaranth occurred in 31 counties in 9 States from Massachusetts to South Carolina. Seabeach amaranth has now been

eliminated from six of the States in its historic range. Of the 55 remaining populations in New York, North Carolina, and South Carolina, 9 are located on lands administered by the National Park Service, 1 is on land administered by the Department of Defense, 1 is on New York City park land, 9 are on State parks and reserves, 3 are on county parks, 2 and part of another are on municipal land, 1 is on land administered by the U.S. Fish and Wildlife Service, and the remaining 28 and part of another population are on private lands. The 41 populations known to have been extirpated are believed to have succumbed as a result of "hard" beach stabilization structures (seawalls, riprap, etc.), storm-related erosion, heavy recreational beach use by ORVs, and possibly as a result of herbivory by webworms. The continued existence of *Amaranthus pumilus* is threatened by these activities, as well as by beach grooming and some forms of "soft" beach stabilization, such as sand fencing and planting of beach-grasses.

The Service recognized *Amaranthus pumilus* as a category 2 candidate for listing in the Supplement to Review of Plant Taxa for Listing as Endangered or Threatened Species published in the *Federal Register* on November 28, 1983 (48 FR 53640). Category 2 comprises those taxa for which listing is possibly appropriate but for which existing information is insufficient to support a proposed rule. Subsequent revisions of the 1983 notice have maintained *Amaranthus pumilus* in category 2. Recent surveys conducted by Service, State, and Nature Conservancy personnel presented sufficient information for the Service to propose to list *Amaranthus pumilus* as threatened on May 26, 1992 (57 FR 21921).

#### Summary of Comments and Recommendations

In the May 26, 1992, proposed rule; the October 20, 1992, notice of public hearing and extension of the comment period (57 FR 47833), the November 5, 1992, public hearing; and notifications associated with these activities, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting public comment were published in the following newspapers: Star News, Wilmington, North Carolina; Post and Courier, Charleston, South Carolina; Newsday, New York, New York; and

Coastland Times, Manteo, North Carolina. In response to a formal request, a public hearing on the proposal to list *Amaranthus pumilus* as a threatened species was held on November 5, 1992, at Cape Hatteras School, Buxton, North Carolina. A notice of the hearing and reopening of the comment period to November 16, 1992, was published in the *Federal Register* on October 20, 1992. The public hearing notice announced the purpose, time, and location of the hearing and extended the formal comment period on the proposal in order to ensure that all interested parties had ample time to provide information on the proposed rule.

All written comments and oral statements presented at the public hearing and those received during comment periods are covered in the following discussion. Comments of similar content are grouped together; these and the Service response to each are discussed below.

Seven written responses to the proposed rule were received during the initial comment period. Five of these comments were from State agencies, and two were from private conservation organizations.

The North Carolina Department of Agriculture, the North Carolina Natural Heritage Program, the New York State Department of Environmental Conservation, the North Carolina Division of Parks and Recreation, and the New York Natural Heritage Program all strongly supported the addition of seabeach amaranth to the Federal list of threatened species; they provided updated information on the status of the species in North Carolina and New York. The Service has incorporated the additional information on the status and conservation of the species, as appropriate, into this document.

The Center for Plant Conservation and the Long Island Chapter of The Nature Conservancy also strongly supported the addition of this species to the Federal list of threatened species.

The Dare County, North Carolina, Board of Commissioners requested a public hearing on the Service's proposal and requested additional information on the plant and maps of population locations. In addition, they requested a presentation to the Board of Commissioners by the Service. This additional information was provided, and a presentation was given to the Board on August 17, 1992.

The public hearing on the proposed rule to list seabeach amaranth as a threatened species was held on November 5, 1992, in the auditorium of the Cape Hatteras School, Buxton, North

Carolina. Fifteen verbal statements were made at the public hearing, and eight written statements were provided, one of which was a copy of a verbal statement given. Nine written comments were received during the comment period extension.

#### Statements at the Public Hearing

The Dare County Board of Commissioners expressed opposition to the proposed addition of seabeach amaranth to the Federal list. The commissioners' representative stated that 80 percent of the land in Dare County is in Federal ownership, and the commissioners felt that the county had already "absorbed enough of the regulatory bureaucracy." They also expressed their fear that the beaches of the county would no longer be available for public recreation if this plant were added to the threatened species list. The Service does not believe there is a need to completely exclude public recreation from the beaches in order to conserve seabeach amaranth in Dare County, nor does the Service have the authority to do so. This plant occupies much of the same habitat already used for nesting by the piping plover, which has been listed as threatened since 1985, and the loggerhead sea turtle, which has been listed as threatened since 1978. The Service has worked with the Federal agencies involved in managing these species' habitats, without excluding public recreation from large areas of the beach. Areas of nesting habitat for the two animal species have been roped off to allow these species to complete their reproductive cycle without eggs and young being crushed by ORVs. The Service believes that seabeach amaranth can be conserved by means of the same management. In fact, many of the areas that represent the best habitat for seabeach amaranth are those that are already roped off for nesting shorebirds and loggerhead sea turtles. The Service does not believe there is a need to close off significant additional areas.

Several respondents suggested that local planting projects be attempted in lieu of listing the species. The Service responded that, although the offers of volunteer help were much appreciated and can be incorporated into recovery efforts for the species, much of the habitat within the species' historic range has been rendered permanently unsuitable for it by the construction of seawalls and the placement of riprap on beaches. In addition, simply cultivating the plants or planting seeds, even on apparently suitable habitat, will not alleviate all the threats of seabeach amaranth. In many areas, heavy infestations by caterpillars have caused

massive defoliations and reproductive failure in this species, even in large populations. The species is also eaten by feral livestock in certain areas. A species which has already been eliminated from two-thirds of its historic range, by definition, is in danger. Under the Endangered Species Act of 1973, as amended, Congress required that the Fish and Wildlife Service list such species as endangered or threatened.

One respondent presented a proposal to recover the species by planting it on off-shore spoil islands that are not generally accessible to people and using it to stabilize areas of beach adjacent to N.C. Highway 12 where erosion threatens the main highway on the Outer Banks. One of the Act's primary purposes, as stated in section 2(b), is "to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved." Cultivation of endangered and threatened species can be a positive conservation tool, and it is often identified as a task necessary for the ultimate recovery of species. The cultivation of threatened species and their reintroduction into areas where they have been extirpated, but where suitable habitat still remains, is a key part of the Service's recovery program for listed species. However, attempting to plant seabeach amaranth in areas that do not represent suitable habitat, such as eroding and otherwise unstable parts of islands, would, in all likelihood, not be successful. These annual plants must be able to survive over an entire season in order to set seed for the following year. The Service believes that cultivation of seabeach amaranth without protecting the natural ecosystems upon which it depends would not meet the requirement of the Act. The range of environmental requirements for successful reestablishment of this species in the wild is not fully understood and will require additional research before anyone can reintroduce the species with confidence that the reintroduction will be successful. Nevertheless, the Service intends to seek out protected areas of suitable habitat where the species has been extirpated and reintroduce it to those areas in hopes of eventual recovery.

One respondent expressed concern that Federal excise tax revenues legislated under the Pittman-Robertson and Dingell-Johnson Acts were not being made available for endangered species conservation. These funds, being a tax on hunters and sport fishermen, are used by the Service and

the States for the conservation of wildlife species.

Many of the comments at the public hearing regarded the potential economic impact that the listing of the species would have on local businesses. These concerns were directly related to the fear that this listing would result in the exclusion of vehicles and people from the beaches, thereby curtailing surf fishing and tourism in general. The Act requires the Service to base its listing decisions upon the best biological data available, not economic considerations. However, the Service believes that the conservation of seabeach amaranth in Dare County can be achieved without any noticeable effects on the local economy. There are only two extant populations of the plant in the county, and the area occupied by the plants is only a small percentage of the total beach available to the public for recreation. There are over 80 miles of beach in Dare County; much of this is publicly owned beach that is part of Cape Hatteras National Seashore and Pea Island National Wildlife Refuge. Seabeach amaranth occupies approximately 2.5 percent of this beach area in two discrete locations. Cape Hatteras Point, an extremely popular area used by surf fishermen and other recreational users, has consistently supported one of the largest populations of seabeach amaranth remaining within the range of the species. The Service considers this ample evidence of the compatibility of this species with these types of human use. The drivers of ORVs, which could be a threat to the species at this location, have demonstrated respect for designated vehicle corridors and areas that are roped off for the protection of nesting shorebirds and sea turtles.

One respondent asked if germ plasm from seabeach amaranth had been collected for long-term preservation. The Service responded that some efforts in this regard have been made; however, material has not been collected from all remaining populations. This would be a part of the Service's recovery program for the species.

One respondent stated that, because critical habitat areas were not identified and specific management proposals were not part of the proposed rule, it was unclear what the public was being asked to respond to. The Service did not propose specific management programs for the species in the proposed rule, since this will be a part of the recovery program following the addition of the species to the Federal list of endangered and threatened species. Much remains unknown about the life history requirements and population biology of

this species. Further research must be undertaken before sound management proposals can be developed. The Service has determined that designation of critical habitat for this species is not prudent at this time due to its vulnerability to taking and vandalism. In Dare County, the two extant populations are located on Park Service lands. This agency is well aware of their presence and is taking steps to protect them. (See further discussion in the "Critical Habitat" section of this rule.)

One respondent expressed concern about the impact of the listing of seabeach amaranth on the Oregon Inlet jetty project. The Service responded that this species has never been found at Oregon Inlet. The closest known population to that area is approximately 40 miles to the south. Nevertheless, if the plant were to be found at Oregon Inlet at some point in the future, before the jetties were built and after the species was listed, the Service and the U.S. Army Corps of Engineers would go through the section 7 consultation process and attempt to eliminate or minimize impacts to the plant while allowing the project to proceed to the maximum extent possible. The loggerhead sea turtle, a species already on the Federal threatened species list, nests at Oregon Inlet and was the subject of a formal consultation there. At the conclusion of the consultation, it was decided that the project could proceed with certain modifications without jeopardizing the continued existence of this species.

One of the respondents wanted to discuss piping plovers and the draft proposal to designate critical habitat for this species. Since this was not the subject of the hearing, plover issues were not addressed.

One respondent stated that he did not believe that the Service's data had spanned a long enough period of time to support the listing of the species as threatened. The Service responds that observations of this plant have been made since the early 1800s. It is now completely extirpated from six of the nine States within its historic range; many of the remaining populations are currently subject to threats, and South Carolina's populations have been reduced by 90 percent in the last 4 years. From 1988 to 1989, a rangewide reduction in population numbers of 76 percent was noted. Although this plant naturally fluctuates to some extent from one year to the next, such large rangewide reductions in populations are alarming. Over one-fifth of the historic populations in South Carolina have been extirpated. Half of the populations remaining in that State have fewer than

25 plants each, and the total State census in 1990 was only 188 plants. New York has a total State census of only 357 plants and only one population containing over 100 plants. North Carolina, the remaining stronghold for the species, has 18 populations with over 100 plants each. Thirty percent of North Carolina's remaining populations have fewer than 25 plants each. The very small remaining populations are extremely vulnerable to extirpation.

One private landowner from Dare County supported the listing of the species. Another took no position on the listing but recommended that study areas be chosen with care so as not to unduly impact the economy of the area.

#### Written Statements Received After the Public Hearing

Nine written comments were received during the comment extension period—one from a State agency, one from a Federal agency, and seven from private individuals.

The North Carolina Department of Environment, Health, and Natural Resources, Division of Parks and Recreation, supported the protection of seabeach amaranth under the Act, stating that:

The proposed rule is well written and very accurately and thoroughly describes the status of and threats to seabeach amaranth. The reduction of a vascular plant species to a third of its former range is highly unusual. Plant species are frequently reduced to small populations distributed in a scattered pattern over their former ranges, but the loss of seabeach amaranth from major portions of its former range (such as the stretch of coast from northern North Carolina north through Virginia, Maryland, Delaware, and New Jersey to southern New York) is dramatic and is cause for grave concern over the species' future. The distribution and status of seabeach amaranth in North Carolina shows that the species survives well on beaches with a wide range of recreational uses, including late fall and winter fishing season use of the beach by vehicles. Seabeach amaranth and the majority of recreational users favor the same conditions—wide, sandy beaches. In fact, protection of seabeach amaranth should help assure the maintenance of wide, sandy, recreational beaches. Some of the larger populations of seabeach amaranth are found on beaches with moderate to heavy recreational use, such as Cape Hatteras Point, Wrightsville Beach, Hammocks Beach State Park, Fort Macon State Park, the north end of West Onslow Beach, and the west end of Holden Beach. The proven compatibility of recreational beach use and seabeach amaranth habitat should allay potential concerns among the public over the proposed listing. A number of other Federal- and State-listed endangered or threatened species characteristically use the same habitat as

seabeach amaranth—including sea turtles, piping plovers, least terns, and others. Conservation of a healthy, upper beach ecosystem will favor all these species.

A professional ecologist from the State of New York strongly recommended that seabeach amaranth be listed as threatened, stating, "I think it most probable that the species would become extinct if it were not given such protection \* \* \*."

A response from Camp Lejeune Marine Corps Base in North Carolina stated no position on the listing of the plant but reiterated their commitment to " \* \* \* sound natural resource management in concurrence with the execution of requisite military training in the interest of our nation's defense." Camp Lejeune is habitat for several other federally and State-listed species of plants and animals. Their response further stated, "Military training and the conservation of federally listed species have been effectively coordinated in a manner that ensured protection and allowed military training requirements to be adequately performed." They requested that the seabeach amaranth management guidelines not vary substantially from the management guidelines already in place for the sea turtles which nest in the same areas.

Six private individuals opposed the addition of seabeach amaranth to the Federal threatened species list based upon their fears that the beaches in Dare County, North Carolina, would no longer be available for public recreation as a result. One of these respondents commented further that he did not believe sufficient historical data existed to support listing the species, since "biological stocks in North Carolina are in good shape." The Service reiterates its commitment to work with local people to conserve this species and the belief that conservation of the species and public recreation on the beaches are compatible. Regarding the status of North Carolina populations, the Service is required to consider the status of the species rangewide, not just within particular political boundaries.

Although there are several large populations remaining in North Carolina, the species is in much worse condition throughout the rest of its range, where it has been completely eliminated from six of the nine States it occupied historically. The criteria for adding species to the Federal list are contained in section 4 of the Act. These criteria, as they relate to the currently known status of seabeach amaranth, are addressed in the "Summary of Factors Affecting the Species" section of this rule.

#### Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Amaranthus pumilus* should be classified as threatened. Procedures found at section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Amaranthus pumilus* Rafinesque (seabeach amaranth) are as follows:

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

*Amaranthus pumilus* has been and continues to be threatened by destruction or adverse alteration of its habitat. Since the species was discovered, it has been eliminated from approximately two-thirds of its range, primarily as a result of beach stabilization efforts and storm-related erosion. All of the remaining 55 populations are currently threatened by these factors (Bucher and Weakley 1990, Weakley and Bucher 1991, Clemans and Mangels 1990, Mangels 1991).

In September of 1989, Hurricane Hugo struck the Atlantic coast near Charleston, South Carolina, causing extensive flooding and erosion north to Cape Fear, North Carolina, with less severe effects extending northward throughout the range of seabeach amaranth. This was followed by several severe Northeasters in the winter of 1989-1990 and by Hurricane Bertha in the late summer of 1990. These last storms, although not as significant as Hurricane Hugo, caused substantial erosion of many barrier islands in the heart of seabeach amaranth's remaining range. The 1990 surveys revealed that the effects of these climatic events were substantial. Thirteen populations of the species reappeared on Long Island, New York, many in places that had been surveyed repeatedly in the past (Mangels 1991). As stated by Weakley and Bucher (1991):

It is not known whether these populations represented long-distance dispersal of seeds (perhaps by ocean currents), short-distance dispersal from previously undiscovered populations on Long Island, or the exposure of local seedbanks.

In the Carolinas, populations were severely reduced. In South Carolina, where the effects of Hurricane Hugo and subsequent dune reconstruction were

extensive, amaranth numbers went from 1,800 in 1988 to 188 in 1990, a reduction of 90 percent. Even with the addition of the New York populations, rangewide totals were reduced 76 percent from 1988. Ironically, although storms and related erosion of beaches threaten seabeach amaranth because of its currently restricted range and reduced populations, attempts to stabilize beaches against these natural geophysical processes is often more destructive to the species and to the beaches themselves in the long run. Weakley and Bucher (1991) state:

Seabeach amaranth never occurs on shorelines where bulkheads, seawalls, or rip rap zones have been constructed. Not only does construction of these structures occur in the primary habitat of seabeach amaranth, but water and wind erosion lower the profile of the beach seaward of the armoring. The upper beach habitat required by seabeach amaranth (above inundation by tidal action) ceases to exist as the beach is steadily eroded. \* \* \* widespread use of seawalls, jetties, and other hard stabilization structures in New Jersey and other northern states is apparently associated with the extirpation of seabeach amaranth in those states. Of all the states in the former range of seabeach amaranth, North Carolina has made the least use of seawalls. The continued presence of seabeach amaranth in North Carolina and in the part of South Carolina's coast lacking seawalls, is probably not accidental or coincidental.

Even nonstructural beach stabilization techniques, such as sand fences and planting of beach-grass, are generally detrimental to seabeach amaranth. Weakley and Bucher (1991) noted that seabeach amaranth only very rarely occurred when sand fences and vegetative stabilization had taken place and, in these situations, was present only as rare scattered individuals.

In some instances beach erosion and lowering of barrier islands has been accelerated by manmade structures built far from the ocean. Damming of large coastal rivers reduces the sediment load carried by the rivers to the coastal environment. Weakley and Bucher (1991) state:

There is evidence in several cases that this has reduced the coastal sediment budget, leading to increased erosion rates. Construction of the Santee Dam on the Santee River in South Carolina, impounding Lake Marion, has probably caused the increased erosion of islands in the vicinity of the mouth of the Santee \* \* \* all of the islands in the vicinity of the Santee's mouth are currently marginal habitat for seabeach amaranth, and it has been extirpated from a number of islands by the frequency of overwash.

Beach renourishment can have positive impacts on this species. Although more study is needed before

the long-term impacts can be accurately assessed, several populations are shown to have established themselves on renourished beaches and have thrived through subsequent applications of dredged material (Weakley and Bucher 1991; W. Adams, U.S. Army Corps of Engineers, personal communication, 1991).

Intensive recreational use of beaches threatens amaranth populations in some instances. Pedestrian traffic, even during the growing season, generally occurs in areas where it has little effect on populations of seabeach amaranth. However, ORV use of the beach during the growing season can have detrimental effects on the species if traffic is not routed around the plants. The fleshy stems of this plant are brittle and easily broken and do not generally survive even a single pass by a truck tire. Therefore, even minor beach traffic over the plants during the growing season is detrimental, causing mortality and reduced seed production (Weakley and Bucher 1991). ORV traffic is allowed at many of the beaches where this species remains, and those sites where vehicles are allowed to run over amaranth plants generally show severe population declines. In contrast, dormant season ORV use has shown little evidence of significant detrimental effects, unless it results in massive physical erosion or degradation of the site. In some cases, winter ORV traffic may actually provide some benefits for the species by setting back succession of perennial grasses and shrubs with which seabeach amaranth cannot compete successfully. Extremely heavy use of an *Amaranthus* site, even in the winter, may have some negative impacts, however, including pulverization of seeds.

Seabeach amaranth appears to be vulnerable to extirpation in two of the three States in which it remains. South Carolina now has only one population with over a hundred plants and a total State census of 188 plants, and New York has only one population with over a hundred plants and a total State census of 357 plants. The many very small populations remaining are highly vulnerable to extirpation from a variety of natural and manmade factors.

#### B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

*Amaranthus pumilus*, although it does not have showy flowers and is not currently a component of the commercial trade in native plants, is an attractive and colorful plant, with a prostrate growth habit that could lend itself to planting on beach-front lots. Its

effectiveness as a sand binder could make it even more attractive for this purpose. In addition, other amaranths have been cultivated as food crops in North, Central, and South America for nearly 10,000 years and continue to be grown as important crops in temperate and tropical climates throughout the world. "Its importance is magnified by its nutritional value, high in several amino acids often lacking in diets with little meat" (Weakley and Bucher 1991). Currently, seabeach amaranth is being investigated by the U.S. Department of Agriculture and several universities and private institutes for its potential use in crop development and improvement. Its favorable traits of salt tolerance and large seeds could be of commercial value if combined with other desirable crop traits. However, overcollection of seabeach amaranth plants or seeds from wild populations could threaten its continued existence. Because the species is easily recognizable and accessible, it is vulnerable to taking, vandalism, and the incidental trampling by curiosity seekers that could result from increased publicity about the species and the specific areas where it grows.

#### C. Disease of Predation

No evidence of disease has been seen in seabeach amaranth. However, predation by webworms is a major source of mortality and lowered fecundity. Moderate to severe herbivory by webworms was seen in most populations in both 1987 and 1988, when many populations, particularly the larger ones, were largely defoliated by early fall. Weakley and Bucher (1991) state, "Defoliation at this season appears to result in premature senescence and mortality, reducing seed production (the most basic and critical parameter in the life cycle of an annual species)." Even though the four webworm species so far identified on seabeach amaranth are all native, their use of barrier island habitats has probably been increased by extensive conversion of coastal plain ecosystems to agricultural use and the resulting introduction of weedy plants, which also serve as hosts for the caterpillars. Therefore, the level of predation experienced by seabeach amaranth is probably unnaturally high. Weakley and Bucher (1991) believe that webworm herbivory is a contributing, rather than a leading, factor in the decline of the species. They state, "The combination of extensive habitat alteration and chronic severe herbivory could be a deadly one for seabeach amaranth." On North Carolina's Outer Banks, feral horses graze on seabeach amaranth. The extent and impact of this

herbivory, however, is minor compared to the effects of webworm predation.

#### D. The Inadequacy of Existing Regulatory Mechanisms

*Amaranthus pumilus* is afforded legal protection in North Carolina by the General Statutes of North Carolina, §§ 106-202.15, 106-202.19 (N.C. Gen. Stat. section 106 (Supp. 1991)), which provide for protection from intrastate trade (without a permit) and for monitoring and management of State-listed species, and which prohibit taking of plants without written permission of landowners. *Amaranthus pumilus* is listed in North Carolina as threatened. The species is recognized in South Carolina as threatened and of national concern by the South Carolina Advisory Committee on Rare, Threatened, and Endangered Plants in South Carolina; however, this State offers no official protection. In New York the species is not currently listed, since it was only recently rediscovered there. State legislation offers no protection to the habitat of seabeach amaranth in any of the three States where it remains, and habitat loss/modification and predation appear to be the main threats to the continued existence of the species. Federal/State regulation of development in coastal areas under the Coastal Areas Management Act has undoubtedly helped protect the habitat of seabeach amaranth; however, the scope of these regulations is limited and does not preclude all forms of habitat degradation that adversely affect this species. The Endangered Species Act would provide additional protection and encouragement of active management and recovery actions for *Amaranthus pumilus*.

#### E. Other Natural or Manmade Factors Affecting Its Continued Existence

Little is known about the demographics and reproductive requirements of this species in the wild. As a fugitive species dependent on a dynamic landscape and large-scale geophysical processes, seabeach amaranth is extremely vulnerable to habitat fragmentation and isolation of small populations. As stated by Weakley and Bucher (1991):

In New Jersey and New York, it has been extirpated or severely diminished by the fortification and modification of a portion only of the coastline. Rendering 50 percent or 75 percent of coastline "permanently" unsuitable may doom seabeach amaranth, because any given area will become unsuitable at some time because of natural forces. If a seed source is no longer available in the vicinity, amaranth will be unable to

reestablish itself when the area is once again suitable. In this way, it can be progressively eliminated even from generally favorable stretches of habitat surrounded by "permanently" unfavorable areas \* \* \* fragmentation of habitat in the north has apparently led to regional extirpation, resulting from the separation of suitable habitat areas from one another by too great a distance to allow recolonization following natural catastrophes. Though apparently suitable habitat is present in a number of northern states formerly part of seabeach amaranth's range, it is no longer found there \* \* \* seabeach amaranth grows above the high tide line, and is intolerant of even occasional flooding during its growing season. It does not, however, grow more than a meter or so above the beach elevation on the foredune or anywhere behind the foredune (except very rarely and extraordinarily). It is, therefore, dependent on a terrestrial, upper beach habitat, unflooded during the growing season from May into the fall. This zone is absent on barrier islands that are experiencing significant rates of beach erosion. If data and hypotheses suggesting future increases in sea level are correct, beach erosion will accelerate and put further pressure on seabeach amaranth.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Amaranthus pumilus* as threatened. With the species already having been extirpated from two-thirds of its historic range, and based upon the threats to most of the remaining populations, it warrants protection under the Act. Threatened status seems appropriate since there are 55 remaining populations, including some large ones in areas protected from development and beach stabilization.

Critical habitat is not being designated for the reasons discussed below.

#### Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Amaranthus pumilus* at this time. As discussed in Factor B in the "Summary of Factors Affecting the Species," *Amaranthus pumilus* is vulnerable to taking, and taking prohibitions are difficult to enforce. Take is regulated by the Act with respect to threatened plants only in cases of removal and reduction to possession from lands under Federal jurisdiction. Most populations of *Amaranthus pumilus* are located on

private lands. Although North Carolina general statutes prohibit collection of *Amaranthus pumilus* without permission from the landowner, unlawful taking is difficult to enforce, and publication of critical habitat descriptions would make it more vulnerable to taking and vandalism, increasing enforcement problems for the State of North Carolina. In addition, while listing under the Act increases public awareness of the species' plight, it can also increase the desirability of a species to collectors. As stated previously, *Amaranthus pumilus* is an attractive plant, whose populations are easily accessible. It also could be adversely affected by increased visits to and associated trampling of occupied sites by curiosity seekers as a result of critical habitat designation and accompanying increases in specific publicity.

For the foregoing reasons, it would not be prudent to determine critical habitat for *Amaranthus pumilus*. The Federal and State agencies and landowners involved in protecting and managing the habitat of this species have been informed of the plant's locations and the importance of its protection. Protection of this species' habitat will be addressed through the recovery process and through the section 7 consultation process.

#### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued

existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal activities that could impact *Amaranthus pumilus* and its habitat in the future include, but are not limited to, the following: Construction of beach stabilization structures, such as jetties, groins, bulkheads, and sand fences; beach renourishment and deposition of dredged spoil; and regulation of recreational beach use on Federal lands. The Service will work with the involved agencies to secure protection and proper management of *Amaranthus pumilus* while accommodating agency activities to the extent possible.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general prohibitions and exceptions that apply to all threatened plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers.

In addition, for endangered plants, the 1988 amendments (Pub. L. 100-478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any State law or regulation, including State criminal trespass law. Section 4(d) of the Act allows for the provision of such protection to threatened species through

regulations. This protection may apply to threatened plants once revised regulations are promulgated. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances.

It is anticipated that few trade permits would ever be sought or issued because the species is not common in cultivation or in the wild. Requests for copies of the regulations on listed plants and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 (703/358-2104).

#### National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the *Federal Register* on October 25, 1983 (48 FR 49244).

#### References Cited

Bucher, M., and A. Weakley. 1990. Status survey of seabeach amaranth (*Amaranthus pumilus* Rafinesque) in North and South Carolina. Report to North Carolina Plant Conservation Program, North Carolina Department of Agriculture, Raleigh, NC, and Endangered Species Field Office, U.S. Fish and Wildlife Service, Asheville, NC. 149 pp.

Clemants, S. and C. Mangels. 1990. *Amaranthus pumilus*—1990 New York State status survey. Report to U.S. Fish and Wildlife Service, Newton Corner, MA. 11 pp.

Mangels, C. 1991. Seabeach amaranth in New York State. *New York Flora Association Newsletter* 2(2):7-8.

Radford, A., H. Ahles, and C. Bell. 1968. *Manual of the vascular flora of the Carolinas*. University of North Carolina Press, Chapel Hill, NC.

Rafinesque schmaltz, C.S. 1808. Essential generic and specific characters of some new genusses (sic) and species of plants observed in the United States of America, in 1803 and 1804. *The Medical Repository* II(5)356-363.

Weakley, A., and M. Bucher. 1991. Status survey of seabeach amaranth (*Amaranthus pumilus* Rafinesque) in North and South Carolina, second edition (after Hurricane Hugo). Report to North Carolina Plant Conservation Program, North Carolina Department of Agriculture, Raleigh, NC, and Endangered Species Field Office, U.S. Fish and Wildlife Service, Asheville, NC. 149 pp.

#### Author

The primary author of this final rule is Ms. Nora Murdock (see "ADDRESSES" section).

#### List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

#### Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50, of the Code of Federal Regulations, is amended as set forth below:

#### PART 17—[AMENDED]

(1) The authority citation for 50 CFR part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Public Law 99-625, 100 Stat. 3500; unless otherwise noted.

(2) Amend § 17.12(h) by adding the following, in alphabetical order under Amaranthaceae, to the List of Endangered and Threatened Plants:

#### § 17.12 Endangered and threatened plants.

\* \* \* \* \*

(h) \* \* \*

Species	Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name				
Amaranthaceae—Amaranth family:					
<i>Amaranthus pumilus</i> ... Seabeach amaranth .....	U.S.A. (DE, MA, MD, NC, T NJ, NY, RI, SC, and VA).	498	NA	NA	

Dated: March 11, 1993.

Richard N. Smith,

*Acting Director, Fish and Wildlife Service.*

[FR Doc. 93-8076 Filed 4-6-93; 8:45 am]

BILLING CODE 4310-55-M

# Proposed Rules

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

### Rural Electrification Administration

#### 7 CFR Parts 1785 and 1786

RIN 0572-AA65

#### Loan Account Computations, Procedures and Policies

**AGENCY:** Rural Electrification Administration, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Rural Electrification Administration (REA) proposes to codify, update and consolidate its loan account computations, policies and procedures contained in REA Bulletin 20-9:320-12. Bulletin 20-9:320-12 is outdated and will be rescinded upon publishing of the final rule. Codifying the policies and procedures will streamline and consolidate information on loan accounting.

**DATES:** Public comments concerning this proposed rule must be received by REA or bear a postmark or its equivalent no later than May 7, 1993.

**ADDRESSES:** Comments may be mailed to Robert D. Ruddy, Director, Financial Operations Division, Rural Electrification Administration, room 2001-South Building, U.S. Department of Agriculture, Washington, DC 20250. REA requests an original and three copies of all comments (7 CFR part 1700). All comments received will be made available for inspection in room 2238-South Building during regular business hours (7 CFR 1.27(b)).

**FOR FURTHER INFORMATION CONTACT:** Robert D. Ruddy, Director, address as above, telephone number (202) 720-0823.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12291

This proposed rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512-1. This action has been classified as "nonmajor" because it does not meet the criteria for a major regulation as established by the Order.

#### Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. It will not (1) Preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule; (2) Have any retroactive effect; and (3) Require administrative procedures before parties may file suit to challenge the provisions of this rule.

#### Regulatory Flexibility Act Certification

REA has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

#### Information Collection and Recordkeeping Requirements

In compliance with the Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implements the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and section 3504 of that Act, the information collection and recordkeeping requirements contained in this proposed rule have been submitted to OMB for review. Comments concerning these requirements should be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USDA, room 3201, NEOB, Washington, DC 20503.

#### National Environmental Policy Act Certification

REA has determined that this proposed rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

#### Catalog of Federal Domestic Assistance

The programs described by this proposed rule are listed in the Catalog of Federal Domestic Assistance Programs under numbers 10.850, Rural Electrification Loans and Loan Guarantees, 10.851, Rural Telephone Loans and Loan Guarantees, 10.852, Rural Telephone Bank (RTB) Loans, and 10.854, Rural Economic Development (RED) Loans and Grants. This catalog is available on a subscription basis from

#### Federal Register

Vol. 58, No. 65

Wednesday, April 7, 1993

the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402-9325.

#### Executive Order 12372

This proposed rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation. A Notice of Final Rule entitled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts REA and RTB loans and loan guarantees, to governmental and nongovernmental entities from coverage under this Order.

#### Regulatory Reform: Less Burdensome or More Efficient Alternatives

The Department of Agriculture is committed to carrying out its statutory and regulatory mandates in a manner that best serves the public interest. Therefore, where legal discretion permits, the Department actively seeks to promulgate regulations that promote economic growth, create jobs, are minimally burdensome and are easy for the public to understand, use, or comply with. In short, the Department is committed to issuing regulations that maximize net benefits to society and minimize costs imposed by those regulations. This principle is articulated in President Bush's January 28, 1992, memorandum to agency heads, and in Executive Orders 12291 and 12498. The Department applies this principle to the full extent, consistent with law.

The Department has developed and reviewed this regulatory proposal in accordance with these principles. Nonetheless, the Department believes that public input from all interested persons can be invaluable to ensuring that the final regulatory product is minimally burdensome and maximally efficient. Therefore, the Department specifically seeks comments and suggestions from the public regarding any less burdensome or more efficient alternative that would accomplish the purposes described in the proposal. Comments suggesting less burdensome or more efficient alternatives should be addressed to the agency as provided in this Notice.

#### Background

Loan account computations, procedures, and policies in REA Bulletin 20-9:320-12 require updating, consolidating and clarifying. Bulletin 20-9:320-12 is outdated and codifying

the procedures of this Bulletin will streamline and consolidate information on loan accounting. Upon publishing the final rule, Bulletin 20-9:320-12 will be rescinded.

REA proposes to revise 7 CFR part 1785 by:

(1) Redesignating the existing Subpart A, Loan Payments and Statements, as subpart F, and adding a new subpart A which contains the general purposes, definitions and information on the availability of sample documents related to this part.

(2) Redesignating and revising the existing Subpart B, REA Cushion of Credit Account Computation and Procedures, as subpart D, and adding a new subpart B which describes billing procedures. These procedures include billing options, the computation of various types of periodic installments and amounts due, and Federal Financing Bank (FFB) maturity date extensions.

(3) Adding a new subpart C which describes the procedures for applying loan repayments, overpayments, prepayments, and special payments.

(4) Adding a new subpart D which describes the policies and procedures for REA's cushion of credit payments. This subpart incorporates the policies of previously designated subpart B and provisions of the RE Act (7 U.S.C. 901 *et seq.*), which describes types of payments used in calculating the interest differential.

(5) Adding a new subpart E which describes statements sent to borrowers and certified public accountants. These statements include bills, transaction statements, confirmation schedules, maturity extension notifications, and interest rate notifications.

7 CFR part 1786 is being amended to include a cross reference statement of the general policies and procedures regarding prepayments which can be found in 7 CFR 1710.110, 1719.54 and 1785.102(b).

#### List of Subjects

##### 7 CFR Part 1785

Electric power, Loan programs—communications, Loan programs—energy, Rural areas, Telephone.

##### 7 CFR Part 1786

Electric power, Federal Financing Bank, Loan programs—communications, Loan program—energy, Rural areas, Telephone.

For the reasons set out in the preamble, title VII, parts 1785 and 1786 of the Code of Federal Regulations, are proposed to be amended as follows.

1. Part 1785 is revised as follows:

## PART 1785—LOAN ACCOUNT COMPUTATIONS, PROCEDURES AND POLICIES

### Subpart A—General

Sec.

1785.1 General statement.  
1785.2 Definitions.  
1785.3 Availability of sample documents.  
1785.4–1785.49 [Reserved]

### Subpart B—Billings

1785.50 General.  
1785.51 Billing dates.  
1785.52 Computing periodic installments.  
1785.53 Computation of interest and principal due.  
1785.54 Types of bills.  
1785.55 FFB maturity date extensions.  
1785.56–1785.99 [Reserved]

### Subpart C—Application of Payments

1785.100 General.  
1785.101 Payments for amounts billed.  
1785.102 Overpayments, prepayments and special payments.  
1785.103–1785.149 [Reserved]

### Subpart D—Cushion of Credit Account Computations and Procedures

1785.150 General.  
1785.151 Assets of the subaccount.  
1785.152 Establishing an REA cushion of credit payment account.  
1785.153 Cushion of credit payment account computations.  
1785.154 Application of RETRF cushion of credit payments.  
1785.155–1785.199 [Reserved]

### Subpart E—Statements Furnished Borrowers and CPA's

1785.200 Statement of interest and principal due.  
1785.201 Statement of loan account and transactions.  
1785.202 Confirmation schedules.  
1785.203 FFB maturity extension notifications.  
1785.204 Interest rate notifications.  
1785.205–1785.249 [Reserved]

### Subpart F—Loan Payments and Statements

1785.250–1785.257 [Reserved]  
1785.258 Basis dates and termination of unadvanced fund commitments—electric.

Authority: 7 U.S.C. 901 *et seq.*

### Subpart A—General

#### § 1785.1 General statement.

This part sets forth:

(a) Provisions of the notes, bonds or agreements for loans from Rural Electrification Administration (REA), Rural Telephone Bank (RTB), Federal Financing Bank (FFB), Rural Economic Development (RED), Rural Communication Development Fund (RCDF), and restructured loans; and  
(b) Policies and procedures for debt service computations, and payments.

### § 1785.2 Definitions.

The following definitions will apply for the purpose of this part:

*Account receivable* means an amount owed REA for payment to a lender on behalf of a borrower, in accordance with the terms of a loan guarantee provided by REA.

*Accrued interest* means current interest since the last payment date neither received nor past due.

*Accumulated (deferred) interest* means interest on loans approved before June 5, 1957, which was allowed to accumulate through the basis date and is payable over the remaining life of the note.

*Advance* means loan funds disbursed to a borrower on an executed note. These funds are advanced upon the request of a borrower and approval by REA, RTB, or FFB.

*Advance payment* means a voluntary unscheduled payment made prior to October 2, 1987, and credited to the advance payment account of a borrower. These payments apply to REA insured loans only.

*Basis date* means a date determined by the terms of the note that begins a period for the payment of both interest and principal.

*Bill* means a Statement of Interest and Principal Due.

*Current interest* means interest payable periodically as it accrues.

*Cushion of credit account* means an account where all voluntary payments or overpayments on Rural Electric and Telephone Revolving Fund loans after October 1, 1987, are to be applied. The monthly balances of these accounts and the advance payment accounts are used as the basis to determine the amount available for grants and zero interest loans for rural economic development under section 313 of the RE Act (7 U.S.C. 901 *et seq.*). These accounts earn 5 percent per annum interest.

*Cushion of credit payment* means a voluntary unscheduled payment made after October 1, 1987, credited to the cushion of credit account of a borrower (REA insured loans only).

*Debt service payment* means a scheduled payment of interest and/or principal.

*FFB note* means a note evidencing a loan by REA and funded by FFB, which REA services and guarantees payment.

*Interest credit* means an amount earned on balances of a borrower's advance payment or cushion of credit account, and credited against current interest due.

*Loan rescission* means the rescission of a loan or part thereof by the REA Administrator, the RTB Governor, or their designee, and the termination of

**the obligation to make, approve or guarantee advances of any portion of the loan.**

**Maturity extension** means an extension of an FFB short-term maturity.

**Note** means note, bond or other promise to pay borrowed money, and any amendment such as a basis date or deferral agreement.

**Prebasis period** means the time, between the date of a note and its basis date, when only interest is due.

**Prepayment** means a voluntary unscheduled payment which the borrower instructs REA to apply directly and immediately to a note.

**Price or price on such advance** means the present value which is an amount that, if the account were purchased and held to maturity, would yield an amount equal to a loan from the U.S. Treasury to FFB to finance an advance having the identical interest and payment schedule as the advance being prepaid.

**RCDF note** means a note evidencing a loan made by REA for financing community antenna television services or facilities.

**RE Act** means the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*).

**REA note** means a note, bond, or other obligation evidencing indebtedness created by a loan made by REA pursuant to title I, II or III of the RE Act.

**RED note** means a note evidencing a loan made by REA for rural economic development.

**Restructured note** means an REA note for the restructured debt of a borrower. Since the terms of each restructured agreement are unique and agreed upon by the borrower and REA, the term of the notes will vary depending on the specific agreement.

**RETRF** means, for the purpose of this part, the Rural Electric and Telephone Revolving Fund from which REA loans are made and into which REA payments are recorded.

**RTB note** means a note evidencing a loan made by the Rural Telephone Bank.

**Special payment** means a payment required under a loan contract, mortgage, note, agreement, approval for sale of a capital asset, or other document, and applied in accordance with the terms of the document.

**Subaccount** means the Rural Economic Development Subaccount established pursuant to the RE Act as part of the RETRF.

**Supplemental bill** means a bill for an amount due before the next regular billing date and not included in the last billing.

### § 1785.3 Availability of sample documents.

Copies of the following sample documents applicable to this part are available from the Financial Operations Division, Rural Electrification Administration, United States Department of Agriculture, Washington, DC 20250-1500:

- (a) Sample A—Maturity date extension letters;
- (b) Sample B—Statements of Interest and Principal Due (bills);
- (c) Sample C—Description of electronic funds transfer message utilizing Fedwire;
- (d) Sample D—Description of Automated Clearing House (ACH) electronic funds transfer;
- (e) Sample E—Cycle plan and borrowers' state code;
- (f) Sample F—Statement of Loan Account and Transactions;
- (g) Sample G—Audit confirmation schedules;
- (h) Sample H—Interest rate notifications;
- (i) Sample I—Computation of RTB prepayment premium;
- (j) Sample J—Letter requesting prepayment or early extension of a short-term advance, or prepayment of a long-term advance on FFB notes dated after calendar year 1982;
- (k) Sample K—Letter requesting prepayment of a long-term advance on FFB notes dated prior to calendar year 1983.

### §§ 1785.4–1785.49 [Reserved]

## Subpart B—Billings

### § 1785.50 General.

Bills for debt service payments will be sent to borrowers approximately 15 days before the payment due date. The amounts shown on the bills will be the consolidation of the amounts due on all notes. Payments are due on the due date; however, if the due date is a Saturday, Sunday or holiday, payment must be made on the preceding work day to avoid the payment being classified as past due.

### § 1785.51 Billing dates.

REA issues bills as follows:

(a) Quarterly, which applies to all loans approved prior to September 1, 1982. A Statement of Interest and Principal Due and Statement of Loan Account and Transactions are sent to approximately one-third of the borrowers each month. All loans funded by FFB are billed on a calendar quarter basis by REA;

(b) Monthly, which applies to:

(1) All REA and RTB loans approved on or after September 1, 1982, and for

amounts due REA for guaranteed payments (Accounts Receivable);

(2) Borrowers with loans approved both prior to and after September 1, 1982, who will receive:

- (i) One consolidated bill for all monthly and quarterly accounts in the month their regular quarterly installment is due;
- (ii) A bill for their monthly installments only, the other two months of each quarter; and
- (iii) A quarterly Statement of Loan Account and Transactions showing all activity for the quarter; and
- (c) Other which applies to borrowers who have notes or bonds specifying annual or semi-annual payments or have a repayment schedule are issued bills on the dates and in the amounts stated in the note or bond.

### § 1785.52 Computing periodic installments.

(a) **Level debt service installments.** The installment amount on REA, RTB and FFB notes is computed by FFB or REA as of the basis date. When applicable, the unpaid principal balance as of the basis date is multiplied by the amortization rate stated in the note to determine the installment. The installment includes current interest and the amortization of principal. The amount of the installment for notes issued by electric borrowers will be increased for the appropriate number of periods when a deferment of payments, allowed under section 12 of the RE Act (7 U.S.C. 901 *et seq.*), for energy resource conservation occurs. The installment will revert to the original amount when the deferred amount has been repaid.

(b) **Level principal installments.** The installment amount on FFB, RED and REA notes is computed as of the basis date. To arrive at the periodic installment necessary to fully amortize the principal by the maturity date, the unpaid principal balance as of the basis date is divided by the number of repayment periods through the maturity date of the note. Level principal installments, along with accrued interest on the unpaid balance, must be paid monthly or quarterly, as applicable. Interest does not accrue on RED notes as they are non-interest bearing.

(c) **Graduated principal installments.** The installment amount on FFB notes changes after one-third of the repayments have been made. The amount of each of the first one-third (or the nearest number of payments that rounds to one-third) of the total number of principal payments must substantially equal one-half of the

amount of each of the remaining principal payments. Graduated quarterly payments of principal, along with accrued interest on the unpaid balance, must be paid on each payment date.

**§ 1785.53 Computation of interest and principal due.**

(a) *Current interest.* (1) Interest on REA, RTB and RCDF notes is computed on the unpaid principal balance for the actual number of days the balance is outstanding. Interest on advances in the prebasis period, made in the month billed, will not be included in the current bill but will be included in the next bill for the total number of days outstanding from the date of the advance to the billing date;

(2) An interest credit is allowed for early payments and additional interest is charged for late payments. Interest adjustments for early or late payments are reflected in the next billing. Interest credit or additional interest charged is not made on final payments of \$1 or less;

(3) RED notes require the borrower to pay a late charge on any payment not made within ten (10) days of the due date of the bill. This late charge is submitted on a separate billing;

(4) Interest on FFB notes is computed on the unpaid principal balance for the actual number of days the balance is outstanding. Interest credit is not allowed for early payments;

(5) Interest on accounts receivable is computed:

(i) For guaranteed payments on FFB notes dated prior to September 1, 1987, on the amount paid to the lender by REA for the actual number of days the payment is outstanding at the same interest rate(s) as the related FFB advances(s); and

(ii) For guaranteed payments on FFB notes executed subsequent to September 1, 1987, at a rate of 1½ times the rate to be determined by the U.S. Treasury taking into consideration the prevailing market yield on the remaining maturity of the most recently auctioned 13-week United States Treasury Bills. This rate is reestablished every 13 weeks and applies to the adjusted principal balance outstanding, which includes accrued unpaid interest as of that date. Except for balances of \$1 or less, interest credit is given and additional interest is charged for early or late payments.

(b) *Principal.* (1) For level debt service notes, the interest computed in accordance with paragraph (a)(1) or (a)(2) of this section shall not exceed the interest due for the installment period, and is subtracted from the installment to determine the principal due.

(2) For level principal and graduated principal notes, the amount of the installment is the amount of principal due.

(c) Accumulated interest due is the amount of the installment established for this interest.

**§ 1785.54 Types of bills.**

(a) Periodic debt service bills are sent to borrowers approximately 15 days before the due date. Amounts shown on the bill represent a consolidation of amounts due on all notes (see § 1785.51(a)(b) and (c)). Accounts which have not reached their maturity date, but whose outstanding balance will be paid upon receipt of the payment due will have a notation on the bill stating that "PAYMENT OF THIS BILL WILL PAY IN FULL ACCOUNT(S) (account number)".

(b) Maturity bills identify accounts reaching the maturity date and are for principal and/or accumulated interest outstanding balances and current interest if any. REA, RTB and RCDF maturity bills are sent to borrowers approximately 30 days before the maturity date. The maturity bill has a notation stating "PAYMENT OF THIS MATURITY BILL WILL PAY IN FULL ACCOUNT (account number)". FFB maturity bills are sent about 14 days before the maturity date and have the following notations: "IF MATURITY DATE IS TO BE EXTENDED, PAY INTEREST ONLY" (used when principal payments have not begun) and "A MINIMUM PAYMENT OF \$ (amount) REQUIRED" (only used when principal payments have begun).

(c) Supplemental bills are for amounts due in addition to the borrower's periodic debt service bill or maturity bill. The reason for the billing is noted on the supplemental bill. Supplemental bills are mailed to FFB borrowers when the extension of the maturity date occurs in the month in which a regular quarterly installment is due, and the maturity date is not the quarterly due date. The bill covers current interest due from the extension date through the end of the billing period at the new interest rate. Supplemental bills are also sent to REA and RTB borrowers for amounts due on advances made in the month an account enters the principal repayment period, if the month is a billing month and the debt service bills have been sent to the borrower before the advance.

(d) Fee bills are for an amount of one one-thousandth of one percent (0.00001) per year of the amount outstanding as of December 31 on FFB notes, or FFB amended notes, dated after October 1, 1983. The fee bills are sent to FFB borrowers, on March 31 of each year, or

if that day is not a business day, the first business day thereafter.

**§ 1785.55 FFB maturity date extensions.**

(a) *Regular extensions of short-term maturity date.* (1) *Notification to borrower.* REA will mail an original and one copy of a maturity date extension letter to the borrower approximately 60 days before the short-term maturity date of an advance.

(2) *Borrower notification to REA.* The borrower will complete the extension letter, and return the original copy to REA at least 10 days before the maturity date.

(b) *Early maturity extension of short-term maturity date.* (1) A borrower may request, as specified in the note, an early maturity extension of any FFB advance with a short-term maturity date to a long-term maturity date. Approval of the appropriate REA regional director will be obtained before the request is forwarded by REA to FFB. FFB will treat an early maturity extension as a prepayment for purposes of computing a price. Therefore, in consideration of such an extension, FFB will require a borrower to pay an amount representing the sum of:

(i) The difference between the amount of the advance being extended, and a price on such advance which will result in a yield (based on a quarterly rate) for a period from the date of early maturity extension to the stated maturity date equal to the U.S. Treasury new issue rate for a comparable period. The price will be computed by FFB using the Treasury New Issue Yield Curve as of the close of business 2 days prior to the extension date (if the price is less than the face amount, the difference will be applied against accrued interest); and

(ii) Accrued interest on the advance to the effective date of the extension;

(2) Since the exact amount to be paid to FFB pursuant to paragraph (b)(1) of this section is not known until the day before the effective date of an extension, REA will notify the borrower by telephone of the amount to be paid. If the calculation in paragraph (b)(1) of this section results in a discount that exceeds the accrued interest, REA will return the net amount to the borrower. All payments must be transferred to REA on or before the extension date via electronic funds transfer.

**§§ 1785.56–1785.99 [Reserved]**

**Subpart C—Application of Payments**

**§ 1785.100 General.**

(a) REA and RTB loan contracts, amending loan contracts or amendments to loan contracts, for loans approved after December 31, 1980, require

borrowers to make debt service payments exceeding \$10,000 by electronic funds transfer utilizing the Treasury Fedwire Deposit System (FDS). Borrowers may transfer funds electronically utilizing the Automated Clearance House (ACH) system in lieu of the FDS if they choose, so long as their payments do not exceed \$100,000 per month. Information about the electronic funds transfer can be obtained from the Director, Financial Operations Division, room 2001—South Building, U.S. Department of Agriculture, Washington, DC 20250-1500. FFB and RED borrowers are also required to make debt service payments by electronic funds transfer (31 U.S.C. 321, 3301, 3302 and 3720).

(b) Borrowers will be given credit for their payment as of the date checks are received or electronically transferred funds are credited to REA.

#### § 1785.101 Payments for amounts billed.

(a) Payments on accounts receivable amounts and REA, RTB, FFB and RCDF notes, made in response to a bill will be applied, as applicable, in the following order, beginning with the oldest note:

- (1) First late charges; then
- (2) To premium; then
- (3) To current interest due on all

notes; then

- (4) To accumulated interest due; then
- (5) To principal due on all notes; then
- (6) To the cushion of credit account (REA notes only); and then

- (7) To fees due.

(b) REA electric borrowers who have an Energy Resources Conservation Agreement (ERC) can defer principal payments by deducting amounts equal to the ERC loans made to their consumers. The amount deducted will not exceed the amount stated in the ERC agreement. The installment on notes which have principal payments deferred will be increased by an amount sufficient to amortize the deferred principal and interest over the period stated in the ERC agreement. At the end of the deferment period, the installment will be reduced by the amount of the increase.

(c) Payments on RED notes are applied to principal due.

(d) Payments on restructured notes will be applied as specified in the restructure agreement; or, if the agreement does not so specify, payments will be applied in accordance with paragraph (a) of this section.

#### § 1785.102 Overpayments, prepayments and special payments.

(a) Overpayments of an REA bill will be applied to the borrower's cushion of credit account. RTB, RCDF, RED or FFB

borrowers are contacted by REA to determine the disposition of the overpayment.

(b) Prepayments will be applied as follows:

(1) REA, RCDF and RED prepayments will be applied to the principal outstanding on the note(s) identified by the borrower. If the prepayment results in an account being paid in full, a payment of interest accrued to the payment date must be made;

(2) RTB prepayments are applied directly to the note(s) identified by the borrower. There is a prepayment premium which is explained in the RTB note;

(3) FFB prepayments of any advance with a short-term maturity date (2 to 7 years) can be prepaid either in whole or in part at any time before the maturity date. Approval of the appropriate REA regional director must be obtained before the request is forwarded to FFB for concurrence. In consideration for accepting the prepayment, FFB requires a borrower to pay an amount representing the sum of:

(i) The difference between the face amount of the advance being prepaid, and a price on such advance which will result in a yield for a period from the date of prepayment to the stated maturity date equal to the U.S. Treasury new issue rate for a comparable period. The price will be computed by FFB using market yields on U.S. Treasury securities as of the close of business 2 days prior to the prepayment date (if the price is less than the face amount, the difference will be applied against accrued interest), and

(ii) Accrued interest on the advance to the date of the prepayment;

(4) Prepayment of principal of any FFB long-term advance on notes executed prior to January 1, 1983, may be made prior to 12 years after the end of the calendar year in which the advance was made. The borrower will be required to pay a sum equal to the total of accrued interest from the last payment date through the date of prepayment plus the higher of:

(i) The principal being prepaid plus an amount equal to one 100 percent of the amount of interest for one year on the prepaid principal; or

(ii) A price which would, if such advance were purchased and held to the maturity thereof, produce a yield to the purchaser for the period from the date of prepayment to the maturity thereof equal to the interest rate which would be set on a loan from the Secretary of the Treasury to the FFB to finance an advance having a payment schedule identical to the advance. Such prepayment price shall be calculated by

the FFB as of the close of business 2 business days prior to the date of such prepayment using standard U.S. Treasury Department calculation methods. Provisions for making prepayments and prepayment premiums are set forth in paragraph 9 of the FFB note dated prior to January 1, 1983. Notes executed subsequent to December 31, 1982, may be prepaid at any time (see paragraph (b)(3) of this section). The provisions for making prepayments and prepayment premiums are set forth in the FFB Note;

(5) Since the exact amount to be paid to FFB is not known until the day before the effective date of a prepayment, REA will notify the borrower by telephone of the amount to be paid. All payments must be transferred to REA on or before the prepayment date via electronic funds transfer; and

(c) Special payments representing proceeds from the sale of property, and special payments made under a loan contract or mortgage provision will be applied as agreed upon by REA and the borrower. It is the responsibility of borrowers with concurrent loans to apportion and remit all repayments in accordance with the terms of the common mortgage.

#### § 1785.103-1785.149 [Reserved]

#### Subpart D—Cushion of Credit Account Computations and Procedures

##### § 1785.150 General.

This subpart sets forth policies and procedures of the REA cushion of credit payments program. The cushion of credit payments program will be maintained only for insured loans evidenced by obligations of the RETRF. A subaccount, known as the "Rural Economic Development Subaccount", is established within the RETRF for purposes of promoting rural economic development. This subaccount will be used to provide rural economic development grants and zero-interest loans to borrowers under the RE Act (7 U.S.C. 901 et seq.).

##### § 1785.151 Assets of the subaccount.

The assets of the subaccount will be determined by crediting, on a monthly basis, the sum of the following:

(a) The result obtained by multiplying the outstanding cushion of credit payments and the advance payments by the difference converted on a monthly basis, between the average weighted interest rate paid on outstanding certificates of beneficial ownership issued by the RETRF and the 5 percent rate of interest provided to borrowers on cushion of credit payments; plus

(b) The repayment of loans made pursuant to section 313 of the RE Act; plus

(c) Other sources as provided by Congress.

**§ 1785.152 Establishing an REA cushion of credit payment account.**

A cushion of credit account will be automatically established by REA for each borrower who makes a payment after October 1, 1987, in excess of amounts then due on an REA note. This account will bear interest at a rate of 5 percent per annum. All payments on REA notes which are in excess of required payments and not otherwise designated by the borrower will be deposited in the borrowers' cushion of credit account. Payments received in the month in which an installment is due will be applied to the installment due. However, if the regular installment payment is received at a later date in the month, the first payment received will be applied retroactively to a cushion of credit account and the second will be applied to the installment due.

**§ 1785.153 Cushion of credit payment account computations.**

(a) *Payments.* Cushion of credit payments are credited to the borrowers' cushion of credit accounts.

(b) *Interest.* Interest at the rate of 5 percent per annum will be credited on a quarterly basis to cushion of credit accounts. Interest earned will appear as a reduction of the interest billed on the borrower's REA notes and will be separately shown on the bill.

**§ 1785.154 Application of RETRF cushion of credit payments.**

(a) If a maturing installment on an REA note or a note which has been guaranteed by REA is not paid by its due date, funds will be withdrawn from the borrower's cushion of credit account and applied as of the installment due date beginning with the oldest notes as follows:

(1) To late charges, if any; then  
(2) To current interest due on all notes; then

(3) To the accumulated interest due, if any, on all notes; and then

(4) To the principal due on all notes.

(b) A borrower may reduce the balance of its cushion of credit account only if the amount obtained from the reduction is used to make scheduled payments on loans made or guaranteed under the RE Act.

**§ 1785.155-1785.199 [Reserved]**

**Subpart E—Statements Furnished Borrowers and CPA's**

**§ 1785.200 Statement of interest and principal due.**

(a) A Statement of Interest and Principal Due (bill) is mailed to borrowers for amounts due on outstanding balances of REA, RTB, FFB, RCDF and accounts receivable approximately 2 weeks before the due date. The bill shows the due date, principal due, interest due and, interest credit on overdue amount, if any.

(b) An amortization schedule will be mailed to RED borrowers before the principal repayment period begins. This schedule will take the place of periodic bills.

**§ 1785.201 Statement of loan account and transactions.**

A statement of loan account and transactions is mailed to REA, RTB, FFB and RCDF borrowers at the end of a given period, usually every 3 months. This statement shows the beginning balance, transactions for the period, amounts billed and unpaid, and closing balances for each account and/or note, using transaction codes to identify the type of transaction. These statements are mailed to borrowers approximately 2 weeks after the end of the cycle quarter.

**§ 1785.202 Confirmation schedules.**

Confirmation schedules, as of the audit date, are mailed to borrower's certified public accountants (CPA) on record with REA. This schedule confirms note information and outstanding balances for each account as of the audit date.

**§ 1785.203 FFB maturity extension notifications.**

FFB maturity extension notifications are mailed to borrowers approximately 60 days before the short-term maturity date. This notification gives the borrower information on the advance maturity and states options for the extension of the advance.

**§ 1785.204 Interest rate notifications.**

(a) Interest rate notifications are mailed to FFB borrowers and RTB borrowers who have variable interest rate notes. These notifications are sent upon computation of the interest rate and include interest rate, advance or extension date, amount of advance or extension, and account number.

(b) If the FFB advance or extension was long-term or short-term and will reach the principal repayment period within 2 years from the date of the advance or prior extension, an

amortization installment is included on the notification.

**§ 1785.205-1785.249 [Reserved]**

**Subpart F—Loan Payments and Statements**

**§ 1785.250-1785.257 [Reserved]**

**§ 1785.258 Basis dates and termination of unadvanced fund commitments—electric.**

(a) *Termination of loan fund advances.* Loan contracts or amendments thereto providing for insured loans approved by the REA Administrator on or after June 1, 1984, shall provide that the Government's obligation to advance insured loan funds pursuant to such loan contracts, as amended, will terminate without further action by the Government after four years from the date of the loan contract or the most recent amendment thereto, unless the REA Administrator agrees, in writing, to an extension of the obligation.

(b) *Request for extension.* The REA Administrator may agree to an extension of the Government's obligation to advance loan funds if the borrower demonstrates to the Administrator's satisfaction that the loan funds continue to be needed for approved loan purposes (i.e., facilities included in an REA-approved construction workplan). To apply for an extension, borrowers must mail to the appropriate area office, at least 120 days before the Government's obligation to advance loan funds terminates, the following:

(1) A certified copy of a board resolution requesting an extension of the Government's obligation to advance loan funds;

(2) Evidence that the unadvanced loan funds continue to be needed for approved loan purposes; and

(3) Notice of the estimated date for the completion of construction.

(c) *Approval of extension.* If the REA Administrator approves a request for an extension, the borrower will be notified in writing of the extension and the terms and conditions thereof.

2. The authority citation for part 1786 is revised to read as follows:

**Authority:** 7 U.S.C. 901 *et seq.*

3. Subpart A of part 1786 is revised as follows:

**PART 1786—PREPAYMENT OF REA GUARANTEED AND INSURED LOANS TO ELECTRIC AND TELEPHONE BORROWERS.**

**Subpart A—General**

1786.1 General statement  
1786.2-1786.24 [Reserved]

**Subpart A—General****§ 1786.1 General Statement.**

The general policies and procedures of the Rural Electrification Administration (REA), the Rural Telephone Bank (RTB) and, the Federal Financing Bank (FFB) regarding prepayments provided for in the notes or loan contracts can be found in 7 CFR 1710.110, 1719.54, and 1785.102(b).

**§§ 1786.2–1786.24 [Reserved]**

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Dated: April 1, 1993.

Robert Peters,

*Acting Under Secretary, Small Community and Rural Development.*

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**NUCLEAR REGULATORY COMMISSION**

**10 CFR Part 20**

**Radiological Criteria for Decommissioning of NRC-Licensed Facilities; Workshop**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of workshop.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is preparing to initiate an enhanced participatory rulemaking on establishing the radiological criteria for the decommissioning of NRC-licensed facilities. The Commission intends to enhance the participation of affected interests in the rulemaking by soliciting commentary from these interests on the rulemaking issues before the staff develops the draft proposed rule. The Commission plans to conduct a series of workshops to solicit commentary from affected interests on the fundamental approaches and issues that must be addressed in establishing the radiological criteria for decommissioning.

**DATES:** The fifth workshop will be held in Philadelphia, Pennsylvania on April 13 and 14, 1993 and will be open to the public April 13, 1993 from 9 a.m. to 5:45 p.m.; April 14, 1993, from 8:30 a.m. to 4 p.m. In addition, the staff of the Nuclear Regulatory Commission and the Environmental Protection Agency will be available the evening before the workshop, Monday, April 12, 1993, from 7 p.m. to 9:30 p.m. to provide information on the intent and format of the workshop and to receive comments from members of the public who may not be able to attend the workshop. The

workshop agenda also provides for scheduled opportunities throughout the workshop for the public to comment on the rulemaking issues and the workshop discussions. The scheduled public comment periods include: 12:15 p.m.–12:45 p.m.; 3:15 p.m.–3:30 p.m.; and 5:15 p.m.–5:45 p.m. on Tuesday, April 13; and 10 a.m.–10:15 a.m.; 12 p.m.–12:30 p.m.; and 2:45 p.m.–3:15 p.m. on Wednesday, April 14. All sessions will be held at the Sheraton Valley Forge Hotel, North Gulph Road and First Avenue, King of Prussia, Pennsylvania, 215–337–2000.

As discussed later in this notice, the workshop discussions will focus on the issues and approaches identified in a Rulemaking Issues Paper prepared by the NRC staff. The Commission will accept written comments on the Rulemaking Issues Paper from the public, as well as from workshop participants. Written comments should be submitted by May 28, 1993.

**ADDRESSES:** Send written comments on the Rulemaking Issues Paper to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. ATTN: Docketing and Service Branch. Hand deliver comments to 11555 Rockville Pike, Rockville, Maryland between 7:45 a.m. and 4:15 p.m. on Federal workdays. The Rulemaking Issues Paper is available from Francis X. Cameron (See "FOR FURTHER INFORMATION CONTACT").

**FOR FURTHER INFORMATION CONTACT:** Francis X. Cameron, Special Counsel for Public Liaison and Waste Management, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–504–1642.

**SUPPLEMENTARY INFORMATION:**

**Background**

The NRC has the statutory responsibility for protection of health and safety related to the use of source, byproduct, and special nuclear material under the Atomic Energy Act. The NRC believes that one portion of this responsibility is to ensure the safe and timely decommissioning of nuclear facilities which it licenses and to provide guidance to licensees on how to plan for and prepare their sites for decommissioning. Once licensed activities have ceased, licensees are required to decommission their facilities so that their licenses may be terminated. This requires that the radioactivity in land, groundwater, buildings, and equipment resulting from the licensed operation be reduced to levels that allow the property to be released for unrestricted use. Licensees must then

demonstrate that all facilities have been properly decontaminated and that radioactive material has been transferred to authorized recipients. Confirmatory surveys are conducted by NRC, where appropriate, to verify that sites meet NRC radiological criteria for decommissioning.

The types of nuclear fuel cycle facilities that will require decommissioning include nuclear power plants; non-power (research and test) reactors; fuel fabrication plants, uranium hexafluoride production plants, and independent spent fuel storage installations. In addition there are currently about 24,000 materials licensees. About one third of these are NRC licensees, while the remainder are licensed by Agreement States acting under the authority of the Atomic Energy Act, section 274. These licensees include universities, medical institutions, radioactive source manufacturers, and companies that use radioisotopes for industrial purposes. About 50% of NRC's 7,500 materials licensees use either sealed radioactive sources or small amounts of short-lived radioactive materials. Decommissioning of these facilities should be relatively simple because there is usually little or no residual radioactive contamination. Of the remaining 50%, a small number (e.g. radioactive source manufacturers, radiopharmaceutical producers, and radioactive ore processors) conduct operations that could produce substantial radioactive contamination in portions of the facility. These facilities, like the fuel cycle facilities identified above, must be decontaminated before they can be safely released for unrestricted use.

Several hundred NRC and Agreement State licenses are terminated each year. The majority of these licenses involve limited operations, produce little or no radioactive contamination, and do not present complex decommissioning problems or potential risks to public health or the environment from residual contamination. However, as the nuclear industry matures, it is expected that more and more of the larger nuclear facilities that have been operating for a number of years will reach the end of their useful lives and be decommissioned. Therefore, both the number and complexity of facilities that will require decommissioning is expected to increase.

The Commission believes that there is a need to incorporate into its regulations radiological criteria for termination of licenses and release of land and structures for unrestricted use. The intent of this action would be to provide a clear and consistent regulatory basis

for determining the extent to which lands and structures must be decontaminated before a site can be decommissioned. The Commission believes that inclusion of criteria in the regulations would result in more efficient and consistent licensing actions related to the numerous and frequently complex site decontamination and decommissioning activities anticipated in the future. A rulemaking effort would also provide an opportunity to reassess the basis for the residual contamination levels contained in existing guidance in light of changes in basic radiation protection standards and decommissioning experience obtained during the past 15 years.

The new criteria would apply to the decommissioning of power reactors, non-power reactors, fuel reprocessing plants, fuel fabrication plants, uranium hexafluoride production plants, independent spent fuel storage installations, and materials licenses. The criteria would apply to nuclear facilities that operate through their normal lifetime, as well as to those that may be shut down prematurely. The proposed criteria would not apply to uranium (other than source material) mines and mill tailings, high-level waste repositories, or low-level waste disposal facilities.

Until the new criteria are in place, the Commission intends to proceed with the decommissioning of nuclear facilities on a site-specific basis as the need arises considering existing criteria. Case and activity-specific risk decisions will continue to be made as necessary during the pendency of this process.

#### The Enhanced Participatory Rulemaking

The Commission believes it is desirable to provide for early and comprehensive input from affected interests on important public health and safety issues, such as the development of radiological criteria for decommissioning. Accordingly, the Commission is initiating an enhanced participatory rulemaking to establish these criteria. The objective of the rulemaking is to enhance the participation of affected interests in the rulemaking by soliciting commentary from these interests on the rulemaking issues before the NRC staff develops the draft proposed rule. The NRC staff will consider this commentary in the development of the draft proposed rule, as well as document how these comments were considered in arriving at a regulatory approach. The Commission believes that this will be an effective method for illuminating the decision making process on complex

and controversial public health and safety issues. This approach will ensure that the important issues have been identified; will assist in identifying potential information gaps or implementation problems; and will facilitate the development of potential solutions to address the concerns that affected interests may have in regard to the rulemaking.

The early involvement of affected interests in the development of the draft proposed rule will be accomplished through a series of workshops. A workshop format was selected because it will provide representatives of the affected interests with an opportunity to discuss the rulemaking issues with one another and to question one another about their respective positions and concerns. Although the workshops are intended to foster a clearer understanding of the positions and concerns of the affected interests, as well as to identify areas of agreement and disagreement, it is not the intent of the workshop process to attempt to develop a consensus agreement on the rulemaking issues. In addition to the commentary from the workshop participants, the workshops will be open to the public and the public will be provided with the opportunity to comment on the rulemaking issues and the workshop discussions at discrete intervals during the workshops.

The workshops were initially announced in the *Federal Register* on December 11, 1992 (57 FR 58727). The complete schedule for the workshops is: January 27 and 28, Chicago, Illinois. 1993. February 23 and 24, 1993, San Francisco, California. March 12 and 13, 1993, Boston, Massachusetts. March 23 and 24, 1993, Dallas, Texas. April 13 and 14, 1993, Philadelphia, Pennsylvania. April 29 and 30, 1993, Atlanta, Georgia. May 6 and 7, 1993 ... Washington, DC.

The normal process for conducting Commission rulemakings is NRC staff development of a draft proposed rule for Commission review and approval, publication of the proposed rule for public comment, consideration of the comments by the NRC staff, and preparation of a draft final rule for Commission approval. In the enhanced participatory rulemaking, not only will comments be solicited before the NRC staff prepares a draft proposed rule, but the mechanism for soliciting these early comments will also provide an opportunity for the affected interests and the NRC staff to discuss the issues

with each other, rather than relying on the traditional one-to-one written correspondence with the NRC staff. After Commission review and approval of the draft proposed rule that is developed using the workshop commentary, the general process of issuing the proposed rule for public comment, NRC staff evaluation of comments, and preparation of a draft final rule for Commission approval, will occur.

#### Participants

In order to have a manageable discussion among the workshop participants, the number of participants in each workshop must be limited. Based on discussions with experts on workshop facilitation, the NRC staff believes that the optimum size of the workshop groups is fifteen to twenty participants. Due to differing levels of interest in each region, the actual number of participants in any one workshop, as well as the number of participants that represent a particular interest in any one workshop, may vary. Invitations to attend the workshops will be extended by the NRC staff using several selection criteria. First, to ensure that the Commission has the benefit of the spectrum of viewpoints on the issues, the NRC staff is attempting to achieve the participation of the full range of interests that may be affected by the rulemaking. The NRC staff has identified several general interests that will be used to select specific workshop participants—state governments, local governments, tribal governments, Federal agencies, citizens groups, nuclear utilities, fuel cycle facilities, and non-fuel cycle facilities. In addition to these interests, the staff also plans to invite representatives from the contracting industry that performs decommissioning work and representatives from professional societies, such as the Health Physics Society and the American Nuclear Society. The NRC anticipates that most of the participants will be representatives of organizations. However, it is also possible that there may be a few participants who, because of their expertise and influence, will participate without any organizational affiliation.

The second selection criterion is the ability of the participant to knowledgeably discuss the full range of rulemaking issues. The NRC staff wishes to ensure that the workshops will elicit informed discussions of options and approaches, and the rationale for those options and approaches, rather than simple statements of opinion. The NRC staff's identification of potential

participants has been based on an evaluation of such factors as the extent of a potential participant's experience with a broad range of radiation protection issues and types of nuclear facilities, specific experience with the decommissioning issue, and the extent of a potential participant's substantive comment and participation on previous Commission regulatory or licensing actions.

The third criterion emphasizes participation from organizations within the region encompassed by the workshop. As much as practicable, those organizations that primarily operate within the region, as opposed to regional units of national organizations, will have priority in terms of participating in the corresponding regional workshops. Organizations with a national standing will be part of the "national" workshop to be held in Washington, DC.

#### Workshop Format

To assure that each workshop addresses the issues in a consistent manner, the workshops will have a common pre-defined scope and agenda focused on the Rulemaking Issues Paper discussed below. However, the workshop format will be sufficiently flexible to allow for the introduction of any additional issues that the participants may want to raise. At each workshop, the NRC staff will begin each discussion period with a brief overview of the rulemaking issues to be discussed and the remainder of the workshop will be devoted to a discussion of the issues by the participants. The workshop commentary will be transcribed and made available to participants and to the public.

Personnel from The Keystone Center, a nonprofit organization located in Keystone, Colorado, will serve as neutral facilitators for each workshop. The facilitators will chair the workshop sessions and ensure that participants are given an opportunity to express their viewpoints, assist participants in articulating their interests, ensure that participants are given the opportunity to question each other about their respective viewpoints, and assist in keeping the discussion moving at a pace that will allow all major issue areas to be addressed.

#### Rulemaking Issues Paper

The NRC staff has prepared a Rulemaking Issues Paper to be used as a focal point for the workshop discussions. This paper, which will be distributed to participants in advance of the workshops, sets forth in neutral terms the issues that must be addressed

in the rulemaking, as well as background information on the nature and extent of the problem to be addressed. In framing the issues and approaches discussed in the Rulemaking Issues Paper, the NRC staff has attempted to anticipate the variety of views that exist on these approaches and issues. The paper will provide assistance to the participants as they prepare for the workshops, suggest the workshop agenda, and establish the level of technical discussion that can be expected at the workshops. The workshop discussions are intended to be used by the staff in developing the draft proposed rule. Prior to the workshops no staff positions will be taken on the rulemaking approaches and issues identified in the Rulemaking Issues Paper. As noted earlier, to the extent that the Rulemaking Issues Paper fails to identify a pertinent issue, this may be corrected at the workshop sessions.

The discussion of issues is divided into two parts. First are two primary issues dealing with: (1) The objectives for developing radiological criteria; and (2) application of practicality considerations. The objectives constitute the fundamental approach to the establishment of the radiological criteria, and the NRC staff has identified four distinct possibilities including: (1) Risk Limits, which is the establishment of limiting values above which the risks to the public are deemed unacceptable, but allows for criteria to be set below the limit using practicality considerations; (2) Risk Goals, where a goal is selected and practicality considerations are used to establish criteria as close to the goal as practical; (3) Best Effort, where the technology for decontamination considered to be the best available is applied; and (4) Return to Preexisting Background, where the decontamination would continue until the radiological conditions were the same as existed prior to the licensed activities.

Following the primary issues are several secondary issues that are related to the discussions of the primary issues, but which the NRC staff believe warrant separate presentations and discussions. These secondary issues include the time frame for dose calculation, the individuals or groups to be protected, the use of separate criteria for specific exposure pathways such as groundwater, the treatment of radon, and the treatment of previously buried materials.

The Rulemaking Issues Paper will be provided to each potential workshop participant. Additional copies will be available to members of the public in

attendance at the workshop. Copies will also be available from the NRC staff contact identified above. In addition to the comments on the Rulemaking Issues Paper provided at the workshops, the Commission is also receptive to the submittal of written comments on the rulemaking issues, as noted under the heading "DATES".

Dated at Rockville, MD this 1st day of April, 1993.

For the Nuclear Regulatory Commission.  
Samuel J. Chilk,  
*Secretary of the Commission.*

[FR Doc. 93-8111 Filed 4-6-93; 8:45 am]  
BILLING CODE 7590-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 93-NM-15-AD]

#### Airworthiness Directives; Aerospatiale Model ATR72-100 and -200 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Aerospatiale Model ATR72-100 and -200 series airplanes. This proposal would require a one-time detailed visual inspection of the fastener holes on the front and rear wing spar fittings to ensure that spotfacing of the fastener holes has been accomplished; and, if necessary, a one-time general visual inspection of the fastener holes for peening or cracks, and modification or repair, as necessary. This proposal is prompted by a report that, during assembly, spotfacing of some fastener holes in the front and rear wing spar fittings was not performed on these airplanes. The actions specified by the proposed AD are intended to prevent reduced structural integrity of the wing spar fittings.

**DATES:** Comments must be received by June 1, 1993.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-15-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m.,

Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gary Lium, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-1112; fax (206) 227-1320.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93-NM-15-AD." The postcard will be date stamped and returned to the commenter.

##### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-15-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

##### Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France,

recently notified the FAA that an unsafe condition may exist on certain Aerospatiale Model ATR72-100 and -200 series airplanes. The DGAC advises that, during assembly, spotfacing of some fastener holes at wing ribs 13 and 15 in the front and rear wing spar fittings was not performed on these airplanes. If spotfacing of the fastener holes in this area is not accomplished, cracks may develop and propagate at the fitting attachments. This condition, if not corrected, could result in reduced structural integrity of the wing spar fittings.

Aerospatiale has issued Service Bulletin ATR72-57-1008, dated November 19, 1992, that describes procedures for a one-time detailed visual inspection of the fastener holes on the front and rear wing spar fittings to ensure that spotfacing of the fastener holes has been accomplished. If no spotfacing has been accomplished, a one-time general visual inspection of the fastener holes for peening or cracks is recommended, and modification, if necessary. The modification consists of installing a shim and replacing existing nuts with self-aligning nuts, which would preclude the possibility for the propagation of cracks at the fitting attachments. The DGAC classified this service bulletin as mandatory and issued French Airworthiness Directive 92-262-016(B), dated November 25, 1992, in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a one-time detailed visual inspection of the fastener holes on the front and rear wing spar fittings to ensure that spotfacing of the fastener holes has been accomplished. If no spotfacing has been accomplished, a one-time general visual inspection of the fastener holes for peening or cracks would be required; and modification or repair, as necessary.

The inspections and modification would be required to be accomplished in accordance with the service bulletin described previously. The repair would be required to be accomplished in accordance with a method approved by the FAA.

The FAA estimates that 11 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 14 work hours per airplane to accomplish the proposed actions, and that the average labor rate is \$55 per work hour. Required parts would be supplied by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$8,470, or \$770 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

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

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

##### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

##### The Proposed Amendment

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

##### PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**Aerospatiale:** Docket 93-NM-15-AD.

**Applicability:** Model ATR72-100 and -200 series airplanes on which Modification 3196 has not been installed; certificated in any category.

**Compliance:** Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the wing spar fittings, accomplish the following:

(a) Within 12 months after the effective date of this AD, perform a one-time detailed visual inspection of the fastener holes on the front and rear wing spar fittings to ensure that spotfacing of the fastener holes has been accomplished, in accordance with Aerospatiale Service Bulletin ATR72-57-1008, dated November 19, 1992.

(1) If spotfacing of the fastener holes has been accomplished, no further action is required by this AD.

(2) If spotfacing of the fastener holes has not been accomplished, prior to further flight, perform a one-time general visual inspection of the fastener holes for peening or cracks, in accordance with the service bulletin.

(i) If no peening or crack is found, prior to further flight, install a shim and replace existing nuts with self-aligning nuts, in accordance with the service bulletin.

(ii) If any peening or crack is found, prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

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

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

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

Issued in Renton, Washington, on April 1, 1993.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 93-8061 Filed 4-6-93; 8:45 am]

BILLING CODE 4910-13-P

### 14 CFR Part 39

[Docket No. 93-NM-12-AD]

#### Airworthiness Directives; Short Brothers, PLC, Model SD3-60 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Short Brothers Model SD3-60 series airplanes. This proposal would require repetitive inspections to detect cracking in the attachment lugs of the horizontal stabilizer and replacement of cracked lugs with serviceable parts. This proposal is prompted by reports of fatigue cracking in the attachment lugs of the horizontal stabilizer that developed during fatigue testing conducted by the manufacturer. The actions specified by the proposed AD are intended to prevent reduced structural integrity of the attachment of the horizontal stabilizer to the airplane.

**DATES:** Comments must be received by June 1, 1993.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-12-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Short Brothers, PLC, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3719. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** William Schroeder, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address

specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93-NM-12-AD." The postcard will be date stamped and returned to the commenter.

#### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-12-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

#### Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on all Short Brothers, PLC, Model SD3-60 series airplanes. The CAA advises that, during fatigue testing conducted by the manufacturer on a Model SD3-60 series airplane, cracks developed in the attachment lugs of the horizontal stabilizer. Such cracking, if not detected and corrected, could result in reduced structural integrity of the attachment of the horizontal stabilizer to the airplane.

Short Brothers, PLC, has issued Service Bulletin SD360-55-19, dated January 18, 1993, that describes procedures for repetitive ultrasonic inspections to detect cracking in the attachment lugs of the horizontal stabilizer and replacement of cracked lugs with serviceable parts. The CAA classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of

the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require repetitive ultrasonic inspections to detect cracking in the attachment lugs of the horizontal stabilizer and replacement of cracked lugs with serviceable parts. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 81 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 16 work hours per airplane to accomplish the proposed actions, and that the average labor rate is \$55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$71,280, or \$880 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

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

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

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

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

#### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

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

**Short Brothers, PLC: Docket 93-NM-12-AD.**

*Applicability:* All Model SD3-60 series airplanes, certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the attachment of the horizontal stabilizer to the airplane, accomplish the following:

(a) Prior to the accumulation of 20,000 total landings on the horizontal stabilizer or within 3 months after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 4,000 landings, perform an ultrasonic inspection to detect cracking in the attachment lugs of the horizontal stabilizer in accordance with Shorts Service Bulletin SD360-55-19, dated January 18, 1993. If any cracked lug is found, prior to further flight, replace the lug with a serviceable part in accordance with the service bulletin and continue to inspect at intervals not to exceed 4,000 landings in accordance with this paragraph.

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

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

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

Issued in Renton, Washington, on April 1, 1993.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*  
[FR Doc. 93-8059 Filed 4-6-93; 8:45 am]

**BILLING CODE 4910-13-P**

#### 14 CFR Part 71

[Airspace Docket No. 93-AGL-6]

#### Proposed Transition Area Alteration, Pontiac, IL

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposed rule would alter the existing Pontiac, IL, transition area to accommodate a new VOR runway 24 Standard Instrument Approach Procedure (SIAP) to the new Pontiac Municipal Airport, Pontiac, IL. This proposal would also reflect the new location of Pontiac Municipal Airport by updating the airport's geographic position. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

**DATES:** Comments must be received on or before May 25, 1993.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL-7, Rules Docket No. 93-AGL-6, 2300 East Devon Avenue, Des Plaines, Illinois 60018. The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

**FOR FURTHER INFORMATION CONTACT:** Douglas F. Powers, Air Traffic Division, System Management Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7568.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in

developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made:

"Comments to Airspace Docket No. 93-AGL-6." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

#### Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3485.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

#### The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the existing Pontiac, IL, transition area to accommodate a new VOR runway 24 SIAP to the new Pontiac Municipal Airport, Pontiac, IL. This proposal would also reflect the new location of Pontiac Municipal Airport by updating the airport's geographic position.

The development of the procedure requires that the FAA alter the designated airspace to ensure that the procedure would be contained within

controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts would reflect the defined area which would enable pilots to circumnavigate the area in order to comply with applicable visual flight rule requirements. The coordinates for this airspace docket are based on North American Datum 83. Transition areas are published in Section 71.181 of FAA Order 7400.7A dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The transition area listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. 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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

#### List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Transition areas.

#### The Proposed Amendment

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

#### PART 71—[AMENDED]

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

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

#### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

#### Section 71.181 Designation of Transition Areas

##### AGL IL TA Pontiac, IL, Revised]

Pontiac Municipal Airport, IL  
(lat. 40°55'25" N, long. 88°37'32" W)

That airspace extending upward from 700 feet above the surface within a 6.4 mile radius of Pontiac Municipal Airport.

Issued in Des Plaines, Illinois on March 15, 1993.

John P. Cuprisin,  
Manager, Air Traffic Division.

[FR Doc. 93-8084 Filed 4-6-93; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 71

##### [Airspace Docket No. 93-AGL-5]

#### Proposed Transition Area Establishment, Fort Atkinson, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would establish a transition area near Fort Atkinson, WI, to accommodate a new VOR-A instrument approach procedure to Fort Atkinson Municipal Airport, Fort Atkinson, WI. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before May 25, 1993.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL-7, Rules Docket No. 93-AGL-5, 2300 East Devon Avenue, Des Plaines, Illinois 60018. The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Douglas F. Powers, Air Traffic Division, System Management Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7568.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

Interested parties are invited to participate in this proposed rulemaking

by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made:

"Comments to Airspace Docket No. 93-AGL-5." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

#### Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-220, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267-3485.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

#### The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a transition area near Fort Atkinson, WI, to accommodate a new VOR-A instrument approach procedure to Fort Atkinson Municipal Airport, Fort Atkinson, WI.

The development of the procedure requires that the FAA establish the

designated airspace to ensure that the procedure would be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts would reflect the defined area which would enable pilots to circumnavigate the area in order to comply with applicable visual flight rule requirements. The coordinates for this airspace docket are based on North American Datum 83. Transition areas are published in Section 71.181 of FAA Order 7400.7A dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The transition area listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. 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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

#### List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Transition areas.

#### The Proposed Amendment

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

#### PART 71—[AMENDED]

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

**Authority:** 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

#### Section 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

#### Section 71.181 Designation of Transition Areas

AGL WI TA Fort Atkinson, WI [New] Fort Atkinson Municipal Airport, WI (lat. 42°57'47" N, long. 88°49'04" W)

That airspace extending upward from 700 feet above the surface within a 6.3 mile radius of Fort Atkinson Municipal Airport.

Issued in Des Plaines, Illinois on March 1, 1993.

**John P. Cuprisin,**  
Manager, Air Traffic Division.

[FR Doc. 93-8083 Filed 4-6-93; 8:45 am]  
BILLING CODE 4910-13-M

## FEDERAL TRADE COMMISSION

#### 16 CFR Part 305

RIN 3084-AA26

#### Rules for Using Energy Cost and Consumption Information Used in Labeling and Advertising of Consumer Appliances Under the Energy Policy and Conservation Act

**AGENCY:** Federal Trade Commission.

**ACTION:** Extension of time in which to submit comments on proposed amendments to the Appliance Labeling Rule.

**SUMMARY:** The Federal Trade Commission is seeking public comment on proposed amendments to the Appliance Labeling Rule that were published on March 5, 1993. The time for filing such comments has been extended by the Presiding Officer from April 19, 1993, to May 20, 1993.

**DATES:** Written comments will be accepted until May 20, 1993.

**ADDRESSES:** Comments should be sent to Henry B. Cabell, Presiding Officer, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580. Written comments should be submitted, when feasible and not burdensome, in five copies.

**FOR FURTHER INFORMATION CONTACT:** James Mills, Attorney, 202-326-3035, Enforcement Division, Federal Trade Commission, Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:** By notice of March 5, 1993,<sup>1</sup> the Commission announced it was seeking public comment on proposed amendments to the Appliance Labeling rule, including a proposed new format for the Energy Guide labels the rule requires. Requests that the comment period be extended until May 20, 1993 have been filed by

<sup>1</sup> 58 FR 12818.

two participants. The Commission's staff does not oppose the requested extension of time. In light of the foregoing, the Presiding Officer has extended the period for the receipt of such comments to May 20, 1993.

Lewis F. Parker,  
Chief Presiding Officer.

[FR Doc. 93-8130 Filed 4-6-93; 8:45 am]

BILLING CODE 6750-01-M

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 150

#### Revision of Federal Speculative Position Limits; Reopening of Comment Period

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Reopening of comment period.

**SUMMARY:** On April 13, 1992, the Commodity Futures Trading Commission ("Commission") published in the *Federal Register* a Notice of Proposed Rulemaking relating to Commission-set speculative position limits. 57 F.R. 12766. Based upon its consideration of the comments received and upon its independent analysis, the Commission, elsewhere in this issue of the *Federal Register*, is promulgating interim final rules amending Federal speculative position limits.

The interim final rules adopted by the Commission differ from the proposed rules by increasing the position limit levels to less than originally proposed and by phasing-in the implementation of these increases in two steps; the first to take effect in sixty days and the second to take effect as of March 31, 1994. The originally-proposed speculative position limit levels remain pending. The Commission will make a final determination on these proposed levels after having had an opportunity to observe the impact of these two interim, phased increases.

In light of the apparent widespread interest in the proposed revisions to these rules, and because it wishes to ensure that all interested parties have an adequate opportunity to submit informed comments, especially with regard to the actual experience in implementing these two interim increases, the Commission is reopening the comment period concerning the originally proposed speculative position limit levels, on March 31, 1994. This coincides with the beginning of the second interim increase to speculative position limits. The Commission will consider whether to adopt the proposed

speculative position limit levels as final shortly after the comment period closes on April 30, 1995.

**DATES:** The comment period on the pending, proposed levels will reopen on March 31, 1994 through April 30, 1995.

**ADDRESSES:** Comments should be sent to the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW, Washington, DC 20581 and should make reference to "Revision of Federal Speculative Position Limits."

#### FOR FURTHER INFORMATION CONTACT:

Blake Imel, Deputy Director, or Paul M. Architzel, Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K St. NW, Washington, DC 20581, (202) 254-3201 or 254-6990, respectively.

Issued in Washington, DC, this 30th day of March, 1993, by the Commission.

Jean A. Webb,

*Secretary of the Commission.*

[FR Doc. 93-8133 Filed 4-6-93; 8:45 am]

BILLING CODE 6351-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 101

[Docket No. 93N-0075]

RIN 0095-AC48

#### Food Labeling; Declaration of Ingredients; Common or Usual Name for Nonstandardized Foods; Diluted Juice Beverages

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Proposed rule.

**SUMMARY:** The Food and Drug Administration (FDA) is proposing to amend its regulations to exempt food that purports to be a beverage that contains any fruit or vegetable juice from the requirement that the label of the food bear a statement on the information panel as to the percentage of juice contained in the food. The proposed exemption is for 1 year. If the agency adopts this exemption, such food will not have to bear a percent juice declaration until May 8, 1994. This proposal is in response to requests from industry for such an exemption on the grounds that compliance with this requirement by May 8, 1993, will cause such great costs to the industry as to be impracticable and result in unfair competition.

**DATES:** Written comments by May 7, 1993. The agency proposes that any

final rule that may issue based on this proposal become effective on the date of publication of the final rule in the *Federal Register*.

**ADDRESSES:** Submit written comments, data or information to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

#### FOR FURTHER INFORMATION CONTACT:

Nannie H. Rainey, Center for Food Safety and Applied Nutrition (HFS-158), Food and Drug Administration, 200 C St. SW, Washington, DC 20204, 202-205-5007.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

In the *Federal Register* of January 6, 1993 (58 FR 2897), FDA published a final rule amending the food labeling regulations to establish in § 101.30 (21 CFR 101.30) requirements for label declaration of the percentage of juice in foods that purport to be beverages containing fruit or vegetable juice. The agency also revised the existing common or usual name regulation for diluted fruit or vegetable juice beverages in § 102.33 (21 CFR 102.33). In addition, the agency revoked the common or usual name regulations for noncarbonated beverage products that contain no fruit or vegetable juice, § 102.30 (21 CFR 102.30), and for diluted orange juice beverages, § 102.32 (21 CFR 102.32). This final rule was part of FDA's ongoing rulemaking on juices and juice beverages. It also responded to the Nutrition Labeling and Education Act of 1990 (the 1990 amendments) (Pub. L. 101-535), which amended section 403(i)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 343(i)(2)) to provide that foods that purport to be beverages containing vegetable or fruit juice must bear a statement with appropriate prominence on the information panel of the label of the total percentage of such fruit or vegetable juice contained in the food.

In the percent juice labeling proposal, which published in the *Federal Register* of July 2, 1991 (56 FR 30452), FDA proposed November 8, 1991, as the effective date for the percent juice labeling requirements, consistent with section 10(c) of the 1990 amendments. However, comments from the food industry strongly urged FDA to adopt a different effective date. These comments maintained that the November 8, 1991, effective date would not allow the food industry enough time to develop the required labeling and would significantly increase costs because the present label inventory would have to

be discarded. The comments also urged FDA to make the effective date of the percent juice declaration requirement consistent with the effective date of the regulations implementing the mandatory nutrition labeling (section 403(q) of the act) and health and nutrient content claims (section 403(r) of the act) provisions of the act, which were also added by the 1990 amendments. Although FDA agreed with the comments, it had no authority to extend an effective date that was established by statute.

On August 17, 1991, Congress amended the 1990 amendments to delay the effective date of the percent juice labeling requirements (Pub. L. 102-108). Notice of this change in the effective date was given in the *Federal Register* of November 27, 1991 (56 FR 60877). Under this amendment, the percent juice labeling requirement for fruit and vegetable juice beverages applies to labels attached to these products after May 8, 1993.

The agency received a comment to the percent juice labeling proposal requesting a temporary exemption from the May 8, 1993, statutory effective date established by Public Law 102-108 (see the discussion in comment 60 of the January 6, 1993, final rule (58 FR 2897 at 2923)). The comment requested that the requirement for percent juice declaration on the labels of beverages purporting to contain juice be implemented concurrently with any later date that the agency may prescribe under section 10(a)(3)(B) of the 1990 amendments for the application of the nutrition labeling and nutrient content claim provisions of the act. The comment suggested that the effective date for the percent juice declaration be delayed on the basis of the proviso in section 403(i) of the act that "to the extent that compliance with the requirements of clause (2) of this paragraph is impracticable, or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the Secretary." The comment cited case law and previous FDA policy as precedent for the requested temporary exemption.

The agency, at that time, was not persuaded by the arguments and assertions presented in the request for a temporary exemption from the statutory compliance date of May 8, 1993, for the requirement of percent juice declaration. However, the agency acknowledged that section 403(i) of the act provides authority for an exemption, and that it has provided some exemptions in the past. The agency noted that Congress had twice specifically considered when the

requirement for percent juice declaration should be effective, and that Congress had failed to include a provision for a delay of the application of this provision in the 1990 amendments, in contrast to the provision that it had made for such a delay for the nutrition labeling and nutrient content claims provisions (58 FR 2897 at 2924, January 6, 1993). In addition, the agency noted the absence of any indication in the legislative history of the 1990 amendments that Congress wished to delay the implementation of percent juice declaration on beverages purporting to contain juice (58 FR 2897 at 2924). Based on these factors, the agency concluded that a temporary exemption based on section 403(i) of the act was not appropriate. However, because the amendments to the common or usual name regulations in part 102 (21 CFR part 102) were not directly responsive to the 1990 amendments (which amended section 403(i) of the act), and in order to minimize costs, FDA established May 8, 1994, as the effective date for the amendments to the common or usual name regulation for juice beverages (58 FR 2897 at 2924).

## II. Requests for Exemption

Since issuance of the January 6, 1993, final rule on percent juice labeling, FDA has received letters from the National Food Processors Association (NFPA), Washington, DC, the Processed Apples Institute, Inc. (PAI), Atlanta, GA, and two firms that produce labels and printed containers for the beverage industry that requested that FDA delay the announced effective date of May 8, 1993, to May 8, 1994, the date on which the common or usual name regulations for juice beverages (§ 102.33), the nutrition labeling regulations (§ 101.9 (21 CFR 101.9)), and other related regulations are effective. These requests assert that the May 8, 1993, effective date will result in such excessive costs that it will be impracticable for most companies to make the labeling change in a timely manner, and that it will put the juice and juice products industries at a competitive disadvantage by limiting the products that they can market.

The letter from NFPA (Ref. 1) contains a report of a survey that it initiated on January 14, 1993, with members of the NFPA Juice Products Technical Committee. The committee consists of representatives of 28 companies that manufacture foods that purport to be beverages that contain fruit or vegetable juice. The companies ranged from relatively small firms, with a few

million dollars per year in annual sales, to multi-billion dollar corporations.

The association stated that as of January 19, 1993, a total of 19 companies, or 68 percent of the survey population, had responded. Companies responding account for about 67 percent of the national processed juice market and about 50 percent of the domestic processed juice product market. The products represented include canned, aseptically packaged, refrigerated, and frozen fruit juices, vegetable juices, diluted juice products, and blended juices. NFPA noted that the reported products do not include all products that will be subject to percent juice declarations, such as flavored carbonated beverages that may purport to contain juice by use of a label vignette or advertising images. In addition, NFPA stated that products packed on site in produce departments of retail markets, supermarkets, and other food retail establishments are outside the scope of the survey.

According to NFPA, the companies responding to its survey have a total of 550 juice and juice beverage products that will be affected by the percent juice label declaration requirement. The 19 responding companies will have to change a total of 9,466 labels, of which 8,087 are private labels.

NFPA reported that the survey data show that the costs of complying with the May 8, 1993, effective date for percent juice labeling will exceed \$388 million. Contributing to the costs are: (1) The more than 741 million labels or packages (individual units) that must be discarded due to the May 8, 1993, date, resulting in a dollar value of approximately \$53 million; (2) \$181 million for returns from the trade for beverages in distribution before May 8, 1993, that the trade may refuse because it does not bear percent juice labeling; and (3) total dollar costs of \$154 million to redesign and reprint a 6-month working supply of juice product labels.

NFPA explained that the large volume of labels and printed containers that must be discarded and the high costs result from several factors:

First, the survey respondents conduct a great deal of private label business and maintain an average of 15 labels per product to cover their private label accounts.

Second, many juice beverages are not seasonal in nature, and a fairly high level of packing inventory is needed to maintain continuing business.

Third, for certain seasonal products, in particular those using domestic citrus fruit, the season is now in progress. Some products currently in production may not be able to enter into interstate

commerce before May 8, 1993. NFPA maintained that this delay may necessitate destruction not only of the label or printed package, but of the beverage contents of the package on or after May 8, 1993, because these products may not be perceived as current production.

The association stated that the new data illustrate the impracticability of complying with the short compliance period for percent juice label declarations and demonstrate that the juice beverage industry will be placed at a serious competitive disadvantage with respect to other beverage industries that will not be required to assume these costs.

NFPA noted that, despite good faith efforts to comply with the May 8, 1993, effective date for percent juice labeling, none of the 19 firms responding to the NFPA survey reported that they can take delivery of a 6-month replacement inventory of labels or packages for their affected products by the effective date. However, about 40 percent of the responding firms stated that they can replace a working level of label or package inventory some time in June 1993. Some firms, chiefly those with many private label accounts, indicated that the process of label and package inventory replacement will not be complete until 1994.

NFPA noted that the estimated delivery dates are based on the presumption that survey respondents will convert their labels to comply with percent juice labeling only. The estimated dates do not represent the dates that juice product companies could also take delivery of labels or printed packages that comply with mandatory nutrition labeling regulations, which will entail more extensive label redesign and longer timeframes. It further noted that the estimated delivery dates are for labels and printed packages and do not represent the dates that goods in commerce would be in compliance.

According to NFPA, anecdotal information from label and package suppliers to the juice and beverage industry underscores the impracticality of the May 8, 1993, deadline. These suppliers have stated that despite their best efforts to fulfill their customers' orders, they are unable to promise delivery of new labels and printed packages before the May 8, 1993, deadline. Several suppliers have stated that even with skilled craftsmen, such as film technicians and cylinder engravers, each working around the clock for the next 16 weeks, the volume of work to be completed is so vast that it simply cannot be accomplished in

time for the May 8, 1993, effective date for percent juice labeling.

The PAI letter (Ref. 2) stated that private label packers are in jeopardy because of the wide variety of products that they pack for a multiplicity of customers. Each of these customers usually has products packed in several sizes and flavors. PAI reported that the private label packers are responsible for ensuring that the label complies with applicable Federal and State regulations, but that it was virtually impossible to prepare to comply with section 403(i)(2) of the act until the final rule was published. PAI noted that one of its smaller members has 1,564 stock keeping units (SKU's) that require changes. If this firm were to meet the May 1993 deadline, it would have to scrap 48 million labels. More importantly, PAI stated, their inability to replace all of these labels in the short compliance period will cause them to lose business to competitors, resulting in a gross loss of some \$10 million between May 1993 and May 1994.

FDA also received letters from two producers of labels and packages used by juice products manufacturers who requested that the agency postpone the effective date until May 8, 1994. One manufacturer of lithographed cans pointed out that the beverage can industry is seasonal, and that the plurality of sales in the United States takes place during the summer months, between May and September. It stated that depending on individual customer specifications, storage and transportation logistics, and the orders received from various beverage packers, plants must produce cans as far as 9 months in advance. Hence, many of the beverage cans to be sold after May 8, 1993, were produced as early as September 1992, more than 3 months before the issuance of the percent juice labeling final rule. It maintained that while these cans were in conformity with FDA regulations at the time of production, they will be out of compliance at the time of their sale if an extension of the percent juice labeling requirement is not provided.

The comment also pointed out that given the short time for compliance of 4 months, manufacturers cannot possibly replace all of their lithographs according to the needs of their customers (who will need time themselves to redesign their labels) quickly enough to ensure that cans produced after May 8, 1993, will conform to the new percent juice labeling requirement. In addition, the comment maintained, not providing for a postponement of the effective date of § 101.30 will cost the can manufacturers

and their customers untold dollars to dispose of cans already produced.

A comment from another firm, requesting a delay in the effective date for percent juice labeling, stated that economic impact on that firm is prohibitive because of the costs of destroying labels and of developing new labels twice in 1 year to comply both with the May 8, 1993, date for percent juice labeling and the May 8, 1994 date, for the other food labeling regulations issued under the 1990 amendments. The comment added that it may have to withdraw from sale to their small wholesalers and retailers their entire juice product line because the firm cannot afford the cost.

FDA acknowledges that the short time period for compliance with the percent juice labeling requirements, by May 1993, and the different effective date for nutrition labeling and other food labeling changes, by May 8, 1994, will increase costs to manufacturers substantially. Therefore, the agency has evaluated the economic impact of an exemption.

### III. Economic Impact

FDA has examined the economic implications of the proposed rule as required by the Regulatory Flexibility Act and Executive Order 12291. The Regulatory Flexibility Act requires regulatory relief for small businesses where feasible. Executive Order 12291 compels agencies to use cost-benefit analysis as a component of decisionmaking.

The agency finds that this proposed rule is not a major rule as defined by Executive Order 12291. In addition, in accordance with the Regulatory Flexibility Act (Pub. L. 96-354), FDA has determined that this proposed rule will not have a significant adverse impact on a substantial number of small businesses.

In the proposal to require label declaration of percentage juice, published in the *Federal Register* of July 2, 1991 (56 FR 30452), FDA determined that the costs of the proposed requirements would be \$40 million, based on a 6-month compliance period. FDA received no comment on the original proposal objecting to its determination of the costs. Therefore, in the final Regulatory Impact Analysis (RIA), published in the *Federal Register* of January 6, 1993 (58 FR 2927), FDA did not amend its original estimate of the costs of declaring percentage juice.

NFPA, in its comments requesting a 1-year exemption from complying with the new percent juice labeling requirements (Ref. 1), presented estimates of costs that far exceed FDA's

original estimate of \$40 million. The agency's estimates were based on a study conducted by Research Triangle Institute for FDA (Ref. 3). This study consisted of both interviews with food manufacturers and a mailed survey.

The agency notes that although its estimates were based on a 6-month compliance period, firms actually will have only 4 months to comply with the percent juice labeling requirement. The agency, therefore, has reviewed the data and amended its estimate of the costs associated with a 4-month compliance period. The cost of administrative activities are estimated to be \$1 million for a 4-month compliance period. Analytical costs are estimated to be \$300,000 and are not dependent on the length of the compliance period. Label inventory disposal costs are estimated to be approximately \$18 million for a 4-month compliance period. Incremental printing costs, most accurately described as redesign costs, are estimated to be \$32 million. Therefore, total administrative, analytical, printing, and inventory disposal costs of the declaration of percent juice requirements are approximately \$52 million for a 4-month compliance period.

In addition, juice product manufacturers are required to comply with common or usual name regulations, nutrition labeling, nutrient content claims, and other requirements of the 1990 amendments by May 8, 1994. Juice product manufacturers will incur an additional \$19 million to change their labels in response to these other labeling regulations.

The agency believes that, because of the demand on the printing industry caused by the 1990 amendments, it is unlikely that most juice product manufacturers will be able to change their labels to comply with all labeling requirements by May 8, 1993. Therefore, juice products manufacturers would be expected to change labels twice—first, to comply with percent juice declaration requirements by May 8, 1993, and again, 1 year later, to comply with all other label requirements. The effect of the two dates is to place juice products at a competitive disadvantage with respect to other beverage products, as other beverage industries will not be forced to relabel their products twice.

FDA notes that NFPA reported both costs of replacing labels that are destroyed and the value of the destroyed label inventory. As stated in the final RIA, disposed label inventory is valued at its replacement cost. Therefore, to include both the costs of labels ordered to replace existing inventory and the value of the destroyed label inventory

would be double counting. For this reason, FDA considers NFPA's estimate of \$154 million in printing costs for a 4-month compliance period to be overstated.

NFPA also estimated that juice products not labeled in compliance with current regulations, valued at approximately \$181 million, would be rejected by distributors and returned to the manufacturer. Products labeled before May 8, 1993, are not subject to the percent juice declaration requirements. Therefore, FDA will not require the destruction of any juice products labeled before that date. However, respondents to NFPA's survey explained that some distributors may perceive that these products are not current production and not saleable. These distributors would return the product to the manufacturer. While some products may be returned, the agency is convinced that costs of returns are likely to be small. Although some distributors may not accept products without the new labeling, certainly not all distributors will do so. Thus, manufacturers most likely will be able to sell the returned product to the same or other distributors at the same or a reduced price.

The agency considers it unlikely that many products actually will be destroyed as a result of this rule. Although a lower price results in reduced profits for manufacturers, such lower profits are not a societal cost, i.e., a use of real resources. Instead, these reduced profits are viewed as a transfer between producers and distributors.

Upon consideration of the estimates provided by NFPA, the agency has amended its estimates of the costs of complying with the requirements of the percentage juice regulations by May 8, 1993. FDA believes that its estimate of costs may have been understated. FDA estimates that declaration of the percent of juice in beverage products by May 8, 1993, would cost manufacturers approximately \$52 million.

However, because FDA is proposing to provide a temporary exemption from the effective date of the requirements for percent juice declaration until May 8, 1994, as explained below, manufacturers will be able to coordinate these changes with other mandated label changes. Therefore, this proposal would reduce the incremental costs of declaring the percent of juice in beverage products by \$51 million in direct costs. Thus, the cost that manufacturers of juice products will incur if they are exempted from the effective date of the percent juice declaration to May 8, 1994, is approximately \$1 million. This

regulation is expected to reduce the benefits of percent juice labeling only slightly. FDA expects that many manufacturers will provide labeling prior to the effective date. Also, it is unlikely that many consumers will alter juice consumption patterns during this interim if the information is provided.

#### IV. The Proposal

Based on the new information about the costs and difficulties of complying with percent juice labeling that was submitted in the letters from NFPA, PAI, and label and container manufacturers, FDA has reconsidered its determination not to exempt juice products from this requirement. After reconsideration, FDA has determined that it is appropriate to propose an exemption from the May 9, 1993, effective date of the percent juice labeling requirements for the following reasons: As stated above in the economic impact assessment, the NFPA survey data show that compliance by May 8, 1993, is impracticable and will result in unfair competition. According to NFPA, the juice industry will incur substantial costs because it will need to discard labels, packages, and cans after May 8, 1993, and redesign and print new labels and packages that bear percent juice declaration in accordance with new § 101.30. Although some manufacturers may have products returned, as explained in the economic discussion, because the requirement does not apply to goods labeled before May 8, 1993, these returns are not appropriately considered in a determination of whether compliance is impracticable, or whether it would cause unfair competition.

Despite the substantial difference in FDA's estimated costs for compliance with percent juice labeling compared to those provided by NFPA (\$51 million versus \$388 million), the agency is concerned that the regulations not burden any segment of the industry needlessly or unfairly. FDA estimates that if the effective date is postponed for 1 year, until May 8, 1994, the costs of the requirements would be only approximately \$1 million, significantly less than either estimate.

In addition to costs, the question of impracticability is directly affected by the ability of suppliers to provide new labels and packages for juice products to meet the short effective date. NFPA stated that the capacity of label and package suppliers to produce the necessary labels is a serious concern, especially for direct labels on such packages as composite containers and laminated aseptic boxes. It noted that one supplier with a lot of business in

aseptic beverage packaging estimates that it would take them over 200 working days to process all changes to their beverage packages (Ref. 4). There are less than 80 days until May 8, 1993. Thus, NFPA stated that many juice product companies will fail to meet the May 8, 1993, effective date for percent juice declarations on some or all of their juice products. This could result in juice being withheld from the market.

The agency recognizes that some manufacturers may need to change labels twice—first, to comply with percent juice declaration requirements by May 8, 1993, and later to comply with the mandatory nutrition labeling and other new labeling requirements by May 8, 1994. The early effective date for juice product labels places manufacturers of these affected juice products at a competitive disadvantage with respect to manufacturers of other beverage products (e.g., soft drinks, tea, and coffee) that will not have to relabel their products twice.

The need for additional time for the industry to comply has also been noted by a Senator and two Congressmen in a letter to the agency, dated January 25, 1993 (Ref. 5). Although the Congressmen did not suggest a new effective date for compliance with percent juice labeling, they urged to agency to act promptly on NFPA's request.

The agency tentatively finds that providing an exemption from the effective date until May 8, 1994, will allow manufacturers sufficient time to efficiently redesign and print their labels to provide for percent juice labeling. It will enable manufacturers to make such changes at the same time as changes are made for compliance with the other new food labeling regulations issued under the 1990 amendments, such as nutrition labeling. It will also reduce the unfair competitive effects of the regulation and allow all segments of the beverage industry to compete on a more equitable basis. Further, as discussed above, the agency does not believe that the delay in effective date will result in a significant reduction in consumer benefits to be derived from this regulation. Thus, after considering the new information on direct costs to the juice beverage industry to comply, as well as the shortened time for compliance and its effect on manufacturers' ability to obtain revised labels and printed packages for all affected juice products, FDA tentatively concludes that a temporary exemption from the May 8, 1993, effective date under section 403(i) of the act based on impracticability and unfair competition is warranted. Therefore, FDA is

proposing to amend § 101.30 to add § 101.30(m), which exempts beverages that purport to contain fruit or vegetable juice from the requirements of the percent juice labeling regulations until May 8, 1994.

The agency recognizes that some juice products may be labeled before the proposed new effective date of May 8, 1994, and not bear percent juice declarations but will still be in the distribution channels on or after that date. Thus, FDA is proposing to provide in the exemption for those products, provided that the manufacturer can demonstrate that the juice products were actually labeled before May 8, 1994. Finally, because of the imminence of May 8, 1993, FDA is proposing to make any final rule resulting from this proposal effective on the date of publication.

#### V. Environmental Impact

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

#### VI. References

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

1. Letter to David Kessler, Commissioner of Food and Drugs, from Lester M. Crawford, Executive Vice President, Scientific Affairs, NFPA, Washington, DC, January 19, 1993.
2. Letter to David Kessler, Commissioner of Food and Drugs, from Larry C. Davenport, Executive Director, PAI, Inc., Atlanta, GA, January 7, 1993.
3. Research Triangle Institute Compliance Costs of Food Labeling Regulations, FDA Contract #223-87-2097, Project Officer—Richard A. Williams, Jr., December 1990.
4. Letter to David Kessler, Commissioner of Food and Drugs, from John R. Cady, President, NFPA, Washington, DC, January 11, 1993.
5. Letter to David Kessler, Commissioner of Food and Drugs, from Henry A. Waxman, U.S. House of Representatives; Howard M. Metzenbaum, U.S. Senate; and Thomas J. Bliley, Jr., U.S. House of Representatives, January 25, 1993.

#### VII. Request for Comments

Interested persons may, on or before May 7, 1993, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy.

Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

The agency concludes that a shortened comment period of 30 days is necessary to ensure prompt publication of final regulations because of the nearness of the effective date. Because of the urgency of issuing final regulations, the agency is announcing that it will be unable to extend the comment period. Further, the agency may not be able to consider untimely comments, i.e., those comments received after May 7, 1993.

#### List of Subjects in 21 CFR Part 101

Food labeling, Reporting and recordkeeping requirements.

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

#### PART 101—FOOD LABELING

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

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

2. Section 101.30 is amended by adding new paragraph (m) to read as follows:

**§ 101.30 Percentage juice declaration for foods purporting to be beverages that contain fruit or vegetable juice.**

\* \* \* \* \*

(m) Products purporting to be beverages that contain fruit or vegetable juices are exempted from the provisions of this section until May 8, 1994. All products that are labeled on or after that date shall comply with this section.

Dated: March 25, 1993.

**David A. Kessler,**  
*Commissioner of Food and Drugs.*

**Donna E. Shalala,**  
*Secretary of Health and Human Services.*  
[FR Doc. 93-8073 Filed 4-6-93; 8:45 am]

BILLING CODE 4160-01-F

**ENVIRONMENTAL PROTECTION AGENCY**
**40 CFR Ch. I**  
**[FRL-4611-3]**
**Open Meeting of the Disinfection By-Products Negotiated Rulemaking Advisory Committee**
**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice.

**SUMMARY:** The Disinfection By-Products Negotiated Rulemaking Advisory Committee will meet on April 29-30 to develop consensus that can be used as the basis of a proposed rule.

**DATES:** On April 29, the meeting will start at 9:30 a.m. and go til completion. On April 30, the meeting will start at 9 a.m. and go til completion though we'll do our best to end by 4 p.m.

**ADDRESSES:** The Committee will meet at The Quality Hotel, 415 New Jersey Avenue, NW., Washington, DC 20001, [202] 638-1616.

**FOR FURTHER INFORMATION CONTACT:** For further information on substantive aspects of the rule, call Stig Regli of EPA's Water Office at [202] 260-7379. For further information on the meeting, call Gail Bingham, the Committee Co-Chair, at [202] 778-9632.

Dated: April 2, 1993.

**Chris Kirtz,**  
**Director, Consensus and Dispute Resolution Program.**

[FR Doc. 93-8126 Filed 4-6-93; 8:45 am]

**BILLING CODE 6560-50-M**

**40 CFR Ch. I**
**[FRL-4611-6]**
**Open Meeting of the Architectural and Industrial (AIM) Maintenance Coatings Negotiated Rulemaking Advisory Committee**
**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice.

**SUMMARY:** The AIM Negotiated Rulemaking Advisory Committee will meet in Arlington, Virginia to attempt to reach consensus that can be used as the basis of a proposed rule.

**DATES:** The meeting will take place on April 22-23. On April 22, the meeting will start at 10 a.m. and run until 6 p.m. On April 23, it will start at 8 a.m., and end by 3 p.m.

**ADDRESSES:** The meeting will be held at the Sheraton National Hotel, Arlington, Virginia, 22204, (703) 521-2122.

**FOR FURTHER INFORMATION CONTACT:**

Persons needing further information on substantive aspects of the rule should call Ellen Ducey of EPA's Office of Air Quality Planning and Standards at 919-541-5408. Persons needing further information on meeting logistics should call Barbara Stinson the Committee Co-chair at 303-468-5822.

Dated: April 2, 1993.

**Chris Kirtz,**

*Director, Consensus and Dispute Resolution Program.*

[FR Doc. 93-8124 Filed 4-6-93; 8:45 am]

**BILLING CODE 6560-50-M**

**40 CFR Part 238**
**[FRL-4547-5]**
**RIN 2050-AD09**
**Degradable Ring Rule**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is issuing this proposal in response to Pub. L. 100-556, which in general requires that plastic ring carriers (for bottles and cans) be made of degradable material. Such ring carriers must be processed from a material that, in addition to performing its intended function of carrying beverages, degrades quickly and does not pose a greater threat to the environment than nondegradable materials. Currently, all ring carriers, as defined by Pub. L. 100-556, on the world market are processed from a photodegradable resin.

The Agency has chosen to propose a degradability performance standard for ring carriers rather than specify a particular type of degradable plastic. The proposed performance standard includes three factors: A physical endpoint for degradation, a time limit for degradation, and marine environmental conditions. This performance standard will allow the processors of ring carriers the flexibility needed to use new technology that degrades differently than the current photodegradable technology.

**DATES:** Comments on this proposed rule must be submitted on or before May 7, 1993.

**ADDRESSES:** Persons who wish to comment on this notice must provide an original and two copies of their comments, include the docket number (F-93-DPRP-FFFFF), and send them to EPA RCRA Docket (OS305), U.S. EPA, 401 M Street SW., Washington, DC 20460. The background materials for

this regulation are available for viewing at the RCRA Information Center (RIC), room M2427, U.S. Environmental Protection Agency, 401 M Street SW., Washington DC 20460. The RIC is open from 9 to 4 Monday through Friday, except for federal holidays. The public must make an appointment to review docket materials. Call (202) 260-9327 for appointments. Copies cost \$.15 per page.

**FOR FURTHER INFORMATION:** For general information, contact the RCRA/Superfund Hotline toll free at (800) 424-9346. In the Washington, DC metropolitan area, call (703) 412-9810. For information regarding specific aspects of this notice, contact Tracy Bone, Office of Solid Waste (OS-301), U.S. EPA, 401 M Street SW., Washington, DC 20460, telephone (202) 260-5649.

**SUPPLEMENTARY INFORMATION:**

- I. Authority
- II. Background
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  - A. Feasibility of Producing Degradable Ring Carriers
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- VII. Administrative Designation and Regulatory Analysis
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**I. Authority**

The U.S. Environmental Protection Agency (EPA) is proposing this rule under the authority of sections 101, 102, and 103 of Public Law 100-556 (the "Act" or "Statute"). Although this statute has been codified in Subtitle B of the Resource Conservation and Recovery Act (42 U.S.C.A. 6914b and 6914b-1), it does not amend RCRA. In section 101 of this law, Congress found that: (1) Nondegradable plastic ring carrier devices have been found in large quantities in the marine environment; (2) fish and other wildlife have become entangled in such ring carriers; (3) such ring carriers can remain intact in the

marine environment for decades, posing a threat to fish and other marine wildlife; and (4) sixteen states (as of 1988) had enacted laws requiring that ring carriers be made of degradable material in order to reduce litter and protect fish and wildlife. Since passage of the Act, eleven additional states have passed laws of this kind.

As a result of these findings, Congress required EPA under section 103 of the Act to promulgate a rule that would require that plastic ring carriers (as defined in section 102(1)) be made of "naturally degradable material which, when discarded, decomposes within a period established by such regulation." 42 U.S.C. 6914b-1. The period to be established under the rule for such decomposition or degradation is to be "the shortest period of time consistent with the intended use of the item and the physical integrity required for such use." *Id.* Section 102(2) of the Act defines "naturally degradable material" to mean a "material which, when discarded, will be reduced to environmentally benign subunits under the action of normal environmental forces, such as, among others, biological decomposition, photodegradation, or hydrolysis." 42 U.S.C. 6914b(2). EPA, however, may not require the use of a degradable ring carrier if it is not "feasible" or if the degradable ring carriers present greater threats to the environment than nondegradable ring carriers. 42 U.S.C. 6914b-1.

## II. Background

Concern about the disposal of plastic materials dates back to the early 1970s. Degradable plastics were seen by some as a solution for the problems of littering, landfill capacity, and wildlife entanglement and were developed for agricultural uses (mulch film, seedling pots) as well as medical applications (sutures, implants).

The mechanisms of plastics degradation have been understood for many years. Plastics scientists traditionally have worked to inhibit the degradative processes to make plastic products more durable. In the 1970s, in response to public concern regarding solid waste management, scientists used their understanding of plastics degradation to develop an array of degradable plastics. Virtually all of these products are made of materials developed in the 1970s.

Renewed public concern over solid waste management and resource conservation in the past few years has been met by a resurgence of corporate and academic research into degradable plastics, and by the commercialization of various products designed to degrade.

Specifically, there has been great interest in finding degradable plastics made from non-petroleum-derived materials.

The Agency is unable to determine if naturally-derived plastics have less impact on the environment than the petroleum-derived degradable plastics in use for ring carriers because, as explained below, industry has not developed any naturally-derived degradable plastics that can function as a ring carrier (as defined in Pub. L. 100-556) for the Agency to analyze. The Agency has written this rule based on data available for the photodegradable, petroleum-based plastic currently used for ring carriers; however, it does not intend to impose any barriers to new plastic technology.

### A. Mechanisms of Degradation

Plastics are polymers (chemicals made of repeating subunits) most often derived from petroleum (referred to here as "synthetic plastics"). There are plastics derived from other natural materials that have many of the same properties as synthetic plastics and have been used to make degradable products. Starch, for example, is a naturally-derived plastic that may include over 10,000 linked subunits. Starch has been blended with synthetic plastics to form garbage bags that fall apart as the starch degrades. Lactic acid is used to make surgical sutures that degrade within the body after the incision has healed.

Plastics degrade by a number of different physical and chemical processes. In photodegradation, light causes physical changes that cause the plastic to become brittle and crumble into small pieces. Fragments may range in size from several centimeters in diameter to invisible macromolecular particles.

The molecular structure of the plastic is not changed.

Plastics may also be designed to be completely broken down and assimilated into the environment. These plastics differ from those that undergo photodegradation in that chemical changes occur in the structure of polymer molecules, and the ultimate products are different from the original plastic. This chemical breakdown and alteration may be caused by one of a number of processes, including chemical reactions with natural compounds (e.g., dissolution by naturally-occurring acids) and biological activity (e.g., biodegradation). Degradable plastics also may be designed to combine degradation processes; they may break down to smaller fragments due to photodegradation and then rely on

biodegradation to complete the process. For the purposes of this regulation, "biodegradable plastic" is meant to describe any plastic that is intended to completely assimilate into the environment regardless of the derivation of the material or the combination of degradation processes involved in assimilation. In this notice EPA will use the term "degradable plastics" to include photodegradable, and biodegradable plastics as well as plastics that degrade by any other means. EPA requests comments on the definitions in this section.

Synthetic plastics typically cannot be assimilated by living organisms; consequently, they are usually not biodegradable. Biodegradation, however, is the most common degradation process for naturally-derived products.

### B. Factors Affecting Degradation

Two key factors affecting degradation are the time required for degradation, and the environment in which degradation takes place. Given enough time or a harsh enough environment, all materials, including plastics not designed to degrade, will degrade. A meaningful definition of degradability must include a time limit that is appropriate for the planned use and targeted method of disposal for specific degradable products. The time limit varies significantly for degradable products designed for different end uses. For example, surgical sutures may be required to degrade in a few days, while an agricultural mulch film may have a desired life of several months prior to its degradation.

Environmental conditions also play a critical role in controlling degradation. The rate of biodegradation is primarily determined by temperature, moisture, and the presence of oxygen. For example, biodegradation is very slow in municipal solid waste landfills since these facilities are engineered to exclude water and air. In desert environments, the absence of water retards biodegradation. In northern climates, temperature is typically the factor that controls biodegradation rates. The intensity and wavelengths of light, are the most important factors in determining the rate of photodegradation. Light intensity and wavelength also play roles in some types of biodegradation. Since landfills exclude light, photodegradable plastics do not degrade quickly in landfills.

### C. State Laws

In 1977, the State of Vermont enacted the first law banning the use of nondegradable ring carriers. By the end

of 1991, 27 states have passed legislation specifically prohibiting the sale of nondegradable ring carriers. State legislation typically is written to prohibit the sale of nondegradable ring carriers by retail stores. Most of these states indicated that the primary purposes for adopting the legislation were to promote litter reduction and to address wildlife entanglement concerns. The states that have adopted legislation banning nondegradable ring carriers, the dates the legislation took effect, the time limit required for degradation under each state law, and allowable mechanisms for degradation, are listed in reference 26.

#### *D. Other Programs and Investigations Concerning Degradable Plastics*

Reflecting the significant public and legislative interest in the use of degradable plastics, a number of organizations have addressed the issues related to degradable plastics in the past few years. These organizations include EPA, the U.S. General Accounting Office, the Congressional Office of Technology Assessment, the U.S. Food and Drug Administration (FDA), the U.S. Federal Trade Commission (FTC), the National Institute of Standards and Technology, the American Society for Testing and Materials (ASTM), the Department of Defense, and many state and local governments. Except for EPA, ASTM, and the Department of Defense, the organizations and states addressing degradable plastics issues are focusing more on litter and landfill capacity problems than on the risk to marine mammals or on degradation in the marine environment.

The ASTM D-20 committee (Ref. 1) has developed standards for testing degradable plastics under certain environmental conditions (including photodegradation and composting). They are working on a test to simulate and measure degradation under marine conditions. Further discussion of ASTM's efforts concerning degradability is found in section V.

The Department of Defense is working on biodegradable plastics. The U.S. Army Natick Research Development & Engineering Center and its Biodegradable Packaging Program is working on ways to help the Navy control its disposal of packaging wastes at sea (Ref. 2). The major emphasis of the program is to develop biodegradable materials and products, such as drinking cups, food wraps, and eating utensils, using starch-based materials.

FTC has issued guidance (Ref. 3) which applies to anyone making an environmental claim that a product is degradable. FDA is responsible for

reviewing product petitions designed for food packaging, including any product that may come in contact with food that may be degradable. Neither organization intends to provide testing standards for degradable plastic products.

### **III. EPA's Proposed Findings**

#### *A. Feasibility of Producing Degradable Ring Carriers*

The statute requires the Agency to require the use of degradable ring carriers unless it determines that manufacture of the ring carriers would not be "feasible." To make this determination, EPA examined the ring carrier industry, which produces the degradable resin currently being used in ring carriers.

Plastic ring carriers used to package multiple bottles and cans were first manufactured in the early 1960s. Both the design for these ring carriers and the machinery used to apply the ring carriers are patented by Illinois Tool Works, Inc. (ITW).

In the past, ring carriers were made exclusively from low density polyethylene (LDPE). In the 1970s, several state legislatures enacted laws requiring ring carriers to be degradable. Ethylene carbon monoxide, (E/CO) a photodegradable resin, was developed by Eastman Chemical in the 1940's and commercialized by Du Pont Chemical. In the late 1960's, anticipating litter concern over the ring carrier, ITW Hi-cone produced for use a ring carrier made from E/CO. Use of photodegradable ring carriers expanded throughout the 1970s and 1980s as additional states adopted laws banning nondegradable ring carriers. Today, all ring carriers, as defined by Pub. L. 100-556, on the world market are processed from E/CO resin (Refs. 4 through 6).

E/CO is produced by incorporating carbon monoxide into the plastic chain of polyethylene. E/CO degrades when ultraviolet radiation is absorbed by the carbon monoxide molecules, causing a cleavage in the co-polymer chain (Ref. 1). Aside from the photodegradability of E/CO, its general properties and processing characteristics are almost identical to LDPE (Ref. 7).

Three industry segments participate in the manufacture and use of ring carriers: (1) Resin suppliers; (2) processors, who manufacture ring carriers from plastic resin and market them to end users; and (3) consumers of ring carriers, including manufacturers and bottlers of beverages (and some other products) that are packaged with ring carriers. Fifty to 75 million pounds of plastic resin (Refs. 4 through 5) are

processed into 8.1 billion ring carriers annually (Ref. 8). The ring carrier market is approximately \$135 million per year (Ref. 9). Three companies in the United States currently produce ring carriers, as defined under section 102 of Public Law 100-556. Ring carriers are not currently processed in, or imported from foreign markets.

Three companies supply the 50 to 75 million pounds of plastic resins that are used in the manufacture of ring carriers each year (Ref. 4). These resin producers previously supplied LDPE as well as E/CO to ring carrier processors (Refs. 4 through 6).

At the present time, ring carrier processors do not plan to manufacture ring carriers from degradable material other than E/CO (Ref. 11). One of the major ring carrier processors has tested many of the degradable resins that are commercially available in hopes of finding a biodegradable plastic suitable for production of ring carriers. This company has stated that it has not found an alternative to E/CO that meets its standards for extrudability, strength, durability, and degradation rate. Among photodegradable resins, this company claims that its internal testing has shown that none degrades as rapidly as E/CO. Among current starch-based biodegradable resins, the company has determined that available resins are hypersensitive to heat used in ring carrier production, and will not meet degradation time requirements in many states (Ref. 11).

Resin suppliers reported that they are not aware of any other currently available degradable resins that could be used in ring carrier applications. They also indicated that their own development of an alternative to the E/CO resin could be a lengthy process that would involve extensive research and testing (Refs. 5 and 6).

#### *B. Comparison of Threats From Nondegradable Ring Carriers to Degradable Ring Carriers*

This regulation is being written in response to Public Law 100-556. The statute and the legislative history indicate entanglement of fish and wildlife as the impetus for the Statute.

In developing today's proposed regulation, EPA must address the degradation products that could be released from degradable ring carriers. The Statute requires that ring carriers be made of "naturally degradable materials", defined as a material which, "when discarded, will be reduced to environmentally benign subunits under the action of normal environmental forces." "Environmentally benign" is not an easily definable term, because

some impacts may be associated with the release of virtually any compound or material in the environment.

Public Law 100-556 also specifies that EPA will require ring carriers to be processed from degradable material unless "the Administrator determines \*\*\* that the byproducts of degradable regulated items present a greater threat to the environment than nondegradable regulated items." To meet this requirement, EPA has reviewed existing information, including an EPA-funded study on the environmental impacts of both degradable and nondegradable ring carriers (Ref. 16). On the basis of this analysis, which is summarized in the following section, EPA has tentatively concluded that the data do not support a conclusion that degradable ring carriers pose more of a threat in the environment than nondegradable ring carriers, and that this issue should not prevent the Agency from issuing today's proposed regulation.

#### 1. Environmental Concerns Related to Nondegradable Ring Carriers

This section reviews the impact of improper disposal of nondegradable ring carriers as well as other types of plastic packaging that may be substituted for ring carriers. EPA's 1990 Report to Congress: Methods to Manage and Control Plastic Wastes contains a comprehensive review of the impacts of plastics on marine fish and wildlife.

This discussion is based on that report and on information from the draft EPA report, Accelerated Environmental Exposure, Laboratory Testing, and Recyclability Study of Photo/Biodegradable Polymers and the beach cleanups sponsored by EPA and National Oceanic and Atmospheric Administration and conducted by the Center for Marine Conservation (CMC), summarized in Cleaning North America's Beaches; 1990 Beach Cleanup Results (as well as from the 1988 and 1989 editions of this document).

The improper disposal of plastic articles, including ring carriers, results in aesthetic degradation of the environment and exposes wildlife to entanglement and ingestion hazards. EPA was unable to find data on the extent of wildlife hazards; however, if large numbers of ring carriers are improperly disposed, EPA believes that these impacts could be significant. The ubiquity of ring carriers in the environment is demonstrated by the thousands of ring carriers collected every year in beach cleanups around the country. Table 1 shows the number of ring carriers found in each state in 1988, 1989, and 1990 during CMC beach cleanup campaigns.

The number of volunteers varies from year to year and from state to state; therefore, data on the number of ring carriers are not accurate enough to be used to indicate yearly trends or

patterns among states. These data do show, however, that large numbers of ring carriers are found. Nearly 35,000 ring carriers were collected during the 1990 beach cleanup. The beach cleanup survey did not attempt to differentiate between ring carriers made of degradable materials and ring carriers made of nondegradable plastic; therefore, these numbers most likely include both kinds of ring carriers.

EPA assumes that the total number of ring carriers that wash up on the entire U.S. coastline in a year is much higher. In 1990, less than 4 percent of the total U.S. coastline (Ref. 13 and CMC) was included in the cleanup. The number of ring carriers discarded in the marine environment is impossible to estimate, but is likely to be substantially greater than the 35,000 collected in 1990.

Entanglement of wildlife in ring carriers or other debris can cause strangulation, drowning, reduced ability to obtain food, increased difficulty in escaping predators, wounds and associated infections, and altered behavior patterns. Specific documentation of wildlife entanglement in ring carriers is scarce. In a CMC survey of the 30 states that border an ocean or the Great Lakes, 17 state environmental agencies specifically listed wildlife entanglement in ring carriers as a problem when asked if plastic debris posed any environmental hazards in their state.

TABLE 1.—NUMBER OF RING CARRIERS FOUND (BY STATE) IN THE NATIONAL BEACH CLEANUPS OF 1988, 1989, AND 1990

State	1988	1989	1990
Alabama	414	538	565
Alaska*	221	158	10
California*	977	3,405	3,450
Connecticut*	15	156	277
Delaware*	548	615	604
Florida	8,104	8,145	5,803
Georgia	209	14	53
Hawaii*	2,530	2,552	2,652
Louisiana*	1,240	1,022	1,962
Maine*	375	498	421
Maryland	89	91	653
Massachusetts*	674	1,114	917
Mississippi	1,164	1,244	1,654
New Hampshire		85	83
New Jersey*	130	267	211
New York*	163	609	1,824
North Carolina	1,192	1,065	2,467
Oregon*	346	541	497
Pennsylvania	16	4	19
Puerto Rico	376	145	82
Rhode Island*	887	986	919
South Carolina	558	-----	240
Texas	10,319	11,406	7,872
Virginia	149	166	291
Virgin Islands	245	49	247
Washington	356	215	478

TABLE 1.—NUMBER OF RING CARRIERS FOUND (BY STATE) IN THE NATIONAL BEACH CLEANUPS OF 1988, 1989, AND 1990—Continued

State	1988	1989	1990
Total .....	30,808	35,090	34,722

\* Degradable ring rule legislation enacted by 1988 (Ref. 26).

In its 1987 study Plastics in the Ocean: More Than a Litter Problem, CMC reported that ring carriers are one of the two items most commonly reported as the cause of entanglement (the other was monofilament fishing line). In addition, the national beach cleanup campaigns found three birds entangled in ring carriers in 1988; one bird, one fish, and one crustacean entangled in ring carriers in 1989; and three gulls and three fish entangled in 1990. There is no way to estimate the number of entangled wildlife that do not reach the areas of the beach involved in the cleanup or that reach these areas on a day other than the day of the cleanup. These data reflect only one day a year for only a small percentage of coastal property.

Information developed by CMC through interviewing state officials indicates that the following types of animals have been found entangled in ring carriers: Canada geese, ducks, gulls, osprey, pelicans (including endangered brown pelicans), loons, herons, other unspecified bird species, sea lions, sea turtles, raccoons, crabs, and several unspecified fish species. EPA has, however, no data as to the frequency of these events or whether the rate of this problem is increasing or decreasing.

## 2. Environmental Concerns Related to Degradable Ring Carriers

The majority of degradable plastics are either biodegradable or photodegradable. Very few plastics incorporating other mechanisms of degradability (e.g., hydrolytically degradable plastics) have been offered for widespread application, although such plastics are currently used in a few niche markets (e.g., degradable surgical sutures, and water-dissolvable packaging). Currently, a photodegradable plastic is used to produce all ring carriers. The use of a biodegradable plastic for disposable plastic products (including ring carriers) has been called for in many states concerned with plastic disposal (Ref. 15). Therefore, this section will present information on the risks posed by both photodegradable and biodegradable plastics.

*a. Fragments.* All ring carriers that reach marine waters will eventually degrade into fragments due to forces in

the marine environment. Degradable ring carriers will reduce to fragments much more rapidly than ring carriers that are not designed to degrade. The Agency is unable to analyze the impact of the fragments of degraded ring carriers upon ingestion of debris by marine species or other animals. EPA found no field or experimental evidence on the size distribution of such fragments, nor could it find data allowing it to determine whether such fragments could resemble food to diving birds. There has been no report to the Agency of an ingestion problem due to fragments of ring carriers. It is possible that ingestion of ring carrier fragments will occur, but EPA does not have data that would support a conclusion that this could pose a significant hazard to marine wildlife. As the Agency documented in its Report to Congress: Methods to Manage and Control Plastic Wastes (Ref. 17), pellets from the plastic manufacturing process are ubiquitous in the world's oceans; they are the most common item of marine debris in most harbor and nearshore environments that have been studied, and have been found in significant quantities hundreds of miles from the nearest coast. In comparison with this source of plastic pellets in the marine environment, EPA concludes that the potential incremental impact of ring carrier fragments is small.

EPA also notes that key supporters of both the House and Senate bills fully expected that EPA would promulgate a rule requiring the use of the photodegradable E/CO ring carriers that were just coming into widespread use in the late 1980's. For example, Representative Studds explained that:

[t]his legislation addresses a visible problem with a straightforward and painless solution by requiring the use of a commercially available degradable plastic ring that is not appreciably more expensive than its nondegradable counterpart. It is a constructive solution to an identified and avoidable problem—and is, to my knowledge, without opposition.

134 Cong. Rec. H9530 (daily ed., Oct. 4, 1988). See also 134 Cong. Rec. S16374 (daily ed., Oct. 14, 1988) (remarks of Senator Chafee). In light of these expectations, EPA believes that it is reasonable to propose to require degradable carriers in the absence of any data indicating that degradable carriers

pose greater risks than nondegradable ones.

Since no biodegradable carriers have been developed, it is even more difficult for EPA to compare the risks of fragments from these carriers to the risks of strangulation from nondegradable carriers. Nevertheless, EPA believes that the risks from fragments from biodegradable carriers could be less than the risks from the current photodegradable carriers, if the fragments degrade at a more rapid rate than photodegradable plastics.

The Agency requests comment on these findings; specifically EPA requests data on the size distribution of fragments of degraded ring carriers, and any evidence that might relate to their ingestion by and impact on marine wildlife. In the absence of such data, however, EPA does not intend to conclude that the risks of ingesting degraded fragments exceed the risks of entanglement.

*b. Degradation by-products.* Many of the degradable plastics in use today are made by modifying a plastic resin by incorporating an additive that promotes the breakdown of the plastic to a commonly used resin. The degradable plastic formulation should not be more toxic than the nondegradable resin it is made from unless the additive itself is toxic. The breakdown products of degradable plastics are the same for nondegradable plastics they are made from with the exception of the additives. For example, E/CO is made from LDPE with carbon monoxide added to allow the formulation to photodegrade. The breakdown products for E/CO should be the same as for LDPE with the exception of any impact carbon monoxide might have.

*c. Additives used in plastics.* EPA is aware that a number of the additives used in plastic processing are, in a pure and concentrated form, toxic; however, it is relatively uncommon for additives to be released from plastics to the environment (Ref. 17) in significant quantities.

Among biodegradable plastics, EPA is aware of no evidence to suggest that additives promoting degradation may pose an environmental hazard (Ref. 17). Starch is the most common degradable additive in current biodegradable plastics (Ref. 17). To date, no

manufacturer has produced a ring carrier from a biodegradable plastic (Refs. 4 through 6); therefore, no information exists regarding potential additives that might be incorporated into future biodegradable ring carriers. In the absence of any information on materials that may be used to make biodegradable ring carriers, EPA cannot conclude that a potential threat to the environment exists from the release of toxic additives from biodegradable ring carriers.

The E/CO copolymer is made degradable by incorporation of carbon monoxide (CO) into the polymer chain. Carbon monoxide makes up one percent of the plastic. Degradation of E/CO may proceed by one of two photochemical reactions. In the predominant reaction, responsible for approximately 90 percent of polymer chain scissions at ambient temperatures, CO is not released upon degradation; it remains incorporated in the plastic fragments. CO is released into the environment only by the second photochemical reaction (Ref. 7), therefore, for any ring carrier, no more than 10 percent of the CO will be released which is only 0.1 percent, by weight, of the entire ring carrier. In addition, only the ring carriers that photodegrade (i.e., littered rather than landfilled or incinerated) will release CO. The Agency is unable to estimate the number of ring carriers that are improperly disposed of each year and, therefore, cannot precisely estimate the amount of CO released annually into the environment.

However, the Agency does not believe that the amount of CO released poses a significant risk to human health or the environment.

Carbon monoxide is the only additive incorporated into the E/CO copolymer currently used in the manufacture of all degradable ring carriers. Preliminary toxicity data provided by ITW (Ref. 18) as well as by the EPA-funded study (Ref. 16), indicate that the degraded plastic and extractives are without observable toxicity.

It is possible that future plastic ring carriers may contain chemicals that cause adverse impacts on the environment. EPA encourages processors of all plastics proposed for use in ring carriers to conduct thorough testing and analysis of the additives as well as the complete formulation, to ensure that they will not pose a hazard as they degrade. If EPA determined that a new degradable plastic was likely to have adverse impacts, and that these impacts presented a greater threat than nondegradable carriers, it could propose to prohibit its use under Pub. L. 100-556. Citizens that obtain information

suggesting that a degradable ring carrier would pose a greater threat to the environment than nondegradable ring carriers could submit that information to EPA and request it to investigate.

#### IV. Approach to This Proposed Ring Carrier Standards

Public Law 100-556 requires ring carriers to be processed from a material that, in addition to performing its intended function of carrying beverages, degrades quickly and does not pose a threat to the environment. In addition to these requirements, the Agency identified two additional goals for this regulation.

First, the Agency does not want to create barriers to the development of new technology. As discussed in section V, the Agency has chosen to propose a degradability performance standard for ring carriers rather than specify a particular type of degradable plastic. This performance standard will allow the processors of ring carriers the flexibility needed to use new technology that degrades differently than the current degradable technology. A plastic that biodegrades completely (i.e., all products of degradation are assimilated into the environment) would be preferable to the current technology which degrades into smaller pieces of plastic. The Agency intends to avoid placing barriers in the way of new plastic technology capable of functioning as a ring carrier.

Second, the Agency does not intend to interfere with local, state, or other federal programs pertaining to the regulation of degradable plastics as long as the goals of the statute are preserved. Over half of the states have enacted legislation requiring the use of degradable ring carriers. State requirements (Ref. 26) vary widely in time frames for degradation, definitions of plastic articles covered, testing requirements, and degradation processes. Given that Congress did not provide enforcement authority for this rule (as discussed in detail in Section VI), EPA does not believe Congress intended this rule to preempt more stringent state and local regulations.

#### V. Major Issues

##### A. Definition of Degradable

At the present time, no clear consensus exists on a definition for degradable plastics. Because of the several mechanisms of degradability, and the variety of products degradable plastics could be used for, it is unlikely that a single definition of degradability will ever be applicable for all degradable plastics. Today's proposed

regulation, for example, establishes a performance standard to determine degradability for beverage ring carriers. This standard is not necessarily relevant to degradable plastics intended for other end uses.

As discussed in section two of the preamble, definitions of the terms "photodegradable," and "biodegradable" as applied to plastics are currently the subject of debate among the technical, commercial and regulatory communities. The Agency has chosen not to define the terms but rather to require that any materials used to make ring carriers meet a performance standard that reflects the intent of the statute. The use of a performance standard is intended to allow regulatory flexibility for the changing technology of the degradable plastic field and to prevent barriers to new technology.

##### B. Physical Endpoint for Degradation

The rate and extent of degradation are typically assessed by measuring changes in the physical properties of a material. For degradable plastics, a common method used to quantify the extent of degradation is to assess the "brittleness" of the material by measuring the amount of stress that must be applied before the plastic breaks. Brittleness can be measured in many ways, including, tensile strength and the elongation of the plastic prior to breaking.

The Agency is proposing "percent elongation at break" to measure degradation. The ring carrier design requires the plastic to be elastic enough to stretch over the cans and then return to the original diameter and grasp the cans. If the plastic loses its elasticity, the cans will fall out of the carrier. There are data that show a close correlation between the loss of elasticity (i.e., becomes brittle) and the rate of degradation. Brittleness can be used to predict the loss of physical integrity of the plastic which correlates to a reduced risk to wildlife from entanglement. "Elongation at break" is accepted by the scientific community as an appropriate method for measuring brittleness, and therefore, degradation of plastics.

Plastic that has degraded to the point of 5 percent elongation at break means it will stretch only 5 percent of its original length before crumbling. The LDPE resin used to make ring carriers stretches readily. Ring carriers made from LDPE normally can be stretched to more than several hundred percent of their original length before breaking. Once the plastic material has been exposed to degrading factors, the material becomes more brittle and no longer can stretch very much before the

plastic breaks. At one hundred percent elongation at break, ring carriers lose their ability to function and the cans fall out of the carriers (Ref. 11).

Ring carriers degraded past the point of being able to hold beverage cans probably pose little threat to marine wildlife. Unfortunately, there is no precise way to select a level of brittleness that is safe for all marine species because of the difference in strength between marine species. The statute requires the Agency to choose a time period for degradation that allows ring carriers to continue to function effectively as beverage holders.

A law enacted in Massachusetts specified degradation to the point of 20 percent elongation at break as sufficient to protect wildlife. Before 5 percent elongation at break is reached, ring carriers should pose little threat of entanglement to fish and wildlife. Measuring brittleness below 5 percent is impracticable because at lower values the plastic is too fragile to load into the test equipment. Industry and the scientific community commonly use 5 percent elongation at break as the physical endpoint for the measurement of degradability in plastic material. The Agency is proposing that all ring carriers be able to degrade to the endpoint of 5 percent elongation at break. EPA requests comment on whether 5 percent is too strict an endpoint and whether 20 percent or some other number would be more appropriate.

#### C. Time Limit for Degradation

The Agency is required by the statute to establish a time limit for degradation that is, "the shortest period of time consistent with the intended use of the item and the physical integrity required for such use." Although it would be ideal to set a time limit that is not expected to pose any risk to marine wildlife, it is likely that some risk to marine wildlife will remain because it is not technically possible to design a ring carrier that degrades immediately upon disposal in a marine environment, but is also strong enough for its intended use (holding beverages). Therefore, the Agency has chosen a time limit for degradation that is based on the best performance observed in actual testing of the E/CO ring carriers currently in use. The time degradable ring carriers require to degrade is a fraction of the time nondegradable ring carriers were estimated to remain intact; therefore, the risk from degradable ring carriers will be much less than the risk posed by nondegradable ring carriers.

The Agency investigated whether or not the material currently being used to

make ring carriers, E/CO, degrades under marine conditions. E/CO clearly degrades when exposed to sunlight on land. Most E/CO exposure studies have focused on terrestrial rather than marine exposure.

Limited data is available on the rate of degradation of E/CO under marine conditions (Refs. 16, and 19 through 22). In a study performed by Research Triangle Institute for EPA, it took 35 days for E/CO ring carriers to reach 5 percent elongation at break in the marine environment. The testing was done during the month of July, off the coast of Miami, Florida. Miami, in July, receives one of the highest average amounts of UV absorption in the country, therefore is an optimal environment for degradation of either biodegradable or photodegradable ring carriers. A timeframe of 35 days is probably as quick as an E/CO ring carrier can photodegrade in a marine environment. Ring carriers made from LDPE, but without carbon monoxide added, were also tested in Miami and after 59 days were degraded to only 158.2 percent elongation at break. This study also tested ring carriers off the coast of Seattle, Washington, during this same time period. After 94 days, E/CO ring carriers had degraded to 14.5 percent elongation at break. After 101 days, the LDPE ring carriers had not degraded significantly (676.5 percent as compared to an initial unexposed value of 759.9 percent). E/CO ring carriers will degrade more slowly in areas of the country that receive less UV than Miami and also degrade more slowly during winter months than during summer months. Nonetheless, the E/CO ring carriers degrade more quickly than LDPE ring carriers under all environmental settings that include some sunlight.

Based on these data, it is the Agency's conclusion that 35 days of exposure to sunlight in Miami in the summer is the shortest time to achieve 5 percent elongation at break. Ring carriers discarded in marine environments other than Miami and similar environments, during seasons other than summer, take longer to degrade. Based on these considerations the proposed rule establishes a time period of 35 days during June and July in a location below the latitude 26 degrees North in continental United States waters. The Agency requests comments on the 35 day time limit under the above conditions—specifically whether it provides enough protection for entangled wildlife and whether the time period for degradation is feasible for current ring technology.

EPA does not intend to require *in situ* testing. The testing can be done under laboratory conditions as long as the exposure conditions are equivalent to the standard above. For photodegradable ring carriers, the most important exposure condition is UV. Based on modeling data, this 35 day time period in Miami averages about 10,000 kilojoules of UV (Ref. 27). This converts to approximately 250 light hours in the photodegradation exposure apparatus described in the ASTM test, D-5208 "Standard Practice for Operating Fluorescent Ultraviolet (UV) and Condensation Apparatus for Exposure of Photodegradable Plastics." EPA believes, based on industry data (Ref. 11) that this test run on Cycle A, for no more than 250 light hours is equivalent to 35 days under marine conditions in a location below the latitude 26 degrees North. ASTM test G-26, "Practice for Operating Light-Exposure Apparatus (Xenon-Arc Type) With and Without Water for Exposure of Nonmetallic Materials," is a second method that can be used to expose plastics to UV. EPA data (Ref. 16) using this procedure to degrade E/CO indicates that the ring carrier reaches 5 percent elongation at break within 200 hours. EPA believes this test (see reference 16 for test conditions) is equivalent to 35 days under marine conditions in a location below the latitude 26 degrees North in continental United States waters.

EPA realizes that a ring carrier that degrades in 35 days in Miami will take longer to degrade in other parts of the country. E/CO ring carriers lose their ability to function after a few days when exposed to full sunlight (for example if the beverage cans are displayed outside) in southern climates, during the summer (Ref. 11). It will take longer for a ring carrier to degrade in the same climate during winter (seasonal variation of UV is greater than geographic). Any regulation requiring a shorter timeframe during the entire year or the same time limit in a more northern area of the country will not allow the E/CO ring carrier to function nationwide. EPA does not intend processors of ring carriers to make different ring carriers for use during different seasons of the year. EPA requests comment on the structure of this requirement; specifically, if a time limit expressed as 10,000 kilojoules of UV, 250 light hours under ASTM D-5208, or 200 hours using ASTM G-26 are equivalent to 35 days in a location below the latitude 26 degrees North in continental United States waters. EPA

also requests comment on placing one or all of these values in the rule.

*D. Environmental Conditions for Degradation*

After the formulation of the resin, environmental conditions are the most important factors for determining the rate of degradation. For example, a photodegradable plastic buried in a landfill will degrade at the same rate as the nondegradable formula of that plastic because there is no source of light to degrade the plastic. A degradable plastic must be tested under the environmental conditions in which the product will be disposed. The Statute directs the Agency to protect marine wildlife.

The quantity and wavelength of ultraviolet (UV) light a photodegradable plastic is exposed to are the most significant factors controlling the rate of photodegradation. Biodegradation in comparison to photodegradation is a much more complex process and any test to measure the rate of degradation would have to control more variables. Variables that impact the rate of biodegradation in a marine environment include: the microbial population, water quality/chemistry, temperature, amount of UV, and wave action. Biodegradable carriers would have difficulty meeting a standard based only on the amount and spectra of light.

The Agency explored several options for regulatory requirements that reflect "marine conditions":

1. Establish a laboratory test imposing specific limits on all the variables listed above that influence biodegradation and photodegradation.

2. Establish a test for photodegradable plastic limiting UV and temperature.

3. Require *in situ* testing, i.e., ring carriers would be tested in a marine setting (as opposed to a laboratory test simulating marine conditions). The important factors determining degradation for an *in situ* test are the latitude of the test site and season during testing.

4. Require ring carriers to meet a performance standard for degradability under certain environmental conditions without specifying the test method that must be used.

Option 1 would require the Agency to establish limits under which ring carriers would biodegrade. The Agency would define the species of micro- and macroorganisms and the agitation of the seawater. At this time, the Agency does not have enough information to define precisely conditions for these processes. The American Society for Testing and Materials (ASTM) and other groups are working on tests which might be

appropriate to test biodegradable plastics in a laboratory setting. The Agency requests comment on this option and information on the processes described above.

For option 2, the Agency would define the two most important variables for photodegradables, temperature and light, and then allow the processor to test the ring carriers in a laboratory setting. ASTM has standards for testing photodegradable plastics which define these variables. ASTM test D-5208 and G-26 are designed to mimic UV exposure under laboratory conditions and D-3826 to measure elongation at break for plastics. These tests are accepted by the academic as well as the industrial community for simulating weathering conditions for photodegradable plastics. This option would be adequate to test the ring carriers presently used, but it would limit new technology that degrades by any means other than photodegradation (e.g., biodegradation). Such a limitation would not meet the Agency's goal of providing flexibility for new technologies, as described earlier. The Agency requests comment on this option, specifically whether it should be included in the rule language as a requirement for photodegradable ring carriers.

Option 3 would require the processor to test *in situ*. The processor would anchor several ring carriers in a marine environment (ring carriers float until weighted with growth of algae and crustaceans) and test the samples to determine if they have degraded to the point of 5 percent elongation at break. There is no accepted test for exposure of biodegradable plastics in marine environments (either simulated in a lab or testing *in situ*). The Agency considered the following elements for an *in situ* test:

a. *Season and location.* The rate of biodegradation is most strongly influenced by the environmental conditions of the location for testing; the season (which determines temperature and sunlight) and biology in which an *in situ* test is performed will determine the degradation rate. The Agency explored the option of defining a specific month and geographic latitude so that the test results would be reproducible and comparable.

b. *Environment.* The Agency believes that, if an *in situ* test were proposed, certain restrictions should apply. The Agency would require that samples be exposed to a marine environment within U.S. nearshore waters; allowing testing in United States territories such as the United States Virgin Islands

would favorably influence the test results because of higher amounts of UV and water temperature. Also prohibited would be testing in any location, such as sewage outfalls, that would favorably influence test results.

c. *Enclosure of Samples.* The Agency would require samples to be enclosed in a manner that allows free circulation of water into the enclosure but does not allow large fragments of ring carriers to leave the enclosure. The Agency requests comment on the size of screening necessary to retain fragments large enough to prevent a risk to wildlife.

An *in situ* test has the advantage of being applicable for both biodegradable and photodegradable plastics. A disadvantage of this option, however, is that the degradation rates will vary greatly between *in situ* test runs (as compared to a laboratory tests) because of the environmental variables. A plastic tested during a month which is relatively cloudy will show a slower rate than an equivalent plastic tested during a sunny month. Comparison of test results performed in different locations and/or during different time periods would be very difficult even to the extent that an otherwise degradable plastic may fail the test due to climate conditions.

EPA requests comment on the need for an *in situ* test. EPA also requests specific comment on the structure and content of an *in situ* testing procedure. If the comments on today's proposal indicate that an *in situ* test is desirable, an *in situ* test may be included in the final rule.

Option 4 would allow the greatest flexibility, and therefore EPA has chosen to use this approach in this proposal. Processors would design and manufacture for use ring carriers to meet a performance standard of degradability under certain conditions. The processor may choose a test to demonstrate compliance of the ring carriers based on the material used to manufacture the ring carriers. Current ring carriers could be tested using the ASTM photodegradation test (option 2) or any revisions of the ASTM tests. Processors employing new technology could use an *in situ* test (option 3). Processors would not be required to submit test results to the Agency.

The EPA is proposing three factors to be included in the performance standard: A physical endpoint for degradation, a time limit for degradation, and marine environmental conditions. The first two factors have been defined as 5 percent elongation at break and 35 days under marine conditions in a location below the

latitude 26 degrees North in continental United States waters. The processor may choose to define the environmental conditions for the test from many different options so long as the conditions reflect the marine environment.

If a ring carrier processor wishes to market photodegradable ring carriers, the processor may test the ring carriers using the ASTM procedures for testing and handling photodegradable plastics. If a processor chooses to market a ring carrier which is biodegradable or is degradable by several processes (perhaps including photodegradation and biodegradation in the process) the processor may use an *in situ* test of their own design to measure degradability or an established test (ASTM is working on a lab test for biodegradable plastics). The EPA requests comment on this proposed structure of the rule, specifically whether the ASTM procedures (D-5208, G-26, and D-3826) and an *in situ* test should be included in the rule.

The exposure of photodegradable ring carriers should be equivalent to the amount of exposure ring carriers receive during 35 days under marine conditions in a location below the latitude 26 degrees North in continental United States waters.

#### E. Applicability and Compliance

Public Law 100-556 requires that EPA issue a rule providing that all ring carriers intended for use in the United States must be made of degradable material. EPA is proposing to apply this rule both to processors in the United States and also to any person in the United States importing ring carriers. This rule does not differentiate between ring carriers processed for use in the United States and other countries because, at the time of sale to beverage bottlers, the processor has no knowledge as to where the ring carriers will be sold or used.

The proposed rule would require each ring processor and importer to determine that its ring carrier meets this degradable performance standard before marketing for use the ring carriers. The Agency does not necessarily intend for importers of ring carriers to test each shipment of ring carriers to determine if they meet the performance standard. Importers must not knowingly distribute ring carriers that do not meet this performance standard and they should seek reassurance from the processors that the ring carriers meet the performance standard. If more than one processor manufactures ring carriers using the same ring carrier material and processing conditions, then they do not

each have to test their own ring carrier. They may share the test data. However, the processors should document this agreement. The processor also should test the ring carrier each time the ring carrier's formulation or processing procedure changes substantially.

#### F. Recycling

Recycling of plastic consumer products is a growing industry. Many communities have programs for plastics recycling. There is a concern that if degradable plastics are included in recycled plastic stock the degradable plastics may, because of their ability to degrade, cause the recycled plastic product to become brittle and fail.

The Agency does not believe degradable ring carriers pose a threat to plastics recycling. The quantity of ring carriers compared to the total quantity of plastic disposed of every year is very small and, therefore, should have relatively little effect (Ref. 16). If photodegradable material is included in a recycled product that is a dark color, further degradation is not going to occur because the dark pigments will block UV penetration. Furthermore, there are preliminary data that show that inclusion of a small amount of degradable plastic does not increase the brittleness of recycled plastic (Ref. 16). In addition, ITW is running a pilot program to recycle E/CO ring carriers. The ring carriers have been recycled into ring carriers as well as into other consumer products (Ref. 28).

#### VI. Enforcement and Effective Date

The Agency requests comment on incentives for compliance with this rule. The Agency suggests the processors of ring carriers retain evidence of compliance in the event that citizens question the degradability claim. Public Law 100-556 does not provide the Agency with the authority to enforce this rule. Furthermore, it is a free-standing legislation that does not amend RCRA. Consequently, EPA cannot use the enforcement provisions in Section 3008 of RCRA. The Agency requests comment on the need for compliance incentives as well as specific suggestions of compliance strategies.

The Agency is proposing that this rule be effective six months after the date of the promulgation of the final rule. The Agency believes that the current ring carrier technology meets the proposed performance standard. The Agency requests comment on this effective date and whether processors will be able to test any ring carriers currently in use and comply with the proposed performance standard within this timeframe. Moreover, EPA believes that

the entire existing inventory of ring carriers in the United States is made of the E/CO polymer, so it does not need to allow additional time for the use of noncomplying inventory. EPA requests comment on this finding.

#### VII. Administrative Designation and Regulatory Analysis

##### A. Executive Order 12291

Under Executive Order 12291, the Agency must judge whether a regulation is "major" and thus subject to the requirement to prepare a regulatory impact analysis. The proposed rule published today is not major. It will not result in an effect on the economy of \$100 million or more, will not result in significant increased costs or prices, will not have significant adverse effects on competition, employment, investment, productivity and innovation, and will not disrupt domestic export markets. This proposal will have none of the above effects, because the Agency finds the processors are able to meet these standards without changing current technology. Therefore the Agency has not prepared a regulatory impact analysis under the Executive Order. The Agency requests comment on the potential costs of this rulemaking. This proposed regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order No. 12291.

##### B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to prepare, and make available for public comment, a regulatory flexibility analysis that describes the impact of a proposed or final rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required if the head of an agency certifies the rule will not have significant economic impact on a substantial number of small entities.

The proposed rule will affect ring carrier processor, none of whom are small entities. Small entities are not likely to enter into this market because of the requirements for expensive application equipment and quantities of materials. Therefore, in accordance with 5 U.S.C. 605(b), I hereby certify that this rule, if promulgated, will not have a significant adverse economic impact on a substantial number of small entities (as defined by the Regulatory Flexibility Act).

**C. Paperwork Reduction Act**

The Agency has determined that there are no additional reporting, notification, or recordkeeping provisions associated with this proposed rule. Such provisions, were they included, would be submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.*

**VIII. References**

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**List of Subjects in 40 CFR Part 238**

Beverage ring carrier, Biodegradation, Degradable plastic, Degradability standards, Photodegradation, Ring carrier.

Dated: March 30, 1993.

**Carol Browner,**  
Administrator.

For the reasons set out in the preamble title 40 of the Code of Federal

Regulations is proposed to be amended by adding part 238 to read as follows:

**PART 238—DEGRADABLE PLASTIC RING CARRIERS****Subpart A—General Provisions**

Sec.

238.10 Purpose and applicability.  
238.20 Definitions.

**Subpart B—Requirements**

238.30 Requirement.

Authority: 42 U.S.C. 6914b-1.

**Subpart A—General Provisions****§ 238.10 Purpose and applicability.**

The purpose of this part is to require that plastic ring carriers be made of degradable materials as described in §§ 238.20 and 238.30. The requirements of this part apply to all processors and importers of plastic ring carriers in the United States as defined in § 238.20.

**§ 238.20 Definitions.**

For the purpose of this part:

*5 percent Elongation at break* means the increase in length of the plastic material caused by a tensile load. This is computed by dividing the length, at break, of the material before it is tested by the length of the material, at break, after it is stretched by the tensile load. It is stretched (and simultaneously measured) until the material breaks.

*Processor* means the persons or entities that produce ring carriers ready for use as beverage carriers.

*Ring Carrier* means any plastic ring carrier device that contains at least one hole greater than 1 1/4 inches in diameter which is made, used, or designed for the purpose of packaging, transporting, or carrying multipackaged cans or bottles.

**Subpart B—Requirements****§ 238.30 Requirement.**

(a) No processor shall manufacture ring carriers intended for use in the United States unless they are designed and manufactured so that the ring carriers degrade to the point of 5 percent elongation at break when exposed for 35 days, during June and July, to marine conditions in a location below the latitude 26 degrees North, in continental United States waters or equivalent laboratory exposure conditions.

(b) No person shall import ring carriers in bulk unless they are designed and manufactured to degrade to the point of 5 percent elongation at break when exposed for 35 days, during June and July, to marine conditions in a location below the latitude 26 degrees North, in continental United States

waters or equivalent laboratory exposure conditions.

[FR Doc. 93-8129 Filed 4-6-93; 8:45 am]  
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## INTERSTATE COMMERCE COMMISSION

### 49 CFR Part 1039

[Ex Parte No. 394 (Sub-No. 12)]

#### Petition To Exempt From Regulation the Rail Transportation of Scrap Paper

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission is seeking public comment on a proposal from the Association of American Railroads (AAR) to exempt from regulation the rail transportation of scrap paper. If the exemption proposed by AAR is adopted, rates for the transportation of scrap paper would be deregulated and would not be subject to the evidentiary requirements associated with the annual compliance proceedings that govern other recyclable commodities. The proposal requested by AAR appears below. We also seek comments on an alternate approach that would grant an exemption from tariff and other filing requirements while retaining the maximum rate cap of section 10731(e) as to increases in individual rates.

**DATES:** Any person interested in participating in this proceeding as a party of record by filing and receiving written comments must file a notice of intent to do so by April 19, 1993. We will issue a service list of the parties of record shortly thereafter. Comments and replies must be served on all parties on the service list. Comments are due May 19, 1993. Replies are due June 18, 1993.

**ADDRESSES:** Send notices of intent to participate and an original and 10 copies of pleadings referring to Ex Parte No. 394 (Sub-No. 12) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

**FOR FURTHER INFORMATION CONTACT:** Maynard Dixon, 202-927-5293 or Joseph Dettmar, 202-927-5660 (TDD for hearing impaired: 202-927-5721).

**SUPPLEMENTARY INFORMATION:** By notice published on September 9, 1992 at 57 FR 41122-41123 in Ex Parte No. 394 (Sub-No. 10), Railroad Rates on Recyclables—Exemptions, we proposed to exempt movements of nonferrous recyclable commodities whose rates are found, in an annual compliance

proceeding for recyclables rates,<sup>1</sup> to recover revenues below the variable cost of service. In the (Sub-No. 10) proceeding, we stated that we would entertain petitions to exempt commodities such as scrap paper that are recovering revenues "just above the R/VC break even point."

By petition filed December 1, 1992 and docketed as Ex Parte No. 394 (Sub-No. 12), the Association of American Railroads and nine class I railroads (Petitioners) responded to our invitation in the (Sub-No. 10) proceeding by requesting that the Commission exempt railroad movements of scrap paper from regulation under 49 U.S.C. subtitle IV.

The provisions of 49 U.S.C. 10505 authorize us to exempt services from regulation where (1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101a and (2) the service is of limited scope or regulation is not necessary to protect shippers from abuse of market power.

Petitioners present substantial evidence that exemption of scrap paper would meet the criteria of 49 U.S.C. 10505:

1. Petitioners attempt to demonstrate that an exemption would not subject shippers to abuse of market power. Petitioners' witnesses present information designed to show that motor carriers move the great majority of the traffic and that the motor carriers' share has been increasing. Petitioners also present information designed to demonstrate the presence of substantial intramodal, geographic, and product competition. Petitioners testify that the movements proposed for exemption compete with exempt movements of substitutes for scrap paper in boxcars and that shippers are overwhelmingly satisfied with the boxcar exemption. Petitioners also testify that an exemption would enable railroads to compete more effectively with motor carriers by eliminating the delay and expense of filing tariffs and complying with the administrative requirements connected with contracts executed under section 10713.

2. As additional evidence of lack of market dominance, petitioners incorporate by reference testimony in Ex Parte No. 394 (Sub-No. 9), Cost Ratio for Recyclables—1992 Determination, which shows that the railroads' revenue/variable cost ratios for scrap paper range from 0.95 to 1.12. According to petitioners, this indicates that the traffic produces little, if any, net revenue and thus is subject to significant competition.

3. Petitioners cite cases in which this agency has found that exemptions of similar or greater economic effect are of "limited scope" under 49 U.S.C. 10505(a). We request comments on whether an exemption for scrap paper would satisfy section 10505.

In the (Sub-No. 10) proceeding, we asked whether we have authority to grant exemptions for commodities subject to section 10731's rate cap for recyclables. That question is at issue in this rulemaking as well. Accordingly, we also seek comments on the efficacy of a partial exemption which would exempt the transportation of scrap paper from tariff and other filing requirements (including participation in annual compliance proceedings) but would continue to subject the transportation to the maximum rate cap of section 10731(e). Such an approach may accommodate the objectives of the exemption provisions while preserving a shipper's right to relief in the event that an individual above-the-cap rate is increased. In a conference on March 23, 1993, we voted to adopt a partial exemption in the (Sub-No. 10) proceeding. We request comments on whether this approach would satisfy the objectives of the proponents of the exemption in this matter.

Finally, we seek comment on whether the exemption should be granted for transportation of all scrap paper covered by the 5-digit Standard Transportation Commodity Code (STCC) No. 40 241, or whether it should be drawn more narrowly. We note that 5-digit STCC groups contain several commodities, and if the exemption is to focus on a single 5-digit group, we might want to ensure that there are no commodities in the group with particular characteristics warranting regulation.

We preliminarily conclude that implementation of this proposal would not have a significant impact on a substantial number of small entities. No new regulatory requirements are imposed, directly or indirectly. The purpose of the proposal is simply to reduce regulation where it appears to be unnecessary. The proposal should not significantly change the rates paid by shippers, large or small. The parties most affected by the regulatory burdens removed by this proposal are the larger railroads.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

#### List of Subjects in 49 CFR Part 1039

Intermodal transportation, Manufactured commodities, Railroads.

Decided: March 30, 1993.

<sup>1</sup> See 49 CFR part 1145.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Sidney L. Strickland, Jr.,  
Secretary.

#### Exemption Proposed by AAR

For the reasons set forth in the preamble, title 49, chapter X, part 1039 of the Code of Federal Regulations is proposed to be amended as follows:

#### PART 1039—EXEMPTIONS

1. The authority citation for part 1039 is amended to read as follows:

Authority: 49 U.S.C. 10321, 10505, 10708, 10761, 10762, and 11105; 5 U.S.C. 553.

2. Section 1039.11, paragraph (a) is proposed to be amended by adding to the chart, after STCC No. 39, STCC No. 40 241 (Scrap paper); and by adding to the concluding text the words "(except for specific recyclable commodities listed above)" after the words "by the Commission at 356 I.C.C. 445-447".

#### § 1039.11 Miscellaneous commodities exemptions.

(a) \* \* \*

STCC No.	STCC tariff	Commodity
40 241 .....	6001-U, eff. 1-1-93..	Scrap paper.

\* \* \* \* \*

#### § 1039.14 [Amended]

3. Section 1039.14, paragraph (b)(5) is proposed to be amended by adding the following words to the end of the sentence: "and specific recyclable commodities listed in § 1039.11 of this part."

[FR Doc. 93-8103 Filed 4-6-93; 8:45 am]

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#### DEPARTMENT OF THE INTERIOR

##### Fish and Wildlife Service

##### 50 CFR Part 17

##### RIN 1018-AB97

#### Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Plant *Poa manii* (Mann's Bluegrass)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes endangered status pursuant to the Endangered

Species Act of 1973, as amended (Act), for the plant *Poa manii* (Mann's bluegrass). Four extant populations containing a total of approximately 125 individuals of the species are known to occur in the northwestern and north-central region of the island of Kauai. The major threat to this species is damage done by feral goats. These animals trample vegetation, cause erosion, and open areas to invasion by alien plants. In addition, the species and its habitat are affected by competition for space, light, water, and nutrients by naturalized, introduced vegetation, especially *Erigeron karvinskianus* (daisy fleabane); fire; and landslides and erosion. The existence of few populations and individuals increases the likelihood of extinction from stochastic events and/or reduced reproductive vigor. This proposal, if made final, would implement the Federal protection and recovery provisions provided by the Act. If made final, it would also augment State regulations protecting this plant as an endangered species. Comments and materials related to this proposal are solicited.

**DATES:** Comments from all interested parties must be received by June 7, 1993. Public hearing requests must be received by May 24, 1993.

**ADDRESSES:** Comments and materials concerning this proposal should be sent to Robert P. Smith, Field Supervisor, Pacific Islands Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 6307, P.O. Box 50167, Honolulu, Hawaii 96850. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Robert P. Smith, at the above address (808/541-2749).

#### SUPPLEMENTARY INFORMATION:

##### Background

*Poa manii* was first collected by Horace Mann, Jr., and William Tufts Brigham in 1864 or 1865 in Waimea Canyon on the island of Kauai. The name *Poa manii* was published in Seemann's *Journal of Botany* in 1869 without a diagnosis and was attributed to William Munro. The specific epithet was selected to honor one of the original collectors. Subsequently, the species was validly published by Hillebrand (1888) in his flora.

*Poa manii* of the grass family (Poaceae) is a perennial grass with short rhizomes (underground stems) and erect, tufted culms (bunched stems) 50 to 75 centimeters (cm) (20 to 30 inches

(in)) tall. The leaf sheath completely surrounds the leaf, and the ligule (appendage at the junction of the leaf blade and sheath) completely encircles the stem, is about 0.5 millimeter (mm) (0.02 in) long, and has a tooth about 2 to 4 mm (0.08 to 0.2 in) long and a fringed margin. The leaf blade is up to 15 cm (6 in) long and 2 to 4 mm (0.08 to 0.2 in) wide, and has a rough upper surface and a hairless lower surface. The panicles (branched flower clusters) are usually less than 5 cm (2 in) long and have primary branches 5 to 20 mm (0.2 to 0.8 in) long. The 4 to 7 mm (0.2 to 0.3 in) long, flattened spikelets (ultimate flower clusters) are pale greenish or yellowish brown and usually comprise 4 or 5 flowers. The glumes (small pair of bracts at the base of each spikelet) are about 3 mm (0.1 in) long. The lemma (outer bract at the base of a floret) is 3 to 4 mm (0.1 to 0.2 in) long and has cobwebby hairs at its base. The palea (inner bract at the base of a floret) is 3 to 3.5 mm (about 0.1 in) long and has a sharp, longitudinal ridge. The reddish brown grain-like fruit is elliptical to spindle-shaped and about 1.5 mm (0.06 in) long. All three native species of *Poa* in the Hawaiian Islands are endemic to the island of Kauai. *Poa manii* is distinguished from both *Poa siphonoglossa* and *Poa sandvicensis* by its fringed ligule and from *Poa sandvicensis* by its shorter panicle branches (O'Connor 1990).

*Poa manii* is found only on the northwestern and west-central portions of the island of Kauai. The four known populations extend over a distance of about 10.5 by 8.5 kilometers (km) (6.5 by 5.3 miles (mi) and are found in Kalalau, Makaha, Koae, and Waialae Valleys (David Lorence, National Tropical Botanical Garden, pers. comms., 1992). The species was formerly found in Olokele Gulch (O'Connor 1990). Approximately 125 individuals have been observed in the extant populations. This species typically grows on cliffs and rock faces at elevations between 460 and 1,150 meters (m) (1,510 and 3,770 (ft)) in Lowland and Montane Mesic Forests. Associated species include *Chamaesyce* sp. ('akoko), *Exocarpos luteolus* (heau), *Labordia helleri* (kamakahala), and *Nototrichium* sp., in Kalalau Valley; *Cyrtandra wawrae* (ha'iwale) in Makaha Valley; *Acacia koa* (koa), *Alectryon macrococcus* (mahoe), and *Antidesma platyphyllum* (hame) in Koae Valley; and *Bidens cosmoides* (po'ola nui), *Carex meyenii*, *Dodonaea viscosa* ('a'ali'i), and *Schiedea amplexicaulis* in Waialae Valley. Threats to *Poa manii* include habitat damage, trampling, and

browsing by feral *Capra hircus* (goats); competition with invasive alien plants, especially daisy fleabane, *Lantana camara* (lantana), and *Rubus arquutus* (prickly Florida blackberry); landslides in the steep habitat; fire; and reduced reproductive vigor and/or extinction from stochastic events due to the small number of existing populations and individuals (D. Lorence and Ken Wood, Hawaii Plant Conservation Center, pers. comms., 1992).

Federal action on *Poa manii* began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act, and giving notice of its intention to review the status of the plant taxa named therein. As a result of that review, on June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine endangered status pursuant to section 4 of the Act for approximately 1,700 vascular plant species. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94-51 and the July 1, 1975, **Federal Register** publication. General comments received in response to the 1976 proposal are summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice in the **Federal Register** (44 FR 70796) withdrawing the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. The Service published updated notices of review for plants on December 15, 1980 (45 FR 82479), September 27, 1985 (50 FR 39525), and February 21, 1990 (55 FR 6183). *Poa manii* was first included in the 1980 and 1985 notices of review as a Category 1 species. Category 1 taxa are those for which the Service has on file substantial information on biological vulnerability and threats to support preparation of listing proposals. In the 1990 notice of review, *Poa manii* was considered a

Category 1\* species. Category 1\* taxa are those which are possibly extinct. Since the 1990 notice of review, three previously unknown populations of the species have been discovered, and a population has been found in an area in which the plant was formerly known.

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. On October 13, 1983, the Service found that the petitioned listing of *Poa manii* was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed in October of 1984, 1985, 1986, 1987, 1988, 1989, 1990, and 1991. Publication of the present proposed rule constitutes the final 1-year finding for this species.

#### Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the Act set forth the criteria and procedures for adding species to the Federal Lists. A species may be determined to be an endangered species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Poa manii* Munro ex Hillebr. (Mann's bluegrass) are as follows:

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

The area of Kauai in which *Poa manii* is found has undergone extreme alteration because of past and present land management practices, including grazing, deliberate alien plant and animal introductions, water diversion, and recreational development (Wagner et al. 1985). Feral animals have made the greatest overall impact, altering and degrading the vegetation and habitats of the area; feral goats currently cause the most damage to the area.

Feral goats, which have inhabited the drier, more rugged areas of Kauai since the 1820s, consume native vegetation, trample roots and seedlings, cause erosion, and promote the invasion of alien plants (Cuddihy and Stone 1990). Feral goats on Kauai are managed as a game species with a limited hunting

season (Tomich 1986), but their numbers are large enough to cause considerable habitat damage. *Poa manii* survives only in very steep areas that are inaccessible to goats, suggesting that goat predation may have eliminated this species from more accessible locations, as is the case for other rare plants from northwestern Kauai (Corn et al. 1979). Populations of *Poa manii* are affected by erosion and landslides, resulting, in part, from goat activities in surrounding areas (K. Wood, pers. comm., 1992).

Brought to Hawaii as a cultivated herbaceous plant, daisy fleabane is naturalized in wetter areas of four islands (Wagner et al. 1990). Daisy fleabane has invaded Kalalau, Koaie, and Waialae Valleys, three of the four areas where *Poa manii* occurs (K. Wood, pers. comms., 1992). Lantana, brought to Hawaii as an ornamental plant, is an aggressive, thicket-forming shrub that can now be found on all of the main islands in mesic forests, dry shrublands, and other dry, disturbed habitats (Wagner et al. 1990). Lantana threatens all known populations of *Poa manii* (D. Lorence and K. Wood, pers. comms., 1992). Prickly Florida blackberry, an aggressive alien species in disturbed mesic to wet forests and subalpine grasslands on four islands, is considered a noxious weed by the State of Hawaii (Smith 1985, Wagner et al. 1990). Prickly Florida blackberry threatens the Kalalau and Waialae Valley populations of *Poa manii* (K. Wood, pers. comm., 1992).

##### B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Unrestricted collecting for scientific or horticultural purposes and excessive visits by individuals interested in seeing rare plants could result from increased publicity. This potential threat to *Poa manii* could also promote erosion and greater ingress by competing alien species.

##### C. Disease or Predation

*Poa manii* is not known to be unpalatable to goats, which are found in the areas where all four known populations of *Poa manii* grow. Predation is a probable reason that this species is found only on cliff faces inaccessible to goats (D. Lorence and K. Wood, pers. comms., 1992). Predation by goats constitutes a threat to the expansion of the extant populations of *Poa manii*.

#### D. The Inadequacy of Existing Regulatory Mechanisms

*POA manii* is not presently listed as an endangered species by the State of Hawaii. Hawaii's Endangered Species Act states, "Any species of aquatic life, wildlife, or land plant that has been determined to be an endangered species pursuant to the [Federal] Endangered Species Act shall be deemed to be an endangered species under the provisions of this chapter \* \* \*" (HRS, sect. 195D-4(a)). Federal listing would automatically invoke listing under Hawaii State law, which prohibits taking of endangered plants in the State, encourages conservation by State agencies, and triggers other State regulations to protect the species (HRS, sect. 195D-4).

All populations of *Poa manii* occur on State land. Two populations occur in forest reserves, which have rules and regulations for the protection of resources. However, the regulations are difficult to enforce because of limited personnel. State laws relating to the conservation of biological resources allow for the acquisition of land as well as the development and implementation of programs concerning the conservation of biological resources (HRS, sect. 195D-5(a)). The State also may enter into agreements with Federal agencies to administer and manage any area required for the conservation, management, enhancement, or protection of endangered species (HRS, sect. 195D-5(c)). If listing were to occur, funds for these activities could be made available under section 6 of the Federal Act (State Cooperative Agreements).

All populations of *Poa manii* are located on conservation district lands, which, among other purposes, are regarded as necessary for the protection of endemic biological resources and the maintenance or enhancement of the conservation of natural resources. Activities permitted in the conservation district are chosen by considering how best to make a multiple use of the land (HRS, sect. 205-2). Some uses, such as maintaining animals for hunting, are based on policy decisions, while others, such as preservation of endangered species, are mandated by both Federal and State laws. Requests for amendments to district boundaries or variances within existing classifications can be made by government agencies and private landowners (HRS, sect. 205-4). Before decisions about these requests are made, the impact of the proposed reclassification on "preservation or maintenance of important natural systems or habitat" (HRS, sects. 205-4, 205-17) as well as the maintenance of

natural resources is required to be taken into account (HRS, sects. 205-2, 205-4). For any proposed land use change that would occur on county or State land, would be funded in part or whole by county or State funds, or would occur within land classified as conservation district, an environmental assessment is required to determine whether or not the environment will be significantly affected (HRS, chapt. 343). If it is found that an action will have a significant effect, preparation of a full Environmental Impact Statement is required. Hawaii environmental policy, and thus approval of land use, is required by law to safeguard " \* \* \* the State's unique natural environmental characteristics \* \* \*" (HRS, sect. 344-3(1)) and includes guidelines to "Protect endangered species of individual plants and animals \* \* \*" (HRS, sect. 344-4(3)(A)). Federal listing, because it automatically invokes State listing, would also trigger these other State regulations protecting the plants. The Federal Act would offer additional protection to this species because, if it were to be listed as endangered, it would be a violation of the Act for any person to remove, cut, dig up, damage, or destroy any such plant in an area not under Federal jurisdiction in knowing violation of State law or regulation or in the course of any violation of a State criminal trespass law.

#### E. Other Natural or Manmade Factors Affecting Its Continued Existence

The existence of only 4 populations and approximately 125 individuals of *Poa manii* increases the potential for extinction from stochastic events. The limited gene pool may depress reproductive vigor, or a single human-caused or natural environmental disturbance, a disease, or predation could destroy an entire population and a significant percentage of the known individuals of the species. In the steep areas where *Poa manii* grows, erosion and landslides due to natural weathering can result in the death of individual plants, as well as habitat destruction. This process especially affects the continued existence of species or populations with limited numbers and/or narrow ranges, such as *Poa manii*, and can be exacerbated by human disturbance and land use practices.

Fire is considered an immediate threat to the rare plants of the cliff faces and valleys of the Na Pali Coast, where the largest known population of *Poa manii* occurs. Under dry conditions, human-set fires would spread rapidly and could destroy these plants, due to the strong prevailing winds and dry fuel

load on cliff ledges. Fire could destroy dormant seeds as well as plants, even on steep cliffs (Clarke and Cuddihy 1980).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Poa manii* as endangered. This species numbers only approximately 125 individuals in 4 known extant populations. Threats to the continued existence of the species include habitat degradation and/or predation by goats, competition from alien plants, fire, landslides and erosion, and lack of legal protection or difficulty in enforcing laws that are already in effect. Small population size and limited distribution make the species particularly vulnerable to extinction and/or reduced reproductive vigor from stochastic events. Because *Poa manii* is in danger of extinction throughout all or a significant portion of its range, it fits the definition of endangered as defined in the Act.

Critical habitat is not being proposed for *Poa manii* for reasons discussed in the "Critical Habitat" section of this proposal.

#### Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered. The Service finds that designation of critical habitat is not presently prudent for *Poa manii*. Such a determination would result in no known benefit to the species. The publication of a precise map and description of critical habitat in the **Federal Register** and local newspapers as required in a proposal for critical habitat would increase the degree of threat to this species from take or vandalism and, therefore, could contribute to its decline and increase enforcement problems. The listing of this species as endangered would publicize the rarity of the plant and, thus, make it attractive to researchers, curiosity seekers, or collectors of rare plants. All involved parties and the major landowner have been notified of the importance of protecting the habitat of this species, which will be addressed through the recovery process. There are no known Federal activities within the currently known natural habitat of this species. Therefore, the Service finds that designation of critical habitat for this species is not prudent at this time, because such designation would increase the degree of threat from

vandalism, collecting, or other human activities and because it is unlikely to aid in the conservation of this species.

#### Available Conservation Measures

Conservation measures provided to species listed as endangered under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any taxon that is proposed or listed as endangered and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. There are no known Federal activities that occur with the presently known habitat of *Poa manni*.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 for endangered plants set forth a series of general prohibitions and exceptions that apply to all endangered plant species. With respect to *Poa manni*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal with respect to any endangered plant for any person subject to the jurisdiction of the United States to import or export; transport in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale in interstate

of foreign commerce; remove and reduce to possession any such species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any area under Federal jurisdiction; or remove, cut, dig up, damage, or destroy any such species on any other area in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued for *Poa manni*, because the species is not common in cultivation or in the wild.

Requests for copies of the regulations concerning listed plants and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203-3507 (703/358-2104; FAX 703/358-2281).

#### Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Poa manni*.

(2) The location of any additional populations of *Poa manni* and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of *Poa manni*, and

(4) Current or planned activities in the subject area and their possible impacts on *Poa manni*.

The final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for one or more public hearings on this proposal, if requested. Requests must be

received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor (see ADDRESSES section).

#### National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment or Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the *Federal Register* on October 25, 1983 (48 FR 49244).

#### References Cited

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Cuddihy, L.W., and C.P. Stone. 1990. Alteration of native Hawaiian vegetation; effects of humans, their activities and introductions. Cooperative National Park Resources Studies Unit, Honolulu, 138 pp.

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O'Connor, P.J. 1990. Poaceae: in Wagner, W.L., D.R. Herbst, and S.H. Sohmer, Manual of the flowering plants of Hawai'i. University of Hawaii Press and Bishop Museum Press, Honolulu. Bishop Museum Special Publication 83:1481-1604.

Smith, G.W. 1985. Impact of alien plants on Hawai'i's native biota: in Stone, C.P., and J.M. Scott (eds.), Hawai'i's terrestrial ecosystems: preservation and management. Cooperative National Park Resources Studies Unit, University of Hawaii, Honolulu, pp. 180-250.

Tomich, P.Q. 1986. Mammals in Hawai'i: a synopsis and notational bibliography. Bishop Museum Press, Honolulu, 375 pp.

Wagner, W.L., D.R. Herbst, and S.H. Sohmer. 1990. Manual of the flowering plants of Hawai'i. University of Hawaii Press and Bishop Museum Press, Honolulu. Bishop Museum Special Publication 83:1-1853.

Wagner, W.L., D.R. Herbst, and R.S.N. Yee. 1985. Status of the native flowering plants of the Hawaiian Islands: in Stone, C.P., and J.M. Scott (eds.), Hawai'i's terrestrial ecosystems: preservation and management. Cooperative

National Park Resources Studies Unit,  
University of Hawaii, Honolulu, pp. 23-74.

#### Author

The author of this proposed rule is Zella E. Ellshoff, Pacific Islands Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 6307, P.O. Box 50167, Honolulu, Hawaii 96850 (808/541-2749).

#### List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and

recordkeeping requirements, and Transportation.

#### Proposed Regulation Promulgation

#### PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Public Law

99-625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the family indicated, to the List of Endangered and Threatened Plants:

#### § 17.12 Endangered and threatened plants.

\* \* \* \* \*

(h) \* \* \*

Species	Scientific name	Common name	Historic range	Status	When listed	Critical habitat	Special rules
Poaceae—Grass family:		*	*	*	*	*	*
<i>Poa manii</i> .....	Mann's bluegrass .....	U.S.A. (HI) .....	E	.....	.....	NA	NA
*	*	*	*	*	*	*	*

Dated: March 24, 1993.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93-8074 Filed 4-6-93; 8:45 am]

BILLING CODE 4310-55-M

# Notices

Federal Register

Vol. 58, No. 65

Wednesday, April 7, 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 COMMERCE

### Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* Bureau of the Census.

*Title:* 1993 National Census Test II (Appeals and Long-Form Experiment, ALFE).

*Form Number(s):* DD-1B, DD-2A, DD-2B, DD-2C, and DD-17.

*Agency Approval Number:* None.

*Type of Request:* New collection.

*Burden:* 16,350 hours.

*Number of Respondents:* 46,000.

*Avg Hours Per Response:* 21 minutes.

*Needs and Uses:* The 1993 National Census Test II (Appeals and Long-Form Experiment/ALFE) is one in a series of data collections to assist in formulating policy and design options for the 2000 Census of Population and Housing. This study is designed to measure the effects of alternative motivational appeals and data confidentiality messages upon response rates to a census short form, as well as to determine whether contrasting designs influence response and data quality for census long forms. The ALFE experiment is designed to develop empirical data, based upon messages contained in the questionnaire mailing package, about the response effects of highlighting mandatory versus benefits motivational messages. The degree of emphasis placed upon assurances of data confidentiality will be varied in conjunction with various response-motivational appeals. The experiment will measure possible differences in response to the three forms sharing the same data content (that of the 1990 decennial census) but having substantially different designs and layouts. An important secondary objective will be to determine whether

design enhancements to the long forms can reduce the incidence of item non-response, as well as of blank (incomplete) forms returned by respondents.

*Affected Public:* Individuals or households.

*Frequency:* One-time only.

*Respondent's Obligation:* Mandatory.

*OMB Desk Officer:* Maria Gonzalez, (202) 395-7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: April 1, 1993.

Edward Michals,

*Departmental Forms Clearance Officer, Office of Management and Organization.*

[FR Doc. 93-7992 Filed 4-6-93; 8:45 am]

**BILLING CODE 3510-07-F**

## Economic Development Administration

### Notice of Availability of All Environmental Documents Prepared for EDA Funded Projects Under the Requirements of the National Environmental Policy Act of 1969 (NEPA)

**AGENCY:** Economic Development Administration (EDA), Department of Commerce (DOC).

**ACTION:** Notice.

**SUMMARY:** This Notice announces the availability of all NEPA documents prepared for EDA projects funded in FY'93 as agency fulfillment of the requirements of the Council on Environmental Quality (CEQ) NEPA Regulation 1501.4(b).

**SUPPLEMENTARY INFORMATION:** The CEQ Regulations require EDA to provide public notice of the availability of project specific environmental documents such as environmental impacts statements, environmental assessments, findings of no significant impact, records of decision etc., to the

affected public as specified in CEQ Regulation 1506.6(b).

Depending on the project location, environmental information concerning specific projects can be obtained from the Regional Environmental Officer (REO) in the appropriate EDA regional office. The EDA regional offices, and states covered are listed below.

### Atlanta Regional Office

401 West Peachtree Street, NW., Suite 1820, Atlanta, GA 30308-3510, (404) 730-3010

States covered: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee.

### Austin Regional Office

Suite 201, Grant Building, 611 East Sixth Street, Austin, TX 78701, (512) 482-5407

States covered: Arkansas, Louisiana, New Mexico, Oklahoma, Texas.

### Chicago Regional Office

111 North Canal Street, Suite 855, Chicago, IL 60606-7204, (312) 353-8143

States covered: Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.

### Denver Regional Office

1244 Speer Boulevard, Room 670, Denver, CO 80204, (312) 482-5407 (call the REO in Austin)

States covered: Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, Wyoming.

### Philadelphia Regional Office

Curtis Center, Suite 140 South, Independence Square West, Philadelphia, PA 19106, (215) 597-6767

States covered: Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virginia, Virgin Islands, West Virginia.

### Seattle Regional Office

Jackson Federal Building, room 1856, 915 Second Avenue, Seattle, WA 98174, (206) 553-5681

States covered: Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Marshall Islands,

Micronesia, Nevada, Northern Mariana Islands, Oregon, Washington.

For further information, please contact Dr. Frank Monteferrante, Environmental Branch, Compliance Review Division, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, (202) 482-4208.

Dated: March 30, 1993.

Craig M. Smith,  
Acting Assistant Secretary for Economic Development.

[FR Doc. 93-8081 Filed 4-6-93; 8:45 am]  
BILLING CODE 3610-24-M

**International Trade Administration**  
[A-823-804 and A-834-804]

**Antidumping Duty Orders: Ferrosilicon From Kazakhstan and Ukraine**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** April 7, 1993.

**FOR FURTHER INFORMATION CONTACT:**

Kimberly Hardin, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC, 20230: (202) 482-0371.

**Scope of Orders**

The merchandise subject to these antidumping duty orders is ferrosilicon, a ferroalloy generally containing, by weight, not less than four percent iron, more than eight percent but not more than 96 percent silicon, not more than 10 percent chromium, not more than 30 percent manganese, not more than 3 percent phosphorous, less than 2.75 percent magnesium, and not more than 10 percent calcium or any other element.

Ferrosilicon is a ferroalloy produced by combining silicon and iron through smelting in a submerged-arc furnace. Ferrosilicon is used primarily as an alloying agent in the production of steel and cast iron. It is also used in the steel industry as a deoxidizer and a reducing agent, and by cast iron producers as an inoculant.

Ferrosilicon is differentiated by size and by grade. The sizes express the maximum and minimum dimensions of the lumps of ferrosilicon found in a given shipment. Ferrosilicon grades are defined by the percentages by weight of contained silicon and other minor elements. Ferrosilicon is most commonly sold to the iron and steel

industries in standard grades of 75 percent and 50 percent ferrosilicon.

Calcium silicon, ferrocalcium silicon, and magnesium ferrosilicon are specifically excluded from the scope of these orders. Calcium silicon is an alloy containing, by weight, not more than 5 percent iron, 60 to 65 percent silicon and 28 to 32 percent calcium.

Ferrocalcium silicon is a ferroalloy containing, by weight, not less than 4 percent iron, 60 to 65 percent silicon, and more than 10 percent calcium. Magnesium ferrosilicon is a ferroalloy containing, by weight, not less than 4 percent iron, not more than 55 percent silicon, and not less than 2.75 percent magnesium.

Ferrosilicon is classifiable under the following subheadings of the Harmonized Tariff Schedule of the United States (HTSUS): 7202.21.1000, 7202.21.5000, 7202.21.7500, 7202.21.9000, 7202.29.0010, and 7202.29.0050. The HTSUS subheadings are provided for convenience and customs purposes. Our written description of the scope of these orders is dispositive.

**Antidumping Duty Orders**

In accordance with section 735(a) of the Tariff Act of 1930, as amended (the Act), on March 3, 1993, the Department of Commerce (Department) made its final determinations that ferrosilicon from Kazakhstan and Ukraine is being sold at less than fair value (58 FR 13050 March 9, 1993). On March 23, 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.

**Suspension of Liquidation**

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 ferrosilicon from Kazakhstan and Ukraine. These antidumping duties will be assessed on all unliquidated entries of ferrosilicon from Kazakhstan and Ukraine entered, or withdrawn from warehouse, for consumption on or after December 29, 1992, the date on which the Department published its preliminary determinations notice in the *Federal Register* (57 FR 61876). On or after the date of publication of this notice in the *Federal Register*, Customs officers must require, at the same time as importers would normally deposit estimated

duties, the following cash deposit for the subject merchandise.

Manufacturer/producer/exporter	Margin percentage
All manufacturers/producers/exporters	104.18

In its final determinations, the Department found that critical circumstances exist with respect to exports of ferrosilicon from Kazakhstan and Ukraine. However, on March 23, 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 entries of subject merchandise entered or withdrawn from warehouse, for consumption prior to December 29, 1992.

This notice constitutes the antidumping duty orders with respect to ferrosilicon from Kazakhstan and Ukraine, 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.

These orders are published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: March 31, 1993.

Joseph A. Speirini

Acting Assistant Secretary for Import Administration.

[FR Doc. 93-7993 Filed 4-6-93; 8:45 am]  
BILLING CODE 3610-DS-P

**National Oceanic and Atmospheric Administration**

**Coastal Zone Management Programs and Estuarine Sanctuaries**

**AGENCY:** National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management, Commerce.

**ACTION:** Notice of Availability of NOAA Boundary Recommendation Information Developed Pursuant to 6217(e) of the Coastal Zone Act Reauthorization Amendments of 1990.

**LOCATION:** Washington, DC.

**SUMMARY:** Congress enacted section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA) in November 1990 to help address the problem of nonpoint source pollution in coastal waters. As part of its responsibilities under section 6217, the National Oceanic and Atmospheric Administration (NOAA), in consultation with the Environmental Protection Agency (EPA), is required to review the inland coastal zone boundaries of participating states and evaluate whether they extend inland to the extent necessary to control the land and water uses that have a significant impact on a state's coastal waters. Based on this review, NOAA is required to develop recommendations for changes to existing coastal zone boundaries. Although expressed in terms of a recommendation that a state modify its coastal zone boundary, NOAA's recommendation also defines what NOAA and EPA believe should be the geographic scope of that state's coastal nonpoint program, i.e., "the 6217 management area." Further discussion of the geographic scope issue is contained in the *Coastal Nonpoint Pollution Control Program: Program Development and Approval Guidance* published by NOAA and EPA on January 19, 1993 (Guidance).

Because of the public interest this program has received, NOAA is hereby giving notice of the availability of the boundary recommendation information which was sent to each state in March 1993. This information consists of boundary recommendation letters and draft guidance regarding criteria states may use when evaluating and responding to NOAA's boundary recommendation. We urge interested parties to comment on the geographic scope of the 6217 management area as part of each state's program development process.

Further detail on NOAA's boundary recommendation information may be obtained by contacting: John R. King, NOAA/Office of Ocean & Coastal Resource Management, 1825 Connecticut Avenue, NW., room 718, Washington, DC 20235, (202) 606-4130.

Individuals may also obtain a listing of state coastal management and nonpoint source pollution program contacts by contacting the Office of Ocean and Coastal Resource Management at the above address.

Federal Domestic Assistance Catalog 11.419  
Coastal Zone Management Program  
Administration.

Dated: March 31, 1993.

**W. Stanley Wilson,**  
Assistant Administrator for Ocean Services  
and Coastal Zone Management.  
[FR Doc. 93-8118 Filed 4-6-93; 8:45 am]  
BILLING CODE 3510-00-M

#### South Atlantic Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council (Council) and its Committees will hold public meetings on April 19-23, 1993, at the Sea Palms on 5445 Frederica Road, St. Simons Island, GA, telephone: (912) 638-3351.

The full Council sessions will be held from 8:30 a.m. to 5:30 p.m. on April 22 and on April 23 from 8:30 a.m. to 12 p.m. to discuss reports and recommendations from the committees that will be meeting in conjunction with the Council.

The Council will review a mackerel stock assessment presented by the National Marine Fisheries Service (NMFS) Southeast Fisheries Science Center and comments from scientists, advisory panel members and the public before setting this year's bag limits and quotas. Public comments on the new mackerel limits will be taken on April 22 at 8:45 a.m.

Results of the 1992 red drum stock assessment will be presented to the Red Drum Committee on April 19, from 1:30 p.m. to 3:30 p.m., during its review of the status of the fishery. The harvest or possession of red drum is currently prohibited in South Atlantic Federal waters. The Committee will review management efforts of the states and comments from scientists on additional research needed.

There will be a closed session (not open to the public) of the Advisory Panel Selection Committee on April 19, from 3:30 p.m. to 6 p.m.

The Council is scheduled to set the 1993 total allowable catch (TAC) and bag limits for Atlantic king and Spanish mackerel in South Atlantic Federal waters. A joint Mackerel Advisory Panel and Committee meeting will be held from 8:30 a.m. to 12 p.m., on April 20. It will be followed by a Mackerel Committee meeting from 1:30 p.m. to 5:30 p.m.

The Mackerel Committee will review current trip limits which were set for the commercial Federal South Atlantic Spanish mackerel fishery beginning last year. The Committee also will discuss the status of the Gulf Council's actions to establish trip limits for the commercial Gulf king mackerel fishery.

The Mackerel Committee will evaluate current management of the cobia fishery following an updated stock assessment presented by the NMFS.

The Snapper-Grouper Committee will meet on April 21 from 8:30 a.m. to 5:30 p.m., to continue working on draft Amendment #6 to the Snapper-Grouper Fishery Management Plan. The amendment addresses the following changes to current regulations in the snapper-grouper fishery:

(1) Spawning closure for gag grouper;  
(2) Specification of allowable gear;  
(3) TACs for snowy grouper and golden tilefish;

(4) Inclusion of all tilefish species in the current recreational aggregate five-grouper bag limit;

(5) Requiring Federal dealer, charter and headboat permits;

(6) Requiring Federal permit to sell snapper-grouper caught in South Atlantic Federal waters;

(7) Establishing a 12-inch total length minimum size limit (recreational and commercial) for white grunt;

(8) Prohibiting all retention of speckled hind and warsaw grouper; and

(9) Requiring tending of sea bass pots.

The Snapper-Grouper Committee, while discussing TACs for snowy grouper and golden tilefish, will consider a 1,000 pound snowy grouper trip limit while the directed quota is open. Commercial bycatch would be limited to 100 pounds each of snowy grouper and golden tilefish when each directed quota is filled.

The above list of options is scheduled for public hearings throughout the South Atlantic coast in June before the June 21-25 Council meeting. Details of the hearings will be made public in mid-May.

A stock assessment for the amberjack fishery will be reviewed to evaluate the existing recreational three-fish bag limit and to address the need for a commercial quota.

A detailed agenda with specific meeting times will be available to the public on March 31. For more information contact Carrie Knight, Public Information Officer; South Atlantic Fishery Management Council; One Southpark Circle, suite 306; Charleston, SC 29407; telephone (803) 571-4366.

Dated: March 31, 1993.

**David S. Crestin,**

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93-8013 Filed 4-6-93; 8:45 am]

BILLING CODE 3510-22-M

**Marine Mammals; Permits**

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.  
**ACTION:** Notice of Receipt of Application for a Scientific Research Permit to Take Marine Mammals (P775#1).

Notice is hereby given that Dr. Paul Becker, Office of Protected Resources, NMFS, NOAA, 1335 East-West Highway, Silver Spring, MD 20910, has applied in due form for a Permit to take marine mammals for scientific research as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), Sections 216.33 (d) and (e), of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act (16 U.S.C. 1531-1543), the Regulations Governing Endangered Fish and Wildlife (50 CFR parts 217-222), and the Fur Seal Act of 1966 (16 U.S.C. 1151-1187).

The Applicant seeks authorization to collect and maintain samples from up to 100 each of the following species over a five-year period: Bearded seals (*Erignathus barbatus*), bowhead whales (*Balaena mysticetus*), largha seals (*Phoca largha*), Northern fur seals (*Callorhinus ursinus*), Pacific harbor seals (*Phoca vitulina richardii*), ringed seals (*Phoca hispida*), and beluga whales (*Delphinapterus leucas*). The samples would be collected from animals taken in Alaska Native subsistence hunts or from dead beached/stranded animals in Alaska, and would be archived for purposes of monitoring long-term trends in contaminant levels.

Concurrent with the publication of this notice in the Federal Register, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Highway, room 7324, Silver Spring, MD 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 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 the National Marine Fisheries Service.

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 7324, Silver Spring, MD 20910 (301/713-2289); and

Director, Alaska Region, National Marine Fisheries Service, Federal Annex, 9109 Mendenhall Mall Road, suite 6, Juneau, AK 99802 (907/586-7221).

Dated: April 1, 1993.

Herbert W. Kaufman,

*Acting Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 93-8056 Filed 4-6-93; 8:45 am]

BILLING CODE 3510-22-M

**Marine Mammals; Permits**

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Modification of Scientific Research Permit No. 737 (P368B).

**SUMMARY:** Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), Scientific Research Permit No. 737 issued to Dr. James T. Harvey, Assistant Professor, Moss Landing Marine Laboratories, P.O. Box 450, Moss Landing, CA 95039-0450, on May 8, 1991 (56 FR 22402), was modified to allow biopsy sampling of up to 100 harbor seals annually. This modification becomes on April 7, 1993.

Documents pertaining to Permit and this Modification are available for review upon written request or by appointment in the:

Permits Division, Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Hwy., Suite 7324, Silver Spring, MD 20910 (301/713-2289); and

Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802-4213 (310/980-4015).

Dated: March 31, 1993.

Herbert W. Kaufman,

*Acting Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 93-8057 Filed 4-6-93; 8:45 am]

BILLING CODE 3510-22-M

**COMMISSION ON IMMIGRATION REFORM****Meeting**

**AGENCY:** Commission on Immigration Reform.

**ACTION:** Announcement of meeting.

**SUMMARY:** This notice announces the third meeting of the Commission on Immigration Reform. The Commission was established by the Immigration Act of 1990 under section 141. The public meeting will include a panel of immigration policy experts who will discuss "Immigration and the U.S. Economy." The panel will provide expertise as to policy issues and research priorities for the Commission to address in responding to its mandate.

**DATES:** 9:30 a.m., April 27, 1993.

**ADDRESSES:** Omni Shoreham Hotel, 2500 Calvert Street NW., Washington, DC 20008.

**FOR FURTHER INFORMATION CONTACT:** Beth Bickley or Brett Endres, Telephone: (202) 673-5348.

Dated: April 2, 1993.

Susan Forbes Martin,  
*Executive Director.*

[FR Doc. 93-8132 Filed 4-6-93; 8:45 am]

BILLING CODE 6620-07-M

**COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS**

**Request for Public Comments on Bilateral Textile Consultations With the Government of Pakistan on Certain Cotton and Man-Made Fiber Textile Products; Correction**

April 1, 1993.

In the notice published in the Federal Register on March 23, 1993, beginning on page 15487, first column, replace the letter to the Commissioner of Customs with the following letter:

Committee for the Implementation of Textile Agreements

March 18, 1993.

Commissioner of Customs,  
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on December 9, 1992; pursuant to the Bilateral Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated May 20, 1987 and June 11, 1987, as amended and extended, between the Governments of the United

States and Pakistan; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on March 25, 1993, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 334/634, produced or manufactured in Pakistan and exported during the ninety-day period beginning on February 28, 1993 and extending through May 28, 1993, in excess of 44,773 dozen<sup>1</sup>.

Textile products in Categories 334/634 which have been exported to the United States prior to February 28, 1993 shall not be subject to the limit established in this directive.

Textile products in Categories 334/634 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1) prior to the effective date of this directive shall not be denied entry under this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

J. Hayden Boyd,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

J. Hayden Boyd,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 93-8012 Filed 4-6-93; 8:45 am]

BILLING CODE 3510-DR-F

## CONSUMER PRODUCT SAFETY COMMISSION

### Technical Advisory Group for Cigarette Fire Safety; Notice of Meeting

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** The Technical Advisory Group for Cigarette Fire Safety will meet on April 29 and 30, 1993, in Gaithersburg, Maryland. The purpose of the meeting is to discuss current research to develop a test method to measure cigarette ignition propensity and other matters related to implementation of the Fire Safe Cigarette Act.

**DATES:** The meeting will be from 9 a.m. to 4 p.m. on April 29 and 30, 1993.

**ADDRESSES:** The meeting will be in room B245, Building 224, National Institute of

Standards and Technology, Gaithersburg, Maryland.

**FOR A RECORDED MESSAGE CONTAINING THE LATEST INFORMATION ABOUT THE TIME AND LOCATION OF THE MEETING CALL:** (301) 504-0709.

**FOR FURTHER INFORMATION CONTACT:** Beatrice M. Harwood, Directorate for Epidemiology, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504-0470.

**SUPPLEMENTARY INFORMATION:** The Fire Safe Cigarette Act of 1990 (FSCA) (Pub. L. 101-352, 104 Stat. 405) directs the Commission, with assistance from the National Institute of Standards and Technology (NIST) and the Department of Health and Human Services, to conduct research concerning the feasibility of a performance standard to address the propensity of cigarettes to act as an ignition source. The FSCA also establishes an advisory committee, the Technical Advisory Group for Cigarette Fire Safety, to advise and work with the Commission and NIST in the implementation of that act.

The Technical Advisory Group for Cigarette Fire Safety will meet on April 29 and 30, 1993, to discuss current research to develop a test method to measure cigarette ignition propensity; the status of a cigarette fire incident study; plans to evaluate the possible health effect of cigarettes with reduced ignition propensity; and other administrative and operational plans to implement the FSCA.

The meeting will be open to observation by members of the public, but only members of the Technical Advisory Group for Cigarette Fire Safety may participate in the discussion. Persons who desire to submit written statements or questions for consideration by the Technical Advisory Group, before or after the meeting, should address them to the Technical Advisory Group for Cigarette Fire Safety, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

Sadye E. Dunn,

*Secretary, Consumer Product Safety Commission.*

[FR Doc. 93-8102 Filed 4-6-93; 8:45 am]

BILLING CODE 6335-01-F

<sup>1</sup> The limit has not been adjusted to account for any imports exported after February 27, 1993.

## DEPARTMENT OF DEFENSE

### Department of the Army

**Office of the Secretary of the Army; Environmental Assessment/Finding of No Significant Impact for the Disposal of Property at Hamilton Army Airfield**

**AGENCY:** United States Army, Department of Defense.

**ACTION:** Notice of availability.

**SUMMARY:** Hamilton Army Airfield, California is directed for closure by the Defense Base Closure and Realignment Act of 1988, Public Law 100-526. The FY 1993 Department of Defense Appropriations Act directs the Army to transfer five parcels of land at Hamilton Army Airfield to the buyers of the General Services Administration sale parcel. This document focuses upon the environmental and socioeconomic impacts and mitigations associated with the planned transfer. The transfer of these parcels at Hamilton Army Airfield is not expected to significantly affect traffic, noise, air quality, population, employment, schools, or housing in the area. If transfer affects ongoing remediation in any way, it may expedite remediation efforts.

**SCOPING:** The public is encouraged to comment on the Environmental Assessment/Finding of No Significant Impact. Comments received within 30 days of this notice will be considered in decisions concerning this land transfer.

**ADDRESSES:** A copy of the EA/FNSI can be obtained by contacting Mr. Bob Koenigs, U.S. Army Corps of Engineers, Sacramento District, CESPK-PD-R, 1325 J Street, Sacramento, California 95814-2922.

**FOR FURTHER INFORMATION CONTACT:** Questions regarding this action may be directed to Mr. Bob Koenigs, (916) 557-6712.

Dated: April 1, 1993.

Lewis D. Walker,

*Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health); OASA (L, L&E).*

[FR Doc. 93-8114 Filed 4-6-93; 8:45 am]

BILLING CODE 3710-08-M

## Preparation of the Theater Missile Defense (TMD) Extended Test Range Environmental Impact Statement

**AGENCY:** United States Army, Department of Defense.

**ACTION:** Notice of intent (NOI).

This NOI is for the preparation of an Environmental Impact Statement (EIS) for proposed long-range tests of

groundbased Theater Missile Defense (TMD) missile and sensor systems. This TMD program would allow for the development of a means to protect deployed U.S. forces, as well as U.S. friends and allies around the world, against attacks by—short- and medium-range ballistic (e.g., Scud-type), cruise, or air-to-surface missiles armed with conventional, nuclear, biological, or chemical warheads.

These tests would consist of multiple demonstration and operational missile launches along proposed flight paths from off-range locations, with intercepts of targets over existing ranges or open ocean areas. Four alternative test range areas, located within and outside the United States, will be considered for these tests. These flight tests would support the developmental and operational requirements needed to validate system design and operational effectiveness.

Possible significant environmental issues to be analyzed in the TMD Extended Test Range EIS are in the areas of air quality, airspace use, biological resources, cultural resources, hazardous waste, health and safety, land use and recreation, noise, and socioeconomics.

**LEAD AGENCY:** United States Army Space and Strategic Defense Command (USASSDC).

**COOPERATING AGENCY:** Strategic Defense Initiative Organization (SDIO).

**PROPOSED ACTION:** The Army proposes to launch nondestructive targets along planned flight paths from off-range locations into existing test ranges.

Defensive missiles (e.g., PATRIOT) would be launched from the test ranges to intercept the incoming targets over existing land or sea test ranges, or open ocean areas. It is anticipated that approximately 80 missile flight tests would be conducted between 1994 and 1999, from more than one off-range launch location and potentially at more than one test range.

Alternatives for conducting these missile flight tests and intercepts, which will be evaluated in the TMD Extended Test Range EIS, are:

a. White Sands Missile Range, NM, and potentially including McGregor Range of Fort Bliss, TX, with off-range missile launches from Fort Wingate Army Depot, NM, and/or Green River Launch Site, UT.

b. Eglin Air Force Base, FL, including Santa Rosa Island and/or Cape San Blas, with off-range missile launches from a ship or sea-platform stationed in the eastern Gulf of Mexico.

c. Western Range, CA, involving San Nicolas Island of the Naval Air Warfare Center Point Mugu, and/or Vandenberg

Air Force Base, with off-range missile launches from a ship or sea-platform stationed off the Pacific Coast.

d. Kwajalein Missile Range, U.S.

Army Kwajalein Atoll, Republic of the Marshall Islands, with off-range missile launches from Wake Island Airfield, and/or a ship or sea-platform stationed in the Pacific Ocean.

e. Some combination of the previous four alternative test range areas.

f. No Action.

**SCOPING PROCESS:** Comments received as a result of this notice will be used to assist the Army in identifying potential impacts to the quality of the human and natural environment. Individuals or organizations may participate in the scoping process by calling toll free 1-800-546-8552, which will be available April 7 to May 7, 1993, sending written questions and comments to the address below, and offering verbal or written comments at Scoping Meetings scheduled to be held at 7 p.m. in the following communities:

April 13—Green River, UT (6:30 p.m.)  
 April 15—Salt Lake City, UT  
 April 19—Fort Walton Beach, FL  
 April 21—Oxnard, CA  
 April 22—Lompoc, CA  
 April 27—Albuquerque, NM  
 April 29—Gallup, NM

**ADDRESSES:** Submit written questions and comments to Mr. David Hasley, U.S. Army Space and Strategic Defense Command, ATTN: CSSD-EN-V, Post Office Box 1500, Huntsville, AL 35807-3801. Comments should be received by May 7, 1993.

Dated: April 2, 1993.

Lewis D. Walker,

*Deputy Assistant Secretary of the Army (Environmental, Safety and Occupational Health), OASA (I, L&E).*

[FIR Doc. 93-8119 Filed 4-6-93; 8:45 am]

**BILLING CODE 3710-08-M**

#### Department of the Army; Corps of Engineers

**Notice of Intent To Prepare a Draft Supplemental Environmental Impact Statement and Environmental Impact Report (DSEIS/EIR) for Richmond Harbor Deep-Draft Navigation Improvements, Contra Costa County, CA**

**AGENCY:** U.S. Army Corps of Engineers, DOD.

**ACTION:** Notice of intent.

#### SUMMARY:

##### *Proposed Action*

The Corps of Engineers, San Francisco District, has been authorized by the

Water Resources Development Act of 1986 (WRDA 1986), 99th Congress, 2nd Session, Public Law 99-662, and the Supplemental Appropriations Act of 1985 to improve the navigation channels at the Port of Richmond in San Francisco Bay. The Port of Richmond is the non-Federal (i.e., local) sponsor of the Federal project and will participate in the project cost in accordance with WRDA 1986. The environmental impacts of these improvements have been previously evaluated in a Final Environmental Impact Statement filed with the Environmental Protection Agency (EPA) in 1981. The Corps of Engineers, as the lead agency under the National Environmental Policy Act (NEPA) and the Port of Richmond, as the lead agency under the California Environmental Quality Act (CEQA), will prepare a joint Draft Supplemental Environmental Impact Statement/Environmental Impact Report (DSEIS/EIR) for the entire project. The subject DSEIS/EIR will address changes in the authorized project related to dredged material disposal and update information from previous environmental documents.

#### FOR FURTHER INFORMATION CONTACT:

For further information, contact Mr. Gary Flickinger, USAED, San Francisco, California 94105-1905; (415) 744-3341.

#### SUPPLEMENTARY INFORMATION:

Construction of the authorized project for Richmond Harbor will generate an estimated 1.5 million cubic yards of dredged material. As originally authorized, disposal of the dredged material was to be at a contemporary aquatic site identified by the U.S. EPA as "SF-11," near Alcatraz Island in Central San Francisco Bay. Due to the mounding of dredged material historically disposed of at the Alcatraz Site, initially discovered in 1982, and increased public concern about the impact of large-scale dredged material disposal events on the resources of San Francisco Bay, use of the Alcatraz Site would be difficult to achieve. The changing regulatory climate concerning dredged material disposal in the Bay Area has resulted in a need to consider additional options for dredged material disposal and has necessitated the preparation of this DSEIS/EIR.

The project area includes the Harbor Entrance Channel, Potrero Reach, Potrero Sharp Turn, Inner Channel, and Santa Fe Channel. At the request of the local sponsor, a two-phase plan to construct navigation improvements has been formulated. Phase I, the proposed action, calls for deepening the existing 4.5-mile navigation channel from -35 feet mean lower low water (MLLW) to

—38 feet MLLW and providing an approximately 1,200-foot wide turning basin at Potrero Point. In addition, berthing areas served by the project would be deepened by the local sponsor to depths commensurate with the improved Federal channels. All of these improvements will require the removal and disposal of approximately 1.5 million cubic yards of channel bottom sediments.

Phase II of the project, which would deepen the channel to —41 feet MLLW, has been deferred indefinitely. If and when the additional deepening takes place, it will be subject to separate environmental review.

#### Alternatives

Dredged material disposal alternatives to be considered in the DSEIS/EIR are ocean, in-Bay, and land disposal. Dredged material disposal in the San Francisco Bay Area is the subject of intensive study by the Corps of Engineers, the EPA, and two state regulatory agencies, under the Long-Term Management Strategy (LTMS) for the Disposal of Dredged Material in the San Francisco Bay Region. The disposal alternatives to be discussed in the DSEIS/EIR will reflect the LTMS work and address specific sites for the Richmond Harbor project.

A number of options are under consideration for disposal of the dredged material. These disposal options could be implemented separately or in combination, depending upon the nature of the sediments that each disposal site can accept and the respective disposal site capacity. The selection of disposal site alternatives is based upon environmental and economic factors. The disposal site options currently under consideration are:

- Disposal at an ocean site designated by the EPA for that purpose under section 102 of the Marine Protection, Research, and Sanctuaries Act;
- Confined and unconfined aquatic disposal at the Bay Farm Borrow Pit in San Francisco Bay offshore of the city of Alameda in Alameda County;
- Unconfined aquatic disposal at the Alcatraz Site in San Francisco Bay south of Alcatraz Island.
- Confined disposal in the Point Potrero graving docks at the Port of Richmond.
- Confined and unconfined fill for disposal and wetland restoration in Solano County on land owned by the Catellus Corporation as part of the proposed Montezuma Wetland project.

#### Scoping

The Corps of Engineers, San Francisco District and the Port of Richmond invite Federal, state, and local agencies and members of the public to provide comments on the proposed project. A public scoping meeting has been scheduled for April 20, 1993 at the City of Richmond, City Council Chambers, 2600 Barrett Avenue. Two sessions will be held: from 2 to 4 p.m. and from 7:30 to 9:00 p.m. Your views as to the scope and content of the environmental information to be included in the SEIS/EIR are important. To be most helpful, the scoping comments should clearly describe specific environmental issues or subjects which the commentor wishes addressed. Written comments should be mailed no later than April 28, 1993 to: Gary Flickinger, Corps of Engineers, San Francisco District, 211 Main St., Room 918, San Francisco, CA 94105-1905.

The Corps' experience has shown that the significant issues associated with the Richmond Harbor project primarily concern the disposal of dredged material. The following dredging and disposal impacts will be discussed in the SEIS/EIR.

1. Acute water and sediment quality impacts (in-Bay and ocean disposal).
2. Chronic and sublethal water quality impacts (in-Bay and ocean disposal).
3. Aquatic resources impacts (in-Bay and ocean disposal).
4. Water quality impacts (land disposal).
5. Terrestrial impacts (land disposal).
6. Wetland impacts (land disposal).
7. Air quality impacts (in-Bay, ocean, and land disposal).
8. Contaminated material impacts (in-Bay and land disposal).
9. Disposal site capacity impacts (in-Bay, land, and ocean disposal).
10. Socioeconomic impacts (in-Bay, ocean, and land disposal).
11. Recreational impacts (in-Bay, ocean, and land disposal).
12. Cultural resources impacts (land disposal).
13. Vessel transportation impacts (in-Bay and ocean disposal).
14. Groundwater contamination impacts (intersection of aquifers through dredging operations, especially in the Santa Fe Channel and Lauritzen Canal).
15. Groundwater cleanup impacts (interference with the groundwater cleanup operations of others, especially in the Santa Fe Channel and Lauritzen Canal).

The SEIS/EIR will be used as the primary information document to secure concurrence in a Federal Coastal Zone Consistency Determination. In addition,

the SEIS/EIR will be used by the local sponsor to meet its responsibilities under CEQA and may also be used by the San Francisco Bay Regional Water Quality Control Board to meet its responsibilities under the same Act. Other reviews in which the SEIS/EIR may be a secondary source of information are: Fish and Wildlife Coordination Act, Marine Protection, Research and Sanctuaries Act, Endangered Species Act, Clean Air Act, Clean Water Act, and "trustee agency" reviews by the State of California.

**Leonard E. Cardoza,**

*Commanding LTC, EN.*

[FR Doc. 93-8008 Filed 4-6-93; 8:45 am]

**BILLING CODE 3710-SF-M**

#### Intent To Prepare a Draft Environmental Impact Statement (DEIS) for Hurricane and Wetland Protection in Terrebonne Parish, LA

**AGENCY:** U.S. Army Corps of Engineers, New Orleans District.

**ACTION:** Notice of intent to prepare a DEIS.

**SUMMARY:** The U.S. Army Corps of Engineers, New Orleans District (NOD) will prepare a DEIS that presents an assessment of the beneficial and adverse impacts of the South Terrebonne Tidewater Management and Conservation District's (STTMCD) intention to primarily provide protection to existing development from tropical storm and hurricane-induced tidal flooding and secondarily to protect coastal wetlands from hurricane surges in a portion of Terrebonne Parish, Louisiana. The STTMCD's plan calls for: (1) Upgrading many existing forced drainage system levees to FEMA 100-year flood elevations; (2) using other permitted and/or installed flood control features (e.g., floodgates); (3) constructing some new levees (to FEMA elevations) and water control structures; and, (4) operating the water control structures and flood gates in a coordinated manner.

Project implementation involves activities that are subject to Federal regulation. Accordingly, STTMCD has applied to the NOD for the necessary Federal permits. The NOD has advised the STTMCD that the scope and probable impacts of the proposed project are such that an EIS must be prepared before rendering a decision on the requested permit. The EIS will be a major source of information the NOD

considers in its evaluation of the requested permit.

**FOR FURTHER INFORMATION:**

Questions regarding the proposed project may be directed to Mr. O'Neil P. Malbrough, Coastal Engineering and Environmental Consultants, Inc., P.O. Box 370, Bourg, Louisiana 70343-0370, telephone (504) 868-3434.

Questions regarding the DEIS may be directed to Mr. Robert H. Bosenberg, CELMN-PD-RS, U.S. Army, Corps of Engineers, P.O. Box 60267, New Orleans, Louisiana 70160-0267, telephone (504) 862-2522.

**SUPPLEMENTARY INFORMATION:**

**Location**

The STTMCD's project would provide protection from hurricane flood waters to parish residents that live on several of the relic Mississippi River distributary ridges southeasterly from Houma, Louisiana. Residents of and communities along Bayou Grand Caillou/Bayou Petit Caillou, as well as Bayous du Large, Terrebonne, Pointe au Chien and St. Jean Charles are targeted for inclusion in a system that would provide protection against the applicable FEMA 100-year flood.

**Flood Protection**

Ridge elevations become lower as they extend southerly towards the Gulf of Mexico. Elevations of inhabited areas targeted for protection range upward from about two feet to nearly 10 feet above sea level. However, hurricane tides can exceed 10 feet.

Forced drainage projects along some of the distributary ridges were installed over the years by local interests. These leveed-off areas are no longer subject to minor tidal flooding (generally up to about five feet) but water levels in included wetlands are artificially controlled. Many of these areas, as well as others still subject to minor tidal flooding, are targeted for hurricane protection.

A goal of the STTMCD is to preserve life and property in south Terrebonne Parish by providing optimum hurricane protection. Accordingly, the STTMCD has recently been involved with installing flood control gates at strategic locations, upgrading existing forced drainage project features, and constructing additional forced drainage levees elsewhere. Local interests undertook those independent flood control initiatives anticipating that they may someday become part of a hurricane protection system. Those projects comprise a major component of the STTMCD's proposed plan.

**Preservation of Wetlands and Their Values**

Louisiana's coastal marshes and other wetland types have recognized socioeconomic and natural values. Those values are being reduced roughly in proportion to an annual loss rate of about 25 square miles per year. However, those wetland values can be even more greatly diminished by the typically adverse physical, chemical and physiological conditions related to tropical storm and hurricane tides.

Another goal of the STTMCD is to preserve wetlands as breeding habitat for marine organisms. Tidally influenced marsh and other wetland type areas occur between distributary ridges.

By implementing the STTMCD's proposed hurricane protection levee alignment, the applicant proposes to reduce adverse effects of storm-related tidal flooding to already included wetlands as well as reduce those adverse effects on newly included wetlands. Water levels in included wetlands would likely have to be managed and that could potentially adversely impact marine organisms. Thus, this aspect of the project has the potential to be controversial.

**ALTERNATIVES:** A no-action alternative will be evaluated. Additionally, non-structural solutions to protecting existing developments will also be evaluated. So, too, will several levee alignments, to include the STTMCD's preferred alignment that largely but not entirely uses many of the existing forced drainage levees and other permitted and/or installed flood control features (e.g., floodgates).

Each of the alternatives to protect existing developments from hurricane tides will also be evaluated relative to the secondary goal of protecting marshes as breeding habitat for marine organisms. Various water control structure operation plans will also be evaluated.

**SCOPING PROCESS:** The NOD will coordinate closely with Federal, state and local agencies and interested parties while preparing the DEIS. Formal (to include a public scoping meeting) and informal meetings will be held to collect information as well as periodically update interested parties.

Significant issues to be addressed in the DEIS will include the impacts of the proposed project on biological, cultural, historic, social, economic, water quality, and human resources. Specific issues will be formulated based upon the scoping process.

Preparation of the DEIS will be coordinated with Federal, state and

local governmental agencies, environmental groups, landowners and other interested parties. All comments received about the DEIS will be considered when preparing the Final EIS.

**SCOPING MEETING:** A single scoping meeting is planned for mid- to late May 1993. The NOD will issue a public notice specifying the date and location for the scoping meeting.

The purpose of the public scoping meeting is to allow the general public, Federal, State and local governmental agencies, landowners, environmental groups and other interested parties an opportunity to assist the NOD in identifying significant issues to be addressed in the DEIS. Written comments will be accepted for at least 10 days after the date of the scoping meeting.

All verbal and written comments received at the meeting and written comments received through the comment period, will be reviewed, compiled and assessed. The NOD will prepare a scoping document summarizing the comments received and make that scoping document available to all meeting participants.

**AVAILABILITY OF THE DEIS:** The DEIS is scheduled to be available for public review during April of 1994. However, the exact scope of the DEIS and the need and timing for any necessary studies will not be finally determined until after the public scoping meeting occurs. These factors can affect the date the DEIS is ultimately made available for public review and comment.

Michael Diffley,

*Colonel, U.S. Army, District Engineer.*

[FR Doc. 93-8007 Filed 4-6-93; 8:45 am]

BILLING CODE 3710-04-M

**DEPARTMENT OF ENERGY**

**Morgantown Energy Technology Center; Cooperative Agreement; Financial Assistance Award to CER Corp.**

**AGENCY:** Morgantown Energy Technology Center, Department of Energy (DOE).

**ACTION:** Notice of acceptance of an unsolicited financial assistance application for cooperative agreement award.

**SUMMARY:** Based upon a determination made pursuant to 10 CFR 600.7(b)(2)(i)(B) the DOE, Morgantown Energy Technology Center gives notice of its plans to award a 36 month Cooperative Agreement to the CER

Corporation with an associated budget of approximately \$9M of which the Gas Research Institute (GRI) will cost share approximately 50 percent.

**FOR FURTHER INFORMATION CONTACT:**  
Laura E. Brandt, I-07, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26507-0880. Telephone: (304) 291-4079. Procurement Request No. 21-93MC30070.000.

**SUPPLEMENTARY INFORMATION:** The pending award is based on an unsolicited application for the project entitled "Hydraulic Fracture Diagnostics Tests and Model Verification at GRI/DOE Multi-Site Projects". The goal of this project is to conduct fracturing diagnostics research and development in order to characterize and test hydraulic fracturing technologies and performance. CER will develop a fully characterized, tight reservoir-typical, field scale hydraulic fracturing test site, utilizing the old DOE Multiwell Experiment field site near Rifle, Colorado, as well as drill additional instrumentation and diagnostic wells. DOE, GRI, and industry hydraulic fracturing models will be verified at the test site. The research is expected to develop new technologies and improve efficiency of existing fracturing practices. The expanded efficient and economic technology base will provide additional confidence in the long-term availability of natural gas from tight reservoirs, and the successful reduction of stimulation costs will help maintain the competitive advantages of the tight natural gas resource.

**Louie L. Calaway,**

Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 93-8115 Filed 4-6-93; 8:45 am]

BILLING CODE 6450-01-M

#### Federal Energy Regulatory Commission

[Projects Nos. 2451-004, 2452-007 & 2468-003 Michigan]

#### Consumers Power Co.; Intent To Prepare Environmental Assessment and Notice of Public Meeting

April 1, 1993.

The Federal Energy Regulatory Commission (FERC) has received applications for new license filed by Consumers Power Company (Consumers) for the continued operation of three hydropower projects located on the Muskegon River in southwest Michigan.

The three applications for new licenses for the Rogers, Hardy, and Croton Projects have recently been supplemented by the terms of a Settlement Agreement reached between Consumers and the state and Federal resource agencies.

In accordance with the requirements of the National Environmental Policy Act and other applicable laws, the FERC staff, in cooperation with the staff of the Huron-Manistee National Forests (Forest Service), plans to prepare an Environmental Assessment (EA) that evaluates the site-specific and cumulative environmental effects of the continued operation of the projects and proposed environmental enhancements.

The EA will be based on a thorough public scoping of the environmental issues to ensure that the analysis is complete. The FERC and Forest Service staffs will conduct a public meeting at the Velma Matson Upper Elementary School, 219 E. Post St., in Newaygo, Michigan, at 7 p.m. on May 4, 1993. The meeting will be recorded by a stenographer, and thereby become a part of the formal record of the FERC proceeding on the three projects. Persons who have views on the issues or information relevant to the issues are invited to participate in the meeting, and may submit written statements for inclusion in the public record at that time.

A preliminary EA Scoping Document outlining subject areas to be addressed at the meeting will be distributed by mail to all interested parties and will be available at the meeting.

For further information, please phone Frank Karwoski at (202) 219-2782, or Julie Bernt (202) 219-2814.

**Lois D. Cashell,**

Secretary.

[FR Doc. 93-8047 Filed 4-6-93; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 2599-005 & 2580-015, Michigan]

#### Consumers Power Co.; Notice of Intent To Prepare Environmental Assessment and Notice of Public Meeting

April 1, 1993.

The Federal Energy Regulatory Commission (FERC) has received applications for new license filed by Consumers Power Company (Consumers) for the continued operation of two hydropower projects located on the Manistee River in west-central Michigan.

The two applications for new licenses for the Hedenpyle and Tippy Projects have recently been supplemented by the

terms of a Settlement Agreement reached between Consumers and the state and Federal resource agencies.

In accordance with the requirements of the National Environmental Policy Act and other applicable laws, the FERC staff, in cooperation with the staff of the Huron-Manistee National Forests (Forest Service), plans to prepare an Environmental Assessment (EA) that evaluates the site-specific and cumulative environmental effects of the continued operation of the projects and proposed environmental enhancements.

The EA will be based on a thorough public scoping of the environmental issues to ensure that the analysis is complete. The FERC and Forest Service staffs will conduct a public meeting at the Wellston Elementary School, in Wellston, Michigan, at 7 p.m. on May 3, 1993. The meeting will be recorded by a stenographer, and thereby become a part of the formal record of the FERC proceeding on the two projects. Persons who have views on the issues or information relevant to the issues are invited to participate in the meeting, and may submit written statements for inclusion in the public record at that time.

A preliminary EA Scoping Document outlining subject areas to be addressed at the meeting will be distributed by mail to all interested parties and will be available at the meeting.

For further information, please phone Frank Karwoski at (202) 219-2782, or Julie Bernt, (202) 219-2814.

**Lois D. Cashell,**

Secretary.

[FR Doc. 93-8048 Filed 4-6-93; 8:45 am]

BILLING CODE 6717-01-M

[Projects Nos. 2448-011, 2447-008, 2449-007, 2453-003, 2450-005 & 2436-007—Michigan]

#### Consumers Power Co., Intent To Prepare Environmental Assessment and Notice of Public Meeting

April 1, 1993.

The Federal Energy Regulatory Commission (FERC) has received applications for new license filed by Consumers Power Company (Consumers) for the continued operation of six hydropower projects located on the Au Sable River in east-central Michigan.

The six applications for new licenses for the Mio, Alcona, Loud, Five Channels, Cooke, and Foote Projects have recently been supplemented by the terms of a Settlement Agreement reached between Consumers and the state and Federal resource agencies.

In accordance with the requirements of the National Environmental Policy Act and other applicable laws, the FERC staff, in cooperation with the staff of the Huron-Manistee National Forests (Forest Service), plans to prepare an Environmental Assessment (EA) that evaluates the site-specific and cumulative environmental effects of the continued operation of the projects and proposed environmental enhancements.

The EA will be based on a thorough public scoping of the environmental issues to ensure that the analysis is complete. The FERC and Forest Service staffs will conduct a public meeting at Oscoda High School, 3550 East River Road, Oscoda, Michigan, at 7 p.m. on May 5, 1993. The meeting will be recorded by a stenographer, and thereby become a part of the formal record of the FERC proceeding on the six projects. Persons who have views on the issues or information relevant to the issues are invited to participate in the meeting, and may submit written statements for inclusion in the public record at that time.

A preliminary EA Scoping Document outlining subject areas to be addressed at the meeting will be distributed by mail to all interested parties and will be available at the meeting.

For further information, please phone Frank Karwoski at (202) 219-2782, or Julie Bernt (202) 219-2814.

Lois D. Cashell,

Secretary.

[FR Doc. 93-8049 Filed 4-6-93; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 2436-007, et al., Michigan]

**Consumers Power Co.; Notice of Intent To Prepare Environmental Assessment and Notice of Public Meeting**

April 1, 1993.

The Federal Energy Regulatory Commission (FERC) has received applications for new license filed by Consumers Power Company (Consumers) for the continued operation of 11 hydropower projects located on the Manistee, Muskegon, and Au Sable Rivers in Michigan.

The 11 applications for new licenses have recently been supplemented by the terms of a Settlement Agreement reached between Consumers and the state and Federal resource agencies.

In accordance with the requirements of the National Environmental Policy Act and other applicable laws, the FERC staff, in cooperation with the staff of the Huron-Manistee National Forests (Forest Service), plans to prepare three Environmental Assessments (EA) that

evaluate the site-specific and cumulative environmental effects of the continued operation of the projects, and proposed environmental enhancements, in the three river systems.

The EA's will be based on a thorough public scoping of the environmental issues to ensure that the analysis is complete. The FERC and Forest Service staffs will conduct a public meeting at the Holiday Inn-South, 6820 S. Cedar St., Lansing, Michigan, at 7 p.m. on May 6, 1993. The meeting will be recorded by a stenographer, and thereby become a part of the formal record of the FERC proceeding on the 11 projects. Persons who have views on the issues or information relevant to the issues are invited to participate in the meeting, and may submit written statements for inclusion in the public record at that time.

Preliminary EA Scoping Documents outlining subject areas to be addressed at the meeting will be distributed by mail to all interested parties and will be available at the meeting.

For further information, please phone Frank Karwoski at (202) 219-2782, or Julie Bernt (202) 219-2814.

Lois D. Cashell,  
Secretary.

[FR Doc. 93-8050 Filed 4-6-93; 8:45 am]  
BILLING CODE 6717-01

[Docket Nos. CP93-253-000, et al.]

**El Paso Natural Gas Co., et al.; Natural Gas Certificate Filings**

March 30, 1993.

Take notice that the following filings have been made with the Commission:

1. **El Paso Natural Gas Company**

[Docket No. CP93-253-000]

Take notice that on March 16, 1993, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP93-253-000 an application pursuant to Section 3 of the Natural Gas Act and Sections 153.1 and 153.10 through 153.12 of the Commission's Regulations and Executive Order 10485, as amended by Executive Order 12038, and Secretary of Energy Delegation Order No. 0204-112. In that application, El Paso requested an order authorizing the siting, construction, operation and maintenance of pipeline facilities at the United States-Mexico international boundary in El Paso County, Texas, approximately six miles south of Clint, Texas. In addition, El Paso requested a Presidential Permit covering the proposed construction, connection and operation of pipeline facilities at the

United States-Mexico border, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

El Paso requests authorization to site, construct, operate, maintain, and connect pipeline facilities at the International Boundary between the United States and Mexico in El Paso County, Texas, approximately six miles south of Clint, Texas. El Paso proposes to construct approximately 500 feet of 24-inch O.D. pipeline, with appurtenances, necessary to connect El Paso's upstream facilities with a new pipeline system to be owned in Mexico by Petroleos Mexicanos (PEMEX).

El Paso states that it will construct the entire river crossing including those facilities extending to the Mexican side of the Rio Grande River (approximately 500 feet will be on the Mexican side of the border for a total of 1,000 feet to be constructed for the border crossing). El Paso further states that it will transfer those facilities located in Mexico to PEMEX for its ownership and operation.

El Paso states that it is filing concurrently an application, pursuant to section 7(c) of the Natural Gas Act, for authorization to construct and operate approximately 36.1 miles of mainline looping and lateral pipeline; 28,000 horsepower of compression; the uprate and restage of an existing compressor unit for an additional 4,800 horsepower of compression; and the construction and operation of certain metering facilities, with appurtenances, to transport natural gas from its existing interstate system to the International Boundary (hereby called the Samalayuca Lateral Expansion Project).

El Paso states that the proposed facilities to be constructed and operated at the International Boundary will constitute a portion of the Samalayuca Lateral Expansion Project and will facilitate the transportation and delivery of up to 300,000 Mcf per day of natural gas to PEMEX at the International Boundary for eventual delivery to the Samalayuca Power Plant, located approximately 30 miles south of the Cities of Juarez, Mexico, and El Paso, Texas for electric generation in northern Mexico.

El Paso states that the proposed PEMEX pipeline will interconnect with PEMEX's existing pipeline system, which crosses through the City of Chihuahua and terminates in the City of Juarez, Mexico. El Paso further states that, although natural gas in such pipeline flows north, it can be made capable of flowing south. El Paso submits that the City of Juarez and the City of Chihuahua may also receive additional natural gas service.

El Paso submits that the proposed border facilities will be made available to any shipper who has executed a transportation service agreement with El Paso. El Paso also submits that the shippers who execute transportation service agreements with El Paso will obtain the necessary export authorization from the Department of Energy, Office of Fossil Energy prior to the commencement of service.

El Paso states that the transportation rates to be charged by El Paso transportation service are those rates set forth in its firm transportation service Rate Schedule T-3 and its interruptible transportation service Rate Schedule T-1. El Paso further states that the rates between the shippers and the ultimate purchaser in Mexico will be set by competition, and should be comparable to rates charged by any selling entity for similar service in the United States.

*Comment date:* April 20, 1993, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

## 2. Caprock Pipeline Company

[Docket No. CP93-269-000]

Take notice that on March 25, 1993, Caprock Pipeline Company (Caprock), 333 Clay Street, suite 2000, Houston, Texas 77002-9817, filed in Docket No. CP93-269-000 an application pursuant to section 7 of the Natural Gas Act and subpart F of section 157 of the Commission's Regulations for a blanket certificate of public convenience and necessity, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Caprock states that it was recognized as a natural gas company subject to regulation pursuant to the Natural Gas Act in Docket Nos. CP69-134, CP70-209, CP72-227 and CP72-254. Caprock states that it is unaware of any outstanding budget-type certificates issued to it pursuant to § 157.7 of the Commission's Regulations. Caprock states that it agrees to comply with the terms, conditions and procedures specified in subpart F of the Commission's Regulations.

*Comment date:* April 20, 1993, in accordance with Standard Paragraph F at the end of the notice.

## 3. Algonquin Gas Transmission

[Docket No. CP93-261-000]

Take notice that on March 18, 1993, Algonquin Gas Transmission Company (Algonquin), located at 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed in Docket No. CP93-261-000, pursuant to section 7(c) of the

Natural Gas Act an application for certificate of public convenience and necessity authorizing Algonquin to construct and operate facilities and to transport and deliver a total of approximately 40,000 MMbtu of natural gas per day on a firm basis to New England Power Company (NEP) and Bay State Gas Company (Bay State), and to abandon certain facilities pursuant to section 7(b) of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Algonquin proposes to construct and operate: (1) 3.2 miles of 36-inch diameter pipeline to replace existing 26-inch diameter pipeline from Valve Site 11-1 to Valve Site 12-2 near Mahwah, New Jersey; (2) 3.8 miles of 16-inch diameter loop pipeline paralleling the existing 8-inch Brockton lateral near Brockton, Massachusetts; and, (3) 4.9 miles of 36-inch diameter pipeline to replace existing 26-inch pipeline from a point of 1400 feet east of Route 202 to Valve Site 18A-1 upstream of the Southeast Compressor Station in Southeast, New York. Algonquin also proposes to increase the horsepower ratings of units C-7 and C-8 at the Cromwell Compressor Station in Cromwell, Connecticut, and to modify certain metering facilities. The cost of Algonquin's proposed facilities is estimated to be approximately \$35.4 million. Algonquin states that it will use revolving credit arrangements, short-term loans and funds on hand to finance the cost of the facilities.

Algonquin proposes to take receipt of Bay States' volume of 14,758 MMbtu per day at an interconnection between the facilities of Algonquin and Texas Eastern Transmission Corporation at Lambertville, New Jersey and transport such gas to the Brockton Meter Station located on Algonquin's I-2 lateral. Algonquin will take receipt of the remainder of the 40,000 MMbtu per day at an interconnection with Columbia Gas Transmission Corporation at Hanover, New Jersey and transport the gas to the Manchester Street Meter Station on Algonquin's G-12 lateral near Providence, Rhode Island.

Algonquin proposes to provide the firm transportation service for NEP and Bay State under proposed Rate Schedule AFT-5. The proposed incremental rate for service under Rate Schedule AFT-5 is a 100% demand rate of \$19.2169 per MMbtu.

*Comment date:* April 20, 1993, in accordance with Standard Paragraph F at the end of this notice.

## 4. Arkla Energy Resources, a division of Arkla, Inc.

[Docket No. CP93-268-000]

Take notice that on March 23, 1993, Arkla Energy Resources, a division of Arkla, Inc. (AER), P.O. Box 21734, Shreveport, Louisiana 71151 filed in Docket No. CP93-268-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon the ecoshare transportation services which were authorized by its blanket certificate in Docket No. CP82-384-000, all as more fully set forth in the application on file with the Commission and open to public inspection.

AER proposes to abandon the services, specified in subpart F of part 157 of the Commission's Regulations, previously performed under its (a) Ecoshare Transportation Rate Schedule, (b) Rate Schedule Ecoshare-AIC, and (c) Rate Schedule TRG-1, which are on file in its FERC Gas Tariff, First Revised Volume No. 2, Sheet Nos. 221-226. AER states that there is no longer a need for these rate schedules. AER explains that the services performed under the rate schedules were terminated with the issuance and effectiveness of Order No. 436.

*Comment date:* April 20, 1993, in accordance with Standard Paragraph F at the end of this notice.

## 5. El Paso Natural Gas Company

[Docket No. CP93-252-000]

Take notice that on March 16, 1993, El Paso Natural Gas Company (Applicant), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP93-252-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity requesting authorization to construct and operate certain pipeline, metering and compression facilities in order to provide transportation service to the International Boundary between the United States and the Republic of Mexico near Clint, El Paso County, Texas (the Samalayuca Lateral Expansion Project), all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Applicant proposes to construct and operate the following facilities to link Applicant's existing interstate system to a point of interconnection with facilities to be sited at the International Boundary between the United States and the Republic of Mexico in El Paso County, Texas, approximately six miles south of Clint, Texas:

**Compression****1. Toyah Compressor Station**

Install one (1) 14,000 ISO horsepower G.E. Frame 3 compressor unit, with appurtenances, at approximately milepost 27.0 on the Waha-Ehrenberg Line located in Reeves County, Texas.

**2. Gresham Compressor Station**

Upgrade by an additional 4,800 ISO horsepower the existing 9,800 ISO horsepower turbine unit to 14,600 ISO horsepower located at approximately milepost 65.6 on the Waha-Ehrenberg Line located in Culberson County, Texas.

**3. Sierra Diablo Compressor Station**

Install one (1) 14,000 ISO horsepower G.E. Frame 3 compressor unit, with appurtenances, at approximately milepost 104.5 on the Waha-Ehrenberg Line located in Culberson County, Texas.

**Pipelines****4. Cornudas Compressor Station to Hueco Compressor Station**

Install approximately 14.9 miles of 30-inch O.D. pipeline, with appurtenances, commencing at the Cornudas "A" Compressor Station at milepost 144.5 on Applicant's existing 30-inch O.D. pipeline and terminating at milepost 159.4 in Hudspeth County, Texas.

**5. Line from the Hueco Compressor Station to the International Boundary near Clint, Texas**

Install approximately 21.11 miles of 24-inch O.D. pipeline, with appurtenances, commencing at milepost 174.5 on the California System at Applicant's Hueco Compressor Station located in Hudspeth County, Texas and terminating in Tract 4, Block 37, San Elizario Grant, El Paso County, Texas.

**6. Rio Grande River Crossing**

Install approximately 0.18 mile (1,000 feet) of 24-inch O.D. pipeline, with appurtenances, of which approximately 0.09 mile (500 feet) is on the United States side of the International Boundary, commencing at approximately milepost 21.11 Track 4, Block 37, San Elizario Grant, El Paso County, Texas and terminating 500 feet on the Mexican side of the International Boundary.

**Delivery Meter Station****7. International Boundary**

Install two (2) 16-inch standard orifice-type meter runs, with appurtenances, at approximately

milepost 21.10 on Applicant's proposed 24-inch pipeline located in Track 4, Block 37, San Elizario Grant, El Paso County, Texas.

Applicant proposes to construct and operate, under Section 2.55(a) of the Commission's Regulations, those facilities as follows:

**1. Gresham Compressor Station**

Upgrade one (1) turbine unit at Applicant's existing Gresham Compressor Station located at approximately milepost 65.6 in Culberson County, Texas.

Applicant estimates the cost of the proposed facilities to be \$56,610,000. Applicant indicates that it will finance the proposed construction through use of internally generated funds or through short-term borrowing.

Applicant states that its proposal will provide for firm and interruptible transportation service of up to 300,000 Mcf/d of natural gas, primarily for shippers serving existing and proposed electric generation facilities and other possible needs in northern Mexico.

Applicant states that the primary use for the proposed capacity will be in satisfaction of the natural gas requirements of the Samalayuca Power Plant, which is located in northern Mexico, approximately 30 miles south of the Cities of Juarez, Mexico and El Paso, Texas. Applicant further states that the Samalayuca Power Plant, with a capacity of 316 megawatts, generates electricity for use within northern Mexico and uses natural gas as fuel in one of two units. Applicant indicates that the second unit currently uses high sulphur residual oil. Applicant submits that plans are underway to expand the plant and convert the second unit to natural gas as a means to reduce air pollution.

Applicant indicates that the Comision Federal de Electricidad has recently awarded the contract for the expansion of the Samalayuca Power Plant to a consortium consisting of General Electric Company, Bechtel Enterprises, Inc. Corporation, Coastal Pan American Corporation, Grupo ICA and Applicant.

Applicant indicates that Petroleos Mexicanos (PEMEX) will own the necessary downstream pipeline in Mexico to move gas from the International Boundary to the Samalayuca Power Plant and other potential delivery points. Applicant anticipates that the Mexican pipeline facilities will consist of approximately 24 miles of pipeline and appurtenant facilities. Applicant indicates that the Mexican pipeline facilities and the Samalayuca Power Plant expansion are

scheduled to be placed in-service by June 1, 1994.

Applicant states that the proposed PEMEX pipeline will interconnect with PEMEX's existing pipeline system, which crosses through the City of Chihuahua and terminates in the City of Juarez, Mexico. El Paso further states that, although natural gas in such pipeline flows north, it can be made capable of flowing south. El Paso submits that the City of Juarez and the City of Chihuahua may also receive additional natural gas service.

Applicant submits that it will offer a firm transportation arrangement to any shipper who requests the service proposed. Applicant states that it has initiated discussions for transportation service through the proposed facilities and that these arrangements will allow for flexible receipt points. Applicant further states that it may receive gas from the San Juan, Permian, or Anadarko Basins or from any pipeline interconnect. Applicant states that its existing pipeline system is capable of receiving and transporting to the Waha Compressor Station all or any portion of the proposed additional 300,000 Mcf per day of additional throughput from any of the above-named supply sources.

Applicant states that the facility design is not dependent upon the relinquishment of firm capacity on Applicant's system by any existing shipper as provided by the Order No. 636, *et seq.*, restructuring process.

Applicant states that the various shippers utilizing Applicant's proposed facilities at the border will be required to obtain the proper authorizations from the Department of Energy, Office of Fossil Energy for the exportation of natural gas. Applicant further states that it will not itself export any gas, and does not require any export authorization.

Applicant indicates that it filed concurrently with the subject application, an application for an order, under Section 3 of the Act and Section 153.1 of the Commission's Regulations under the Act, authorizing the siting of pipeline facilities at the International Boundary between the United States and the Republic of Mexico in El Paso County, Texas, approximately 6 miles south of Clint, Texas, and under Section 153.10 of the Commission's Regulations under the Act, for a Presidential Permit authorizing the proposed construction, connection, operation and maintenance of pipeline facilities at the International Boundary.

Applicant proposes to provide service utilizing the proposed facilities in accordance with its current Rate Schedules T-1 and T-3. Applicant states that new shippers will be offered

Transportation Service Agreements in accordance with Rate Schedule T-1 and T-3, with system-wide receipt points, and with delivery points located on the proposed expansion facilities.

Applicant requests a preliminary determination that the Samalayuca Lateral Expansion Project will provide a net system benefit and that the costs of the proposed facilities should be rolled into Applicant's cost-of-service in the first system-wide general rate proceeding initiated following the in-service date of the proposed facilities. Applicant states that it is willing to accept the financial risk for undersubscription, and it is willing to agree that its existing customers will be shielded from any risk of economic harm.

**Comment date:** April 20, 1993, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

#### Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date 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.

Lois D. Cashell,

Secretary.

[FR Doc. 93-8035 Filed 4-6-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD93-06581T Texas-129]

#### State of Texas; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

April 1, 1993.

Take notice that on March 29, 1993, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to section 271.703(c)(3) of the Commission's regulations, that the Travis Peak Formation, White Oak Creek (Travis Peak) Field, underlying a portion of Cherokee County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area is in Railroad Commission District No. 6 and is described as the Thomas Shartle #2 Proration Unit, a 704 acre tract within the Martin Lacey Survey, A-30.

The notice of determination also contains Texas' findings that the reference portion of the Travis Peak Formation meets the requirements of the Commission's regulations set forth in 18 CFR Part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93-8044 Filed 4-6-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD93-06582T Texas-130]

#### State of Texas; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

April 1, 1993.

Take notice that on March 29, 1993, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that portions of the Georgetown Formation, underlying a portion of Burleson County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area is in Railroad Commission District No. 3 and includes all or portions of the following surveys:

Cox, J.S.—A-15

Cummings, M.A.—A-16

Guild, A.R.—A-268

[FR Doc. 93-8043 Filed 4-6-93; 8:45 am]

BILLING CODE 6717-01-M

Hardeman, J.M.—A-140  
 Hollingsworth, J.A.—A-30  
 Huff, W.P.—A-31  
 Lastley, J.A.—A-35  
 Long, J.A.—A-37  
 McFadden, N.A.—A-38

The notice of determination also contains Texas' findings that the referenced portions of the Georgetown Formation meet the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,  
 Secretary.

[FR Doc. 93-8045 Filed 4-6-93; 8:45 am]  
 BILLING CODE 6717-01-M

[Docket Nos. TQ93-6-63-000, TM93-6-63-000]

#### Carnegie Natural Gas Co.; Proposed Changes in FERC Gas Tariff

April 1, 1993.

Take notice that on March 30, 1993, Carnegie Natural Gas Company ("Carnegie") tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1, with a proposed effective date of March 1, 1993:

Forty-Second Revised Sheet No. 8  
 Forty-Second Revised Sheet No. 9

Carnegie states that pursuant to § 154.308 of the Commission's regulations and sections 23 and 26 of the General Terms and Conditions of its FERC Gas Tariff, it is filing a combined Out-of-Cycle Purchased Gas Adjustment ("PGA") and Transportation Cost Adjustment ("TCA") to reflect updated projections affecting the average commodity cost of purchased gas to be incurred by Carnegie on and after April 1, 1993. Carnegie states that this filing was necessitated by (i) a substantial and unanticipated increase in the price of spot gas supplies available on and after April 1, 1993, as compared to the projected cost of purchased gas reflected in Carnegie's most recent PGA filed in Docket No. TQ93-5-63-000 on February 25, 1993, and (ii) the planned shutdown of Carnegie's Waynesburg compressor station, which Carnegie expects will cause a change in the projected supply mix of its Appalachian

purchase gas and company-owned production, thereby affecting its weighted-average cost of gas.

The above revised tariff sheets reflect a commodity rate increase of \$0.3586 per dth under Rate Schedules CDS, LVWS, and SEGSS, as compared to the rates filed in Carnegie's last fully-supported PGA in Docket No. TQ93-5-63-000, on February 25, 1993, reflecting an increase in Carnegie's average commodity cost of purchased gas from \$1.8717 per dth to \$2.2303 per dth. The revised tariff sheets also reflect an increase in the TCA charge of \$0.0398 per dth, from \$0.1635 per dth to \$0.2033 per dth, as measured against Carnegie's last TCA in Docket No. TM93-5-63-000, filed on February 25, 1993.

Carnegie states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before April 8, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,  
 Secretary.

[FR Doc. 93-8040 Filed 4-6-93; 8:45 am]  
 BILLING CODE 6717-01-M

[Docket No. RP93-77-002]

#### CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

April 1, 1993.

Take notice that on March 26, 1993, CNG Transmission Corporation (CNG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets:

Substitute Original Sheet No. 240  
 Substitute Original Sheet No. 243  
 Substitute Original Sheet No. 248  
 Substitute First Revised Sheet No. 260B  
 Substitute Original Sheet No. 260G

CNG states that the revised tariff sheets are being filed to correct typographical error to the filing that was made on March 19, 1993 in the above-referenced proceeding.

CNG states that copies of the filing have been mailed to CNG's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before April 8, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,  
 Secretary.

[FR Doc. 93-8041 Filed 4-6-93; 8:45 am]  
 BILLING CODE 6717-01-M

[Docket No. TQ93-9-25-000]

#### Mississippi River Transmission Corp.; Rate Change Filing

April 1, 1993.

Take notice that on March 30, 1993, Mississippi River Transmission Corporation (MRT) tendered for filing Eighty-Fifth Revised Sheet No. 4 and Forty-Fourth Revised Sheet No. 4.1 to its FERC Gas Tariff, Second Revised Volume No. 1 to be effective April 1, 1993. MRT states that the purpose of the instant filing is to reflect an out-of-cycle purchase gas cost adjustment (PGA).

MRT states that Eighty-Fifth Revised Sheet No. 4 and Forty-Fourth Revised Sheet No. 4.1 reflect an increase of 21.11 cents per MMBtu in the commodity cost of purchased gas, and a decrease of 89.8 cents per MMBtu in the demand costs from PGA rates contained in the motion filing to be effective April 1, 1993 in Docket No. RP93-4. MRT also states that since the March 29, 1993 filing date, MRT has experienced changes in purchase and transportation costs for its system supply that could not have been reflected in that filing under current Commission regulations.

MRT states that a copy of this filing has been served on all of MRT's jurisdictional sales customers and to the State Commissions of Arkansas, Illinois and Missouri.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the

Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 8, 1993. 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. 93-8046 Filed 4-6-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-5-16-000]

**National Fuel Gas Supply Corp.; Proposed Changes in FERC Gas Tariff**

April 1, 1993.

Take notice that on March 30, 1993, National Fuel Gas Supply Corporation ("National") tendered for filing the following revised tariff sheet as part of its FERC Gas Tariff, Second Revised Volume No. 1, to become effective on April 1, 1993:

Thirty-Second Revised Sheet No. 5

National states that the filing is made to implement an out-of-cycle Purchased Gas Adjustment ("PGA") rate change to reflect the increased gas cost resulting from the impact of the current market price. National's revised demand and commodity rates are \$9.67 per Dt and 297.26 cents per Dt respectively.

National further states that copies of this filing were served upon the Company's jurisdictional customers and the Regulatory Commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts and New Jersey.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such motions to intervene or protests should be filed on or before April 8, 1993. 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. 93-8038 Filed 4-6-93; 8:45 am]

BILLING CODE 6717-01-M

**Panhandle Eastern Pipe Line Co., Refund Report**

April 1, 1993.

Take notice that on March 12, 1993, Panhandle Eastern Pipe Line Company (Panhandle) filed a report of refunds paid to Michigan Consolidated Gas Company and Michigan Gas Utilities in compliance with Commission order issued February 11, 1993.

Panhandle states that the refunds, paid on March 12, 1993, reflect the amounts collected for production-related costs under Order Nos. 94 and 473, with carrying charges computed from the dates payments were received through March 12, 1993, in accordance with § 154.67 of the regulations.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before April 8, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**  
*Secretary.*

[FR Doc. 93-8036 Filed 4-6-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-4-18-000]

**Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff**

April 1, 1993.

Take notice that on March 30, 1993, Texas Gas Transmission Corporation (Texas Gas) tendered for filing the following revised tariff sheets to its FERC Gas Tariff:

**Original Volume No. 1**

Sixty-ninth Revised Sheet No. 10  
Sixty-eighth Revised Sheet No. 10A  
Fiftieth Revised Sheet No. 11  
Fortieth Revised Sheet No. 11A  
Thirty-ninth Revised Sheet No. 11B  
Sixteenth Revised Sheet No. 12

**First Revised Volume No. 2-A**

Third Revised Sheet No. 14

Texas Gas states that the tariff sheets are being submitted to eliminate the Fixed Monthly Take-Or-Pay (TOP) Charge, which expired with Texas Gas's January 1993 invoice (1/31/93) and to remove the current TOP Volumetric Surcharge one month prior to the allowed April 30, 1993 expiration date to minimize any possible overcollection.

Texas Gas requests an effective date of April 1, 1993, for the proposed tariff sheets.

Texas Gas states that copies of the revised tariff sheets are being mailed to Texas Gas's sales customers and interested state commissions.

Texas Gas will maintain copies of this filing at its Owensboro, Kentucky, offices for public inspection during regular business hours.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before April 8, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**  
*Secretary.*

[FR Doc. 93-8039 Filed 4-6-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-202-010]

**Trunkline Gas Co., Refund Report**

April 1, 1993.

Take notice that on March 12, 1993, Trunkline Gas Company (Trunkline) filed its report of a refund made to Michigan Gas Utilities (MGU) in compliance with Commission order issued February 11, 1993, that required Trunkline to refund to MGU the Order No. 94 costs paid to Trunkline by MGU, with interest.

Trunkline states that it refunded \$1,077,086.59, including interest computed through March 12, 1993, in Order No. 94 costs paid to Trunkline by MGU.

Trunkline states that a copy of the information was sent to MGU and the respective state regulatory commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before April 8, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,  
Secretary.

[FR Doc. 93-8037 Filed 4-6-93; 8:45 am]  
BILLING CODE 6717-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-4611-T]

### Scientific Conference on the Biological and Health Effects of Radiofrequency Radiation

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The United States Environmental Protection Agency (EPA) will hold a scientific conference to assess the current knowledge about the

biological and health effects of radiofrequency (RF) radiation. Experts have been invited to present papers and participate on panels to address RF radiation issues of special interest to the U.S. Environmental Protection Agency. The meeting is open to the public without advance registration.

DATES: The Conference will run from 8:30 a.m. to 5:30 p.m. on April 26 and 27, 1993.

ADDRESSES: The Conference will be held at the Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland 20814, (301) 652-2000.

FOR FURTHER INFORMATION CONTACT: Further information on attending the Conference may be obtained by calling the Radiofrequency Radiation Conference Information Line at (703) 218-2565.

Dated: March 29, 1993.

Eugene Durman,

Director, Office of Radiation and Indoor Air.

[FR Doc. 93-8127 Filed 4-6-93; 8:45 am]

BILLING CODE 6560-50-M

[OPP-66174; FRL 4577-2]

### Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act

(FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by July 6, 1993, orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (H7502C), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 220, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, 703-305-5761.

### SUPPLEMENTARY INFORMATION:

#### I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the *Federal Register* before acting on the request.

#### II. Intent to Cancel

This Notice announces receipt by the Agency of requests to cancel some 23 pesticide products registered under Section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1.

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000352-00358	Du Pont Benomyl 50W	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 CA-88-0006	Du Pont Lorox DF Weed Killer	3-(3,4-Dichlorophenyl)-1-methoxy-1-methylurea
000359 FL-87-0002	Mocap Nematocide-Insecticide 15% Granular	O-Ethyl S,S-dipropyl phosphorodithioate
000876 MT-79-0004	Banvel D Herbicide	Dimethylamine 3,6-dichloro-o-anisate
001386-00083	Unico Malathion Wettable Powder	O,O-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
001386-00403	Unico 5% Malathion Dust	O,O-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
001386-00636	Smith Douglass Malathion 10% Dust	O,O-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
001386-00637	Smith Douglass Malathion 5% Dust	O,O-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
001839-00048	BTC 812	Isopropanol
002596-00041	Hartz Algi Stop	Octyl dodecyl dimethyl ammonium chloride
002935 CA-79-0146	Wilbur-Ellis Snail & Slug Bait	Streptomycin sulfate
005481 PA-79-0019	DDVP Technical Grade Organophosphorus Insecticide	4-(Methylthio)-3,5-xylyl methylcarbamate
005905-00136	Helena Brand Ethion Emulsifiable Liquid Insecticide Acaricide	2,2-Dichlorovinyl dimethyl phosphate
005905-00188	Helena Brand Ethion 8	O,O,O',O'-Tetraethyl S,S'-methylene bis(phosphorodithioate) Aliphatic petroleum hydrocarbons
005905 FL-85-0008	Helena Brand Cythion the Premium Grade Malathion	O,O,O',O'-Tetraethyl S,S'-methylene bis(phosphorodithioate) Aliphatic petroleum hydrocarbons
036488-00032	Ringer Aphid Mite Attack/Indoor Plants	O,O-Dimethyl phosphorodithioate of diethyl mercaptosuccinate Potassium salts of fatty acids

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
038167 FL-89-0035 042697-00015	Helena Brand Cython the Premium Grade Malathion Safer Agro-Chem's Indoor Flea Guard Concentrate	O,O-Dimethyl phosphorodithioate of diethyl mercaptosuccinate Potassium salts of fatty acids
056228 ME-92-0003	Compound DRC-1339 Concentrate-Feedlots	3-Chloro- <i>p</i> -toluidine hydrochloride
060182 FL-82-0072	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
060182 FL-87-0017	Resmethrin EC 26 Insect Spray	(5-Benzyl-3-furyl)methyl methyl(propenyl)cyclopropanecarboxylate
060182 FL-87-0018	Talstar 10WP Insecticide/miticide	(2-Methyl(1,1-biphenyl)-3-yl)methyl 3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate
064000 AZ-91-0005	Fruit Doctor	2,2-dimethyl-3-(2-

Unless a request is withdrawn by the registrant within 90 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 90-day period. The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000352	E. I. Du Pont Denemours & Co., Inc., Barley Mill Plaza, Walker's Mill, Wilmington, DE 19880.
000359	Rhone-Poulenc Agrochemical Division, 2 T. W. Alexander Drive, Box 12014, Research Triangle Park, NC 27709.
000876	Velsicol Chemical Corp., 10400 W. Higgins Rd., Suite 600, Rosemont, IL 60018.
001386	Universal Cooperatives Inc., Box 460, 7801 Metro Parkway, Minneapolis, MN 55440.
001839	Stepan Co., 22 W. Frontage Rd., Northfield, IL 60093.
002596	Hartz Mountain Corp., 700 Frank E. Rodgers Blvd., So, Harrison, NJ 07029.
002935	Wilbur Ellis Co., 191 W. Shaw Ave., Fresno, CA 93704.
005481	Arvac Chemical Corp., 4100 E. Washington Blvd., Los Angeles, CA 90023.
005905	Helena Chemical Co, 6075 Popular Ave - Suite 500, Memphis, TN 38119.
036488	Ringer Corp., 9959 Valley View Rd., Eden Prairie, MN 55344.
038167	Setre Chemical Co, 6075 Poplar Ave., Suite 500, Memphis, TN 38119.
042697	Safer Inc., c/o Delta Analytical Corp., 1414 Fenwick Ln, Silver Springs, MD 20910.
056228	U. S. Dept of Agriculture, Animal & Plant Health Inspection, Federal Building, Room 533, Hyattsville, MD 20782.
060182	Land, Epcot Center, Box 10000, Lake Buena Vista, FL 32830.
064000	Arizona Grape Growers Association, Box 144, Waddell, AZ 85335.

### III. Loss of Active Ingredients

Unless these requests for cancellation are withdrawn, one pesticide active ingredient will no longer appear in any registered products. Those who are concerned about the potential loss of this active ingredient for pesticidal use are encouraged to work directly with the registrant to explore the possibility of their withdrawing the request for cancellation. This active ingredient is listed in the following Table 3 with the EPA Company Number of the registrant:

TABLE 3.—ACTIVE INGREDIENTS WHICH WOULD DISAPPEAR AS A RESULT OF REGISTRANTS' REQUESTS TO CANCEL

CAS No.	Chemical Name	EPA Company No.
10361-18-7	Octyo dodecyl dimethyl ammonium chloride	001839

### IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before [insert date 90 days after date of publication in the *Federal Register*.] This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

### V. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in *Federal Register* No. 123, Vol. 56, dated June 26, 1991. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders. Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for

shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

Dated: March 29, 1993.

Douglas D. Camp, Director, Office of Pesticide Programs.

[FR Doc. 93-8123 Filed 4-6-93; 8:45 am]

BILLING CODE 6560-50-F

[OPP-180888; FRL 4580-4]

**Receipt of Application for Emergency Exemption to use Tebuconazole; Solicitation of Public Comment**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has received a specific exemption request from the Alabama Department of Agriculture (hereafter referred to as the "Applicant") for use of the pesticide tebuconazole (CAS No. 107534-96-3) to control Rhizoctonia limb rot and Southern stem rot on up to 120,000 acres of peanuts in Alabama. In accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

**DATES:** Comments must be received on or before April 22, 1993.

**ADDRESSES:** Three copies of written comments, bearing the identification notation "OPP-180888," should be submitted by mail to: Public Response and Human Resource Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. In person, bring comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Susan Stanton, Registration Division (H7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: 6th Floor, Crystal Station I, 2800 Jefferson Davis Highway, Arlington, VA 22202, (703-308-8327).

**SUPPLEMENTARY INFORMATION:** Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for the use of the fungicide tebuconazole, available as Folicur 3.6F from Miles, Inc., to control Southern stem rot and Rhizoctonia limb rot on up to 120,000 acres of peanuts in Alabama. Information in accordance with 40 CFR part 166 was submitted as part of this request.

According to the Applicant, Southern stem rot, caused by the fungus, *Sclerotium rolfsii*, is responsible for yield losses in excess of 40 percent in some Alabama peanut fields, resulting in statewide economic losses of approximately \$45 million annually. The Applicant attributes the stem rot epiphytic to a combination of factors, including the large peanut acreage in Alabama, poor cropping practices due to land limitations, and the absence of efficacious pesticides to control the disease. Rhizoctonia limb rot, caused by the fungus, *Rhizoctonia solani*, has emerged as another important disease of peanuts in the southeastern U.S., causing yield losses in Alabama of 4 to 8 percent annually, valued at \$6 million to \$8 million. According to the Applicant, there are no pesticides registered and no alternative practices available to control this disease.

Under the proposed exemption, up to 4 ground applications of Folicur 3.6F would be made at 0.5 pint of product (0.225 pounds a.i.) per acre. A maximum of 2.0 pints of product (0.9

pounds a.i.) would be applied per acre per season. No applications would be made within 120 days of harvest. A maximum of 30,000 gallons of product (108,000 pounds a.i.) would be needed to treat up to 120,000 acres of peanuts.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require that the Agency publish notice of receipt in the *Federal Register* and solicit public comment on an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide) [40 CFR 166.24 (a)(1)]. Tebuconazole is a new chemical. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above. The Agency will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Alabama Department of Agriculture.

Dated: March 24, 1993.

Lawrence E. Culleen, Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93-7876 Filed 4-6-93; 8:45 am]

BILLING CODE 6560-50-F

**EXPORT-IMPORT BANK OF THE UNITED STATES**

[Public Notice 19]

**Agency Forms Submitted for OMB Review**

**AGENCY:** Export-Import Bank of the United States.

**ACTION:** In accordance with the provisions of the Paperwork Reduction Act of 1980, Eximbank has submitted a proposed collection of information to the Office of Management and Budget for review.

**PURPOSE:** Eximbank is the agency that facilitates U.S. goods and services through a variety of programs including Eximbank Insurance. This program enables U.S. exporters to compete fairly in foreign markets on the basis of price and product.

**SUMMARY:** The following summarizes the information collection proposal submitted to OMB.

- (1) Type of request: New.
- (2) Number of forms submitted: 9.
- (3) Form Numbers and Title of information collection:

(1) EIB-92-45 Application for Export Credit Insurance Financing or Operating Lease Coverage;

- (2) EIB-92-50 Application for Multibuyer Export Credit Insurance Policy;
- (3) EIB-92-64 Application for Short-Term Single-Buyer Policy (For Exporters Only);
- (4) EIB-92-68 Application for Export Credit Insurance Trade Association Policy;
- (5) EIB-92-72 Application for Export Credit Insurance Umbrella Policy;
- (6) EIB-92-80 Broker Registration Form;
- (7) EIB-92-34 Application for Quotation-Export Credit Insurance Commercial Bank Insureds;
- (8) EIB-92-41 Application for Short-Term Single-Buyer Coverage Financial Institution Buyer Credit Policies;
- (9) EIB-92-48 Application for Export Credit Insurance Medium-Term Single Sale, Repetitive, or Combined Short-Term/Medium-Term Coverage.

**(4) Frequency of use:** Applications submitted one time, renewals annually.

**(5) Respondents:** Entities involved in the export of U.S. goods and services including exporters, banks, insurance brokers and non-profit or state and local governments acting as facilitators.

**(6) Estimated total number of annual responses:** 1,200 (per form).

**(7) Estimated total number of hours needed to fill out the form:** 1,200 (1 hour per form).

**ADDITIONAL INFORMATION OR COMMENTS:** Copies of the proposed application may be obtained from Helene H. Wall, Agency Clearance Officer, (202) 566-8111. Comments and questions should be directed to Mr. Jeff Hill, Office of Management and Budget, Information and Regulatory Affairs, room 3235, New Executive Office Building, Washington, DC 20503, (202) 395-3176. All comments should be submitted within two weeks of this notice; if you intend to submit comments but are not able to meet this deadline, please advise by telephone that comments will be submitted late.

Dated: March 31, 1993.

**Helene H. Wall,**  
Agency Clearance Officer.

[FR Doc. 93-8065 Filed 4-6-93; 8:45 am]

BILLING CODE 6690-01-M

#### FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-3104-EM]

#### Kentucky; Amendment to Notice of an Emergency Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of an emergency for the State of Kentucky (FEMA-3104-EM), dated March 16, 1993, and related determinations.

**EFFECTIVE DATE:** March 25, 1993.

#### FOR FURTHER INFORMATION CONTACT:

Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

**SUPPLEMENTARY INFORMATION:** The notice of an emergency for the State of Kentucky dated March 16, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of March 16, 1993:

Assistance for required emergency measures for a period of five (5) days beginning on March 13 to open critical emergency access on collector roads and streets, and on minor and principal arterial roads for emergency vehicles in the counties of Allen and Green.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

**Richard W. Krimm,**  
Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93-8079 Filed 4-6-93; 8:45 am]

BILLING CODE 6710-02-M

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

**Richard W. Krimm,**  
Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93-8077 Filed 4-6-93; 8:45 am]

BILLING CODE 6710-02-M

[FEMA-3095-EM]

#### Tennessee; Amendment to Notice of an Emergency Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of an emergency for the State of Tennessee (FEMA-3095-EM), dated March 14, 1993, and related determinations.

**EFFECTIVE DATE:** March 25, 1993.

#### FOR FURTHER INFORMATION CONTACT:

Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

**SUPPLEMENTARY INFORMATION:** The notice of an emergency for the State of Tennessee dated March 14, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of March 14, 1993:

Assistance for required emergency measures for a period of five (5) days beginning on March 13 for opening critical emergency access on collector roads and streets, minor and principal arterial roads for emergency vehicles in the county of Sevier.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

**Richard W. Krimm,**  
Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93-8078 Filed 4-6-93; 8:45 am]

BILLING CODE 6710-02-M

#### FEDERAL MARITIME COMMISSION

#### Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders,

Assistance for required emergency

measures for a period of five (5) days beginning on March 13 to open critical emergency access on collector roads and streets, and on minor and principal arterial roads for emergency vehicles in the City of Baltimore.

Federal Maritime Commission,  
Washington, DC 20573.

Aero Expediting Inc., 29205 Airport Drive, Romulus, MI 48174, Officers: Colleen E. Taylor, President, Kathleen A. Raymor, Vice President, David M. Opru, Vice President Int'l.

Koo Forwarding, 819 Princeton St., Santa Monica, CA 90403, Howard Y. Koo, Sole Proprietor.

AMR Shipping Ltd., 9 Murray Street, New York, NY 10007, Officers: Alberto M. Recca, President/Director/Stockholder, Anna Marie Gannon, Treasury/Secretary.

Oceanwide Shipping Inc., 2455 W. Bryn Mawr, #2F, Chicago, IL 60605, Officers: Magdy M. El-Hawary, President/Director, Marinam El-Hawary, Secretary.

American Exhibition Services International, Inc., 1600 Busse Road, Elk Grove Village, IL 60007, Officers: Jeanette Mucha, President/Stockholder, Michelle Kobelinski, Vice President, Gene F. Blum, Director.

Trato International Forwarders, 6503 S.W. 107 Place, Miami, FL 33173, Gloria V. Trapage-Torres, Sole Proprietor.

Express Shipping International, 700 Park Ave., #4D, Baltimore, MD 21201, Joseph M. Issa, Sole Proprietor.

Hopkins Services, 2223 Landscape Way, Richmond, TX 77469, James E. Hopkins, Sole Proprietor.

Advanced International Freight Services, Inc., 1722 Nokia Way, Eagan, MN 55122, Officer: Wayne Bachman, President.

Freight Brokers International Chicago L.P., 120 Old Higgins Road, Des Plaines, IL 60018, Officer: Julia L. Ertler, President.

By the Federal Maritime Commission.

Dated: April 1, 1993.

Joseph C. Polking,  
Secretary.

[FR Doc. 93-8015 Filed 4-6-93; 8:45 am]  
BILLING CODE 6730-01-M

## FEDERAL RESERVE SYSTEM

**Citizens Bancorp Investment, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities**

The organization listed in this notice has 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.

The 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.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 30, 1993.

**A. Federal Reserve Bank of Atlanta** (Zane R. Kelley, Vice President) 104 Marietta Street, NW, Atlanta, Georgia 30303:

**1. Citizens Bancorp Investment, Inc.**, Lafayette, Tennessee; to acquire Town and Country Finance Company, Lafayette, Tennessee; and thereby engage in making, acquiring, and servicing loans or other extensions of credit for its own account and for the account of others, pursuant to § 225.25(b)(1); and in insurance agency and underwriting activities pursuant to § 225.25(b)(8)(ii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 1, 1993.

**Jennifer J. Johnson,**  
Associate Secretary of the Board.

[FR Doc. 93-8066 Filed 4-6-93; 8:45 am]  
BILLING CODE 6210-01-F

**Comerica Incorporated, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities**

The companies listed in this notice have filed an application under §

225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(e)(1)) 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 commence or to engage *de novo*, either directly or through a subsidiary, 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 the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 27, 1993.

**A. Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

**1. Comerica Incorporated**, Detroit, Michigan; to engage *de novo* through its subsidiary, Comerica Community Development Corporation, Detroit, Michigan, in making equity and debt investments in corporations or projects designed to promote community welfare, primarily economic rehabilitation and development of low income areas by providing housing, services or jobs for residents pursuant to § 225.25(b)(6) of the Board's Regulation Y.

**B. Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

**1. Marquette National Corporation,** Chicago, Illinois; to engage *de novo* through its subsidiary, Marquette Community Development Corporation, Chicago, Illinois, in forming a community development corporation to purchase, rehabilitate and resell affordable housing to low and moderate income families pursuant to § 225.25(b)(6) of the Board's Regulation Y. These activities will be conducted in Chicago, Illinois.

Board of Governors of the Federal Reserve System, April 1, 1993.

**Jennifer J. Johnson,**  
*Associate Secretary of the Board.*  
[FR Doc. 93-8067 Filed 4-6-93; 8:45 am]

BILLING CODE 6210-01-F

**James Richard Gatlin, 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 April 27, 1993.

**A. Federal Reserve Bank of Dallas**  
(W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

**1. James Richard Gatlin**, Powderly, Texas; to acquire an additional 0.90 percent for a total of 25.66 percent; and Harold Lee Blackburn, Blossom, Texas, to acquire an additional 0.91 percent for a total of 25.45 percent of the voting shares of Red River Financial Corporation, Detroit, Texas, and thereby indirectly acquire Community National Bank, Detroit, Texas.

**2. William Osborn Barrett**, San Antonio, Texas; to acquire an additional 22.54 percent for a total of 23.17 percent, and Marcus Barrett, San Antonio, Texas, to acquire an additional 22.54 percent for a total of 22.92 percent of the voting shares of Stone Oak Bankshares, Inc., San Antonio, Texas,

and thereby indirectly acquire Stone Oak National Bank, San Antonio, Texas.

Board of Governors of the Federal Reserve System, April 1, 1993.

**Jennifer J. Johnson,**  
*Associate Secretary of the Board.*  
[FR Doc. 93-8068 Filed 4-6-93; 8:45 am]

BILLING CODE 6210-01-F

Board of Governors of the Federal Reserve System, April 1, 1993.

**Jennifer J. Johnson,**  
*Associate Secretary of the Board.*  
[FR Doc. 93-8069 Filed 4-6-93; 8:45 am]

BILLING CODE 6210-01-F

**Huntington Bancshares Incorporated, et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking 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 April 30, 1993.

**A. Federal Reserve Bank of Atlanta**  
(Zane R. Kelley, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

**1. HNB Holding Company, Inc.**, Headland, Alabama; to become a bank holding company by acquiring 80.63 percent of the voting shares of Headland National Bank, Headland, Alabama.

**B. Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

**1. Republic Bancshares, Inc.**, Duluth, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Republic Bank, Inc., Duluth, Minnesota.

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) 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, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the 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 or the offices of the Board of Governors not later than April 30, 1993.

**A. Federal Reserve Bank of Cleveland**  
(John J. Wixted, Jr., Vice President) 1455  
East Sixth Street, Cleveland, Ohio  
44101:

**1. Huntington Bancshares**

Incorporated, Columbus, Ohio; and Huntington Bancshares West Virginia, Inc., Columbus, Ohio, to merge with CB&T Financial Corp., Fairmont, West Virginia, and thereby indirectly acquire Community Bank & Trust, N.A., Fairmont, West Virginia; Community Bank & Trust of Ritchie County, Harrisville, West Virginia; Bank of Hundred, Inc., Hundred, West Virginia; and CBT-Westover Bank, Inc., Westover, West Virginia; and CB&T Clarksburg Corp., Fairmont, West Virginia, and thereby indirectly acquire Community Bank & Trust of Harrison County, Clarksburg, West Virginia, and Community Bank & Trust of Randolph County, Elkins, West Virginia.

In connection with this application, Applicants also propose to acquire CB&T Capital Investment Company, Fairmont, West Virginia, and thereby engage in making and servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 1, 1993.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 93-8070 Filed 4-6-93; 8:45 am]

**BILLING CODE 8210-01-F**

Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the *Federal Register*.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

**FEDERAL TRADE COMMISSION**

**Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules**

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by title II of the Hart-Scott-Rodino Antitrust

**TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 031593 AND 032693**

Name of acquiring person, Name of acquired person, Name of acquired entity	PMN No.	Date terminated
Caterpillar, Inc .....		
Anchor Coupling Company, Inc .....	93-0693	03/15/93
Anchor Coupling Company, Inc .....	93-0739	03/15/93
General Electric Company .....	93-0764	03/15/93
First Chicago Corporation .....	93-0666	03/17/93
JB One, Inc., Tealco, Inc., Washtenaw Hotel .....	93-0761	03/17/93
Broadcasting Partners, Inc .....	92-1213	03/18/93
Norman J. Patti .....	93-0743	03/19/93
WNY-FM Inc .....	93-0771	03/19/93
Clyde Wm. Engle .....	93-0774	03/19/93
Alba-Waldensian, Inc .....	93-0775	03/19/93
Alba-Waldensian, Inc .....	93-0776	03/19/93
Fleming Companies, Inc .....	93-0777	03/19/93
Mr. Robert R. Onstead .....	93-0778	03/19/93
Tom Thumb Food & Drugs, Inc .....	93-0779	03/19/93
Petroleos de Venezuela, S.A .....	93-0780	03/19/93
Amoco Corporation .....	93-0781	03/19/93
Amoco Oil Company's East/South Asphalt Business Unit .....	93-0782	03/19/93
Ferro Corporation .....	93-0783	03/19/93
Imperial Chemical Industries PLC .....	93-0784	03/19/93
The Gildden Company .....	93-0785	03/19/93
Swift Energy Company .....	93-0786	03/19/93
Electrafinia S.A .....	93-0787	03/19/93
American Comatra, Inc. and Comatra Oil & Gas, Inc .....	93-0788	03/19/93
U S West, Inc .....	93-0789	03/19/93
U S West, Inc .....	93-0790	03/19/93
Greeley MSA Limited Partnership, Ft. Collins MSA .....	93-0791	03/19/93
K N Energy, Inc .....	93-0792	03/19/93
Panhandle Eastern Corporation .....	93-0793	03/19/93
Panhandle Eastern Pipe Line Company .....	93-0794	03/19/93
Chevron Corporation .....	93-0795	03/19/93
Exxon Corporation .....	93-0796	03/19/93
Exxon Corporation .....	93-0797	03/19/93
Exxon Corporation .....	93-0798	03/19/93
Chevron Corporation .....	93-0799	03/19/93
Chevron Corporation .....	93-0800	03/19/93
Ronald O. Perelman .....	93-0801	03/19/93
SCI Television, Inc .....	93-0802	03/19/93
SCI Television, Inc .....	93-0803	03/19/93
Ronald O. Perelman .....	93-0804	03/19/93
Irving Pollack .....	93-0805	03/19/93
WTVT, Inc. and WTWT License, Inc .....	93-0806	03/19/93
Teleflex Incorporated .....	93-0807	03/19/93
Blackstone Capital Partners, L.P .....	93-0808	03/24/93
Collins & Aikman Group, Inc. and Cepco Inc .....	93-0809	

## TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 031593 AND 032693—Continued

Name of acquiring person, Name of acquired person, Name of acquired entity	PMN No.	Date terminated
Teleflex Incorporated .....		
Wasserstein, Perella Partners, L.P .....	93-0745	03/24/93
Collins & Aikman Group, Inc. and Capco Inc .....		
Norcen Energy Resources Limited .....		
North Canadian Oils Limited .....	93-0747	03/24/93
North Canadian Oils Limited .....		
Acadia Partners, L.P .....		
UCC Investors Holding, Inc .....	93-0748	03/25/93
UCC Investors Holding, Inc .....		
Berwind Group Partners .....		
Larry G. McKenzie .....	93-0768	03/25/93
McKenzie Taxidermy Supply, Inc .....		
Triton Financial Corporation .....		
Euro Brokers Investment Corporation .....	93-0789	03/25/93
Euro Brokers Investment Corporation .....		
Arrow Electronics, Inc .....		
Zeus Components, Inc .....	93-0789	03/25/93
Zeus Components, Inc .....		
Bausch & Lomb Incorporated .....		
Dahlberg, Inc .....	93-0742	03/26/93
Dahlberg, Inc .....		
InterWest Partners IV, a limited partnership .....		
Lester D. Speyer .....	93-0748	03/26/93
Speyer Investments, Inc .....		
American Bankers Insurance Group, Inc .....		
Primerica Corporation .....	93-0752	03/26/93
Voyager Group, Inc., Voyager Life Insurance Company .....		
Dresser Industries, Inc .....		
Henry Zarros .....	93-0778	03/26/93
TK Valve & Manufacturing, Inc .....		
Dresser Industries, Inc .....		
Jack Zarrow .....	93-0781	03/26/93
TK Valve & Manufacturing, Inc .....		
ITT Corporation .....		
AMBAC Inc .....		
Airport Hotel Associates #1, Ltd., Airport Hotel .....	93-0814	03/26/93

**FOR FURTHER INFORMATION CONTACT:**

Sandra M. Peay or Renee A. Horton,  
Contact Representatives, Federal Trade  
Commission, Premerger Notification  
Office, Bureau of Competition, room  
303, Washington, DC 20580, (202) 326-  
3100.

By Direction of the Commission.

**Donald S. Clark,**  
Secretary.

[FR Doc. 93-8131 Filed 4-6-93; 8:45 am]

BILLING CODE 8750-01-M

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Health Resources and Services Administration****Special Project Grants; Maternal and Child Health (MCH) Services; MCH Community Integrated Service Systems (CISS) Set-Aside Program**

**AGENCY:** Health Resources and Services Administration (HRSA).

**ACTION:** Extension of application deadline date.

The Special Project Grants; Maternal and Child Health (MCH) Services; MCH Community Integrated Service Systems (CISS) Set-Aside Program notice

deadline date, published on March 17, 1993, beginning on page 14408, is hereby extended to June 16, 1993.

The rest of the notice remains as published.

Dated: April 1, 1993.

**Robert G. Harmon, M.D., M.P.H., Administrator.**

[FR Doc 93-8072 Filed 4-6-93; 8:45 am]

BILLING CODE 4160-15-P

**Indian Health Service****Announcement of Financial Assistance for Tribal Recruitment and Retention of Health Professionals into Indian Health Programs**

**AGENCY:** Indian Health Service, HHS.

**ACTION:** Notice of application for financial assistance awards for tribal recruitment and retention of health professionals into Indian health programs.

**SUMMARY:** The Indian Health Service (IHS) announces that competitive applications are now being accepted for financial assistance awards to fund American Indian and Alaska Native tribes and tribal and Indian health organizations in the recruitment, placement, and retention of health

professionals to meet the staffing needs of Indian health programs. Indian health programs are defined in the statute, Indian Health Care Amendments of 1988 (25 U.S.C. 1616a), as any health program or facility funded, in whole or part, by the IHS for the benefit of Indians and administered—

(1) Directly by the IHS;  
(2) By any Indian tribe or tribal or Indian organization pursuant to a contract under—

(a) The Indian Self-Determination Act (Pub. L. 93-638); or

(b) Section 23 of the Act of April 30, 1908 (25 U.S.C. 47), popularly known as the "Buy-Indian" Act; or

(3) By an urban Indian organization pursuant to Title V of Public Law 94-437.

These financial assistance awards are established under the authority of section 110 of the Indian Health Care Improvement Act, Public Law 94-437, as amended by Public Law 100-713 and Public Law 102-573. There will be one funding cycle during fiscal year (FY) 1993. This program is described at 93.954 in the Catalog of Federal Domestic Assistance. Financial assistance for this program will be awarded and administered in accordance with this announcement.

Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (Indian Tribes), Code of Federal Regulations (CFR) Title 45, part 92, or Administration of Grants for Non-profit Organizations, CFR Title 45, part 74; the Public Health Service Grant Policy Statement; and applicable Office of Management and Budget Circulars. Executive Order 12372 requiring intergovernmental review is not applicable to this program.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objective of Healthy People 2000, a PHS-led activity for setting priority areas. This program announcement is related to the priority area of Clinical and Preventive Services. Interested applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report: Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone 202-783-3238).

**DATES:** A. Application Receipt Date—An original and two (2) copies of the completed application must be submitted with all required documentation to the Grants Management Branch, Division of Acquisition and Grants Operations, 12300 Twinbrook Parkway, suite 300, Rockville, Maryland 20852 by close of business (COB) May 14, 1993.

Applications shall be considered as meeting the deadline if they are either: (1) Received on or before the deadline with a hand carried application received by COB 5 p.m.; or (2) postmarked on or before the deadline date and received in time to be reviewed along with all other timely applications. A legibly dated receipt from a commercial carrier or the United States Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing.

Late applications will be returned to the applicant and will not be considered for funding.

B. Application Review: June 22-23, 1993.

C. Applicants Notified of Results (approved, approved unfunded, or disapproved) on or about July 16, 1993.

D. Anticipated Project Start Date: on or about August 1, 1993.

**CONTACTS FOR ASSISTANCE:** For program information, contact Mr. Darrell Pratt, Chief, Health Professions Support Branch, Division of Health Professions Recruitment and Training, Indian

Health Service, 12300 Twinbrook Parkway, Suite 100, Rockville, Maryland 20852, telephone (301) 443-4242. For grants information, contact Ms. Kay Carpenter, Grants Management Officer, Grants Management Branch, Division of Acquisition and Grants Operations, Indian Health Service, 12300 Twinbrook Parkway, Suite 300, Rockville, Maryland 20852, telephone (301) 443-5204.

**SUPPLEMENTARY INFORMATION:** This announcement provides information on the general program purpose, eligibility, program priority, programmatic objectives and type of award document, fund availability, period of support, application process, required documentation, review process, and review criteria.

#### A. General Program Purpose

Section 110 of Public Law 100-713 authorizes the IHS to make financial assistance awards to Indian tribes and tribal and Indian health organizations to enable them to recruit, place, and retain health professionals to fill critical vacancies and to meet the staffing needs of Indian health programs and facilities including those administered directly by the IHS. However, the selection or non-selection of individuals for Federal Government employment and the direction and control of Federal employees including the approval of position descriptions and performance standards for Federal employees are Federal functions that may only be performed by Federal officials.

#### B. Eligible Applicants

Any federally recognized Indian tribe or tribal or Indian health organization is eligible to apply for a grant. For purposes of this announcement, Indian Health organization is defined at CFR title 42, part 36.302(i) as "a non-profit corporate body composed of Indians which provides for the maximum participation of all interested Indian groups and individuals and which has the provision of health programs as its principal function." This means that the following types of organizations could be eligible: urban Indian organizations; Indian health boards; "Buy Indian" contractors, if they are non-profit and health oriented; and other national and regional non-profit Indian organizations having a health focus. The IHS components, i.e., Area Offices and service units, are not eligible to apply under this announcement.

#### C. Program Priority

First priority will be given to those applicants who propose to recruit for health programs and facilities that IHS

has designated as Tier 1 sites for the IHS Loan Repayment Program for physicians, nurses, and other health professions. Tier 1 designation identifies IHS and tribally contracted health programs that experience high vacancy and staff turnover rates. For purposes of this announcement, the Tier 1 listings currently in effect will be used for priority determination. These listings are included in the IHS Grant Application Kit (refer to section G, Application Process, of this announcement).

The Tier listings do not include urban Indian health programs. Urban Indian health programs will be considered as Tier 1 Equivalents if they: (1) Address five established criteria that indicate need; (2) score 30 points or more on these criteria; and (3) provide documentation verifying their responses to the criteria. The criteria for Tier 1 and Tier 1 Equivalents are included in the IHS Grant Application Kit.

Those sites designated as Tiers 2 and 3 will be considered as the second priority and will be funded only if monies remain available after all approved Tier 1 and Tier 1 Equivalents have been awarded.

#### D. Programmatic Objectives and Type of Award

The objectives of this program are to recruit, to place, and to retain health professionals in areas identified by the IHS as having high vacancy and staff turnover rates. Demonstration projects will be funded to develop and test innovative strategies that may be replicated at other locations. Applicants must address activities for all three objectives—recruitment, placement, and retention.

Organizations that are approved for funding to carry out activities related to recruitment of personnel for health programs and facilities that they operate or that are operated by other tribes, tribal or Indian organizations will be awarded as grants. Organizations that receive health care directly from the IHS and are approved to carry out activities related to recruitment of Federal staff for IHS Area Offices; service units, Hospitals, and Health Centers will be awarded cooperative agreements. Cooperative agreements are financial assistance awards that require the substantial programmatic involvement of the Federal Government. Examples of such involvement in these projects are:

- The IHS personnel specialists and health professional recruiters must provide vacancy listings, copies of position descriptions and selection criteria for Federal Civil Service and commissioned corps employees.

• The IHS staff must be responsible for determining qualifications of candidates and interviewing and selecting employees. Specific programmatic involvement by the IHS in a project will be negotiated with an approved applicant before award of a cooperative agreement.

Applicants who propose to recruit for health programs operated by tribes and tribal and Indian health organizations will be given equal opportunity to compete with applicants who propose recruitment activities for programs operated directly by the IHS.

#### E. Fund Availability

In FY 1993, it is anticipated that approximately \$523,500 will be available for recruitment, placement, and retention awards. It is anticipated that up to 7 awards will be funded. Although it is expected that project funding needs will vary depending on the scope of work, the anticipated funding range, inclusive of direct and indirect costs, is \$85,000 to \$100,000. Only one project grant will be awarded per Indian tribe or tribal or Indian health organization.

#### F. Period of Support

Projects will be funded for annual budget periods with project periods of up to 3 years, dependent upon the scope of work. The second and third year continuations will be based on the following: (1) Satisfactory progress; (2) availability of funds; and (3) continuing need of the IHS for the program.

#### G. Application Process

An IHS Grant Application Kit may be obtained from the Grants Management Branch, Division of Acquisition and Grants Operations, 12300 Twinbrook Parkway, Suite 300, Rockville, Maryland 20852. Telephone (301) 443-5204. This kit includes Standard Form PHS 5161-1 (Rev. 7/92); Standard Forms 424, 424A, and 424B (Rev. 4/88); Application Receipt Card—PHS 3038 (Rev. 5/90); Tier 1 Listings; Criteria for Tier 1 Equivalents; instructions for preparing the program narrative; and IHS Application Check List.

The application must comply with the following format:

1. Abstract (1 page)—Summarizes the project
2. Table of Contents (1 page)
3. Narrative (10 pages)
4. Budget and Justification
5. Appendix (résumés, position descriptions, information on contractors/consultants, tribal resolutions/letters of support, responses to criteria for Tier 1

#### Equivalents and supporting documentation)

#### Narrative

The following instructions for the preparation of the narrative are to be used in lieu of the instructions on pages 19-21 of form PHS 5161-1. The narrative section of the application must include: (1) justification of need for assistance; (2) approach or methodology proposed, including a program evaluation; (3) adequacy of management controls, and (4) key personnel. The narrative section should be written in a manner that is clear to outside reviewers unfamiliar with activities of the applicant. It should be well organized, succinct, and contain all information necessary for reviewers to understand the project fully. THE NARRATIVE MAY NOT EXCEED TEN SINGLE-SPACED PAGES IN LENGTH, EXCLUDING ATTACHMENTS, BUDGET, AND LETTERS OF SUPPORT/TRIBAL RESOLUTIONS. Pages must be numbered!

#### 1. Need for Assistance

(a) Describe the organization submitting the application.

(b) Describe the location(s) and health profession category(ies) for which the applicant will be recruiting. Indicate if the location(s) has been identified as a Tier 1 site for the health profession category(ies). If location is an urban Indian health program, you must address the criteria for Tier 1 Equivalents (you must score 30 or more points for Tier 1 consideration). Include your responses, scores, and supporting documentation of Tier 1 Equivalents in the Appendix. Supporting documentation is not necessary if site has been designated as Tier 1, 2, or 3 on the Tier listings.

(c) Describe efforts that have been made in the past to recruit health professionals and to meet needs.

#### 2. Approach

(a) Program Objectives

1. State concisely the objectives of the project and how this project will address recruitment, placement, and retention. Be innovative.

2. Describe briefly what the project intends to accomplish and the number of Indians to benefit from the project.

3. Describe how accomplishment of the objectives will be measured (including if applicable).

4. Describe how the project has the potential to carry out objectives in an efficient and effective manner. Discuss cost effectiveness.

#### (b) Work Plan

1. The work plan section should be project specific.
2. Describe the tasks and resources needed to implement and complete this project. Be sure to address recruitment, placement, and retention.
3. Provide a task timeline (timelines) breakdown or chart.
4. Discuss data collection for the project—what data will be collected and how it will be obtained, analyzed, and maintained by the project. For example, how many people were contacted about vacancies; how many applied; how many were placed; how long they remained in the positions; etc.

5. Describe how the project will be evaluated. This is the evaluation process to determine if the project has been successful in meeting identified needs and in achieving its stated objectives. Include information on who will conduct the evaluation, the criteria to be used to evaluate results, when the evaluation will be conducted, and what will be done with the evaluation results.

6. Multi-year projects must include a description of the activities to be performed in the second and third years.

#### 3. Adequacy of Management Controls

(a) Describe where the project will be housed, i.e., facilities and equipment available.

(b) Describe the management controls of the grantee over the direction and acceptability of work to be performed.

(c) Applicant must demonstrate that the organization has adequate systems and expertise to manage Federal funds.

(d) Provide an organizational chart and indicate how the project will operate within the organization.

(e) If the applicant proposes to recruit for other tribes, tribal or Indian organizations, indicate how the applicant will interrelate with these groups to obtain vacancy information and to refer those recruited for consideration and selection. Indicate a plan for tracking placement and retention.

(f) If the applicant proposes to recruit Federal staff for IHS directly operated health programs, indicate how the applicant will interrelate with the IHS Area Office, service unit, Hospital, or Clinic to obtain vacancy information and to refer those recruited for consideration and selection. Indicate a plan for tracking placement and retention.

#### 4. Key Personnel

(a) Provide biographical sketches (résumés) and position descriptions for

the program director and other key personnel as described on pages 20-21 of form PHS 5161-1.

(b) List the qualifications and experience of consultants or contractors if their use is anticipated.

#### Budget

An itemized estimate of costs must be provided on form PHS 5161-1 (rev. date 7/92). A narrative justification must be submitted for costs by line item. Multi-year projects shall include funding requirements for the second and third years. (Grant funding may not be used to supplant existing public and private resources.)

#### Documentation of Support

##### 1. Tribal Resolution

If the applicant is an Indian tribe or tribal organization, a resolution from the tribal government supporting the project must accompany the application submission. Applications that propose services that will benefit more than one Indian tribe must include a resolution from every tribe to be served. Applications by tribal organizations will not require resolution(s) if the current tribal resolution(s) under which they operate would encompass the proposed grant activities. A statement of proof or a copy of the current operational resolution must accompany the application. If a resolution or a statement is not submitted, the application will be considered incomplete and will be returned without consideration. Indian health organizations (e.g., urban Indian health organizations, non-profit Buy Indian health organizations, etc.) are not required to submit tribal resolutions. Refer to the following section or Letters of Cooperation/Collaboration/Assistance for requirements for Indian health organizations.

##### 2. Letters of Cooperation/Collaboration/Assistance

(a) If any applicant proposes to recruit for a health program operated directly by IHS, a letter of support must be submitted by the IHS Area Director responsible for the program. In the letter, the Area Director must confirm the nature and extent of cooperation/collaboration/assistance with the applicant.

(b) An Indian health organization that proposes to carry out recruitment for Indian health programs operated by tribes, tribal organizations, or other Indian health organizations must have letters of support from each organization to be served.

#### H. Review Process

Applications that meet eligibility requirements, are complete, and conform to this announcement will be reviewed by an Ad Hoc Review Committee comprised of IHS and other Federal staff. Applications will be reviewed against established review criteria. Reviewers will assign a numerical score to each application. In making the final funding decision, the IHS will also consider recommendations of the IHS Area Office within which the applicant is located.

#### I. Review Criteria

Applications will be evaluated against the following criteria and weights:

Weights	Criteria
25	1. <i>Need</i> —Is the need for the project justified? Does proposed project target a Tier 1 site? A Tier 2 or 3 site? If a project targets urban Indian health programs, is there justification and documentation for conducting activities at that site? Do proposed efforts complement and expand past recruitment efforts?
40	2. <i>Approach</i> —Are the objectives well stated? Is the applicant's work plan for conducting the project sound and effective? Is the approach innovative? Are the activities proposed cost effective and will they lead to effective recruitment, placement, and retention? Does the applicant present a sound evaluation plan capable of determining the project's successes?
15	3. <i>Adequacy of Management Controls</i> —Is the applicant capable of successfully conducting the project both from a technical and business standpoint? Is the proposed interaction with IHS staff adequate for an application for recruitment of Federal staff? Is the budget sound in relation to the work plan and does it assure effective utilization of grant funds? Are the facilities and equipment adequate?
20	4. <i>Key Personnel</i> —Regarding the position descriptions, are the qualifications of key personnel appropriate and adequate to carry out the project? If a résumé is provided, are the individual's qualifications and experience consistent with the position description and conduct of the project?

Dated: January 29, 1993.

Everett R. Rhoades,

Assistant Surgeon General, Director.

[FR Doc. 93-8071 Filed 4-6-93; 8:45 am]

BILLING CODE 4160-18-M

#### National Institutes of Health

##### National Cancer Institute; Opportunity for a Cooperative Research and Development Agreement (CRADA) for the Scientific and Commercial Development of a Vaccine To Prevent Infection of the Human Genital Tract by Human Papillomaviruses

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice.

**SUMMARY:** The National Cancer Institute (NCI) seeks a pharmaceutical company that can effectively pursue the scientific and commercial development of a safe and effective anti-virion vaccine to prevent infection of the human genital tract by human papillomaviruses. NCI has established that papillomaviruses virion-like particles self-assemble in insect cells when the major virion protein is overexpressed. These particles induce the production of high titer antibodies that prevent papillomavirus infection in an in vitro assay. The selected sponsor will be awarded a CRADA for the development of a subunit vaccine based on the self-assembled virus-like particles.

**ADDRESSES:** Questions about this opportunity may be addressed to John Schiller, Ph.D., Senior Investigator, Division of Cancer Biology, Diagnosis and Centers, NCI, 9000 Rockville Pike, Bld 37, room 1B26, Bethesda, MD 20892, (301) 496-9513, Fax (301) 480-5322.

**DATES:** On or before June 7, 1993.

**SUPPLEMENTARY INFORMATION:** The NCI is seeking a pharmaceutical or biotechnology company which, in accordance with the requirements of the regulations governing the transfer of Government-developed agents (37 CFR part 404), can develop a vaccine based on self-assembled human papillomavirus (HPV) virion proteins, for which a patent is pending, to meet the needs of the general public with the best terms for the NCI. HPV infection of the genital tract is a common venereal disease which at the present time is not adequately controlled or effectively treated. Infection with certain genital HPV types, most frequently HPV16, is the most significant risk factor in the development of cervical cancer, the second most common cancer in women world wide. A vaccine to prevent genital HPV infection has not been critically evaluated, in large part, because no adequate source of virions or properly folded virion capsid proteins has been available for testing. In an attempt to overcome this obstacle, the NCI has expressed the papillomavirus

major capsid protein L1 in insect cells via a baculovirus vector and demonstrated that the L1 protein has the intrinsic capacity to self-assemble into virion-like particles that are morphologically indistinguishable from native virions. Self-assembly has been demonstrated for bovine papillomavirus type 1 (BPV1), rhesus monkey papillomavirus (RHPV) and HPV16. Unlike bacterially derived BPV L1, the BPV particles mimic native virions in their ability to elicit high titer antibodies that neutralized papillomavirus infection of cultured cells.

Although the minor capsid protein L2 is not required for self-assembly or the generation of neutralizing antibodies, it is incorporated into the L1 particles when co-expressed in insect cells.

In order to bring a prophylactic vaccine against human genital papillomaviruses to market, it will be necessary to develop suitable animal models, design appropriate vaccination protocols for the models, conduct the studies, and establish the efficacy of vaccination in the animals. If protection is demonstrated in the animals, it will be necessary to produce a polyvalent vaccine consisting of the virion proteins of the most prevalent genital HPV types, conduct FDA approved human trial, evaluate the results, and lastly manufacture and market an FDA approved human vaccine.

The role of the Division of Cancer Biology, Diagnosis, and Centers, NCI, includes the following:

1. NCI will provide the baculovirus vectors that induce the self-assembly of L1 and L1 plus L2 particles for bovine papillomavirus type 1 (BPV1), Rhesus monkey papillomavirus type 1 (RHPV1), and human papillomavirus type 16 (HPV16). Similar vectors for other human and animal papillomavirus are currently being developed, including HPV6, HPV11, HPV18, BPV4, and cottontail rabbit papillomavirus (CRPV).

2. NCI will provide the methodology to efficiently generate and purify the virion particles from recombinant baculovirus infected insect cells. Current procedures, employing CsCl gradient centrifugation, yield approximately 10 mg of purified L1 particles per liter of infected cells. The L1 alone and L1 plus L2 particle will be compared to determine if L2 facilitates assembly or stability of the particles.

3. NCI will provide an ELISA assay based on the self-assembled particles to measure the titer of conformationally dependent anti-virion antibodies. ELISA assays for both animal and human genital types are being developed so that anti-virion immunity can be monitored

prior to and after vaccination of the model animals and human populations.

4. NCI will evaluate the potential for using the anti-particle ELISA assay to measure current infection or previous exposure to HPV infection. The NCI will provide the necessary sera and lavages from women whose HPV status has been monitored using other procedures.

5. NCI will participate in designing, conducting and evaluating vaccine trials in animal models. At least three models are planned to be examined, RhPV which induces genital lesions with malignant potential, BPV4, which primarily infects the oral mucosa, and CRPV, which infects normal epidermis. In addition to the ELISA assays to measure seroconversion, PCR based assays are being developed to monitor papillomavirus infection.

6. If infectious virus can be produced in vitro, NCI will attempt to develop infectivity assays for HPV and RhPV which could be used to measure the neutralizing titer of the antibodies generated against our particle immunogens.

7. Relevant Patent rights are available for licensing through the Office of Technology Transfer, NIH. For further information contact: Mark Hankins, National Institutes of Health, Box OTT, Bethesda, MD 20892. (301) 496-7735, Fax (301) 402-0220.

The role of the successful corporate partner under the CRADA will include the following:

1. Generate large scale preparations of purified papillomavirus particles. This could either be accomplished by the CsCl gradient centrifugation method currently employed by the NCI or by an alternative procedure, such as chromatographic method, developed by the company.

2. Develop and optimize alternative expression systems for the generation of virion-like particles. It would be desirable for the corporate partner to attempt to develop a more cost effective method of generating the virus-like particles than the current expression in cultured insect cells. Bacterial expression is not an alternative because the L1 protein does not fold properly in bacteria. However, it is possible that expression in yeast might result in proper folding and self-assembly of L1, be amenable to large scale production, and be acceptable for a human vaccine.

3. Provide general support for the NCI's papillomavirus vaccine development program.

4. Provide funds for supporting the animal vaccination trials. This could be accomplished through contributing to the cost of the NCI studies and/or

conducting some of the studies through the company.

5. Develop and test alternative vaccination protocols. It has yet to be determined if the virus-like particles can elicit sufficiently high titer and long lasting neutralizing antibodies on genital mucosal surfaces using standard vaccination procedures. It may be necessary to test recently developed adjuvants, novel delivery vehicles or unusual vaccination protocols to achieve long lasting protection by procedures that would be acceptable for use in humans. Should such procedures be needed, a corporate partner would be expected to contribute significantly to the development of alternative vaccination protocols and their testing in the animal models described above.

6. If protection is demonstrated in the animal models, approval for human trials will be sought. The corporate partner will cooperate with the NCI in designing and drafting the applications for the trials. In addition, it will assume major responsibilities for funding and conducting the trials, evaluating the results, and preparing and filing the FDA product license.

7. If efficacy is demonstrated in the human trials, the company will be responsible for large scale production, packaging, marketing and distribution of a commercial vaccine.

Criteria for choosing the cooperating company include the following:

1. Experience in developing and testing vaccines in animal models.
2. Experience in preclinical and clinical testing and evaluation of human vaccines.
3. Experience and ability to produce, package, market, and distribute pharmaceutical products in the United States and to provide the product at a reasonable price.

4. Willingness to cooperate with the NCI in the collection, evaluation, publication and maintenance of data from animal studies and from clinical trials of the investigational agents.

5. Willingness to cost share in animal studies and clinical trials as outlined above.

6. An agreement to be bound by the DHHS rules involving human and animal subjects.

7. The aggressiveness of the development plan, including the appropriateness of milestones and deadlines for preclinical and clinical development.

8. Provisions for equitable distribution of patent rights to any inventions. Generally the rights of ownership are retained by the organization which is the employer of the inventor, with (1) an irrevocable,

nonexclusive, royalty-free license to the Government (when a company employee is the sole inventor) or (2) an exclusive or nonexclusive license to the company on terms that are appropriate (when the Government employee is the sole inventor).

Dated: March 26, 1993.

**Reid Adler,**  
Director, Office of Technology Transfer,  
National Institutes of Health.

[FR Doc. 93-8053 Filed 4-6-93; 8:45 am]  
BILLING CODE 4140-01-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**Office of the Assistant Secretary for Housing-Federal Housing Commissioner**

[Docket No. N-93-3605; FR-3495-N-01]

### Interest Rate for the Section 235(r) Mortgage Insurance Program

**AGENCY:** Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

**ACTION:** Notice of change in interest rate.

**SUMMARY:** this notice announces a change in the maximum interest rate for mortgages to be insured under section 235(r) of the National Housing Act. The section 235(r) maximum interest rate is to be determined by the Secretary of HUD and published in the *Federal Register*. Mortgage market conditions now dictate that the Secretary decrease the section 235(r) maximum rate from 8.00 percent to 7.50 percent. There is no change being made in the maximum margin of additional percentage points that may be added to the maximum rate if the established conditions are met.

Therefore, the maximum for the premium section 235(r) interest rate will be 9.00 percent (7.50 percent for the rate of interest and 1.50 percent for the margin of additional percentage points).

**EFFECTIVE DATE:** April 7, 1993.

#### FOR FURTHER INFORMATION CONTACT:

John N. Dickie, Director, Program Evaluation Division, room 9134, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone number (202) 708-2270, or (202) 708-4594 (TDD). (These are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:** Section 235(r) of the National Housing Act (12 U.S.C. 1715z) authorizes the Secretary to insure mortgages that refinance mortgages insured under section 235. The purpose of the program is to reduce the interest rate insured and assisted

under section 235, so that the assistance payments which the Department pays on behalf of mortgagors is reduced. The regulations implementing the program are contained in 24 CFR part 235 (subpart H, on the refinancing of mortgages under section 235(r), was published on December 30, 1992 (57 FR 62452), and became effective on February 16, 1993). The interest rate for these loans is set by the Secretary and published in the *Federal Register* as authorized by 24 CFR 235.1202(b)(3). The previous section 235(r) interest rate of 8 percent was published in the *Federal Register* on December 30, 1992 (57 FR 62452). The market conditions dictate a change in the section 235(r) interest rate commencing on the date of publication of this notice.

The most recent monthly HUD survey of Mortgage Market conditions (i.e., Secondary Market Prices and Yields), an OMB-designated Principal Federal Indicator, found that the dominant national FHA rate being quoted to potential homebuyers for "lock-in" commitments of 10 days or more was 7.50 percent on March 1, 1993, with an average of .38 points, and an effective interest rate of 7.55 percent. The 7.50 percent rate was dominant in all parts of the country. Since the initial section 235(r) interest rate was set at 8.00 percent in December 1992, the bond market has experienced a substantial rally, pushing some long-term interest rates to twenty-year lows. As a result of investors reaction to the President's proposed economic package, coupled with signs the economy may be weakening, bond yields have fallen dramatically. The yield on 30-year Treasury bonds was 7.47 percent on January 8, 1993 and dropped to 7.02 percent on the day after the President's announcement of his economic program, and was 6.81 percent on March 19, 1993. The yield curve for Treasury bonds had climbed sharply upward because of investor uncertainty and lingering fear of inflation. Now those fears have been eased somewhat and long-term rates have moved downward.

Most FHA mortgages are funded in the GNMA mortgage-backed securities market. On March 22, 1993, the GNMA 7.00 percent coupon security, backed with 7.50 percent GHA/VA loans, was trading in the two-month forward delivery market at even par. This means lenders will be willing to commit to close these loans in the primary mortgage market at no discount points. On the other hand, the 8.00 percent FHA/VA loans are now trading at about 3 points premium.

Adjusting the section 235(r) rate to 7.50 percent will bring this rate back into line with the rest of the FHA current production loans. Therefore, the maximum rate for section 235(r) mortgages is 7.50 percent beginning with the publication date of this notice. The maximum margin of additional percentage points that may be added to the maximum rate under 24 CFR 235.1202(b)(3)(i)(B) will remain at 1.50 percent.

The subject matter of this notice is categorically excluded from HUD's environmental clearance procedures, in accordance with 24 CFR 50.20(l). For that reason, no environmental finding has been prepared for this notice.

**Authority:** 12 U.S.C. 1715z; 42 U.S.C. 3535(d).

Dated: March 26, 1993.

**James E. Schoenberger,**  
Associate General Deputy Assistant Secretary for Housing.

[FR Doc. 93-8054 Filed 4-6-93; 8:45 am]  
BILLING CODE 4210-27-M

## DEPARTMENT OF THE INTERIOR

**Bureau of Land Management**

[AA-260-4210-05]

### Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget, Paperwork Reduction Project (1004-0012), Washington, DC 20503, telephone 202-395-7340.

**Title:** Recreation and Public Purposes Act, 43 CFR part 2740.

**OMB Approval Number:** 1004-0012.

**Abstract:** Respondents supply information and data describing the lands requested, the proposed use of the lands, applicant qualifications, and detailed plans concerning project development and management. This information allows the Bureau to determine if the applicant and proposed use meet the requirements of the Recreation and Public Purposes Act of 1926, as amended.

**Bureau form number:** 2740-1.  
**Frequency:** Once as indicated on SF 83.

**Description of respondents:** State and local governments and nonprofit organizations.

**Estimated completion time:** 40 Hours.  
**Annual responses:** 55.

**Annual burden hours:** 2,200.

**Bureau Clearance Officer:** (Alternate) Marsha Harley 202-653-6105.

**Mike Penfold,**

**Assistant Director for Land and Renewable Resources.**

[FR Doc. 93-8009 Filed 4-6-93; 8:45 am]

**BILLING CODE 4310-84-M**

[CA-010-03-4350-03; 3-00160-GP3-010-15]

#### Public Use Restriction; California

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Establishment of a temporary visitation restriction order on public lands within the Carrizo Plain Natural Area, San Luis Obispo County, in the Caliente Resource Area, Bakersfield District, California.

**SUMMARY:** This emergency action temporarily restricts public visitation on BLM-administered rock outcrops within the Carrizo Plain Natural Area due to the presence of sensitive species of birds of prey during a critical part of their life cycles. The public lands affected by this restriction are located within San Luis Obispo County, California.

**SUPPLEMENTARY INFORMATION:** Effective on the date of publication, and pursuant to 43 CFR part 8360 and 42 CFR 8364.1(a), all authorized visitation within 0.25 miles of any rock outcrop in the vicinity of and including Painted Rock is unlawful. This prohibition includes all outcrops within public lands in T3S, R20E, Sections 8, 16, and 17, Mount Diablo Base and Meridian. Access shall be limited to persons carrying written permission from the Authorized Officer or those participating with an authorized guided tour. Individuals within 0.25 miles of the base of a rock-outcrop or climbing on a rock-outcrop within the above described area will be in violation of this Temporary Visitation Restriction Order.

This Temporary Visitation Restriction Order will be in effect from the date of publication in the **Federal Register** until 30 June 1993. Maps of the affected area and information concerning guided tours are available from the Caliente Resource Area Office, 4301 Rosedale Highway, Bakersfield, California 93308.

This emergency visitation restriction is intended to limit visitor-caused disturbance to nesting birds of prey to a level compatible with successful nesting while allowing for educational and recreational use.

Bureau of Land Management employees and Carrizo Plain cooperators are exempt from this order while in the course of their official duties.

Any person who fails to comply with this restriction order may be subject to a fine not to exceed \$1,000 and/or imprisonment not to exceed 12 months. Penalties are contained in 43 CFR 8360.0-7.

Dated: March 31, 1993.

**James Wesley Abbott,**  
**Caliente Resource Area Manager.**

[FR Doc. 93-8058 Filed 4-6-93; 8:45 am]

**BILLING CODE 4310-40-M**

[CO-010-03-4210-04; COC-52864]

#### Reality Action; Exchange of Public and Private Land in Grand and Jackson Counties, CO

**AGENCY:** Bureau of Land Management, Department of the Interior.

**ACTION:** Correction to notice of reality action.

**SUMMARY:** A notice of reality action regarding an exchange of public and private lands in Grand and Jackson Counties was published in the **Federal Register** on January 4, 1993. Under the supplementary information section, item number 2 states that there will be "A reservation to the United States of all mineral deposits of known value" made in the patent. This is incorrect. Instead, under the supplementary information section, item number 2 should be deleted and item number 3 renumbered to number 2. Additionally, under the selected public land section, the last paragraph, second sentence reads "In exchange for these lands, the United States will acquire the following described lands from Daniel Ritchie, Grand River Ranch". This sentence should be deleted. The second sentence in the last paragraph of the selected public land section should read, "In exchange for these lands and subsurface rights, the United States will acquire the following described lands, including subsurface rights, from Daniel Ritchie Grand River Ranch".

Dated: March 30, 1993.

**Robert W. Schneider,**  
**Associate District Manager.**

[FR Doc. 93-8019 Filed 4-6-93; 8:45 am]

**BILLING CODE 4310-JB-M**

[UT-842-4210-06; U-42907 et. al.]

#### Proposed Continuation of Withdrawals; Utah

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Reclamation proposes that four land withdrawals for the Central Utah Project, totalling 10,665.60 acres, continue for 100 years. The land would remain closed to surface entry and mining, but has been and would remain open to mineral leasing.

**DATES:** Comments should be received by July 6, 1993.

**ADDRESSES:** Comments should be sent to State Director, Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145-0155.

#### FOR FURTHER INFORMATION CONTACT:

Randy Massey, BLM Utah State Office, (801) 539-4119.

**SUPPLEMENTARY INFORMATION:** The Bureau of Reclamation proposes that the existing land withdrawals made by Secretarial Orders dated October 18, 1918 and November 17, 1916, Commissioner Order of January 30, 1956, and Public Land Order 3682, dated June 10, 1965, as to the following described land, be continued for 100 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

#### Central Utah Project

##### Uintah Special Meridian

**U-42907**

T. 2 N., R. 9 W.,  
 Sec. 25, N $\frac{1}{2}$ NW $\frac{1}{4}$ , SW $\frac{1}{4}$ NW $\frac{1}{2}$ ;  
 Sec. 26, SE $\frac{1}{4}$ NE $\frac{1}{4}$ , E $\frac{1}{2}$ SE $\frac{1}{4}$ ;  
 Sec. 35, SE $\frac{1}{4}$ SE $\frac{1}{4}$ .

**U-42938**

T. 3 S., R. 12 W.,  
 Sec. 13, NE $\frac{1}{4}$ NE $\frac{1}{4}$ ;  
 Sec. 24, SE $\frac{1}{4}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ ;  
 Sec. 25, SW $\frac{1}{4}$ SE $\frac{1}{4}$ .

**U-42939**

T. 1 N., R. 8 W.,  
 Sec. 6, lots 1-5, SE $\frac{1}{4}$ NW $\frac{1}{4}$ .  
**T. 1 N., R. 9 W.,**  
 Sec. 1, lots 1, 2, 6, S $\frac{1}{2}$ N $\frac{1}{2}$ , N $\frac{1}{2}$ SW $\frac{1}{4}$ ,  
 SW $\frac{1}{4}$ SW $\frac{1}{4}$ ;  
 Sec. 2, lot 1, SE $\frac{1}{4}$ SW $\frac{1}{4}$ , NE $\frac{1}{4}$ SE $\frac{1}{4}$ ,  
 S $\frac{1}{2}$ SE $\frac{1}{4}$ ;  
 Sec. 11, NW $\frac{1}{4}$ , NE $\frac{1}{4}$ , NW $\frac{1}{4}$ ;  
 Sec. 15, N $\frac{1}{2}$ NW $\frac{1}{4}$ ;  
 Sec. 16, NE $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$ , SW $\frac{1}{4}$ ,  
 NW $\frac{1}{4}$ SE $\frac{1}{4}$ ;

Sec. 17, S $\frac{1}{2}$ SE $\frac{1}{4}$ ;  
 Sec. 20, N $\frac{1}{2}$ NE $\frac{1}{4}$ , SW $\frac{1}{4}$ NE $\frac{1}{4}$ , E $\frac{1}{2}$ NW $\frac{1}{4}$ ,  
 SW $\frac{1}{4}$ ;  
 Sec. 21, NW $\frac{1}{4}$ NW $\frac{1}{4}$ .

**T. 1 N., R. 10 W.,**

Sec. 25, S $\frac{1}{2}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$ , N $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ , SW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ , NW $\frac{1}{4}$ SW $\frac{1}{4}$ , N $\frac{1}{2}$ N $\frac{1}{2}$ SE $\frac{1}{4}$ , N $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ ;  
 Sec. 26, N $\frac{1}{2}$ S $\frac{1}{2}$ ;  
 Sec. 27, SW $\frac{1}{4}$ , N $\frac{1}{2}$ SE $\frac{1}{4}$ , SW $\frac{1}{4}$ SE $\frac{1}{4}$ ;  
 Sec. 28, E $\frac{1}{2}$ SE $\frac{1}{4}$ ;  
 Sec. 34, NW $\frac{1}{4}$ NE $\frac{1}{4}$ , E $\frac{1}{2}$ NW $\frac{1}{4}$ , SW $\frac{1}{4}$ .  
 T. 1 S., R. 10 W.,  
 Sec. 4, lots 1, 2, S $\frac{1}{2}$ NE $\frac{1}{4}$ , E $\frac{1}{2}$ SW $\frac{1}{4}$ , W $\frac{1}{2}$ SE $\frac{1}{4}$ ;  
 Sec. 8, E $\frac{1}{2}$ SE $\frac{1}{4}$ ;  
 Sec. 9, NW $\frac{1}{4}$ , W $\frac{1}{2}$ SW $\frac{1}{4}$ ;  
 Sec. 17, E $\frac{1}{2}$ NE $\frac{1}{4}$ , SW $\frac{1}{4}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ SW $\frac{1}{4}$ , N $\frac{1}{2}$ SE $\frac{1}{4}$ , SW $\frac{1}{4}$ SE $\frac{1}{4}$ ;  
 Sec. 20, NW $\frac{1}{4}$ NE $\frac{1}{4}$ , NE $\frac{1}{4}$ NW $\frac{1}{4}$ , S $\frac{1}{2}$ NW $\frac{1}{4}$ , N $\frac{1}{2}$ SW $\frac{1}{4}$ , SW $\frac{1}{4}$ SW $\frac{1}{4}$ ;  
 Sec. 29, W $\frac{1}{2}$ NW $\frac{1}{4}$ ;  
 Sec. 30, E $\frac{1}{2}$ NE $\frac{1}{4}$ , NE $\frac{1}{4}$ SE $\frac{1}{4}$ , W $\frac{1}{2}$ SE $\frac{1}{4}$ ;  
 Sec. 31, lots 2, 3, 4, E $\frac{1}{2}$ W $\frac{1}{2}$ .  
 T. 1 S., R. 11 W.,  
 Sec. 36, SE $\frac{1}{4}$ NE $\frac{1}{4}$ , E $\frac{1}{2}$ SE $\frac{1}{4}$ .  
 T. 2 N., R. 7 W.,  
 Sec. 8, S $\frac{1}{2}$ ;  
 Sec. 17, 20;  
 Sec. 19, lots 3 and 4, S $\frac{1}{2}$ NE $\frac{1}{4}$ , E $\frac{1}{2}$ SW $\frac{1}{4}$ , N $\frac{1}{2}$ SE $\frac{1}{4}$ ;  
 Sec. 21, W $\frac{1}{2}$ .  
 T. 2 N., R. 8 W.,  
 Sec. 24, SE $\frac{1}{4}$ SW $\frac{1}{4}$ , S $\frac{1}{2}$ SE $\frac{1}{4}$ ;  
 Sec. 25, N $\frac{1}{2}$ N $\frac{1}{2}$ , SW $\frac{1}{4}$ NW $\frac{1}{4}$ ;  
 Sec. 26, NE $\frac{1}{4}$ NE $\frac{1}{4}$ , S $\frac{1}{2}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$ , N $\frac{1}{2}$ SW $\frac{1}{4}$ ;  
 Sec. 27, S $\frac{1}{2}$ SW $\frac{1}{4}$ , SE $\frac{1}{4}$ ;  
 Sec. 31, S $\frac{1}{2}$ SE $\frac{1}{4}$ ;  
 Sec. 32, SE $\frac{1}{4}$ NE $\frac{1}{4}$ , E $\frac{1}{2}$ SW $\frac{1}{4}$ , SW $\frac{1}{4}$ SW $\frac{1}{4}$ , N $\frac{1}{2}$ SE $\frac{1}{4}$ , SW $\frac{1}{4}$ SE $\frac{1}{4}$ ;  
 Sec. 33, NE $\frac{1}{4}$ , NW $\frac{1}{4}$ SW $\frac{1}{4}$ , S $\frac{1}{2}$ NW $\frac{1}{4}$ ;  
 Sec. 34, N $\frac{1}{2}$ NW $\frac{1}{4}$ .  
 T. 2 S., R. 10 W.,  
 Sec. 6, lots 3-6, SW $\frac{1}{4}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$ , E $\frac{1}{2}$ SW $\frac{1}{4}$ , SE $\frac{1}{4}$ ;  
 Sec. 7, N $\frac{1}{2}$ NE $\frac{1}{4}$ ;  
 Sec. 8, W $\frac{1}{2}$ NW $\frac{1}{4}$ , SW $\frac{1}{4}$ ;  
 Sec. 17, W $\frac{1}{2}$ NE $\frac{1}{4}$ , E $\frac{1}{2}$ NW $\frac{1}{4}$ , NE $\frac{1}{4}$ SW $\frac{1}{4}$ , S $\frac{1}{2}$ SE $\frac{1}{4}$ , NW $\frac{1}{4}$ SE $\frac{1}{4}$ .  
 U-0139316  
 T. 1 N., R. 9 W.,  
 Sec. 10, SW $\frac{1}{4}$ SE $\frac{1}{4}$ .  
 T. 4 S., R. 12 W.,  
 Sec. 10, lots 2, 3, E $\frac{1}{2}$ NE $\frac{1}{4}$ , SW $\frac{1}{4}$ NE $\frac{1}{4}$ ;  
 Sec. 11, N $\frac{1}{2}$ NW $\frac{1}{4}$ .  
 The areas described aggregate 10,665.60 acres in Duchesne and Wasatch Counties.

The purpose of the withdrawals is to protect Soldier Creek Dam, and Strawberry Reservoir, the Strawberry Collection System, which consists of numerous tunnels and features, Upper Stillwater Dam and Reservoir, and Current Creek Dam and Reservoir. The withdrawals segregate the land from settlement, sale, location, and entry, including location and entry under the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed

withdrawal continuation may present their views in writing to the Chief, Branch of Lands and Minerals Operations, Utah State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued, and, if so, for how long. The final determination on the continuation of the withdrawal will be published in the *Federal Register*. The existing withdrawal will continue until such final determination is made.

**Terry Catlin,**  
*Acting Chief, Branch of Lands and Minerals Operations.*

[FR Doc. 93-8011 Filed 4-6-93; 8:45 am]

BILLING CODE 4310-DQ-M

### Geological Survey

#### Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information described below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1028-0049), Washington, DC 20503, telephone 202-395-7340.

**Title:** Tsunami Questionnaire  
**OMB approval number:** 1028-0049

**Abstract:** Respondents supply information on the effects of earthquake-related tsunamis on themselves personally, buildings and their effects, other man-made structures, and coastal areas. This information will be used in the study of the hazards from earthquakes and tsunamis.

**Bureau form number:** 9-3014

**Frequency:** After each tsunami

**Description of respondents:** State and local employees; and, the general public

**Estimated completion time:** 0.1 hours

**Annual responses:** 200

**Annual burden hours:** 20 hours

**Bureau clearance officer:** Geraldine A. Wilson, 703-648-7309

Dated: February 16, 1993.

**Benjamin A. Morgan,**

*Chief Geologist.*

[FR Doc. 93-7999 Filed 4-6-93; 8:45 am]

BILLING CODE 4310-31-M

#### Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information described below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1028-0048), Washington, DC 20503, telephone 202-395-7340.

**Title:** Earthquake Report

**OMB approval number:** 1028-0048

**Abstract:** Respondents supply information on the effects of the shaking from an earthquake—on themselves personally, buildings and their effects, other man-made structures, and ground effects such as faulting or landslides. This information will be used in the study of the hazards from earthquakes and used to compile and publish the annual USGS publication "United States Earthquakes".

**Bureau form number:** 9-3013

**Frequency:** After each earthquake

**Description of respondents:** State and local employees; and, the general public

**Estimated completion time:** 0.1 hours

**Annual responses:** 1,500

**Annual burden hours:** 150 hours

**Bureau clearance officer:** Geraldine A. Wilson 703-648-7309

Dated: February 16, 1993.

**Benjamin A. Morgan,**

*Chief Geologist.*

[FR Doc. 93-8000 Filed 4-6-93; 8:45 am]

BILLING CODE 4310-13-M

**Information Collection Submitted to the Office of Management and Budget (OMB) for Review Under the Paperwork Reduction Act**

The proposal for the collection of information described below is being submitted to the OMB for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's clearance officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503, telephone 202/395-7340.

**Title: Annual National Earthquake Hazards Reduction Program Announcement**

**OMB approval number:** None

**Abstract:** Respondents submit proposals to support research in earthquake hazards and earthquake prediction to provide earth-science data and information essential to mitigate earthquake losses. This information will be used as the basis for selection and award of projects meeting the program objectives. Annual or final reports are required on each selected project to assess scientific performance.

**Bureau form number:** None

**Frequency:** Annual proposals, annual or final reports.

**Description of Respondents:** Educational institutions, profit and non-profit organizations, individuals, and agencies of local or State governments.

**Estimated completion time:** 46 hours

**Annual responses:** 420

**Annual burden hours:** 19,300

**Bureau Clearance Officer:** Geraldine A. Wilson, telephone 703/648-7309.

Dated: January 15, 1993.

**Benjamin A. Morgan,**

*Chief Geologist.*

[FR Doc. 93-8002 Filed 4-6-93; 8:45 am]

BILLING CODE 4310-31-M

**Minerals Management Service**

**Information Collection Submitted for Review**

The collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the information collection requirement and related explanatory material may be obtained by contacting Jeane Kalas at 303-231-3046. Comments and suggestions on the

material may be obtained by contacting Jeane Kalas at 303-231-3046.

Comments and suggestions on the requirement should be made directly to the Bureau Clearance Office at the telephone number listed below and to the Office of Management and Budget, Paperwork Reduction Project (1010-0074), Washington, DC 20503, telephone 202-395-7340.

**Title: Coal Washing and Transportation Allowances**

**OMB approval number:** 1010-0074

**Abstract:** The Government collects royalties resulting from the sale of Federal and Indian coal. Coal sales contracts are required to be submitted upon request by the Minerals Management Service to ensure that the Federal and Indian lessor receives royalties that are based on product values representing fair market value. In some cases an allowance may be granted from royalties to compensate the lessee for the reasonable actual costs of washing the royalty portion of the coal. An allowance may also be granted for transporting the royalty portion of coal to a sales point not on the lease or in the mine area. Failure to collect the data described in this information collection could result in the undervaluation of coal and render it impossible to ensure that the public and Indians receive payment on the full value of the minerals being removed.

**Bureau Form Numbers:** MMS-4292 and MMS-4293

**Frequency:** Annually, or when a contract terminates or changes

**Description of Respondents:** Solid minerals mining companies

**Estimated Completion Time:** 6 hours

**Annual Responses:** 78

**Annual Burden Hours:** 498

**Bureau Clearance Officer:** Dorothy Christopher, 703-787-1238

Dated: November 9, 1992.

**James W. Shaw,**

*Associate Director for Royalty Management.*

[FR Doc. 93-7998 Filed 4-6-93; 8:45 am]

BILLING CODE 4310-MR-M

**Information Collection Submitted for Review**

The collection of information listed below has been submitted to the Office of Management and Budget for reapproval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the information collection requirement and related explanatory material may be obtained by contacting Jeane Kalas at 303-231-3046. Comments and suggestions on the

requirement should be made directly to the Bureau Clearance Officer at the telephone number listed below and to the Office of Management and Budget, Paperwork Reduction Project (1010-0061), Washington, DC 20503, telephone 202-395-7340.

**Title:** Oil Transportation Allowances

**OMB approval number:** 1010-0061

**Abstract:** The Government collects

royalties resulting from the sale of Federal and Indian oil. In some cases an allowance is granted to compensate lessees for the reasonable costs of transporting the royalty portion of the oil to a delivery point remote from the lease. Transportation allowances are taken as a deduction from royalty. The allowance determination procedure is essential to ensure that the public and the Indians receive the full royalty payment to which they are entitled, and that lessees are correctly compensated for allowable transportation costs. Failure to collect the data described in this information collection could make it impossible to ensure that royalty rates computed and paid are appropriate.

**Bureau Form Number:** MMS 4110

**Frequency:** On occasion, annually, or when circumstances change

**Description of Respondents:** Oil companies

**Estimated Completion Time:** Average, 3.5 hours

**Annual Responses:** 1,200

**Annual Burden Hours:** 4,400

**Bureau Clearance Officer:** Dorothy Christopher, 703-787-1238

Dated: November 9, 1992.

**James W. Shaw,**

*Associate Director for Royalty Management.*

[FR Doc. 93-8001 Filed 4-6-93; 8:45 am]

BILLING CODE 4310-MR-M

**Office of Surface Mining Reclamation and Enforcement**

**Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act**

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau's clearance officer and to the

Office of Management and Budget, Paperwork Reduction Project (1029-0067), Washington DC 20503, telephone 202-395-7340.

**Title:** Restrictions on Financial Interests of State Employees, 30 CFR part 705  
**OMB approval number:** 1029-0067

**Abstract:** Respondents supply information on employment and financial interests. The information is used to determine if respondents are in compliance with Section 517(g) of the Surface Mining Control and Reclamation Act of 1977 which places an absolute prohibition on having a direct or indirect financial interest in underground or surface coal mining operations.

**Bureau form number:** OSM-23

**Frequency:** Entrance on duty and annually

**Description of respondents:** Any State regulatory authority employee or member of advisory boards and commissions established in accordance with State law or regulation to represent multiple interests who performs any function or duty under the Act is required to file a statement of employment and financial interests.

**Estimated completion time:** 20 minutes

**Annual responses:** 2,749

**Annual burden hours:** 928

**Bureau clearance officer:** John A.

Trelease, 202-343-1475

Dated: January 29, 1992.

**John P. Mosesso,**

*Chief, Division of Technical Services.*

**Editorial Note:** This document was received at the Office of the Federal Register on April 1, 1993.

[FR Doc. 93-7996 Filed 4-6-93; 8:45 am]

BILLING CODE 4310-05-M

#### Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related form may be obtained by contacting the Bureau clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project 1029-0090, Washington, DC 20503, telephone 202-395-7340.

**Title:** Application for Blaster Certification in Federal Program States and on Indian Lands, 30 CFR 955

**Abstract:** This information is being collected to ensure that the qualification of applicants for blaster certification is adequate. This information will be used to determine the eligibility of the applicant. The affected public will be blasters who want to be certified by the Office of Surface Mining Reclamation and Enforcement.

**Bureau Form Number:** OSM-74

**Frequency:** Every three years

**Description of Respondents:** Individuals seeking certification as Blasters

**Estimated Completion Time:** 53 minutes

**Annual Responses:** 40

**Annual Burden Hours:** 35

**Bureau clearance officer:** John A.

Trelease, (202) 343-1475

Dated: March 16, 1993.

**John P. Mosesso,**

*Chief, Division of Technical Services.*

[FR Doc. 93-8003 Filed 4-6-93; 8:45 am]

BILLING CODE 4310-05-M

#### Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information, the related form and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau clearance officer listed below and to the Office of Management and Budget, Paperwork Reduction Project (1029-0090), Washington, DC 20503, telephone 202-395-7340.

**Title:** Abandoned Mine Reclamation Fund—Fee Collection and Coal Production Reporting, 30 CFR part 870

**OMB Number:** 1029-0090

**Abstract:** Section 402 of the Surface Mining Control and Reclamation Act of 1977 requires fees to be paid to the Abandoned Mine Reclamation Fund by coal operators on the basis of coal tonnage produced. This information collection requirement is needed to support verification of the moisture deduction allowance. The information will be used by the regulatory

authority during audits to verify that the amount of excess moisture taken by the operator is appropriate.

**Bureau Form Number:** None

**Frequency:** On Occasion

**Description of Respondents:** Coal Mine Operators

**Annual Responses:** None

**Annual Burden Hours:** 3,272

**Estimated Recordkeeping Time:** 2 hours

**Bureau clearance officer:** John A.

Trelease, (202) 343-1475.

Dated: December 29, 1992.

**John P. Mosesso,**

*Chief, Division of Technical Services.*

[FR Doc. 93-8004 Filed 4-6-93; 8:45 am]

BILLING CODE 4310-05-M

#### INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

##### Agency for International Development

###### Malaria Vaccine Program Advisory Committee; Meeting

**Action:** Notice of partially closed meeting.

**Committee:** Malaria Vaccine Program Advisory Committee.

**Date & Location:** VBC Conference Room, 1901 North Fort Myer Drive, Arlington, VA 22209.

1. April 26, 9 am-12 pm, suite 400, (closed session).

2. April 26, 1 pm-4:30 pm, suite 400.

3. April 27, 9 am-4:30 pm, suite 400.

**Agenda:** The committee will (1) review progress towards malaria vaccine development by A.I.D.-funded and other invited investigators and (2) review procurement actions, both current and planned. Closed Meeting: Portions of the meeting are closed under exemption 9 (B) of 5 U.S.C. 552(b) to discuss proposals, scopes of work, cost estimates, and other sensitive procurement information. Disclosure of such information would be likely to significantly frustrate implementation of current and future procurement by A.I.D.

**FOR FURTHER INFORMATION CONTACT:** Kirk D. Miller, M.D., Malaria Vaccine Development Program, A.I.D. Office of Health (SA-18 Room 1232), Washington, DC 20523-1817, (703) 875-5693. Julie Klement, Chief, Communicable Diseases Division, Office of Health, Bureau for Research and Development.

Dated: March 31, 1993.

**Jan W. Miller,**

*Assistant General Counsel, Employees & Public Affairs.*

[FR Doc. 93-8014 Filed 4-6-93; 8:45 am]

BILLING CODE 6116-01-M

**Public Information Collection Requirements Submitted to OMB for Review**

The Agency for International Development (AID) submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry no later than ten days after publication. Comments may also be addressed to, and copies of the submissions obtained from the Reports Management Officer, Fred D. Allen, (202) 467-9367, FA/AS/ISS, room 3726 NS, Washington, DC 20523-0042.

**Date Submitted:** March 26, 1993

**Submitting Agency:** Agency for International Development

**OMB Number:** 0412-0004

**Form Number:** AID-11

**Type of Submission:** Renewal

**Title:** Application for Approval of Commodity Eligibility

**Purpose:** AID provides loans and grants to many developing countries in the form of Commodity Import Programs (CIPS). These funds are made available to host countries to be allocated to the public and private sectors for purchasing various commodities from the U.S. or in some cases, from other developing countries. In accordance with section 604(f) of the Foreign Assistance Act of 1961, as amended, AID can finance only those commodities which are determined eligible and suitable in accordance with various statutory requirements and Agency policies. Using the Application for Approval of Commodity Eligibility (Form AID-11), the supplier certifies to AID information about the commodities being supplied, as required in section 604(f), so that AID may determine eligibility.

**Annual Reporting Burden:** Respondents: 385; annual responses: 2.1; average hours per response: .50; burden hours: 404

**Reviewer:** Jefferson Hill, (202) 395-7340, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: March 26, 1993.

**Elizabeth Baltimore,**

*Information Support Services Division.*

[FR Doc. 93-8016 Filed 4-6-93; 8:45 am]

BILLING CODE 6116-01-M

**INTERNATIONAL TRADE COMMISSION**

[Investigation No. 337-TA-345]

**Commission Determination Not To Review an Initial Determination Designating the Investigation "More Complicated"**

In the Matter of certain anisotropically etched one megabit and greater DRAMs, components thereof, and products containing such DRAMs.

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ) initial determination (ID) designating the above-captioned investigation "more complicated." The deadline for completion of the investigation is extended by six months, i.e., from December 20, 1993, to June 20, 1994.

**FOR FURTHER INFORMATION CONTACT:** Judith M. Czako, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-205-3093.

**SUPPLEMENTARY INFORMATION:** On February 8, 1993, respondents Hyundai Electronics Industries Co., Ltd., Hyundai Electronics America, Inc. ("Hyundai"), Goldstar Electron Co., Ltd., and Goldstar Electron America, Inc. ("Goldstar"), filed a motion to designate the subject investigation "more complicated." Complainant Micron Semiconductor, Inc. opposed the motion. The Commission investigative attorney (IA) supported the motion.

On February 25, 1993, the presiding administrative law judge issued an ID (Order No. 3) granting the motion to designate the investigation more complicated because the technology involved is complex and discovery will be time-consuming, in light of the need for extensive third-party discovery, the possible need for making tests during various stages of respondents' production process to assess infringement, and the possible need for experiments reproducing prior art processes to assess validity.

On March 8, 1993, complainant Micron Semiconductor, Inc. filed a petition for review of the ID. The IA filed a response to the petition for review on March 15, 1993. Goldstar filed a response on March 16, 1993, and Hyundai filed a response on March 17, 1993.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission interim rule 210.53, 19 CFR 210.53.

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-205-2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-205-2648.

By order of the Commission.

Issued: March 29, 1993.

**Paul R. Bardoe,**

*Acting Secretary.*

[FR Doc. 93-8097 Filed 4-6-93; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-347]

**Change of Commission Investigative Attorney**

In the Matter of certain anti-theft deactivatable resonant tags and components thereof.

Notice is hereby given that, as of this date, Steven A. Glazer, Esq., of the Office of Unfair Import Investigations is designated as the Commission investigative attorney in the above-cited investigation instead of Jeffrey R. Whieldon, Esq.

The Secretary is requested to publish this Notice in the *Federal Register*.

Dated: March 29, 1993.

**Lynn I. Levine,**

*Director, Office of Unfair Import Investigations.*

[FR Doc. 93-8096 Filed 4-6-93; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-559 (Final)]

**New Steel Rails From the United Kingdom**

**Determination**

On the basis of the record<sup>1</sup> developed in the subject investigation, the Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is not materially injured or threatened with

<sup>1</sup> The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

material injury,<sup>2</sup> and the establishment of an industry in the United States is not materially retarded, by reason of imports from the United Kingdom of new steel rails,<sup>3</sup> provided for in subheading 7302.10.10 and heading 8548.00.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

#### Background

The Commission instituted this investigation effective October 14, 1992, following a preliminary determination by the Department of Commerce that imports of new steel rails from the United Kingdom were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of November 12, 1992 (57 FR 53778). The hearing was held in Washington, DC, on February 16, 1993, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on March 26, 1993. The views of the Commission are contained in USITC Publication 2617 (March 1993), entitled 'New Steel Rails from the United Kingdom: Determination of the Commission in Investigation No. 731-TA-559 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation.'

By order of the Commission.

Issued: March 30, 1993.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93-8095 Filed 4-6-93; 8:45 am]

BILLING CODE 7020-02-M

#### [Investigation No. 337-TA-340]

#### Commission Determination not to Review Initial Determination Granting Joint Motion to Terminate the Investigation in Its Entirety

In the Matter of certain specimen container systems and components including alignment indicator labels, and method of use.

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's initial determination (ID) in the above-captioned investigation granting joint motion to terminate the investigation with respect to respondent Starplex Scientific, Inc. (Starplex) consent order agreement.

**ADDRESSES:** Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-205-2000.

**FOR FURTHER INFORMATION CONTACT:** Anjali Singh, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-205-3117. Hearing-impaired individuals are advised that information about this matter can be obtained by contacting the Commission's TDD terminal, 202-205-1810.

**SUPPLEMENTARY INFORMATION:** On July 6, 1992, Sage Products, Inc. filed a complaint with the Commission alleging unfair acts in violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). The unfair acts alleged in the complaint are the importation into the United States, the sale for importation, the sale within the United States after importation of certain specimen container systems and components, including alignment indicator labels, by reason of alleged infringement of claims 1-8 and 14 of U.S. Letters Patent No. 5,048,711. On August 5, 1992, the Commission instituted an investigation of the complaint and publish notice of its investigation in the Federal Register (57 FR 36109 (August 12, 1992)).

On January 27, 1993, complainant Sage and respondent Starplex jointly moved for termination of this investigation on the basis of a Consent Order Agreement (Motion Docket No. 340-4). The staff on February 8, 1993

supported Motion No. 340-4 to terminate the investigation. On March 2, 1993, the presiding administrative law judge issued an ID granting the motion and terminated the investigation in its entirety. No petitions for review, or agency or public comments were received.

This action is taken pursuant to section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and Commission interim rule 19 CFR 210.51(c) and §§ 211.20-211.22 for the termination of the investigation.

By order of the Commission.

Issued: March 29, 1993.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93-8098 Filed 4-6-93; 8:45 am]

BILLING CODE 7020-02-M

#### INTERSTATE COMMERCE COMMISSION

[Released Rates Decision No. MC-999; Release Rates Application No. MC-1554]

#### Released Rates of Motor Common Carriers of Household Goods

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice. Released Rates Application No. MC-1554.

**SUMMARY:** The Commission modifies existing released rates authority to permit household goods carriers to increase excess value charges for released rates shipments and to restructure excess value charges for storage-in-transit shipments.

**EFFECTIVE DATE:** Decision is effective on May 21, 1993.

#### FOR FURTHER INFORMATION CONTACT:

Lawrence C. Herzig, (202) 927-5180, [TDD for hearing impaired: (202) 927-5721].

#### SUPPLEMENTARY INFORMATION:

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD Services (202) 927-5721.]

#### Environmental Statement

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

**Authority:** 49 U.S.C. 10730(a).

Decided: March 30, 1993.

<sup>2</sup>Chairman Newquist determines that an industry in the United States is materially injured by reason of imports from the United Kingdom:

<sup>3</sup>The merchandise covered by this investigation is new steel rails, except light rail and girder rail, of other than alloy steel, weighing over 30 kilograms per meter. New steel rails include standard and premium carbon steel tee rail, crane rail, and contact rail (electrical rail).

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

**Sidney L. Strickland, Jr.,  
Secretary.**

[FR Doc. 93-8101 Filed 4-6-93; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-394X]

**Austin & Northwestern Railroad Co., Inc., Texas & New Mexico Railroad Division; Abandonment Exemption; In Lea County, NM**

Austin & Northwestern Railroad Co., Inc., Texas & New Mexico Railroad Division, has filed a notice of exemption under 49 CFR part 1152 subpart F—Exempt Abandonment to abandon its 2.55-mile line of railroad between milepost 104.5 and milepost 107.05 (the end of the track), and approximately 0.65 mile of rail-owned sidetrack (located between the above mileposts), resulting in 3.2-mile line of track to be abandoned in the City of Lovington, Lea County, NM. The segment of the line between milepost 104.5 and milepost 105.3 will be reclassified as industrial track and will be kept in place.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period, and (4) that the requirements at 49 CFR 1105.7, 49 CFR 1105.8, 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under Oregon Short Line R. Co.—

Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on May 7, 1993, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,<sup>1</sup>

<sup>1</sup> A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues

formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),<sup>2</sup> and trail use/rail banking requests under 49 CFR 1152.29<sup>3</sup> must be filed by April 19, 1993. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by April 27, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Thomas F. McFarland, Jr., Belnap, Spencer, McFarland & Herman, 20 North Wacker Drive, Suite 3118, Chicago, IL 60606.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environmental and historic resources. SEE will issue an environmental assessment (EA) by April 12, 1993. Interested persons may obtain a copy of the EA by writing to SEE (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927-6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: March 31, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

**Sidney L. Strickland, Jr.,  
Secretary.**

[FR Doc. 93-8099 Filed 4-6-93; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 450X)]

**CSX Transportation, Inc.;  
Abandonment Exemption; In Polk  
County, FL**

**AGENCY:** Interstate Commerce  
Commission.

**ACTION:** Notice of exemption.

(whether raised by a party or by the Commission's Section of Energy and Environment (SEE) in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit this commission to review and act on the request before the effective date of this exemption.

<sup>2</sup> See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

<sup>3</sup> The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

**SUMMARY:** The Commission exempts from the prior approval requirements of 49 U.S.C. 10903-10904 the abandonment by CSX Transportation, Inc., of a 1.4-mile rail line extending from milepost AVC-828.71 at Haines City to the end of the line at milepost AVC-830.11, in Polk County, FL, subject to standard labor protective conditions.

**DATES:** Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on May 7, 1993. Formal expressions of intent to file an OFA<sup>1</sup> under 49 CFR 1152.27(c)(2) must be filed by April 19, 1993; OFAs must be filed by May 7, 1993; requests for public use conditions must be filed by April 27, 1993; petitions to stay must be filed by April 22, 1993; and petitions to reopen must be filed by May 3, 1993.

**ADDRESSES:** Send pleadings referring to Docket No. AB-55 (Sub-No. 450X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and

(2) Petitioner's representative: Charles M. Rosenberger, 500 Water Street, Jacksonville, FL 32202.

**FOR FURTHER INFORMATION CONTACT:**  
Richard B. Felder, (202) 927-5610, [TDD for hearing impaired: (202) 927-5721]

**SUPPLEMENTARY INFORMATION:**

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359.

[Assistance for the hearing impaired is available through TDD services (202) 927-5271.]

Decided: March 31, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

**Sidney L. Strickland, Jr.,  
Secretary.**

[FR Doc. 93-8104 Filed 4-6-93; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 32258]

**Daniel R. Frick; Continuance in Control  
Exemption; Winamac Southern  
Railway Co.**

Daniel R. Frick has filed a notice of exemption to continue in control of

<sup>1</sup> See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C. 2d 164 (1987).

Winamac Southern Railway Company (Winamac Southern) upon its becoming a class III rail carrier. Winamac Southern, a noncarrier, has concurrently filed a notice of exemption in Finance Docket No. 32257, Winamac Southern Railway Company—Acquisition and Operation Exemption—Lines of Consolidated Rail Corporation, to acquire and operate 75.6 miles of rail line, commonly known as the Logansport Cluster, which is owned by Consolidated Rail Corporation (Conrail) in the Counties of Carroll, Cass, Clinton, Howard, and Pulaski, IN.<sup>1</sup> Winamac Southern expected that transaction be consummated on or after March 18, 1993.

Mr. Frick also controls a nonconnecting class III rail carrier, J. K. Line, which owns and operates approximately 16 miles of rail line between Monterey, IN, and North Judson, IN. He has certified that (1) the properties operated by J. K. Line do not connect with the properties being acquired by Winamac Southern; (2) the continuance in control is not part of a series of anticipated transactions that would connect the two railroads with each other or any other railroad in their corporate family; and (3) the transaction does not involve a class I carrier. The transaction is therefore exempt from the prior approval requirements of 49 U.S.C. 11343. See 49 CFR 1180.2(d)(2).

As a condition to use of this exemption, any employees adversely affected by the transaction will be protected by the conditions set forth in New York Deck. Ry.—Control—Brooklyn Eastern Dist., 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: Thomas F. McFarland, Jr., Belnap, Spencer, McFarland & Herman, 20 North Wacker Drive, Suite 3118, Chicago, IL 60606-3101.

Decided: April 1, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93-8105 Filed 4-6-93; 8:45 am]

BILLING CODE 7035-01-M

<sup>1</sup> The Conrail segments to be acquired and operated by Winamac Southern includes: (1) the Logansport Secondary Track between milepost 51.0 at Brighurst, IN, and milepost 98.5 at Kolomo, IN; (2) the Winamac Secondary Track between milepost 0.0 at Van, IN, and milepost 25.7 at Winamac, IN; and (3) Conrail's interest in the Kokomo Belt Line between milepost 0.0 and milepost 2.4 at Kokomo, IN.

[Docket No. AB-393, Sub-No. 1X]

**Northwestern Oklahoma Railroad Co.—Abandonment Exemption—in Woodward County, OK**

Northwestern Oklahoma Railroad Co. has filed a notice of exemption under 49 CFR part 1152 Subpart F—*Exempt Abandonments* to abandon its line of railroad extending from its crossing with The Atchison, Topeka and Santa Fe Railway Co. south of Webster Avenue to the end of the track at the north line of Downs Avenue, all in the City of Woodward, Woodward County, OK.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7; 49 CFR 1105.8; 49 CFR 1105.12 (newspaper publication); and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on May 7, 1993,<sup>2</sup> unless stayed or a formal expression of intent to file an offer of financial assistance is filed. Petitions to stay that do not involve environmental issues,<sup>2</sup> formal expressions of intent to

<sup>1</sup> Pursuant to 49 CFR 1152.50(d)(2), the railroad must file a verified notice with the Commission at least 50 days before the abandonment is to be consummated. The applicant, in its verified notice, indicated a proposed consummation date of May 4, 1993. Because the verified notice was not filed until March 18, 1993, consummation cannot take place prior to May 7, 1993. The applicant's representative has orally confirmed the corrected consummation date.

<sup>2</sup> A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon

file an OFA under 49 CFR 1152.27(c)(2),<sup>3</sup> and trail use/rail banking statements<sup>4</sup> under 49 CFR 1152.29 must be filed by April 19, 1993. Petitions to reopen or requests for public use conditions<sup>5</sup> under 49 CFR 1152.28 must be filed by April 27, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Michael W. Blaszak, Northwestern Oklahoma Railroad Co., 211 South Leitch Avenue, LaGrange, IL 60525-2162.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environmental and historic resources. The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by April 12, 1993. Interested persons may obtain a copy of the EA by writing to SEE (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927-6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: March 31, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings. Sidney L. Strickland, Jr., Secretary.

[FR Doc. 93-8100 Filed 4-6-93; 8:45 am]  
BILLING CODE 7035-01-M

[Finance Docket No. 32257]

**Winamac Southern Railway Co.; Acquisition and Operation Exemption; Lines of Consolidated Rail Corp.**

Winamac Southern Railway Company (Winamac Southern), a noncarrier, has filed a notice of exemption to acquire and operate 75.6 miles of rail line, commonly known as the Logansport

as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

<sup>3</sup> See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

<sup>4</sup> The Commission will accept a late-filed trail use statement as long as it retains jurisdiction to do so.

<sup>5</sup> The applicant indicates that the city of Woodward has expressed interest in acquiring a portion of the right-of-way south of Cedar Avenue to expand the grounds of its Pioneer Museum.

Cluster, owned by Consolidated Rail Corporation (Conrail) in the Counties of Carroll, Cass, Clinton, Howard, and Pulaski, IN.<sup>1</sup> The involved Conrail segments include: (1) The Logansport Secondary Track between milepost 51.0 at Bringhurst, IN, and milepost 98.5 at Kokomo, IN; (2) the Winamac Secondary Track between milepost 0.0 at Van, IN, and milepost 25.7 at Winamac, IN; and (3) Conrail's interest in the Kokomo Belt Line between milepost 0.0 and milepost 2.4 at Kokomo, IN. Winamac Southern will become a class III rail carrier. The parties expected to consummate the proposed transaction on or after March 18, 1993, the effective date.

Any comments must be filed with the Commission and served on: Thomas F. McFarland, Jr., Belnap, Spencer, McFarland & Herman, 20 North Wacker Drive, Suite 3118, Chicago, IL 60606-3103.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: April 1, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,  
Secretary.

[FR Doc. 93-8106 Filed 4-6-93; 8:45 am]

BILLING CODE 7037-01-M

## DEPARTMENT OF JUSTICE

### Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States v. Easton Area Joint Sewer Authority*, Civil Action No. 89-7144, (E.D. Pa.) and *CORCO et al. v. Pfizer Pigments, Inc., et al.*, Civil Action No. 88-1359 (E.D. Pa.) were lodged on January 26, 1993 and March 26, 1993 with the United States District Court for the Eastern District of Pennsylvania.

The cases arise out of violations of the Clean Water Act committed at the Easton Sewage Treatment Plant, located in Easton, Pennsylvania, and an industrial facility currently owned by Harcross Pigments, Inc., which

<sup>1</sup> This proceeding is related to Finance Docket No. 32258, in which Daniel R. Frick has concurrently filed a notice of exemption to continue in control of Winamac Southern when it becomes a carrier upon consummation of the transaction described in this notice.

discharges into the treatment plant. The United States' complaint alleges (1) that the Easton Area Joint Sewer Authority and the City of Easton violated the Act by discharging pollutants from the treatment plant in excess of amounts allowed by permit; (2) that the Authority violated the Act by failing properly to implement and enforce a pretreatment program; and (3) that Pfizer, Inc. and its subsidiary, Pfizer Pigments, Inc., both which are former operators of the industrial facility now owned by Harcross, violated pretreatment requirements applicable to the wastewater they discharged to the treatment plant.

The above-referenced consent decrees resolve the claims of the United States, the Commonwealth of Pennsylvania and the citizen plaintiffs in No. 88-159 against the authority, the City and Harcross. The decrees require the current operators of the treatment plant and the Harcross facility to comply with the Clean Water Act and to undertake specific corrective measures. The decrees require payment of civil penalties as follows: The Authority—\$389,800; the City of Easton—\$45,250. A prior decree required Pfizer, Inc. and Pfizer Pigments, Inc. to pay a civil penalty of \$3.2 million.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Easton Area Joint Sewer Authority, et al.*, DOJ Ref. #90-5-1-1-3273.

The proposed consent decree may be examined at the Office of the United States Attorney, suite 1300, 615 Chestnut Street, Philadelphia, PA 19106; the Region III Office of the Environmental Protection Agency, 815 Chestnut Building, Philadelphia, PA 19107; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202-624-0892). A copy of the proposed decrees may also be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of \$41.00 (25

cents per page reproduction costs), payable to the Consent Decree Library.

Myles E. Flint,

Acting Assistant Attorney General,  
Environment and Natural Resources Division.  
[FR Doc. 93-8006 Filed 4-6-93; 8:45 am]

BILLING CODE 4410-01-M

## DEPARTMENT OF LABOR

### Employment and Training Administration

[Training and Employment Guidance Letter (TEGL) No. 7-92]

### Job Training Partnership Act: Transition Guidance for Implementation of the Job Training Partnership Act (JTPA) Amendments of 1992

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

**SUMMARY:** The Employment and Training Administration has issued Training and Employment Guidance Letter (TEGL) No. 7-92, dated March 8, 1993. TEGL No. 7-92 provides guidance to States to facilitate their developing policy for Service Delivery Areas and other subrecipients as they establish systems in response to the JTPA Amendments of 1992. TEGL 7-92 is reprinted below for public information.

Dolores Battle,

Administrator, Office of Job Training Programs.

Training and Employment Guidance Letter No. 7-92

From: Carolyn Golding, Acting Assistant Secretary of Labor

Subject: Transition Guidance for Implementation of the Job Training Partnership Act (JTPA) Amendments of 1992

1. **Purpose.** To provide guidance to State to facilitate their developing policy for Service Delivery Areas (SDAs) and other subrecipients as they establish systems in response to the JTPA Amendments, which take effect on July 1, 1993. This guidance is being provided in advance of Final Regulations on 20 CFR Part 627 Subpart I, Transition Provisions, which will be published as soon as possible.

2. **References.** JTPA Interim Final Regulations published on December 29, 1992, TEIN No. 16-92; TEGL No. 2-92; TEGL No. 4-92; and TEGL No. 6-92.

3. **Background.** Public Law 102-367, dated September 7, 1992, established major revisions to JTPA. Section 701(i) of Public Law 102-367 permits the Department to "establish such rules and procedures as may be necessary to provide for an orderly implementation of the amendments." \* \* \* Interim final rules published December 29, 1992, provide policy on transition to the new

requirements at 20 CFR Part 627 Subpart I. The JTPA Amendments of 1992 made significant enhancements to program requirements and administrative systems. The regulations state that transition activities will be accomplished during the balance of Program Year (PY) 1992 in order to fully implement the Amendments on July 1, 1993, unless otherwise stated. Comments on the interim final rule have indicated considerable concern with the transition provisions. The anticipated expansion and enrichment of the Title II-B program for the upcoming summer has also prompted a reexamination of transition provisions. Accordingly, pursuant to the authority provided by Section 701(i) of Public Law 102-367, this issuance provides rules and procedures which the Department finds necessary to provide for the orderly implementation of the Amendments. It is intended that these guidelines may be relied on by States and SDAs. The Department will issue conforming amendments to the JTPA Interim Final Regulations as soon as possible.

**4. Program Implementation.** The Department recognizes that implementation by the States and SDAs of the new program design requirements, particularly objective assessment and development of the individual service strategies (ISS), may require additional time to fully implement beyond July 1, 1993. The Department intends that the program design changes be undertaken in a manner which ensures the long-term quality of service delivery in JTPA. Reasonable efforts to implement the provisions of 20 CFR 628.515, 628.520, and 628.530, objective assessment, individual service strategy, and referrals of participants to non-Title II services as soon after July 1, 1993 as possible, are expected to be made. However, all new participants will not be expected to initially receive such services until January 1, 1994. The Department acknowledges that the quality of those activities is expected to be improved and refined during PY 1993, as are all aspects of the JTPA program. Monitoring of the program aspects of the Amendments during PY 1993 by all levels of the JTPA system, including the Department, should focus heavily on improving service quality. In determining compliance with the program design requirements during PY 1993, the grant officer will consider the extent to which the States and SDAs have made good faith efforts to implement the new provisions during PY 1993.

**5. Immediate action.** In order to make the transition from the old to the new requirements, the JTPA Regulations at 20 CFR 627.902 identified actions that must be accomplished by the Governor prior to July 1, 1993. These actions cover four major areas: (a) Funding; (b) Participants; (c) Procurement; and (d) Reporting.

#### a. Funding

Effective July 1, 1993, PY 1993 funds must be administered in accordance with the new legislation and regulations. PY 1992 funds unexpended on June 30 may be expended after July 1 to serve "grandparented" participants under "old" rules, or they may be expended after July 1 to serve "new" or

"old" participants under new rules. Whatever amount is used under the "old" rules is to be reported on the "old" reporting form. Whatever amount is used under the "new" rules is to be reported on the "new" reporting form.

There will be an increase allowed in the administrative cost limitation for PY 1992 funds from 15 percent to 20 percent, with a corresponding adjustment to the other cost limitations. Specifically, not less than 80 percent of Title II-A funds may be expended for training and participant support, and not less than 65 percent may be expended for training. Any unexpended PY 1992 funds to be used after June 30, 1993, may be used according to the "old" rules (20 CFR part 626 et al., published September 22, 1989) so long as these funds are used to provide training to participants who were enrolled on or before June 30, 1993. When all such participants are terminated, remaining unspent funds must be used and accounted for in accordance with the rules implementing the 1992 Amendments.

States and SDAs should identify PY 1992 and earlier funds that will be used in PY 1993 for programs operating under the new Amendments. Of these funds, not less than 40 percent, or the rate approved by the Governor as established under section 203(b)(2), must be used in PY 1993 as Title II-C funds to provide services to eligible youth. The cost limitations, cost classifications, and allowable costs requirements in the 1992 JTPA Amendments apply to these funds.

The Interim Final Regulations provide that administrative cost pool funds must be allocated on the basis of benefits received, rather than the past practice in some States and SDAs of allocating costs on the basis of proportionate fund contribution to the pool. Many commentors viewed this as unduly restrictive. It is important to note that States, in setting policy in this area, may apply whatever allocation methodology is in accordance with generally accepted accounting practices and is acceptable to its auditors.

Pursuant to TEGL 2-92, any available section 202(b)(3) PY 1992 or earlier "6 percent" funds may be used to develop and implement data collection and management information systems to track the program experience of participants.

The JTPA Amendments of 1992 provide SDAs with the option to transfer funds between the "Parts" within Title II. For the PY 1993 planning process, SDAs may use available PY 1992 and earlier Title II-A funds for Titles II-A and Title II-C purposes in PY 1993, and may also transfer PY 1993 Title II-A, II-B, and II-C funds to Titles II-A and II-C. Guidance that addresses this was issued separately in TEGL No. 6-92.

#### b. Participants

##### "Grandparenting" Participants

Participants enrolled in JTPA programs prior to July 1, 1993, may continue to be served under the "old" rules and regulations.

As previously noted, all new Title II-A and II-C participants enrolled after January 1, 1994, must be served under the requirements of the 1992 JTPA Amendments, e.g.,

assessment, ISS, and referral. The 65 percent barrier requirement for Titles II-A and II-C, however, will apply to all participants newly enrolled after June 30, 1993.

The 50 percent out-of-school participants requirement at 20 CFR 628.803(h) will not be the subject of compliance review until the period following July 1, 1994. During PY 1993, however, SDAs must show improvement in the proportion of out-of-school youth being served and ETA and States will monitor performance in increasing the proportion.

The Interim Final Regulations call for all participants to come under the requirements of the Amendments as of July 1, 1994. Final Regulations will allow participants on board prior to July 1, 1993 to continue service under the old arrangements until they terminate, which may be after June 30, 1994.

#### c. Procurement

Section 627.904(e) of the Interim Final Regulations states that "All procurements initiated on or after July 1, 1993, shall be governed by and follow the requirements in 20 CFR 627.420 \* \* \*." Initiation of a procurement, for purposes of this section, is considered to be either the award of a sole source grant/contract, the award of a small purchase contract or the issuance of an Invitation For Bid or Request For Proposal. In accordance with 20 CFR 627.905, contracts, awards, and agreements entered into on or before June 30, 1993, are to be used to serve only participants enrolled on or before June 30, 1993, unless the contracts, awards and agreements are modified to comply with the new amendments and regulations.

#### d. Reporting

##### Financial Reports

States/SDAs may continue to use PY 1992 money for grandparented participants under old requirements, or PY 1992 funds may be used for new participants under new requirements. PY 1992 money used to implement the 1992 Amendments will be reported on the new Title II financial report format, and will be subject to the new financial management requirements. States will continue to report on the JTPA Annual Status Report (JASR), as usual, PY 1992 and earlier money that is not used to implement the 1992 Amendments. Reporting instructions for PY 1993 are forthcoming. As soon as OMB approval has been secured, the Department will issue instructions for the new fiscal reports.

PY 1992 and earlier funds used for PY 1993 activity will assume PY 1993 characteristics and cost limitations and audit requirements. They will not, however, lose their appropriation identity. These funds will be reported separately on the new financial report under new cost categories in accordance with the reporting instructions issued for PY 1993 funds.

#### Participant Reporting

All current annual and semi-annual reporting requirements for Title II and Title III will continue until full implementation of the Standardized Program Information Reporting (SPIR) system. Full SPIR

implementation is required for PY 1993, beginning July 1, 1993. For PY 1992, a dual system of participant reporting will be required as follows: (1) PY 1992 aggregate data required in the JASR and Worker Adjustment Program Annual Program Report (WAPR) will be reported no later than August 15, 1993; and (2) SPIR participant reports for all individuals terminating during PY 1992 will be reported no later than November 15, 1993. Reports will contain, at a minimum, that information needed to complete the JASR and WAPR. Title II-B information will be reported on the JTPA Summer Performance Report. Additional requirements may be added, depending on the proposed summer supplemental.

*6. Other Issues of Immediate Concern:*

*a. State Human Resource Investment Council (HRIC)*

Pursuant to section 701 of the JTPA as amended, States may establish an HRIC that would supersede and replace the State Job Training Coordination Council and other State councils. Section 703(c) provides that a State electing to establish an HRIC shall certify to the Secretary such establishment at least 90 days before the beginning of the 2-program year planning period. The 2-year period for the next State and local plans begins July 1, 1994. Therefore, an HRIC may be established now, or at any time during PY 1993. The certification for the HRIC is required 90 days prior to July 1, 1994.

*b. Instructions Necessary for SDAs to Operate the 1993 Summer Program*

There is contradictory language in the Interim Final Regulations at 20 CFR 627.902(j) and 627.904(k). The calendar year 1993 Title II-B Summer Youth Employment and Training Program will be governed by the Act and regulations in effect prior to the 1991 JTPA Amendments pursuant to 20 CFR 627.904(k). Additional guidance will follow related to the proposed summer supplemental.

*c. Capacity Building and Technical Assistance*

The JTPA Amendments of 1992 made capacity building and technical assistance priorities at the National, State and local levels. Governors are encouraged to use section 202(c)(1)(B) funds to develop a Statewide capacity building and technical assistance strategy, including provisions for SDAs in State planning. Funds may be used for capacity building purposes beginning July 1, 1993. Consideration should be given to directing resources and/or training directly to staff of SDAs and local service providers. Other coordinated capacity building arrangements, including cost-sharing approaches, should also be considered.

*d. Performance Standards*

Consistent with the transition provisions in Section 701, implementation of new performance standards requirements will begin on July 1, 1993 (PY 1994). Until that time, current requirements pertaining to measures and applications (i.e., adjustments, incentive awards, and imposition of sanctions) will remain in effect. Therefore, for calculating PY 1992 SDA performance on

the postprogram performance employment and earnings measures, States are to use the PY 1992 JASR follow-up information (based on the first three quarters of PY 1992 and the fourth quarter of PY 1991). A similar procedure will be used for PY 1993 (using the first three quarters of PY 1993 from the August 15, 1994 SPIR and the fourth quarter of PY 1992 derived from the November 15, 1993 SPIR). This is consistent with the procedures used since the inception of postprogram measures.

*e. Grievances*

The transition provisions contained in the Interim Final Regulations appear to imply that "new" grievances procedures are required at the State and SDA levels as a result of the JTPA Amendments of 1992. This is not really the case. The basic requirements at section 144 of the Act, to have and maintain a JTPA grievance procedure for complaints and alleged violations of the Act and regulations, were not changed by the Amendments. The Amendments revised section 144 by adding new subsections which apply to the handling of alleged section 143 labor standards violations. The States and SDAs will need to modify their grievance procedures accordingly to cover such complaints. Complaints and grievances will continue to be handled in accordance with established grievance procedures, except as modified by the changes in the Amendments to section 144, and other minor revisions set forth at Subpart E, F, and H of the Interim Final Regulations.

*f. Coordination Requirements*

New coordination and linkage requirements are expected to be developed during PY 1993 so as to constructively impact the planning and coordination of PY 1994-95 activities under Titles I, II and III.

*g. Plans Modifications*

The Interim Final Regulations call for the modification of State and local job training plans. The plans need to reflect only those programmatic revisions which are necessary to implement the requirements that take effect on July 1, 1993 or during PY 1993. The plans must also reflect provisions for the new coordination requirements for local adult and youth programs which must be in place during PY 1993.

*h. SDA Redesignation*

Policies for the designation of SDAs need not affect SDAs prior to the designations for PY 1994. It is expected that these policies will apply to SDA designations prior to the 1994-1995 program year period.

*7. Action.* States should ensure that transition activities are consistent with this guidance.

*8. Inquiries.* Questions may be directed to Jim Aaron at (202) 219-6825 or Hugh Davies at (202) 219-5580.

[FR Doc. 93-8091 Filed 4-6-93; 8:45 am]

BILLING CODE 4510-30-M

**Office of the Assistant Secretary for Veterans' Employment and Training**

**Procedures for Application for Funds: Stewart B. McKinney Homeless Assistance Act, Title VII, Subtitle C, Section 738, Fiscal Year 1993**

**AGENCY:** Office of the Assistant Secretary for Veterans' Employment and Training (OASVET), Labor.

**ACTION:** Notice of availability of funds and of solicitation for grant applications.

**SUMMARY:** This notice sets forth the procedures for obtaining an application for funds for the operation of a Homeless Veterans Reintegration Project (HVRP) funded under the Stewart B. McKinney Homeless Assistance Act, Title VII, Subtitle C, Section 738. Projects will be administered by the Department of Labor through grants with State and local public agencies and nonprofit organizations.

**DATES:** The closing date for receipt of a completed application package in response to this notice is May 14, 1993. Applications received after that time will be considered for award according to the instructions in the application package governing late proposals.

**ADDRESSES:** A copy of the application package and instructions for completion may be obtained by written request only directed to: U.S. Department of Labor, Office of Procurement Services, rm. S5220, 200 Constitution Ave., NW., Washington, DC 20210, Grant Officer, Attention: Robert MacLeod, Reference SGA 93-02. Self-addressed mailing labels will be appreciated.

**FOR FURTHER INFORMATION CONTACT:** Robert MacLeod, U.S. Department of Labor, Office of Procurement Services, 200 Constitution Ave., NW., rm. S5220, Washington, DC 20210, Telephone (202) 219-6246.

**SUPPLEMENTARY INFORMATION:** The Office of the Assistant Secretary for Veterans' Employment and Training (OASVET) announces the availability of an application package for its HVRP funds for Fiscal Year 1993. Funding for these projects is authorized by Section 738 of the Stewart B. McKinney Homeless Assistance Act, (Pub. L. 100-77). Most recently under the Homeless Veterans Comprehensive Service Programs Act of 1992 (Public Law 102-590, enacted on November 10, 1992) the Homeless Veterans Reintegration Project was reauthorized through Fiscal Year 1995.

The McKinney Act provides funds to various Federal agencies to administer a variety of programs for homeless persons. Title VII, Subtitle C, section

738 of the Act authorizes programs "to expedite the reintegration of homeless veterans into the labor force." There is approximately \$4.5 million available in Fiscal Year 1993 to carry out demonstration HVRPs in urban areas authorized under section 738. A separate competition for a small number of demonstration grants to operate in rural areas will be announced separately at a later time.

Project funding will range from \$100,000 to \$300,000 with an average of \$150,000. Between 25 and 30 projects will be funded. Projects will begin no later than September 30, 1993 for a one-year period with an option to renew for an additional year. Individual starting dates will be negotiated with successful applicants.

In keeping with the demonstration nature of the McKinney Act, the program is designed to provide each potential program operator with flexibility in determining the range of supportive and training-related activities which best meet the need of the homeless veteran population in its jurisdiction.

There are three elements, however, which will be required in each HVRP: (1) An outreach activity staffed by veterans who have experienced homelessness; or, if outreach is deemed not necessary due to the applicant's particular local circumstances, at least one veteran who has experienced homelessness must be employed on staff in a position involving direct client contact; (2) linkages with providers of other services which could benefit homeless veterans, including, where applicable, other recipients of funds under the McKinney Act; and (3) projects must be employment-focused in order to provide the employment and training services needed to reintegrate homeless veterans into the labor force.

Potential jurisdictions which will be served through HVRPs are limited to: (1) The 75 largest U.S. cities and/or jurisdictions which were served through the HVRP in FY 1992. A list of these jurisdictions follows:

Arizona  
Birmingham  
Alaska  
Anchorage  
Arizona  
Mesa  
Phoenix  
Tucson  
California  
Anaheim  
Fresno  
Long Beach  
Los Angeles  
Oakland

Riverside	Toledo
Sacramento	Oklahoma
San Diego*	Oklahoma City
San Francisco	Tulsa*
San Jose*	Oregon
Santa Ana	Portland
Stockton	Pennsylvania
Colorado	Philadelphia
Aurora	Pittsburgh
Colorado Springs	Tennessee
Denver*	Memphis
District of Columbia	Nashville/Davidson*
Florida	Texas
Jacksonville	Arlington
Miami	Austin
St. Petersburg	Corpus Christi
Tampa	Dallas
Georgia	El Paso
Atlanta*	Fort Worth
Hawaii	Houston
Honolulu	San Antonio
Illinois	Virginia
Chicago	Norfolk
Indiana	Virginia Beach
Indianapolis	Washington
Kansas	Seattle*
Wichita	Olympia*
Kentucky	Tacoma*
Lexington-Fayette	Wisconsin
Louisville	Milwaukee*
Louisiana	Entities which are eligible to submit
Baton Rouge	applications for serving the jurisdictions
New Orleans	listed above are (1) State and local
Maryland	public agencies and (2) nonprofit
Baltimore	organizations.
Massachusetts	"Local public agency" refers to any
Boston*	public agency of a general purpose
Michigan	political subdivision of a State which
Detroit*	has the power to levy taxes and spend
Minnesota	funds, as well as general corporate and
Minneapolis	police powers. (This typically refers to
St. Paul	cities and counties).
Missouri	Nonprofit organizations invited to
Kansas City	apply are those who have operated an
St. Louis*	HVRP or similar employment and
Nebraska	training program for the homeless or
Omaha	veterans; have proven capacity to
Nevada	manage Federal grants; and will provide
Las Vegas	the necessary linkages for services.
New Jersey	The application instructions will
Jersey City	include a more detailed program
Newark	description, program guidelines, and
New Mexico	approach to implementation. The
Albuquerque	application package will consist of a
New York	standard application form, a narrative
Buffalo	description of proposed activities and
New York*	current services, and a detailed budget.
Rochester	Criteria for identifying the most
North Carolina	promising and effective proposals will
Charlotte	be applied, and between 25 and 30
Raleigh	applicants will be identified as potential
Ohio	grantees. Applicants are advised that
Akron	discussions may be necessary to clarify
Cincinnati	any inconsistencies in their
Cleveland	applications. The final decision on the
Columbus	award will be based upon what is

\* Fiscal Year 1992 Homeless Veterans Reintegration Project jurisdictions.

Signed at Washington, DC this 1st day of April 1993.

**Jeffrey C. Crandall,**

*Acting Assistant Secretary for Veterans' Employment and Training.*

[FR Doc. 93-8090 Filed 4-6-93; 8:45 am]

BILLING CODE 4510-78-M

## NUCLEAR REGULATORY COMMISSION

### Proposed Generic Communication

#### The Relocation of the Technical Specification Tables on Instrument Response Time Limits

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of opportunity for public comment.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is proposing to issue a generic letter to provide guidance to assist licensees in preparing a license amendment request to relocate tables for instrument response time limits from technical specification to the updated final safety analysis report. The NRC is seeking comment from interested parties regarding both the technical and regulatory aspects of the proposed generic letter presented under the Supplementary Information heading. At the 236th meeting of the Committee to Review Generic Requirements (CRGR), the NRC staff discussed the proposed generic letter and the supporting CRGR review package documentation. This information is available under accession number 9212150291 for inspection or copying for a fee in the NRC Public Document Room, the Gelman Building—room LL6 (Lower Level), 2120 L Street, NW., Washington DC, 20555. The NRC will consider comments received from interested parties in the final evaluation of the proposed generic letter. The NRC's final evaluation will include a review of the technical position and, when appropriate, an analysis of the value/impact on licensees. Should this generic letter be issued by the NRC, it will become available for public inspection in the Public Document Rooms.

**DATES:** Comment period expires May 24, 1993. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

**ADDRESSES:** Submit written comments to Chief, Rules Review and Directives Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Written comments may also be

delivered to room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m., Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

#### FOR FURTHER INFORMATION CONTACT:

Thomas Dunning, (301) 504-1189.

**SUPPLEMENTARY INFORMATION:** The following is the proposed generic letter that would be addressed to all holders of operating licenses for power reactors under the subject of "Relocation of the Technical Specification Tables on Instrument Response Time Limits."

The U.S. Nuclear Regulatory Commission (NRC) is issuing this guidance for requesting a license amendment to relocate tables of instrument response time limits from technical specifications (TS) to the updated final safety analysis report (FSAR). The NRC developed this line-item TS improvement in response to TS proposals by applicants for operating licenses.

Licensees that plan to adopt this line-item TS improvement are encouraged to propose TS changes consistent with the enclosed guidance in Enclosures 1 and 2. NRC project managers will review the amendment requests to verify that they conform to the guidance. Please contact your project manager or the contact indicated herein if you have questions on this matter.

Any action by licensees to propose technical specification changes in accordance with the guidance of this generic letter is voluntary and, therefore, not a backfit under 10 CFR 50.109. The following information, although not requested under the provisions of 10 CFR 50.54(f), would help the NRC to evaluate licensees' costs to propose TS changes in accordance with this generic letter.

1. The licensee's time and costs to prepare the amendment request.
2. An estimate of the licensee's long-term costs or savings as a result of this TS change.

#### Enclosure 1—Guidance for a Proposed License Amendment to Relocate Tables of Instrument Response Time Limits from Technical Specifications to the Updated Final Safety Analysis Report

##### Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing the following guidance for preparing a proposed license amendment to relocate the tables of response time limits for the reactor trip system (RTS) and the engineered safety features actuation

system (ESFAS) instruments from technical specifications (TS) to the updated final safety analysis report (FSAR). The NRC has already implemented this line-item TS improvement for recently issued operating licenses and in the improved standard technical specifications.

#### Discussion

The limiting conditions for operation (LCO) for RTS and ESFAS instruments require that these systems be operable with response times as specified in TS tables for each of these systems. The surveillance requirements specify that licensees test these systems and verify that the response time of each function is within its limits. Relocating the tables for the RTS and ESFAS instrument response time limits from the TS to the updated FSAR will not alter these surveillance requirements. However, this TS change allows the licensee to administratively control changes to the response time limits for the RTS and ESFAS instruments in accordance with the provisions of 10 CFR 50.59 without the need to process a license amendment request.

The LCO for the RTS and the ESFAS typically specify that the associated instruments "shall be OPERABLE with RESPONSE TIMES as shown in Table 3.3-2" (RTS) or "Table 3.3-5" (ESFAS). An acceptable change to the LCO would be to remove the reference to response times and simply state that this instrumentation "shall be OPERABLE" as shown for the markup of the Westinghouse standard technical specifications in Enclosure 2. This change is compatible with relocating the referenced tables.

The surveillance requirements specify that the response time of each trip function is to be demonstrated to be within its limit at the specified frequency and do not reference the tables of response time limits. Therefore, the surveillance requirements specified in this manner need not be modified to implement this change. However, a footnote in the table of response time limits for the RTS states that neutron detectors are exempt from response time testing. To retain this exception, which is stated only in the table being removed from the TS, the surveillance requirements for the RTS should be modified to add the following statement:

Neutron detectors are exempt from response time testing. Each licensee that wishes to implement this line-item TS improvement should confirm that the plant procedures for response time testing include acceptance criteria that reflect the RTS and the ESFAS response

time limits in the tables being relocated from the TS to the updated FSAR. The licensee should also provide a commitment to include the RTS and the ESFAS response time limits in the next update of the FSAR.

Licensees would submit any subsequent changes to these limits in the FSAR as an update of the FSAR as required by 10 CFR 50.71(e). Related changes to plant procedures would be subject to the provisions that control changes to plant procedures as stated in the administrative controls section of the TS.

#### Enclosure 2—Model Technical Specifications

The model technical specifications are based on the "Standard Technical Specifications for Westinghouse Pressurized Water Reactors," NUREG-0452, Revision 4a.

##### 3/4.3.1 Reactor Trip System Instrumentation

3.3.1 As a minimum, the Reactor Trip System instrumentation channels and interlocks of Table 3.3-1 shall be OPERABLE.

(Change TS 3.3.1 as shown)

4.3.1.2 The REACTOR TRIP SYSTEM RESPONSE TIME of each Reactor trip function shall be demonstrated to be within its limit at least once per 18 months. Each test shall include at least one train such that both trains are tested at least once per 36 months and one channel per function such that all channels are tested at least once every N times 18 months where N is the total number of redundant channels in a specific Reactor trip function as shown in the "Total No. of Channels" column of Table 3.3-1.

(No change to TS 4.3.1.2)

##### 3/4.3.2 Engineered Safety Features Actuation System Instrumentation

3.3.2 The Engineered Safety Features Actuation System (ESFAS) instrumentation channels and interlocks shown in Table 3.3-3 shall be OPERABLE with their Trip Setpoints set consistent with the values shown in the Trip Setpoint column of Table 3.3-4.

(Change TS 3.3.2 as shown)

4.3.2.2 The Engineered Safety Features Response Time of each ESFAS function shall be demonstrated to be within the limit at least once per 18 months. Each test shall include at least one train such that both trains are tested at least once per 36 months and one channel per function such that all channels are tested at least once every N times 18 months where N is the total number of redundant channels in a specific ESFAS function as shown in

the "Total No. of Channels" column of Table 3.3-3.

(No change to TS 4.3.2.2)

Dated at Rockville, Maryland, this thirty-first day of March 1993.

For the Nuclear Regulatory Commission.

Gail H. Marcus,

*Chief, Generic Communications Branch,  
Division of Operating Reactor Support, Office  
of Nuclear Reactor Regulation.*

[FR Doc. 93-8120 Filed 4-6-93; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-315 and 50-316]

#### Indiana Michigan Power Co., (Donald C. Cook Nuclear Plant Units 1 and 2); Exemption

##### I.

Indiana Michigan Power Company (the licensee) is the holder of Facility Operating License Nos. DPR-58 and DPR-74 which authorize operation of the Donald C. Cook Nuclear Plant, Units 1 and 2 at steady-state reactor power levels not in excess of 3250 and 3411 megawatts thermal, respectively. The Donald C. Cook facilities are pressurized water reactors located at the licensee's site in Berrien County, Michigan. These licenses provide, among other things, that they are subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

##### II.

Section 50.54(q) of 10 CFR part 50 requires a licensee authorized to operate a nuclear power reactor to follow and maintain in effect emergency plans that meet the standards of 10 CFR 50.47(b) and the requirements of appendix E to 10 CFR part 50. Section IV.F.3 of appendix E requires that each licensee at each site shall exercise with off-site authorities such that the State and local government emergency plans for each operating reactor site are exercised biennially, with full or partial participation by State and local governments, within the plume exposure pathway emergency planning zone (EPZ).

The NRC may grant exemptions from the requirements of the regulations which, pursuant to 10 CFR 50.12(a), (1) are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security; and (2) where special circumstances are present. Section 50.12(a)(2)(v) of 10 CFR part 50 indicates that special circumstances exist when an exemption would provide only temporary relief from the applicable regulation and the

licensee has made good faith efforts to comply with the regulation.

##### III.

By letter dated May 24, 1991, the licensee requested an exemption from the schedule requirements of Section IV.F.3 of appendix E to perform a biennial full participation emergency preparedness exercise for Donald C. Cook Nuclear Plant in 1992. This exemption was granted by the Commission on September 4, 1991, with the stipulation that the full participation exercise be conducted before June 1, 1993. By letter dated January 15, 1993, the licensee requested an extension to the previously granted exemption. As a result of a scheduling conference held November 12 and 13, 1992, with FEMA and representatives from all of the State and utilities in FEMA Region V, the licensee was assigned a date of June 30, 1993, for its full participation emergency preparedness exercise.

The rationale that was provided for originally granting the exemption, to balance the logistical and resource burden on the State and FEMA, is still germane. The current schedule only extends the previously granted exemption by a month. Also, local officials of Berrien County also participated in emergency preparedness exercises for the Palisades Nuclear Plant.

Based on a consideration of the facts presented in Section III above, the NRC staff finds that the following factors support granting of the requested exemption:

a. The capability of the State of Michigan and the local government agencies to respond to an emergency at the Donald C. Cook Nuclear Plant has been adequately demonstrated in previous exercises at D. C. Cook. FEMA has found that there is reasonable assurance that appropriate measures can be taken to protect the health and safety of the public in the event of a radiological accident at D. C. Cook and had previously granted an exemption to the requirements of 44 CFR 350.9(c).

b. The State of Michigan maintains a high level of preparedness through its participation in exercises with each of the nuclear power plants located in the State, including two full participation exercises in 1992.

c. FEMA and State and local agencies have indicated their agreement with the proposed exercise schedule change.

The requested exemption is a one-time schedule change which will result in extending the previously granted exemption by one month. This will result in a more balanced and efficient allocation of State and FEMA resources.

The licensee has made a good faith effort to comply with the regulations by conducting the required full participation emergency preparedness exercises at D. C. Cook with State and local government agencies since 1984. All affected parties support the proposed schedule change.

Accordingly, the Commission has determined that pursuant to 10 CFR 50.12(a)(1), this exemption as described in Section IV as authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission determines further that special circumstances as provided in 10 CFR 50.12(a)(2)(v) are presently justifying the exemption.

Therefore, the Commission hereby grants the Exemption from the requirements of 10 CFR part 50, appendix E, Section IV.F.3, for the conduct of a biennial off-site full participation emergency preparedness exercise in 1992, provided that such an exercise be conducted by the end of July 1993.

Pursuant to 10 CFR 51.32, the Commission has determined that granting of this Exemption will have no significant impact on the environment (58 FR 16555).

This Exemption is effective upon issuance.

Dated at Rockville, Maryland this 30th day of March, 1993.

For the Nuclear Regulatory Commission.  
Martin J. Virgilic, Acting Director,  
Division of Reactor Projects—III/IV/V, Office  
of Nuclear Reactor Regulation.  
[FR Doc. 93-8121 Filed 4-6-93; 8:45 am]  
BILLING CODE 7590-01-M

#### OFFICE OF MANAGEMENT AND BUDGET

##### Issuance of Transmittal Memorandum No. 12

**AGENCY:** Office of Management and Budget.

**ACTION:** Issuance of Transmittal Memorandum No. 12, amending OMB Circular No. A-76, "Performance of Commercial Activities."

**SUMMARY:** This notice contains Transmittal No. 12, to OMB Circular No. A-76, "Performance of Commercial Activities."

This Transmittal Memorandum updates the Federal pay raise assumptions and inflation factors used for computing the Government's in-house personnel and non-pay cost increases for Fiscal Years 1993 through 1998. The Federal pay raise

assumptions and the non-pay category rates are contained in the President's Budget for Fiscal Year 1994. The factors contained in OMB Circular No. A-76, Transmittal Memorandum No. 11 (See Federal Register Vol. 57, No. 59, dated March 26, 1992, page 10508) are outdated.

The revision does not require any agency to (1) create or maintain a duplicate control/monitoring/reporting system or (2) adopt any additional controls, not presently in compliance with Federal Acquisition Regulations (FAR).

**FOR FURTHER INFORMATION CONTACT:** Mr. David Childs, Federal Services Branch, General Management Division, Office of Management and Budget, (202) 395-6104.

Franklin S. Reeder,  
Assistant Director for General Management.  
Circular No. A-76 (Revised)  
Transmittal Memorandum No. 12  
To the Heads of Executive Departments and Agencies  
Subject: Performance of Commercial Activities

This Transmittal Memorandum updates the Federal pay raise assumptions and inflation factors used for computing the Government's in-house personnel and non-pay cost increases, as provided in the President's Budget for Fiscal Year 1994.

The following factors should be applied per paragraph C pages IV-6 and IV-7 of the OMB Circular A-76 Supplemental Cost Comparison Handbook (August 1983).

Federal pay raise assumptions, Effective date	Inflation factors, Military and civilian
January 1993 .....	3.7
January 1994 .....	0.0
January 1995 .....	2.0
January 1996 .....	1.7
January 1997 .....	1.6
January 1998 .....	2.3
Non-Pay categories (supplies and equipment, etc.)	
FY 1993 .....	3.0
FY 1994 .....	2.7
FY 1995 .....	2.6
FY 1996 .....	2.5
FY 1997 .....	2.5
FY 1998 .....	2.5

The above personnel pay raise factors do not include "locality pay," which is expected to begin in 1995 under the President's FY 1994 budget. Locality pay factors will be provided in a future update. Until that time, locality pay adjustments are not required. Locations that received the Interim Geographic Adjustments (IGA), as provided by section 302 of the Federal Employees Pay Comparability Act of 1990 (P.L. 101-509), will continue to receive those payments. The above personnel pay raise factors shall be applied at these locations after consideration

is given to the Interim Geographic Adjustments.

These revisions are effective as follows: All changes in the Transmittal Memorandum are effective immediately and shall apply to all cost comparisons in process where the Government's in-house cost estimate has not been publicly revealed before this date.

Sincerely,

Franklin S. Reeder,  
Assistant Director for General Management.  
[FR Doc. 93-7877 Filed 4-6-93; 8:45 am]  
BILLING CODE 3110-01-P

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-32083; File No. SR-AMEX-92-44]

**Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the American Stock Exchange, Inc. Relating To Its Pre-Opening Application Rule**

March 31, 1993.

On December 14, 1992, the American Stock Exchange, Inc. ("AMEX") filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> The purpose of the proposal is to conform the AMEX's pre-opening application rule with the ITS pre-opening application rule.<sup>2</sup> Notice of the proposal appeared in the *Federal Register* on February 24, 1993.<sup>3</sup> The Commission received no comments on the proposal. For the reasons discussed below, the Commission is approving the proposal.

##### I. Description

The proposed rule change amends AMEX Rule 232, governing the pre-opening application in the Intermarket Trading System ("ITS"), to conform AMEX Rule 232 with the ITS pre-

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> The ITS is a National Market System ("NMS") plan approved by the Commission pursuant to Section 11A of the Act and Rule 11Aa3-2. The ITS was designed to facilitate intermarket trading in exchange-listed equity securities based on current quotation information emanating from the linked markets. Securities Exchange Act Release No. 19456 (January 27, 1983), 48 FR 4938.

Participants to the ITS Plan include the AMEX, the Boston Stock Exchange, Inc. ("BSE"), the Chicago Board Options Exchange, Inc. ("CBOE"), the Cincinnati Stock Exchange, Inc. ("CSE"), the Midwest Stock Exchange, Inc. ("MSE"), the National Association of Securities Dealers, Inc. ("NASD"), the New York Stock Exchange, Inc. ("NYSE"), the Pacific Stock Exchange, Inc. ("PSE"), and the Philadelphia Stock Exchange, Inc. ("PHLX").

<sup>3</sup> Securities Exchange Act Release No. 31882 (February 17, 1993), 58 FR 11265.

opening application rule.<sup>4</sup> Recently, the Commission approved an amendment to the ITS pre-opening application rule.<sup>5</sup> The AMEX's proposal would adopt the model ITS rule.

The proposed rule change amends the AMEX's pre-opening rule to clarify the use of a cancellation notification (designated as "CXL") sent after a pre-opening notification.<sup>6</sup> Under the proposed rule change, a cancellation notification will have the effect of indicating that the security will open within the applicable price change.<sup>7</sup>

The proposed rule change applies to the situation where a specialist has sent a cancellation notification following the initial pre-opening notification, and subsequently receives additional orders indicating the security will open within the price range of the original pre-opening notification. Under the current pre-opening rule, a cancellation notification represents that the specialist will open the security within the applicable price change, but outside the price range of the original pre-opening application.

For example, a specialist sends a pre-opening notification of 30-31 for a stock that closed at 30. Subsequent to sending the notification, the specialist receives sell orders indicating that the stock will be opened at 29 $\frac{1}{2}$ . The specialist then sends a cancellation notification—which, by definition, means that the stock will open at 29 $\frac{1}{2}$  or 29 $\frac{1}{4}$ . The specialist then receives more buy orders

<sup>4</sup> AMEX Rule 232 contains basic definitions pertaining to ITS, prescribes the transactions that may be effected through ITS and the pricing of commitments to trade, and specifies the procedures pertaining to the pre-opening application.

<sup>5</sup> See Securities Exchange Act Release No. 31970 (March 9, 1993), 58 FR 14227.

<sup>6</sup> The pre-opening rule prescribes that if an AMEX specialist anticipates that the opening transaction in the stock will be at a price that represents a change from the security's previous day's consolidated closing price by more than the "applicable price change," the specialist shall notify other participant markets by sending a pre-opening notification through ITS. See ITS Plan, Section 7(a). See also infra note 8.

The pre-opening rule also applies whenever an "indication of interest" is sent to the CTA plan processor prior to the reopening of trading of an ITS security following a trading halt, even if the anticipated price is not greater than the applicable price change. See ITS Plan, Section 7(a). See also Securities Exchange Act Release No. 27472 (November 24, 1989), 54 FR 49829.

<sup>7</sup> The ITS rules define "applicable price changes" as:

and opens the stock at 30, which is outside the 29 $\frac{1}{2}$  or 29 $\frac{1}{4}$  prices. The pre-opening rule does not currently address this situation.

As revised, the CXL notification procedure would operate as follows:

The CTA close in a stock is 30. A pre-opening notification is sent with any one of the following price ranges: 30-31; 30 $\frac{1}{2}$ -31 $\frac{1}{2}$ ; or 30 $\frac{1}{4}$ -31 $\frac{1}{4}$ . It is then determined that the stock will open at 29 $\frac{1}{2}$  or 29 $\frac{1}{4}$  and the specialist sends a cancellation notification. If it is subsequently determined that stock will open at 30, 30 $\frac{1}{2}$ , or 30 $\frac{1}{4}$ , under the proposed rule change the specialist would not be required to reindicate the stock.

## II. Discussion

The Commission finds that approval of the proposed rule change is consistent with the Act, in particular, with sections 6(b)(5) and 11A(a)(1)(C)(ii) and (D). Section 6(b)(5) of the Act requires that the rules of an exchange be designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a NMS. Section 11A(a)(1)(C)(ii) and (D) establish the NMS goals to provide for fair competition among the ITS participants and their members, and the linking of all markets or qualified securities through communications and data processing facilities which foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors orders, and contribute to the best execution of such orders.

The pre-opening application enables an AMEX specialist who wishes to open his or her market in an ITS security to obtain any pre-opening interest in that security of other market-markers registered in that security in other participant markets. This enables ITS market makers to participate as either principal or as agent in the opening transaction in a security in another participant market, and thus, enables execution of limited price orders that may otherwise go unexecuted. The instant filing should prevent confusion in the pre-opening process by clarifying the use of a cancellation notification sent after a pre-opening notification.

## III. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule is consistent with the Act and the rules and regulations thereunder applicable to the AMEX and, in particular, sections 6(b)(5) and 11A(a)(1)(C)(ii) and (D) of the Act.

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, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,  
Deputy Secretary.

[FR Doc. 93-8027 Filed 4-6-93; 8:45 am]  
EFFECTIVE DATE: 6010-01-M

[Release No. 34-32082; File No. SR-BSE-93-02]

## Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the Boston Stock Exchange, Inc. Relating To its Pre-Opening Application Rule

March 31, 1993.

On January 26, 1993, the Boston Stock Exchange, Inc. ("BSE") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-BSE-93-02) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> The purpose of the proposal is to conform the BSE's pre-opening application rule with the ITS pre-opening application rule.<sup>2</sup> Notice of the proposal appeared in the Federal Register on February 24, 1993.<sup>3</sup> The Commission received no comments on the proposal. For the reasons discussed below, the Commission is approving the proposal.

## I. Description

The proposed rule change amends Chapter XXXI of the BSE Rules, governing the pre-opening application in the Intermarket Trading System ("ITS"), to conform the BSE pre-opening application rule with the ITS pre-opening application rule.<sup>4</sup> Recently, the

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> The ITS is a National Market System ("NMS") plan approved by the Commission pursuant to Section 11A of the Act and Rule 11Aa3-2. The ITS was designed to facilitate intermarket trading in exchange-listed equity securities based on current quotation information emanating from the linked markets. Securities Exchange Act Release No. 19456 (January 27, 1983), 48 FR 4938.

Participants to the ITS Plan include the American Stock Exchange, Inc. ("AMEX"), the BSE, the Chicago Board Options Exchange, Inc. ("CBOE"), the Cincinnati Stock Exchange, Inc. ("CSE"), the Midwest Stock Exchange, Inc. ("MSE"), the National Association of Securities Dealers, Inc. ("NASD"), the New York Stock Exchange, Inc. ("NYSE"), the Pacific Stock Exchange, Inc. ("PSE"), and the Philadelphia Stock Exchange, Inc. ("PHLX").

<sup>3</sup> Securities Exchange Act Release No. 31884 (February 17, 1993), 58 FR 11267.

<sup>4</sup> Chapter XXXI of the BSE Rules contains basic definitions pertaining to ITS, prescribes the transactions that may be effected through ITS and

Continued

Security	Consolidated closing price	Applicable price change (more than)
Network B .....	Under \$5 .....	1/8 point.
	\$5 or over .....	1/4 point.

ITS Plan, Section 7(a).

Commission approved an amendment to the ITS pre-opening application rule.<sup>5</sup> The BSE's proposal would adopt the model ITS rule.

The proposed rule change amends the BSE's pre-opening rule to clarify the use of a cancellation notification (designated as "CXL") sent after a pre-opening notification.<sup>6</sup> Under the proposed rule change, a cancellation notification will have the effect of indicating that the security will open within the applicable price change.<sup>7</sup>

The proposed rule change applies to the situation where a specialist has sent a cancellation notification following the initial pre-opening notification, and subsequently receives additional orders indicating the security will open within the price range of the original pre-opening notification. Under the current pre-opening rule, a cancellation notification represents that the specialist will open the security within the applicable price change, but outside the price range of the original pre-opening application.

For example, a specialist sends out a pre-opening notification of 30-30½ for a stock that closed at 30. Subsequent to sending out the notification, the specialist receives sell orders indicating that the stock will be opened at 29%.

the pricing of commitments to trade, and specifies the procedures pertaining to the pre-opening application.

<sup>5</sup> See Securities Exchange Act Release No. 31970 (March 9, 1993), 58 FR 14227.

<sup>6</sup> The pre-opening rule prescribes that if a BSE specialist anticipates that the opening transaction in the stock will be at a price that represents a change from the security's previous day's consolidated-closing price by more than the "applicable price change," the specialist shall notify other participant markets by sending a pre-opening notification through ITS. See ITS Plan, Section 7(a). See also infra note 7.

The pre-opening rule also applies whenever an "indication of interest" is sent to the CTA plan processor prior to the reopening of trading of an ITS security following a trading halt, even if the anticipated price is not greater than the applicable price change. See ITS Plan, Section 7(a). See also Securities Exchange Act Release No. 27472 (November 24, 1989), 54 FR 49829.

<sup>7</sup> The ITS rules define "applicable price changes" as:

Security	Consolidated closing price	Applicable price change (more than)
Network A .....	Under \$15 .....	½ point.
	\$15 or over* .....	¼ point.
Network B .....	Under \$5 .....	½ point.
	\$5 or over .....	¼ point.

<sup>\*</sup>If the previous day's consolidated closing price of a Network A eligible security exceeded \$100 and the security does not underlie an individual stock option contract listed and currently trading on a national securities exchange, the applicable price change is one point. ITS Plan, Section 7(a).

The specialist then sends out a cancellation notification—which, by definition, means that the stock will open at 39½ or 29%. The specialist then receives more buy orders and opens the stock at 30, which is outside the 29½ or 29% prices. The pre-opening rule does not currently address this situation.

As revised, the CXL notification procedure would operate as follows:

The CTA close in a stock is 30. A pre-opening notification is sent with any one of the following price ranges: 30-30½; 30½-30¾; or, 30¾-30¾. It is then determined that the stock will open at 29½ or 29% and the specialist sends a cancellation notification. If it is subsequently determined that stock will open at 30, 30½, or 30¾, under the proposed rule change the specialist would not be required to reindicate the stock.

## II. Discussion

The Commission finds that approval of the proposed rule change is consistent with the Act, in particular, with sections 6(b)(5) and 11A(a)(1)(C)(ii) and (D). Section 6(b)(5) of the Act requires that the rules of an exchange be designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a NMS. Section 11A(a)(1)(C)(ii) and (D) establish the NMS goals to provide for fair competition among the ITS participants and their members, and the linking of all markets for qualified securities through communications and data processing facilities which foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors orders, and contribute to the best execution of such orders.

The pre-opening application enables a BSE specialist who wishes to open his or her market in an ITS security to obtain any pre-opening interest in that security of other market-markers registered in that security in other participant markets. This enables ITS market makers to participate as either principal or as agent in the opening transaction in a security in another participant market, and thus, enables execution of limited price orders that may otherwise go unexecuted. The instant filing should prevent confusion in the pre-opening process by clarifying the use of a cancellation notification sent after a pre-opening notification.

## III. Conclusion

For the foregoing reasons, the Commission finds that the proposed

rule is consistent with the Act and the rules and regulations thereunder applicable to the BSE and, in particular, sections 6(b)(5) and 11A(a)(1)(C)(ii) and (D) of the Act.

*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, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,  
Deputy Secretary.

[FR Doc. 93-8026 Filed 4-6-93; 8:45 am]  
BILLING CODE 8010-01-M

[Release No. 34-32081; File No. SR-CBOE-93-10]

## Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating To Its Pre-Opening Application Rule

March 31, 1993.

On February 11, 1993, the Chicago Board Options Exchange, Inc. ("CBOE"), filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-CBOE-93-10) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> The purpose of the proposal is to conform the CBOE's pre-opening application rule with the ITS pre-opening application rule.<sup>2</sup> Notice of the proposal appeared in the *Federal Register* on February 24, 1993.<sup>3</sup> The Commission received no comments on the proposal. For the reasons discussed below, the Commission is approving the proposal.

## I. Description

The proposed rule change amends CBOE Rules 30.70, 30.71, and 30.72, governing the pre-opening application in the Intermarket Trading System ("ITS"), to conform the CBOE pre-

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> The ITS is a National Market System ("NMS") plan approved by the Commission pursuant to section 11A of the Act and Rule 11Aa3-2. The ITS was designed to facilitate intermarket trading in exchange-listed equity securities based on current quotation information emanating from the linked markets. Securities Exchange Act Release No. 19456 (January 27, 1983), 48 FR 4938.

Participants to the ITS Plan include the American Stock Exchange, Inc. ("AMEX"), the Boston Stock Exchange, Inc. ("BSE"), the CBOE, the Cincinnati Stock Exchange, Inc. ("CSE"), the Midwest Stock Exchange, Inc. ("MSE"), the National Association of Securities Dealers, Inc. ("NASD"), the New York Stock Exchange, Inc. ("NYSE"), the Pacific Stock Exchange, Inc. ("PSE"), and the Philadelphia Stock Exchange, Inc. ("PHLX").

<sup>3</sup> Securities Exchange Act Release No. 31878 (February 17, 1993), 58 FR 11289.

opening application rule with the ITS pre-opening application rule.<sup>4</sup> Recently, the Commission approved an amendment to the ITS pre-opening application rule.<sup>5</sup> The CBOE's proposal would adopt the model ITS rule.

The proposed rule change amends the CBOE's pre-opening rule to clarify the use of a cancellation notification (designated as "CXL") sent after a pre-opening notification.<sup>6</sup> Under the proposed rule change, a cancellation notification will have the effect of indicating that the security will open within the applicable price change.<sup>7</sup>

The proposed rule change applies to the situation where a DPM or OBO has sent a cancellation notification following the initial pre-opening notification, and subsequently receives additional orders indicating the security will open within the price range of the original pre-opening notification. Under the current pre-opening rule, a cancellation notification represents that the DPM or OBO will open the security within the applicable price change, but outside the price range of the original pre-opening application.

For example, a DPM sends a pre-opening notification of 30-30½ for a stock that closed at 30. Subsequent to

<sup>4</sup>The CBOE's pre-opening application rules contain basic definitions pertaining to ITS, prescribes the transactions that may be effected through ITS and the pricing of commitments to trade, and specifies the procedures pertaining to the pre-opening application.

<sup>5</sup>See Securities Exchange Act Release No. 31970 (March 9, 1993), 58 FR 14227.

<sup>6</sup>The pre-opening rule prescribes that if a CBOE designated primary market maker ("DPM") or order book official ("OBO") anticipates that the opening transaction in the stock will be at a price that represents a change from the security's previous day's consolidated closing price by more than the "applicable price change," the DPM or OBO shall notify other participant markets by sending a pre-opening notification through ITS. See ITS Plan, Section 7(a). See also *infra* note 7.

The pre-opening rule also applies whenever an "indication of interest" is sent to the CTA plan processor prior to the reopening of trading of an ITS security following a trading halt, even if the anticipated price is not greater than the applicable price change. See ITS Plan, Section 7(a). See also Securities Exchange Act Release No. 27472 (November 24, 1989), 54 FR 49329.

<sup>7</sup>The ITS rules define "applicable price changes" as:

sending the notification, the DPM receives sell orders indicating that the stock will be opened at 29¾. The DPM then sends a cancellation notification—which, by definition, means that the stock will open at 29¾ or 29¾. The DPM then receives more buy orders and opens the stock at 30, which is outside the 29¾ or 29¾ prices. The pre-opening rule does not currently address this situation.

As revised, the CXL notification procedure would operate as follows:

The CTA close in a stock is 30. A pre-opening notification is sent with any one of the following price ranges: 30-30½; 30⅓-30⅔; or, 30⅓-30⅔. It is then determined that the stock will open at 29¾ or 29¾ and the DPM sends a cancellation notification. If it is subsequently determined that stock will open at 30, 30⅓, or 30⅔, under the proposed rule change the DPM would not be required to reindicate the stock.

## II. Discussion

The Commission finds that approval of the proposed rule change is consistent with the Act, in particular, with sections 6(b)(5) and 11A(a)(1)(C)(ii) and (D). Section 6(b)(5) of the Act requires that the rules of an exchange be designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a NMS. Section 11A(a)(1)(C)(ii) and (D) establish the NMS goals to provide for fair competition among the ITS participants and their members, and the linking of all markets for qualified securities through communications and data processing facilities which foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors orders, and contribute to the best execution of such orders.

The pre-opening application enables a DPM or OBO who wishes to open his or her market in an ITS security to obtain any pre-opening interest in that security of other market-marketers registered in that security in other participant markets. This enables ITS market makers to participate as either principal or as agent in the opening transaction in a security in another participant market, and thus enables execution of limited price orders that may otherwise go unexecuted. The instant filing should prevent confusion in the pre-opening process by clarifying the use of a cancellation notification sent after a pre-opening notification.

Security	Consolidated closing price	Applicable price change (more than)
Network A .....	Under \$15 .....	1/8 point
	\$15 or over *	1/4 point
Network B .....	Under \$5 .....	1/8 point
	\$5 or over .....	1/4 point

<sup>8</sup>If the previous day's consolidated closing price of a Network A eligible security exceeded \$100 and the security does not underlie an individual stock option contract listed and currently trading on a national securities exchange, the applicable price change is one point.

ITS Plan, Section 7(a).

## III. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule is consistent with the Act and the rules and regulations thereunder applicable to the CBOE and, in particular, sections 6(b)(5) and 11A(a)(1)(C)(ii) and (D) of the Act.

*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, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,  
Deputy Secretary.

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[Release No. 34-32080; File No. SR-CSE-93-01]

## Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the Cincinnati Stock Exchange, Inc. Relating To Its Pre-Opening Application Rule

March 31, 1993.

On February 5, 1993, the Cincinnati Stock Exchange, Inc. ("CSE") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-CSE-93-01) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> The purpose of the proposal is to conform the CSE's pre-opening application rule with the ITS pre-opening application rule.<sup>2</sup> Notice of the proposal appeared in the *Federal Register* on February 24, 1993.<sup>3</sup> The Commission received no comments on the proposal. For the reasons discussed below, the Commission is approving the proposal.

## I. Discussion

The proposed rule change amends CSE Rule 14.3, governing the pre-

<sup>1</sup>15 U.S.C. 78s(b)(1).

<sup>2</sup>The ITS is a National Market System ("NMS") plan approved by the Commission pursuant to section 11A of the Act and Rule 11Aa3-2. The ITS was designed to facilitate intermarket trading in exchange-listed equity securities based on current quotation information emanating from the linked markets. Securities Exchange Act Release No. 19456 (January 27, 1983), 48 FR 4933.

Participants to the ITS Plan include the American Stock Exchange, Inc. ("AMEX"), the Boston Stock Exchange, Inc. ("BSE"), the Chicago Board Options Exchange, Inc. ("CBOE"), the CSE, the Midwest Stock Exchange, Inc. ("MSE"), the National Association of Securities Dealers, Inc. ("NASD"), the New York Stock Exchange, Inc. ("NYSE"), the Pacific Stock Exchange, Inc. ("PSE"), and the Philadelphia Stock Exchange, Inc. ("PHLX").

<sup>3</sup>Securities Exchange Act Release No. 31886 (February 17, 1993), 58 FR 11268.

opening application in the Intermarket Trading System ("ITS"), to conform the CSE pre-opening application rule with the ITS pre-opening application rule.<sup>4</sup> Recently, the Commission approved an amendment to the ITS pre-opening application rule.<sup>5</sup> The CSE's proposal would adopt the model ITS rule.

The proposed rule change amends the CSE's pre-opening rule to clarify the use of a cancellation notification (designated as "CXL") sent after a pre-opening notification.<sup>6</sup> Under the proposed rule change, a cancellation notification will have the effect of indicating that the security will open within the applicable price change.<sup>7</sup>

The proposed rule change applies to the situation where a specialist has sent a cancellation notification following the initial pre-opening notification, and subsequently receives additional orders indicating the security will open within the price range of the original pre-opening notification. Under the current pre-opening rule, a cancellation notification represents that the specialist will open the security within the applicable price change, but outside the price range of the original pre-opening application.

<sup>4</sup> CSE Rules 14, 14.1, and 14.3 contain basic definitions pertaining to ITS, prescribes the transactions that may be effected through ITS and the pricing of commitments to trade, and specifies the procedures pertaining to the pre-opening application.

<sup>5</sup> See Securities Exchange Act Release No. 31970 (March 9, 1993), 58 FR 14227.

<sup>6</sup> The pre-opening rule prescribes that if a CSE specialist anticipates that the opening transaction in the stock will be at a price that represents a change from the security's previous day's consolidated closing price by more than the "applicable price change," the specialist shall notify other participant markets by sending a pre-opening notification through ITS. See ITS Plan, Section 7(a). See also infra note 7.

<sup>7</sup> The pre-opening rule also applies whenever an "indication of interest" is sent to the CTA plan processor prior to the reopening of trading of an ITS security following a trading halt, even if the anticipated price is not greater than the applicable price change. See ITS Plan, Section 7(a). See also Securities Exchange Act Release No. 27472 (November 24, 1989), 54 FR 49829.

<sup>7</sup> The ITS rules define "applicable price changes" as:

Security	Consolidated closing price	Applicable price change (more than)
Network A .....	Under \$15 .....	1/4 point.
	\$15 or over* .....	1/4 point.
Network B .....	Under \$5 .....	1/4 point.
	\$5 or over .....	1/4 point.

\* If the previous day's consolidated closing price of a Network A eligible security exceeded \$100 and the security does not underlie an individual stock option contract listed and currently trading on a national securities exchange, the applicable price change is one point. ITS Plan, Section 7(a).

For example, a specialist sends out a pre-opening notification of 30-30 1/4 for a stock that closed at 30. Subsequent to sending out the notification, the specialist receives sell orders indicating that the stock will be opened at 29 1/4. The specialist then sends out a cancellation notification—which, by definition, means that the stock will open at 29 1/4 or 29 1/2. The specialist then receives more buy orders and opens the stock at 30, which is outside the 29 1/4 or 29 1/2 prices. The pre-opening rule does not currently address this situation.

As revised, the CXL notification procedure would operate as follows:

The CTA close in a stock is 30. A pre-opening notification is sent with any one of the following price ranges: 30-30 1/4; 30 1/2-30 3/4; or 30 3/4-30 1/2. It is then determined that the stock will open at 29 1/4 or 29 1/2 and specialist sends a cancellation notification. If it is subsequently determined that stock will open at 30, 30 1/4, or 30 3/4, under the proposed rule change the specialist would not be required to reindicate the stock.

## II. Discussion

The Commission finds that approval of the proposed rule change is consistent with the Act, in particular, with sections 6(b)(5) and 11A(a)(1)(C)(ii) and (D). Section 6(b)(5) of the Act requires that the rules of an exchange be designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a NMS. Section 11A(a)(1)(C)(ii) and (D) establish the NMS goals to provide for fair competition among the ITS participants and their members, and the linking of all markets for qualified securities through communications and data processing facilities which foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors orders, and contribute to the best execution of such orders.

The pre-opening application enables a CSE specialist who wishes to open his or her market in an ITS security to obtain any pre-opening interest in that security of other market-makers registered in that security in other participant markets. This enables ITS market makers to participate as either principal or as agent in the opening transaction in a security in another participant market, and thus, enables execution of limited price orders that may otherwise go unexecuted. The instant filing should prevent confusion in the pre-opening process by clarifying

the use of a cancellation notification sent after a pre-opening notification.

## III. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule is consistent with the Act and the rules and regulations thereunder applicable to the CSE and, in particular, sections 6(b)(5) and 11A(a)(1)(C)(ii) and (D) of the Act.

*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, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,  
Deputy Secretary.

[FR Doc. 93-8024 Filed 4-6-93; 8:45 am]  
BILLING CODE 2010-01-M

[Release No. 34-32079; File No. SR-MSE-93-02]

## Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the Midwest Stock Exchange, Inc. Relating To Its Pre-Opening Application Rule

March 31, 1993.

On February 11, 1993, the Midwest Stock Exchange, Inc. ("MSE") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-MSE-93-02) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> The purpose of the proposal is to conform the MSE's pre-opening application rule with the ITS pre-opening application rule.<sup>2</sup> Notice of the proposal appeared in the Federal Register on February 24, 1993.<sup>3</sup> The Commission received no comments on the proposal. For the reasons discussed below, the Commission is approving the proposal.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> The ITS is a National Market System ("NMS") plan approved by the Commission pursuant to Section 11A of the Act and Rule 11Aa3-2. The ITS was designed to facilitate intermarket trading in exchange-listed equity securities based on current quotation information emanating from the linked markets. Securities Exchange Act Release No. 19458 (January 27, 1983), 48 FR 4938.

Participants to the ITS Plan include the American Stock Exchange, Inc. ("AMEX"), the Boston Stock Exchange, Inc. ("BSE"), the Chicago Board Options Exchange, Inc. ("CBOE"), the Cincinnati Stock Exchange, Inc. ("CSE"), the MSE, the National Association of Securities Dealers, Inc. ("NASD"), the New York Stock Exchange, Inc. ("NYSE"), the Pacific Stock Exchange, Inc. ("PSE"), and the Philadelphia Stock Exchange, Inc. ("PHLX").

<sup>3</sup> Securities Exchange Act Release No. 31879 (February 17, 1993), 58 FR 11271.

## I. Description

The proposed rule change would amend MSE Article XX, Rule 39(c)(vi)(B), governing the pre-opening application in the Intermarket Trading System ("ITS"), to conform the MSE pre-opening application rule with the ITS pre-opening application rule.<sup>4</sup> Recently, the Commission approved an amendment to the ITS pre-opening application rule.<sup>5</sup> The MSE's proposal would adopt the model ITS rule.

The proposed rule change amends the MSE's pre-opening rule to clarify the use of a cancellation notification (designated as "CXL") sent after a pre-opening notification.<sup>6</sup> Under the proposed rule change, a cancellation notification will have the effect of indicating that the security will open within the applicable price change.<sup>7</sup>

The proposed rule change applies to the situation where a specialist has sent a cancellation notification following the initial pre-opening notification, and subsequently receives additional orders indicating the security will open within the price range of the original pre-opening notification. Under the current pre-opening rule, a cancellation notification represents that the specialist will open the security within

the applicable price change, but outside the price range of the original pre-opening application.

For example, a specialist sends out a pre-opening notification of 30-30½ for a stock that closed at 30. Subsequent to sending out the notification, the specialist receives sell orders indicating that the stock will be opened at 29¾. The specialist then sends out a cancellation notification—which, by definition, means that the stock will open at 29¾ or 29¾. The specialist then receives more buy orders and opens the stock at 30, which is outside the 29¾ or 29¾ prices. The pre-opening rule does not currently address this situation.

As revised, the CXL notification procedure would operate as follows:

The CTA close in a stock is 30. A pre-opening notification is sent with any one of the following price ranges: 30-30½; 30½-30¾; or 30¾-30¾. It is then determined that the stock will open at 29¾ or 29¾ and the specialist sends a cancellation notification. If it is subsequently determined that stock will open at 30, 30¾, or 30¾, under the proposed rule change the specialist would not be required to reindicate the stock.

## II. Discussion

The Commission finds that approval of the proposed rule change is consistent with the Act, in particular, with sections 6(b)(5) and 11A(a)(1)(C)(ii) and (D). Section 6(b)(5) of the Act requires that the rules of an exchange be designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a NMS. Section 11A(a)(1)(C)(ii) and (D) establish the NMS goals to provide for fair competition among the ITS participants and their members, and the linking of all markets for qualified securities through communications and data processing facilities which foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors orders, and contribute to the best execution of such orders.

The pre-opening application enables a MSE specialist who wishes to open his or her market in an ITS security to obtain any pre-opening interest in that security of other market-makers registered in that security in other participant markets. This enables ITS market-makers to participate as either principal or as agent in the opening transaction in a security in another participant market, and thus, enables execution of limited price orders that

may otherwise go unexecuted. The instant filing should prevent confusion in the pre-opening process by clarifying the use of a cancellation notification sent after a pre-opening notification.

## III. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule is consistent with the Act and the rules and regulations thereunder applicable to the MSE and, in particular, sections 6(b)(5) and 11A(a)(1)(C)(ii) and (D) of the Act.

*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, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-8023 Filed 4-6-93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-32085; File No. SR-NASD-93-02]

## Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Pre-Opening Application in the Intermarket Trading System/Computer Assisted Execution System

March 31, 1993.

On January 28, 1993, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-NASD-93-02) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> The purpose of the proposal is to conform the NASD's pre-opening application rule with the ITS pre-opening application rule.<sup>2</sup> Notice of the proposal appeared in the Federal

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> The ITS is a National Market System ("NMS") plan approved by the Commission pursuant to section 11A of the Act and Rule 11Aa3-2. The ITS was designed to facilitate intermarket trading in exchange-listed equity securities based on current quotation information emanating from the linked markets. Securities Exchange Act Release No. 19456 (January 27, 1983), 48 FR 4938.

Participants to the ITS Plan include the American Stock Exchange, Inc. ("AMEX"), the Boston Stock Exchange, Inc. ("BSE"), the Chicago Board Options Exchange, Inc. ("CBOE"), the Cincinnati Stock Exchange, Inc. ("CSE"), the Midwest Stock Exchange, Inc. ("MSE"), the NASD, the New York Stock Exchange, Inc. ("NYSE"), the Pacific Stock Exchange, Inc. ("PSE"), and the Philadelphia Stock Exchange, Inc. ("PHLX").

<sup>4</sup> MSE Article XX, Rule 39 contains basic definitions pertaining to ITS, prescribes the transactions that may be effected through ITS and the pricing of commitments to trade, and specifies the procedures pertaining to the pre-opening application.

<sup>5</sup> See Securities Exchange Act Release No. 31970 (March 9, 1993), 58 FR 14227.

<sup>6</sup> The pre-opening rule prescribes that if a MSE specialist anticipates that the opening transaction in the stock will be at a price that represents a change from the security's previous day's consolidated closing price by more than the "applicable price change," the specialist shall notify other participant markets by sending a pre-opening notification through ITS. See ITS Plan, Section 7(a). See also infra note 7.

<sup>7</sup> The pre-opening rule also applies whenever an "indication of interest" is sent to the CTA plan processor prior to the reopening of trading of an ITS security following a trading halt, even if the anticipated price is not greater than the applicable price change. See ITS Plan, Section 7(a). See also Securities Exchange Act Release No. 27472 (November 24, 1989), 54 FR 49829.

<sup>8</sup> The ITS rules define "applicable price changes" as:

Security	Consolidated closing price	Applicable price change (more than)
Network A .....	Under \$15 .....	½ point.
	\$15 or over* .....	¼ point.
Network B .....	Under \$5 .....	½ point.
	\$5 or over .....	¼ point.

<sup>9</sup> If the previous day's consolidated closing price of a Network A eligible security exceeded \$100 and the security does not underlie an individual stock option contract listed and currently trading on a national securities exchange, the applicable price change is one point.

ITS Plan, Section 7(a).

Register on February 24, 1993.<sup>3</sup> The Commission received no comments on the proposal. For the reasons discussed below, the Commission is approving the proposal.

#### I. Description

The proposed rule change amends the NASD's ITS/CAES Rules, governing the pre-opening application in the Intermarket Trading System ("ITS"), to conform the NASD pre-opening application rule with the ITS pre-opening application rule.<sup>4</sup> Recently, the Commission approved an amendment to the ITS pre-opening application rule.<sup>5</sup> The NASD's proposal would adopt the model ITS rule.

The proposed rule change amends the NASD's pre-opening rule to clarify the use of a cancellation notification (designated as "CXL") sent after a pre-opening notification.<sup>6</sup> Under the proposed rule change, a cancellation notification will have the effect of indicating that the security will open within the applicable price change.<sup>7</sup>

The proposed rule change applies to the situation where a market maker has sent a cancellation notification following the initial pre-opening

notification, and subsequently receives additional orders indicating the security will open within the price range of the original pre-opening notification. Under the current pre-opening rule, a cancellation notification represents that the market maker will open the security within the applicable price change, but outside the price range of the original pre-opening application.

For example, a market maker sends out a pre-opening notification of 30-30½ for a stock that closed at 30. Subsequent to sending out the notification, the market maker receives sell orders indicating that the stock will be opened at 29¾. The market maker then sends out a cancellation notification—which, by definition, means that the stock will open at 29¾ or 29¾. The market maker then receives more buy orders and opens the stock at 30, which is outside the 29¾ or 29¾ prices. The pre-opening rule does not currently address this situation.

As revised, the CXL notification procedure would operate as follows:

The CTA close in a stock is 30. A pre-opening notification is sent with any one of the following price ranges: 30-30½; 30½-30¾; or 30¾-30¾. It is then determined that the stock will open at 29¾ or 29¾ and the market maker sends a cancellation notification. If it is subsequently determined that stock will open at 30, 30½, or 30¾, under the proposed rule change the market maker would not be required to reindicate the stock.

#### II. Discussion

The Commission finds that approval of the proposed rule change is consistent with the Act, in particular, with sections 15A(b)(6) and 11A(a)(1)(C)(ii) and (D). Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade. Section 11A(a)(1)(C)(ii) and (D) establish the NMS goals to provide for fair competition among the ITS participants and their members, and the linking of all markets for qualified securities through communications and data processing facilities which foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors orders, and contribute to the best execution of such orders.

The pre-opening application enables an NASD market maker who wishes to open his or her market in an ITS security to obtain any pre-opening interest in that security of other market-

makers registered in that security in other participant markets. This enables ITS market makers to participate as either principal or as agent in the opening transaction in a security in another participant market, and thus, enables execution of limited price orders that may otherwise go unexecuted. The instant filing should prevent confusion in the pre-opening process by clarifying the use of a cancellation notification sent after a pre-opening notification.

#### III. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule is consistent with the Act and the rules and regulations thereunder applicable to the NASD and, in particular, sections 15A(b)(6) and 11A(a)(1)(C)(ii) and (D) of the Act.

*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, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,  
Deputy Secretary.

[FR Doc. 93-8030 Filed 4-6-93; 8:45 am]  
BILLING CODE 8010-01-M

[Release No. 34-32077; File No. SR-NASD-93-17]

#### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to Quotation Size Requirements for Market Makers in OTC Equity Securities

March 31, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) ("Act"), notice is hereby given that on March 24, 1993, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchanges Commission ("Commission" or "SEC") the proposed rule change as described Items I, II, and III below, which Items have been prepared by the NASD. 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 NASD hereby files this proposed rule change, pursuant to section 19(b)(1) of the Act and Rule 19b-4 thereunder, to revise the minimum size requirement applicable to markets makers utilizing

<sup>3</sup> Securities Exchange Act Release No. 31883 (February 17, 1993), 58 FR 12275.

<sup>4</sup> The NASD's ITS/CAES Rules contain basic definitions pertaining to ITS, prescribes the transactions that may be affected through ITS and the pricing of commitments to trade, and specifies the procedures pertaining to the pre-opening application.

<sup>5</sup> See Securities Exchange Act Release No. 31970 (March 9, 1993), 58 FR 14227.

<sup>6</sup> The pre-opening rule prescribes that if an NASD market maker anticipated that the opening transaction in the stock will be at a price that represents a change from the security's previous day's consolidated closing price by more than the "applicable price change," the specialist shall notify other participant markets by sending a pre-opening notification through ITS. See ITS Plan, Section 7(a). See also *infra* note 7.

<sup>7</sup> The pre-opening rule also applies whenever an "indication of interest" is sent to the CTA plan processor prior to the reopening of trading of an ITS security following trading halt, even if the anticipated price is not greater than the applicable price change. See ITS Plan, Section 7(a). See also Securities Exchange Act Release No. 27472 (November 24, 1989), 54 FR 49829.

<sup>8</sup> The ITS rules define "applicable price changes" as:

Security	Consolidated closing price	Applicable price change (more than)
Network A .....	Under \$15 .....	½ point.
	\$15 or over* ....	¼ point.
Network B .....	Under \$5 .....	½ point.
	\$5 or over .....	¼ point.

<sup>9</sup> If the previous day's consolidated closing price of a Network A eligible security exceeded \$100 and the security does not underlie an individual stock option contract listed and currently trading on a national securities exchange, the applicable price change is one point.

ITS Plan, Section 7(a).

the OTC Bulletin Board Service ("OTCBB" or "Service") or any comparable inter-dealer quotation system to quote firm markets in OTC Equity Securities. The text of the proposed rule is set forth below and will be added as Section 5 to Schedule H to the NASD By-Laws. (New language is italicized.)

*Minimum Quotation Size Requirements for OTC Equity Securities*

*Every member firm that functions as a market marker in OTC Equity Securities by entering firm quotations into the OTC Bulletin Board Service ("OTCBB") (or any other inter-dealer quotation system that permits quotation updates on a real-time basis) must honor those quotations for the minimum size defined in the table below. In this regard, it is the market marker's responsibility to determine the minimum size requirement applicable to its firm bid and/or offer in each of its registered securities (excluding those OTC Equity Securities for which the OTCBB will not accept firm quotations). Depending on the price level of the bid or offer, a different minimum size can apply to each side of the market being quoted by the member firm in a given security.*

Price (bid or offer)	Minimum quote size
0 to .50 <sup>1</sup> .....	5,000
.51 to 1.00 .....	2,500
1.01 to 10.00 .....	500
10.01 to 100.00 .....	200
100.01 to 200.00 .....	100
200.01 to + .....	50

*For purposes of this rule, the term "OTC Equity Security" means any equity security not classified as a "designated security" for purposes of Parts XII or XIII of Schedule D to the NASD By-Laws, or as an "eligible security", for purposes of Schedule G to the NASD By-Laws. The term does not include "restricted securities", as defined by Rule 144(a)(3) under the Securities Act of 1933, nor any securities designated in the PORTAL Market<sup>SM</sup>.*

<sup>1</sup> The OTCBB can accept bids/offers expressed in fractions as small as  $1/4256$  or in decimals up to six places. In applying the price test for minimum quotation size, any increment beyond an upper limit in the right hand column will trigger application of the minimum quote size for the next tier. For example, a bid (or offer) of \$.505 must be firm for a size of 2,500 shares.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the NASD 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 NASD has prepared summaries, set forth in section (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 principal purpose of this filing is to obtain the Commission's approval of new quotation size requirements that would apply to NASD members that employ the OTCBB to enter and display firm quotations in OTC Equity Securities. Currently, priced bids and offers displayed in the Service for domestic securities must be firm for one trading unit, which is typically 100 shares.<sup>1</sup> This requirement was implemented in July of 1991. Since that time, NASD members that quote markets in the Service have gained substantial experience with this minimum size requirement in their day-to-day trading activities. Based on this experience and the input received from participating market makers, the NASD has determined that the 100 share minimum is no longer appropriate for the vast majority of issues quoted in the OTCBB, especially the lower priced issues. Accordingly, the NASD is proposing a tiered structure of minimum size requirements that corresponds more closely to the trading practices of market makers that actively use the Service. Under this proposal, the applicable size requirement depends on the level of a market maker's firm bid or offer displayed in the Service (or in a comparable quotation medium).

From an operational standpoint, the table contained in section 1 of this filing will establish the minimum size associated with a market maker's proprietary bid and/or offer. This table will be reproduced in a newsframe accessible to OTCBB market makers on the PC workstations that they use to enter and update their quotations. Every registered market maker in an OTC Equity Security will be obliged to honor its firm bid/offer for individual orders

<sup>1</sup> The new size requirements will not apply to any foreign/ADR issue in which firm quotations are not permitted to be entered into the OTCBB.

up to the prescribed size. To illustrate, if a market maker enters a quotation comprised of a bid of \$.45 and an offer of \$.55, the firm must honor its displayed bid for up to 5,000 shares, and its displayed offer for up to 2,500 shares. If the same firm updates its quotation to reflect a bid of \$.40 and an offer of \$.50, a size requirement of 5,000 shares attaches to both sides of the market maker's quotation. As is the case today, OTCBB market makers will retain the options of entering an unpriced indication of interest or a one-sided quotation. The unpriced indication of interest triggers no obligation to trade the subject security at a particular price or size. In contrast, a one-sided entry obligates the market maker to honor that bid (or offer) for the size established by the proposed standards.

Initially, the OTCBB display screen will not reflect the minimum size associated with each market maker's priced bid and offer in a particular security. Nonetheless, every OTCBB market maker will be required to honor its displayed bid and/or offer for the amount prescribed by this rule proposal. Under these circumstances, members should promptly report occurrences of backing away to the NASD Market Surveillance Department. The Department's staff will investigate each situation and refer apparent violations to the Market Surveillance Committee for appropriate enforcement action. Meanwhile, the NASD will proceed to develop the system enhancements needed to implement a size display capability for the Services.<sup>2</sup> As part of that initiative, the NASD will provide a default feature to ensure display of the correct minimum size if a market maker neglects to enter that size updating its priced bid/offer in a particular OTC Equity Security. The size display feature will also permit market makers to insert a size greater than the minimum requirements proposed in this rule filing.

Finally, the proposed size requirements would extend to member firms quoting markets in OTC Equity Securities through other systems with features approximating those of the OTCBB, specifically the capability to update quotations on a real-time basis. The NASD is unaware of any other interdealer quotation system that accommodates OTC Equity Securities and possesses operational characteristics approximating the OTCBB. However, should one be developed by an entity that is not a self-

<sup>2</sup> The NASD anticipates implementation of the size display capability during the final quarter of 1993.

regulatory organization, the NASD would apply the new size requirements to members that make markets in OTC Equity Securities through that system.<sup>3</sup> Assuming approval of this proposed rule change, the NASD would implement the new size requirements within 90 days of the date of the SEC's approval order.

The NASD believes that the proposed rule change is consistent with the provisions of sections 15A(b)(6), 15A(b)(11), and 17B of the Act. Section 15A(b)(6) requires, *inter alia*, that the NASD's rules be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and facilitate transactions in securities. Section 15A(b)(11) authorizes the NASD to adopt rules governing the form and content of quotations for securities traded over-the-counter. Such rules should produce fair and informative quotations, prevent misleading quotations, and promote orderly procedures for collecting and disseminating quotations. Finally, section 17B sets forth the Congressional findings and directives respecting the collection and dissemination of firm bids/offers from broker-dealers respecting OTC Equity Securities classified as "penny stocks" pursuant to Rule 3a51-1 under the Act.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

#### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the *Federal Register* or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD 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.

<sup>3</sup> If a comparable system were provided by another self-regulatory organization, the applicable quotation size requirements would be established by that entity.

#### 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by April 28, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-8093 Filed 4-6-93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-32078; File No. SR-NYSE-93-01]

#### Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the New York Stock Exchange, Inc. Relating To Its Pre-Opening Application Rule

March 31, 1993.

On January 6, 1993, the New York Stock Exchange, Inc. ("NYSE") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-NYSE-93-01) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> The purpose of the proposal is to conform the NYSE's pre-opening application rule with the ITS pre-opening application rule.<sup>2</sup> Notice of the proposal appeared in the *Federal Register* on February 24, 1993.<sup>3</sup> The Commission received no comments on the proposal. For the reasons discussed below, the Commission is approving the proposal.

<sup>1</sup> 15 U.S.C. 78a(b)(1).

<sup>2</sup> The ITS is a National Market System ("NMS") plan approved by the Commission pursuant to section 11A of the Act and Rule 11Aa3-2. The ITS was designed to facilitate intermarket trading in exchange-listed equity securities based on current quotation information emanating from the linked

#### I. Description

The proposed rule change amends NYSE Rule 15, governing the pre-opening application in the Intermarket Trading System ("ITS"), to conform the NYSE pre-opening application rule with the ITS pre-opening application rule.<sup>4</sup> Recently, the Commission approved an amendment to the ITS pre-opening application rule.<sup>5</sup> The NYSE's proposal would adopt the model ITS rule.

The proposed rule change amends the NYSE's pre-opening rule to clarify the use of a cancellation notification (designated as "CXL") sent after a pre-opening notification.<sup>6</sup> Under the proposed rule change, a cancellation notification will have the effect of indicating that the security will open within the applicable price change.<sup>7</sup>

markets. Securities Exchange Act Release No. 19456 (January 27, 1983), 48 FR 4938.

Participants to the ITS Plan include the American Stock Exchange, Inc. ("AMEX"), the Boston Stock Exchange, Inc. ("BSE"), the Chicago Board Options Exchange, Inc. ("CBOE"), the Cincinnati Stock Exchange, Inc. ("CSE"), the Midwest Stock Exchange, Inc. ("MSE"), the National Association of Securities Dealers, Inc. ("NASD"), the NYSE, the Pacific Stock Exchange, Inc. ("PSE") and the Philadelphia Stock Exchange, Inc. ("PHLX").

<sup>3</sup> Securities Exchange Act Release No. 31880 (February 17, 1993), 58 FR 11276.

<sup>4</sup> NYSE Rule 15 contains basic definitions pertaining to ITS, prescribes the transactions that may be effected through ITS and the pricing of comments to trade, and specifies the procedures pertaining to the pre-opening application.

<sup>5</sup> See Securities Exchange Act Release No. 31970 (March 9, 1993), 58 FR 14227.

<sup>6</sup> The pre-opening rule prescribes that if a NYSE specialist anticipates that the opening transaction in the stock will be at a price that represents a change from the security's previous day's consolidated closing price by more than the "applicable price change," the specialist shall notify other participant markets by sending a pre-opening notification through ITS. See ITS Plan, Section 7(a). See also *infra* note 7.

The pre-opening rule also applies whenever an "indication of interest" is sent to the CTA plan processor prior to the reopening of trading of an ITS security following a trading halt, even if the anticipated price is not greater than the applicable price change. See ITS Plan, Section 7(a). See also Securities Exchange Act Release No. 27472 (November 24, 1989), 54 FR 49829.

<sup>7</sup> The ITS rules define "applicable price changes" as:

Security	Consolidated closing price	Applicable price change (more than)
Network A .....	Under \$15 .....	1/4 point.
	\$15 or over* .....	1/4 point.

<sup>8</sup> If the previous day's consolidated closing price of a Network A eligible security exceeded \$100 and the security does not underlie an individual stock option contract listed and currently trading on a national securities exchange, the applicable price change is one point.

ITS Plan, Section 7(a).

The proposed rule change applies to the situation where a specialist has sent a cancellation notification following the initial pre-opening notification, and subsequently receives additional orders indicating the security will open within the price range of the original pre-opening notification. Under the current pre-opening rule, a cancellation notification represents that the specialist will open the security within the applicable price change, but outside the price range of the original pre-opening application.

For example, a specialist sends out a pre-opening notification of 30-30½ for a stock that closed at 30. Subsequent to sending out the notification, the specialist receives sell orders indicating that the stock will be opened at 29½. The specialist then sends out a cancellation notification—which, by definition, means that the stock will open at 29½ or 29¾. The specialist then receives more buy orders and opens the stock at 30, which is outside the 29½ or 29¾ prices. The pre-opening rule does not currently address this situation.

As revised, the CXL notification procedure would operate as follows:

The CTA close in a stock is 30. A pre-opening notification is sent with any one of the following price ranges: 30-30½; 30½-30¾; or 30¾-30¾. It is then determined that the stock will open at 29½ or 29¾ and the specialist sends a cancellation notification. If it is subsequently determined that stock will open at 30, 30½, or 30¾, under the proposed rule change the specialist would not be required to reindicate the stock.

## II. Discussion

The Commission finds that approval of the proposed rule change is consistent with the Act, in particular, with sections 6(b)(5) and 11A(a)(1)(C)(ii) and (D). Section 6(b)(5) of the Act requires that the rules of an exchange be designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a NMS. Section 11A(a)(1)(C)(ii) and (D) establish the NMS goals to provide for fair competition among the ITS participants and their members, and the linking of all markets for qualified securities through communications and data processing facilities which foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors orders, and contribute to the best execution of such orders.

The pre-opening application enables a NYSE specialist who wishes to open his or her market in an ITS security to

obtain any pre-opening interest in that security of other market-makers registered in that security in other participant markets. This enables ITS market makers to participate as either principal or as agent in the opening transaction in a security in another participant market, and thus, enables execution of limited price orders that may otherwise go unexecuted. The instant filing should prevent confusion in the pre-opening process by clarifying the use of a cancellation notification sent after a pre-opening notification.

## III. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule is consistent with the Act and the rules and regulations thereunder applicable to the NYSE and, in particular, sections 6(b)(5) and 11A(a)(1)(C)(ii) and (D) of the Act.

*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, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-8028 Filed 4-6-93; 8:45 am]

BILLING CODE 2010-01-W

[Release No. 34-32084; File No. SR-PHLX-92-32]

## Self-Regulatory Organizations; Notice of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating To its Pre-Opening Application Rule

March 31, 1993.

On November 13, 1992, the Philadelphia Stock Exchange, Inc. ("PHLX") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-PHLX-92-32) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> The purpose of the proposal is to conform the PHLX's pre-opening application rule with the ITS pre-opening application rule.<sup>2</sup> Notice of the proposal appeared in the Federal Register on February 24, 1993.<sup>3</sup> The Commission received no comments on the proposal. For the reasons discussed below, the Commission is approving the proposal.

## I. Description

The proposed rule change amends PHLX Rule 2001, governing the pre-opening application in the intermarket

Trading System ("ITS"), to conform the PHLX pre-opening application rule with the ITS pre-opening application rule.<sup>4</sup> Recently, the Commission approved an amendment to the ITS pre-opening application rule.<sup>5</sup> The PHLX's proposal would adopt the model ITS rule.

The proposed rule change amends the PHLX's pre-opening rule to clarify the use of a cancellation notification (designated as "CXL") sent after a pre-opening notification.<sup>6</sup> Under the proposed rule change, a cancellation notification will have the effect of indicating that the security will open within the applicable price change.<sup>7</sup>

<sup>2</sup> The ITS is a National Market System ("NMS") plan approved by the Commission pursuant to Section 11A of the Act and Rule 11Aa3-2. The ITS was designed to facilitate intermarket trading in exchange-listed equity securities based on current quotation information emanating from the linked markets. Securities Exchange Act Release No. 19456 (January 27, 1983), 48 FR 4938.

Participants to the ITS Plan include the American Stock Exchange, Inc. ("AMEX"), the Boston Stock Exchange, Inc. ("BSE"), the Chicago Board Options Exchange, Inc. ("CBOE"), the Cincinnati Stock Exchange, Inc. ("CSE"), the Midwest Stock Exchange, Inc. ("MSE"), the National Association of Securities Dealers, Inc. ("NASD"), the New York Stock Exchange, Inc. ("NYSE"), the Pacific Stock Exchange, Inc. ("PSE"), and the PHLX.

<sup>3</sup> Securities Exchange Act Release No. 31881 (February 17, 1993), 58 FR 11280.

<sup>4</sup> PHLX Rule 2001 contains basic definitions pertaining to ITS, prescribes the transactions that may be effected through ITS and the pricing of commitments to trade, and specifies the procedures pertaining to the pre-opening application.

<sup>5</sup> See Securities Exchange Act Release No. 31970 (March 9, 1993), 58 FR 14227.

<sup>6</sup> The pre-opening rule prescribes that if a PHLX specialist anticipates that the opening transaction in the stock will be at a price that represents a change from the security's previous day's consolidated closing price by more than the previous day's consolidated closing price by more than the "applicable price change," the specialist shall notify other participant markets by sending a pre-opening notification through ITS. See ITS Plan, Section 7(a). See also *infra* note 7.

The pre-opening rule also applies whenever an "indication of interest" is sent to the CTA plan processor prior to the reopening of trading of an ITS security following a trading halt, even if the anticipated price is not greater than the applicable price change. See ITS Plan, Section 7(a). See also Securities Exchange Act Release No. 27472 (November 24, 1989), 54 FR 49829.

<sup>7</sup> The ITS rules define "applicable price changes" as:

Security	Consolidated closing price	Applicable price change (more than)
Network A ....	Under \$15 .... \$15 or over*	½ point ½ point
Network B ....	Under \$5 .... \$5 or over	½ point ½ point

<sup>1</sup> If the previous day's consolidated closing price of a Network A eligible security exceeded \$100 and the security does not underlie an individual stock option contract listed and currently trading on a national securities exchange, the applicable price change is one point.

ITS Plan, Section 7(a).

<sup>2</sup> 15 U.S.C. 78s (b)(1).

The proposed rule change applies to the situation where a specialist has sent a cancellation notification following the initial pre-opening notification, and subsequently receives additional orders indicating the security will open within the price range of the original pre-opening notification. Under the current pre-opening rule, a cancellation notification represents that the specialist will open the security within the applicable price change, but outside the price range of the original pre-opening application.

For example, a specialist sends out a pre-opening notification of 30-30½ for a stock that closed at 30. Subsequent to sending out the notification, the specialist receives sell orders indicating that the stock will be opened at 29½. The specialist then sends out a cancellation notification—which, by definition, means that the stock will open at 29½ or 29¾. The specialist then receives more buy orders and opens the stock at 30, which is outside the 29½ or 29¾ prices. The pre-opening rule does not currently address this situation.

As revised, the CXL notification procedure would operate as follows:

The CTA close in a stock is 30. A pre-opening notification is sent with any one of the following price ranges: 30-30½; 30½-30¾; or, 30¾-30¾. It is then determined that the stock will open at 29¾ or 29¾ and the specialist sends a cancellation notification. If it is subsequently determined that stock will open at 30, 30½, or 30¾, under the proposed rule change the specialist would not be required to reindicate the stock.

## II. Discussion

The Commission finds that approval of the proposed rule change is consistent with the Act, in particular, with sections 6(b)(5) and 11A(a)(C)(ii) and (D). Section 6(b)(5) of the Act requires that the rules of an exchange be designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a NMS. Section 11A(a)(1)(C)(ii) and (D). Section 6(b)(5) of the Act requires that the rules of an exchange be designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a NMS. Section 11A(a)(2)(C)(ii) and

(D) establish the NMS goals to provide for fair competition among the ITS participants and their members, and the linking of all markets for qualified securities through communications and data processing facilities which foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors orders, and contribute to the best execution of such orders.

The pre-opening application enables a PHLX specialist who wishes to open his or her market in an ITS security to obtain any pre-opening interest in that security of other market-makers registered in that security in other participant markets. This enables ITS market makers to participate as either principal or as agent in the opening transaction in a security in another participant market, and thus, enables execution of limited price orders that may otherwise go unexecuted. The instant filing should prevent confusion in the pre-opening process by clarifying the use of a cancellation notification sent after a pre-opening notification.

## III. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule is consistent with the Act and the rules and regulations thereunder applicable to the PHLX and, in particular, sections 6(b)(5) and 11A(a)(1)(C)(ii) and (D) of the Act.

*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, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-8029 Filed 4-6-93; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Release No. 19374; 812-8256]

Connecticut Mutual Investment Accounts, Inc., et al.; Notice of Application.

March 31, 1993.

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

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

**APPLICANTS:** Connecticut Mutual Investment Accounts, Inc. (the "Fund") and G.R. Phelps & Co., Inc. ("Phelps & Co.").

## RELEVANT 1940 ACT SECTIONS:

Conditional order requested under section 6(c) for exemption from the provisions of sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act and rule 22c-1 thereunder.

**SUMMARY OF APPLICATION:** Applicants seek a conditional order to permit them to impose a contingent deferred sales charge ("CDSC") on the redemption of certain shares acquired through purchases of \$500,000 or more, and to waive the CDSC under certain specified instances.

**FILING DATES:** The application was filed on January 22, 1993 and amended on March 24, 1993 and March 30, 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 April 26, 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.

Applicants: Connecticut Mutual Investment Accounts, Inc., 140 Garden Street, Hartford, Connecticut 06154; G.R. Phelps & Co., Inc., 10 State House Square, Hartford, Connecticut 06154.

## FOR FURTHER INFORMATION CONTACT:

Mary Kay Frech, Staff Attorney, at (202) 272-7648, or Elizabeth G. Osterman, Branch Chief, at (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

**Applicant's Representations**

1. The Fund, a Maryland corporation, is registered under the Act as a diversified, open-end, management investment company.<sup>1</sup> The Fund offers five separate classes of shares relating to the following five series (the "Accounts"): Connecticut Mutual Liquid Account (the "Liquid Account"), Connecticut Mutual Government Securities Account (the "Government Securities Account"), Connecticut Mutual Income Account (the "Income Account"), Connecticut Mutual Total Return Account (the "Total Return Account"), and the Connecticut Mutual Growth Account (the "Growth Account"). Phelps & Co., an indirect subsidiary of Connecticut Mutual Life Insurance Company, serves as the investment adviser and exclusive distributor of shares of the Accounts.

2. Applicants request exemptive relief on behalf of themselves, the Accounts, and any existing or future registered investment companies or existing or future series thereof which may become a member of the Fund's "group of investment companies," as defined in rule 11a-3 under the Act, the shares of which will be distributed on substantially the same basis as those of the Accounts.<sup>2</sup>

3. Each of the Accounts currently offers its shares daily to the public at net asset value plus, except for the Liquid Account, a front-end sales charge that decreases as the aggregate dollar invested increases. The Government Securities Account, the Income Account, the Total Return Account and the Growth Account are collectively referred to as the "Sales Load Accounts." The Liquid Account has adopted a distribution financing plan pursuant to rule 12b-1 under the Act, which provides for distribution assistance payments to Phelps & Co. based on a percentage of the average daily net assets of the Liquid Account.

4. Applications propose to eliminate the front-end sales load, and impose a CDSC, on purchases of the Accounts'

shares in amounts of \$500,000 or more. An investor may purchase \$500,000 or more of Account shares (whether in one or more than one Account) at the same time or the investor may sign a statement of intention to purchase \$500,000 worth of Account shares over the course of 13 months. For the purpose of determining which shares are subject to the CDSC, the shares will be accounted for on an Account-by-Account basis, each share being designated as subject to the CDSC.

5. The CDSC will not apply to the Liquid Account and will be imposed only on shares of the Sales Load Accounts redeemed within a period of 12 months commencing after the end of the calendar month in which the purchase order was accepted (the "CDSC period"). The amount of the CDSC to be imposed at any time during the CDSC period will be equal to 1% of the lesser of (i) the net asset value of the redeemed shares at the time of purchase, or (ii) the net asset value of the redeemed shares at the time of redemption.

6. The Fund reserves the right to reduce or raise the CDSC amount and/or the CDSC period in the future. However, any such change will be disclosed in the Fund's prospectus and will not affect shares already issued, unless such change results in terms more favorable to shareholders. In addition, no CDSC will be imposed on any shares issued prior to the date of the order granting exemptive relief.

7. No CDSC will be imposed at redemption on (a) amounts attributable to increases in the value of the shareholder's account due to capital appreciation, (b) shares purchased through the reinvestment of dividends or capital gain distributions, or (c) shares held for more than the CDSC period. In determining whether a CDSC is applicable, it will be assumed that a redemption is made first of shares not subject to the CDSC, and then other shares in the order of purchase, resulting in the lowest CDSC being imposed at the time of redemption.

8. No CDSC will be imposed upon exchanges of shares of an Account subject to a CDSC for shares of another Account. However, if the shares acquired by such exchanges are redeemed within 12 months of the end of the calendar month of the initial purchase of the exchanged shares, the CDSC will apply to the acquired shares being redeemed. Applicants currently, and in the future, will comply at all times with the requirements of rule 11a-3 under the Act.

9. Shares on which a CDSC was paid at the time of redemption and which are

subsequently reinvested in the same Account within 30 days will be credited with payment of the CDSC on such reinvestment, if identified by the shareholder at the time of reinvestment. The CDSC credit will be in the form of a reimbursement by Phelps & Co. of the CDSC paid at the time of redemption. Upon reinvestment, shareholders will not be credited with the time they held their original shares. In the event the reinvestment credit period is shortened with respect to any Account, a shareholder who redeemed prior to the time the period was shortened will be allowed reinvestment credit for the longer reinvestment period in effect at the time of the redemption.

10. Applicants request the ability to waive the CDSC in the case of redemptions of shares made: (a) By the estate of the shareholder; (b) upon the disability of the shareholder, as defined in section 72(m)(7) of the Internal Revenue Code of 1986, as amended (the "Code"); (c) for retirement distributions or loans to participants or beneficiaries from retirement plans qualified under sections 401(a) or 403(b)(7) of the Code or from IRAs, deferred compensation plans created under section 457 of the Code, or other employee benefit plans; (d) as tax-free returns of excess contributions to such retirement or employee benefit plans; (e) in whole or in part, in connection with shares sold to any state, county, or city, or any instrumentality, department, authority, or agency thereof, that is prohibited by applicable investment laws from paying a sales charge or commission in connection with the purchase of shares of any registered investment management company; (f) in connection with the redemption of shares of any fund or series that is combined with another investment company, or the combination of two or more series of the same fund, by virtue of a merger, acquisition, or similar reorganization transaction; (g) in connection with the Fund's right to redeem or liquidate an account that holds less than a certain minimum number or dollar amount of shares, as may be described in the Fund's prospectus; (h) in connection with automatic redemptions pursuant to the Fund's systematic withdrawal plan, as described in the Fund's prospectus, but limited to no more than 12% of the original account value annually; (i) as involuntary redemptions of shares by operation of law or under procedures set forth in the Fund's Articles of Incorporation or as adopted by the board of directors of the Fund; (j) by directors of the Fund; (k) by NASD registered representatives whose

<sup>1</sup> The Fund was established on December 9, 1981 by Connecticut Mutual Life Insurance Company as the Connecticut Mutual Liquid Account.

<sup>2</sup> There currently are no other investment companies in the Fund's group of investment companies. Any additional series or future registered investment companies or series thereof that in the future rely on the requested exemption will impose a CDSC in accordance with the representations and the condition in the application.

employer consents to such purchases and by the spouses and immediate family members of such representatives; (1) by employee benefit plans sponsored by Phelps & Co. and its affiliated companies; and (m) by one or more members of a group of at least 1,000 persons (and persons who are retirees from such group) engaged in a common business, profession, civic or charitable endeavor, or other activity, and the spouses and immediate family members of such persons, pursuant to a marketing program between Phelps & Co. and such group. If the Accounts waive the CDSC, such waiver will be uniformly applied to all shares in the specified category. If the board of directors, on behalf of an Account that has been waiving its CDSC, determines not to waive such CDSC any longer, the disclosure in that Account's prospectus will be appropriately revised and such revocation of waiver will be applied only to shares purchased after the date of such revision.

#### Applicants' Condition

If the requested order for exemption is granted, applicants expressly agree to comply with the provisions of proposed rule 6c-10 under the Act, Investment Company Act Release No. 16619 (Nov. 2, 1988), as such rule is currently proposed and as it may be repropoosed, adopted or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,  
Deputy Secretary.

[FR Doc. 93-8031 Filed 4-6-93; 8:45 am]

BILLING CODE 8010-01-M

#### DEPARTMENT OF STATE

[Public Notice 1785; Delegation of Authority No. 202]

#### Deputy Secretary of State; Delegation of Authority

Issued April 7, 1993.

Effective March 23, 1993.

1. *Delegation.* By virtue of the authority vested in the Secretary of State, including the authority of section 4 of the Act of May 26, 1949 (22 U.S.C. 2658), as amended, I hereby delegate to the Deputy Secretary of State those functions conferred upon the Secretary of State by 18 U.S.C. 981(i)(1), 19 U.S.C. 1616a(c)(2), and 21 U.S.C. 881(e)(1)(E), and similar statutes that may be enacted, to approve the transfer of forfeited assets to foreign governments.

2. *Technical provisions.* (a) Notwithstanding this delegation of authority, the Secretary of State may at

any time exercise any function delegated by this delegation.

(b) Any act affected by this delegation shall be deemed to be such act as amended from time to time.

Dated: March 23, 1993.

Warren Christopher,

Secretary of State.

[FR Doc. 93-8064 Filed 4-6-93; 8:45 am]

BILLING CODE 4710-24-M

#### DEPARTMENT OF TRANSPORTATION

##### Federal Aviation Administration

###### Advisory Circular (AC) 25.773-1, Pilot Compartment View Design Considerations

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of issuance of advisory circular.

**SUMMARY:** This notice announces the issuance of Advisory Circular (AC) 25.773-1, Pilot Compartment View Design Considerations. The AC provides current guidance concerning the geometric characteristics of the pilot compartment and the properties of transparent materials necessary to assure adequate visibility from the flight deck.

**DATES:** Advisory Circular 25.773-1 was issued on January 8, 1993, by the Acting Manager of the Transport Airplane Directorate, Aircraft Certification Service, in Renton, Washington.

**HOW TO OBTAIN COPIES:** A copy of AC 25.773-1 may be obtained by writing to the U.S. Department of Transportation, Utilization and Storage Section, M-443.2, Washington, DC 20590.

Issued in Renton, Washington, on March 17, 1993.

Neil D. Schalekamp,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM-100.

[FR Doc. 93-8086 Filed 4-6-93; 8:45 am]

BILLING CODE 4910-13-M

###### Approval of Noise Compatibility Program and Revised Noise Exposure Maps; Capital Airport, Springfield, IL

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Springfield Airport Authority under the provisions of Title I of the Aviation Safety and

Noise Abatement Act of 1979 (Public Law 96-193) and 14 CFR part 150.

These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96-52 (1980). On April 12, 1991, the FAA determined that the noise exposure maps submitted by the Springfield Airport Authority under part 150 were in compliance with applicable requirements. On March 1, 1993, the Assistant Administrator for Airports approved the Capital Airport noise compatibility program and accepted the revised noise exposure maps.

A total of sixteen (16) measures were included in Capital Airport's recommended program. Of these, three are listed as Noise Abatement Plan Measures, ten are listed as Land Use Management Plan Measures and three are listed as Implementation Plan Measures. The FAA has approved fourteen (14) of these measures in their entirety. One measure was divided into two sub-sections, with one sub-section approved and the other sub-section disapproved pending submittal of additional information. Another measure required no action, as it was withdrawn by the Springfield Airport Authority.

**EFFECTIVE DATE:** The effective date of the FAA's approval of Capital Airport's noise compatibility program is March 1, 1993.

**FOR FURTHER INFORMATION CONTACT:** Jerry R. Mork, Federal Aviation Administration, Great Lakes Region, Chicago Airports District Office, CHI-ADO-630.5, 2300 East Devon Avenue, Des Plaines, Illinois 60018, (312) 694-7522. Documents reflecting this FAA action may be revised at this same location.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA has given its approval to the noise compatibility program and revised noise exposure maps for Capital Airport, effective March 1, 1993.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local

communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act, and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action.

Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests for project grants must be submitted to the FAA Chicago Airports District Office in Des Plaines, Illinois. The Springfield Airport Authority

submitted to the FAA on May 3, 1989, noise exposure maps, descriptions and other documentation. This documentation was produced during the Airport Noise Compatibility Planning (Part 150) Study at Capital Airport from September 18, 1987, through December 3, 1992. The Capital Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on April 12, 1991. Notice of this determination was published in the *Federal Register* on April 24, 1991.

The Capital Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 2002. The study also contains revised Noise Exposure Maps, labeled Noise Exposure Map 1991 and Abated Noise Exposure Map 1996 replacing the existing Noise Exposure Map 1987 and the 5-year map labeled Noise Exposure Map 1992, respectively. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on September 3, 1992, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period would have been deemed to be an approval of such program.

The program proposed by the Springfield Airport Authority contained sixteen (16) measures for noise mitigation on and off Capital Airport, along with revised existing and 5-year noise exposure maps. The FAA completed its review and determined the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied, and the FAA has accepted the revised noise exposure map. The overall program, therefore, was approved by the Assistant Administrator for Airports effective March 1, 1993.

Of the sixteen measures originally submitted, three were listed as Noise Abatement Plan Measures and all were approved: (NA-1) Preferential Utilization of Runway 30 in Conjunction with the Extension of Runway 12/30 to the Northwest; (NA-2) Construct a Hush House Facility to Attenuate Noise Levels by Aircraft Ground Activity; and (NA-3) Reduction in Departure Thrust by the Illinois Air National Guard 183rd Tactical Fighter Group Aircraft (approved as a voluntary measure). Eight of the ten Land Use

Management Plan Measures were approved in their entirety: (LU-1) Comprehensive/Master Plan; (LU-2) Establish Airport Overlay Zoning; (LU-3) Capital Improvement Program; (LU-4) Noise Disclosure Program; (LU-5) Building Code; (LU-6) Site Design Review; (LU-9) Environmental Project Review; (LU-10) Federal Regulations. One measure (LU-7) Land Acquisition Fee Simple Purchase was divided into two subsections, with one sub-section (LU-7a) approved: Northeast Property Acquisition Map, Portion of Northwest Property Acquisition Map, and Portion of Southwest Property Acquisition Map; and the other sub-section disapproved: (LU-7b) Portion of the Northwest Property Acquisition Map and Portion of Southwest Property Acquisition Map (Disapproved pending submittal of additional information by the Airport Authority). One measure required no action as it was withdrawn by the Springfield Airport Authority: (LU-6) Sound Insulation. All three of the Implementation Plan Measures were approved in their original form: (IM-1) Noise Monitoring and Contour Updating; (IM-2) Noise Complaint Response; and (IM-3) Plan Review and Evaluation;

The Record of Approval, as well as other evaluation materials and documents which comprised the submittal to FAA are available for review at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., room 615, Washington, DC 20591

Federal Aviation Administration, Great Lakes Region, 2300 East Devon Avenue, room 261, Des Plaines, Illinois 60018

Federal Aviation Administration, Chicago Airports District Office, Great Lakes Region, 2300 East Devon Avenue, room 260 Des Plaines, Illinois 60018

Springfield Airport Authority, Capital Airport, Airport Authority Office, Second Floor, Springfield, Illinois 62607

Division of Aeronautics, Illinois Department of Transportation, Capital Airport, Springfield, Illinois 62706

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Des Plaines, Illinois, March 23, 1993.

Louis H. Yates,

Manager, Chicago Airports District Office, Great Lakes Region.

[FR Doc. 93-8087 Filed 4-6-93; 8:45 am]

BILLING CODE 4910-13-M

### Flight Service Station at Crescent City, CA; Closure

Notice is hereby given that on March 12, 1993, the Flight Service Station at Crescent City, California, closed. Services to the general aviation public of Crescent City, formerly provided by this office, are being provided by the Automated Flight Service Station in Oakland, California. This information will be reflected in the next issue of the FAA Organization Statement.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354)

Issued in Lawndale, California, on March 25, 1993.

Fanny Rivera,

Acting Regional Administrator, Western-Pacific Region.

[FR Doc. 93-8089 Filed 4-6-93; 8:45 am]

BILLING CODE 4610-13-M

### Flight Service Station at Santa Barbara, CA; Closure

Notice is hereby given that on or about March 26, 1993, the Flight Service Station at Santa Barbara, California, will be closed. Services to the general aviation public of Santa Barbara, formerly provided by this office, will be provided by the Automated Flight Service Station in Hawthorne, California. This information will be reflected in the next issue of the FAA Organization Statement.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354)

Issued in Lawndale, California, on March 25, 1993.

Fanny Rivera,

Acting Regional Administrator, Western-Pacific Region.

[FR Doc. 93-8088 Filed 4-6-93; 8:45 am]

BILLING CODE 4610-13-M

### National Highway Traffic Safety Administration

[Docket No. 93-23; Notice 1]

#### General Motors; Receipt of Petition for Determination of Inconsequential Noncompliance

General Motors (GM) of Warren, Michigan has determined that some of its vehicles fail to comply with 49 CFR 571.115, "Vehicle Identification Number—Basic Requirements" (Federal Motor Vehicle Safety Standard No. 115), and has filed an appropriate report pursuant to 49 CFR part 573. GM has also petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) on the basis that the noncompliance is

inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgement concerning the merits of the petition.

During the 1993 model year, GM manufactured 429 Chevrolet Camaros and 201 Pontiac Firebirds that do not comply with the lettering height requirements of Standard No. 115. The vehicle identification number (VIN) characters on the subject vehicles are 3.55 millimeters (mm) in height. Section S4.6 of Standard No. 115 requires that "[e]ach character in the VIN \* \* \* shall have a minimum height of 4 mm."

GM supports its petition for inconsequential noncompliance with the following:

Although technically not in compliance with the 4 mm requirement of FMVSS 115 S4.6, [GM believes] the subject VIN-characters are no less legible than those meeting the 4 mm height requirement. Consequently, they could be clearly viewed from the specified position by an observer outside the vehicle adjacent to the left windshield pillar. Three GM engineers from our Auto Safety Engineering group were able to read without difficulty the subject VINs of 18 vehicles selected at random in the field under clear, cloudy, and foggy weather conditions. None of the windshields in the survey was cleaned or wiped prior to viewing the VINs checked.

The cost of windshield and VIN plate removal and replacement for the 1993 Firebirds and Camaros is currently estimated at about \$300 per vehicle. The perceived risk the noncompliant VIN format poses to vehicle safety is at worse negligible, and at best nonexistent. The amount of customer inconvenience, on the other hand, would be considerable, and not likely to be viewed by the customer as providing a benefit commensurate with that inconvenience.

In light of these considerations, we don't believe that an agency ruling requiring recall and remedy of the affected vehicles would serve the best interest of the motoring public, GM, or GM's customers. It would instead impose a substantial burden of cost and inconvenience on the manufacturer and the customer with no demonstrable benefit to vehicle safety.

FMVSS 115 specifies the general physical requirements for a VIN "to simplify vehicle information retrieval and to reduce the incidence of accidents by increasing the accuracy and

efficiency of vehicle recall campaigns." The reduced height of the subject VIN-characters in no way hinders or compromises the achievement of this purpose. In fact, the reduced height format seems to enhance rather than degrade the general legibility of the subject VINs. It seems that the laser-etching software program automatically provides more generous spacing and broader individual strokes for 3.55 mm characters than for those at 4 mm in order to achieve equivalency of legibility and visibility throughout the character-height range for VIN plate formatting.

On the basis of these observations, and the absence of any field reports or complaints from vehicle owners, car dealers, rental agencies, the law enforcement community, etc., GM has concluded that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and therefore requests that the affected vehicles be exempted from the recall and remedy provisions of section 151 of the Safety Act.

Interested persons are invited to submit written data, views, and arguments on the petition of GM, 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 six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the petition is granted or denied, the notice will be published in the *Federal Register* pursuant to the authority indicated below.

Comment closing date: May 7, 1993.

(15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: April 2, 1993.

Harry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93-8092 Filed 4-6-93; 8:45 am]

BILLING CODE 4610-59-M

### DEPARTMENT OF THE TREASURY

#### Public Information Collection Requirements Submitted to OMB for Review

Date: April 1, 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.

#### BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

**OMB Number:** 1512-0001.  
**Form Numbers:** ATF F 1600.1 and ATF F 1600.8.

**Type of Review:** Extension.  
**Title:** Requisition of Forms or Publications (ATF F 1600.1). Requisition for Firearms/Explosives Forms (ATF F 1600.8).

**Description:** Forms are used by the general public to request or order forms or publications from the ATF Distribution Center. These forms notify ATF of the quantity required by the respondent and provide a guide as to annual usage of ATF forms and publications by the general public.

**Respondents:** Individuals or households, Businesses or other for-profit, Small businesses or organizations.

**Estimated Number of Respondents:** 30,000.

**Estimated Burden Hours Per Respondent:** 3 minutes, 45 seconds.

**Frequency of Response:** On occasion.  
**Estimated Total Reporting Burden:** 1,725 hours.

**OMB Number:** 1512-0020.  
**Form Number:** ATF F 9 (5320.9).

**Type of Review:** Extension.  
**Title:** Application and Permit for Permanent Exportation of Firearms (26 U.S.C. chapter 53, Firearms).

**Description:** This form is used to move National Firearms Act weapons legally into export channels and serves as a vehicle to allow either the removal of the weapon from the National Firearms Registration and Transfer Record or to the collection of an excise tax. It is used by firearms manufacturers, exporters and others to obtain a benefit and by the Treasury Department to determine/collect taxes.

**Respondents:** Individuals or households, Businesses or other for-profit.

**Estimated Number of Respondents:** 300.

**Estimated Burden Hours Per Respondent:** 3 hours, 24 minutes.

**Frequency of Response:** Other (Optionally, 1-5 years).

**Estimated Total Reporting Burden:** 1,020 hours.

**OMB Number:** 1512-0163.

**Form Number:** ATF F 5210.5 (3068).

**Type of Review:** Extension.

**Title:** Manufacturer of Tobacco Products Monthly Report.

**Description:** ATF F 5210.5 (3068) documents a tobacco products manufacturer's accounting of cigars and cigarettes. The form describes the tobacco products manufactured, articles produced, received, disposed of and statistical classes of large cigars. ATF examines and verifies entries on these reports so as to identify unusual activities, errors and omissions.

**Respondents:** Businesses or other for-profit, Small businesses or organizations.

**Estimated Number of Respondents:** 113.

**Estimated Burden Hours Per Respondent:** 1 hour.

**Frequency of Response:** Monthly.

**Estimated Total Reporting Burden:** 1,356 hours.

**OMB Number:** 1512-0467.

**Form Number:** ATF F 5000.24.

**Type of Review:** Extension.

**Title:** Excise Tax Return—Alcohol and Tobacco.

**Description:** ATF Form 5000.24 is completed by persons who owe tax on distilled spirits, beer, wine, cigars, cigarettes, cigarette paper and tubes, snuff and smoking tobacco (pipe). The return is prescribed by law for the collection of these taxes. ATF uses the form to identify the taxpayer, the premises and period covered by the tax return, taxpayer's liability and adjustments affecting amount paid.

**Respondents:** Businesses or other for-profit, Small businesses or organizations.

**Estimated Number of Respondents:** 2,033.

**Estimated Burden Hours Per Respondent:** 42 minutes.

**Frequency of Response:** Other (bi-monthly).

**Estimated Total Reporting Burden:** 26,615 hours.

**OMB Number:** 1512-0497.

**Form Number:** ATF F 5000.25.

**Type of Review:** Extension.

**Title:** Excise Tax Return—Alcohol and Tobacco (Puerto Rico).

**Description:** ATF Form 5000.25 is completed by persons in Puerto Rico who ship alcohol, tobacco products and cigarette papers and tubes to the U.S. for consumption or sale. The return, prescribed by law, identifies: taxpayer, tax liability, return period, type of

payment, adjustments, and taxes for carry over into the Treasury of Puerto Rico.

**Respondent:** Businesses or other for-profit.

**Estimated Number of Respondents:** 25.

**Estimated Burden Hours Per Respondent:** 15 minutes.

**Frequency of Response:** Other (bi-monthly).

**Estimated Total Reporting Burden:** 150 hours.

**Clearance Officer:** Robert N. Hogarth (202) 927-8930, Bureau of Alcohol, Tobacco and Firearms, room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.

**OMB Reviewer:** Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

**Lois K. Helland,**

**Departmental Reports Management Officer.** [FIR Doc. 93-8032 Filed 4-6-93; 8:45 am]

**BILLING CODE 4810-31-M**

#### Public Information Collection Requirements Submitted to OMB for Review

Dated: April 1, 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:** 1545-0024.

**Form Number:** IRS Form 843.

**Type of Review:** Revision.

**Title:** Claim for Refund and Request for Abatement.

**Description:** Internal Revenue Code (IRC) sections 6402, and §§ 301.6404-1, and 301.6404-3 of the regulations allow for refunds of taxes (except income taxes) or refund, abatement, or credit of interest, penalties, and additions to tax in the event of errors or certain actions by the Internal Revenue Service. Form 843 is used by taxpayers to claim these refunds, credits, or abatements.

**Respondents:** Individuals or households, State or local governments, Farms, Businesses or other for-profit,

Non-profit institutions, Small businesses or organizations.

*Estimated Number of Respondents/Recordkeepers:* 688,000.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

Recordkeeping—1 hour, 19 minutes. Learning about the law or the form—10 minutes.

Preparing the form—41 minutes.

Copying, assembling, and sending the form to the IRS—58 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Reporting/Recordkeeping Burden:* 1,001,545 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. 93-8033 Filed 4-6-93; 8:45 am]

**BILLING CODE 4830-01-M**

#### **Public Information Collection Requirements Submitted to OMB for Review**

Date: April 1, 1993.

The Department of the 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.

#### **FINANCIAL MANAGEMENT SERVICE**

*OMB Number:* 1510-0037.

*Form Number:* TFS 5135.

*Type of Review:* Extension.

*Title:* Voucher for Payment of Awards.

*Description:* Awards certified to Treasury are paid annually as funds are received from foreign governments. Vouchers are mailed to awardholders showing payments due. Awardholder signs voucher certifying that he is entitled to payment. Executed vouchers are used as a basis for payment.

*Respondents:* Individuals or households.

*Estimated Number of Respondents:* 1,400.

*Estimated Burden Hours Per Response:* 30 minutes.

*Frequency of Response:* Annually.

*Estimated Total Reporting Burden:* 700 hours.

*OMB Number:* 1510-0042.

*Form Number:* SF 1055.

*Type of Review:* Extension.

*Title:* Claims Against the U.S. for Amounts Due in Case of a Deceased Creditor.

*Description:* This form is required to determine who is entitled to the funds of a deceased postal savings depositor or deceased awardholder. The form properly completed with supporting documents enables this office to decide who is legally entitled to payment.

*Respondents:* Individuals or households.

*Estimated Number of Respondents:* 400.

*Estimated Burden Hours Per Response:* 1 hour.

*Frequency of Response:* Other (as needed).

*Estimated Total Reporting Burden:* 400 hours.

*Clearance Officer:* Jacqueline R. Perry (301) 344-8577, Financial Management Service, 3361-L 75th Avenue, Landover, MD 20785.

*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. 93-8034 Filed 4-6-93; 8:45 am]

**BILLING CODE 4810-35-M**



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Wednesday  
April 7, 1993

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## Part II

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# Department of Transportation

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Federal Aviation Administration

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**14 CFR Part 11**

**Transition to an All Stage 3 Fleet;  
Addition to the OMB Control Number;  
Final Rule**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 11**

[Docket No. 27245, Amendment No. 11-36]

**Addition of the OMB Control Number Assigned for Information Collection Under the Transition to an All Stage 3 Fleet****AGENCY:** Federal Aviation Administration, DOT.**ACTION:** Final rule.

**SUMMARY:** This amendment adds to the Federal Aviation Regulations the Office of Management and Budget (OMB) Control Number for annual progress reports required to comply with the Transition to an All Stage 3 Fleet Operating in the 48 Contiguous United States and the District of Columbia rule.

**EFFECTIVE DATE:** April 7, 1993.

**FOR FURTHER INFORMATION CONTACT:** Ms. Laurette Fisher, Policy and Regulatory Division (AEE-300), Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267-3561.

**SUPPLEMENTARY INFORMATION:** The Federal Aviation Administration (FAA) is amending its regulations to add an Office of Management and Budget (OMB) Control Number for FAR §§ 91.851 through 91.875. The reporting

requirements of these FAR sections are subject to the provisions of the Paperwork Reduction Act of 1980. The Control Number is needed for annual progress reports that are required for operators to comply with the Transition to an All Stage 3 Fleet Operating in the 48 Contiguous United States and the District of Columbia rule.

**Immediate Adoption**

This amendment confirms that OMB approval has been granted for the reports required under the operating noise rules of part 91, and amends § 11.101 to include the OMB Control Number assigned. No changes have been made to the rule as promulgated September 25, 1991 (56 FR 48628). Accordingly, it is found that notice and prior public comment hereon unnecessary. Further, because the first reports were required by February 15, 1992, it is found that good cause exists for making this amendment effective in less than 30 days.

**Conclusion**

I certify that this amendment: (1) Is not a major rule under Executive Order 12291; (2) is not a significant rule, nor does it otherwise require a Regulatory Evaluation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**The Final Rule**

Accordingly, the FAA amends 14 CFR part 11 of the Federal Aviation Regulations as follows:

**PART 11—GENERAL RULE-MAKING PROCEDURES**

1. The authority citation for part 11 continues to read as follows:

**Authority:** 49 U.S.C. App. 1341(a), 1343(d), 1348, 1354(a), 1401 through 1405, 1421 through 1431, 1481, and 1502; 49 U.S.C. 106(g).

2. In § 11.101(b), the table is amended by adding a new entry immediately following the entry "Part 91, Subpart E" to read as follows:

**§ 11.101 OMB Control Numbers assigned pursuant to the Paperwork Reduction Act.**

\* \* \* \* \*

(b) \* \* \*

14 CFR part or section identified and described	Current OMB control No.
§§ 91.851 thru 91.875 .....	2120-0553

\* \* \* \* \* Issued in Washington, DC on March 30, 1993.

**Joseph M. Del Balzo,  
Acting Administrator.**

[FR Doc. 93-8085 Filed 4-6-93; 8:45 am]

**BILLING CODE 4910-13-M**

# Reader Aids

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## Federal Register

Vol. 58, No. 65

Wednesday, April 7, 1993

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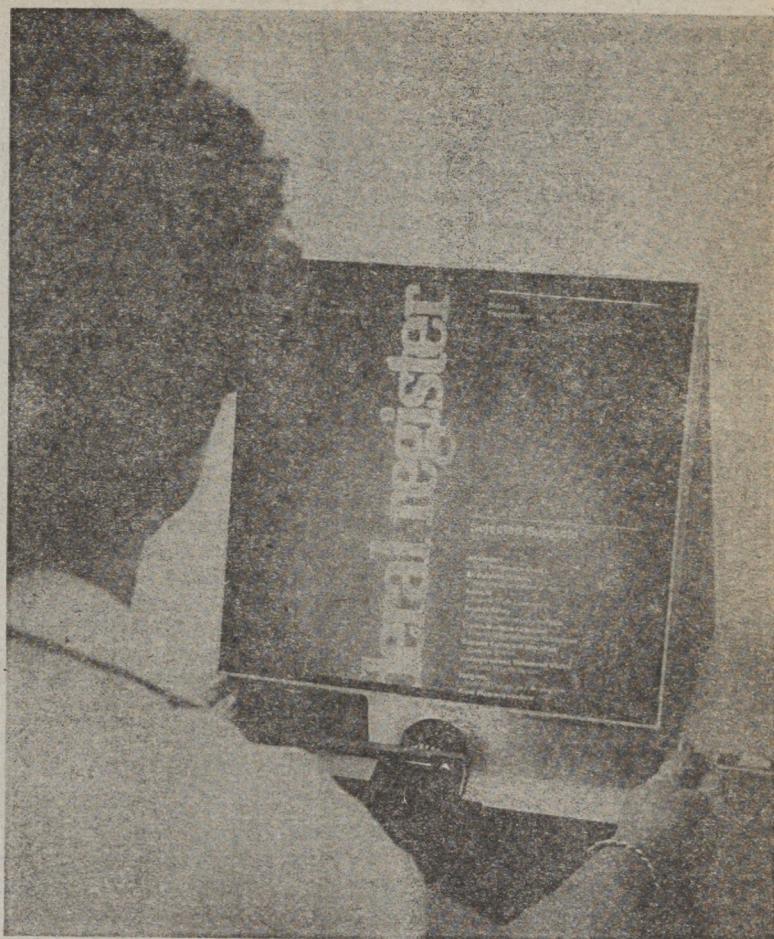
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