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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

Farmers Home Administration

7 CFR Part 1980

RIN 0575–AB67

Business and Industrial Loan Program

AGENCY: Farmers Home Administration and Rural Development Administration, USDA.

ACTION: Interim rule.

SUMMARY: The Farmers Home Administration (FmHA) and Rural Development Administration (RDA) amend their guaranteed loan program regulations to revise procedures for guaranteeing loans to businesses impacted by certain natural disasters. This action is needed to allow additional time to file applications for loan guarantees under the authority of the Dire Emergency Supplemental Appropriations Act, 1992, Public Law 102–368. The intended effect is to remove the regulatory deadline for filing applications.

DATES: Interim rule effective August 3, 1993. Written comments must be received on or before September 2, 1993.

ADDRESSES: Submit written comments in duplicate to the Chief, Regulations, Analysis, and Control Branch, Farmers Home Administration, U.S. Department of Agriculture, room 6348, South Agriculture Building, 14th and Independence SW., Washington, DC 20250. All written comments will be available for public inspection during regular work hours at the above address.

FOR FURTHER INFORMATION CONTACT: M. Wayne Stansbery, Business and Industry Loan Specialist, Rural Development Administration, USDA, room 6327, 14th & Independence Avenue SW., Washington, DC 20250, Telephone (202) 720–6819.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291 and has been determined to be non-major. The annual effect on the economy is less than $100 million and there will be no significant increase in costs or prices for consumers, individual industries, organizations, governmental agencies or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Programs Affected

The Catalog of Federal Domestic Assistance program impacted by this action is: 10.768, Business and Industrial Loans.

Paperwork Reduction Act

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and has been assigned OMB control number 0575–0029 in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). The interim final rule does not revise or impose any new information collection or recordkeeping requirement from those approved by OMB.

Intergovernmental Review

As set forth in the final rule and related Notice to 7 CFR part 3015, subpart V, 48 FR 29112, June 24, 1983, Business and Industrial Loans are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. FmHA and RDA conduct intergovernmental consultation in the manner delineated in FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities."

Civil Justice Reform

This document has been reviewed in accordance with Executive Order 12778. It is the determination of RDA and FmHA that this action does not unduly burden the Federal Court System in that it meets all applicable standards provided in section 2 of the Executive Order.

Environmental Impact Statement

The action has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." FmHA and RDA have determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Discussion of the Rule

Business and Industry Disaster (BID) loans guaranteed under the authority of the Dire Emergency Supplemental Appropriations Act cover costs arising from the consequences of natural disasters such as Hurricanes Andrew and Iniki and Typhoon Omar that occur after August 23, 1992, and receive a Presidential declaration. The regulations implementing BID loans were published as a final rule with comment period in 57 FR 45968 on September 5, 1992. Since the legislative authority to issue guaranteed loans under BID expires on September 30, 1993, a deadline of July 31, 1993, to file applications was placed in the regulation. This was intended to give RDA staff time to process any applications before the guarantee authority expires. Due to additional disasters that have occurred recently, the application deadline is being removed to allow additional time to apply for assistance.

Interim Rule

It is the policy of this Department that rules relating to public property, loans, grants, benefits or contracts shall be published for comment notwithstanding the exemption of 5 U.S.C. 533 with respect to such rules. However, RDA and FmHA are making this action effective upon publication in the **Federal Register** without securing prior public comment. This action removes the July 31, 1993, deadline for filing applications for BID loan guarantees to allow recent disaster victims additional time to apply. However, any applications received must be processed and approved prior to September 30, 1993, when the guarantee authority

expires. Immediate action is needed to provide assistance to disaster victims. Comments will be accepted for 30 days after publication and, if necessary, adjustments will be made in the regulations based on the comments.

List of Subjects in 7 CFR Part 1980

Loan programs—Business and Industry—Rural development assistance, Rural areas.

Accordingly, part 1980, chapter XVIII, title 7 of the Code of Federal Regulations is amended as follows:

PART 1980—GENERAL

1. The authority citation for part 1980 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 7 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart E—Business and Industrial Loan Program

2. Section 1980.498 is amended by revising paragraph (a) to read as follows:

§ 1980.498 Business and Industry Disaster Loans.

(a) *Introduction.* This section contains regulations for the Business and Industry Disaster (BID) loan program. The purpose of the program is to provide loan guarantees under the authority of the Dire Emergency Supplemental Appropriations Act, 1992, Public Law 102–368. These guaranteed loans cover costs arising from the consequences of natural disasters such as Hurricanes Andrew and Iniki and Typhoon Omar that occur after August 23, 1992, and receive a Presidential declaration. Also included are the costs to any producer of crops and livestock that are a consequence of at least a 40 percent loss to a crop, 25 percent loss to livestock, or damage to building structures from a microburst wind occurrence in calendar year 1992. No BID loan guarantee will be approved after September 30, 1993. All provisions of subparts A and E of part 1980 of this chapter apply to BID loans, except as provided in this section. All forms used in connection with a BID loan will be those used with other Business and Industry (B&I) loans, except as provided in paragraph (m) of this section.

* * * * *

Dated: July 22, 1993.

Bob J. Nash,

Under Secretary, Small Community and Rural Development.

[FR Doc. 93–18544 Filed 7–30–93; 10:07 am]

BILLING CODE 3410–07–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–118–AD; Amendment 39–8652; AD 93–15–06]

Airworthiness Directives; Airbus Industrie Model A300, A310 and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Airbus Industrie Model A300, A310 and A300–600 series airplanes. This action requires an inspection to verify correct installation of certain bolts in the nose landing gear (NLG) uplock box, and correction, if necessary. This amendment is prompted by a recent report that the NLG did not extend when the NLG doors opened during a scheduled landing gear free fall extension test. The actions specified in this AD are intended to prevent jamming of the free fall mechanical control mechanism, which could result in the failure of the NLG to extend during a gravity free fall.

DATES: Effective August 18, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 18, 1993.

Comments for inclusion in the Rules Docket must be received on or before October 4, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–118–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: 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 all Airbus Industrie Model A300, A310 and A300–600 series airplanes. The DGAC advises that it has received a recent report that the nose landing gear (NLG) did not extend when the NLG doors opened during a scheduled landing gear free fall extension test on a Model A310 series airplane. Subsequent investigation revealed reverse installation of the bolts that attach one of the two NLG door uplock assemblies to the support fittings. The operator has confirmed other cases of reverse bolt installation in its fleet. Further investigations and tests revealed that interference between the bolt end and the bolt, which may have been installed in reverse, caused jamming of the free fall mechanical control mechanism. Consequently, the jammed control mechanism prevented release of the NLG uplock assembly. The NLG uplock assembly for Model A300 and A300–600 series airplanes is similar in design to that of Model A310 series airplanes. This condition, if not corrected, could result in jamming of the free fall mechanical control mechanism, and subsequent failure of the NLG to extend during a gravity free fall.

Airbus Industrie has issued Airbus Industrie All Operator Telex (AOT) 32–06, dated March 3, 1993, that describes procedures for a one-time visual inspection to verify correct installation of the bolts that attach the left- and right-hand NLG door uplock assemblies to the support fittings, and of the bolt that connects the free fall rod to its lever; correction of incorrectly installed bolts; a functional test; and submission of an inspection report. The DGAC classified this AOT as mandatory and issued French Airworthiness Directive 93–063–145(B), dated May 12, 1993, 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 § 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, this AD is being issued to prevent jamming of the free fall mechanical control mechanism, which could result in the failure of the NLG to extend during a gravity free fall. This AD requires a one-time detailed visual inspection to verify correct installation of the bolts that attach the left- and right-hand NLG door uplock assemblies to the support fittings, and of the bolt that connects the free fall rod to its lever; correction of incorrectly installed bolts, and a functional test. Finally, operators are required to submit a report to Airbus of the results of any inspection findings. The actions are required to be accomplished in accordance with the AOT described previously.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket Number and be submitted in triplicate to the address specified under the caption "ADDRESSES." All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–118–AD." The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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:

93–15–06 Airbus Industrie: Amendment 39–8652. Docket 93–NM–118–AD.

Applicability: All Airbus Industrie Model A300, A310 and A300–600 series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent jamming of the free fall mechanical control mechanism, which could result in the failure of the nose landing gear (NLG) to extend during a gravity free fall, accomplish the following:

(a) Within 30 landings after the effective date of this AD, perform a detailed visual inspection to verify correct installation of the bolts that attach the left- and right-hand NLG door uplock assemblies to the support fittings, and of the bolt connecting the free fall rod to its lever in accordance with Airbus Industrie All Operator Telex (AOT) 32–06, dated March 3, 1993.

(1) If the bolts are installed correctly, no further action is required by paragraph (a) of this AD.

(2) If any bolt is found to have been incorrectly installed, prior to further flight, correct its installation and perform a functional test of the landing gear free fall control and emergency extension systems in accordance with the AOT.

(b) Within 7 days after accomplishing the detailed visual inspection required by paragraph (a) of this AD, submit a report of any inspection findings to Airbus Industrie, in accordance with Airbus Industrie AOT 32–06, dated March 3, 1993. Report all findings, including nil defects to: Airbus Industrie, Product Support Directorate, Attention: Technical Support, AI/ST41, 1 Rond Point Bellonte, 31707 Blagnac Cedex, France. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) and have been assigned OMB Control Number 2120–0056.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, 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.

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

(e) The detailed visual inspection, correction, reporting requirement, and functional test shall be done in accordance

with Airbus Industrie All Operator Telex (AOT) 32–06, dated March 3, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on August 18, 1993.

Issued in Renton, Washington, on July 26, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–18391 Filed 8–2–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–NM–117–AD; Amendment 39–8651; AD 93–15–05]

Airworthiness Directives; Airbus Industrie Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Airbus Industrie Model A320 series airplanes equipped with BFGoodrich carbon brakes. This action requires a revision to the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to make allowances for the additional accelerate-stop distances necessary to compensate for reduced braking performance. This amendment is prompted by a report that certain carbon brakes were manufactured with a flexural strength that is outside specified limits. The actions specified in this AD are intended to compensate for reduced braking performance.

DATES: Effective August 18, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 18, 1993.

Comments for inclusion in the Rules Docket must be received on or before October 7, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–117–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: 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 Airbus Industrie Model A320 series airplanes equipped with BFGoodrich carbon brakes. The DGAC advises that BFGoodrich has manufactured certain carbon brakes with a flexural strength that is outside specified limits. These carbon brakes are installed on certain Model A320 series airplanes. This condition, if not corrected, could result in reduced braking performance.

Airbus Industrie has issued A320 Flight Manual Temporary Revision 9.99.99/89, Issue 2, dated December 16, 1992, that describes procedures for making allowances for the additional accelerate-stop distances necessary to compensate for reduced braking performance for airplanes on which Airbus Industrie Modification 20856 or Airbus Industrie Service Bulletin A320–32–1090 has been installed. Airbus Industrie has also issued Issue 3 of Temporary Revision 9.99.99/89, dated February 8, 1993, which specifies that braking performance is recovered once Airbus Industrie Modification 23597 or Airbus Industrie Service Bulletin A320–32–1114 has been installed on these airplanes. The DGAC classified these temporary flight manual revisions as mandatory and issued French Airworthiness Directive 93–056–040(B), dated April 28, 1993, 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 § 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, this AD is being issued to prevent reduced brake performance. This AD requires revisions to the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to correct reduced braking performance. The actions are required to be accomplished in accordance with Issue 2 of the A320 Flight Manual Temporary Revision described previously. This AD also provides an optional terminating action, which involves the accomplishment of Airbus Industrie Modification 23597 or Airbus Industrie Service Bulletin A320–32–1114 and replacement of Issue 2 of the A320 Flight Manual Temporary Revision with Issue 3 of that temporary revision in the AFM.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "ADDRESSES." All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by

interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–117–AD." The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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:

93–15–05 Airbus Industrie: Amendment 39–8651. Docket 93–NM–117–AD.

Applicability: Model A320 series airplanes on which Airbus Industrie Modification 20856 or Airbus Industrie Service Bulletin A320–32–1090 has been accomplished, and on which Airbus Industrie Modification 23597 or Airbus Industrie Service Bulletin A320–32–1114 has not been accomplished; certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent reduced braking performance, accomplish the following:

(a) Within 30 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) by inserting a copy of Airbus Industrie A320 Flight Manual Temporary Revision 9.99.99/89, Issue 2, dated December 16, 1992, in the AFM.

(b) Accomplishment of Airbus Industrie Modification 23597 or Airbus Industrie Service Bulletin A320–32–1114 and replacement of Airbus Industrie A320 Flight Manual Temporary Revision 9.99.99/89, Issue 2, dated December 16, 1992, with Airbus Industrie A320 Flight Manual Temporary Revision 9.99.99/89, Issue 3, dated February 8, 1993, in the AFM constitutes terminating action for the requirements of paragraph (a) of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, 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.

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

(e) The AFM revision shall be accomplished in accordance with Airbus Industrie A320 Flight Manual Temporary Revision 9.99.99/89, Issue 2, dated December 16, 1992, which contains the following list of effective pages:

Page No.	Issue level shown on page	Date shown on page
1	2	December 16, 1992.
2	Original	November 3, 1992.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on August 18, 1993.

Issued in Renton, Washington, on July 26, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–18392 Filed 8–2–93; 8:45 am]

BILLING CODE 4910–13–E

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14 CFR Part 39

[Docket No. 92–ANE–10; Amendment 39–8643; AD 93–14–18]

Airworthiness Directives; General Electric Co. CF6 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to General Electric Company (GE) CF6 series turbofan engines, that requires a one-time inspection of high pressure turbine (HPT) thermal shields, removal from service of certain HPT thermal shields, and replacement with serviceable parts. This amendment is prompted by a report of an HPT thermal shield separation. The actions specified by this AD are intended to prevent an uncontained engine failure.

DATES: Effective October 4, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 4, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from General Electric Aircraft Engines, CF6 Distribution Clerk, room 132, 111 Merchant Street, Cincinnati, OH 45246. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert J. Ganley, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7138, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to General Electric Company (GE) CF6 series turbofan engines was published in the **Federal Register** on August 27, 1992 (57 FR 38795). That action proposed to require a one-time inspection of high pressure turbine (HPT) thermal shields, removal from service of certain HPT thermal shields, and replacement with serviceable parts in accordance with GE CF6–6 Service Bulletin (SB) No. 72–983, Revision 1, dated October 10, 1991, applicable to CF6–6 engines; GE CF6–50 SB No. 72–1021, Revision 1, dated October 10, 1991, applicable to CF6–45 and CF6–50 engines; GE CF6–80A SB No. 72–596, Revision 1, dated October 10, 1991, applicable to CF6–80A engines; and GE CF6–80C2 SB No. 72–565, Revision 1, dated October 10, 1991, applicable to CF6–80C2 engines.

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

One comment supports the rule as proposed.

One comment recommends that compliance paragraph (a) of this AD be revised to require inspection "at the first opportunity not to interfere with revenue service, but no later than the next HPT shop visit." The comment further states that requiring an inspection within these time parameters would make the AD consistent with the applicable SB. The Federal Aviation Administration (FAA) concurs in part with the comment. To clarify the compliance time for the required inspection, paragraph (a) of this AD has been revised to require inspection at the "next HPT shop visit." Compliance paragraph (c) of this AD has also been revised to define shop visit as when the HPT module is removed from the engine for any reason.

One comment states that the applicable SB's do not incorporate a compliance end date, and if one is required, that it be changed from December 12, 1995, to December 12, 1996, to avoid unscheduled removals. The FAA does not concur. The manufacturer has advised the FAA that the original compliance end date will allow 99% of all GE CF6–50 engines to have a planned shop visit, thus alleviating unscheduled removals. The FAA has therefore not revised the original compliance end date.

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

There are approximately 560 GE CF6 series engines of the affected design in the worldwide fleet. The FAA estimates that 100 engines installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 100 work hours per engine to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $50,000 per engine. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $5,550,000.

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

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

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation Safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

93–14–18 General Electric Company: Amendment 39–8643. Docket 92–ANE–10.

Applicability: General Electric Company (GE) CF6–6/–45/–50/–80A/–80C2 series turbofan engines that contain high pressure turbine (HPT) thermal shields as listed in the applicable service bulletins that are referenced in this AD, installed on but not limited to Airbus A300 and A310 series, Boeing 747 and 767 series, and McDonnell Douglas DC–10 and MD–11 series aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent an uncontained engine failure, accomplish the following:

(a) Perform either an impression and optical comparitor inspection or an ultrasonic inspection of the HPT thermal shield at the next HPT shop visit, or by December 12, 1995, whichever occurs first, as follows:

(1) For GE CF6–6 engines, in accordance with GE CF6–6 Service Bulletin (SB) No. 72–983, Revision 1, dated October 10, 1991.

(2) For CF6–45/–50 engines, in accordance with GE CF6–50 SB No. 72–1021, Revision 1, dated October 10, 1991.

(3) For CF6–80A engines, in accordance with GE CF6–80A SB No. 72–596, Revision 1, dated October 10, 1991.

(4) For CF6–80C2 engines, in accordance with GE CF6–80C2 SB No. 72–565, Revision 1, dated October 10, 1991.

(b) Remove from service prior to further flight, and replace with a serviceable part, HPT thermal shields that do not meet the service criteria contained in the applicable service bulletins as specified in paragraph (a) of this AD.

(c) For the purpose of this AD, a shop visit is defined as the removal of the HPT module from the engine for any reason.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

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

(e) 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.

(f) The inspections shall be done in accordance with the following service bulletins:

Document No.	Pages	Revision	Date
GE CF6–6 SB	1–3	1	October 10, 1991.
No. 72–983	4–30	Original	September 19, 1991.
Total Pages: 30			
GE CF6–50 SB	1–3	1	October 10, 1991.
No. 72–1021	4–30	Original	September 19, 1991.
Total Pages: 30			
GE CF6–80A SB	1–3	1	October 10, 1991.
No. 72–596	4–31	Original	September 19, 1991.
Total Pages: 31			
GE CF6–80C2 SB	1–3	1	October 10, 1991.
No. 72–565	4–31	Original	September 19, 1991.
Total Pages: 30			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from General Electric Aircraft Engines, CF6 Distribution Clerk, Room 132, 111 Merchant Street, Cincinnati, OH 45246. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(g) This amendment becomes effective on October 4, 1993.

Issued in Burlington, Massachusetts, on July 16, 1993.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 93–18393 Filed 8–2–93; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 92–NM–65–AD; Amendment 39–8644; AD 93–14–19]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767–200 and –300 series airplanes, that requires inspections to detect disbonding of the trailing edge wedges on the leading edge slats, and repair, if necessary. This amendment is prompted by numerous reports of wedge damage or disbonding; in two cases, the damage resulted in loss of a portion of the slat wedges. The actions specified by this AD are intended to prevent loss of slat wedges, which could result in reduced maneuver margins, reduced speed margins to stall, and unexpected roll before stall warning, all of which would adversely affect the controllability of the airplane.

DATES: Effective September 2, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 2, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2776; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Boeing Model 767–200 and –300 series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on March 2, 1993 (58 FR 11997). That action proposed to require inspections to detect disbonding of the trailing edge wedges on the leading edge slats, and repair, if necessary.

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

Two commenters request that the proposed compliance time for accomplishing the initial inspection be extended. One commenter requests that, for airplanes that have accumulated 12,000 or more total flight hours, the compliance time be extended from the proposed 1,000 flight hours to 2,000 flight hours; the other commenter requests that it be extended to 5,000 flight hours or 15 months, whichever occurs later. These commenters state that adoption of an extended compliance time would allow sufficient time for a phase-in of the proposed inspections with existing maintenance programs. Both commenters note that their fleets of Model 767 series airplanes have accumulated many flight hours and have not experienced any incidents of disbonding, wedge damage, or core corrosion such as that addressed by the proposed AD. The FAA does not concur with the commenters' requests to extend the compliance time for the initial inspections. The FAA has determined that the compliance time, as proposed, provides ample time within which affected operators can schedule time for a maintenance base visit. The selected compliance period also represents the maximum interval of time allowable for the affected airplanes to continue to operate prior to accomplishing the required inspection without compromising safety.

Two commenters request that the compliance time for the repetitive inspections specified in proposed paragraphs (b) and (d) be extended from the proposed 4,000 flight hours to 5,000 flight hours. Both commenters state that an interval of 5,000 flight hours would coincide with regularly scheduled "C" checks. One commenter notes that a repetitive inspection interval of 5,000 flight hours also would match the repetitive inspection interval recommended by the manufacturer in Boeing Service Bulletin 767–57A0039, Revision 1, dated October 15, 1992. The FAA concurs with the commenters' requests. Extending the compliance time for the repetitive inspections by 1,000 additional flight hours will not adversely affect safety, and will allow the inspection to be performed at a main base during regularly scheduled maintenance where special equipment and trained maintenance personnel will be available. Paragraphs (b) and (d) of the final rule have been revised to

specify a repetitive inspection interval of 5,000 flight hours.

Two commenters request that the rule specify a minimum time period over which the two consecutive repeat inspections proposed in paragraphs (b) and (d) must be accomplished before those inspections can be terminated due to negative findings (i.e., when no disbonding is found). Although the proposal specifies a maximum period for the repeat interval (now changed to 5,000 flight hours), it does not specify a minimum period. The commenters point out that, as written, the proposal would allow an operator to terminate these inspections over a very short period of time; during that short period of time, disbonding may not yet have grown to a detectable size, but may continue to grow once the two consecutive inspections have been completed. The commenters note that, in a worst case scenario, an operator could perform the initial and two successful repeat inspections all on the same day and still be within the letter of the law. Obviously, this would not satisfy the desired safety objective of the AD. These commenters request that the FAA clarify this point. Upon further review of the wording of paragraphs (b) and (d) of the proposal, the FAA concurs that the requirements could be misconstrued; therefore, clarification is warranted. It was the FAA's intent that the two repeat inspections be accomplished over a period of time during which disbonding, if not detectable during the initial inspection, would grow to be detectable by the first or second subsequent inspection. Since the addressed unsafe condition is a time-related phenomenon, it is vital that sufficient time be allowed between inspections for potential development of disbonding, so that it can be detected during the subsequent inspection and corrected in a timely manner. The FAA has revised paragraphs (b) and (d) of the final rule to specify that the two repeat inspections must be accomplished during an elapsed period of time not less than 6,000 flight hours after the initial inspections or repair. Based on disbond growth rates, this 6,000-flight hour interval should allow for any disbonding to grow to a detectable size, so that it can be identified at the subsequent inspection and repaired.

Two commenters request that the FAA withdraw the proposal. One commenter states that all of the Model 767 series airplanes in its fleet have accumulated more than 35,000 flight hours and, during this extensive amount of operating experience, none have experienced excessive wedge damage or corrosion as addressed by the proposal. This commenter further states that its existing maintenance inspections, conducted during regularly scheduled "C" checks, have been sufficient to detect any minor damage which may exist. Another commenter states that it operates some of the oldest Model 767 series airplanes in service and has not detected disbonding in the leading edge slats trailing edge wedges. Both commenters consider that the concern of leading edge slat corrosion is addressed adequately in the Model 767 Corrosion Prevention and Control Program (CPCP) and, therefore, the proposed AD would be redundant. The FAA does not concur with the request to withdraw this AD. The Model 767 CPCP is not a mandatory document, that is, it is not mandated by any rulemaking action; therefore, there is no assurance that all, if any, operators have implemented and are following the program. Furthermore, the inspections called out in the Model 767 CPCP are meant to be general and visual in nature; they do not include any provisions for coin-tap inspections, as is required by this final rule. The FAA has determined that the inspections called out in the CPCP would not be sufficiently detailed to detect the type of disbonding addressed by this AD action. Further, the inspection intervals called out in the CPCP are at "4C" checks; the FAA does not consider this interval to be frequent enough to address the type of disbonding that is the subject of this AD action. The FAA has determined that the procedures required by this AD action are the most effective actions that must be taken in order to prevent separation of the slat wedges due to the consequences of disbonding, a condition which could adversely affect the controllability of the airplane. Further, the appropriate vehicle for mandating such inspections and additional actions to correct the identified unsafe condition is the airworthiness directive.

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

There are approximately 487 Boeing Model 767–200 and -300 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 180 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $79,200, or $440 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

93–14–19 Boeing: Amendment 39–8644. Docket 92–NM–65–AD.

Applicability: Model 767 series airplanes, line numbers 1 through 488, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent separation of the trailing edge wedges of the leading edge slats from the airplane, accomplish the following:

(a) Perform either a visual and a "Coin-Tap" inspection, or a visual and an ultrasonic inspection, of the trailing edge wedges of the leading edge slats in accordance with Boeing Service Bulletin 767–57A0039, Revision 1, dated October 15, 1992, and in accordance with the schedule specified in paragraph (a)(1) or (a)(2) of this AD, as applicable:

(1) For airplanes that have accumulated less than 12,000 total flight hours as of the effective date of this AD, accomplish the initial inspections at the earlier of the times specified in paragraphs (a)(1)(i) and (a)(1)(ii) of this AD.

(i) Prior to the accumulation of 13,000 flight hours; or

(ii) Within 5,000 flight hours or 15 months after the effective date of this AD, whichever occurs first.

(2) For airplanes that have accumulated 12,000 or more total flight hours as of the effective date of this AD, accomplish the initial inspections within 1,000 flight hours after the effective date of this AD.

(b) If no disbonding is detected during the inspections required by paragraph (a) of this AD, repeat the inspections at intervals not to exceed 5,000 flight hours. After 2 consecutive repetitive inspections of the slat wedge are accomplished during an elapsed period of time not less than 6,000 flight hours since the performance of the inspections required by paragraph (a) of this AD, and during which no damage is found, the inspections required by this paragraph may be discontinued for that slat wedge.

Note: Inspections finding no slat wedge damage but accomplished sooner than the specified period of 6,000 flight hours will not be accepted as terminating action.

(c) If disbonding is detected during any inspection required by paragraph (a) or (b) of this AD, prior to further flight, repair the disbonded area in accordance with paragraph (c)(1) or (c)(2) of this AD, as applicable:

(1) Repair the disbonded area using the "permanent" repair method in accordance with paragraph (c)(1)(i) or (c)(1)(ii) of this AD, as applicable.

(i) Repair using the "permanent" repair method specified in the 767 Structural Repair Manual (SRM), Section 57–43–02.

(ii) If damage goes into the dense core area, or if there is no applicable SRM repair, repair the disbonded area in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(2) If the disbonded area is within the limits specified in paragraph J., Section III, "Accomplishment Instructions," of Boeing Service Bulletin 767–57A0039, Revision 1, dated October 15, 1992, operators may repair the disbonded area using the time-limited repair method in accordance with that paragraph of the Service Bulletin.

(i) Within 500 flight hours after accomplishing the time-limited repair, and thereafter at intervals not to exceed 500 flight hours until the permanent repair specified in paragraph (c)(1) of this AD is accomplished, inspect the repaired area in accordance with Boeing Service Bulletin 767–57A0039, Revision 1, dated October 15, 1992.

(ii) The permanent repair must be installed within 5,000 flight hours after installation of the time-limited repair, or prior to further flight if the disbond grows beyond the doubler edges of the slat wedge, whichever occurs first.

(d) After accomplishment of any permanent repair in accordance with paragraph (c) of this AD, continue the inspections required by paragraph (a) of this AD at intervals not to exceed 5,000 flight hours. After 2 consecutive repetitive inspections of the slat wedge are accomplished during an elapsed period of time not less than 6,000 flight hours since accomplishment of the permanent repair, and during which no damage is found, the inspections required by this paragraph may be discontinued for that slat wedge.

Note: Inspections finding no slat wedge damage but accomplished sooner than the specified period of 6,000 flight hours will not be accepted as terminating action.

(e) Replacement of the slat wedge with a new more corrosion-resistant slat wedge, in accordance with Boeing Service Bulletin 767–57A0039, Revision 1, dated October 15, 1992, constitutes terminating action for the inspection requirements of this AD for that slat wedge.

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

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

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

(h) The inspections, repair, and replacement shall be done in accordance with Boeing Service Bulletin 767–57A0039, Revision 1, dated October 15, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(i) This amendment becomes effective on September 2, 1993.

Issued in Renton, Washington, on July 20, 1993.

Suzanne E. Stevens,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–18389 Filed 8–2–93; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 92–ANE–14; Amendment 39–8636; AD 93–14–12]

Airworthiness Directives; Essex PB&R Corporation (Formerly E.I. DuPont de Nemours and Company Incorporated) PELS Model 4566M37B Crewmember Protective Breathing Equipment

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Essex PB&R Corporation (formerly E.I. DuPont de Nemours and Company Incorporated) PELS Model 4566M37B crewmember protective breathing equipment (PBE). This rule requires that PBE units with certain serial numbers be removed from service and replaced with serviceable PBE units. This amendment is prompted by the discovery, during a functional audit, of failed neck seal adhesive bonds and the subsequent determination that 2,757 PBE units were produced with adhesive that exceeded the shelf life date. The actions specified by this AD are intended to prevent leakage of the PBE neck seal, which could compromise the crew's ability to combat an aircraft fire.

DATES: Effective September 2, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 2, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Essex PB&R Corporation, P.O. Box 791, Elkton, Maryland 21921. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Constantine Kallis, Aerospace Engineer, New York Aircraft Certification Office, ANE–173, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 181 South Franklin Avenue, room 202, Valley Stream, NY 11581–1145; telephone (516) 791–6428; fax (516) 791–9024.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (FAR) to include an airworthiness directive (AD) that is applicable to Essex PB&R Corporation (formerly E.I. DuPont de Nemours and Company Incorporated) PELS Model

4566M37B crewmember protective breathing equipment (PBE) was published in the **Federal Register** on July 20, 1992 (57 FR 31989). That action proposed to require removal of certain serial numbered PBE units, in accordance with Essex PB&R Corporation Service Bulletin (SB) No. 001, Revision 1, dated October 3, 1991.

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

One commenter requests that the AD include an examination of the effort required to open the packaging of the equipment and don the units. The FAA does not concur with the commenter's request to include such examinations in this rulemaking action, at this point. However, after additional data is obtained and analyzed, the FAA may consider further rulemaking to expand the scope of this AD to include such examination requirements, if warranted.

Two commenters request that the compliance time of 90 days be extended to allow sufficient time for retrofit and delivery of parts from the manufacturer. One commenter requests 180 days (6 months) after the effective date of the AD, to allow for proper notification and production of parts; the other requests 15 months after the effective date of the rule, to allow the modification to be accomplished during the time of a regularly scheduled "C" check. This same commenter considers that the adoption of the proposed compliance time of 90 days would require operators to schedule special times for the acomplishment of the modification, at additional expense. The FAA concurs with the commenters' requests to extend the compliance time for the modification requirements. Extending the complaince time will not adversely affect safety, and will allow the manufacturer sufficient time to produce and deliver the parts; and the operators sufficient time to perform the modification at a base during regularly scheduled maintenance where special equipment and trained maintenance personnel will be available, if necessary. Paragraph 2(a) of the final rule has been revised to specify a compliance time of 15 months.

The manufacturer requests altering the language of the rule to indicate that the responsible party on the referenced service bulletin is E.I. DuPont and not Essex PB&R Corp. The affected equipment was made by E.I. DuPont in 1989, and the original service bulletin was issued by them in April 1990. The FAA disagrees. At the time Essex Corp. purchased E.I. DuPont in December 1990, they acquired full responsibility for the product(s); and, in that respect, issued the revised service bulletin in October 1991.

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

The FAA estimates that 2,757 PBE units, installed in aircraft of U.S. registry, will be affected by this AD; that it will take approximately 1 work hour per PBE unit to accomplish the required actions; and that the average labor rate is $55 per work hour. The replacement PBE unit will cost approximately $400 per unit. The FAA has been advised by the manufacturer that they will exchange, at no cost, certain PBE units that are returned. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,254,435. This total figure may be reduced by the operators electing to participate in the exchange program.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

93–14–12 Essex PB&R Corporation (formerly E.I. DuPont de Nemours and Company Incorporated): Amendment 39–8636. Docket No. 92–ANE–14:

Applicability: Essex PB&R Corporation (formerly E.I. DuPont de Nemours and Company Incorporated) PELS Model 4566M37B crewmember protective breathing equipment (PBE) units, as listed in Essex PB&R Corporation Service Bulletin (SB) No. 001, Revision 1, dated October 3, 1991, installed on but not limited to transport category aircraft manufactured by Boeing, McDonnell Douglas, Airbus, and Lockheed.

Compliance: Required as indicated, unless accomplished previously.

To prevent leakage of the PBE neck seal, which could compromise the crew's ability to combat an aircraft fire, accomplish the following:

(a) Within the next 15 months after the effective date of this AD, remove the affected PBE unit, in accordance with the accomplishment instructions of Essex PB&R Corporation Service Bulletin (SB) No. 001, Revision 1, dated October 3, 1991, and replace with a serviceable unit.

(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, New York Aircraft Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from New York Aircraft Certification Office.

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

(d) The modification shall be done in accordance with Essex PB&R Corporation Service Bulletin (SB) No. 001, Revision 1, dated October 3, 1991. This incorporation by reference was approved by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Essex PB&R Corp., P.O. Box 791, 505 Blue Ball Road, Elkton, MD 21921. Copies may be inspected at the FAA, New

England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA 01803–5299; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(e) This amendment becomes effective on September 2, 1993.

Issued in Burlington, Massachusetts, on July 14, 1993.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 93–18390 Filed 8–2–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

[Airspace Docket No. 93–ASO–3]

Designation of Class E Airspace, Boca Raton, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Boca Raton, Florida. A Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) Standard Instrument Approach Procedure (SIAP) has been developed to serve the Boca Raton Airport based on the Palm Beach VORTAC. Controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing the approach. The area will be depicted on aeronautical charts to provide a reference for pilots operating in the area.

EFFECTIVE DATE: 0901 UTC, November 11, 1993.

FOR FURTHER INFORMATION CONTACT: Armando Castro, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 763–7646.

SUPPLEMENTARY INFORMATION:

History

On March 15, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a transition area at Boca Raton, Florida. (48 FR 29881). The proposal was to add controlled airspace extending upward from 700 feet above the surface to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the en route and terminal environments. The operating status of the airport is changed to include IFR (51 FR 11455). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Airspace Reclassification, which becomes effective September 16, 1993, will discontinue the use of the term "transition area" and replace it with the designation "Class E airspace" for airspace extending upward from 700 feet above the surface. Other than the change in terminology, this amendment is the same as that proposed in the notice. The coordinates for this airspace docket are based on North American Datum 83. Designation for Class E airspace extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 effective September 16, 1993 (58 F.R. 36298; July 6, 1993). The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes Class E airspace at Boca Raton, Florida, to provide controlled airspace extending upward from 700 feet above the surface for aircraft executing the VOR/DME–A SIAP into the Boca Raton Airport, at Boca Raton, Florida.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 in effect as of September 16, 1993, 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.

2. The incorporation by reference in 14 CFR 71.1 in effect as of September 16, 1993, of the Federal Aviation Administration Order 7400.9A, Airspace Designation and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

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

* * * * *

ASO FL E5 Boca Raton, FL [New]
Boca Raton Airport, FL
(lat. 26° 22'44" N., long. 80° 06'26" W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Boca Raton Airport, excluding that portion that coincides with the Pompano Beach, FL, Class E airspace.

* * * * *

Issued in East Point, Georgia, on June 23, 1993.

Walter E. Denley,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 93–18454 Filed 8–2–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regulations No. 16]

RIN 0960–AD55

Supplemental Security Income for the Aged, Blind and Disabled; Residence and Citizenship; Temporary Protected Status

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: This final rule incorporates into the supplemental security income regulations a provision of the Immigration and Nationality Act (INA) concerning the ineligibility of certain aliens for federal assistance programs. Specifically, this regulation provides that an alien granted temporary protected status (TPS) by the Attorney General of the United States pursuant to section 244A of the INA will not be considered to be permanently residing

in the United States under color of law during that period for the purpose of eligibility for Supplemental Security Income (SSI) benefits.

EFFECTIVE DATE: August 3, 1993.

FOR FURTHER INFORMATION CONTACT: Harry J. Short, Legal Assistant, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–6243.

SUPPLEMENTARY INFORMATION: The SSI program provides cash assistance to persons who are aged, blind, or disabled and whose income and resources are below specified amounts. A person may be eligible for SSI benefits if he or she meets all of the eligibility requirements of title XVI of the Social Security Act (the Act) and implementing regulations. Section 1614(a)(1)(B) of the Act provides that an aged, blind or disabled individual, for purposes of the application of title XVI, must be a resident of the United States, and either a citizen or an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law.

Section 302 of the Immigration Act of 1990, Public Law 101–649, amended the INA on November 29, 1990, by adding a new section 244A entitled "Temporary Protected Status." TPS is an alien status which may be granted temporarily to qualified nationals of designated foreign states. Such designation of a foreign state is based on the existence of an ongoing armed conflict, natural disaster, or other extraordinary and temporary condition which prevents aliens who are nationals of such state from returning safely. Aliens granted TPS may not be deported during the period in which such status is in effect and may work throughout its duration. However, paragraph (f)(1) of section 244A provides that during a period in which an alien is granted TPS, he or she shall not be considered to be permanently residing in the United States under color of law. One effect of this amendment is that individuals will not be eligible for SSI benefits while in TPS, because they have not been admitted for permanent residence and cannot be considered to be permanently residing in the United States under color of law while in TPS.

This final regulation adds a new § 416.1619 to subpart P of our regulations to incorporate the provision of section 244A of the INA which states that aliens granted TPS are not considered to be permanently residing in the United States under color of law.

Regulatory Procedures

Justification for Final Rule

The Department, even when not required by statute, as a matter of policy, generally follows the Administrative Procedure Act (APA) notice of proposed rulemaking and public comment procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its notice and comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest.

We have determined that under 5 U.S.C. 553(b)(B), good cause exists for waiver of notice of proposed rulemaking and public comment procedures on this regulation, because such procedures are unnecessary in this case. This rule merely reflects, without exercise of discretion, section 244A(f)(1) of the INA, 8 U.S.C. 1254a(f)(1), as amended by section 302(a) of Public Law 101–649.

Executive Order No. 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 since the program and administrative impact of the legislation, which this regulation implements, is insignificant and the threshold criteria for a major rule are not otherwise met. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

This final regulation imposes no additional reporting and recordkeeping requirements necessitating clearance by the Office of Management and Budget.

Regulatory Flexibility Act

We certify that this final rule will not have a significant economic impact on a substantial number of small entities because it affects only individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program No. 93.807—Supplemental Security Income)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income (SSI), Reporting and recordkeeping requirements.

Dated: April 30, 1993.

Louis D. Enoff,

Principal Deputy Commissioner of Social Security.

Approved: June 15, 1993.

Donna E. Shalala,

Secretary of Health and Human Services.

For the reasons set out in the preamble, part 416 of chapter III of title 20 of the Code of Federal Regulations is amended as follows:

1. The authority citation for subpart P of part 416 is revised to read as follows:

Authority: Secs. 1102, 1614(a)(1)(B) and (e), and 1631 of the Social Security Act; 42 U.S.C. 1302, 1382c(a)(1)(B) and (e), and 1383; sec. 502 of Pub. L. 94–241, 90 Stat. 268; sec. 302 of Pub. L. 101–649, 104 Stat. 4978.

2. A new § 416.1619 is added to read as follows:

§ 416.1619 When you cannot be considered permanently residing in the United States under color of law.

We will not consider you to be permanently residing in the United States under color of law and you are not eligible for SSI benefits during a period in which you have been granted temporary protected status by the Immigration and Naturalization Service under section 244A of the Immigration and Nationality Act.

[FR Doc. 93–18384 Filed 8–2–93; 8:45 am]

BILLING CODE 4190–29–P

Food and Drug Administration

21 CFR Part 73

[Docket No. 90C–0406]

Listing of Color Additives for Coloring Contact Lenses; 1,4-Bis [4-(2-Methacryloxyethyl) Phenylamino]Anthraquinone Copolymers; Confirmation of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of May 6, 1993, of the final rule that appeared in the Federal Register of April 5, 1993 (58 FR 17506), that amended the color additive regulations to provide for the safe use of the colored reaction product formed by copolymerizing 1,4-bis[4-(2-methacryloxyethyl) phenylamino] anthraquinone (C.I. Reactive Blue 246) with hydroxyethyl methacrylate and *N*-vinyl pyrrolidone to form contact lenses.

DATES: Effective date confirmed: May 6, 1993.

FOR FURTHER INFORMATION CONTACT: Helen R. Thorsheim, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9511.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 5, 1993 (58 FR 17506), FDA published a final rule that amended the color additive regulations in 21 CFR 73.3106 to provide for the safe use of the colored reaction product formed by copolymerizing 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone (C.I. Reactive Blue 246) with hydroxyethyl methacrylate and *N*-vinyl pyrrolidone to form contact lenses. FDA also amended the regulation to clearly identify the color additive as the reaction product of 1,4-bis [4-(2-methacryloxyethyl) phenylamino] anthraquinone copolymerized with other monomers.

FDA gave interested persons until May 5, 1993, to file written objections or requests for a hearing. No objections or requests for a hearing were received in response to the final rule. Therefore, FDA finds that the final rule that published in the **Federal Register** of April 5, 1993, should be confirmed.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sections 201, 401, 402, 403, 409, 501, 502, 505, 601, 602, 701, 721 (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that no objections or requests for a hearing were filed in response to the April 5, 1993, final rule. Accordingly, the amendments promulgated thereby became effective May 6, 1993.

Dated: July 28, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–18471 Filed 8–2–93; 8:45 am]

BILLING CODE 4160–01–F

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21 CFR Part 73

[Docket No. 89C–0480]

Listing of Color Additives for Coloring Contact Lenses; Vinyl Alcohol/Methyl Methacrylate-Dye Reaction Products; Confirmation of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of May 6, 1993, for the final rule that amended the color additive regulations to provide for the safe use in coloring contact lenses of the reaction products formed by chemically bonding five reactive dyes, alone or in combination, to the vinyl alcohol/methyl methacrylate copolymeric lens material.

DATES: Effective date confirmed: May 6, 1993.

FOR FURTHER INFORMATION CONTACT: Mitchell Cheeseman, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9511.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 5, 1993 (58 FR 17508), FDA amended 21 CFR 73.3127 of the color additive regulations to provide for the safe use in coloring contact lenses of the reaction product formed by chemically bonding the following reactive dyes, alone or in combination, to the vinyl alcohol/methyl methacrylate copolymeric lens material:

(1) C.I. Reactive Black 5 [2,7-naphthalenedisulfonic acid, 4-amino-5-hydroxy-3,6-bis[(4-((2-(sulfooxy)ethyl)sulfonyl)phenyl)azo)-, tetrasodium salt] (CAS Reg. No. 17095–24–8);

(2) C.I. Reactive Orange 78 [2-naphthalenesulfonic acid, 7-(acetylamino)-4-hydroxy-3-[(4-((2-(sulfooxy)ethyl)sulfonyl)phenyl)azo)-] (CAS Reg. No. 68189–39–9);

(3) C.I. Reactive Yellow 15 [benzenesulfonic acid, 4-[4,5-dihydro-4-((2-methoxy-5-methyl-4-((2-(sulfooxy)ethyl)sulfonyl)phenyl)azo)-3-methyl-5-oxo-1*H*-pyrazol-1-yl)-] (CAS Reg. No. 60958–41–0);

(4) C.I. Reactive Blue No. 19 [2-anthracenesulfonic acid, 1-amino-9,10-dihydro-9,10-dioxo-4-((3-((2-(sulfooxy)ethyl)sulfonyl)phenyl)amino)-, disodium salt] (CAS Reg. No. 2580–78–1); and

(5) C.I. Reactive Blue 21 [copper, (29*H*,31*H*-phthalocyaninato(2-)-N^{29},N^{30},N^{31},N^{32})-, sulfo[(4-((2-(sulfooxy)ethyl) sulfonyl)phenyl)amino)sulfonyl derivatives] (CAS Reg. No. 73049–92–0).

FDA gave interested persons until May 5, 1993, to file written objections or requests for a hearing. No objections or requests for a hearing were received in response to the final rule. Therefore, FDA finds that the final rule that published in the **Federal Register** of April 5, 1993, should be confirmed.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sections 201, 401, 402, 403, 409, 501, 502, 505, 601, 602, 701, 721 (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that no objections or requests for a hearing were filed in response to the April 5, 1993, final rule. Accordingly, the amendments promulgated thereby became effective May 6, 1993.

Dated: July 28, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–18470 Filed 8–2–93; 8:45 am]

BILLING CODE 4160–01–F

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21 CFR Part 74

[Docket No. 91C–0033]

Listing of Color Additives Subject to Certification; FD&C Blue No. 1; Confirmation of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of May 6, 1993, for the final rule that amended the color additive regulations to provide for the safe use of manganese dioxide as an oxidizing agent in the manufacture of FD&C Blue No. 1.

DATES: Effective date confirmed: May 6, 1993.

FOR FURTHER INFORMATION CONTACT: Wes Long, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9519.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 5, 1993 (58 FR 17510), FDA amended 21 CFR 74.101 and 21 CFR 74.2101 of the color additive regulations to provide for the safe use of manganese dioxide as an oxidizing agent in the manufacture of FD&C Blue No. 1.

FDA gave interested persons until May 5, 1993, to file objections or requests for a hearing. No objections or requests for a hearing were received in response to the final rule. Therefore, FDA finds that the final rule that

published in the **Federal Register** of April 5, 1993, should be confirmed.

List of Subjects in 21 CFR Part 74

Color additives, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sections 201, 401, 402, 403, 409, 501, 502, 505, 601, 602, 701, 721 (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that no objections or requests for a hearing were filed in response to the April 5, 1993, final rule. Accordingly, the amendments promulgated thereby became effective May 6, 1993.

Dated: July 28, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–18472 Filed 8–2–93; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3730, 3820, 3830, and 3850

[WO–660–4191–02–24–1A; Circular No. 2648]

RIN 1004–AC07

Rental Fees, Mining Claim Recordation, and Assessment Work

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final rule that was published Thursday, July 15, 1993 (58 FR 38186). The regulations promulgated by the rule related to the imposition of a $100.00 annual rental fee on unpatented mining claims on Federal lands.

EFFECTIVE DATE: July 15, 1993.

FOR FURTHER INFORMATION CONTACT: Roger Haskins (702) 785–6576, or Frank Bruno (202) 653–5182.

SUPPLEMENTARY INFORMATION:

Background

The final rule that is the subject of this correction implemented provisions of the Interior Department and Related Agencies Appropriations Act of 1993 (the Act) that requires an annual rental fee of $100 for each mining claim and site located and held under the General Mining Law of 1872 for fiscal years 1993 and 1994. The final rule established the procedures for paying and administering the required annual rental fee, put into regulation the statute's mandatory payment deadlines and its mandatory provisions that failure to pay the rental fee on time constitutes abandonment of the claim or site, amended the recording and assessment work regulations to conform to the requirements of the Act, and established procedures by which small miners may obtain an exemption.

Need for Correction

As published, the final rule at § 3833.1–6(a)(4)(ii) did not account for the fact that mining activities are carried out on National Forest System lands under Notices of Intent as well as under Plans of Operations. Section 3833.1–6(a)(5) of the proposed rule published March 5, 1993, allowed a small miner to claim an exemption from the requirement to pay the annual rental fee based on a Notice of Intent to conduct operations on National Forest System lands (58 FR 12885). The reference to such notice was inadvertently omitted as a result of the amendment of the proposed section and the redesignation of part of the text of proposed § 3833.1–6(a)(5) as § 3833.1–6(a)(4)(ii) in the final rule. This correction notice, by adding the phrase "Notice or a" in § 3833.1–6(a)(4)(ii), captures the original intent of the proposed rule. Moreover, it is consistent with the requirements of the Act, which allows small miners to claim exemption from the payment of the annual rental fee on the basis of notices as well as on plans of operations.

Correction of Publication

Accordingly, the publication on July 15, 1993, of the final rule on Rental Fees, Mining Claim Recordation, and Assessment Work is corrected as follows:

Section 3833.1–6 is corrected by revising paragraph (a)(4)(ii) to read as follows:

§ 3833.1–6 Rental fee exemption qualifications.

* * * * *

(a) * * *

(4) * * *

(ii) A Notice or a Plan of Operations issued under parts 9 and 228 of title 36 of the Code of Federal Regulations for National Park System lands and National Forest System lands respectively; or

* * * * *

Dated: July 28, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 93–18438 Filed 8–2–93; 8:45 am]

BILLING CODE 4310–84–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR PART 69

[CC Docket No. 91–213, FCC 93–366]

Transport Rate Structure and Pricing

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission adopted interim rules to govern the rate structure and pricing of the transport component of interstate switched access provided by local exchange carriers (LECs) to enable interexchange carriers (IXCs) to originate and terminate interstate traffic. We now reconsider and clarify certain issues on which guidance is needed before the LECs file their initial transport rates. Specifically, we address: (1) Application of the interim rate structure to certain configurations; (2) issues relating to the derivation of initial transport rates; and (3) clarification of implementation procedures. In addition, we are changing the date on which LECs are required to file tariff revisions incorporating the new transport rate structure and pricing rules from August 2, 1993 to September 1, 1993.

EFFECTIVE DATE: September 1, 1993.

FOR FURTHER INFORMATION CONTACT: David L. Sieradzki, Common Carrier Bureau, Policy & Program Planning Division, 202–632–1304.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's First Memorandum Opinion and Order on Reconsideration in CC Docket No. 91–213, adopted and released on July 21, 1993. This item reconsiders and clarifies matters addressed in Transport Rate Structure and Pricing, Report and Order CC Docket No. 91–213, 7 FCC Rcd 7006 (1992) (Transport Order or Order), 57 FR 54717 (Nov. 20, 1992).

The complete text of this First Memorandum Opinion and Order on Reconsideration is available for inspection and copying during normal business hours in the FCC Reference Center, 1919 M Street NW., room 230, Washington, DC 20554.

Synopsis of First Memorandum Opinion and Order on Reconsideration

I. Rate Structure

A. Intermediate Hubbing

1. Hubbing permits access customers to use the network efficiently and increases opportunities for interexchange competition. Permitting hubbing is in the public interest. Accordingly, we are revising the rules to

clarify that intermediate hubbing is permitted.

2. As a corollary to our hubbing clarification, we modify our rules to enable access customers to order direct-trunked transport between serving wire centers (SWCs) and access tandems, and tandem-switched transport between access tandems and end offices. This option, which many parties support, and no commenting party opposes, should enable parties to use the LEC network more efficiently, and will be more consistent with local access competition. We do not, however, modify our requirement that LECs make available tandem-switched transport between SWCs and end offices on a per-minute basis, with mileage measured between the SWC and the end office.

B. Host-Remote Configurations

3. In the Order, we did not address how to apply the interim transport rate structure to host-remote switching configurations, under which all IXC traffic is routed through a host office, which performs all measurement and recording for the remote office. Direct-trunked transport cannot be provided all the way from SWCs to remote offices because facilities between host offices and remote offices are shared. We conclude that customers should be able to purchase direct-trunked transport from a SWC to a host office, and to pay a per-minute rate for the shared facilities between the host office and remote offices. This per-minute rate should be based on tandem-switched transport rates, but with no tandem charge, with mileage measured between the host office and remote offices.

4. We also conclude that the LECs should treat tandem-switched transport and direct-trunked transport in an equivalent manner in the context of host-remote configurations. We conclude that the LECs should offer tandem-switched transport between the SWC and the host office, based on the airline mileage between those offices. As with direct-trunked transport, LECs should offer host-to-remote transport under a per-minute rate (based on tandem-switched transport rates, but with no tandem charge) for the shared facilities between the host office and remote offices, with mileage measured between the host office and remote offices.

C. Featured Group A

5. In the Order, we did not address the application of the interim transport rate structure and pricing rules to Feature Group A. Feature Group A is similar to a local exchange service, but is used to provide interstate access. IXCs use Feature Group A as a form of switched access to originate and terminate calls by their end user customers. In such circumstances, the end user dials a seven digit number to reach the LEC's "dial tone office" serving the IXC, where the LEC switches the call to the IXC's POP via a dedicated, loop-side connection. In many cases, the dial tone office is the SWC; in some cases, dial tone is provided from a different office, in which case there will be a separate SWC between the dial tone office and the POP.

6. Under Feature Group A, dedicated LEC facilities provide the connection between the IXC POP and the dial tone office. Common facilities are used to connect the dial tone office with the end office serving users. In general, originating Feature Group A transport is billed using mileage measured from the dial tone office to the SWC. Terminating Feature Group A is frequently billed using mileage measured from the SWC to the end office. In general, the difference in mileage measurement is necessitated by the inability of most LEC end office switches to differentiate between originating Feature Group A traffic and local traffic.

7. The manner in which LECs provide Feature Group A service requires that we adjust the interim transport rate structure in order to permit its application to Feature Group A. Entrance facility rates should apply to transport between the POP and the SWC. If the SWC is not the dial tone office, direct-trunked transport rates should apply to transport between the SWC and the dial tone office. Tandem-switched transport rates, excluding the tandem charge, should apply to transport between the dial tone office and the end office. If a LEC's dial tone office switches are incapable of distinguishing between originating Feature Group A access traffic and local exchange traffic, the LEC may forego billing Feature Group A customers for originating transport from end offices to dial tone offices. Unlike customers of tandem-switched transport under Feature Groups B, or D, who have the option of buying direct-trunked transport between SWCs and end offices, Feature Group A customers have no control over whether their traffic between dial tone offices and end offices is switched at LEC tandems. Accordingly, Feature Group A customers should not be required to pay the tandem charge.

D. 800 Service

8. LECs must deliver originating 800 traffic through access tandems from end offices that do not have a service switching point (SSP) deployed. We clarify that this tandem-switched traffic should be assessed rates for tandem-switched transport.

II. Initial Pricing

A. General Issues

1. September 1992 versus July 1993 special access rates as baseline. 9. We retain our conclusion that initial transport rates will be presumed reasonable if they are based on special access rates effective on September 1, 1992. We believe that retaining September 1992 special access rates as the baseline for deriving initial transport rates strikes a better balance of our objectives than the alternatives that parties suggest. The September 1992 special access rates will form the basis of only initial switched transport rates. The LECs have argued that, given the similarities between the facilities used for special access and those used for transport entrance facilities and direct-trunked interoffice transport, substantial benefits will flow from allowing LECs to price transport and special access at the same levels. Even if we accepted this argument, many of the LECs have submitted zone density plans for pricing special access in the near future, so special access and transport rates are likely to diverge at least in the short term. Moreover, price cap LECs have some flexibility, subsequent to the implementation of the initial rates, to change their transport rates and bring them closer to current special access rate levels. Thus, there is little to be gained from using July 1993 rates.

10. We are concerned, however, that using July 1992 rates would impose additional costs for little or no gain. For many LECs, the use of July 1993 rates rather than September 1992 rates would cause the percentage of revenue recovered through the interconnection charge to increase. A proportionally higher interconnection charge could impede local access competition, and weaken the incentives in the new transport rate structure for efficient use of LEC networks because it results in transport prices more similar to pricing under the equal charge rule. In the absence of substantial public interest benefits, we are unwilling to make changes that could cause a proportionally higher interconnection charge. Ameritech, AT&T, and MCI have suggested that the LECs be allowed to use July 1993 rates if they can demonstrate that the percentage of transport revenue recovered through the interconnection charge is no higher than it would have been if September 1992

rates had been used. Although this exercise would alleviate concerns about a higher inter-connection charge, it would create additional administrative complexity. In addition, it is unlikely to result in a transport rate restructure that is revenue-neutral. We conclude that the costs of using July 1993 rates outweigh whatever minimal benefits this change might bring.

11. Accordingly, we conclude that initial transport rates will be presumed reasonable if based on September 1992 special access rates. Price cap LECs' transport rates will be presumed reasonable if based on September 1, 1992 special access rates adjusted for changes in the price cap index calculated for the July 1, 1993 annual filing. Changes in the price cap index include the exogenous change reflecting our reallocation of general support facility (GSF) costs. Rate-of-return LECs' transport rates will be presumed reasonable if based on September 1, 1992 special access rates adjusted to reflect the reallocation of GSF costs. See Amendment of the Part 69 Allocation of General Support Facility Costs, Report and Order, CC Docket No. 92–222, 8 FCC Rcd 3697, 3700, ¶ 16 n. 53 (1993), 58 FR 30994 (May 28, 1993).

2. *Rate derivation.* 12. We now clarify how initial transport rates are to be set. First, LECs' initial rates for direct-trunked transport and entrance facilities will be presumed reasonable only if the rate for each transport service component is set equal to the corresponding special access service component. For this purpose, transport service components include: (1) The non-distance sensitive component of interoffice transport rates, (2) the distance sensitive components of interoffice transport rates (i.e., rates applicable to each mileage band), (3) the non-distance sensitive component of entrance facility rates, (4) the distance sensitive components of entrance facility rates (if any), (5) multiplexing charges, (6) charges for other features and functions, and (7) non-recurring charges.

13. Second, LECs' initial rates for tandem-switched transport will be presumed reasonable only if rates for tandem-switched transport service components (other than the tandem charge) are set on the basis of the rates for corresponding direct-trunked transport service components. We also clarify that initial charges for multiplexing and other features and functions that are needed for switched transport, but not for special access, will be presumed reasonable if they are set equal to rates for comparable multiplexing and other features and functions in the special access tariffs.

14. We find these clarifications to be consistent with our general approach of using special access rates as the basis for initial switched transport rates. These clarifications should ensure that initial transport rates reflect the same degree of distance sensitivity as special access rates. They should also enable LECs to charge users of specific features and functions for the use of such services, rather than including the cost of such services in the interconnection charge.

B. Initial Direct-Trunked Transport and Entrance Facility Rates

15. We conclude that LECs that cannot satisfy the criteria in the Order because they lacked generally tariffed special access rates at certain capacities (e.g., DS3 or DS1) in September 1992 may propose rates based on reasonable criteria, for which the LEC must provide justification. For example, initial transport rates based on special access rates filed subsequent to September 1992 could well be demonstrated to be reasonable, as could rates set pursuant to the proposal in the Public Notice, or rates justified by cost support. These rates, however, will not be accorded a presumption of reasonableness; we will review their reasonableness in the tariff process.

C. Initial Tandem-Switched Transport Rates

1. Circuit mix used to derive rates. 16. On reconsideration, we find that is may be impractical for the LECs to base their tandem-switched transport rates on the actual number of DS3s and DS1s in the tandem-to-end office link. First, the LECs generally have not measured the number of DS3s and DS1s in their interoffice network, and to do so now would be burdensome, raising difficult measurement questions. Second, it appears that most LECs do not account for tandem-to-end office links separately from interoffice facilities generally. No party has identified any alternative surrogate that better serves our objectives of accuracy, verifiability, and administrative ease than the fiber/copper mix, which is objectively verifiable through Tier 1 LECs' reports to the ARMIS database. Accordingly, we clarify that LECs' initial tandem-switched transport rates will be presumed reasonable if they are derived using the fiber/copper mix of interoffice switched transport facilities reported through ARMIS as a surrogate for the actual mix of DS3s and DS1s.

17. In general, we believe that the detriments of using the fiber/copper surrogate are outweighed by other advantages, including administrative simplicity. Rochester, however, is technically correct that many LECs' current DS1 rates reflect a mix of copper and fiber interoffice facilities. We will not preclude LECs from using actual DS3 and DS1 circuit counts as long as when they file their initial transport tariffs, they provide adequate support to enable us to verify their DS3 and DS1 circuit counts, including an explanation of the methodology used to develop these counts.

18. With respect to small LECs that file direct-trunked transport rates, we reaffirm that initial tandem-switched transport rates will be presumed reasonable if based on DS1 and DS3 direct-trunked transport rates. Non-Tier 1 LECs, however, do not report, and may not track, the relative use of fiber and copper in their interoffice networks. For such LECs, and for LECs that do not provide DS3 service, initial tandem-switched transport rates will generally be presumed reasonable if they are based on those LECs' DS1 direct-trunked transport rates. We conclude that this starting point for the interim transport rate structure is reasonable, given that most LECs that provide DS1 (but not DS3) service are likely to use DS1 facilities to provide interoffice services. Incorporating voice grade rates into tandem-switched transport rates does not appear to create significant benefits, and would reduce the ability to verify the basis for initial rates. For LECs with neither DS1 and DS3 direct-trunked transport rates that file direct-trunked transport rates, tandem-switched transport rates will be presumed reasonable if based on voice grade direct-trunked transport rates.

2. 9000 minutes per circuit per month loading factor. 19. The record contains no information to support a specified loading factor lower than 9,000 minutes of use per circuit per month for small LECs. We decline to grant a presumption of reasonableness to LECs' actual loading factors because of the difficulty of verification and the potential for manipulation. We conclude that the benefits to be obtained from use of more individualized loading factors are outweighed by the benefits of the administrative convenience of a uniform loading factor and of avoiding verification difficulties. This conclusion applies with equal force to LECs that use only voice grade circuits. The 9000 minutes per circuit per month standard serves as a convenient starting point in the context of a short-term, interim rate structure.

3. Tandem revenue requirement. 20. The Commission's part 36 separations and Part 69 access charge rules

incorporate fully distributed costing approaches. Part 69 and other Commission rules do not explicitly define a methodology for a tandem revenue requirement, but such a revenue requirement can be computed in a straightforward manner by adding the same proportion of overhead to tandem investment and associated expenses as the amount of overhead loaded on the transport category as a whole. The tandem charge initially will recover only 20% of the tandem revenue requirement, in order to ease the impact of the rate structure change on IXCs that use tandem-switched transport. We clarify that, for purposes of calculating the tandem charge in the interim transport plan, the Transport Order contemplated the use of the Part 69 tandem revenue requirement, which embodies fully distributed costs.

D. Initial Rates for the Interconnection Charge

21. In the Order, we permitted the LECs to set the interconnection charge based on projected demand after IXC reconfigurations have occurred, but required them to take into account other demand for the same facilities in order to prevent double recovery. Because of the risk that errors in projection could lead to an interconnection charge that is too high or too low, we also required the LECs to file on August 1, 1994 a report comparing the projected demand used to calculate the interconnection charge with actual demand during the first six months after the implementation of the interim transport rules. We delegated to the Chief, Common Carrier Bureau, authority to examine these reports and to require any LEC to adjust its interconnection charge if there is a significant disparity between projected and actual demand.

22. In the Order, we directed the LECs to calculate the initial interconnection charge using the following method. First, the LECs compute the revenue they will receive from facilities-based transport charges by projecting the total amount of usage of facility-based transport elements under the new rate structure (including entrance facilities, direct-trunked transport, tandem-switched transport, and dedicated signalling transport), and multiplying by the rates for those elements. Second, the LECs subtract this revenue amount from (in the case of price cap LECs) their total revenue from transport under pre-existing rate and demand levels, or (in the case of rate-of-return LECs) their total transport revenue requirement established under the part 69 rules, to obtain the interconnection charge revenue requirement. Third, the LECs divide the interconnection charge revenue requirement by the expected total number of minutes of use of the LEC interstate switched access network to derive a per-minute interconnection charge. Under this formula, erroneous LEC projections of IXC reconfigurations in response to the interim structure could cause the interconnection charge to be too high (or too low).

23. The transport rate restructure was intended in part to encourage more efficient IXC network reconfigurations. We did not intend that the LECs would lose substantial amounts of revenue as a result of these reconfigurations. Indeed, the initial interconnection charge is to be calculated on a residual basis. The question is how best to implement that decision. Because of LEC incentives to project reconfigurations in a manner that would maximize the interconnection charge, and because of the difficulty of evaluating those projections, we conclude that the LECs should be required to use historical facility demand in computing the initial interconnection charge. In order to ensure that the transport rate restructure results in an interconnection charge that is neither inadequate nor excessive, however, we are permitting LECs to seek mid-course adjustments to the interconnection charge, based in part on reports on actual demand results. In addition, in order to achieve revenue neutrality with a minimum of rate churn, we require the LECs to use projections of the number of switched minutes by which the interconnection charge revenue requirement will be divided in computing the initial interconnection charge.

24. Two major variables will affect the magnitude of the interconnection charge: The amount of transport facilities (direct trunks, entrance facilities, and tandem-switched minutes) to which the facility-based transport rates will apply, and the total number of switched minutes by which the interconnection charge revenue requirement will be divided. The amount of facilities is relatively difficult to project because of the possibility that IXCs will reconfigure to use fewer trunks once the interim transport rate structure is implemented. In the Transport Order, we decided to allow the LECs to use projections, but to require them to report on the reuse of facilities that IXCs have stopped using due to network reconfigurations resulting from the transport rate restructure, in order to avoid double recovery. If LECs can reuse facilities that are no longer needed for interstate switched transport once IXCs reconfigure their network usage, the LECs should not be allowed to recover the costs of these facilities through the interconnection charge, because they can recover such costs from the new uses.

25. After considering the arguments in the record and analyzing further the process that would be necessary to assure that use of projected facility demand did not result in a windfall for the LECs, we conclude that it is in the public interest to require the LECs to use historical facility demand to set the initial interconnection charge, combined with an opportunity to adjust the charge later if actual facilities demand is significantly less than historical demand. In such cases, by assuming that LECs would immediately reuse all facilities freed due to IXC network reconfiguration, this approach will place the burden on LECs to produce the information necessary to demonstrate the extent to which they have not been able to reuse such facilities. In addition, because the LECs would not be guaranteed recovery of such costs through the interconnection charge, this approach provides the LECs with incentives to reuse facilities efficiently. The opportunity to true up later, if carriers can demonstrate that their actual experience is significantly less than the historical levels on which the rate is based, should protect carriers from unreasonable under-recovery.

26. In addition, we require that the tandem charge be calculated based on historical demand. In the Transport Order, we directed LECs to calculate the tandem charge using projected demand after IXC reconfigurations have taken place, just as they were to use projected demand for the interconnection charge. As we now conclude that the LECs should use historical demand to set the interconnection charge, we also conclude that the tandem charge should be calculated based on the historical number of minutes of access tandem use. We delegate authority to the Chief, Common Carrier Bureau, to require an adjustment to the tandem charge if the actual number of minutes of access tandem use is significantly different from the historical number of minutes, and if this results in a substantial difference in the level of the charge.

27. For these reasons, we modify the Order's provisions, and require the LECs to set the interconnection charge in their initial transport tariffs based on historical demand for transport facilities, expressed in units (i.e., numbers of entrance facilities, direct trunks, and tandem-switched minutes) reflecting the new transport rate structure. We retain our conclusion that

the transport rate restructure should be revenue neutral, however. Thus, we will permit a mid-course adjustment to the interconnection charge to ensure revenue neutrality if a LEC can demonstrate that: (1) Actual demand for interstate transport facilities is significantly less than from the historical demand used to set the interconnection charge due to IXC network reconfigurations resulting from the transport rate restructure; and (2) the LEC has not been able to put its facilities to alternative uses. Thus, the LEC must show that the loss of demand is not due to competition from other access providers. The interconnection charge should not compensate LECs for the loss of demand for facility-based transport services due to competition, particularly if we adopt our proposal to require switched expanded interconnection. In the newly competitive transport market that we proposed to facilitate in the Expanded Interconnection Second Notice, the LECs would not be shielded from the risks of revenue loss due to the growth of competition.

28. Unlike the difficult process of forecasting IXC facility reconfigurations due to the transport rate restructure, we conclude that projecting the number of interstate switched minutes based on historical trends in minute growth is a relatively straightforward process with which the LECs and Commission staff have ample experience. The historical trend of increased annual growth in minutes is unlikely to be affected significantly by the transport rate restructure. Moreover, given the historical growth trends, requiring the LECs to use historical minutes would almost certainly understate the minutes of use LECs can reasonably expect and thereby overstate the interconnection charge, followed by rate churn if the charge were lowered to achieve revenue neutrality. We therefore retain our requirement that the LECs use projections of the number of minutes in computing the initial interconnection charge. We also retain our requirement that the LECs file reports on actual demand results. We are imposing the reporting requirement on all LECs, because of the possible need for adjustments to the interconnection charge due to erroneous projections of the number of minutes. If a LEC's projection of the number of minutes is substantially below actual minutes, we would require the LEC to reduce the interconnection charge. We would also permit appropriate increases in the interconnection charge if a LEC's projection of the number of minutes is substantially greater than actual minutes.

29. We believe that the reports can be provided—and the necessary showings to justify any mid-course adjustments to ensure revenue neutrality can be made—as soon as valid information is available regarding the extent of IXC reconfigurations. Thus, instead of requiring the LECs to submit such reports in August 1994 (as provided in the Order), we delegate authority to the Chief, Common Carrier Bureau, to specify the timing, as well as the format, of the reports. LECs seeking an increase in the interconnection charge will bear the burden of showing that their actual facility use is significantly lower than the historical levels on which the charge is based, and that they have not been able to put their facilities to alternative uses. LECs may submit justifications based on surrogates or studies, provided that they use reasonable methodologies.

30. Such LECs should also provide information to verify that the interconnection charge does not compensate them for losses of demand due to competition. We would consider the demand for cross-connect elements under switched expanded interconnection to be a reasonable starting point for determining loss of demand for LEC switched transport facilities due to competition, because competitive providers of the transport component of switched access cannot bypass the LEC network entirely, but must use LEC switched expanded interconnection.

III. Implementation Procedures

A. Ratcheting Procedures

31. We conclude that when a customer uses a given facility for both special access and switched transport traffic, it should pay a mix of the rates from the special access and transport tariffs for facilities at that level of capacity. For example, when a customer uses a given DS3 for both special access and switched transport traffic, it should pay a mix of the DS3 rates from the special access and transport tariffs. In addition to the facility-based rates, the customer would pay the interconnection charge applicable to the switched transport minutes traversing such a facility. We decline at this time to require LECs to implement a specific pricing plan for ratcheting. In the tariff review process, we will assess LEC proposals for pricing dedicated facilities carrying both switched and special access traffic of a single customer.

B. Implementation by Small LECs

32. Requiring all non-Tier 1 LECs to implement the interim transport rate structure appears to generate more costs than benefits. Small LECs are likely to face little demand for direct-trunked transport. On the other hand, IXCs that wish to buy direct-trunked transport from small LECs should be able to do so. Accordingly, we reconsider the requirement in the Order that all LECs implement the interim rate structure, and instead require that non-Tier 1 LECs file tariffs for direct-trunked transport upon receipt of a *bona fide* request for direct-trunked transport. We retain our requirement that all LECs providing entrance facilities must do so on a flat-rate basis. We also clarify that the Order requires those LECs that provide entrance facilities to do so on a flat rate basis, but does not apply to carriers that do not provide entrance facilities, such as centralized equal access providers.

C. Jurisdictional Allocation

33. We clarify that percentages of interstate use (PIUs) should continue to be used to allocate transport facilities between the interstate and state jurisdictions.

D. Resale of Transport

34. We affirm that LECs may not impose resale restrictions on any access services subject to our jurisdiction, including interstate switched transport.

E. Rule Changes

35. In addition to the rule changes discussed elsewhere in this Order, we are correcting § 69.111(e) to clarify that the tandem charge should recover 20% of the current tandem revenue requirement, and we are revising § 69.125(b)(1) to clarify that LECs with tariffs in place for dedicated signalling transport need not modify the rates in those tariffs. Moreover, we are correcting § 69.1(c) (and making conforming changes in certain other rules) to clarify that LECs subject to the price cap rules may adjust their rates pursuant to the price cap guidelines adopted in the Order.

F. Impact Estimates

36. We require each of the BOCs and GTE to submit revised impact estimates, as well as estimates of the proportion of transport revenue to be recovered through the interconnection charge. These revised estimates should be based on the same modeling methodologies and assumptions that were used to derive the impact estimates considered in the 1992 Order, except that they should reflect customers' most up-to-date network configurations, the decisions in this Order, and the recent Commission decisions on general support facilities costs and the price cap

index for 1993. Such modeling methodologies and assumptions forming the basis of each carrier's impact analysis should be clearly stated. This information should be provided in the same format as the data provided in 1992, within 14 days after the LECs file their initial transport tariffs. Since this requirement applies to fewer than 10 entities, it is not subject to the requirements of the Paperwork Reduction Act.

G. Information for Planning Purposes

37. Some IXCs have requested information so that they can better assess the impact of the transport restructure and plan for any reconfiguration. We believe that provision of information specific to individual IXCs by the largest LECs would be useful in enabling IXCs to make plans regarding their network configurations in light of the new transport rate structure. Accordingly, we require each of the BOCs and GTE to provide to each switched access customer information on the bill the customer would have paid for a sample recent month (e.g., July 1993) had the interim transport rate structure and pricing system been in effect, as well as the customer's actual bill for that month for comparison purposes. If any of these LECs is unable to provide such comparative billing information, it must present convincing evidence to the Common Carrier Bureau demonstrating why it is unable to do so, and must provide to each switched access customer information that will enable the customer to predict how its bills are likely to change. In addition, LECs providing comparative billing information must either file with the Commission aggregate data summarizing the information provided to individual IXCs, broken down by large, medium, and small IXCs, or present convincing evidence to the Common Carrier Bureau demonstrating why it is unable to do so. All of the information discussed in this paragraph should be provided within 21 days after the LECs file their initial transport tariffs. Since this requirement applies to fewer than 10 entities, it is not subject to the requirements of the Paperwork Reduction Act.

IV. Ordering Clauses

38. Accordingly, *it is ordered*, That pursuant to authority contained in sections 1, 4(i) and (j), 201–205, 218, 220, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (j), 201–205, 218, 220, and 403, part 69 is amended as set forth below.

39. *It is further ordered*, That the petitions for reconsideration and clarification concerning the rate structure and pricing of local transport are granted to the extent discussed herein.

40. *It is further ordered*, That the decisions and rules adopted herein shall be effective on September 1, 1993.[1]

41. *It is further ordered*, That the date on which local exchange carriers are required to file tariff revisions incorporating the new transport rate structure and pricing rules is revised from August 2, 1993 to September 1, 1993. The effective date of these tariff revisions should be December 1, 1993.

List of Subjects in 47 CFR Part 69

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Amendatory Text

Part 69 of title 47, Code of Federal Regulations, is amended as follows:

PART 69—ACCESS CHARGES

1. The authority citation for part 69 continues to read as follows:

Authority: Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat. 1066, 1070, 1072, 1077, 1094, as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, 403.

2. Section 69.1 is amended by revising paragraph (c) to read as follows:

§ 69.1 Application of access charges.

* * * * *

(c) The following provisions of this part shall apply to telephone companies subject to price cap regulation only to the extent that application of such provisions is necessary to develop the nationwide average carrier common line charge, for purposes of reporting pursuant to §§ 43.21 and 43.22 of this chapter, and for computing initial transport rates: §§ 69.3(f), 69.105(b)(4), 69.105(b)(5), 69.106(b), 69.107(b), 69.107(c), 69.109(b), 69.110(d), 69.111(c), 69.111(g), 69.112(d), 69.114(b), 69.114(d), 69.125(b)(2), 69.205(e), 69.301 through 69.310, and 69.401 through 69.412. The computation of rates pursuant to these provisions by telephone companies subject to price cap regulation shall be governed by the price cap rules set forth in part 61 of this chapter and other applicable Commission Rules and orders.

3. Section 69.2 is amended by revising paragraphs (oo) and (ss), and adding paragraphs (tt) and (uu), to read as follows:

§ 69.2 Definitions.

* * * * *

(oo) *Direct-trunked transport* means transport on circuits dedicated to the use of a single interexchange carrier or other person, without switching at the tandem,

(1) Between the serving wire center and the end office, or

(2) Between two customer-designated telephone company offices.

* * * * *

(ss) *Tandem-switched transport* means transport of traffic that is switched at a tandem switch—

(1) Between the serving wire center and the end office, or

(2) Between the telephone company office containing the tandem switching equipment, as described in § 36.124 of this chapter, and the end office.

Tandem-switched transport between a serving wire center and an end office consists of circuits dedicated to the use of a single interexchange carrier or other person from the serving wire center to the tandem (although this dedicated link will not exist if the serving wire center and the tandem are located in the same place) and circuits used in common by multiple interexchange carriers or other persons from the tandem to the end office.

(tt) *Initial transport rates* means rates for entrance facilities, direct-trunked transport, tandem-switched transport, dedicated signalling transport, and the interconnection charge in tariffs filed on September 1, 1993 pursuant to the Report and Order in Transport Rate Structure and Pricing, CC Docket No. 91–213, FCC 92–442, 7 FCC Rcd 7006 (1992).

(uu) *Price cap regulation* means the method of regulation of dominant carriers provided in §§ 61.41 through 61.49 of this chapter.

4. Section 69.108 is revised to read as follows:

§ 69.108 Transport rate benchmark.

(a) For transport charges computed in accordance with this subpart, the DS3-to-DS1 benchmark ratio shall be calculated as follows: the telephone company shall calculate the ratio of:

(1) The total charge for a one mile channel termination, ten miles of interoffice transmission, and one DS3

[1] This effective date is necessary because the LECs are required to file initial transport tariffs, to which the provisions in this Order apply, by that date. We therefore conclude that good cause exists to make the requirements in this Order effective less than 30 days from publication of this Order in the Federal Register.

multiplexer using the telephone company's DS3 special access rates, to

(2) The total charge for a one mile channel termination plus ten miles of interoffice transmission using the telephone company's DS1 special access rates.

(b) Initial transport rates will generally be presumed reasonable if they are based on special access rates with a DS3-to-DS1 benchmark ratio of 9.6 to 1 or higher.

(c) If a telephone company's initial transport rates are based on special access rates with a DS3-to-DS1 benchmark ratio of less than 9.6 to 1, those initial transport rates will generally be suspended and investigated absent a substantial cause showing by the telephone company. Alternatively, the telephone company may adjust its initial transport rates so that the DS3-to-DS1 ratio calculated as described in paragraph (a) of this section is 9.6 or higher. In that case, initial transport rates that depart from existing special access rates effective on September 1, 1992 so as to be consistent with the benchmark will be presumed reasonable only so long as the ratio of projected revenue recovered through the interconnection charge to the projected revenue recovered through facilities-based charges is the same as it would be if the telephone company's existing special access rates effective on September 1, 1992 were used.

5. Section 69.110 is amended by revising paragraph (d) and adding paragraph (e) to read as follows:

§ 69.110 Entrance facilities.

* * * * *

(d) Telephone companies shall apply only their shortest term special access rates in setting entrance facilities charges.

(e) Telephone companies shall not offer entrance facilities based on term discounts or volume discounts for multiple DS3s or any other service with higher volume than DS3 through October 31, 1995.

6. Section 69.111 is amended by redesignating paragraphs (c), (d), (e), and (f), as paragraphs (e), (f), (g), and (h), respectively; revising paragraph (b) and newly redesignated paragraphs (e), (g), and (h); and adding paragraphs (c) and (d), to read as follows:

§ 69.111 Tandem-switched transport and tandem charge.

* * * * *

(b) A tandem-switched transmission charge expressed in dollars and cents per access minute shall be assessed upon all interexchange carriers and other persons that use telephone company tandem-switched transport facilities through October 31, 1995.

(c) Tandem-switched transport transmission charges generally shall be presumed reasonable if the telephone company bases the charges on a weighted per-minute equivalent of direct-trunked transport DS1 and DS3 rates that reflects the relative number of DS1 and DS3 circuits used in the tandem to end office links (or a surrogate based on the proportion of copper and fiber facilities in the interoffice network), calculated using a loading factor of 9000 minutes per month per voice-grade circuit. Tandem-switched transport transmission charges that are not presumed reasonable generally shall be suspended and investigated absent a substantial cause showing by the telephone company.

(d) Tandem-switched transport transmission charges may be distance-sensitive. Mileage shall be measured as airline mileage between the serving wire center and the end office, unless the customer has ordered tandem-switched transport between the tandem office and the end office, in which case mileage shall be measured as airline mileage between the tandem office and the end office.

(e) If the telephone company employs distance-sensitive rates:

(1) A distance-sensitive component shall be assessed for use of the transmission facilities, including intermediate transmission circuit equipment between the end points of the interoffice circuit; and

(2) A nondistance-sensitive component shall be assessed for use of the circuit equipment at the ends of the interoffice transmission links.

* * * * *

(g) Through October 31, 1985, the tandem charge shall be set to recover twenty percent of the annual part 69 interstate tandem revenue requirement.

(h) All telephone companies shall provide tandem-switched transport service.

7. Section 69.112 is amended by redesignating paragraph (e) as paragraph (f), and by revising paragraphs (b), (c), (d), and newly redesignated paragraph (f), and adding paragraph (e) to read as follows:

§ 69.112 Direct-trunked transport.

* * * * *

(b)(1) For telephone companies subject to price cap regulation, initial direct-trunked transport charges based on the interoffice charges for equivalent voice grade, DS1, and DS3 special access services as of September 1, 1992, adjusted for changes in the price cap index calculated for the July 1, 1993 annual filing for telephone companies subject to price cap regulation, generally shall be presumed reasonable if the benchmark defined in § 69.108 is satisfied. Direct-trunked transport charges may be distance-sensitive. Mileage shall be measured as airline mileage between customer-designated points.

(2) For telephone companies not subject to price cap regulation, initial direct-trunked transport charges based on the interoffice charges for equivalent voice grade, DS1, and DS3 special access services generally shall be presumed reasonable if the benchmark defined in § 69.108 is satisfied. Direct-trunked transport charges may be distance-sensitive. Mileage shall be measured as airline mileage between customer-designated points.

(c) If the telephone company employs distance-sensitive rates:

(1) A distance-sensitive component shall be assessed for use of the transmission facilities, including intermediate transmission circuit equipment, between the end points of the circuit; and

(2) A nondistance-sensitive component shall be assessed for use of the circuit equipment at the ends of the transmission links.

(d) Telephone companies shall apply only their shortest term special access rates in setting direct-trunked transport rates.

(e) Telephone companies shall not offer direct-trunked transport rates based on term discounts or volume discounts for multiple DS3s or any other service with higher volume than DS3 through October 31, 1995.

(f) Centralized equal access providers as described in Transport Rate Structure and Pricing, CC Docket No. 91–213, FCC 92–442, 7 FCC Rcd 7002 (1992), are not required to provide direct-trunked transport service. Telephone companies that do not have measurement and billing capabilities at their end offices are not required to provide direct-trunked transport services at those end offices without measurement and billing capabilities. Telephone companies that are not classified as Class A companies under § 32.11 of this chapter are required to provide direct-trunked transport service upon request. All other telephone companies shall provide a direct-trunked transport service.

8. Section 69.124 is amended by redesignating paragraphs (a)(1) and (a)(2) as paragraphs (b)(1) and (b)(2), respectively; removing paragraph (c); in paragraph (a), removing the words "except as provided in paragraph (c) of this section"; and revising newly

redesignated paragraph (b)(1) to read as follows:

§ 69.124 Interconnection charge.

* * * * *

(b)(1) For telephone companies not subject to price cap regulation, the interconnection charge shall be computed by subtracting entrance facilities, tandem-switched transport, direct-trunked transport, and dedicated signalling transport revenues from the 47 CFR part 69 transport revenue requirement, and dividing by the projected total interstate local switching minutes.

* * * * *

9. Section 69.125 is amended by revising paragraph (b) to read as follows:

§ 69.125 Dedicated signalling transport.

* * * * *

(b)(1) A flat-rated signalling link charge expressed in dollars and cents per unit of capacity shall be assessed upon all interexchange carriers and other persons that use facilities between an interexchange carrier or other person's common channel signalling network and a telephone company signalling transfer point or equivalent facilities offered by a telephone company. Signalling link charges may be distance-sensitive. Mileage shall be measured as airline mileage between the signalling point of interconnection of the interexchange carrier's or other person's common channel signalling network and the telephone company's signalling transfer point.

(2) Signalling link rates will generally be presumed reasonable if they are based on the interoffice charges for equivalent special access services. Telephone companies that have, before February 18, 1993, tariffed a signalling link service for signalling transport between the interexchange carrier's or other person's common channel signalling network and the telephone company's STP are permitted to use the rates that are in place.

* * * * *

10. Section 69.110(b)(1) is amended by removing, in two places in the first sentence, the words "carriers subject to price cap regulation as that term is defined in § 61.3(v) of this chapter" and adding, in their place, the words "telephone companies subject to price cap regulation".

11. Section 69.124(b)(2) is amended by removing the words "carriers subject to price cap regulation as that term is defined in § 61.3(v) of this chapter" and adding, in their place, the words "telephone companies subject to price cap regulation".

12. Section 69.110(b)(2) is amended by removing the words "rate of return carriers" and adding, in their place, the words "telephone companies not subject to price cap regulation".

[FR Doc. 93–18435 Filed 7–30–93; 10:24 am]
BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 625

[Docket No. 921230–3020; I.D. 072793A]

Summer Flounder Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notification of commercial quota harvest.

SUMMARY: NMFS issues this notification to announce that the summer flounder commercial quota available to the State of Delaware has been harvested. Vessels issued a Federal fisheries permit for the summer flounder fishery may no longer land summer flounder in the State of Delaware for the remainder of calendar year 1993. Regulations governing the summer flounder fishery require publication of this notification to advise the State of Delaware that its quota has been harvested and to advise vessel and dealer permit holders that no commercial quota is available for landing summer flounder in the State.

EFFECTIVE DATE: July 30, 1993.

FOR FURTHER INFORMATION CONTACT: Hannah Goodale, 508–281–9101.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 625 (December 4, 1992, 57 FR 57358). The regulations require annual specification of a commercial quota that is apportioned among the states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 625.20.

The commercial quota for summer flounder for the 1993 calendar year is set equal to 12.35 million pounds (5.6 million kg) (January 22, 1993, 58 FR 5658). The quota allocated to vessels landing summer flounder in Delaware is 2,197 pounds (997 kg) as described in the emergency interim rule that revised state shares of commercial quota specified in the summer flounder fishery published on May 7, 1993 (58 FR 27214). This emergency interim rule was also extended, effective from August 6 through November 3, 1993 (58 FR 39680; July 26, 1993).

Section 625.21(c) requires the Director, Northeast Region, NMFS (Regional Director) to monitor state commercial quotas based on dealer reports and other available information, and to determine the date when a state commercial quota will be harvested. The Regional Director is further required to publish a notification in the **Federal Register** advising a state and notifying Federal vessel and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state.

The Regional Director has determined, based on dealer reports and other available information, that the Delaware commercial quota will be harvested by July 30, 1993. The regulations at § 625.4(a)(3) provide that Federal permit holders agree as a condition of the permit not to land summer flounder in any state that the Regional Director has determined no longer has commercial quota available. Therefore, further landings in that state by Federally permitted vessels are prohibited for the remainder of the 1993 calendar year, effective 0001 hours July 30, 1993. Federally permitted dealers are advised that they may not purchase summer flounder from federally permitted vessels that land in Delaware, for the remainder of the calendar year.

Classification

This action is required by 50 CFR Part 625 and complies with E.O. 12291.

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

List of Subjects in 50 CFR Part 625

Fisheries, Reporting and recordkeeping requirements.

Dated: July 29, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–18482 Filed 7–29–93; 3:20 pm]
BILLING CODE 3510–22–M

50 CFR Part 672

[Docket No. 921107–3068; I.D. 072993A]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Prohibition of retention.

SUMMARY: NMFS is prohibiting retention of northern rockfish in the Western Regulatory Area of the Gulf of Alaska (GOA) and is requiring that incidental catches be treated in the same manner

as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the northern rockfish total allowable catch (TAC) in this area has been reached.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), July 29, 1993, through 12 midnight, A.l.t., December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(c)(1)(ii)(B), the northern rockfish TAC for the Western Regulatory Area was established by the final 1993 initial specifications (58 FR 16787, March 31, 1993) as 1000 metric tons.

The Director of the Alaska Region, NMFS, has determined, in accordance with § 672.20(c)(3), that the TAC for northern rockfish in the Western Regulatory Area has been reached. Therefore, NMFS is requiring that further catches of northern rockfish in the Western Regulatory Area be treated as prohibited species in accordance with § 672.20(e), effective from 12 noon, A.l.t., July 29, 1993, through 12 midnight, A.l.t., December 31, 1993.

Classification

This action is taken under 50 CFR 672.20, and is in compliance with E.O. 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

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

Dated: July 29, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–18481 Filed 7–29–93; 3:20 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 58, No. 147
Tuesday, August 3, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

5 CFR Chapter XXI

RIN 3209–AA04, 3209–AA15

Supplemental Standards of Ethical Conduct for Employees of the Department of the Treasury

AGENCY: Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: The Department of the Treasury (Department), with the concurrence of the Office of Government Ethics (OGE), proposes to issue regulations for the officers and employees of the Department that supplement the Standards of Ethical Conduct for Employees of the Executive Branch issued by OGE. The proposed rule is a necessary supplement to the Executive Branch-wide Standards because it addresses ethical issues unique to the Department. The proposed rule establishes regulations relating to: the designation of agency components for purposes of the gift rules; prohibitions on the ownership of certain financial interests; prohibitions on certain forms of borrowing and extensions of credit; prohibitions on recommendations concerning certain securities and services of certain types of professionals; limitations on purchases of assets controlled by the Department or related to Department operations; and restrictions on outside employment and business activities.

DATES: Comments are invited and must be received on or before September 2, 1993.

ADDRESSES: Send comments to the Office of the Assistant General Counsel (Administrative and General Law), Department of the Treasury, room 1410, Washington, DC 20220, Attention: Mr. Henry H. Booth.

FOR FURTHER INFORMATION CONTACT: Stephen J. McHale, Henry H. Booth, or R. Peter Rittling, Office of the Assistant General Counsel (Administrative and General Law), Department of the Treasury, telephone (202) 622–0450, FAX (202) 622–1176.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, the Office of Government Ethics published the Standards of Ethical Conduct for Employees of the Executive Branch. See 57 FR 35006–35067, as corrected at 57 FR 48557 and 57 FR 52583. The Executive Branch-wide Standards are now codified at 5 CFR part 2635. Effective February 3, 1993, they established uniform ethical conduct standards applicable to all executive branch personnel.

With the concurrence of OGE, 5 CFR 2635.105 authorizes executive agencies to publish agency-specific supplemental regulations necessary to implement their respective ethics programs. The Department and OGE have determined that the following supplemental regulations contained in the proposed rule are necessary to implement the Department's ethics program successfully, in light of the Department's unique programs and operations.

II. Analysis of the Regulations

The following regulations will appear in new 5 CFR chapter XXI.

Section 3101.101 General

(a) *Purpose.* Proposed § 3101.101(a) explains that the regulations contained in the proposed rule would apply to all Department of the Treasury employees and are supplemental to the Executive Branch-wide Standards. Further, all Department employees must comply with the Executive Branch-wide Standards, the supplemental regulations in the proposed rule, once final, and bureau instructions issued pursuant to proposed § 3101.101(b). In addition, the Treasury rules of conduct, published at 31 CFR part O, will be revised and republished. The revision will delete rules superseded by the Executive Branch-wide Standards and modify some of the remaining rules. Department employees will be required to follow the revised rules republished under part O, and any related rules of conduct bureaus may be authorized to issue.

(b) *Bureau Instructions.* Proposed § 3101.101(b) would authorize the Department's bureaus, with the concurrence of the Designated Agency Ethics Official (DAEO), to issue instructions and manual issuance providing explanatory guidance and implementing procedures to assist employees in understanding and complying with the Executive Branch-wide Standards and these supplemental regulations.

(c) *Agency Designee.* Proposed § 3101.101(c) would delegate to bureaus the authority, by instruction or manual issuance, to designate agency designees to make determinations, give approvals, or take actions required or permitted by the supplemental regulations or Executive Branch-wide Standards.

Section 3101.102 Designation of Separate Agency Components

Section 2635.202(a) of the Executive Branch-wide Standards prohibits an employee from soliciting or accepting a gift from a prohibited source. A prohibited source is defined, in part, as a person who has a specific relationship with an employee's agency, as prescribed in 5 CFR 2635.203(d). For the purpose of identifying an employee's agency, § 2635.203(a) of the Executive Branch-wide Standards authorizes an executive department, by supplemental regulation, to designate as a separate agency a component of the department that exercises a distinct and separate function. Designations made pursuant to § 2635.203(a) are used also to identify an employee's agency for purposes of applying the prohibition in 5 CFR 2635.807 concerning the receipt of compensation for teaching, speaking and writing that relates to an employee's official duties.

Section 3101.102 of the proposed rule would designate 13 of the Department's bureaus and offices as separate agencies. The Department has determined that these bureaus and offices exercise distinct and separate functions. The Legal Division would not be designated as a separate agency. Instead, Legal Division employees would be treated as part of the bureaus or offices in which they serve. Department employees not employed in one of the 13 designated bureaus or offices would be deemed employees of an agency that consists of all parts of the Department other than the 13 designated components and that is separate and distinct from each of the 13 designated components. Thus, for example, a bank regulated by the Office

of the Comptroller of the Currency would be a prohibited source for all employees of that Office, but would not be a prohibited source as to all employees of the Departmental Offices unless that bank was seeking official action from or otherwise had a matter pending before the Departmental offices or an office not designated as a separate component.

This section of the proposed rule would apply Department-wide and is only for the purpose of defining an employee's agency as that term is used in subpart B of 5 CFR part 2635 and 5 CFR 2635.807.

Section 3101.103 Prohibition on Purchase of Certain Assets

(a) *General Prohibition.* Proposed § 3101.103(a) would prohibit all Department employees from purchasing property that is either owned by the Government and under the control of an employee's bureau, or sold under the direction of or incident to the functions of an employee's bureau. This prohibition is not intended to apply to assets under the control of or sold incident to the functions of an agency other than Treasury with which a Treasury official is affiliated in an ex officio capacity (e.g., the Secretary of the Treasury is a member of the Board of the Pension Benefit Guaranty Corporation). The purchase of such assets would be subject to the regulations of the agency controlling or disposing of the assets and not subject to the Department regulations.

(b) *Exceptions.* Section 3101.103(b) excepts from the prohibition in § 3101.103(a) Government securities, items sold to the public at a fixed price, and foreign gifts purchased pursuant to 41 CFR parts 101–49.

(c) *Waiver.* An agency designee, with the advice and legal clearance of the DAEO, or the appropriate Office of Chief or Legal Counsel, would be authorized under § 3101.103(c) to grant a written waiver of the prohibition in proposed § 3101.103(a) based upon a determination that the waiver is lawful, and meets the waiver standard established in that subsection. This waiver is similar to other waivers proposed throughout these supplemental regulations. The waiver provisions are intended, in appropriate cases, to ease the burden that the supplemental regulations may impose on the private lives of employees of the Department, while ensuring that employees do not engage in actions that may interfere with the objective and impartial execution of their official duties or raise questions about possible misuse of their official positions.

The general prohibition and waiver provisions included in proposed § 3101.103 would apply to all Department employees. As set forth in a note to that section, the employees of the Office of the Comptroller of the Currency (OCC) and the Office of Thrift Supervision (OTS) would be subject to additional limitations on their purchase of certain assets pursuant to the bureau-specific rules contained later in this part.

Section 3101.103 is proposed as a supplement to § 2635.702 of the Executive Branch-wide Standards, prohibiting generally the use of public office for private gain. The Department exercises broad powers to seize, hold and forfeit private property. It is therefore important to preserve the public's confidence that these powers will not be misused to benefit the private interests of a Department employee. Prohibiting employees from engaging in certain purchases that may appear improper is essential to achieve this objective.

Section 3101.104 Outside Employment

(a) *General Requirement for Prior Approval.* Proposed § 3101.104(a) would require all employees of the Department to obtain prior written approval before engaging in any outside employment or business activity. This requirement would apply to any outside employment or business activity regardless of whether it is compensated. The regulation would establish a Department-wide standard allowing approval of outside employment or business activity upon a determination that the outside employment or business activity is not prohibited by law, the Executive Branch-wide Standards, or these supplemental regulations. As would be evident from this standard, § 3101.104 would not itself provide a basis to deny any Department employee's request for approval of outside employment. The basis must be found in applicable statutes, the Executive Branch-wide Standards, or another provision of these supplemental regulations. Bureau-specific regulations that would restrict the outside employment and activities of employees of the Bureau of Alcohol, Tobacco and Firearms, the Internal Revenue Service, the Legal Division, the OCC, the United States Customs Service and the United States Secret Service appear later in this part as proposed.

(b) *Bureau Responsibilities.* Under proposed § 3101.104(b), the bureaus would be required to issue instructions or manual issuances; (1) Establishing procedures for the submission of requests for approval of outside employment or business activity, and (2) designating bureau officials responsible for processing the requests. The bureaus could include examples of permissible and impermissible employment and activities in their instructions or manual issuances. Further, the bureaus would be required to retain all requests for approval to engage in outside employment or business activity in the requesting employee's Official Personnel Folder (temporary side), whether a request is granted or not. Categories of outside employment or activities could be exempted by the bureaus from the prior written approval requirement provided the employment or activities exempted are not prohibited by law, the Executive Branch-wide Standards, or these supplemental regulations, and would normally be approved if subject to the case-by-case requirement for prior approval.

For the purposes of this section, the Departmental Offices and the Office of the Inspector General are considered bureaus.

The regulation in § 3101.104, requiring prior written approval, is proposed pursuant to § 2635.803 of the Executive Branch-wide Standards. Given the breadth of the Department's responsibilities, requiring prior written approval of outside employment and business activities provides a necessary control to ensure that employees do not engage in outside employment or activities in violation of applicable laws and regulations.

Section 3101.105 Additional Rules for Bureau of Alcohol, Tobacco and Firearms Employees

The regulations contained in proposed § 3101.105 apply only to employees of the Bureau of Alcohol, Tobacco and Firearms (ATF), and are in addition to the regulations in proposed § 3101.101 through § 3101.104 which would apply to all Department employees.

(a) *Prohibited Financial Interests.* Proposed § 3101.105(a) would regulate the financial interests of ATF employees. More specifically, ATF employees and their spouses or minor children would generally be prohibited from having any financial interest in the alcohol, tobacco, firearms or explosives industries.

(b) *Waiver.* Under proposed § 3101.105(b), an agency designee, with the advice and legal clearance of the DAEO or Office of the Chief Counsel, would be authorized to grant a written waiver of the prohibition in proposed § 3101.105(a) based upon a determination that the financial interest

is not prohibited by 26 U.S.C. 7214(b), proscribing investment in the alcohol or tobacco industries, and meets the waiver standard established in that subsection of the regulations. Further action may be required under a waiver, including a written disqualification.

Section 3101.105 is proposed as a supplement to § 2635.403 of the Executive Branch-wide Standards, which deals with prohibited financial interests. Accordingly, the term "financial interest" as used in this section is intended to have the same meaning as that term is given in § 2635.403(c) of the Executive Branch-wide Standards. Under that definition, a financial interest includes, for example, an employee's current or contingent ownership or equity or security interest in real or personal property or a business, or a compensated employment relationship. And, consistent with that definition and the authority in 5 CFR 2635.403(a), proposed § 3101.105(a) would make it clear that the prohibition extends to the financial interests of spouses and minor children of ATF employees.

The prohibition proposed in § 3101.105 is based in part on the statutory prohibition at 26 U.S.C. 7214(b), proscribing employee investment in the alcohol or tobacco industries, and is intended in part to ensure that ATF employees do not violate that statute. However, under the authority in 5 CFR 2635.403(a), the section would extend a similar prohibition (unless waived) to interests in two additional industries regulated by the ATF: The firearms and explosives industries. Prohibiting ATF employees from having financial interests in entities that are regulated by or closely connected to the work of their bureau is important for three reasons: (1) To maintain the ATF's appearance of impartiality and objectivity in the execution of its regulatory functions; (2) to eliminate a regulated entity's concern that sensitive information provided to the bureau might be misused for private gain; and (3) to avoid the large-scale recusal of employees from official matters resulting in an inability of the bureau to fulfill its mission.

Section 3101.106 Additional Rules for Internal Revenue Service Employees

The regulations contained in § 3101.106 of the proposed rule apply only to employees of the Internal Revenue Service (IRS), and are in addition to the regulations in proposed § 3101.101 through § 3101.104 which would apply to all Department employees.

(a) *Prohibited Recommendations.* Proposed § 3101.106(a) would prohibit all IRS employees from recommending or suggesting the services of a specific attorney or accountant or firm of attorneys or accountants to any individual in connection with a matter involving or that may involve the IRS. This prohibition supplements § 2635.702(c) of the Executive Branch-wide Standards, prohibiting a Government employee from using public office to endorse any product, service or enterprise. It is, in part, the purpose of this proposed supplemental prohibition to eliminate any misunderstanding or harm that could result from such a recommendation. An IRS employee's recommendation of an attorney or accountant may mislead a taxpayer into believing that the IRS endorses that individual or accords the opinion of that individual special weight. This rule, however, would not prohibit IRS offices from providing to taxpayers in need of professional assistance the names of independent referral agencies, such as bar associations.

(b) *Outside Employment.* Proposed § 3101.106(b) would establish regulations concerning the outside employment of IRS employees. The proposed regulations would supplement § 2635.802 of the Executive Branch-Wide Standards by prohibiting certain tax-related outside activities that, if engaged in by IRS employees, would cause reasonable persons to question the objectivity and impartiality with which IRS programs are administered, or would otherwise conflict with IRS employees' official duties. More specifically, the rule would prohibit IRS employees from engaging in any outside employment that would involve performing certain legal services; appearing on behalf of taxpayers regarding tax matters; accounting or bookkeeping regarding tax matters; or preparing tax returns for any compensation, monetary or otherwise. Regulations on outside employment specific to IRS employees are necessary to address situations and issues unique to IRS employees in light of the IRS's specialized tax administration duties.

(c) *Seasonal Employees.* Proposed § 3101.106(c) would address the special circumstances of seasonal employees at the IRS. While in non-duty status, seasonal employees would be able to engage in outside employment or activities, other than those prohibited by § 3101.106(b), without obtaining the prior written approval that would otherwise be required of all Department employees by § 3101.104 of these supplemental regulations.

Section 3101.107 Additional Rules for Legal Division Employees

The regulations contained in § 3101.107 of the proposed rule apply only to employees of the Legal Division, and are in addition to the regulations in proposed § 3101.101 through § 3101.104 which would apply to all Department employees.

(a) *Application of Rules of Other Bureaus.* The Legal Division includes the attorneys responsible for providing legal advice to officials in all of the Department's bureaus or offices, as well as the staff assigned to support those attorneys. While the Legal Division is a separate bureau of the Department, each member of the Division is assigned to serve in a particular bureau or office. Under proposed § 3101.107(a), employees of the Legal Division would be required to follow any bureau-specific rules contained in these supplemental regulations that are applicable to the employees of the bureaus or offices in which the Legal Division employees serve, subject to any instruction issued by the General Counsel or appropriate Chief of Legal Counsel, pursuant to proposed § 3101.101.

(b) *Outside Employment.* Proposed § 3101.107(b) would prohibit attorneys in the Legal Division from practicing law outside their official positions where they may in fact or in appearance take a legal position in conflict with the interests of the Department. Further, Legal Division attorneys would be prohibited from interpreting a statute, regulation or rule administered by the Department as part of the outside practice of law. The proposed regulation in this section is consistent with the rules of professional conduct governing the attorney-client relationship. It is a necessary supplement to the general Executive Branch-wide Standards at § 2635.802(a) because it specifically addresses the unique and sensitive relationship between an attorney and a client, which, for the attorneys in the Legal Division, is the Department of the Treasury.

Section 3101.108 Additional Rules for Office of the Comptroller of the Currency Employees

Section 3101.108 of the proposed rule contains several regulations specific to the employees of the Office of the Comptroller of the Currency; they are in addition to the regulations in proposed § 3101.101 through § 3101.104 which would apply to all Department employees.

(a) *Prohibited Financial Interests.* As proposed, § 3101.108(a)(1) would

prohibit an OCC employee, or a spouse of minor child of an OCC employee, from owning securities issued by a commercial bank or commercial bank affiliate, including a bank holding company.

The Department has determined that in light of the OCC's sensitive bank regulatory functions this restriction is necessary to: (1) Maintain public confidence in the impartiality and objectivity with which the OCC executes its regulatory functions; (2) eliminate any reason for regulated entities to be concerned that sensitive information provided to the OCC might be misused for private gain; and (3) avoid the widespread disqualification of employees from official matters that might result in the OCC's inability to fulfill its mission.

The term "commercial bank," as used in this section, includes both national and State-chartered banks. The scope of this prohibition is expanded to cover both national and State-chartered commercial banks for the purposes of easing administration and minimizing inadvertent violations, even though the OCC's regulatory jurisdiction includes only national banks and their affiliates. Whether a financial interest is held indirectly by a national bank may be difficult for an ethics official and employee to determine in today's financial services industry where financial institutions frequently merge, consolidate or change their charters. A prohibition on the ownership of all commercial bank securities establishes a bright-line test, enabling employees easily to identify prohibited interests. The utility of this bright-line test outweighs any incremental restriction on an employee's ability to invest that may result from the extension of the prohibition to State-chartered bank securities.

Proposed § 3101.108(a)(2) contains a comprehensive definition of the term "securities." It includes any "interest in debt or equity instruments" such as, for example, stocks, bonds and commercial paper. However, the term securities as used in these supplemental regulations does not include deposit accounts. Finally, proposed § 3101.108(a)(3) (i)–(iii) includes several exceptions to the prohibition in § 3101.108(a)(1) on financial interests. The exceptions are intended to ease the restrictions on the financial interests of OCC employees, their spouses and their minor children, and to permit interests of a character unlikely to raise questions regarding the objective and impartial performance of OCC employees' official duties or the possible misuse of their positions. Subsection § 3101.108(a)(3)(iv) is included as a specific cross reference to the proposed waiver authority at § 3101.108(g) which would be used on a case-by-case basis.

(b) *Prohibited Borrowing.* The proposed rules on borrowing contained in § 3101.108 (b)(1) and (b)(2) would apply only to "covered OCC employees," their spouses and minor children. For the purposes of this subsection, the term covered OCC employee would be defined in proposed § 3101.108(b)(3) to mean all OCC bank examiners and any other OCC employee specified in an OCC instruction or manual issuance who the Comptroller of the Currency or a designee determines should be subject to the borrowing prohibition pursuant to the standard established in this subsection.

A covered OCC employee would be prohibited from seeking or obtaining a loan or extension of credit from a national bank or an officer, director, employee, or subsidiary of a national bank. For the purposes of this section, an extension of credit includes any credit obtained by use of a credit card. The borrowing prohibition applies equally to spouses and minor children of covered OCC employees unless the loan or extension of credit is supported exclusively by the income or means of the spouse or minor child and is obtained on the same terms and conditions as those offered to the public, and the covered OCC employee does not participate in the negotiations for the loan or serve as co-maker, endorser or guarantor of the loan.

In contrast to the proposed prohibition of holding securities set forth in § 3101.108(a), the rule in this subsection would regulate borrowing from only national banks, and not from State-chartered banks. While some of the same concerns resulting from the integration of the banking industry apply here, permitting employees to have access to adequate sources of credit outweighs any incremental benefit that may be gained by extending the rule to cover loans from State-chartered banks.

Exceptions to the prohibition on borrowing are set forth in proposed § 3101.108(b)(4). Under the exceptions, a covered OCC employee or spouse or minor child of a covered OCC employee would be permitted to obtain a loan or extension of credit from a national bank provided the loan or extension of credit is obtained under one of the conditions indicated in subsections (b)(4) (i)–(iii), and provided: (1) The terms and conditions of the transaction are not more favorable than for the general public; (2) the employee is not assigned to examine the bank at the time of the transaction; and (3) the employee is disqualified from examining or participating in the supervision of the bank. As with the exceptions to the financial interests prohibitions in proposed § 3101.108(a)(3), the exceptions in § 3101.108(b)(4) are intended to minimize the burden on covered OCC employees, and their spouses and minor children, in obtaining loans or extensions of credit that are unlikely to raise issues regarding the motivation of the lender or the objective and impartial performance of official duties by OCC employees.

Proposed § 3101.108(b)(5) addresses pre-existing credit and serves to clarify that § 3101.108 (b)(1) and (b)(2) would impose prohibitions only on seeking or obtaining loans or extensions of credit. Thus, there would be no prohibition on a covered OCC employee, or a spouse or minor child of a covered OCC employee, retaining a loan from a national bank provided the loan was obtained either: (1) Prior to the covered employee's employment at the OCC; or (2) as a result of the sale or transfer of the loan to a national bank, or a conversion or merger of the lender into a national bank. The renewal or renegotiation of a pre-existing loan or extension of credit, however, would be treated as a new loan subject to the prohibitions in § 3101.108 (b)(1) and (b)(2).

The proposed prohibition on borrowing contained in § 3101.108(b) is necessary for several reasons. First, it is necessary to prevent covered OCC employees from obtaining or appearing to obtain loans or extensions of credit on preferential terms, or from benefiting or appearing to benefit from their official positions through possible forbearance by the lender in collecting on the indebtedness. Second, public confidence in the integrity of the OCC will be strengthened by prohibiting OCC employees from engaging in financial transactions with institutions regulated by the OCC. Third, the borrowing prohibition implements, in part, 18 U.S.C. 212 and 213, regulating the offer and acceptance of certain loans to and by bank examiners. Finally, limitations on OCC employees' borrowing from regulated institutions will avoid a high number of employee disqualifications that would have a detrimental effect on the OCC's administration of its supervisory responsibilities.

(c) *Restrictions Arising from Third Party Relationships.* Proposed § 3101.108(c) would attribute to an OCC employee certain securities and loans, or extensions of credit, that are held by the entities described in that subsection (e.g., trusts, partnerships, closely-held corporations). An employee with an

attributed interest would be required to report the interest to the Chief Counsel or designee, and could be required to terminate the relationship with the entity, disqualify himself or herself from a matter or take other appropriate action as determined by the Chief Counsel or designee to avoid a violation of the conflict of interest statutes, the Executive Branch-wide Standards or these supplemental regulations.

(d) *Prohibited Recommendations.* As proposed, § 3101.108(d) would prohibit OCC employees from making any recommendation or suggestion regarding a security issued by a commercial bank or commercial bank affiliate, including a bank holding company. This rule is intended in part to eliminate any misunderstanding or harm that could result from such a recommendation. For example, an investor should not be misled into believing, pursuant to the recommendation of an OCC employee, that the securities of a particular institution regulated by the OCC are a sound buy because the investor believes that the employee may have access to inside information. Rules addressing similar concerns apply to the employees of the OTS and IRS.

(e) *Prohibited Purchase of Assets.* Section 3101.108(e) is proposed as a further supplement to the proposed prohibitions in § 3101.103, regarding the purchase of assets by all Department employees. It would specifically prohibit an OCC employee, or a spouse or minor child of an OCC employee, from purchasing assets from a national bank or national bank affiliate, including a bank holding company. An asset sold by public auction or by a method that ensures that the asset is sold at its fair market value would be exempt from this prohibition.

(f) *Outside Employment.* Proposed § 3101.108(f) would supplement § 2635.802 of the Executive Branch-wide Standards by prohibiting certain OCC employees from engaging in specified outside employment and activities. The prohibition in this section would apply only to covered OCC employees. For the purpose of this subsection, the term covered OCC employee would mean all OCC bank examiners and any other employee specified in an OCC instruction or manual issuance who the Comptroller of the Currency or designee determines should be covered by the rule pursuant to the standard established in the subsection. Employees of the OCC covered by this rule would be prohibited from performing compensated services for any bank, banking or loan association or national bank affiliate or any officer, director, employee or person connected in any way with any of the foregoing entities. This regulation, based in part on 18 U.S.C. 1909, addresses situations unique to OCC bank examiners and OCC employees involved in the regulation of national banks, and prohibits activity that, if engaged in, may interfere with the objective and impartial performance of an employee's official duties.

(g) *Waivers.* Proposed § 3101.108(g) would give an agency designee authority, with the advice and legal clearance of the DAEO or the Office of the Chief Counsel, to grant a written waiver of any prohibition in proposed § 3101.108 based upon a determination that the waiver is consistent with law and the Executive Branch-wide Standards, and meets the waiver standard established in the subsection. An employee may be required under the waiver to disqualify himself or herself from a particular matter or take other appropriate action.

Section 3101.109 Additional Rules for Office of Thrift Supervision Employees

Section 3101.109 of the proposed rule contains several rules applicable solely to the employees of the Office of Thrift Supervision; they are in addition to the regulations in proposed § 3101.101 through § 3101.104 which would apply to all Department employees. These rules are very similar to the rules that would apply to OCC employees under proposed § 3101.108. They differ in scope primarily in that § 3101.109 would impose no specific prohibition on the outside employment and business activities of OTS employees. This is due in part to the fact that OTS employees are not subject to 18 U.S.C. 1909. Nevertheless, OTS employees, like all other Department employees, would be required to obtain prior approval for outside employment pursuant to proposed § 3101.104.

(a) *Covered OTS Employees.* Several of the rules in proposed § 3101.109 would apply only to "covered OTS employees." Covered OTS employees as the term is used in this section would mean all OTS grade 17 positions or above, and any OTS employees specified in an OTS instruction or manual issuance who the Director of the OTS or a designee determines should be covered by the prohibitions contained in this section pursuant to the standard established in § 3101.109(a).

(b) *Prohibited Financial Interests.* The proposed financial interest provisions of § 3101.109(b) are similar to those proposed for application to OCC employees. Specifically, the subsection would prohibit covered OTS employees, and their spouses or minor children from owning securities issued by an OTS-regulated savings association or savings association holding company. As with the OCC rule, this prohibition is intended to ensure public confidence in the manner in which the OTS fulfills its regulatory responsibilities, eliminate potential concerns over use of nonpublic information and avoid widespread disqualification of OCC employees.

(c) *Prohibited Borrowing.* Proposed § 3101.109(c) would prohibit covered OTS employees from seeking or obtaining loans or extensions of credit from and OTS-regulated savings association or an officer, director, employee, or subsidiary of an OTS-regulated savings association. For the purpose of this subsection, and extension of credit includes credit obtained through the use of credit cards. The prohibition on borrowing in § 3101.109(c) is required in part by 18 U.S.C. 212 and 213, and is similar in scope and purpose to the borrowing prohibition proposed for application to OCC employees. The proposed exceptions in § 3101.109(c)(3) are similar to those in the OCC borrowing rule.

(d) *Restrictions Arising from Third Party Relationships.* Proposed § 3101.109(d) is identical to the rule proposed for the purpose of regulating OCC employees' relationships with certain entities.

(e) *Prohibited Recommendations.* Proposed § 3101.109(e) is substantially the same as the prohibition on making recommendations concerning regulated entities that is proposed for application to OCC employees.

(f) *Prohibited Purchase of Assets.* Proposed § 3101.109(f) is substantially the same as the prohibition on purchasing the assets of certain regulated proposed for application to OCC employees.

(g) *Waivers.* Proposed § 3101.109(g) would give an agency designee authority, with the advice and legal clearance of the DAEO or Office of the Chief Counsel, to grant a written waiver of any prohibition in proposed § 3101.109 upon a determination that the waiver is consistent with law and the Executive Branch-wide Standards, and meets the waiver standard established in the subsection. An employee may be required under the waiver to disqualify himself or herself from a particular matter or take other appropriate action.

Section 3101.110 Additional Rules for United States Customs Service Employees

Section § 3101.110 of the proposed rule contains regulations applicable only to employees of the United States Customs Service; they are in addition to the regulation in proposed § 3101.101 through § 3101.104 which would apply to all Department employees.

(a) *Prohibition on Employment.* Under proposed § 3101.110(a), Customs Service employees would be prohibited from working for specified types of entities that are regulated by or have a business relationship with the Custom Service.

(b) *Restrictions Arising from Employment of Relatives.* Under proposed § 3101.110(b), a Customs Service employees would be required to file a report of family member employment with his or her supervisor if the employee's spouse or a relative who is dependent on or resides with the employee is employed with an entity specified in proposed § 3101.110(a). The report would be forwarded to the appropriate regional counsel for transmittal to the Chief Counsel. The employee would be disqualified from participating in any matter involving the employee's spouse or relative, or their employer, unless the employee received the appropriate authorization pursuant to the standard in section 2635.502(d) of the Executive Branch-wide Standards. In effect, proposed § 3101.110(b) supplements § 2635.502 of the Executive Branch-wide Standards.

The regulations in proposed § 3101.110(a) are necessitated by the frequent contact Customs Service employees have with importers at the local level, and are designed to assure that the Customs Service and its employees maintain the highest level of integrity while minimally restricting the employees' personal activities and associations. Customs Service employees at all levels carry out many types of duties that can have a major impact on the business of an importer, broker, or carrier. For example, Customs Service inspectors enforce customs laws and make determinations involving the financial interests of importers at every port or entry in the United States. In addition, Customs Service employees audit and investigate numerous companies to determine potential violations of the customs laws. The regulations in this section will prevent the outside employment interests of Customs Service employees and their family members from interfering with the objective and impartial execution of the employees' official duties and will help to ensure public confidence in the Customs Service's execution of its mission.

Section 3101.111 Additional Rules for United States Secret Service Employees

Proposed § 3101.111 explains that Secret Service regulations regarding compensated outside the employment in effect on February 2, 1993, will remain in effect until February 3, 1994, or until superseded by a new supplemental regulation substituted for § 3101.111. This temporary preservation of existing rules is consistent with the note following § 2635.403(a) of the Executive Branch-wide Standards and recognizes the need for further study of the extent to which the outside activities of law enforcement personnel should be restricted because of their special responsibilities. During the next year the Department, in consultation with OGE, will be working with other law enforcement agencies to determine whether special rules are needed in this area.

III. Matters of Regulatory Procedure

Executive Order 12291, Federal Regulation

Because this rule relates to agency organization, management and personnel, it is not subject to Executive Order 12291.

Regulatory Flexibility Act

It is hereby certified that this proposed rule will not have significant economic impact on a substantial number of small entities. This rule affects only Federal employees and their immediate families.

List of Subjects in 5 CFR Part 3101

Conflict of interests, Government employees.

Dated: July 9, 1993.

Jean E. Hanson,

General Counsel, Department of the Treasury.

Approved: July 27, 1993.

Stephen D. Potts,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Department of the Treasury, in concurrence with the Office of Government Ethics, is proposing to amend title 5 of the Code of Federal Regulations by adding a new chapter XXI, consisting of part 3101, to read as follows:

CHAPTER XXI—DEPARTMENT OF THE TREASURY

PART 3101—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE DEPARTMENT OF THE TREASURY

Sec.

3101.101 General.
3101.102 Designation of separate agency components.
3101.103 Prohibition on purchase of certain assets.
3101.104 Outside employment.
3101.105 Additional rules for Bureau of Alcohol, Tobacco and Firearms employees.
3101.106 Additional rules for Internal Revenue Service employees.
3101.107 Additional rules for Legal Division employees.
3101.108 Additional rules for Office of the Comptroller of the Currency employees.
3101.109 Additional rules for Office of Thrift Supervision employees.
3101.110 Additional rules for United States Customs Service employees.
3101.111 Additional rules for United States Secret Service employees.

Authority: 5 U.S.C. 301, 7301, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); 26 U.S.C. 7214(b); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.; 5 CFR 2635.105, 2635.203(a), 2635.403(a), 2635.803, 2635.807(a)(2)(ii).

§ 3101.101 General.

(a) *Purpose.* In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the Department of the Treasury and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635. Employees are required to comply with 5 CFR part 2635, this part, and bureau guidance and procedures established pursuant to this section. Department employees are also subject to any additional rules of conduct that the Department or their employing bureaus are authorized to issue.

(b) *Bureau instructions.* With the concurrence of the Designated Agency Ethics Official (DAEO), bureaus of the Department of the Treasury are authorized to issue instructions or manual issuances providing explanatory guidance and establishing procedures necessary to implement this part and part 2635 of this title. See 5 CFR 2635.105(c).

(c) *Definition of "agency designee".* As used in this part and part 2635 of this title, the term "agency designee" refers to any employee who has been delegated authority by an instruction or manual issuance issued by a bureau under paragraph (b) of this section to

make a determination, give an approval, or take other action required or permitted by this part or part 2635 of this title with respect to another employee. See 5 CFR 2635.102(b).

§ 3101.102 Designation of separate agency components.

Pursuant to 5 CFR 2635.203(a), each of the following components of the Department of the Treasury is designated as a separate agency for purposes of the regulations contained in subpart B of 5 CFR part 2635 governing gifts from outside sources and 5 CFR 2635.807 governing teaching, speaking or writing:

(a) Bureau of Alcohol, Tobacco and Firearms (ATF);

(b) Bureau of Engraving and Printing;

(c) Bureau of the Public Debt;

(d) Federal Law Enforcement Training Center;

(e) Financial Management Service;

(f) Internal Revenue Service (IRS);

(g) Office of the Comptroller of the Currency (OCC);

(h) Office of the Inspector General;

(i) Office of Thrift Supervision (OTS);

(j) United States Customs Service (USCS);

(k) United States Mint;

(l) United States Savings Bonds Division; and

(m) United States Secret Service.

For purposes of this section, employees in the Legal Division shall be considered to be part of the bureaus or offices in which they serve.

Note: As a result of the designations contained in this section, employees of the remaining parts of the Department of the Treasury (e.g., employees in Departmental Offices, including the Financial Crimes Enforcement Network) will also be treated as employees of an agency that is separate from all of the above listed bureaus and offices for purposes of determining whether the donor of a gift is a prohibited source under 5 CFR 2635.203(d) and for identifying an employee's "agency" under 5 CFR 2635.807 governing teaching, speaking and writing.

§ 3101.103 Prohibition on purchase of certain assets.

(a) *General prohibition.* Except as provided in paragraph (b) of this section, no employee of the Department of the Treasury shall purchase, directly or indirectly, property:

(1) Owned by the Government and under the control of the employee's bureau (or a bureau over which the employee exercises supervision); or

(2) Sold under the direction or incident to the functions of the employee's bureau.

(b) *Exceptions.* The prohibition in paragraph (a) of this section does not apply to the purchase of Government securities or items sold generally to the public at fixed prices, such as numismatic items produced by the United States Mint, or foreign gifts deposited with the Department pursuant to 5 U.S.C. 7342 that an employee may purchase pursuant to 41 CFR parts 101–49.

(c) *Waiver.* An employee may make a purchase otherwise prohibited by this section where a written waiver of the prohibition has been given to the employee by an agency designee with the advice and legal clearance of the DAEO, or the appropriate Office of Chief or Legal Counsel. Such a waiver may be granted only on a determination that the waiver is not otherwise prohibited by law and that, in the mind of a reasonable person with knowledge of the particular circumstances, the purchase of the asset will not raise a question as to whether the employee has used his or her official position or inside information to obtain an advantageous purchase or create an appearance of loss of impartiality in the performance of the employee's duties.

Note: Employees of the OCC and OTS are subject to additional limitations on the purchase of assets that are set out in bureau-specific rules contained in § § 3101.108 and 3101.109.

§ 3101.104 Outside employment.

(a) *General requirement for prior approval.* All Department of the Treasury employees shall obtain prior written approval before engaging in any outside employment or business activities, with or without compensation, except to the extent that the employing bureau issues an instruction or manual issuance pursuant to paragraph (b) of this section exempting an activity or class of activities from this requirement. Approval shall be granted only on a determination that the employment or activity is not expected to involve conduct prohibited by statute, part 2635 of this title or any provision of this part.

Note: Employees of the ATF, IRS, Legal Division, OCC, USCS and United States Secret Service are subject to additional limitations on outside employment and activities that are set in out in bureau-specific rules contained in this part.

(b) *Bureau responsibilities.* Each bureau, which for the purposes of this section includes the Departmental Offices and the Office of the Inspector General, shall issue instructions or manual issuances governing the submission of requests for approval of outside employment or business activities and designating appropriate officials to act on such requests. The instructions or manual issuances may exempt categories of employment or activities from the prior approval requirement based on a determination that employment or activities within those categories would generally be approved and are not likely to involve conduct prohibited by statute, part 2635 of this title or any provision of this part. Bureaus may include in their instructions or issuances examples of outside employment or activities that are permissible or impermissible consistent with this part and part 2635 of this title. Bureaus shall retain in employees' Official Personnel Folders (temporary side) all requests for approval whether granted or denied.

§ 3101.105 Additional rules for Bureau of Alcohol, Tobacco and Firearms employees.

The following rules apply to the employees of the Bureau of Alcohol, Tobacco and Firearms and are in addition to § § 3101.101–3101.104:

(a) *Prohibited financial interests.* Except as provided in this section, no employee of the ATF, or spouse or minor child of an ATF employee, shall have, directly or indirectly, any financial interest, including compensated employment, in the alcohol, tobacco, firearms or explosives industries. The term financial interest is defined in § 2635.403(c) of this title.

(b) *Waiver.* An agency designee, with the advice and legal clearance of the DAEO or Office of the Chief Counsel, may grant a written waiver of the prohibition in paragraph (a) of this section on a determination that the financial interest is not prohibited by 26 U.S.C. 7214(b) and that, in the mind of a reasonable person with knowledge of the particular circumstances, the financial interest will not create an appearance of misuse of position or loss of impartiality, or call into question the impartiality and objectivity with which the ATF's programs are administered. A waiver under this paragraph may require appropriate conditions, such as execution of a written disqualification.

§ 3101.106 Additional rules for Internal Revenue Service employees.

The following rules apply to the employees of the Internal Revenue Service and are in addition to §§ 3101.101–3101.104:

(a) *Prohibited recommendations.* Employees of the IRS shall not recommend, refer or suggest, specifically or by implication, any attorney, accountant or firm of attorneys or accountants to any person in connection with any official business which involves or may involve the IRS.

(b) *Prohibited outside employment.* Involvement by an employee of the IRS

in the following types of outside employment or business activities is prohibited and shall constitute a conflict with the employee's official duties pursuant to 5 CFR 2635.802:

(1) Performance of legal services involving Federal, State or local tax matters;

(2) Appearing on behalf of any taxpayer as a representative before any Federal, State, or local government agency, in an action involving a tax matter except on written authorization of the Commissioner of Internal Revenue;

(3) Engaging in accounting, or the use, analysis, and interpretation of financial records when such activity involves tax matters;

(4) Engaging in bookkeeping, the recording of transactions, or the record-making phase of accounting, when such activity is directly related to a tax determination; and

(5) Engaging in the preparation of tax returns for compensation, gift or favor.

(c) *Seasonal employees.* Seasonal employees of the IRS while in non-duty status may engage in outside employment or activities, other than those prohibited by paragraph (b) of this section, without obtaining prior written permission.

§ 3101.107 Additional rules for Legal Division employees.

The following rules apply to the employees of the Legal Division and are in addition to §§ 3101.101–3101.104:

(a) *Application of rules of other bureaus.* In addition to the rule contained in paragraph (b) of this section, employees in the Legal Division shall be covered by the rules contained in this part that are applicable to employees of the bureaus or offices in which the Legal Division employees serve, subject to any instructions which the General Counsel or appropriate Chief or Legal Counsel may issue in accordance with § 3101.101(b).

(b) *Prohibited outside employment.* Pursuant to 5 CFR 2635.802, it is prohibited and shall constitute a conflict with the employee's official duties for an attorney employed in the Legal Division to engage in the outside practice of law that might require the attorney to:

(1) Take a position that is or appears to be in conflict with the interests of the Department of the Treasury which is the client to whom the attorney owes a professional responsibility; or

(2) Interpret any statute, regulation or rule administered or issued by the Department.

§ 3101.108 Additional rules for Office of the Comptroller of the Currency employees.

The following rules apply to the employees of the Office of the Comptroller of the Currency and are in addition to §§ 3101.101–3101.104:

(a) *Prohibited financial interests*—(1) *Prohibition.* Except as provided in paragraphs (a)(3) and (g) of this section, no OCC employee, or spouse or minor child of an OCC employee, shall own, directly or indirectly, securities of any commercial bank (including both national and State-chartered banks) or commercial bank affiliate, including a bank holding company.

(2) *Definition of "securities".* For purposes of paragraphs (a)(1) and (a)(3) of this section, the term "securities" includes all interests in debt or equity instruments. The term includes, without limitation, secured and unsecured bonds, debentures, notes, securitized assets and commercial paper, as well as all types of preferred and common stock. The term encompasses both current and contingent ownership interests, including any beneficial or legal interest derived from a trust. It extends to any right to acquire or dispose of any long or short position in such securities and includes, without limitation, interests convertible into such securities, as well as options, rights, warrants, puts, calls, and straddles with respect thereto.

(3) *Exceptions.* Nothing in this section prohibits an OCC employee, or spouse or minor child or an OCC employee, from:

(i) Investing in a publicly traded or publicly available investment fund, provided that the investment fund does not invest more than 20 percent of its funds in securities of commercial banks (including both national and State-chartered banks) and commercial bank affiliates (including bank holding companies) nor more than 5 percent of its funds in the securities of any one such bank or affiliate, and the employee neither exercises control over nor has the ability to exercise control over the financial interests held in the fund;

(ii) Investing in the publicly traded securities of a holding company of a nonbank bank or of a retailing firm that owns or sponsors a credit card bank as defined by the Competitive Equality Banking Act of 1987, except that an employee who owns such an interest must be disqualified from participating in the regulation or supervision of the nonbank bank or the credit card bank;

(iii) Using a commercial bank or commercial bank affiliate as custodian or trustee of accounts containing tax-deferred retirement funds; or

(iv) Owning any security pursuant to a waiver granted under paragraph (g) of this section.

(b) *Prohibited borrowing*—(1) *Prohibition on employee borrowing.* Except as provided in this section, no covered OCC employee shall seek or obtain any loan or extension of credit, including credit obtained through the use of a credit card, from any national bank or from an officer, director, employee, or subsidiary of any national bank.

(2) *Prohibition on borrowing by a spouse or minor child.* The prohibition in paragraph (b)(1) of this section shall apply to the spouse or minor child of a covered OCC employee unless the loan or extension of credit:

(i) Is supported only by the income or independent means of the spouse or minor child;

(ii) Is obtained on terms and conditions no more favorable than those offered to the general public; and

(iii) The covered OCC employee does not participate in the negotiation for the loan or serve as co-maker, endorser or guarantor of the loan.

(3) *Covered OCC employee.* For purposes of the prohibitions on borrowing contained in paragraphs (b)(1) and (b)(2) of this section, "covered OCC employee" means:

(i) An OCC bank examiner; and

(ii) Any other OCC employee specified in an OCC instruction or manual issuance whose duties and responsibilities, as determined by the Comptroller of the Currency or his or her designee, require application of the prohibition on borrowing contained in this section to ensure public confidence that the OCC's programs are conducted impartially and objectively.

(4) *Exceptions.* Nothing in this section prohibits a covered OCC employee, or the spouse or minor child of a covered OCC employee, from obtaining a loan or extension of credit described in paragraphs (b)(4)(i) through (b)(4)(iii) of this section from a national bank if the loan or extension of credit is obtained on terms and conditions no more favorable than those offered to the general public, the employee is not assigned to examine the bank at the time the loan or extension of credit is obtained, and the employee submits to the Chief Counsel or designee a written disqualification from examining or otherwise participating in the supervision of the bank. The exceptions provided by this paragraph are for loans or extensions of credit obtained:

(i) Through use of a credit card issued by a national bank where:

(A) The employee is assigned to a district office and the bank is not

headquartered in the employee's district;

(B) The employee is assigned to the Multinational Division and the bank is not supervised by that Division; or

(C) The employee is assigned to the Washington office (other than the Multinational Division);

(ii) Through use of a national bank credit card sponsored by a retailing firm (e.g., Nordstrom, Lord and Taylor, Amoco Oil Company); or

(iii) Through assumption of a mortgage loan on the employee's residence which is liquidated in accordance with its original terms without renewal or renegotiation.

(5) *Pre-existing credit.* This section does not prohibit a covered OCC employee, or spouse or minor child of a covered OCC employee, from retaining a loan from a national bank on its original terms if the loan was incurred prior to employment by the OCC, or as a result of the sale or transfer of a loan to a national bank or the conversion or merger of the lender into a national bank. Any renewal or renegotiation of a pre-existing loan or extension of credit will be treated as a new loan subject to the prohibitions in paragraphs (b)(1) and (b)(2) of this section.

(c) *Restrictions arising from third party relationships.* If any of the entities listed in paragraphs (c)(1) through (c)(7) of this section have securities that an OCC employee would be prohibited from having by paragraph (a) of this section, or loans or extensions of credit that a covered OCC employee would be prohibited from obtaining under paragraph (b) of this section, the employee shall promptly report such interests to the Chief Counsel or designee. The Chief Counsel or designee may require the employee to terminate the third party relationship, undertake an appropriate disqualification, or take other appropriate action necessary, under the particular circumstances, to avoid a statutory violation or a violation of part 2635 of this title, or this part, including an appearance of misuse of position or loss of impartiality. This paragraph applies to any:

(1) Partnership in which the employee, or spouse or minor child of the employee, is a general partner;

(2) Partnership in which the employee, or spouse or minor child of the employee, individually or jointly holds more than a 10 percent limited partnership interest;

(3) Closely held corporation in which the employee, or spouse or minor child of the employee, individually or jointly holds more than a 10 percent equity interest;

(4) Trust in which the employee, or spouse or minor child of the employee, has a legal or beneficial interest;

(5) Investment club or similar informal investment arrangement between the employee, or spouse or minor child of the employee, and others;

(6) Qualified profit sharing, retirement or similar plan in which the employee, or spouse or minor child of the employee, has an interest; or

(7) Other entity if the employee, or spouse or minor child of the employee, individually or jointly holds more than a 25 percent equity interest.

(d) *Prohibited recommendations.* Employees of the OCC shall not make recommendations or suggestions, directly or indirectly, concerning the acquisition, or sale or other divestiture of securities of any commercial bank or commercial bank affiliate, including a bank holding company.

(e) *Prohibited purchase of assets.* No employee of the OCC, or spouse or minor child of an OCC employee, shall purchase, directly or indirectly, an asset (e.g., real property, automobiles, furniture, or similar items) from a national bank or national bank affiliate, including a bank holding company, unless it is sold at a public auction or by other means which assure that the selling price is the asset's fair market value.

(f) *Outside employment*—(1) *Prohibition on outside employment.* No covered OCC employee shall perform services for compensation for any bank, banking or loan association, or national bank affiliate, or for any officer, director or employee of, or for any person connected in any capacity with a bank, banking or loan association or national bank affiliate.

(2) *Covered OCC employee.* For purposes of the prohibitions on outside employment contained in paragraph (f)(1) of this section, "covered OCC employee" means:

(i) An OCC bank examiner; and

(ii) Any other OCC employee specified in an OCC instruction or manual issuance whose duties and responsibilities, as determined by the Comptroller of the Currency or his or her designee, require application of the prohibition on outside employment contained in this section to ensure public confidence that the OCC's programs are conducted impartially and objectively.

(g) *Waivers.* An agency designee may grant a written waiver from any provision of this section based on a determination made with the advice and legal clearance of the DAEO or Office of the Chief Counsel that the waiver is not inconsistent with part 2635 of this title or otherwise prohibited by law and that, under the particular circumstances, application of the prohibition is not necessary to avoid the appearance of misuse of position or loss of impartiality, or otherwise to ensure confidence in the impartiality and objectivity with which agency programs are administered. A waiver under this paragraph may impose appropriate conditions, such as requiring execution of a written disqualification.

§ 3101.109 Additional rules for Office of Thrift Supervision employees.

The following rules apply to the employees of the Office of Thrift Supervision and are in addition to §§ 3101.101–3101.104:

(a) *Covered OTS employee.* For purposes of this section, the term "covered OTS employee" means:

(1) An OTS examiner;

(2) An employee in a position at OTS grade 17 or above; and

(3) Any other OTS employee specified in an OTS instruction or manual issuance whose duties and responsibilities, as determined by the Director of the OTS or his or her designee, require application of the prohibitions contained in this section to ensure public confidence that the OTS's programs are conducted impartially and objectively.

(b) *Prohibited financial interests*—(1) *Prohibition.* Except as provided in paragraphs (b)(3) and (g) of this section, no covered OTS employee, or spouse or minor child of a covered OTS employee, shall own, directly or indirectly, securities of any OTS-regulated savings association or savings association holding company.

(2) *Definition of "securities".* For purposes of paragraphs (b)(1) and (b)(3) of this section, the term "securities" includes all interests in debt or equity instruments. The term includes, without limitation, secured and unsecured bonds, debentures, notes, securitized assets and commercial paper, as well as all types of preferred and common stock. The term encompasses both current and contingent ownership interests, including any beneficial or legal interest derived from a trust. It extends to any right to acquire or dispose of any long or short position in such securities and includes, without limitation, interests convertible into such securities, as well as options, rights, warrants, puts, calls, and straddles with respect thereto.

(3) *Exceptions.* Nothing in this section prohibits a covered OTS employee, or spouse or minor child of a covered OTS employee, from:

(i) Investing in a publicly traded or publicly available investment funds, provided that the investment fund does not invest more than 20 percent of its funds in securities of OTS-regulated savings associations or savings association holding companies nor more than 5 percent of its funds in the securities of any one such savings association or holding company, and the employee neither exercises control over nor has the ability to exercise control over the financial interests held in the fund;

(ii) Investing in certain non-financial holding companies whose principal business is unrelated to the financial services industry and which are identified as such on a list maintained by the Chief Counsel of the OTS;

(iii) Using a savings association as custodian or trustee of accounts containing tax-deferred retirement funds; or

(iv) Owning any security pursuant to a waiver granted under paragraph (g) of this section.

(c) *Prohibited borrowing*—(1) *Prohibition on employee borrowing.* Except as provided in this section, no covered OTS employee shall seek or obtain any loan or extension of credit, including credit obtained through the use of a credit card, from any OTS-regulated savings association or an officer, director, employee, or subsidiary of any such association.

(2) *Prohibition on borrowing by a spouse or minor child.* The prohibition in paragraph (c)(1) of this section shall apply to the spouse or minor child of a covered OTS employee unless the loan or extension of credit:

(i) Is supported only by the income or independent means of the spouse or minor child;

(ii) Is obtained on terms and conditions no more favorable than those offered to the general public; and

(iii) The covered OTS employee does not participate in the negotiation for the loan or serve as co-maker, endorser or guarantor of the loan.

(3) *Exceptions.* Nothing in this section prohibits a covered OTS employee, or the spouse or minor child of a covered OTS employee, from obtaining a loan or extension of credit described in paragraphs (c)(3)(i) through (c)(3)(iii) of this section from an OTS-regulated savings association if the loan or extension of credit is obtained on terms and conditions no more favorable than those offered to the general public, the employee is not assigned to examine the savings association at the time the loan or extension of credit is obtained, and the employee submits to the Chief Counsel or designee a written disqualification from examining or otherwise participating in the supervision of the savings association. The exceptions provided by this paragraph are for loans or extensions of credit obtained:

(i) Through use of a credit card issued by a savings association where:

(A) The employee is assigned to a district office and the savings association is not headquartered in the employee's district; or

(B) The employee is assigned to the Washington office;

(ii) Through use of a savings association credit card sponsored by a retailing firm (e.g., Sears); or

(iii) Through assumption of a mortgage loan on the employee's residence which is liquidated in accordance with its original terms without renewal or renegotiation.

(4) *Pre-existing credit.* This section does not prohibit a covered OTS employee, or spouse or minor child of a covered OTS employee, from retaining a loan from an OTS-regulated savings association on its original terms if the loan was incurred prior to employment by the OTS or as a result of the sale or transfer of the loan to a savings association or the conversion or merger of the lender into an OTS-regulated savings association. Any renewal or renegotiation of a pre-existing loan or extension of credit is covered by paragraphs (c)(1) and (c)(2) of this section.

(d) *Restrictions arising from third party relationships.* If any of the entities listed in paragraphs (d)(1) through (d)(7) of this section have securities that a covered OTS employee would be prohibited from having by paragraph (b) of this section, or loans or extensions of credit that a covered OTS employee would be prohibited from obtaining under paragraph (c) of this section, the employee shall promptly report such interests to the Chief Counsel or designee may require the employee to terminate the third party relationship, undertake an appropriate disqualification, or take other appropriate action necessary, under the particular circumstances, to avoid a statutory violation or a violation of part 2635 of this title or this part, including an appearance of misuse of position or loss of impartiality. This paragraph applies to any:

(1) Partnership in which the employee, or spouse or minor child of the employee, is a general partner;

(2) Partnership in which the employee, or spouse or minor child of the employee, individually or jointly holds more than a 10 percent limited partnership interest;

(3) Closely held corporation in which the employee, or spouse or minor child of the employee, individually or jointly holds more than a 10 percent equity interest;

(4) Trust in which the employee, or spouse or minor child of the employee, has a legal or beneficial interest;

(5) Investment club or similar informal investment arrangement between the employee; or spouse or minor child of the employee; and others;

(6) Qualified profit sharing, retirement or similar plan in which the employee, or spouse or minor child of the employee, has an interest; or

(7) Other entity if the employee, or spouse or minor child of the employee, individually or jointly holds more than a 25 percent equity interest.

(e) *Prohibited recommendations.* Employees of the OTS shall not make recommendations or suggestions, directly or indirectly, concerning the acquisition or sale, or other divestiture of securities of any OTS-regulated savings association or savings association holding company.

(f) *Prohibited purchase of assets.* No employee of the OTS, or spouse or minor child of an OTS employee, shall purchase, directly or indirectly, an asset (e.g., real property, automobiles, furniture, or similar items) from a savings association or savings association affiliate, including a savings association holding company, unless it is sold at a public auction or by other means which assure that the selling price is the asset's fair market value.

(g) *Waivers.* An agency designee may grant a written waiver from any provision of this section based on a determination made with the advice and legal clearance of the DAEO or Office of the Chief Counsel that the waiver is not inconsistent with part 2635 of this title or otherwise prohibited by law and that, under the particular circumstances, application of the prohibition is not necessary to avoid the appearance of misuse of position or loss of impartiality, or otherwise to ensure confidence in the impartiality and objectivity with which agency programs are administered. A waiver under this paragraph may impose appropriate conditions, such as requiring execution of a written disqualification.

§ 3101.110 Additional rules for United States Customs Service employees.

The following rules apply to the employees of the United States Customs Service and are in addition to §§ 3101.101–3101.104:

(a) *Prohibition on outside employment.* No employee of the USCS

shall work for a customs broker, international carrier, bonded warehouse, foreign trade zone, cartman, law firm engaged in the practice of customs law or importation department of a business, nor be employed in any private capacity related to the importation or exportation of merchandise.

(b) *Restrictions arising from employment of relatives.* If the spouse of a USCS employee, or other relative who is dependent on or resides with a USCS employee, is employed in a position that the employee would be prohibited from occupying by paragraph (a) of this section, the employee shall file a report of family member employment with his supervisor. Supervisors shall forward such reports to the appropriate Regional Counsel for transmittal to the Chief Counsel. The employee shall be disqualified from participation in any matter involving the relative or the relative's employer unless an agency designee, with the advice and legal clearance of the DAEO or Office of the Chief Counsel, authorizes the employee to participate in the matter using the standard in § 2635.502(d) of this title.

§ 3101.111 Additional rules for United States Secret Service employees.

In addition to the rules contained in §§ 3101.101–3101.104, United States Secret Service Administrative Manual Section PER–5(2) prohibiting compensated outside employment in effect on February 2, 1993, will remain in effect until February 3, 1994, or until superseded by a new supplemental regulation published in this part, whichever occurs first. Administrative Manual Section PER–5(2) may be obtained from the Office of the Chief Counsel, United States Secret Service, 1800 G Street, NW., Washington, DC 20223.

[FR Doc. 93–18331 Filed 8–2–93; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1211

[Docket No. FV–93–703]

RIN 0581–AA 50

Pecan Promotion and Research Plan; Order Directing That a Referendum Be Conducted; Determination of Representative Period for Voter Eligibility; and Designation of a Referendum Agent to Conduct the Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Order for referendum.

SUMMARY: The order directs that a referendum be conducted among eligible pecan growers, grower-shellers, and importers to determine whether they favor continuance, termination, or suspension of the Pecan Promotion and Research Plan (Plan).

DATES: In order to be eligible to vote, growers, grower-shellers, and importers must have produced or imported pecans during the period from September 1, 1991, to August 31, 1993 (representative period). Registration to vote will be in person from September 27 through October 1 at local Agricultural Stabilization and Conservation Service (ASCS) offices, except that importers may register by mail to the Research and Promotion Branch at the address listed below. Mail registrations must be received by the Department on or before October 1, 1993. Voting will be conducted on October 4, 5, and 6, 1993, by mail ballot.

FOR FURTHER INFORMATION CONTACT: Arthur L. Pease, Research and Promotion Branch, Fruit and Vegetable Division, AMS, USDA, room 2535–S, P.O. Box 96456, Washington, DC 20090–6456. Telephone (202) 720–6930.

SUPPLEMENTARY INFORMATION: This order directs that a referendum be conducted among pecan growers, grower-shellers, and importers to determine if the Pecan Promotion and Research Plan (Plan) (7 CFR part 1211) should be continued, terminated, or suspended. The Plan is effective under the Pecan Promotion and Research Act of 1990 (Act) (7 U.S.C. 6001 et seq.). The referendum is to be conducted among the growers, grower-shellers, and importers of pecans who during the period September 1, 1991, through August 31, 1993 (which period is hereby determined to be the representative period for purposes of this referendum), were engaged in the growing, growing-shelling or importation of pecans to ascertain whether growers, grower-shellers and importers favor continuance, termination or suspension of the Plan.

The Act provides that the Secretary shall conduct a referendum not later than 24 months after the effective date of the Plan to determine if pecan growers, grower-shellers, and importers favor the continuation, termination, or suspension of the Plan. The Plan became effective May 1, 1992. The Pecan Marketing Board, which administers the Plan, requested that the referendum be conducted prior to the 1993 pecan harvest season.

The Act requires the Secretary to suspend or terminate the Plan if its continuance is not favored by a majority of those growers, grower-shellers, and importers voting in the referendum.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the ballot materials that will be used in the referendum herein ordered have been submitted to and approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0093. It is estimated that there are approximately 21,000 growers and grower-shellers and approximately 25 importers of pecans who will be eligible to vote in this referendum. It will take an average of 1 minute for each grower, grower-sheller, or importer to complete the registration form and 5 minutes to complete the referendum ballot.

Arthur L. Pease, Research and Promotion Branch, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, is hereby designated the referendum agent of the Secretary of Agriculture to conduct this referendum. The procedure applicable to the referendum shall be the "Procedure for the Conduct of Referenda in Connection with the Pecan Promotion and Research Plan" (7 CFR part 1211.300). Pecan growers and grower-shellers must register in person at local ASCS offices. Importers may either register at the local ASCS offices or by mail to the Department. Mail registrations must be received by the Department on or before October 1, 1993. Registration to vote will be conducted at the ASCS offices from September 27 through October 1, 1993. Voters registering at the ASCS offices will be given a ballot which will be returned to the Research and Promotion Branch in Washington, DC. Importers registering by mail will be sent, via overnight delivery, a ballot to complete and return by mail. The voting period is October 4 through October 6, 1993. Ballots must be postmarked no later than October 6, 1993, to be counted. Importers will be notified of

the referendum well in advance of the registration and voting periods.

List of Subjects in 7 CFR Part 1211

Administrative practice and procedure, Advertising, Agricultural research, Imports, Marketing agreements, Pecans, Promotion, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 6001 et seq.

Dated: July 28, 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–18463 Filed 8–2–93; 8:45 am]

BILLING CODE 3410–02–P

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 92–162–1]

RIN 0579–AA57

Quarantine Facilities for Birds

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to revise the bird importation regulations to allow imported birds to be quarantined upon arrival in the United States at any privately owned bird quarantine facility located near an international airport or land-border port served by U.S. Customs, provided the facility meets the standards of the Animal and Plant Health Inspection Service. The current importation system, which allows bird importations through a limited number of "approved quarantine facilities," no longer appears necessary.

We are also proposing standards for incubator/hatcher areas and bird holding areas in quarantine facilities for hatching eggs of ratites. These standards would protect U.S. birds and poultry from disease without requiring importers of hatching eggs of ratites to comply with the more stringent standards appropriate for imported birds.

DATES: Consideration will be given only to comments received on or before October 4, 1993.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 92–162–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead (202–690–2817) to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Keith A. Hand, Senior Staff Veterinarian, National Center for Import-Export, VS, APHIS, USDA, room 768, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–5097.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR 92.100 through 92.107, "Subpart A—Birds" (referred to below as the regulations), regulate the importation of birds to prevent the introduction of communicable diseases of poultry and other domestic livestock into the United States. As a condition of importation, all imported birds must be quarantined for a minimum of 30 days upon their arrival in the United States. The birds must be quarantined in either a U.S. Department of Agriculture (USDA) quarantine facility or in a privately owned facility approved by the Administrator of the Animal and Plant Health Inspection Service (APHIS).

To qualify for designation as an "approved quarantine facility," and to retain that designation, a privately owned facility and its maintenance and operation must meet the minimum requirements of § 92.106(c)(1) through (c)(4) of the regulations. Those minimum requirements concern: (1) The supervision of the facility; (2) physical plant requirements; (3) operational procedures; and (4) additional requirements as to location, security, physical plant and facilities, sanitation, and other items that may be imposed by the Administrator. The approval of any facility is contingent upon the Administrator's determination that adequate APHIS personnel are available to provide the services required by the facility if approved. A facility designated as an "approved quarantine facility" retains that approval indefinitely; § 92.106(c)(6) provides for the refusal or withdrawal of approval. When more quarantine facility operators seek "approval" than APHIS personnel can accommodate, selection is based on a lottery system, set out in § 92.106(c)(5).

We are proposing to eliminate the current system of "allocating" and "approving" private quarantine facilities for the importation of birds, including the lottery system for adding such new facilities. Until now, this system has been necessary to ensure that APHIS personnel, whose services at bird quarantine facilities were in greater demand than we could deliver, were allocated according to a system that was both practical and fair. As a result of the Wild Bird Conservation Act of 1992 (Pub. L. 102–440; the Act), however, the conditions under which this system was designed to operate will no longer exist after October 22, 1993.

Effective October 23, 1993, in the interest of restoring bird populations to sustainable levels in their countries of origin, the Act sharply reduces the number of birds eligible for importation into the United States. The reduced supply of importable birds will cause an immediate and sharp drop in the number of bird import permit applications received by APHIS. Consequently, APHIS expects to have adequate personnel available to provide bird importation-related services upon request.

With the deliberate rationing of APHIS's limited resources no longer necessary, we have no reason to limit the number of quarantine facilities available for bird importations. We are therefore proposing to allow imported birds to be quarantined upon arrival in the United States at any privately owned bird quarantine facility located near an international airport or land-border port served by U.S. Customs, provided the facility meets the standards of the Animal and Plant Health Inspection Service (APHIS), as provided in the proposed regulations. The proposed regulations should enable all qualified persons interested in operating bird quarantine facilities to do so, and would allow importers access to privately owned quarantine facilities nationwide.

Further, the proposed regulations would specify standards, and handling procedures, for incubator/hatcher areas and chick holding areas in privately owned quarantine facilities for hatching eggs of ratites.

The proposed regulations would supersede all APHIS memoranda and policy statements concerning the importation of birds into the United States, through privately owned quarantine facilities.

A discussion of the proposed changes follows.

Bird Import Permit Issuance

As stated above, the primary purpose of this proposal is to relieve unnecessary restrictions on bird importers by removing the requirement that birds be imported through

"approved" quarantine facilities. Current standards for quarantine facilities and the handling of birds in quarantine, contained in §§ 92.106 (c)(1) through (c)(4), would not change substantively.

We propose to dismantle the current system by removing from §§ 92.106 (a), (b), and (c) all provisions for, and references to, "approved" quarantine facilities. Section 92.106(c)(5), which sets forth the supplementary procedures for selecting applicants for consideration for approval of bird quarantine facilities, including provisions for the lottery, would be removed.

Under the proposed regulations, if the quarantine facility named on the import permit application is found to comply with the standards for quarantine facilities and the handling procedures set forth in proposed §§ 92.106(c)(1) through (c)(4); if the Administrator determines that adequate APHIS personnel are available to provide the services required by the facility; and if the importer (permit applicant) satisfies the import permit requirements in proposed § 92.103, APHIS will, upon receipt of a $10,000 deposit and the Cooperative and Trust Fund Agreement completed by the importer, issue the import permit. If more qualified importers (permit applicants) apply to import birds through a specified port of entry than APHIS personnel can accommodate during the period requested, and all other conditions are met, APHIS will issue the permit on a first-come, first-served basis, based on time of receipt of the $10,000 deposit.

Currently, the regulations provide that APHIS will enter into a Cooperative and Trust Fund Agreement with the operator of the "approved" quarantine facility (upon receipt of a deposit approximately equal to the costs APHIS incurs during two quarantine periods). This arrangement, appropriate when APHIS regularly provides services to "approved" facilities only, would serve no purpose under the proposed regulations. Therefore, we propose to delete references to approved quarantine facilities, allowing importers to quarantine birds in any facility that meets the standards for quarantine facilities. In other words, we would provide services at the convenience of the importer, not the facility operator. Our sole contractual agreement would be with the importer. Responsibility for compliance with the quarantine standards, bird handling procedures, and other provisions of proposed §§ 92.106(c)(5), 92.106(d), and 92.106(e) would shift from the facility operator to the importer. Accordingly, we would enter into the Cooperative and Trust Fund Agreement directly with the importer. Proposed § 92.106(c)(5)(i) would require that the Cooperative and Trust Fund Agreement, signed by the importer, be accompanied by a deposit (money order or cashier's check) in the amount of $10,000, an amount equal to the approximate cost of services to be provided by APHIS during the quarantine period, factoring in the possibility of an extended quarantine or other contingency. For some time, APHIS has required a deposit of $10,000, to cover the cost of services provided during two 30-day bird quarantine periods ($5,000 each). This amount allows no margin for costs incurred when, for example, a schedule change unexpectedly occurs or the quarantine period is extended. The cost of services provided during a ratite hatching egg quarantine is approximately $7,500; a $10,000 deposit would cover the cost of services provided during one 72-day quarantine, plus costs incurred when, for example, the quarantine period is extended. The proposed deposit amount would enable APHIS to offset the effect of increased operating expenses, factoring in the possibility of an extended quarantine, while maintaining the amount of the required deposit at $10,000.

All responsibilities currently assumed by the "operator of the facility," would devolve to the importer. Proposed §§ 92.103(a) and 106(c), in particular, reflect this change. With the removal of all references to the "operator of the facility," the definition of "operator" would be unnecessary, and therefore removed from § 92.100.

Ports of Entry

Section 92.105(a) currently lists the 15 Customs ports of entry through which commercial birds, zoological birds, and research birds, including ratite hatching eggs, but excluding other ratites, may enter the United States to undergo mandatory inspection by an APHIS veterinary inspector. Proposed § 92.105(a) would allow these birds to be imported into the United States through any Customs port of entry that is an international airport (as are the 15 currently allowed ports) or, for convenience, a land-border port within 20 miles of an international airport serviced by Customs. (APHIS personnel would not be available to provide required services at other ports of entry.) In conjunction with the proposed elimination of quarantine facility "approvals," this easing of restrictions would allow privately owned quarantine facilities for birds to be located in every State.

Because of the minimal disease risk associated with hatching eggs of ratites, proposed § 92.105(a) would allow these hatching eggs to be shipped, in bond, from the initial Customs port of entry to the Customs port of entry at which they will be quarantined, for inspection at that port.

Special Provisions for Facilities for Ratite Hatching Eggs

We are proposing to establish standards for quarantine facilities for hatching eggs of ratites.

We would continue to require that each quarantine facility be located at least one-half mile from any other concentration of birds, as provided in § 92.106(c)(2)(i)(B), because of the disease risk separate lots of birds (including ratite chicks) pose to one another. To remove ambiguity on this point, we would remove the current reference to "multiple units for handling separate lots of birds," and would specify in proposed § 92.106(c)(2)(ii) that each quarantine facility would consist of a single, self-contained building. That is, no facility could consist of multiple units or buildings. However, we would allow hatching eggs from one lot to be placed in the cleaned and disinfected incubator/hatching area of a facility before the hatched chicks from the previous lot have been released from the bird holding area of the same unit, provided the quarantine facility complies with the proposed standards, discussed below. Cross-contamination between birds and hatching eggs is unlikely, and the proposed standards would ensure the biosecurity of the separate areas on both sides of the wall or wall with locked door that would be required to separate them. Section 92.106(b)(2) provides that each lot of hatching eggs of ratites be incubated for approximately 42 days, after which the hatched chicks must be held for approximately 30 days. The time required for cleaning and disinfecting the incubator/hatching area after the hatched chicks' move into the bird holding area, plus the shorter quarantine period for chicks, should ensure that all birds from one lot would be released from quarantine before the hatch of any chicks from the lot in the incubator/hatcher area. Live birds (hatched chicks) from different lots should at no time coexist in the same building. However, if a quarantine of hatched chicks is for any reason extended to the point that chicks from the second simultaneously quarantined lot have begun to hatch, all live birds in the building would assume the regulatory status of a single lot and, in

accordance with § 92.106(c)(3)(ii)(A), be released from quarantine on an all-in, all-out basis.

Specifically, proposed § 92.106(c)(2)(ii)(L) would prevent hatched chicks from one imported lot from contaminating, or being contaminated by, hatching eggs from a second imported lot, by requiring that each quarantine facility in which ratite hatching eggs from one lot are to be quarantined before the ratite chicks hatched from the previous lot have been released from quarantine have the following:

- A solid wall or wall with a lockable door to serve as an airtight seal separating the incubator/hatcher area from the chick holding area. The solid wall or wall-and-door must be impervious to water and able to withstand continued cleaning and disinfection.
- A necropsy or sample collection area in both the incubator/hatcher area and the chick holding area.
- Separate entrance, shower, toilet, and dressing room facilities for the exclusive use of personnel working with each separate lot. In accordance with proposed § 92.106(c)(2)(i)(B), personnel could work as handlers with only one lot of ratite hatching eggs (including hatched chicks), for the duration of the quarantine of that lot.

Further, proposed § 92.106(c)(2)(ii)(M) would provide for an optional sun room attached to the chick holding area in a quarantine facility for hatching eggs of ratites. At the request of importers who are convinced that a sun room would enhance the health, and improve the life expectancy, of hatched chicks, we have established the following requirements for any such sun room: A roof, such as double-mesh screening or glass, would be required to prevent free-flying birds from entering the chicks' enclosure or otherwise coming into contact with the chicks. The sun room would be required to have a wall with a lockable door connecting it to the chick holding area. As elsewhere in the quarantine areas, this wall, and any other walls used to enclose the sun room, as well as the flooring, would be required to be impervious to water and able to withstand continued cleaning and disinfection. However, the sun room would not be required to be separated from the outside by walls, if it were enclosed by double-mesh screening, or its equivalent, in a concrete or concrete-block curb, at least 12 inches high, that forms the base for the screening and is impermeable to water and able to prevent the escape of water, manure, and debris to the surrounding area. A 6-foot high, chain-link perimeter fence or its equivalent must be located at least 10 feet from all portions of any screened sun room, and, to ensure that no ticks are within range of the sun room, the area between the sun room and the fence must be vegetation-free. Additionally, to prevent entry by trespassers, the perimeter fence must be topped with barbed wire or equipped with an equivalent security system. Also for security, personnel from the chick holding area would be required to be in attendance at all times chicks are in the sun room, whether it is walled or screened.

Proposed § 92.106(c)(3)(i)(A)(*3*) would require personnel to shower when entering and leaving the ratite hatching egg unit. Personnel would not have to shower before moving between the incubator/hatcher area and the chick holding area within one unit, if the eggs and chicks belonged to the same lot.

Finally, proposed § 92.106(c)(3)(ii)(A)(*1*) would allow ratite hatching eggs comprising a single lot to be placed in the quarantine facility in stages for 15 days, beginning on the date the first shipment reaches the facility and ending with receipt of the last shipment 15 days later. Incremental shipments would afford importers the flexibility necessary to collect and transport eggs comprising one lot within a 15-day period experience has shown to be realistic.

The proposed regulations would incorporate a number of miscellaneous editorial changes occasioned by the substantive changes discussed above. An unrelated editorial change would clarify references to the Administrator in § 92.106(a), by removing the term "Veterinary Services," after the word "Administrator."

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

While the proposed regulations would promote competition in the bird importation industry in the United States, the Wild Bird Conservation Act of 1992 provides for the immediate prohibition of importations into the United States of certain exotic bird. Specifically, from October 23, 1992 through October 22, 1993, an importation quota, set at Fiscal Year 1991 import levels, applies to all species of exotic birds listed in the Appendices to the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES). After October 22, 1993, the importation of all wild-caught exotic birds (species listed in the Appendices to CITES) will be prohibited.

Cockatiels and budgerigars are among the few exotic birds that are not listed in the Appendices to CITES and are imported into the United States. Because these birds breed well in captivity, and are therefore readily available in the United States, they are imported in very low volumes.

Hatching eggs of ostriches and other ratites are unaffected by the Wild Bird Conservation Act of 1992. Therefore, potential importers of these eggs are likely to benefit from easier access to privately operated quarantine facilities. Our records indicate that entities involved in the hatching egg industry concentrate on ostrich eggs; we therefore expect the proposed rule to affect primarily the ostrich egg industry. Because ratites other than hatching eggs are not allowed to be quarantined in privately operated facilities, importers of ratites other than hatching eggs would not be affected by the proposed rule.

Of the approximately 45 USDA-approved bird quarantine facilities now operating, fewer than 20 are equipped with hatcheries able to facilitate the importation and incubation of ratite hatching eggs. The proposed rule could double, or possibly triple, this number. However, because the number of eggs available for import is limited, not least by the export restrictions of other countries, a significant increase in the total number of ostrich egg importations appears unlikely. Further limiting the domestic effects of increased importations is the poor success rate of imported hatching eggs. Of ratite hatching eggs imported into the United States since 1991, no more than 14.2 percent have been released as live chicks.

Domestic ratite production has grown rapidly in recent years. Between 2,000 and 3,000 ostrich farmers own between 2 and 200 adult ostriches each. The average flock size is four adult ostriches;

fewer than 12 farms are estimated to own large flocks with 50 to 200 ostriches each. All ostrich producers would be considered small entities.

In the short run, domestic ostrich producers could experience a minor adverse economic impact if more ostrich hatching eggs are imported and domestic prices decline as a result. This will depend on whether demand continues to increase faster than supply, and on the corresponding effect on prices. In the long run, the domestic ratite industry is expected to benefit from increased imports. An expanded domestic supply will cause U.S. prices for ratites and ratite products to drop, allowing more people access to the industry. It is anticipated that reduced prices will lead to larger domestic populations of ostriches, a change that would benefit consumers and at the same time enhance the economic viability of commercial ratite breeding, slaughter, feather, and leather markets.

While easing access to quarantine facilities could, in the short term, increase the number of ostrich egg importations, the effect on the U.S. supply of ostriches is not expected to be significant, based on the current success rate for hatching imported ratite eggs.

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

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule will be submitted for approval to the Office of Management and Budget. Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please send a copy of your comments to: (1) Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, and (2) Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250.

List of Subjects in 9 CFR Part 92

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 92 would be amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 would be revised to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

§ 92.100 [Amended]

2. In § 92.100, the definition of "Operator" would be removed.

§ 92.103 [Amended]

3. Section 92.103 would be amended as follows:

a. In the heading, the footnote would be removed.

b. In paragraph (a)(1), in the middle of the first sentence, the phrase "from any part of the world" would be removed and the phrase "into the United States" would be added in its place.

c. In paragraph (a)(1), the second and third sentences would be revised, to read as set forth below.

d. In paragraph (a)(1), the fourth and fifth sentences would be designated as new paragraph (a)(1)(xiii), and new paragraphs (a)(1)(i) through (xii) would be added, to read as set forth below.

e. Paragraph (a)(2)(i) would be amended by removing the word "also" from the introductory clause; by adding the phrase "the lack of APHIS personnel;" immediately after the fourth semicolon; by removing the final period and adding a comma and the term "such as if:" in its place; and by adding new paragraphs (a)(2)(i)(A), (B), (C), and (a)(3), to read as set forth below.

§ 92.103 Application permits for birds; and reservation fees for space at quarantine facilities maintained by APHIS.

(a) * * *

(1) * * * The importer (permit applicant) shall submit a completed VS form 17–128 for ratites or hatching eggs of ratites; or, for other birds, a completed VS form 17–129; or shall submit a document that states that it is an application for a permit to import ratites, hatching eggs of ratites, or birds other than ratites or hatching eggs of ratites. The application [7] must include the following information:

(i) The name, address, and telephone number of the importer;

(ii) The status of the importer, such as individual, partnership, or corporation (if incorporated, include State where incorporated and date of incorporation);

(iii) Name and address of the quarantine facility;

(iv) Date of intended quarantine;

(v) The purpose of the importation;

(vi) The country of origin;

(vii) The name and address of the exporter;

(viii) The port of embarkation in the foreign country;

(ix) The mode of transportation, route of travel, and port of entry in the United States;

(x) The name and location of the quarantine facility in the United States to which delivery will be made from the port of entry, in accordance with § 92.106(c)(5); and

(xi) A drawing of the floor plan for the facility showing the location of the bird holding area; equipment storage areas; office areas; clothes storage and change areas; feed storage areas; necropsy areas (showing entry and refrigeration); washing areas for equipment; shower areas; ventilation arrangements; and entries and exits; and, for a facility for hatching eggs of ratites in which the hatching eggs of one lot may be quarantined at the same time as the hatched chicks from the previously quarantined lot, the incubation/hatcher and bird (chick) holding areas;

(xii) Date and certification, by signature of the importer (permit applicant), after the following language:

"I certify that the information provided herein is true and correct to the best of my knowledge and belief, and agree to comply with the applicable regulations in title 9, Code of Federal Regulations, §§ 92.100 through 92.107."

* * * * *

(2) * * *

(i) * * *

(A) Any requirement of this subpart is not complied with; or

(B) The importer (permit applicant) or any person responsibly connected with the importation has been convicted of

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[7] VS import permit application forms are available from local offices of Veterinary Services, which are listed in telephone directories, or from the Administrator, c/o National Center for Import-Export, VS, APHIS, USDA, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. For other permit requirements for birds, the regulations issued by the U.S. Department of the Interior (title 50, Code of Federal Regulations, parts 14 and 17) should be consulted.

any crime under any law regarding the importation or quarantine of any animal or bird; or

(C) The importer (permit applicant) or any person responsibly connected with the importation has been convicted of any crime involving fraud, bribery, extortion, or any other crime indicating he or she lacks the integrity needed for the conduct of operations affecting the importation of commercial birds, research birds, or zoological birds.

* * * * *

(3) If APHIS receives more than one application for a permit to import birds through a specified port of entry at approximately the same time, such that APHIS personnel could provide services to only one importer (permit applicant) who requests them, APHIS will issue the permit to the first importer who meets the requirements of this subpart to deposit, with the Administrator, the completed cooperative and trust fund agreement, accompanied by the required deposit.

* * * * *

4. In § 92.105, paragraph (a) would be revised to read as follows:

§ 92.105 Inspection at the port of entry.

(a) All commercial birds, zoological birds, and research birds, including hatching eggs of ratites, but excluding other ratites, imported into the United States, must be inspected by the port veterinarian at the Customs port of entry, which may be any international airport, or any land-border port within 20 miles of an international airport, serviced by Customs. However, hatching eggs of ratites may be shipped, in bond, from the port of first arrival to the Customs port of entry at which they will be quarantined, for inspection at that port.

* * * * *

§ 92.106 [Amended]

5. Section 92.106 would be amended as follows:

a. Paragraph (a), in the first sentence, the phrase "from any part of the world" would be removed and the phrase "into the United States" would be added in its place; the phrase "at one of the ports of entry specified in § 92.105(a)," would be removed and the phrase "at a Customs port of entry, as provided in § 92.105(a)," would be added in its place; and at the end of the first sentence, the phrase "which have been approved by the Administrator as provided in paragraph (c) of this section." would be removed and the phrase "that meet the requirements of paragraph (c) of this section." would be added in its place.

b. Paragraph (a), in the first and third sentences, the term "Veterinary Services," would be removed.

c. Paragraph (a), in the sixth sentence, the term "an approved quarantine facility" would be removed and the term "a privately owned quarantine facility" would be added in its place, and the words "operator of the facility" would be removed and the word "importer" would be added in its place.

d. Paragraph (a), in the seventh sentence, the term "the operator of the facility and" would be removed.

e. Paragraph (b)(2), the second sentence would be amended by removing the words "approved by the Administrator in accordance with" and adding the words "that meets the requirements of" in their place.

f. Paragraph (b)(4), the first sentence would be amended by adding the word "of" after the word "free".

g. Paragraph (c), the heading and introductory text would be revised to read as set forth below.

h. Paragraph (c)(1) would be amended by removing the words "one of the ports listed in § 92.105(a)" and adding the words "the Customs port of entry" in their place.

i. Paragraph (c)(2)(i), the introductory text would be amended by removing the word "The" and adding the words "Each privately owned bird" in its place.

j. Paragraph (c)(2)(i)(A) would be amended by adding the word "metropolitan" after the word "immediate".

k. Paragraph (c)(2)(i)(B), the first sentence would be amended by removing the word "approved" and adding the word "bird" in its place; the second sentence would be amended by adding the term "the efficiency of the air filtration system of the quarantine facility," after the term "winds," and the third sentence would be removed.

l. Paragraph (c)(2)(ii), the introductory text would be revised to read as set forth below.

m. Paragraph (c)(2)(ii)(K) would be amended by removing the period at the end of the sentence and adding a semicolon in its place.

n. New paragraphs (c)(2)(ii)(L) and (M) would be added to read as set forth below.

o. Paragraph (c)(3), the heading would be italicized and the introductory text would be amended by removing the phrase "To retain designation as an approved quarantine facility, the" and adding in its place the word "The".

p. Paragraphs (c)(3)(i)(A) and (A)(1), the term "or the incubator/hatcher area" would be added after the term "bird holding area" both times it appears.

q. Paragraph (c)(3)(i)(A)(3) would be revised to read as set forth below.

r. A new paragraph (c)(3)(i)(A)(4) would be added to read as set forth below.

s. Paragraph (c)(3)(i)(B), the term "operator of the facility" would be removed and the term "importer" would be added in its place.

t. New paragraphs (c)(3)(ii)(A)(1) and (A)(2) would be added to read as set forth below.

u. Paragraphs (c)(3)(ii)(D) and (E), the term "facility operator" would be removed each time it appears, and the term "importer" would be added in its place.

v. Paragraph (c)(3)(iii), the term "operator of the facility" would be removed both times it appears, and the term "importer" would be added in its place.

w. Paragraph (c)(5) and (c)(6) would be removed, and paragraph (c)(7) would be redesignated as paragraph (c)(5).

x. Newly redesignated Paragraph (c)(5), the introductory text would be amended by removing the term "operator of approved quarantine facilities" and adding "importer at a privately owned quarantine facility" in its place.

y. Newly redesignated Paragraphs (c)(5)(i) and (c)(5)(ii) would be revised to read as set forth below.

z. Newly redesignated Paragraph (c)(5)(iii), in the heading of the Cooperative and Trust Fund Agreement, the word "OPERATOR" would be removed and the word "IMPORTER" would be added in its place, and the word "Services" would be removed and the word "Service" would be added in its place.

aa. Newly redesignated Paragraph (c)(5)(iii), the word "approved" would be removed in the following places:

i. First undesignated paragraph.

ii. Paragraphs (A)(1), (A)(3), (A)(5), (A)(6), and (A)(8).

iii. Paragraph (A)(20) both times it appears.

iv. Paragraph (B)(6).

v. Paragraph (C)(1) both times it appears.

bb. Newly redesignated Paragraph (c)(5)(iii), in the second undesignated paragraph, the term "Cooperator represents parties" would be removed and the term "Importer is" would be added in its place.

cc. Newly redesignated Paragraph (c)(5)(iii), the word "Cooperator" would be removed and the word "Importer" would be added in its place, in the following places:

i. In the third and fourth undesignated paragraphs.

ii. Paragraphs (A), (A)(2), (A)(3), and (A)(4) twice.

iii. Paragraph (A)(14) both times it appears.

iv. Paragraph (A)(18) both times it appears.

v. Paragraph (B)(2) three times it appears.

vi. Paragraph (B)(4).

vii. Paragraph (B)(6) three times it appears.

viii. Paragraph (B)(7) three times it appears.

ix. Paragraph (C)(3).

x. After paragraph (C)(5), below the first signature line.

dd. Newly redesignated Paragraph (c)(5)(iii)(A)(2), at the end of the first sentence, the word "a" would be removed and the word "the" would be added in its place.

ee. Newly redesignated Paragraph (c)(5)(iii)(A)(3), the last sentence would be revised to read as set forth below.

ff. Newly redesignated Paragraph (c)(5)(iii), at the end of paragraph (A)(5), the reference "92.109(c)" would be removed and the reference "92.106(c)" would be added in its place.

gg. Newly redesignated Paragraph (c)(5)(iii)(A)(19) would be revised to read as set forth below.

hh. Newly redesignated Paragraph (c)(5)(iii), at the end of paragraph (A)(20), the words "as provided in part 92 of 9 CFR." would be removed and the words "contained in title 9, Code of Federal Regulations, § 92.106(c)." would be added in their place.

ii. Newly redesignated Paragraph (c)(5)(iii)(B)(2) would be amended by removing the words "on a quarterly basis, or".

jj. Newly redesignated Paragraph (c)(5)(iii)(B)(3) would be removed and paragraphs (B)(4), (B)(5), (B)(6), and (B)(7) would be redesignated as paragraphs (B)(3), (B)(4), (B)(5), and (B)(6).

kk. Newly redesignated Paragraph (c)(5)(iii), in the third sentence of newly redesignated paragraph (B)(5), the words "the designated shall" would be removed and the words "the designated employee shall" would be added in their place.

ll. Newly redesignated Paragraph (c)(5)(iii)(C)(2), the reference "(c)(7)(iii)(A)(16)" would be removed and the reference"(c)(5)(iii)(A)(16)" would be added in its place.

mm. Newly redesignated Paragraph (c)(5)(iii), in footnote 13 to paragraph (C)(3), the term "operator of a bird quarantine facility" would be removed and the word "importer" would be added in its place.

nn. Newly redesignated Paragraph (c)(5)(iii)(C)(5), the first sentence would be amended by removing the word "indefinitely." and adding the words "until the permitted lot of birds is released from quarantine." in its place.

oo. Paragraph (d), the introductory language would be amended by removing the word "operator" and adding the word "importer" in its place, and by removing the reference "paragraph (d)" and adding the reference "paragraph (c)" in its place.

§ 92.106 Quarantine requirements.

* * * * *

(c) *Standards for privately owned quarantine facilities and handling procedures for importation of birds.* Before the Administrator will issue an import permit for a lot of birds, the Administrator must determine that the privately owned quarantine facility to be used to quarantine birds imported into the United States (the facility) and its maintenance and operation meet the minimum requirements of paragraphs (c)(1) through (c)(5) of this section, that adequate APHIS personnel are available to provide services required by the facility, and that a Cooperative and Trust Fund Agreement between the importer and the Department has been executed, and the required funds have been deposited, in accordance with that agreement. The cost of the facility and all costs associated with its maintenance and operation must be borne by the importer, in accordance with the provisions of paragraph (e) of this section.

* * * * *

(2) * * *

(ii) *Construction.* Each quarantine facility shall consist of a single, self-contained building, which shall:

* * * * *

(L) In addition, a facility for hatching eggs of ratites, in which the hatching eggs of one lot may be quarantined at the same time as the hatched chicks from the previously quarantined lot, shall:

(*1*) Have a wall or a wall with a lockable door separating the incubator/hatcher area from the bird (chick) holding area, and this wall or wall-with-door shall provide an airtight seal between the two areas, shall be impervious to water, and shall be able to withstand continued cleaning and disinfection;

(*2*) Have a necropsy or sample collection area in both the incubator/hatcher area and the bird (chick) holding area; and

(*3*) Have separate entrances, showers, toilets, and dressing room facilities for the exclusive use of personnel working in the incubator/hatcher area and the bird (chick) holding area.

(*M*) If a facility for hatching eggs of ratites has a sun room, the sun room shall be connected to the chick holding area by a wall with a lockable door. This wall; the other walls, if any; and the flooring, must be impervious to water and able to withstand continued cleaning and disinfection.

(*1*) Double-mesh screening or its equivalent set in a concrete or concrete block curb may replace any of the three exterior walls, provided this curb is at least 12 inches high, impermeable to water, and able to prevent the escape of water, manure, and debris to the surrounding area. A 6-foot-high, chain-link fence with barbed wire at the top, or equivalent security system, must be located at least 10 feet from the double-mesh screening; this peripheral area must be vegetation-free.

(*2*) The sun room shall have a roof, such as a double-mesh-screened roof or a glass roof, that is both impervious to free-flying birds and capable of preventing contact between chicks and free-flying birds.

(*3*) Be attended by personnel working in the bird (chick) holding area whenever chicks are in the sun room.

* * * * *

(3) * * *

(i) * * *

(A) * * *

(*3*) Shower when entering and leaving any bird holding area, any incubator/hatcher area, and any necropsy area. Showering when moving between the incubator/hatcher area and the bird holding area is not required when the eggs in the hatching area and the chicks in the holding area are part of the same lot;

(*4*) Work exclusively with one lot of birds until the lot's release from quarantine, and have no contact with other birds or poultry until 3 days after the release date.

* * * * *

(ii) * * *

(A) * * *

(*1*) Hatching eggs of ratites comprising a single lot may be added to the facility in stages, provided the entire lot has been placed in the facility no later than 15 days after the arrival of the first shipment.

(*2*) If hatching eggs of ratites begin to hatch in the incubator/hatcher area while ratite chicks from the previously quarantined lot remain in the bird (chick) holding area, then the separate lots assume the status of a single lot, and will be released from quarantine in accordance with paragraph (c)(3)(ii)(A) of this section.

* * * * *

(5) * * *

(i) When the Administrator determines that a privately owned

quarantine facility meets the requirements set forth in paragraph (c) of this section, the Department and the importer shall execute a Cooperative and Trust Fund Agreement, as specified in paragraph (c)(6)(iii) of this section. In conjunction with the Cooperative and Trust Fund Agreement, the importer shall deposit with the Administrator a money order or cashier's check in the amount of $10,000, to cover all costs incurred by the Department in providing services in accordance with the provisions of the Cooperative and Trust Fund Agreement. Any unobligated funds will, upon request, be returned to the importer, after the birds' release from quarantine.

(ii) The Administrator may provide services required by the importer at a privately owned quarantine facility for the importation of birds on a first come, first served basis, if adequate APHIS personnel are available to provide those services, upon determining that the importer has executed a Cooperative and Trust Fund Agreement, and has deposited funds in the amount of $10,000 in connection with that agreement, as specified in paragraph (c)(6)(iii) of this section.

(iii) * * *

(A) * * *

(3) * * * This restriction ceases to apply 3 days after the date the birds with which the designated personnel have been in contact are released from quarantine.

* * * * *

(19) To deposit with the Service, upon execution of this agreement, a money order or cashier's check, in the amount of $10,000, to be used by the Service to defray all expenses incurred by the Service in providing services required.

* * * * *

Done in Washington, DC, this 27th day of July 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93-18215 Filed 8-2-93; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93-NM-28-AD]

Airworthiness Directives; Fokker Model F28 Mark 0100 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 Fokker Model F28 Mark 0100 series airplanes. This proposal would require replacement of the bottom joint fittings and modification of these new bottom joint fittings, the main landing gear (MLG) rear spar fittings, and the rear spar webs by cold-expanding the bolt holes. This proposal is prompted by full-scale fatigue testing of a Fokker Model F28 Mark 0100 series airplane, which revealed cracks in the MLG rear spar fitting. The actions specified by the proposed AD are intended to prevent loss of the structural integrity of the MLG attachments.

DATES: Comments must be received by September 27, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-28-D, 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 Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM-13, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2141; 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-28-D." 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-03, Attention: Rules Docket No. 93-NM-28-D, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, recently notified the FAA that an unsafe condition may exist on certain Fokker Model F28 Mark 0100 series airplanes. The RLD advises that during full-scale fatigue testing of a Fokker Model F28 Mark 0100 series airplane, cracks were found in the main landing gear (MLG) rear spar fitting at wing STA.2800 and in the rear spar web at STA.2900. Cracks in these areas, if not detected and corrected, could result in loss of the structural integrity of the MLG attachments.

Fokker has issued Service Bulletin SBF100-57-020, dated April 27, 1992, that describes procedures for replacement of the bottom joint fittings and modification of these new bottom joint fittings, the MLG rear spar fittings, and the rear spar webs by cold-expanding the bolt holes. Fokker has also issued Service Bulletin Change Notification (SBCN) SBF100-57-020/02, dated April 20, 1993, that corrects the hole positions in Figure 2 of the service bulletin. The RLD classified these service documents as mandatory and issued Netherlands Airworthiness Directive BLA No. 92-075, dated July 10, 1992, in order to assure the continued airworthiness of these airplanes in the Netherlands.

This airplane model is manufactured in the Netherlands 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 RLD has kept the FAA informed of the situation described above. The FAA has

examined the findings of the RLD, 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 replacement of the bottom joint fittings and modification of these new bottom joint fittings, the MLG rear spar fittings, and the rear spar webs by cold-expanding the bolt holes. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 52 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 27 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $2,100 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $186,420, or $3,585 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:

Fokker: Docket 93–NM–8–D.

Applicability: Model F28 Mark 0100 series airplanes; serial numbers 11244 through 11390 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of the structural integrity of the main landing gear (MLG) attachments, accomplish the following:

(a) Prior to the accumulation of 13,500 total landings, or within one year after the effective date of this AD, whichever occurs later, replace the bottom joint fittings and modify these new bottom joint fittings, the MLG rear spar fittings, and the rear spar webs by cold-expanding the bolt holes in accordance with Fokker Service Bulletin SBF100–57–20, dated April 27, 1992, as revised by Fokker Service Bulletin Change Notification (SBCN) SBF100–57–20/02, dated April 20, 1993.

(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–13, 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–13.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–13.

(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 July 28, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–18419 Filed 8–2–93; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 71

[Airspace Docket No. 93–ASO–11]

Proposed Establishment of Class E Airspace; Dunnellon, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Dunnellon, Florida. A Standard Instrument Approach Procedure (SIAP) for Runway 23 at the Dunnellon Airport has recently been developed and controlled airspace extending upward from 700 feet above the surface of the earth, is needed to contain instrument flight rules (IFR) operations when utilizing this SIAP. Airspace Reclassification, which becomes effective September 16, 1993, will discontinue the use of the term "transition area" and in its place use the term "Class E airspace" for airspace extending upward from 700 feet or more AGL. The intended effect of this proposal is to provide adequate Class E airspace for IFR operators executing the developed SIAP.

DATES: Comments must be received on or before September 19, 1993.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 93–ASO–11, Manager, System Management Branch, ASO–530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, room 652, 3400 Norman Berry Drive, East Point, Georgia 30344; telephone (404) 763–7204.

FOR FURTHER INFORMATION CONTACT: Armando Castro, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 763–7646.

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 aspects of the proposal. Communications should identify the airspace docket and be

submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93–ASO–11." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, 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 this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, System Management Branch (ASO–530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. 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 Class E airspace at Dunnellon, Florida. A Runway 23 SIAP to serve the Dunnellon Airport based on the Ocala VORTAC has been developed. Controlled airspace extending upward from 700 feet above the surface of the earth, a transition area, is needed to contain IFR operations when utilizing this SIAP. Airspace Reclassification, which becomes effective September 16, 1993, will discontinue the use of the term "transition area" and in its place use the term "Class E airspace". The intended effect of this proposal is to provide adequate Class E airspace for IFR operators executing the developed SIAP.

The coordinates for this airspace docket are based on North American Datum 83. Designations for Class E airspace extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 effective September 16, 1993 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document would be published subsequently in the Order. If approved, the operating status of the airport would change from VFR operations only to include IFR operations concurrent with publication of the SIAP.

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

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 in effect as of September 16, 1993, 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 in effect as of September 16, 1993 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

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

* * * * *

ASO FL E5 Dunnellon, FL [New]
Dunnellon Airport, FL
(lat. 29° 03'45" N, long. 82° 22'38" W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Dunnellon Airport, excluding that portion that coincides with the Ocala, FL, Class E airspace.

* * * * *

Issued in East Point, Georgia, on June 23, 1993.

Walter E. Denley,
Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 93–18452 Filed 8–2–93; 8:45 am]
BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–ASO–9]

Proposed Establishment of Class E Airspace; Fort Pierce, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Fort Pierce, Florida. A Standard Instrument Approach Procedure (SIAP) for Runway 27 at the St. Lucie County international airport has recently been developed and controlled airspace to the surface, a control zone arrival extension, is needed to contain instrument flight rules (IFR) operations when utilizing this SIAP. Airspace Reclassification which becomes effective September 16, 1993, will discontinue the use of the term "control zone arrival extension" and in its place use the term "Class E airspace". The intended effect of this proposal is to provide adequate Class E airspace to contain instrument approach procedures in an area outside the existing Class D and Class E surface areas.

DATES: Comments must be received on or before September 15, 1993.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 93–ASO–9, Manager, System Management Branch, ASO–530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, room 652, 3400 Norman Berry Drive, East Point, Georgia 30344; telephone (404) 763–7646.

FOR FURTHER INFORMATION CONTACT: Armando Castro, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 763–7646.

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 aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93–ASO–9." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, 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 this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, System Management Branch (ASO–530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. 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 Class E arrival extension at Fort Pierce, Florida. A Runway 27 SIAP to serve the St. Lucie County International Airport based on the Fort Pierce Non-directional Beacon (NDB) has been developed. Controlled airspace to the surface, a control zone arrival extension, is needed to contain IFR operations when utilizing this SIAP. Airspace Reclassification which becomes effective September 16, 1993, will discontinue the use of the term "control zone arrival extension" and in its place use the term "Class E airspace". The intended effect of this proposal is to provide adequate Class E airspace to contain instrument approach procedures in an area outside the existing Class D and Class E surface areas.

The existing Class D and Class E surface areas would not completely contain the developed SIAP. Because the northeast arrival extension is greater than two miles, the FAA is proposing to establish the northeast arrival corridor beyond the Class D surface area as Class E airspace. This Class E airspace would contain the instrument approach procedure in controlled airspace without imposing a requirement on aircraft operating under visual flight rules within the Class E area to communicate with the Fort Pierce air traffic control tower.

The coordinates for this airspace docket are based on North American Datum 83. Designations for Class E airspace designated as an extension to a Class D surface are published in Paragraph 6004 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 effective September 16, 1993 (58 FR 36298; July 6, 1993). The Class E airspace designation 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 effect 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

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 in effect as of September 16, 1993 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 in effect as of September 16, 1993 of the Federal Aviation Administration Order 7400.9A, Airspace Designation and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Para. 6004 Class E airspace designated as an extension to a Class D surface.

ASO FL E4 Fort Pierce, FL [New]

Fort Pierce, St. Lucie County International Airport, FL
(lat. 27°29'42"N, long. 80°22'07" W)
Vero Beach VORTAC
(lat. 27°40'42"N, long. 80°29'23" W
Fort Pierce NDB
(lat. 27°29'13" N, long. 80°22'23" W)

That airspace extending upward from the surface within 1.7 miles each side of the Vero Beach VORTAC 150 radial extending from the 4.2-mile radius to 7 miles southeast of the Vero Beach VORTAC, within 2 miles each side of the 300 bearing from the Fort Pierce NDB, extending from the 4.2-mile radius to 7 miles

* * * * *

Issued in East Point, Georgia, on June 23, 1993.

Walter E. Denley,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 93–18453 Filed 8–2–93; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 73

[Airspace Docket No. 93–ASO–2]

Proposed Establishment of Restricted Area R–3008D, and Amendment of Restricted Areas R–3008A, R–3008B, and R–3008C; Grand Bay Weapons Range, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would establish a new Restricted Area R–3008D above the existing Restricted Areas R–3008A, R–3008B, and R–3008C at the Grand Bay Weapons Range, Moody Air Force Base (AFB), GA. The proposed R–3008D is required to accommodate high altitude/high angle weapons delivery training at the Grand Bay Weapons Range. In addition, the designated controlling agency for Restricted Areas R–3008A, R–3008B, and R–3008C would be changed from Jacksonville Air Route Traffic Control Center (ARTCC) to Valdosta Approach Control.

DATES: Comments must be received on or before September 23, 1993.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASO–500, Docket No. 93–ASO–2, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Military Operations Program Office, Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9361.

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–ASO–2." The postcard will be date/time stamped and returned to the commenter. Send comments on environmental and land use aspects to: 347 CES/DEEV, Moody AFB, GA 31699–5000, telephone: (912) 333–3069. 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 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 this 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 73 of the Federal Aviation Regulations (14 CFR part 73) to establish a new Restricted Area R–3008D above the existing Grand Bay Weapons Range Restricted Areas R–3008A, R–3008B, and R–3008C, located at Moody AFB, GA. The proposed new restricted area would coincide with the existing lateral boundary of the range and would extend from 10,000 feet mean sea level (MSL) to but not including FL 230. The maximum altitude of the existing Grand Bay Weapons Range is 10,000 feet MSL. In the past, this altitude provided adequate airspace for aircrew training, which had focused on low and medium altitude weapons delivery tactics. However, during Operation Desert Storm, it was discovered that training in high altitude deliveries is also required. The existing Grand Bay Weapons Range lacks sufficient vertical airspace to accomplish this required training. The proposed R–3008D would raise the upper limit of the Grand Bay Weapons Range to FL 230, thus providing the airspace needed for high altitude/high angle delivery training. The proposed R–3008D would be a joint use restricted area, activated on a "real-time" basis. The airspace would be returned to the controlling agency when it is not required for hazardous military activities. The U.S. Air Force does not expect any increase in the total annual usage of the Grand Bay Weapons Range as a result of this proposal.

In addition, this notice proposes to change the designated controlling agency for the existing Restricted Areas R–3008A, R–3008B, and R–3008C from Jacksonville ARTCC to Valdosta Approach Control. This amendment is consistent with a Letter of Agreement between Jacksonville ARTCC and Valdosta Approach Control wherein the airspace within the Grand Bay Weapons Range is delegated to Valdosta Approach Control during the time that the restricted areas are activated. The coordinates for this airspace docket are based on North American Datum 83. Section 73.30 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8A dated March 3, 1993.

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.

Environmental Impact

An environmental review of this proposal will be completed prior to an FAA final decision.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 73 as follows:

PART 73—[AMENDED]

1. The authority citation for 14 CFR part 73 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510, 1522; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69

§ 73.30 [Amended]

2. In each of the designations in § 73.30 listed below, remove the words "FAA, Jacksonville ARTCC" for the controlling agency and insert, in their place, the words "FAA, Valdosta Approach Control":

R–3008A Grand Bay Weapons Range, GA
R–3008B Grand Bay Weapons Range, GA
R–3008C Grand Bay Weapons Range, GA

3. Add the following designation in § 73.30 to read as follows:

R–3008D Grand Bay Weapons Range, GA [New]

Boundaries. Beginning at lat. 31°04'01" N., long. 83°01' 00" W.; to lat. 30°51'01" N., long. 83°01' 00" W.; to lat. 30°51'01" N., long. 83°08' 00" W.; to lat. 30°53'31" N., long. 83°09' 00" W.; to lat. 30°56'51" N., long. 83°10' 00" W.; to lat. 30°57'36" N., long. 83°11' 05" W.; to lat. 30°59'13" N., long. 83°10' 00" W.; to lat. 31°02'01" N., long. 83°09' 00" W.; to lat. 31°04'01" N., long. 83°08' 00" W.; to the point of beginning.

Designated altitudes. 10, 000 feet MSL to but not including FL 230.

Time of designation. 0700–1900 local time, Monday–Friday, other times by NOTAM six hours in advance.

Controlling agency. FAA, Valdosta Approach Control. Using agency. U.S. Air Force, 347th Fighter Wing, Moody AFB, GA.

Issued in Washington, DC, on July 26, 1993.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 93–18448 Filed 8–2–93; 8:45 am]

BILLING CODE 4910–13–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

15 CFR Part 500

[Docket No. 930788–3188]

Appeal Procedures for Violation of the Special Access and Special Regime Program Requirements

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Proposed rule; request for comments.

SUMMARY: This document sets forth proposed procedures to be followed in order for a company participating in the Special Access Program (SAP) or Special Regime Program (SRP) to appeal a finding for suspension from further participation in the programs for violating program requirements. In the summer of 1992, a number of SAP and SRP participants approached CITA to discuss amending the rules of the SAP and SRP to provide for some type of review of suspension decisions. In order to meet this request, CITA is proposing to establish an appeal procedure. Guidelines that will be developed by CITA to be used in determining whether and how long to suspend a company from further participation in the SAP and SRP will be published at the same time that these procedures are published in a final rule.

DATES: Comments must be received on or before September 2, 1993.

ADDRESSES: Comments may be mailed to the Chairman, Committee for the Implementation of Textile Agreements, room 3001, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Lori E. Goldberg, International Trade Specialist, Office of Textiles and Apparel, United States Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION: On February 20, 1986, the President announced a special program to guarantee access to the U.S. market for Caribbean-produced textile products assembled from fabric formed and cut in the United States. Since the 1986 announcement, Caribbean countries have entered into bilateral agreements with the United States under which guaranteed levels of access are permitted for the products made of U.S. formed and cut fabric. In June of 1986, CITA established the SAP to implement the bilateral agreements and to monitor companies' compliance with program requirements. On February 17, 1988, the United States and Mexico entered into a similar arrangement pursuant to a textile agreement which established the SRP. The SRP assures specific limits for goods assembled in Mexico from U.S. formed and cut fabric. As with the SAP, the SRP was established by CITA to implement the terms of the U.S.-Mexico textile agreement and to monitor companies' compliance with program requirements.

Although compliance with SAP and SRP requirements has generally been excellent, violations have been detected through periodic compliance reviews conducted by the United States Customs Service. Upon discovery of violations, CITA may take action to suspend companies from participation in the SAP and SRP. In the Summer of 1992, a number of SAP and SRP participants approached CITA to discuss amending the rules of the SAP and SRP to provide for some type of review of suspension decisions. In order to meet this request, CITA is proposing an appeal procedure.

Classification

1. The Provisions of the Administrative Procedures Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date are inapplicable because (i) this rule is procedural, and (ii) the SAP and SRP were established by CITA to implement the terms of the bilateral textile agreements with certain Caribbean countries and Mexico and accordingly, it involves a foreign affairs function of the United States. However, comments on this proposed rule will be considered in the context of this foreign affairs function of the United States.

2. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedures Act (5 U.S.C. 553) or by any other law, no initial or final Regulatory Flexibility Analysis has to be or will be prepared 95 U.S.C. 603(a), 604(a)).

3. This rule does not contain collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

4. The requirements of E.O. 12291 do not apply to this rule because it is being issued with respect to a foreign affairs function of the United States.

5. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 12612.

List of Subjects in 15 CFR Part 500

Textiles, Imports, Trade Agreements—Committee for the Implementation of Textile Agreements (CITA) Special Access and Special Regime Programs

For the reasons set out in the preamble, 15 CFR part 500 is proposed to be added to read as follows.

PART 500—APPEAL PROCEDURES FOR VIOLATION OF THE SPECIAL ACCESS AND SPECIAL REGIME PROGRAM REQUIREMENTS

Sec.

500.1 Purpose.
500.2 Applicability and Scope.
500.3 Definitions.
500.4 Compliance Review.
500.5 Director's Review.
500.6 Compliance Letter.
500.7 Charging Letter.
500.8 Answer.
500.9 Deadline for Submissions and Loss of Right to Appeal.
500.10 Director's Decision.
500.11 Decision Letter for Violation of Program Requirements
500.12 Hearing and Burden of Proof.
500.13 Judge's Decision.
500.14 Appeal to CITA.
500.15 CITA's Decision.
500.16 Ex Parte Contacts.
500.17 Separation of Functions.
500.18 Service of Charging Letter, Decision Letter and Judge's Decision.

Authority: Section 204 of the Agricultural Act of 1956 (7 U.S.C. 1854), as amended, and Executive Order 11651 (March 3, 1972) as amended.

§ 500.1 Purpose.

To provide a mechanism by which a company participating in the SAP or SRP may appeal a finding for suspension from further participation in the programs for violating program requirements.

§ 500.2 Applicability and scope.

This part applies to all importers participating in the Special Access Program or Special Regime Program.

§ 500.3 Definitions.

(a) *Program* means the Special Access and Special Regime Programs.

(b) *Participant* means any corporation, company, association, partnership, organization or other legal entity or natural person importing under the Program.

(c) *Judge* means an administrative law judge, appointed pursuant to 5 U.S.C. 3105 or detailed pursuant to 5 U.S.C. 3344, or an administrative judge from the Office of Administrative Law Judge, U.S. Department of Commerce.

(d) *Director* means Director or Acting Director of the Trade Data Division under the Director for the Office of Textiles and Apparel, U.S. Department of Commerce.

(e) *CITA* means the Committee for the Implementation of Textile Agreements.

(f) *Customs* means the U.S. Customs Service.

(g) *Compliance Review* means a post-entry review conducted by Customs at the Participant's place of business of documents proving that all goods entered under the Program were made from U.S. formed and cut fabric.

(h) *Compliance Letter* means a letter from the Director to a Participant stating that the Participant complied with Program requirements.

(i) *Charging Letter* means a letter from the Director to a Participant stating that the Participant failed to provide Customs with the requisite documentation during a Compliance Review or that it was evident based upon the review that foreign fabric was used.

(j) *Guidelines* means the set of criteria developed by CITA for the Director to use in determining whether and how long to suspend a Participant from further participation in the Program.

(k) *Decision Letter* means a letter from the Director to a Participant stating that the participant failed the Compliance Review, may be suspended from further participation in the Program for a specific period of time, and has the right to appeal this decision.

(l) *Days* means calendar days, except that a deadline that falls on a weekend or holiday shall be extended to the next working day.

§ 500.4 Compliance review.

Customs will conduct periodic Compliance Reviews of Participants participating in the Program to access information indicating whether Participants are complying with Program requirements as set forth in the **Federal Register** 51 FR 21208 (June 11, 1986), 52 FR 26057 (July 10, 1987), 53 FR 15274 (May 3, 1988), 53 FR 32421 (August 25, 1988) and 54 FR 50425 (Dec. 6, 1989). Customs will report its findings in writing to the Director.

§ 500.5 Director's review.

The Director will review Customs' report and determine whether

(a) The Participant is in compliance with Program requirements or

(b) The Participant has violated the Program for

(1) Failure to comply with Program document requirements, or

(2) Using foreign fabric.

§ 500.6 Compliance letter.

If the Director determines after reviewing Customs' report or as set forth in § 500.10(a)(3)(i), that the Participant is in compliance with all Program requirements, the Director will issue a letter informing the Participant of such compliance.

§ 500.7 Charging letter.

If the Customs' report indicates that

(a) The Participant did not provide the requisite documents to enable Customs to perform a complete review, or

(b) The Participant used foreign fabric, the Director will issue a Charging Letter by registered mail, return receipt requested, to the Participant:

(1) Requesting that the missing documentation be provided to Customs; or

(2) Setting forth each entry violation and requesting the Participant to submit to the Director an explanation of why foreign fabric was used.

§ 500.8 Answer.

The Participant shall have not more than fifteen [15] days after the date of receipt of the Charging Letter to provide Customs with the documentation requested or to provide the Director with the explanation requested, whichever is the case, unless the Participant provides a written request for an extension to the Director within that time period.

§ 500.9 Deadline for submissions and loss of right to appeal.

(a) If the Participant fails to file a timely answer to the Charging Letter or to request an extension of the time period to answer, it shall lose its right to appeal the Director's decision to the Judge and the Director's decision shall be deemed a final agency action.

(b) Notwithstanding paragraph (a) of this section, if within fifteen (15) days after the last date the answer was to be filed with the Director or Customs, the Participant provides the Director with a written explanation of its reasons for missing the deadline and provides the documentation or explanation requested in the Charging Letter, the Director may, in his discretion and considering the circumstances of the case, determine that the right to appeal is preserved.

(c) If the Participant seeks and is granted an extension of the time period to file an answer and fails to provide the documentation or explanation requested in the Charging Letter within the extended time period, it shall lose its right to appeal the Director's decision to the Judge and the Director's decision shall be deemed a final agency action.

(d) Notwithstanding paragraph (c) of this section, if within fifteen (15) days after the deadline date established by

the extension the Participant provides the Director with a written explanation of its reasons for missing the deadline and provides the documentation or explanation requested in the Charging Letter, the Director may, in his discretion and considering the circumstances of the case, determine that the right to appeal is preserved.

§ 500.10 Director's decision.

(a) If the Director concludes after reviewing

(1) Customs' report;

(2) The Participant's answer to the Charging Letter, if any; and

(3) Any other relevant information available:

(i) That no action is necessary, the Director will issue a Compliance Letter informing the Participant of the decision and the reasons therefor; or

(ii) That the Participant has violated the Program requirements and that action is necessary based on the Guidelines, the Director will issue a Decision Letter as set forth in § 500.11 and take steps, if appropriate, to implement suspension from further participation in the Program no earlier than forty-five [45] Days after Participant's receipt of the Charging Letter. The Director may suspend the Participant from further participation in the Program for up to three years.

(b) An assessment by Customs of liquidated damages against a bond posted by Participants does not prohibit the Director from suspending the Participant from further participation in the Program.

(c) The Director will not take into consideration any independent action taken by Customs regarding assessment or mitigation of liquidated damages against a bond in making a determination to suspend the Participant from further participation in the Program.

§ 500.11 Decision letter for violation of program requirements.

The Director will issue a Decision Letter to a Participant by registered mail, return receipt requested.

(a) *Contents of letter:*

(1) A statement of the precise violation(s) and the basis thereof;

(2) A statement of reasons for the decision and the date suspension from further participation in the Program, if any, it is to take effect;

(3) A statement that the Participant is entitled to appeal the Director's decision to a Judge unless the Participant is in default;

(4) A statement that the Participant is entitled to review the documents or other physical evidence upon which the charge is based and a description of the method for requesting access to, or copies of, such documents.

Excluded from such documents would be language relating to any impending or ongoing investigation of Participant by Customs; and

(5) A statement that the Participant has a right to retain counsel at the Participant's own expense for purposes of representation.

(b) Reserved.

§ 500.12 Hearing and burden of proof.

(a) *Request for hearing.* A Participant may request a formal oral (in-person presentation or telephone conference) or non-oral hearing on the Director's decision by submitting a written request to the Judge and one copy of the request to the Director not later than twenty [20] days after receipt of the Decision Letter, unless extended by the Judge for good cause shown upon a written motion by the Participant to the Judge and a copy to the Director, at the following addresses:

Office of Administrative Law Judge, Suite 4017, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC 20230.

Director, Office of Trade Data Division, Office of Textiles and Apparel, Room 3001, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC 20230.

(b) If the Participant fails to make a timely written request for an appeal of the Director's decision, then the Director's decision shall be deemed a final agency action.

(c) *Burden of proof.*

(1) The Director shall have the burden of proving that the Participant violated Program requirements and any aggravating factors by a preponderance of the evidence.

(2) The Participant shall have the burden of proving any affirmative defenses and any mitigating factors by a preponderance of the evidence.

(d) *Authority of the Judge.* The Judge has the authority to:

(1) Set and change the date, time and place of the hearing upon reasonable notice to the Participant and the Director;

(2) Hold conferences to identify or simplify the issues or to consider other matters that might aid in the expeditious disposition of the proceeding;

(3) Regulate the course of the hearings and the conduct of the Participant and Director and their respective representatives;

(4) Rule on motions and other procedural matters;

(5) Examine witnesses;

(6) Receive, rule on, exclude or limit evidence;

(7) Conduct any conference, argument, or hearing in person or by telephone; and

(8) Exercise such authority as necessary to carry out the responsibilities of the Judge for the Program.

(e) *Non-oral hearing.* The Participant and the Director may each file written submissions for consideration with the Judge no later than thirty [30] days after the date of the deadline for filing the request for a hearing, unless extended by the Judge for good cause shown upon a motion by either party to the Judge.

(f) *Oral hearing.* The Participant and the Director may each file written submissions for consideration with the Judge no later than five [5] days before the date of the scheduled hearing, unless extended by the Judge for good cause shown upon a motion by either party to the Judge.

(g) *Oral hearing procedures.*

(1) *Generally.* Hearings shall be conducted by the Judge. The Federal Rules of Evidence and the Federal Rules of Civil Procedure shall not apply. All evidentiary materials deemed by the Judge to be relevant and material to the hearing and not unduly repetitious will be received and given appropriate weight.

(2) *Scheduling a hearing.* The Judge shall set the date of the hearing and shall notify the Participant and the Director of the hearing date. All hearings will be held in Washington, D.C. unless the Judge determines, based upon good cause shown, that another location would better serve the interests of justice.

(3) *Rights of the parties.* At a hearing, each party will have the right to:

(i) Be represented by counsel;

(ii) Present oral argument;

(iii) Introduce and examine witnesses and submit physical evidence;

(iv) Confront and cross-examine adverse witnesses;

(v) Receive a transcript of the proceedings, at each party's own expense.

(4) *Testimony and record.* Persons testifying at the hearing will testify under oath or affirmation. A verbatim record of the hearing and of any other oral proceedings will be taken by a certified court reporter, transcribed and filed with the Judge. The Participant and the Director may obtain a copy of the transcript upon payment of proper costs. Upon such terms as the Judge deems just, he/she may direct that the testimony of any person be taken by deposition and may admit an affidavit as evidence, provided that the affidavit

shall have been filed and provided to the other party sufficiently in advance of the hearing to permit the other party to file and serve an objection thereto on the grounds that it is necessary that the affiant testify at the hearing and be subject to cross examination.

(5) *Failure to appear.* If the Participant or the Director fails to appear in person or by counsel at a scheduled hearing, the hearing may nevertheless proceed and a party's failure to appear will not affect the validity of the hearing or any proceedings or actions taken thereafter.

§ 500.13 Judge's decision.

(a) In making his/her determination in an oral or non-oral hearing, the Judge will take into consideration:

(1) The Customs' report;

(2) The criteria set forth in the Guidelines;

(3) The Charging Letter;

(4) The Answer;

(5) The Decision Letter;

(6) Written submissions;

(7) The oral presentations, transcript (if applicable) and exhibits (if any); and

(8) Any other information the Judge deems relevant.

(b) The Judge will notify the parties in writing by registered mail, return receipt requested, of the decision including a statement of reasons for the decision. Such notice shall also include a statement that the Participant and the Director are entitled to an appeal of the Judge's decision to CITA.

(c) The Director may not provide, and the Judge may not consider, information to support additional charges not included in the original Charging Letter. Based on the information and documentation presented, the Judge may determine that:

(1) Suspension is warranted for a given period of time;

(2) Suspension is not warranted; or

(3) (i) A period of suspension is warranted, but a waiver of part or all of the period of suspension is appropriate.

(ii) If, however, within three [3] years of the date of issuance of the Judge's determination to waive all or part of the suspension, Customs determines, pursuant to a subsequent compliance review, that either the Participant has used foreign fabric or failed to maintain proper records, then the Judge's determination under paragraph (c)(3)(i) of this section to suspend the Participant may be immediately imposed by the Director. Results of the subsequent compliance review will be treated in the normal course and a decision by the Director to suspend the participant for the subsequent violation will not affect the reinstated term of suspension for violation pursuant to paragraph (c)(3)(i) of this section.

§ 500.14 Appeal to CITA.

The Participant or the Director may appeal the Judge's decision by submitting a written request for appeal to Chairman, Committee for the Implementation, of Textile Agreements, Room 3001, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC 20230, and one copy of the request to the other party, no later than twenty [20] days after receipt of the Judge's decision, unless extended by the Chairman of CITA for good cause shown upon a motion by either party to the Chairman of CITA and one copy to the other party. The decision of the Judge shall be deemed a final agency action if a timely written request for an appeal to CITA is not submitted.

§ 500.15 CITA's decision.

CITA will make a decision based solely on the record of the administrative hearing and will not consider evidence not previously submitted to the Judge. CITA may adopt the Judge's decision in whole or in part, or may reject or modify it. The Chairman of CITA shall notify the Participant and the Director in writing of CITA's decision, and the reasons therefor. CITA's decision shall constitute a final agency action.

§ 500.16 Ex parte contacts.

No party or representative of a party shall communicate in any manner with the Judge or with CITA on any matter at issue in a case when the case is before them, unless on notice and opportunity for each party to participate. This provision does not prohibit a party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

§ 500.17 Separation of functions.

(a) Neither Customs officials nor CITA shall be permitted to participate or advise in the initial decision by the Director or the decision made upon appeal to the Judge.

(b) The Judge shall not be responsible or subject to the supervision or direction by the Director or CITA.

§ 500.18 Service of charging letter, decision letter and Judge's decision.

Service shall be made by mailing a copy:

(a) Registered mail, return receipt requested, to the Participant at the Participant's last known address; or

(b) Registered mail, return receipt requested, on the registered agent authorized by appointment or by law to receive service of process for the Participant.

Dated: July 28, 1993.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–18424 Filed 8–2–93; 8:45 am]

BILLING CODE 3510–DR–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH29–1–5396; FRL–4685–1]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: On November 14, 1991, the State of Ohio submitted proposed revisions to its State Implementation Plan (SIP) for particulate matter. On December 4, 1991, and January 8, 1992, the State submitted supplemental material including additional regulations. These SIP revisions were submitted by the State of Ohio for two purposes:

Pursuant to section 110 of the Clean Air Act (Act), to provide for a federally enforceable SIP based on Statewide regulations that will continue to achieve attainment in most parts of the State, and

Pursuant to part D of title I of the Act, to bring about the attainment of the national ambient air quality standards (NAAQS) for particulate matter and meet certain other requirements for the Cuyahoga County and Steubenville nonattainment areas. In this action, USEPA is proposing limited approval of the State's submittal. With the exception of one pair of paragraphs, USEPA is proposing to approve all of the submitted regulations. However, USEPA is simultaneously proposing a limited disapproval of the State's plans for Cuyahoga and Jefferson Counties. Specifically, USEPA is proposing to disapprove the Cuyahoga County plan for failure to satisfy the section 189(a)(1)(C) and section 172(c)(1) requirement for reasonably available control technology as it applies to a Ford Motor Company facility, and USEPA is proposing to disapprove Ohio's Steubenville area plan for failure to satisfy the attainment demonstration requirements of sections 189(a)(1)(B) and 172(c).

DATES: Comments on these SIP revisions and on the proposed USEPA action

must be received by September 17, 1993.

ADDRESSES: Copies of the State's submittals and USEPA's technical support document of November 17, 1992 are available for inspection at the following address: (It is recommended that you telephone John Summerhays at (312) 886–6067, before visiting the Region 5 Office.) U.S. Environmental Protection Agency, Region 5, Air and Radiation Division (AE–17J), 77 West Jackson Boulevard, Chicago, Illinois 60604.

Written comments should be sent to: William L. MacDowell, Chief, Regulation Development Section, Air Enforcement Branch (AE–17J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Regulation Development Section, Air Enforcement Branch (AE–17J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6067.

SUPPLEMENTARY INFORMATION:

I. History of Requirements and State Submittals

The original air quality standard for particulate matter was published on April 30, 1971, at 36 FR 8186. Under the Clean Air Act of 1970, States were required to submit plans to achieve attainment of this air quality standard. Ohio submitted its plan on January 31, 1972, and submitted major revisions on August 4, 1972. USEPA approved the plan and the revisions, most notably including several regulations in chapter AP–3 (Particulate Matter Standards), on April 15, 1974, at 39 FR 13539. Revisions to AP–3–04, submitted on January 25, 1974, were approved on September 23, 1976, at 41 FR 41692. On August 10, 1976, Ohio submitted EP–12 (Open Burning), which USEPA approved on February 3, 1978, at 43 FR 4611.

The Clean Air Act Amendments of 1977 established designations regarding whether areas were attaining the existing air quality standards, and required States to submit State Implementation Plan (SIP) revisions for areas designated nonattainment. Several areas in Ohio were designated nonattainment for particulate matter. The State submitted some final regulations and some draft regulations for particulate matter several times between June 1980 and March 1985, and USEPA proposed rulemaking to approve these revisions on January 2, 1987 (52 FR 91). However, the State did not complete adoption of the draft regulations, and, as a result, USEPA never received an approvable revision satisfying the requirements under the 1977 amendments. Thus, with the exception of a small number of source-specific limitations, the current Ohio SIP for particulate matter reflects the rules approved in 1974 and 1976, i.e. the 1972 version of the rules now codified in Ohio Administrative Code (OAC) chapter 3745–17 (Particulate Matter Standards) and the 1976 version of the rules now codified in OAC chapter 3745–19 (Open Burning Standards).

On July 1, 1987, USEPA revised the National Ambient Air Quality Standards (NAAQS) for particulate matter, refocussing the standard on smaller particles. The Clean Air Act Amendments of 1990[1] subsequently established nonattainment designations for this revised standard, provided that certain areas were designated nonattainment and classified as moderate, and required States to submit revisions to their SIPs for areas thus designated nonattainment (see sections 107(d)(4)(B) and 188(a) of the amended Clean Air Act, 56 FR 56694 (November 6, 1991) and 57 FR 13498, 13537 (April 16, 1992)). The amended Act requires that States make SIP submittals by November 15, 1991, for such areas to satisfy specified planning requirements of the amended Act.

II. Description of Ohio's Submittal

On November 14, 1991, Ohio submitted major revisions to its particulate matter SIP, consisting of two principal elements:

(1) Statewide regulations, and

(2) Additional regulations, emissions, and modeling information for Cuyahoga County and the Steubenville area. The Statewide regulations, submitted pursuant to section 110, reflect substantial revisions to the 1974 regulations presently in the SIP, and consititute the regulations that are presently maintaining the air quality standards in much of the State. The materials relating to the Cuyahoga County and Steubenville nonattainment areas were submitted pursuant to part D of title I of the Act, and include the more stringent regulations that Ohio identified as needed to attain the standards in these areas. The State's submittals of December 4, 1991, and January 8, 1992, included additional regulations (Rule 3745–17–09 and the six regulations in chapter 3745–75), and included supplemental administrative material relating to the rule adoption process.

The regulations submitted by Ohio include all of the rules in OAC chapter 3745–17 except rule 3745–17–05 ("Nondegradation policy") and all rules in OAC chapter 3745–75. (Rule 3745–17–06 contains no language and is reserved.) The specific submitted rules in chapter 3745–17 (Particulate Matter Standards) and associated titles are as follows:

Rule 3745–17–01—Definitions
Rule 3745–17–02—Ambient air quality standards
Rule 3745–17–03—Measurement methods and procedures
Rule 3745–17–04—Compliance time schedules
Rule 3745–17–07—Control of visible particulate emissions from stationary sources
Rule 3745–17–08—Restriction of emission of fugitive dust
Rule 3745–17–09—Restrictions on particulate emissions and odors from incinerators
Rule 3745–17–10—Restrictions on particulate emissions from fuel burning equipment
Rule 3745–17–11—Restrictions on particulate emissions from industrial processes
Rule 3745–17–12—Additional restrictions on particulate emissions from specific air contaminant sources in Cuyahoga County
Rule 3745–17–13—Additional restrictions on particulate emissions from specific air contaminant sources in Jefferson County
Rule 3745–17–14—Contingency plan requirements for Cuyahoga and Jefferson Counties

The specific submitted rules in chapter 3745–75 (Infectious Waste Incinerator Limitations) and associated titles are as follows:

Rule 3745–75–01—Applicability and definitions
Rule 3745–75–02—Emission limits
Rule 3745–75–03—Design parameters and operating restrictions
Rule 3745–75–04—Monitoring requirements
Rule 3745–75–05—Recordkeeping
Rule 3745–75–06—Certification and compliance time schedules

Rules 3745–17–01 through 3745–17–11 and Rules 3745–75–01 through 3745–75–06 apply Statewide. Rule 3745–17–12 applies only to identified sources in Cuyahoga County. Rule 3745–17–13 applies only to identified sources in Jefferson County. Rule 3745–17–14 applies only to identified sources in Cuyahoga and Jefferson Counties. The rules in chapter 3745–75 apply Statewide.

[1] The 1990 Amendments to the Clean Air Act made significant changes to the air quality planning requirements for areas that do not meet (or that significantly contribute to ambient air quality in a nearby area that does not meet) the particulate matter national ambient air quality standards (see Pub. L. 101–549, 104 Stat. 2399). References herein are to the Clean Air Act, as amended, 42 U.S.C. sections 7401 *et seq.*

The Steubenville nonattainment area includes not only portions of Jefferson County in Ohio, but also includes portions of Brooke County in West Virginia. Ohio's submittal provides copies of the administrative orders adopted by West Virginia to limit emissions from sources in that State's portion of the Steubenville nonattainment area. These administrative orders are addressed in a separate USEPA rulemaking.

A second group of elements of Ohio's submittal is the documentation of the State's demonstration that the regulations provide for attainment in Cuyahoga County and in the Steubenville area, including a comprehensive emissions inventory and documentation of a dispersion modeling analysis. A third group of elements in Ohio's submittal is administrative and regulatory material including material relating to public comments on the State's proposed rules, documentation of the legislative committee approval as required for State rule adoption, and materials addressing the adequacy of the State's program for implementing the particulate matter regulations.

III. Review of Regulations

Ohio submitted 12 rules within OAC chapter 3745–17 for USEPA rulemaking and all 6 rules in OAC chapter 3745–75. The following discussion reviews each of these regulations individually. This discussion highlights the major issues associated with the regulation, compares the regulation to the previously approved SIP, and concludes with a recommendation on whether the regulation is approvable.

Several criteria were used in evaluating the submitted regulations. These criteria include the enforceability of the regulations, the clarity and specificity of the limitations contained in the regulations, the stringency of the regulations relative to the previously approved SIP, and, more generally, whether the submittal satisfies section 110. As indicated above, the previously approved SIP for particulate matter in most respects is the material submitted in 1972 as approved by USEPA on April 15, 1972. The open burning regulations approved by USEPA on February 3, 1978, are also a relevant part of the particulate matter SIP but are not affected by Ohio's November 1991 submittal.

A criterion for approvability of the submitted regulations is that the State must have followed appropriate procedures for adopting the regulations. For the Statewide and Cuyahoga County regulations, public notices of a comment period and hearing were published on December 8, 1990, a public hearing was held on January 11, 1991, and the rules were formally adopted on May 28, 1991. For the Jefferson County regulations, the regulation requiring contingency measures, and revisions to selected other regulations, public notices of a comment period and hearing were published on June 30, 1991, a public hearing was held on August 9, 1991, and the rules were formally adopted on November 14, 1991. For the infectious waste incineration regulations, public hearings were held on December 5, December 10, and December 17, 1990, and the rules were formally adopted on June 18, 1991.

Rule 3745–17–01 provides a variety of definitions, and replaces rule AP–3–01 in the previously approved SIP. Rule 3745–17–01 provides clear definitions for many terms which were not previously defined. The most significant definition is in paragraph (B)(11), which in defining "particulate matter" specifies the test methods which are to be used to measure particulate matter emissions from stacks, i.e. the "applicable test methods in appendix A of 40 CFR part 60." This definition is acceptable to USEPA. Rule 3745–17–01 is approvable.

Rule 3745–17–02 specifies particulate matter air quality standards modified to conform to the federal standards for fine particles that USEPA promulgated July 1, 1987 (52 FR 24634). The State rule that this rule replaces was not an approved part of the SIP. Rule 3745–17–02 is unambiguous, helps assure that violations of the fine particle NAAQS are addressed, and is approvable.

Rule 3745–17–03 provides test methods for the limits imposed in other rules. No previously approved rule is replaced by rule 3745–17–03. This rule specifies clearly identified methods for evaluating compliance with each limit in other rules, generally using methods defined in appendix A of 40 CFR 60. These methods include the applicable stack test methods (as specified in Rule 3745–17–01(B)(11), typically meaning method 5 and several variations of this method), Method 9 for observing opacity of plumes, and method 22 for observing the time that emissions are visible. Other methods cited in this rule are American Society for Testing Materials (ASTM) and the reference "Standard Methods for the Examination of Water and Wastewater." USEPA's technical support document discusses further details of this rule, including several recent modifications of the State rule intended to address USEPA concerns.

USEPA has a remaining concern relating to the test method for quench water specified in rule 3745–17–03. Air emissions from coke quenching operations are limited by a surrogate limit on quench water quality specified in rule 3745–17–12. The test method for this limit, provided in rule 3745–17–03(B)(10)(c), provides for monthly average water quality values, based on grab samples of quench water taken once each of four weeks. Monthly averaging is an inappropriately long averaging time, due to the fact that it provides insufficient limitation on 24 hour average emissions levels and allows noncompliance with the limit for a majority of the time. Therefore, this paragraph of rule 3745–17–03 is not approvable. Except for this paragraph, this rule provides clear, appropriate test methods and is approvable.

Rule 3745–17–04 provides compliance deadlines by which limits provided elsewhere in chapter 3745–17 must be met. This rule replaces a previously approved but now outdated rule providing only a single compliance date of April 15, 1977. For the limits that have been added recently to chapter 3745–17, this rule requires compliance for some sources immediately (the effective date of the State rules), for most other sources by December 31, 1993, and for selected sources at Ford Motor Cleveland Casting Plant by December 31, 1994. Even though rule 3745–17–04 raises issues discussed below concerning the requirement in nonattainment areas that reasonably available control technology be implemented by December 10, 1993, this rule is unambiguous and approvable.

Neither rule 3745–17–05 (Nondegradation policy) nor rule 3745–17–06 (an empty rule at the State level) were submitted. Rule 3745–17–06 reflects the repeal of rule AP–3–06, which was approved as part of the SIP and contained criteria for specifying the stringency level of emissions limits for regions in the State. However, this rule has been superseded by a clearer specification of which counties are subject to which limits. Therefore, rule AP–3–06 may be removed from the SIP.

Rule 3745–17–07 provides Statewide opacity limits. Stack emissions must meet a limit of 20 percent opacity as a 6-minute average, except that one 6-minute average is permitted to be up to 27 percent. Fugitive emissions from industrial processes must meet a limit of 20 percent opacity as a 3 minute average. Visible emissions limits are specified for the various operations involved in coke production. Roadways, parking areas, and storage piles are required to have no visible emissions except for specified numbers of minutes

per hour. Unpaved roadways and parking areas are allowed to exhibit 13 minutes of visible emissions per hour, paved roadways and parking areas are allowed to exhibit 6 minutes of visible emissions per hour, and storage piles are allowed to exhibit 13 minutes of visible emissions. Supplementing this rule is a summary of a study conducted by Ohio EPA demonstrating that these roadway, parking area, and storage pile limits can reasonably be achieved.

Rule 3745–17–07 also provides various exemptions from these opacity limits. Limited exemptions from the stack opacity limit are provided for start-up, shutdown, intermittent soot-blowing, and intermittent ash removal for fuel burning sources, and limited exemptions are also provided for rare malfunctions and for selected other source types. In correspondence to Ohio EPA dated October 26, 1983, and February 17, 1984, USEPA made recommendations on how to define limited, reasonable exemptions in a clear manner. Ohio has adopted regulations that reflect the USEPA recommendations. Ohio has also addressed various provisions of "director's discretion" in its rules, stating in paragraph (D): "Any revision approved by the director in accordance with [the several paragraphs in the rule that involve judgmental, nonreplicable decisions] shall not revise the federally enforceable requirements of the state implementation plan until approved by the U.S. environmental protection agency." Thus, in most cases, specific criteria in the rule establish limited exemptions for probably unavoidable exceedances of the general opacity limit, and the remainder of cases will be subject to USEPA evaluation as a SIP submittal. Finally, the rule provides that sources meeting an applicable mass emission limit but unable to meet the opacity limit may obtain an alternate opacity limit, which like other discretionary revisions does not change the federally enforceable opacity limit until USEPA approval.

Rule 3745–17–07 replaces the previously approved rule AP–3–07, and is considerably more stringent, more enforceable, and limits several significant source categories which were not effectively limited by rule AP–3–07. Rule 3745–17–07 is fully approvable.

Rule 3745–17–08 provides that sources in specified significant source areas in the State must take or install "reasonably available control measures to prevent fugitive dust from becoming airborne." The rule continues that "Such reasonably available control measures shall include * * * one or more of" a listing of nine control measures. For example, one listed measure is "installation and use * * * of equipment to * * * capture, vent and control" emissions, meeting a particulate matter concentration limit in the control equipment outlet of ".030 grain per dry standard cubic foot of exhaust gases or * * * no visible particulate emissions from the exhaust stack(s), whichever is less stringent."

Rule 3745–17–08 is a replacement for and is more stringent than the previously approved rule AP–3–09. Rule 3745–17–08 exempts emissions from tilling and wind erosion of farm land and from selected other source types but specifies additional measures applicable to certain source types and slightly enhances the stringency of other measures. Many States have "reasonably available control measure regulations," and some courts have overturned enforcement cases based on such regulations because the applicable regulations were unclear as to what extent of control was required. However, Ohio's rule 3745–17–08 is clearer than many of its counterpart regulations in other States. The nine control measures are written to apply to nine different kinds of sources, such that it is clear for most sources which requirement applies. Further, each of the nine control measures are clearly defined. Thus, this rule is found to be enforceable. For these reasons, rule 3745–17–08 is approvable.

Rule 3745–17–09 specifies particulate matter emissions limits and odor requirements for incinerators. Medical waste incinerators are exempted from this rule but are regulated under chapter 3745–75 of Ohio's regulations. Rule 3745–17–09 is similar to but more clear than the previously approved AP–3–10. The six Rules in chapter 3745–75 provide clear, enforceable, more stringent requirements for medical waste incinerators. Thus, rule 3745–17–09 and the six rules in chapter 3745–75 are approvable.

Rule 3745–17–10 provides particulate matter emissions limits from combustion sources. A key portion of this rule is a graph specifying emissions limits for combustion of solid fuels and liquid fuels other than number two fuel oil. These graphical limits are identical to the graphical limits in the previously approved rule AP–3–11. Compared to this previously approved rule, rule 3745–17–10 reflects revised emission limits for three individual facilities in the State, provides a procedure for derating of fuel burning equipment, provides an alternative set of limits for small coal-fired space heating equipment which are more work practice oriented, and specifies a significantly more stringent limit for combustion of gaseous fuels and number two fuel oil. Rule 3745–17–10 also specifies which counties and subcounty areas are subject to each set of limits, and thus is less ambiguous than rule AP–3–06 in the current SIP. Overall, rule 3745–17–10 is clearly more enforceable and more stringent than the previously approved rule and is fully approvable.

Rule 3745–17–11 provides emissions limits for stack emissions from industrial sources other than combustion sources. The key element of this rule is known as a "process weight rate limit," which specifies the allowable quantity of emissions as a function of the weight of material processed by the source per hour. This rule also provides an emission limit calculated as a function of uncontrolled emissions. Both sets of limits are essentially identical to the sets of limits in the previously approved rule AP–3–12. Rule 3745–17–11 was also modified to specify limited exemptions for two source types, to remove inappropriate testing provisions, to clarify geographic applicability of different limits (as discussed with rule 3745–17–10), and to specify clear limits for stationary gas turbines and stationary internal combustion engines. Overall, rule 3745–17–11 is clearly more enforceable and more stringent than the previously approved rule and is fully approvable.

Rule 3745–17–12 is a new rule providing limits for specified sources in Cuyahoga County. These limits are intended to reduce allowable emissions in this nonattainment area sufficiently to assure attainment, to implement reasonably available control technology, and to meet other Part D requirements for Cuyahoga County. The sections of this notice that follow discuss whether rule 3745–17–12, in conjunction with Ohio's other particulate matter rules, suffice to meet applicable part D requirements, or whether additional limitations are necessary.

Previous discussion has noted that the quench water test method in rule 3745–17–03 is not approvable. As a result of inseparability from this test method, the quench water quality limit in paragraph (P)(6)(a) of rule 3745–17–12 also may not be approved. Otherwise, the limits in rule 3745–17–12 are clear and enforceable, all limits are more stringent than the limits resulting from other rules. All portions of this rule except paragraph (P)(6)(a) are fully approvable.

Similarly, rule 3745–17–13 is a new rule providing limits for specified sources in Jefferson County, for the purpose of assuring attainment in the Steubenville nonattainment area. Again,

discussion below addresses whether the proposed SIP is sufficient to meet part D requirements. In any case, these limits too are clear and enforceable, more stringent than other rules, and so rule 3745–17–13 is fully approvable.

Rule 3745–17–14 requires selected companies in Cuyahoga and Jefferson Counties to identify control strategies for Ohio to submit as contingency plans. The requirement for contingency plans is a new requirement in section 172(c)(9) of the Clean Air Act as amended in 1990. Rule 3745–17–14 does not provide specific, enforceable contingency measures satisfying the requirements of paragraph 172(c)(9). Nevertheless, it would be appropriate to approve rule 3745–17–14. This rule strengthens the SIP, insofar as it requires companies to develop contingency strategies and insofar as it provides a mechanism for the implementation of those measures. A more thorough discussion of this rule is provided below.

IV. Requirements of Section 189

The air quality planning requirements for moderate particulate matter nonattainment areas are set out in title I of the Act. The USEPA has issued a "General Preamble" describing the Agency's preliminary views on how it intends to review SIP's and SIP revisions submitted under title I of the Act, including those State submittals addressing moderate particulate matter nonattainment area SIP requirements (see generally 57 FR 13498 (April 16, 1992)). Interested parties should refer to the General Preamble for a more detailed discussion of the interpretations of title I advanced in today's proposal and the supporting rationale. In today's rulemaking action on revisions to the Ohio's moderate particulate matter SIP, USEPA is applying its interpretations to the specific factual situation presented in Ohio. USEPA will consider timely submitted comments before taking final action on today's proposal.

Part D of title I contains provisions applicable to nonattainment areas. Moderate particulate matter nonattainment areas must meet the applicable requirements set out in subparts 1 and 4 of part D. Subpart 1 (especially section 172(c)) contains provisions generally applicable to all nonattainment areas, and subpart 4 (especially section 189) contains provisions specifically applicable to particulate matter nonattainment areas. At times, certain requirements of subparts 1 and 4 seem to overlap or conflict. USEPA has attempted to clarify the relationship among these various provisions in the General Preamble and, as appropriate, in today's notice.

Section 189, found in subpart 4 of part D of title I of the Act, provides the principal requirements applicable to particulate matter nonattainment area plans. Of particular importance for moderate area nonattainment plans are the requirements in section 189(a)(1). This section includes the requirement in section 189(a)(1)(B) for States either to demonstrate attainment or to demonstrate that attainment is infeasible by the applicable attainment deadline, and includes the requirement in section 189(a)(1)(C) to provide for reasonably available control measures (RACM). (The requirement in section 189(a)(1)(A) for a new source permitting program will be addressed in a separate State submittal and separate USEPA rulemaking.) Also relevant is the requirement in section 189(e) for States to control sources of particulate matter precursor emissions, unless the USEPA determines that such sources do not contribute significantly to violations of the particulate matter standards. Review of Ohio's submittals with respect to each of these three provisions is provided in the subsections that follow.

A. Attainment Demonstration

As noted, for initial moderate particulate matter nonattainment areas, the State must submit a demonstration (including air quality modeling) showing that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994 (See section 189(a)(1)(B) of the Act). Alternatively, the State must show that attainment by December 31, 1994 is impracticable. In the General Preamble, USEPA indicated that the attainment demonstrations for the initial moderate areas must generally follow existing modeling guidelines for particulate matter (see 57 FR 13539).

Ohio provided analyses concluding that both Cuyahoga County and the Steubenville area would attain the standards by December 31, 1994. These analyses have two components:

(1) An emissions inventory, and

(2) A dispersion modeling analysis of the concentrations resulting from those emissions. The discussion that follows summarizes the more detailed discussion contained in the USEPA technical support document.

The principal causes of nonattainment in the two nonattainment areas are industrial sources. Therefore, in accordance with the "Guideline on Air Quality Models," the attainment analyses submitted by Ohio are based on dispersion modeling using an inventory of allowable emissions from industrial sources in each area, supplemented by modeling using actual emissions for the relatively minor nonindustrial sources ("area sources"). The concentration estimate at each analyzed location reflects the sum of the impact of industrial sources plus the impact of area sources plus a background concentration.

The significant emission points in the two nonattainment areas are of three types:

(1) Stack sources,

(2) Process fugitive emissions, and

(3) Area sources such as roadways and storage piles. Stack sources are generally subject to an hourly emission limit, typically established either as a point-specific limit in rule 3745–17–12 and rule 3745–17–13, as a result of the generic process weight rate limit in rule 3745–17–11, or as a result of an applicable control measure from rule 3745–17–08. These limits are expressed in terms of total suspended particulate matter, which is used as a surrogate for limiting the particulate that are of a nominal aerodynamic diameter of 10 microns or less. Process fugitive emissions are generally limited by rule 3745–17–07, which specifies a general 3-minute average opacity limit for fugitive sources of 20 percent opacity, as well as specifying a stack opacity limit and specifying particular opacity limits for particular coke oven operations. Finally, emissions from roadways and other area source types are limited by Statewide limits on the allowable number of minutes of visible emissions specified in rule 3745–17–07 and for many Cuyahoga and Jefferson County facilities by tighter limits on the allowable number of minutes of visible emissions specified in rule 3745–17–12 and 3745–17–13.

For stack sources, the estimation of allowable emissions is relatively straightforward. This estimation is complicated by Ohio's use of emission limits expressed in terms of total suspended particulate matter, which requires an estimation of the portion of those emissions consisting of particles nominally 10 microns and smaller. Nevertheless, Ohio has used appropriate procedures and made appropriate estimates of the fine particle emission rates allowed by the applicable total particle limits. USEPA review of stack emissions estimates identified only a few relatively minor errors, generally from the use of actual rather than allowable emissions.

For process fugitive sources, the estimation of emissions allowed by an applicable opacity limit is much more difficult. In many cases, Ohio has made appropriate judgements of the quantity

of allowable emissions from these sources. However, for selected emission points in the Steubenville area, USEPA believes that Ohio has significantly underestimated the emissions permitted by the applicable regulation.

One emission point for which emissions are judged to be significantly underestimated is the roof monitor for the basic oxygen furnaces at Wheeling-Pittsburgh Steel. The emissions estimate is documented in a report provided by the company and included in the State's submittal. Two features of this estimate warrant discussion. First, the company estimated that its emission capture system captures 99.5 percent of the emissions generated during the oxygen blowing operation, so that fugitive emissions are only 0.5 percent of generated emissions. Second, the company assumed that only a fraction of emissions generated by a basic oxygen furnace but escaping the primary emissions capture system are actually emitted into the atmosphere.

Wheeling-Pittsburgh Steel argued for its capture efficiency estimate by presenting data that the mass of solids captured by the basic oxygen furnace emission control system were 104.2 percent of the generated emissions as estimated according to AP–42. However, given the uncertainties in AP–42 emission factors, it is USEPA's position that these data cannot distinguish between 99.5 percent capture and for example 95 percent capture, and in fact better support an argument that AP–42 understates the emissions generated by this source.

Wheeling-Pittsburgh Steel did not justify its assumption that some uncaptured emissions are not actually emitted, but the emissions calculation reflects an implied rationale. This implied rationale reflects a comparison of the "at building monitor" emission factors to the "at source" emission factors for tapping and for charging given in AP–42. This implied rationale treats the "at source" emission factor as indicative of the rate of emissions generation and treats the "at building monitor" emission factor as indicative of the quantity of emissions actually reaching the atmosphere. (Both "at building monitor" emission factors are lower than the corresponding "at source" emission factors given in AP–42; otherwise, the company would be implying that emissions are self-generated within the building.) The implied rationale rests on the further assumptions that the AP–42 emission factor for basic oxygen furnace (BOF) melting and refining is an "at source" rather than an "at building monitor" emission factor, and that the same settling or emissions disappearance that the company apparently believes occurs with charging and tapping also occurs with melting and refining.

USEPA does not agree that the "at source" and "at building monitor" emission factors for charging and tapping imply that emissions from these operations or emissions from melting and refining will either settle within the building or otherwise disappear. More generally, USEPA finds that the BOF emissions estimates developed by the company are not justified and significantly underestimate the full atmospheric emissions from this source.

A second set of emission points of concern are coke ovens. In order to estimate emissions permitted by the visible emissions limits that apply to the various coke-making operations, Ohio used information provided in "Coke Oven Emissions from Wet-Coal Charged By-Product Coke Oven Batteries—Background Information for Proposed Standards" (USEPA Report Number EPA–450/3–85–028a, April 1987). Although this report provides data to support a reasonable estimate of these emissions, selected aspects of Ohio's estimation procedure are inappropriate. Most significantly, the emission factors are based on an actual leak rate rather than on the allowable leak rate permitted by the applicable limitation. In addition, minor errors were identified in the calculations of the relationship between benzene soluble organic emissions and fine particulate matter emissions.

In the case of Cuyahoga County, Ohio's estimates are not significantly different from more appropriately derived estimates, particularly given that Ohio included a coke oven battery which by a federally enforceable permit has been shut down. However, emissions for the coke ovens in the Steubenville area (in Brooke County, West Virginia) are significantly underestimated.

The final type of source in Ohio's inventory was open dust sources such as roadways and storage piles. Equations in AP–42 and "Control of Open Fugitive Dust Sources" were used to estimate uncontrolled emissions from these sources. The State assumed that the applicable limits on the allowable number of minutes of visible emissions would require emissions from these sources to be reduced by 95 percent. Ohio also provided a study demonstrating that its limits are strict but achievable. Although the relationship between emissions rates and the number of minutes of visible emissions has not been clearly established, USEPA finds that Ohio has made a plausible estimate of the reductions that its regulations require, particularly for the most significant sources.

Another inventory issue pertains to condensible particulate matter emissions, i.e., material which is emitted in gaseous form (and is in gaseous form at the temperature used in the applicable stack test method) but condenses into particulate form at ambient temperature. The State provided condensible particulate matter emissions estimates for Cuyahoga County, based on numerous stack tests that have been conducted on sources in the County. However, the emissions inventory for the Steubenville area was found to include no emissions of condensible particulate matter other than from coke oven leaks. Several sources in the area have the potential for significant condensible particulate matter emissions which could affect whether the plan provides for attainment or adequately requires reasonably available control technology.

Full assurance of attainment requires that the emissions limits which are necessary to assure attainment are fully enforceable. One set of limits of special concern govern emissions from coke pushing and vented emissions from material handling operations. These sources are regulated under rule 3745–17–08(B), which requires "one or more" of the nine measures specified in the paragraph. Since paragraph (B)(3) of this rule is clearly appropriate for these sources, the requirement in this paragraph for achieving .03 grain of particulate emissions per dry standard cubic foot of exhaust gases (or no visible stack emissions, whichever is less stringent) applies to these sources. For these and other sources, with the exception of the quench water test method issue identified above, Ohio's regulations are clearly written and provide that the limitations assumed in deriving the allowable emissions inventory are fully enforceable.

The second main element of the State's attainment demonstrations is a dispersion modeling analysis. The attainment demonstration utilized the most recent version of the Industrial Source Complex, Short Term, (ISCST), model dated 90346, and (ISCLT), model dated 90008 available at the time the State prepared its plan. The model was run in the regulatory default mode. The Complex I model, dated 90095, was used in conjunction with ISCST to evaluate intermediate terrain. The Gaussian-Plume Multiple Source Air Quality Algorithm (RAM) was also used to model regional area particulate matter emissions. Total concentrations were

estimated by adding the ISCST estimates, the RAM estimates, and a monitor-based background concentration.

The modeling for each of the two areas used a substantial grid of receptors. The receptors for Cuyahoga County initially contained 922 receptors and extended across the County. The receptor resolution ranged from 1.0 kilometer in the remote areas to 0.25 kilometers in the immediate vicinity of the highest receptors. The final model runs were performed on a grid of 258 receptors focussing on the peak impact areas in the County. The receptor grid for the Jefferson County, Ohio/Follansbee, West Virginia area, covered an 8×13 kilometer rectangular area and used 382 receptors. Receptor resolution ranged from 1.0 kilometer at the edge of the grid, to 0.2 kilometers at the property lines of three major facilities.

The Cuyahoga County study utilized five years of National Weather Service (NWS) data (1983–1987). The surface observations were collected at the Cleveland-Hopkins NWS site while the upper air data, used to determine mixing heights, was collected at the Buffalo NWS site. The sites were chosen because they are most representative of the meteorology in the study area, taking into account Lake Erie effects on wind, temperature, and mixing heights.

The Jefferson County study utilized one year of on-site meteorological data. A tower with instruments at both 10 meter and 30 meter levels was used to collect data on wind speed, wind direction, wind direction variability (sigma theta), and temperature. The tower is located in the Ohio River valley, adjacent to the Wheeling Pittsburgh Steel facility in Follansbee, West Virginia. Upper air data from the Pittsburgh, Pennsylvania NWS site was used to determine mixing heights. USEPA believes that one year of local data better represents both typical and worst case meteorology in the Steubenville area than five years of NWS data, and that these data are appropriate for all major sources and receptors in the area.

In order to account for unmodeled sources, Ohio determined a background concentration that was representative of rural/non-industrial air quality. Based on monitoring in Adams County, Ohio, the State used a 24-hour background concentration of 28.0 microgram per cubic meter (μg/m³) (reflecting a second-high value) and an annual background concentration of 18.4 μg/m³ (reflecting an annual average).

The 24 hour average National Primary and Secondary Ambient Air Quality Standards for particulate matter are attained when the concentration exceeds the standard less than or equal to one day per year. Therefore, for any given location, the critical 24 hour average concentration for particulate matter modeling with five years of meteorological data is the sixth highest concentration. In Cuyahoga County, among receptors near Ford's Cleveland Casting Plant, the highest critical concentration (i.e., the highest sixth highest concentration) was 147.7 μg/m3. The highest critical concentration near LTV was 143.2 μg/m³. These concentrations represent the sum of the total point source impacts, the background concentration, and the RAM area source contribution.

In Jefferson County, the use of one year of on-site meteorological data led to a different means of identifying the critical concentration. In accordance with the "PM_{10} SIP Development Guideline," the critical concentration is the second high concentration at a given location. The highest critical concentration in the Steubenville nonattainment area and its immediate vicinity as modeled by Ohio was 144.06 μg/m³. The modeling predicted very high concentrations at receptors placed near Weirton, West Virginia. An analysis of the concentrations modeled at these receptors showed that sources in the Weirton area contributed over 99% of the highest second-highest 24-hour concentration. Sources in the Steubenville-Follansbee nonattainment area contributed 11 μg/m³ to the highest second highest concentration. The City of Weirton, including the portion of the city in Brooke County and the portion in Hancock County, West Virginia, has been proposed to be designated nonattainment. This area includes all the sources that contribute significantly to these modeled violations. Therefore, USEPA proposes to rely on the SIP which will be required for Weirton to address these modeled violations.

USEPA has conducted further modeling runs to assess the significance of various issues. These modeling runs are documented in USEPA's November 17, 1992 technical support document for this rulemaking. These modeling runs utilized the current version of the Industrial Source Complex model, known as ISC2, and were conducted with and without corrections to the emissions inventory problems identified in USEPA's review.

One finding from USEPA's modeling was that ISC2 predicted concentrations very similar to those of ISC in both Cuyahoga County and the Steubenville area. At almost all locations, ISC2 predicted slightly lower concentrations than ISC. At no location did ISC2 predict exceedances of the NAAQS not predicted by ISC.

A second finding from USEPA's modeling was that correction of emissions inventory errors in Cuyahoga County did not change the conclusion that the State's plan provides for attainment. (This analysis, like Ohio's analysis, assumed that the quench water limit will be fully enforceable.) Consequently, USEPA believes that the emissions inventory for this area is adequate to satisfy requirements for an accurate inventory, and believes that the State plan provides for attainment in Cuyahoga County, provided that the quench water limit is made fully enforceable.

A third finding from USEPA's analysis is that correction of errors in the Steubenville area emissions inventory led to prediction of substantial violations of the NAAQS in the area. Particularly significant are the emissions estimates for fugitive emissions from Wheeling-Pittsburgh Steel's basic oxygen furnace shop and coke ovens, which USEPA believes underestimate these emissions substantially. Other less significant issues relating to the emissions inventory and modeling analysis for this area are discussed in the technical support documents for this rulemaking. Consequently, the plan for the Steubenville area is judged not to provide for attainment (nor did the plan demonstrate that attainment is infeasible), and thus does not satisfy section 189(a)(1)(B).

B. Reasonably Available Control Measures (RACM)

Section 189(a)(1)(C) requires particulate matter plans to include "[p]rovisions to assure that reasonably available control measures for the control of PM–10 shall be implemented no later than December 10, 1993. . . ." Guidance in the General Preamble clarifies that attainment needs are a significant factor in judging whether this requirement for reasonably available control measures (RACM) is met, since "some available control measures may not be 'reasonably' available because their implementation would not expedite attainment." (See 57 FR 13543.) As noted in section 172(c)(1), RACM includes reasonably available control technology (RACT).

Most of the sources in Cuyahoga County are subject to emission limitations providing for attainment that are effective by or well before the end of 1993. Although a few compliance deadlines are December 31, 1993, rather than the December 10, 1993, deadline in section 189(a)(1)(C), the three week

difference is considered *de minimis*. In addition, sources which can be rapidly controlled, most notably roadways and storage piles, are subject to stringent control requirements which are already in effect. For this majority of sources, USEPA believes that no additional control measures beyond those already required could be implemented sufficiently rapidly to expedite attainment.

On the other hand, for one facility in Cuyahoga County, the Ford Motor Cleveland Casting Plant, the State plan permits three of the control measures included in the attainment demonstration to be implemented as late as December 31, 1994, well after the December 10, 1993, RACM deadline. As indicated above, USEPA interprets that the RACM requirement may be met either:

(1) By implementation of sufficient measures to provide for attainment by December 1993, along with a demonstration that no additional reasonably available measures would expedite attainment; or

(2) By implementing all RACM by December 1993. The State has not demonstrated that either criterion is met. This issue was further evaluated by reviewing whether additional measures are available at this facility which would be considered to be RACM. First, the emission levels achievable at cupolas are similar to the emission levels achievable at many iron and steel sources. Nevertheless, the cupola emission limits imposed by the State appear to allow much more emissions than those normally considered to be RACM for analogous iron and steel sources. (See the discussion of RACM and RACT in the General Preamble (57 FR 13540), the supplement to the General Preamble (57 FR 18074), an August 20, 1991, memorandum entitled "Questions and Answers (Q&A's) for Particulate Matter, Sulfur Dioxide (SO_2), and Lead (Pb)," an August 7, 1980, memorandum entitled "Steel Technical Support Options and Documents," and the attached table entitled "Particulate Emission Limitations Generally Achievable on a Retrofit Basis.") Second, the cupola emission limitations adopted by the State are less stringent than another of the three strategies recommended by Ford Motor Company and included in the State's proposed rules (the "Cupola Dust Collection Upgrade Plan"). Accordingly, the available evidence indicates that the limitations on the cupolas in this alternate strategy do appear to represent RACT for these sources. Thus, the State plan is judged not to require full RACT for these sources. In addition, the State has not demonstrated that no controls are reasonably available for the Number 7 induction furnace, nor has the State demonstrated that the three sources for which final controls are due December 31, 1994, are required to have RACT prior to that date. Consequently, the State's plan has not satisfied the RACM requirement in section 189(a)(1)(C) as applied to Ford's facility in Cuyahoga County.

For Jefferson County, as with Cuyahoga County, the State did not provide documentation specifically addressing whether its regulations require RACM. Therefore, a further evaluation was conducted for Jefferson County in order to review whether additional measures are available which would be considered to be RACM. (Separate rulemaking addresses a similar evaluation for the West Virginia plan.) The starting point for this review was the four guidance documents cited above. All of the requirements identified in the August 7, 1980, memorandum as being normally achievable for iron and steel sources are in fact required by Ohio. USEPA has not developed such specific RACM guidance for other sources, but Ohio's plan was found to require RACM for other Ohio sources in the area. In addition, Ohio's plan requires RACM in all cases by December 31, 1993, and in most cases much earlier. Consequently, Ohio's plan is judged to satisfy the RACM requirement in section 189(a)(1)(C) for Jefferson County.

C. Particulate Matter Precursors

Section 189(e) specifies that "control requirements . . . for major stationary sources of PM–10 shall also apply to major stationary sources of PM–10 precursors, except where the Administrator determines that such sources do not contribute significantly to PM–10 levels which exceed the standard in the area." Particulate matter precursors are pollutants emitted as gases that undergo chemical transformations to become particulate, and principally include sulfates and nitrates.

USEPA's technical support document provides a detailed discussion of precursor impacts in Ohio. Ohio provided information on precursor impacts as part of its receptor modeling analysis for Jefferson County. This analysis was based on measurements of the composition of filter catches of ambient monitors and a chemical mass balance study comparing these compositions to the compositions of potentially significant source types. The average of the available measurements of sulfate plus nitrate concentrations was 7.5 $\mu g/m^3$. A comparison of this concentration to the annual average background concentration used in Ohio's attainment demonstration, 18.4 $\mu g/m^3$, illustrates the relative insignificance of the impact of particulate matter precursors. With respect to 24 hour average concentrations, the results of the chemical mass balance study indicate that the average secondary particulate matter contribution on days in Jefferson County measuring above 100 $\mu g/m^3$ was 14 $\mu g/m^3$. The highest directly measured sulfate plus nitrate concentration was 13 $\mu g/m^3$. A comparison to the 24 hour average background concentration used in Ohio's attainment demonstration, 28 $\mu g/m^3$, again illustrates the relative insignificance of the impact of particulate matter precursors. More generally, the receptor modeling study supported representing secondary particulate matter impacts as part of the background concentration.

Further considerations also argue against applying the same control requirements for precursor sources as for direct emission sources. The climatology throughout Ohio is such that precursor emission control for a particular source would not have a significant effect until far downwind. Title IV of the Act mandates significant particulate precursor emission reductions in Ohio, after which the impacts of these sources on particulate matter concentrations will be even less significant. Consequently, USEPA proposes to determine that precursor emission sources do not contribute significantly to particulate matter concentrations which exceed the standard in the area.

V. Other Requirements

In addition to the requirements in section 189, particulate matter nonattainment area plans must also meet the requirements of subpart 1 of part D of title I of the Clean Air Act, particularly section 172(c). Section 172(c)(1) mandates that these plans require RACM (including RACT). The discussion above addresses RACM issues and concludes that Ohio's plan requires RACM in Jefferson County and most of Cuyahoga but does not require RACM at Ford Motor's Cleveland Casting Plant.

Section 172(c)(2) requires that nonattainment area plan revisions demonstrating attainment must contain quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment and which demonstrate reasonable further progress (RFP), as defined in section 171(1), toward attainment by December 31,

1994 (see section 189(c) of the Act). RFP is defined in section 171(1) as such annual incremental reductions in emissions of the relevant air pollutant as are required by part D or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date.

For the initial moderate particulate matter nonattainment areas (i.e., areas designated nonattainment by the Clean Air Act Amendments of 1990), the emissions reductions progress made between the SIP submittal (due date of November 15, 1991) and the attainment date of December 31, 1994 (only 46 days beyond the November 15, 1994 milestone date) will satisfy the first milestone requirement. The *de minimis* timing differential makes it administratively impracticable to require separate milestone and attainment demonstrations.

Ohio's submitted regulations provide a range of compliance dates. In Cuyahoga and Jefferson Counties, the final compliance dates in most cases were the effective dates of the rules (i.e., June 14, 1991, for Cuyahoga County, and December 6, 1991, for Jefferson County); a small number of sources for which control equipment installation was required were subject to compliance deadlines ranging from August 1, 1992 to December 31, 1994. (As discussed previously, only sources at Ford Motor's Cleveland Casting Plant have compliance deadlines beyond December 31, 1993.) Thus, the State's plan for Cuyahoga County satisfies section 172(c)(2), provided (as with the attainment demonstration) that the quench water quality limit is made fully enforceable. The State's plan for the Steubenville area does not currently satisfy section 172(c)(2) because the plan is judged not to provide for timely attainment, but the plan would satisfy section 172(c)(2) if the plan were revised to provide for timely attainment.

Section 172(c)(3) requires a suitable emissions inventory. The State has provided thorough documentation of both actual and allowable emissions estimates. For reasons discussed above, this requirement has been met for Cuyahoga County and not met for the Steubenville area.

Section 172(c)(4) mandates that any stationary source growth margin included in the SIP be expressly identified and quantified. Ohio did not include any such growth margin in its SIP.

Section 172(c)(5) mandates a suitable permit program. This requirement is also specified in section 189(a)(1)(A). This requirement is expected to be addressed in a separate State submittal, and will be addressed in separate USEPA rulemaking.

Section 172(c)(6), along with section 110(a)(2)(A), requires that limitations sufficient to provide for attainment be enforceable by the State and USEPA (see 57 FR 13556). The USEPA criteria addressing the enforceability of SIP's and SIP revisions were discussed in a September 23, 1987, memorandum (with attachments) from J. Craig Potter, Assistant Administrator for Air and Radiation, et al. (see 57 FR 13541). The criteria include, for example, applicability to sources, compliance date(s), compliance periods, test methods, record keeping requirements, and any exemptions or variances. In addition to providing enforceable requirements, nonattainment area plan provisions must contain a program that provides for enforcement of the control measures and other elements in the SIP (see section 110(a)(2)(C)).

A concern with the enforceability of the quench water limit has already been discussed. For all of the other limits, Ohio's submitted regulations are found to be fully enforceable. First, Ohio's regulations provide specific quantitative emissions limits applicable to clearly specified sources. Second, Ohio's rule 3745–17–04 specifies clear compliance deadlines, including deadlines for interim steps toward compliance where appropriate. Third, rule 3745–17–03 provides clearly defined test methods with clearly specified applicability. Fourth, Ohio's regulations provide specific recordkeeping requirements for a subset of source limitations which are enforceable only through review of records, and the State has authority through its approved permitting regulations and uses that authority to require appropriate reporting and recordkeeping requirements for other sources. Fifth, Ohio's regulations provide clear and appropriate limitations on equipment malfunctions that increase emissions.

Ohio's regulations also utilize a well designed approach to "director's discretion." In particular, for the few remaining provisions of State discretion in Ohio's regulations, the regulations specifically provide that authorized revisions do not change the SIP without USEPA approval.

In summary, for Cuyahoga County, except for the quench water test method in rule 3745–17–03(B)(10)(c), the State's plan is found to satisfy section 172(c)(6). For the Steubenville area, the plan does not now satisfy section 172(c)(6) because the plan does not provide for attainment, but the plan would satisfy the requirements of this section if sufficient additional enforceable measures to assure attainment were submitted.

Section 172(c)(7) mandates that SIP provisions satisfy section 110(a)(2). Principal among the requirements of section 110(a)(2) are requirements that the State adopt its SIP limitations following reasonable notice and public hearing. Section 110(d) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing. As discussed previously, Ohio is judged to have satisfied these requirements.

The requirements of section 172(c)(8) are not applicable to this submittal, because Ohio did not utilize this paragraph's authorization to apply to use equivalent procedures.

Finally, section 172(c)(9) mandates that SIPs contain contingency measures (see generally 57 FR 13543–44). These measures must be submitted by November 15, 1993, for the initial moderate nonattainment areas. Contingency measures should consist of other available measures that are not part of the control strategy for an area. These measures must take effect without further action by the State or USEPA, upon a determination by USEPA that the area has failed to make RFP or attain the particulate matter NAAQS by the applicable statutory deadline.

Ohio has partially addressed the contingency plan requirement by submitting rule 3745–17–14. This rule requires selected sources in its nonattainment areas to identify two control strategies, to reduce emissions by 15 percent and 25 percent respectively of the actual emissions reductions required by the recent State rule revisions. This rule provides that control strategies satisfying these requirements would then be adopted by the State as source-specific findings and orders, which would be submitted to USEPA as SIP revisions. This rule identifies the precise quantity of emissions reductions to be achieved by each control strategy, defines how the emissions reductions achieved by a proposed strategy will be calculated, and defines a mechanism for initiating implementation of the requisite control strategies should an area fail to attain the air quality standard by the attainment deadline. This mechanism provides that "[u]pon a formal determination and notification by [Ohio EPA] or the [USEPA]" of failure to attain the air quality standards, the strategies achieving 15 percent reductions will be implemented if the violations are less than 15 percent above the standard, and

the strategies achieving 25 percent reductions will be implemented if the violations are more than 15 percent above the standard. Rule 3745–17–14 also provides that if the failure to attain is occurring in only a portion of the nonattainment area, Ohio EPA has the discretion to limit the requirement for implementation of the contingency measures to a subcounty area. Specifically, under these circumstances this requirement may be limited to sources within a three kilometer radius of the violating monitor in the case of Cuyahoga County or within a two kilometer radius of the violating monitor in the case of Jefferson County.

As noted in the General Preamble, at 57 FR 13543, the deadline for submittal of contingency measures for "initial" particulate matter nonattainment areas is November 15, 1993. Rule 3745–17–14 does not provide specific, enforceable contingency measures satisfying the requirements of paragraph 172(c)(9). Nevertheless, it would be appropriate to approve Rule 3745–17–14. This rule strengthens the SIP, insofar as it requires companies to develop contingency strategies and insofar as it provides a mechanism for the implementation of those measures. In addition, the rule provides a reasonable framework for the development and implementation of contingency measures. The provisions for two magnitudes of control strategies, and for authority to reduce the area where implementation is required, provide clear and reasonable flexibility to tailor the contingency measure implementation to the magnitude and geographic extent of any continued nonattainment.

Clearly, the requirement in section 172(c)(9) for actual, enforceable contingency measures has not yet been satisfied. If Ohio submits enforceable contingency measures satisfying the requirements in rule 3745–17–14, these measures in conjunction with the implementation mechanism specified in the rule should satisfy the contingency measure requirements of paragraph 172(c)(9). Ohio has until November 15, 1993, to submit suitable, enforceable contingency measures. In the meantime, USEPA's belief that section 172(c)(9) has not yet been satisfied does not constitute grounds for disapproval of the SIP submittals in whole or in part.

VI. Today's Action

For the reasons discussed above, USEPA is today proposing limited approval and limited disapproval of Ohio's proposed particulate matter plan, including submittals of November 14, 1991, December 4, 1991, and January 8, 1992. With the exception of rule 3745–17–03(B)(10)(c) and the associated rule 3745–17–12(P)(6)(a), USEPA proposes to approve all of the regulations submitted by the State. Specifically, USEPA proposes to approve the following regulations: rule 3745–17–01, rule 3745–17–02, rule 3745–17–03 except for paragraph (B)(10)(c), rule 3745–17–04, rule 3745–17–07, rule 3745–17–08, rule 3745–17–09, rule 3745–17–10, rule 3745–17–11, rule 3745–17–12 except for paragraph (P)(6)(a), rule 3745–17–13, and rule 3745–17–14. USEPA also proposes to approve the rules in chapter 3745–75, including rule 3745–75–01, rule 3745–75–02, rule 3745–75–03, rule 3745–75–04, rule 3745–75–05, and rule 3745–75–06. USEPA proposes to disapprove paragraph (B)(10)(c) of rule 3745–17–03 and paragraph (P)(6)(a) of rule 3745–17–12, but also proposes to approve these paragraphs if the test method is revised to provide either a single day limit or weekly averaging of 5 days' samples.

USEPA proposes to find that the State's submittal satisfies selected requirements that apply to particulate matter nonattainment area plans. For Cuyahoga County, USEPA proposes to find that the State's plan demonstrates attainment in Cuyahoga County (see section 189(a)(1)(B)) and meets associated requirements in sections 172(c)(2), 172(c)(3), 172(c)(6), provided that the limitation on coke quench water quality is made properly enforceable. For the Steubenville area, USEPA proposes to find that the State's plan satisfies the requirement for RACM (see section 189(a)(1)(C) and the associated requirement in 172(c)(1)). For both areas, USEPA proposes to find:

(1) That the State's plan satisfies sections 172(c)(4) and 172(c)(7);

(2) that the requirements of section 172(c)(8) are inapplicable; and

(3) that separate rulemaking is to be conducted with respect to the requirements of sections 189(a)(1)(A), 172(c)(5), and 172(c)(9). Also for both areas, USEPA proposes to determine that sources of particulate matter precursors do not contribute significantly to violations of the particulate matter standard.

At the same time, USEPA proposes to find that the State's plans fail to meet significant other requirements that all SIPs must meet. USEPA proposes to find that the plan for Cuyahoga County does not satisfy the requirement in section 189(a)(1)(C) and section 172(c)(1) to provide for RACM. USEPA proposes to find that the plan for the Steubenville area does not satisfy the requirement in section 189(a)(1)(B) for demonstrating attainment and does not satisfy the related requirements in sections 172(c)(2), 172(c)(3) and 172(c)(6). For these reasons, USEPA is proposing to disapprove in part the SIP revisions submitted by the State of Ohio on November 14, 1991, December 4, 1991, and January 8, 1992 for the Cuyahoga County and Steubenville moderate PM–10 nonattainment area.

Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements reuired by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: Highway funding and offsets. The 18-month period referred to in section 179(a) will begin to run at the time USEPA publishes final notice of this disapproval. Moreover, the final disapproval triggers the Federal Implementation Plan (FIP) requirement under section 110(c).

Public comment is solicited on this proposed rulemaking action. Comments received by September 17, 1993 will be considered in the development of USEPA's final rulemaking action.

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

SIP approvals under sections 110 and 301 and subchapter I of part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval would not impose any new requirements, I certify that it would not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of State action. The Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *USEPA*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

In addition, USEPA's limited disapproval of the State request under

section 110 and Subchapter I, part D of the CAA also would not affect any existing requirements applicable to small entities. Any pre-existing Federal requirements not affected by rules subject to limited approval remain in place after this disapproval. Federal disapproval of the State submittal does not affect its State-enforceability. Moreover, USEPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, USEPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it impose any new Federal requirements. Under Executive Order 12291, this action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: December 31, 1992.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 93–18468 Filed 8–2–93; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 531

[Docket No. LVM 89–01; Notice 13]

Passenger Automobile Average Fuel Economy Standards; Proposed Decision to Grant Exemption

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Proposed decision.

SUMMARY: This proposal is being issued in response to a petition filed by Rolls-Royce Motors, Ltd. (Rolls-Royce) requesting that it be exempted from the generally applicable average fuel economy standard of 27.5 miles per gallon (mpg) for its model year (MY) 1995 and 1996 passenger automobiles, and that lower alternative standards be established for it. This document proposes that the requested exemption be granted and that an alternative standard of 14.6 mpg be established for each of MYs 1995 and 1996 for Rolls-Royce.

DATES: Comments on this proposal must be received on or before September 17, 1993.

ADDRESSES: Comments on this proposal must refer to the docket number and notice number in the heading of this notice and be submitted, preferably in ten copies, to: Docket Section; room 5109, National Highway Traffic Safety Administration, 400 Seventh Street. SW., Washington DC 20590. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

Ms. Yolene Young, Office of Market Incentives, NHTSA, 400 Seventh Street, SW., Washington DC 20590. Ms. Young's telephone number is: (202) 366–4802.

SUPPLEMENTARY INFORMATION:

Statutory Background

Section 502(c) of the Motor Vehicle Information and Cost Savings Act, as amended (the Act), provides that NHTSA may exempt a low volume manufacturer of passenger automobiles from the generally applicable average fuel economy standards for passenger automobiles if NHTSA concludes that those standards are more stringent then the maximum feasible average fuel economy for that manufacturer and if NHTSA establishes an alternative standard for that manufacturer at its maximum feasible level. Under the Act, a low volume manufacturer is one that manufactured (worldwide) fewer than 10,000 passenger automobiles in the second MY before the MY for which the exemption is sought (the affected MY) and that will manufacture fewer than 10,000 passenger automobiles in the affected MY. In determining maximum feasible average fuel economy, the agency is required by section 502(e) of the Act to consider:

(1) Technological feasibility;

(2) Economic practicability;

(3) The effect of other Federal motor vehicle standards on fuel economy; and

(4) The need of the Nation to conserve energy.

The Act permits NHTSA to establish alternative average fuel economy standards applicable to exempted low volume manufacturers in one of three ways: (1) a separate standard for each exempted manufacture; (2) a separate average fuel economy standard applicable to each class of exempted automobiles (classes would be based on design, size, price, or other factors); or (3) a single standard for all exempted manufacturers.

Petition

On October 23, 1992, Rolls-Royce petitioned NHTSA for an exemption from the generally applicable fuel economy standards for MYs 1995 and 1996. Rolls-Royce's current petition is the latest in a series of exemption petitions which that company has submitted since MY 1978. The most recent previous petition, dated November 8, 1989, requested an alternative standard of 13.8 mpg for MYs 1992 through 1994, was granted by NHTSA in a **Federal Register** notice of September 11, 1990 (See 55 FR 37325). In the current petition, Rolls-Royce states that its maximum feasible fuel economy for MYs 1995 and 1996 has increased to 14.6 mpg for each year.

Background Information on Rolls-Royce

Rolls-Royce is a small company that concentrates wholly on the production of high quality prestigious cars. Rolls-Royce markets cars under two separate nameplates; Rolls-Royce and Bentley. Rolls-Royce seeks an exemption for both Rolls-Royce and Bentley cars. It annual production rate is 2,000–3,000 automobiles, about one third of which is sole in the U.S. market. Rolls-Royce's corporate philosophy is that concentrating on this limited range and volume is the only way to maintain its reputation for producing cars that it says are widely perceived as the best in the world.

The corporate financial limitations of this small company and its unique market sector preclude Rolls-Royce from improving fuel economy by any means involving significant changes to the basic concept of a Rolls-Royce car. Fuel economy improvements are particularly difficult in the short run. Rolls-Royce manufactures its on engines and bodies. Because of this integration of component manufacturing and low volume of production, model changes are much less frequent than with larger manufacturers. Its long model runs (as much as 15 years between major changes) make even small changes difficult. There is also little opportunity in the short term for improving fuel economy by changing the model mix because it makes only one basic model in various configurations, and all have similarly low fuel economy.

In the long term, Rolls-Royce's ability to make fuel economy improvements is similarly limited. A change in the basic concept of its cars to reduce size or downgrade the specifications would not, according to the petitioner, be acceptable to its customers.

Nevertheless, Rolls-Royce states that it is making every effort to achieve the lowest possible fuel consumption consistent with meeting emission, safety, and other standards while maintaining customer expectations of its product. In the 15-year period from 1978, when Federal fuel economy standards were introduced, Rolls-Royce has achieved a fuel economy improvement of approximately 28 percent by optimizing and tuning its powertrain while leaving basic features of the vehicles unchanged.

Rolls-Royce states that technical innovation and switching to lighter weight materials should result in worthwhile improvements in its vehicles. The company believes that it has been conscious of the need for weight saving for many years, and since the introduction of the Silver Shadow, has made many parts of aluminum. These include the engine block and cylinder heads, transmission and axle casings, doors, hood and deck lid.

In addition to discussing opportunities for weight reduction, Rolls-Royce also included in its petition discussions of improving its fuel economy through mix shifts, engine improvements, and drive train and transmission improvements.

Methodology Used to Project Maximum Feasible Average Fuel Economy Level for Rolls-Royce

Baseline Fuel Economy

To project the level of fuel economy which could be achieved by Rolls-Royce in MYs 1995 and 1996, the agency considered whether there were technical or other improvements that would be feasible for these Rolls-Royce vehicles, whether or not the company currently plans to incorporate such improvements in those vehicles. The agency reviewed the technological feasibility of any changes and their economic practicability.

NHTSA interprets "technological feasibility" as meaning that technology which would be available to Rolls-Royce for use on its MY 1995 and 1996 automobiles, and which would improve the fuel economy of those automobiles. The areas examined for technologically feasible improvements were weight reduction, aerodynamic improvements, engine improvements, drive line improvements, and reduced rolling resistance.

The agency interprets "economic practicability" as meaning the financial capability of the manufacturer to improve its average fuel economy by incorporating technologically feasible changes to its MY 1995 and 1996 automobiles. In assessing that capability, the agency has always considered market demand since it is an implicit part of the concept of economic practicability. Consumers need not purchase what they do not want.

In accordance with the concerns of economic practicability, NHTSA has considered only those improvements which would be compatible with the basic design concepts of Rolls-Royce automobiles. NHTSA assumes that Rolls-Royce will continue to produce a five-passenger luxury car. Hence, design changes that would make the cars unsuitable for five adult passengers with luggage or would remove items traditionally offered on luxury cars, such as air conditioning, automatic transmission, power steering, and power windows, were not examined. Such changes to the basic design could be economically impracticable since they might well significantly reduce the demand for these automobiles, thereby reducing sales and causing significant economic injury to the low volume manufacturer.

Mix Shift

Rolls-Royce has little opportunity for improving fuel economy by changing the model mix since it makes only one basic model in various configurations, all with similarly low fuel economy. The differences in fuel economy values among the different models available in MYs 1995 and 1996 will likewise be small. For MYs 1995 and 1996, Rolls-Royce and Bentley cars will fall into five fuel economy configurations, three from the naturally aspirated engine family and two from the turbocharged engine family with a range of curb weights, the lowest being a little over 2,430 kilograms (5,360 lbs). The differences in fuel economy values between the different models are relatively small (total difference 0.9 mpg), and the models with the lower projected fuel economies have significantly lower projected volumes. The Rolls-Royce model mix is essentially fixed by market demand, and variations in sales percentages among the vehicles would produce negligible improvement in fuel economy.

Producing additional models or making some of the configurations significantly more fuel efficient is not possible since both corporate financial limitations and the unique market sector served by Rolls-Royce preclude significant changes to the basic concept of a Rolls-Royce car.

Weight Reduction

Rolls-Royce had begun work to design a lighter and more fuel efficient model which included new features such as a lighter bodyshell, engine, transmission, and suspension. However, economic considerations resulted in the delay of a new model.

As stated previously, Rolls-Royce has used aluminum for many of its unstressed components for some time. An in-house program has been conducted by the company to evaluate the effect of further weight reduction by removing items from the vehicle with no changes to engine or transmission. Dynamometer tests indicated that emissions as well as fuel economy improvements would result from reduced weight, but the tests were conducted simply by removing components from the vehicle. An 11 percent reduction in weight resulted in a 4 percent improvement in fuel economy. To achieve an equal or greater weight reduction through design changes would require complete redesign and retooling, which is not practicable, as Rolls-Royce states that it does not, for the foreseeable future, have the capital to undertake such an expensive effort.

Engine Improvements

Rolls-Royce's petition for MYs 1995 and 1996 restates past efforts to improve fuel economy in addressing engine improvements. Developmental activities within the past ten years include test and evaluation of various technologies applied to the Rolls-Royce engine. These include diesel engines, cylinder disablement, increased engine displacement (to reduce nitrous oxide emissions and permit timing for improved fuel economy), the May "Fireball" combustion chamber, and overall downsizing of the engine and car incorporating all new features including bodyshell, engine, transmission, and suspension. Each of these approaches was discarded in turn as failing to provide a feasible option for simultaneously meeting fuel economy and emission requirements, and exacting customer expectations. For MYs 1995 and 1996, Rolls-Royce plans a series of improvements in the engine and emissions systems that are of a confidential nature. The agency agrees with Rolls-Royce that these improvements will result in better fuel economy for Rolls-Royce's MYs 1995 and 1996 vehicles.

Transmission and Drive Train Improvements

Rolls-Royce uses the General Motors 4L80–E four-speed automatic transmission with torque converter lockup clutch on all models beginning in MY 1992. Use of the fourth gear as

an overdrive ratio has shown the capability of improving fuel economy by approximately 14 percent under highway driving conditions. Rolls-Royce states that on one of its models, other transmission and drive train improvements, of a confidential nature, that will be made, will result in a slightly improved highway fuel economy for that model. The agency agrees with Rolls-Royce's assessment.

The Effect of Other Motor Vehicle Standards

The Rolls-Royce petition cites exhaust emission standards as having the greatest effect on fuel economy, and for this reason, the company considers the fuel economy program to be an integral part of its emission control program. It states that, historically, emission standards have placed a severe strain on its limited technical resources. According to Rolls-Royce, only with the introduction of new emission control techniques such as oxidation and three-way catalysts has the trend to higher fuel consumption been reversed.

As a small volume manufacturer, the recently enacted stringent California emission standards will not apply to Rolls-Royce until MY 1995. The more stringent Federal Clean Air Act amendments will not apply until MY 1996. Rolls-Royce does not mention a fuel economy penalty for meeting the California emission standards for MY 1995 and Federal standards for MY 1996. Nevertheless, Rolls-Royce will have to expend some of its limited engineering resources to comply with the new standards.

Of the Federal safety regulations it believes have an adverse effect on fuel economy, Rolls-Royce considers the most significant ones to be 49 CFR part 581 energy absorbing bumpers, Federal motor vehicle safety standard (FMVSS) 214 (side intrusion beam in doors), and FMVSS 208 (automatic restraints). The addition of automatic restraint systems (air bags) had the effect of moving some models into the 6,000 lbs and 6,500 lbs inertia weight classes. The effect of these regulations increased vehicle weight despite efforts to reduce weight. Rolls-Royce stated that it is a small company with limited engineering resources, necessitating it to give priority to meeting mandatory safety standards over attaining better fuel economy in order to remain in the market.

The effect of complying with safety standards is to increase vehicle weight notwithstanding other efforts to reduce weight, including application of other materials. The weight increases attributable to these standards are reflected in Rolls-Royce's weight projections for MYs 1995 and 1996 and in requested alternative standards.

The Need of the Nation to Conserve Energy

The agency recognizes there is a need to conserve energy, to promote energy security, and to improve balance of payments. However, as stated above, NHTSA has tentatively determined that it is not technologically feasible or economically practicable for Rolls-Royce to achieve an average fuel economy in MYs 1995 and 1996 above 14.6 mpg. Granting an exemption to Rolls-Royce and setting an alternative standard at that level would result in only a negligible increase in fuel consumption and would not affect the need of the Nation to conserve energy. In fact, there would not be any increase since Rolls-Royce cannot attain those generally applicable standards. Nevertheless, for illustrative purposes only, the agency estimates that the additional fuel consumed by operating the MY 1995 and 1996 cars at the company's projected CAFE of 14.6 mpg (compared to a hypothetical 27.5 mpg fleet) over 106,952 miles would be 128,982 bbls. of fuel. This translates to an average of about 29 bbls. of fuel per day over the 12 year period that these cars would be an active part of the fleet. This is insignificant compared to the daily fuel used by the entire motor vehicle fleet which amounted to some 4.6 million bbls. per day for passenger cars in the U.S. in 1991.

Maximum Feasible Average Fuel Economy for Rolls Royce

This agency has tentatively concluded that it would not be technologically feasible and economically practicable for Rolls-Royce to improve the fuel economy of its MY 1995 and 1996 automobiles above an average of 14.6 mpg, that compliance with other Federal automobile standards would not adversely affect achievable fuel economy beyond the amount already factored into Rolls-Royce's projections, and that the national effort to conserve energy would not be affected by granting the requested exemption and establishing an alternative standard. Consequently, the agency tentatively concludes that the maximum feasible average fuel economy for Rolls-Royce in MYs 1995 to 1996 is 14.6 mpg.

Proposed Level and Type of Alternative Standard

The agency proposes to exempt Rolls-Royce from the generally applicable standard of 27.5 mpg and to establish an alternative standard for Rolls-Royce for each of MYs 1995 and 1996 at its maximum feasible average fuel economy of 14.6 mpg. NHTSA tentatively concludes that it would be appropriate to establish a separate standard for Rolls-Royce for the following reasons. The agency has already granted a petition for an alternate standard for Dutcher Motors, Inc. for MY 1995, establishing an alternate standard for that company of 17.0 mpg (see 56 FR 37478; August 7, 1991). The agency has not yet received a petition from other low volume manufacturer for MY 1996. Therefore, the agency cannot use the second (class standards) or third (single standard for all exempted manufacturers) approaches for MYs 1995 and 1996.

Regulatory Impact Analyses

NHTSA has analyzed this proposal and determined that neither Executive Order 12291 nor the Department of Transportation regulatory policies and procedures apply. Under Executive Order 12291, the proposal would not establish a "rule," which is defined in the Executive Order as "an agency statement of general applicability and future effect." The proposed exemption is not generally applicable, since it would apply only to Rolls-Royce Motors, Inc., as discussed in this notice. Under DOT regulatory policies and procedures, the proposed exemption would not be a "significant regulation." If the Executive Order and the Departmental policies and procedures were applicable, the agency would have determined that this proposed action is neither major nor significant. The principal impact of this proposal is that the exempted company would not be required to pay civil penalties if its maximum feasible average fuel economy were achieved, and purchasers of those vehicles would not have to bear the burden of those civil penalties in the form of higher prices. Since this proposal sets an alternative standard at the level determined to be Rolls-Royce's maximum feasible level for MYs 1995 and 1996, no fuel would be saved by establishing a higher alternative standard. NHTSA finds in the Section on "The Need of the Nation to Conserve Energy" that because of the small size of the Rolls-Royce fleet, that incremental usage of gasoline by Rolls-Royce customers would not affect the nation's need to conserve gasoline. There would not be any impacts for the public at large.

The agency has also considered the environmental implications of this proposed exemption in accordance with the National Environmental Policy Act and determined that this proposed

exemption, if adopted, would not significantly affect the human environment. Regardless of the fuel economy of the exempted vehicles, they must pass the emissions standards which measure the amount of emissions per mile traveled. Thus, the quality of the air is not affected by the proposed exemptions and alternative standards. Further, since the exempted passenger automobiles cannot achieve better fuel economy than is proposed herein, granting these proposed exemptions would not affect the amount of fuel used.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential business information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 531

Energy conservation, Gasoline, Imports, Motor vehicles.

In consideration of the foregoing, it is proposed that 49 CFR part 531 be amended as follows:

PART 531—[AMENDED]

1. The authority citation for part 531 would continue to read as follows:

Authority: 15 U.S.C. 2002, delegation of authority at 49 CFR 1.50.

2. In § 531.5, the introductory text of paragraph (b) would be republished and paragraph (b)(2) would be revised to read as follows:

§ 531.5 Fuel economy standards.

* * * * *

(b) The following manufacturers shall comply with the standards indicated below for the specified model years:

* * * * *

(2) Rolls-Royce Motors, Inc.

Model year	Average fuel economy standard (miles per gallon)
1978	10.7
1979	10.8
1980	11.1
1981	10.7
1982	10.6
1983	9.9
1984	10.0
1985	10.0
1986	11.0
1987	11.2
1988	11.2
1989	11.2
1990	12.7
1991	12.7
1992	13.8
1993	13.8
1994	13.8
1995	14.6
1996	14.6

* * * * *

Issued on: July 28, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93–18382 Filed 8–2–93; 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 Arroyo Southwestern Toad

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to list the arroyo southwestern toad (Bufo microscaphus californicus) as an endangered species pursuant to the provisions of the Endangered Species Act of 1973, as amended (Act). The arroyo southwestern toad occurs exclusively in streams in southern California and northwestern Baja California, Mexico. The arroyo southwestern toad has been extirpated from an estimated 75 percent of its former range (Sweet 1992). Threats to the survival of this species include: habitat degradation, drought, predation, and small population sizes. Only 2 of the 15 extant populations south of Ventura are known to contain more than a dozen adults. Critical habitat is not being proposed at this time. If made final, this action would extend the Act's protection to the arroyo southwestern toad. The Service seeks information, data and comments from the public regarding this proposal.

DATES: Comments from all interested parties must be received by October 4, 1993. Public hearing requests must be received by September 17, 1993.

ADDRESSES: Comments and materials concerning this proposal should be sent to Field Supervisor, Ventura Field Office, U.S. Fish and Wildlife Service, 2140 Eastman Avenue, Suite 100, Ventura, California 93003 (telephone 805/644–1766). Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Cathy R. Brown at the Ventura Field Office (see **ADDRESSES** section).

SUPPLEMENTARY INFORMATION:

Background

The arroyo southwestern toad (*Bufo microscaphus californicus*) is a small toad in the family Bufonidae. This taxon was originally described as *Bufo cognatus californicus* from a specimen collected at Santa Paula, Ventura

County (Camp 1915 as cited in Price and Sullivan 1988). Camp's specimen was later shown to differ in several respects from *Bufo cognatus* and was afforded separate status as *Bufo californicus* (Myers 1930). In the following two decades, this toad was considered a subspecies of *Bufo compactilis* (Linsdale 1940) and of *B. woodhousei* (Shannon 1949). The currently accepted taxonomy of the arroyo southwestern toad as a subspecies of *Bufo microscaphus* is based on morphological similarities (Stebbins 1951, Price and Sullivan 1988). The arroyo southwestern toad (*B. m. californicus*) is geographically isolated from the Arizona southwestern toad (*B. m. microscaphus*) by the Mojave Desert. Work is now in progress to determine if the arroyo southwestern toad is genetically distinct at the species level (S. Sweet, Univ. of Calif., Santa Barbara, pers. comm., 1991).

The arroyo southwestern toad is a small (5–8 centimeters or 2–3 inches) light greenish gray or tan toad with warty skin and dark spots. Its underside is buff colored and often without spots. A light-colored stripe crosses the head and eyelids, and a light area usually occurs on each sacral hump and in the middle of the back. Its movement consists of hopping more often than walking. Its courtship vocalization is a high trill, usually lasting 8 to 10 seconds.

Arroyo southwestern toads were historically found along the length of drainages in southern California from San Luis Obispo County to San Diego County, but now they survive only in the headwaters as small isolated populations, primarily on National Forest lands (Sweet 1992). Urbanization and dam construction beginning in the early 1900's in southern California caused most of the extensive habitat degradation.

At least 90 percent of the known extant populations of arroyo southwestern toad occur in areas owned or managed by the Forest Service (Los Padres, Angeles, San Bernardino, and Cleveland National Forests) (Sweet 1992). Most other remaining populations occur on privately owned lands. Due mostly to habitat destruction, only five drainages remain where populations of this species may be viable. In 1990, only seven pairs of arroyo southwestern toads are known to have bred anywhere within the toad's range (Sweet 1992). Due to the isolation and the small sizes, each population is at great risk of extinction.

The arroyo southwestern toad is restricted to rivers that have shallow, gravelly pools adjacent to sandy terraces. Breeding occurs on large streams with persistent water from late March until mid-June (Sweet 1989). Eggs are deposited and larvae develop in shallow pools with minimal current and little or no emergent vegetation and with sand or pea gravel substrate overlain with flocculent silt. After metamorphosis (June-July), the juvenile toads remain on the bordering gravel bars until the pool no longer persists (3 to 8 weeks, depending on site and year) (Sweet 1992). Juveniles and adults forage for insects on sandy stream terraces that have nearly complete closure of cottonwoods (*Populus* spp.), oaks (*Quercus* spp.), or willows (*Salix* spp.), and almost no grass and herbaceous cover at ground level. Adult toads excavate shallow burrows on the terraces where they shelter during the day when the surface is damp, or during longer intervals in the dry season (Sweet 1989).

Previous Federal Action

The arroyo southwestern toad was first included by the Service as a Category 2 candidate species in the September 18, 1985, Notice of Review of Vertebrate Wildlife (50 FR 37958). Category 2 applies to taxa for which information now in the possession of the Service indicates that proposing to list as endangered or threatened is possibly appropriate, but for which conclusive data on biological vulnerability and threat are not currently available to support proposed rules. The subspecies also was included as a Category 2 candidate in the January 6, 1989, and November 21, 1991, Animal Notices of Review (54 FR 554 and 56 FR 58804 respectively). Since the toad was first listed as a Category 2 candidate, the Service has obtained substantial information on the biological vulnerability and the environmental threats to elevate this species to Category 1. Category 1 species are those for which the Service possesses sufficient data to support proposals for listing. Most of the new information and analyses came from Samuel Sweet of the University of California, Santa Barbara; Mark Jennings of the University of Arizona; and staff of the Los Padres National Forest.

On January 12, 1993, the Service received a petition from Dr. Sam Sweet, Associate Professor of Biology at the University of California, Santa Barbara, and Dr. Mark Jennings, Research Associate in the Department of Herpetology, California Academy of Sciences, to list the arroyo southwestern toad as endangered (Sweet and Jennings 1992). Section 4(b)(3)(A) of the Endangered Species Act (Act), as amended, requires to the maximum extent practicable, that the Secretary make a finding within 90 days of receipt of a petition, as to whether or not substantial information indicates the requested action may be warranted. If such a finding is made, the Service is directed to commence a review of the status of the species. Within 12 months of receipt of a petition found to present substantial information, the Secretary is further directed to make a finding that the petitioned action is warranted, not warranted, or warranted but precluded. In this instance the preparation of this proposed rule was nearly complete at the time the petition was received, and therefore alleviates the need to commence the status review that the Service would typically commence in response to a petition.

This proposed rule constitutes the Service's 12 month finding that listing of the arroyo southwestern toad is warranted. The petition, status surveys, and reference data (Sweet 1992) describe the arroyo southwestern toad as endangered due to past and continuing wide-ranging losses and degradation of riparian habitat within its historic range.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the arroyo southwestern toad (*Bufo microscaphus californicus*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Habitat destruction and alteration constitutes the most severe threat facing the arroyo southwestern toad. This toad is now confined to the headwaters of streams it occupied historically along their entire lengths. Of 475 river-kilometers (km)(295 river-miles) once known (from museum records circa 1915) to support populations of arroyo southwestern toads in the State, populations currently exist on only 120 km (73.5 miles); thus, arroyo southwestern toads have been extirpated from 75.1 percent of their former range in the United States (Sweet 1992).

The arroyo southwestern toad was formerly found on rivers with near-

perennial flow throughout southern California from San Luis Obispo County to San Diego County. It is believed to be extirpated in San Luis Obispo County (S. Sweet, pers. comm., 1991). Populations persist in Santa Barbara, Ventura, Los Angeles, and San Diego Counties. Recent sightings of scattered individuals have been reported from Orange, Riverside, San Bernardino, and southwest Imperial Counties.

Most of the remaining populations exist on Forest Service land. The Los Padres National Forest in Santa Barbara, Ventura, and Los Angeles Counties supports the majority of southern California's remaining intact large river systems, and probably maintains the only extant viable populations of arroyo southwestern toads. Sespe Creek in Ventura County has the largest known population (Sweet 1992). Other populations are found on the Sisquoc, Santa Ynez, and upper and lower Piru drainages (Sweet 1992). In San Diego County, arroyo southwestern toads are found on the Santa Margarita, Guejito, Sweetwater, Vallecito, San Luis Rey, Santa Ysabel, Witch, and Cottonwood Rivers (S. Sweet, pers. comm., 1991).

Several factors presently threaten the remaining 25 percent of the habitat of the arroyo southwestern toad including: (1) Short- and long-term changes in river hydrology, including construction of dams and water diversions; (2) alteration of riparian wetland habitats by agriculture and urbanization; (3) construction of roads; (4) site-specific damage by off-highway vehicle use; (5) development of campgrounds and other recreational activities; (6) over-grazing; and (7) mining activities.

Dam construction was responsible for the loss of approximately 40 percent of the estimated original range of the arroyo southwestern toad. Twenty-six large impoundments are currently located within the range of this species, inundating over 190 km (120 miles) of suitable habitat. Additional areas have been identified as potential dam sites, and if constructed would destroy 25 percent of the current range (6–7 percent of the original range) of the arroyo southwestern toad (Sweet 1991a).

In addition to habitat loss through direct inundation, dams can have significant effects on habitat quality downstream. Artificial flow regulation disrupts the natural processes that produce the terrace and pool habitats required by arroyo southwestern toads. Unseasonal water releases may prevent arroyo southwestern toads from breeding due to habitat changes (Sweet 1992).

Another consequence of sustained unnatural perennial flows below dams is an adverse affect on the habitat of this species by encouraging vegetative growth in a riparian corridor, which increases ground stability and hence confines and deepens the creek channel. Water temperatures are reduced below the temperatures needed for larval development (Sweet 1991a).

The arroyo southwestern toad is also sensitive to stream diversions as they cause the riparian areas to dry. Water diversions that alter normal flows have degraded habitats and adversely affected arroyo southwestern toads by leading to: (1) The early drying of breeding pools, causing breeding failures or loss of the larval population; (2) restriction of the period essential for rapid growth when newly-metamorphosed toads can forage on damp gravel bars; and (3) loss of damp subsurface soil, which may result in high adult mortality during late summer and early fall (Sweet 1992).

Development projects in riparian wetlands have caused permanent losses of riparian habitats, and are the most conspicuous factor in the decline of the arroyo southwestern toad (S. Sweet, pers. comm., 1991). Agriculture and urbanization have already destroyed much of the suitable arroyo southwestern toad habitat south of the Santa Clara River in Ventura County (S. Sweet, pers. comm., 1991). Stream terraces have been converted to farming, road corridors, and residential and commercial uses, while the streams themselves have been channelized for flood control. Large stretches of riparian corridor habitat has also been degraded or destroyed by cattle and feral pigs (S. Sweet, pers. comm., 1991).

Recreational activities in riparian wetlands have had substantial negative affects to arroyo southwestern toad habitat and individuals, as discussed in Factor E. Off-highway vehicles cause extensive damage to the shallow pools in which arroyo southwestern toads breed (Sweet 1992).

Streamside campgrounds in southern California National Forests have frequently been located adjacent to arroyo southwestern toad habitat (Sweet 1992). In the Los Padres National Forest, each of the three campgrounds on Piru and Sespe Creeks were developed on terraces used by arroyo southwestern toads, within 50–100 meters (150–300 feet) of their breeding pools. On the upper Santa Ynez River, also on Los Padres National Forest, three of four campgrounds are also located in arroyo southwestern toad habitat (Sweet 1991a, 1991b). The placement of campgrounds is similar in the Cleveland National Forest in San Diego County.

The use of heavy equipment in yearly reconstruction of roads and stream crossings in the National Forests has had significant and repeated impacts to arroyo southwestern toads and toad habitat. Maintenance of the road to Ogilvy Ranch, a private inholding in the Los Padres National Forest, is likely responsible for a depressed population of arroyo southwestern toads on Mono Creek. The Ogilvy Ranch road makes 18 crossings of Mono Creek, many directly through or near arroyo southwestern toad breeding pools. In summer 1992, the Los Padres National Forest declined to open the Ogilvy Ranch road in order to protect populations of arroyo southwestern toads and other candidate amphibians and reptiles. However, the road was opened with a bulldozer in the fall. As juvenile arroyo southwestern toads were likely burrowed into the soft sand adjacent to the creek, grading the road up the creek killed individuals, and destroyed habitat. Regular maintenance of roads in the Los Padres National Forest negatively affects arroyo southwestern toad individuals and toad habitat on the Santa Ynez River, Piru and Sespe Creeks, as well.

An additional threat to this species is mining activities. Recreational suction dredging for gold adversely affects toad habitat and individuals. Dredging destroys breeding pools used by arroyo southwestern toads and causes excessive siltation downstream, which asphyxiates eggs and small larvae. For example, during the Memorial Day weekend of 1991, four small dredges operating on Piru Creek (of Los Padres National Forest) produced sedimentation visible more than 1 kilometer (0.6 mile) downstream, and adversely affected 40,000–60,000 arroyo southwestern toad larvae. Subsequent surveys revealed nearly total destruction of the species in this stream section; fewer than 100 larvae survived, and only 4 juvenile toads were located (Sweet 1992).

Several rivers in the Los Padres National Forest were recently temporarily closed to gold mining, and it is uncertain whether the ban will be made permanent. In December 1992, a group of miners challenged the Forest Service's authority to close Piru Creek to mining. These individuals practiced various methods of gold extraction until cited by the Forest Service. It seems likely that future challenges will occur and, if successful, will threaten the population of arroyo southwestern toads on Piru Creek.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Populations of the arroyo southwestern toad are becoming so small and confined that even limited taking by campers, recreationists, and

scientific researchers could adversely affect this species' viability. These toads are threatened by children near the campgrounds as it is commonplace for children to capture and keep organisms while at play. No data exists on the extent of such collection activities, but it is very likely that it has occurred or is occurring.

C. *Disease or predation.* Over the past 20 years, at least 60 species of fishes have been introduced to the western U.S. states, 59 percent of which are predatory (Hayes and Jennings 1986; Jennings 1988). The introduction of exotic predators to southern California waters has been facilitated by the interbasin transport of water (e.g., California Aqueduct). Introduced predators had substantial impacts on the sizes of extant populations of arroyo southwestern toads, and may have contributed to regional extinctions (Hayes and Jennings 1986).

Virtually all rivers that contain or once contained arroyo southwestern toads support populations of introduced predatory fish, such as green sunfish (*Lepomis cyanellus*), largemouth bass (*Micropterous salmoides*), mosquitofish (*Gambusia affinis*), black bullhead (*Ictalurus nebulosus*), arroyo chub (*Gila orcutti*), prickly sculpin (*Cottus asper*), stocked trout (*Oncorhynchus mykiss*), oriental gobies (*Tridentiger* sp.), and red shiners (*Neotropis lutrensis*) (Sweet 1992). All of these introduced fish prey on tadpoles, and have been observed inducing high arroyo southwestern toad larval mortality in breeding pools on the Piru, Sespe, and Santa Ynez drainages, and it is likely to have occurred elsewhere (Sweet 1992).

Most streams with populations of arroyo southwestern toads also have populations of introduced bullfrogs (*Rana catesbeiana*). Adult bullfrogs are highly predatory and are believed to prey on adult arroyo southwestern toads (Sweet 1992). Artificially maintained perennial flows below dams provide permanent water and enhance the habitat for bullfrogs to the detriment of arroyo southwestern toads.

D. *The inadequacy of existing regulatory mechanisms.* The U.S. Army Corps of Engineers (Corps), responsible for administering section 404 of the Federal Water Pollution Control Act Amendments of 1972 (Clean Water Act), has authority to regulate the placement of dredged and fill materials into waters of the United States. Individual actions under nationwide permits undergo minimal outside agency review. Individual permits, which are subject to more extensive review, are required for projects that affect greater than 10 acres.

The Corps cannot issue a nationwide or individual permit where a federally listed species may be affected, without first consulting with the Service under section 7 of the Endangered Species Act. The Service, as part of the section 404 review process, provides comments on both pre-discharge notices for nationwide permits and public notices for individual permits. The Service's comments are only advisory, although procedures exist for elevation when disagreements between the two agencies arise.

Most construction projects in or near arroyo southwestern toad habitat would require a permit from the Corps pursuant to section 404 of the Clean Water Act. In practice, the Corps' actions under section 404 has not adequately protected arroyo southwestern toads, as the Corps has rarely required individual permits where impacts to the toad would occur. The Corps has either approved the projects under nationwide permits, or there have been repeated unauthorized activities. Federal listing of this species would ensure greater consideration of the effects of permitted actions during the review process, as well as provide the protection of section 7 of the Act.

The National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA) require an intensive environmental review of projects that may adversely affect Federal candidate species. However, project proponents are not required to avoid impacts to these species, and proposed mitigation measures are frequently not adequately implemented. As with section 404 permits, the Service's comments through these environmental review processes are only advisory.

Forest Service policy as described in the National Forest Management Act states "Fish and wildlife habitat shall be managed to maintain viable populations of existing native and desired non-native vertebrate species in the planning area" (36 CFR 219.19). The Los Padres National Forest recently funded a study on the ecology of arroyo southwestern toads (Sweet 1992). The results of this study will be used to develop sound management recommendations for protection of arroyo southwestern toads on the Forest. Despite this positive step, the southern California National Forests have not been able to successfully implement the protection of the arroyo southwestern toad. Activities such as road maintenance, off-highway vehicle use, and the issuance of special use permits for dam and water diversion construction have contributed to the decline of the arroyo southwestern toad.

Alteration of the natural intermittent flow regimes by dams has had significant adverse impacts to arroyo southwestern toads. The State Department of Water Resources, which operates Pyramid Dam on Piru Creek in the Los Padres and Angeles National Forests, frequently discharges excess flows from the reservoir with inadequate consideration by the State for downstream consequences to fish and wildlife. The depressed population of arroyo southwestern toads on lower Piru Creek below Pyramid Dam is probably a result of unscheduled timing of water releases since the 1970's (Sweet 1992). Although the dam is located on National Forest land and each release or each release program should be subject to a Forest Service special use permit, inadequate protection has been given by the Forest Service to aquatic and riparian-dependent wildlife below the dam.

Although the arroyo southwestern toad is classified as a "Species of Special Concern" by the State of California (Steinhart 1990) and may not be taken within a scientific collecting permit, this designation provides no special, legally mandated protection of the species and its habitat.

E. *Other natural or manmade factors affecting its continued existence.* Several other factors have also contributed to the decline of the species including drought, fire, and light and noise pollution. Additionally there has been direct mortality of the toads due to road construction and maintenance, water inundation or drainage from dams and diversions, off-highway vehicle use, cattle and pig trampling, mining, and recreational activities.

By far, the most significant natural factor adversely affecting the arroyo southwestern toad is drought, and resultant deterioration of riparian habitats. Southern California recently experienced 5 consecutive years of lower than average rainfall. These drought conditions, when combined with human induced water reductions (i.e., diversions of water from streams), have degraded riparian ecosystems and have created extremely stressful conditions for most aquatic species.

Drought also affects arroyo southwestern toads in another manner. Female arroyo southwestern toads must feed for at least 2 months in order to develop the fat reserves needed to produce a clutch of eggs (Sweet 1992). In drought years, females may find insufficient insect prey to produce eggs before males cease their courtship behavior of calling, resulting in no reproduction in that year. The extremely low reproduction of 1990 was likely due

to 4 years of severe drought (Sweet 1992).

Periodic fires may adversely affect arroyo southwestern toads by causing direct mortality, destroying streamside vegetation, or eliminating vegetation that sustains the watershed. Recent natural and human-induced wildfires had devastating effects on populations of arroyo southwestern toads. The 1991 Lions Fire on upper Sespe Creek in the Los Padres National Forest destroyed habitat containing the largest known extant population of arroyo southwestern toads, including 15 known breeding pools and over 50 percent of the known adult population on the Sespe drainage (Sweet 1991c). Even more significantly, the wildfire heavily affected the only section of river where these toads were known to reproduce successfully in 1989, 1990, and 1991 (S. Sweet, pers. comm., 1991). It is likely that populations of adults or juvenile toads concentrated in areas sustaining high-intensity burns were decimated due to the subsequent sedimentation that occurred in the drainages (Sweet 1991c). Following the effects of the preceding series of drought years, the impact of this fire has been intense and will likely be long-term.

The vocalizations of male toads are crucial to the breeding success of this species, as their calls are the key factor to finding mates. Light and noise pollution from adjacent developments or campgrounds may also reduce arroyo southwestern toad reproductive success by disrupting the vocalization behavior of males during the breeding season. Generally, the local population of arroyo southwestern toads declines as campground use increases (Sweet 1992).

Unseasonal water releases from dams may prevent arroyo southwestern toads from breeding altogether, as discussed in Factor A, or may wash away eggs and larvae if releases are made after breeding has occurred (Sweet 1992). Service advisory input may be sought by the California Department of Water Resources prior to scheduled water releases to avoid negative impacts to the toad. However, unscheduled releases do occur, whereby the Department of Water Resources does not seek advisory input from the Service. For example, large unscheduled releases from Pyramid Lake in May 1991 virtually eliminated all reproduction by arroyo southwestern toads below the dam in Piru Creek, in what would have been the best year for reproduction following 5 years of drought (Sweet 1992). A proposal to convey State Water Project water from Pyramid Lake to Piru Lake via Piru Creek would also threaten arroyo southwestern toad survival on Piru Creek if releases substantially alter natural flow regimes.

Grazing brings another potential source of mortality to this species. Horses and cattle graze in riparian areas and may trample eggs and larvae of arroyo southwestern toads (S. Sweet, pers. comm., 1991).

Off-highway vehicle use is believed to be the primary factor responsible for the decimation of the Mojave River population of the arroyo southwestern toad (Jennings 1991). On Memorial Day weekend in 1991, a fence protecting a breeding pool on Piru Creek was cut, and off-highway vehicles had access to the creek. The disturbance destroyed a small sand bar that maintained a shallow pool, resulting in the loss of 12,000 to 16,000 arroyo southwestern tadpoles (Sweet 1992).

Recreational use of campgrounds is heaviest in early summer, when arroyo southwestern toad larvae and juveniles are present and most vulnerable. As the young toads are diurnal, immobile, and live on the sand bars, they are often crushed. Recreational use has resulted in the alteration of stream and breeding pool morphology, and trampling of juvenile toads (Sweet 1992). Adult arroyo southwestern toads, which forage in open areas in the campgrounds, are frequently killed on campground roads at night (Sweet 1992).

Habitat loss, high mortality, and low reproduction from all of the sources discussed above also result in the fragmentation of surviving populations into isolated subpopulations. While these subpopulations may continue to survive and reproduce over the short term, their long-term survival is not secure, because little opportunity exists for natural dispersal and recolonization following local extirpations (Sweet 1991a). Habitat fragmentation increases the probability of local extirpation due to stochastic events, and also likely results in reduction of genetic variability within the small, isolated subpopulations.

The recent years of extremely low reproductive success have likely been a bottleneck in the remaining populations of arroyo southwestern toads, in which few, if any, individuals will reach sexual maturity until 1995 (Sweet 1992). As mature adults age and die in the next 2 years, no recruitment into the breeding population is likely, and numerous local extinctions of already small populations are probable. As individuals may not survive and reproduce due to traumatic events such as drought or road maintenance, for example, and as the population numbers are low and the range is restricted, such events could cause the extinction of the species.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the arroyo southwestern toad in determining to propose this rule. The arroyo southwestern toad has been extirpated from a substantial portion of its historic range. Virtually all remaining populations are small, and face a variety of immediate threats to their continued viability. This toad lives in highly specialized habitats that have been and will continue to be targeted for development and degradation by human activities, and is extremely vulnerable to habitat modification and water quality changes. Based on this evaluation, the preferred action is to list the arroyo southwestern toad as endangered. For the reasons discussed below, critical habitat is not being proposed at this time.

Critical Habitat

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time a species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for the arroyo southwestern toad.

As discussed under Factor B in the "Summary of Factors Affecting the Species," the arroyo southwestern toad is threatened by taking, an activity difficult to control. Remaining populations of the arroyo southwestern toad are small and geographically restricted, so that they are now vulnerable to unrestricted collection. Publication of specific localities, which would be required in proposing critical habitat, would reveal precise locality data and thereby make the species more vulnerable to additional collection and acts of vandalism, and increase the difficulties of enforcement.

The principal landowner, the Forest Service, has been notified of the locations and importance of protecting this species' habitat. Protection of this species' habitat will be addressed in the recovery process and through the section 7 consultation process. Therefore it would not now be prudent to determine the critical habitat of the arroyo southwestern toad.

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 States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) 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 subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Forest Service (Department of Agriculture) and the Army Corps of Engineers (Department of Defense) are the main Federal agencies that will be required to protect this species if it is listed. Federal agencies must confer with the Service, as described in section 7 of the Act, on any project that might jeopardize the continued existence of this proposed species. The Forest Service harbors the majority of known arroyo southwestern toad populations; hence, authorization of Forest Service actions within the species' habitat may be affected. Forest Service activities, such as the construction and maintenance of roads, and the issuance of special use permits for dam and bridge construction, mining, and water diversion projects would be subject to the Act's section 7 requirements. Army Corps of Engineers activities or issuances of permits subject to section 404 of the Clean Water Act would be subject to the Endangered Species Act section 7 requirements. Any Federal actions that are subject to environmental review under the National Environmental Policy Act may be subject to the requirements of section 7 of the Act.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or attempt any such conduct), import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed wildlife species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.22 and 17.23 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, for incidental take in connection with otherwise lawful activities, and economic hardship under certain circumstances. Requests for copies of the regulations on listed wildlife and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, Room 432, 4401 North Fairfax Drive, Arlington, Virginia 22203–3507 (703/358–2104).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Any 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 a public hearing 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 at the Ventura Field Office (see ADDRESSES section).

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).

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for additional research. Unpublished report. 23 pp.
Sweet, S. 1991a. Reasons for the decline of *Bufo microscaphus californicus*. Unpublished report. 5 pp.
Sweet, S. 1991b. Biological issues underlying the need to maintain natural flow regimes in the Piru Creek drainage. Unpublished report. 6 pp.
Sweet, S. 1991c. Riparian habitat damage assessment, Lion Fire, Sespe Creek, 20–21 October 1991. Unpublished report. 6 pp.
Sweet, S. 1992. Initial report on the ecology and status of the arroyo toad (*Bufo microscaphus californicus*) on the Los Padres National Forest of southern California, with management recommendations. Contract report to USDA Forest Service, Los Padres National Forest. 198 pp.
Sweet, S. and M. Jennings. 1992. Letter to the U.S. Fish and Wildlife Service, December 30, 1992: Petition to list the arroyo southwestern toad as an endangered species. 4 pp. + appendix.

Author

The primary author of this proposed rule is Cathy R. Brown of the Ventura Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under Amphibians, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common Name	Scientific Name						
*	*	*	*	*	*		*
Amphibians							
*	*	*	*	*	*		*
Toad, arroyo southwestern.	*Bufo microscaphus californicus.*	U.S.A. (CA); Mexico ...	NA	E	.....	NA	NA
*	*	*	*	*	*		*

Dated: June 21, 1993

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93–18434 Filed 8–2–93; 8:45 am]

BILLING CODE 3410–55–P

50 CFR Part 17]

RIN 1018–AB94

Endangered and Threatened Wildlife and Plants; Notice of Public Hearings on Proposal To List the Kootenai River Population of the White Sturgeon as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearings..

SUMMARY: The U.S. Fish and Wildlife Service (Service), under the Endangered Species Act of 1973, as amended (Act), gives notice that three public hearings will be held on the proposal to list the Kootenai River population of the white sturgeon (*Acipenser transmontanus*) as endangered. This fish is found in the Kootenai River in Idaho, Montana, and British Columbia, Canada. The Service will receive oral testimony or written comments at these hearings.

DATES: Three public hearings will be held: from 5 to 8 p.m. on Tuesday, August 24, 1993, in Bonners Ferry, Idaho; from 5 to 8 p.m. on Wednesday, August 25, 1993, in Libby, Montana; and from 1 to 4 p.m. and 6 to 8 p.m. on August 26, 1993, in Sand Point, Idaho. Comments from all interested parties must be received by November 4, 1993.

ADDRESSES: The public hearings will be held at the following locations:

Tuesday, August 24, 1993—Kootenai River Inn, Kootenai River Plaza, Bonners Ferry, Idaho

Wednesday, August 25, 1993—Memorial Gymnasium, 101 East Lincoln Boulevard, Libby, Montana

Thursday, August 26, 1993—Schweitzer Mountain Resort, Headquarters Day Lodge Caribou Room, 1000 Schweitzer Mountain Road, Sand Point, Idaho

Written comments and materials may be submitted at the hearings or may be sent directly to Mr. Charles Lobdell, Field Supervisor, U.S. Fish and Wildlife Service, Boise Field Office, 4696 Overland Road, room 576, Boise, Idaho, 83705. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the above address.

FOR FURTHER INFORMATION CONTACT: Charles H. Lobdell, Field Supervisor, at the above address or (208) 334–1931

SUPPLEMENTARY INFORMATION:

Background

The Kootenai River population of the white sturgeon (*Acipenser transmontanus*) is restricted to approximately 168 miles (270 kilometers) of the Kootenai river, in Idaho, Montana, and British Columbia, Canada, primarily upstream from Cora Linn Dam at the outflow from Kootenay Lake, British Columbia. A natural barrier at Bonnington Falls downstream of Kootenay Lake has isolated the Kootenai River sturgeon from other white sturgeaon populations in the Columbia River basin. The free-flowing river habitat for this fish has been adversely affected from development of the Kootenai River basin. Construction of Libby Dam for hydropower and flood control has reduced river flows critical to successful reproduction during the May to July sturgeon spawning season, and reduces the availability of nutrients in the river system. The Kootenai River population of white sturgeon has declined to an estimated 880 individuals, with approximately 80 percent of the sturgeon over 20 years old. In addition to the lack of recruitment of juveniles into the population, this fish is threatened by disease and poor water quality.

On July 7, 1993, the Kootenai River population of the white sturgeon was

proposed for listing as an endangered species (58 FR 36379). Section 4(b)(5)(E) of the Act requires that a public hearing be held, if requested within 45 days of the publication of a proposed rule. In anticipation of requests for a hearing on the proposal, the Service announced in the proposed rule that a public hearing would be held on August 26, 1993, in Sand Point, Idaho. Because of the level of interest in this proposed action the Service has decided to schedule two additional hearings to receive comments from the public. The three public hearings will be held at the following locations:

Tuesday, August 24, 1993, from 5 to 8 p.m. at the Kootenai River Inn, Kootenai River Plaza, Bonners Ferry, Idaho

Wednesday, August 25, 1993, from 5 to 8 p.m. to the Memorial Gymnasium, 101 East Lincoln Boulevard, Libby, Montana

Thursday, August 26, 1993, from 1 to 4 p.m. and 6 to 8 p.m. at the Schweitzer Mountain Resort, Headquarters Day Lodge Caribou Room, 10000 Schweitzer Mountain Road, Sand Point, Idaho

Those parties wishing to make statements for the record should have available a copy of their statements to be presented to the Service at the start of the hearing. Time limits may be placed on oral statements to accommodate many people wishing to testify. Written comments or materials presented at the hearing or mailed to the Service may be of any length. Written comments will be given the same weight as oral comments. Written comments may be submitted at the hearing or mailed to the U.S. Fish and Wildlife Service, Boise Field Office (see **ADDRESSES** section). Comments must be received by November 4, 1993.

Author

The primary author of this notice is Leslie J. Propp, U.S. Fish and Wildlife Service, Portland Regional Office, 911 NE. 11th Avenue, Portland, Oregon 97232 (telephone 503/231–6131 or 206/753–9440).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (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).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: July 27, 1993.

William E. Martin,

Acting Regional Director, Region 1, U S. Fish and Wildlife Service.

[FR Doc. 93–18418 Filed 8–2–93; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 58, No. 147
Tuesday, August 3, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 93–025–3]

Public Meeting; Veterinary Biologics

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of postponement of public meeting.

SUMMARY: We are advising producers of veterinary biologics and other interested persons that the fifth annual public meeting on veterinary biologics previously scheduled to be held on Tuesday, August 10, and Wednesday, August 11, 1993, is postponed and will be rescheduled at a later date.

FOR FURTHER INFORMATION CONTACT: Ms. Lorie Lykins, Veterinary Biologics Field Operations, BBEP, APHIS, USDA, 223 South Walnut Avenue, Ames, IA 50010, telephone (515) 232–5785, fax (515) 232–7120.

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on July 16, 1993 (58 FR 38354–38355, Docket Number 93–025–2), we gave notice that we would be holding a public meeting on Tuesday, August 10, and Wednesday, August 11, 1993, at the Iowa State Center in Ames, IA. The purpose of the meeting was to discuss current regulatory and policy issues related to the manufacture, distribution, and use of veterinary biological products. Due to the extensive flooding in the areas of Ames and Des Moines, IA, we are being forced to reschedule the meeting to a later date. A notice announcing the new date, time, and place will appear in the **Federal Register**. We regret any inconvenience caused by the rescheduling.

Done in Washington, DC, this 29th day of July 1993.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93–18480 Filed 8–2–93; 8:45 am]
BILLING CODE 3410–34–P

Forest Service

Establishment of Ouachita Purchase Unit

AGENCY: Forest Service, USDA.

ACTION: Notice of establishment of ouachita purchase unit.

SUMMARY: On July 8, 1993, the Secretary of Agriculture created the Ouachita Purchase Unit. This purchase unit comprises 188 acres, more or less, within Polk County, Arkansas. A copy of the Secretary's establishment document which includes the legal description of the lands within the purchase unit appears at the end of this notice.

EFFECTIVE DATE: The effective date of this purchase unit was July 8, 1993.

ADDRESSES: A copy of the map showing the purchase unit is on file and available for public inspection in the Office of the Chief of the Forest Service, Auditor's Building, 201 14th Street, SW, Washington, DC 20090–6090.

FOR FURTHER INFORMATION CONTACT: Ralph Bauman, Lands Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090 (202) 205–1248.

Dated: July 27, 1993.

George M. Leonard,

Associate Chief.

Establishment of Ouachita Purchase Unit Polk County, Arkansas

Pursuant to the Secretary of Agriculture's authority under the Act of March 1, 1911, as amended, the Ouachita Purchase Unit is being created and is described as follows:

Township 3 South, Range 29 West, Fifth Principal Meridian, Arkansas, More Particularly Described as

Section 7: fractional SE¼NW¼ containing 40.18 acres;

All of the NE¼SW¼ EXCEPT a tract of land more particularly described as follows: Beginning at the Southwest corner of said NE¼SW¼, run East 190 yards; thence Northwesterly to a point on the North line of said NE¼SW¼ which is 30 yards east of the Northwest corner of said NE¼SW¼; thence West 30 yards to said Northwest corner; thence South 440 yards to the Point of Beginning of said excepted tract, conveying herein 30.00 acres, more or less;

E½SE¼ containing 80.00 acres;

SW¼SE¼ Less and Except a tract of land containing 2.65 acres more particularly described as follows:

Beginning at a 2" iron pipe with a 2" cap set for the southwest corner of said SW¼SE¼; thence NO°23'01"E 1285.17 feet along the west line of said SW¼SE¼ to a 1" rebar with a 2" aluminum cap at a wire fence; thence S73°24'29"E 40.62 feet along said wire fence to a 1" rebar with a 2" aluminum cap; thence leaving said wire fence S4°50'06"E 866.30 feet to a 1" rebar with a 2" aluminum cap; thence S1°06'58"W 411.73 feet to a 1" rebar with a 2" aluminum cap on the south line of said SW¼SE¼ (at a wire fence); thence N89°19'28"W 112.53 feet along the south line of said SW¼SE¼ to the Point of Beginning, conveying 37.35 acres, more or less.

containing 187.53 acres, more or less, and being adjacent to the present Ouachita National Forest boundary.

These lands are well suited for watershed protection and meet the requirements of the Act of March 1, 1911, as amended.

Dated: July 8, 1993.

Mike Espy,

Secretary of Agriculture.

[FR Doc. 93–18426 Filed 8–2–93; 8:45 am]
BILLING CODE 3410–1–M

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

BACKGROUND: Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with § 353.22 or 355.22 of the Commerce Regulations, that the Department of Commerce ("the

Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

OPPORTUNITY TO REQUEST A REVIEW: Not later than August 31, 1993, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in August for the following periods:

	Period
Antidumping Duty Proceedings:	
Armenia: Titanium Sponge, (A–831–803)	08/01/92–07/31/93
Azerbaijan: Titanium Sponge, (A–832–803)	08/01/92–07/31/93
Belarus-Baltic: Titanium Sponge, (A–822–803)	08/01/92–07/31/93
Belgium: Industrial Phosphoric Acid, (A–423–602)	08/01/92–07/31/93
Canada: Pure Magnesium, (A–122–814)	11/20/91–07/31/93
Estonia-Baltic: Titanium Sponge, (A–447–803)	08/01/92–07/31/93
France: Industrial Nitrocellulose, (A–427–009)	08/01/92–07/31/93
Georgia: Titanium Sponge, (A–833–803)	08/01/92–07/31/93
Israel: Industrial Phosphoric Acid, (A–508–604)	08/01/92–07/31/93
Italy: Granular Polytetrafluoro-ethylene Resin, (A–475–703)	08/01/92–07/31/93
Italy: Tapered Roller Bearings, and Parts Thereof, Finished or Unfinished, (A–475–603)	08/01/92–07/31/93
Japan: Acrylic Sheet, (A–588–055)	08/01/92–07/31/93
Japan: Brass Sheet and Strip, (A–588–704)	08/01/92–07/31/93
Japan: Cadmium, (A–588–035)	08/01/92–07/31/93
Japan: Certain High-Capacity Pagers, (A–588–007)	08/01/92–07/31/93
Japan: Granular Polytetrafluoro-ethylene Resin, (A–588–707)	08/01/92–07/31/93
Japan: Personal Word Processors, (A–588–818)	08/01/92–07/31/93
Kazakhstan: Titanium Sponge, (A–834–803)	08/01/92–07/31/93
Kyrgyzstan: Titanium Sponge, (A–835–803)	08/01/92–07/31/93
Latvia-Baltic: Titanium Sponge, (A–449–803)	08/01/92–07/31/93
Lithuania: Titanium Sponge, (A–451–803)	08/01/92–07/31/93
Mexico: Gray Portland Cement and Clinker, (A–201–802)	08/01/92–07/31/93
Moldova: Titanium Sponge, (A–841–803)	08/01/92–07/31/93
Netherlands: Brass Sheet and Strip, (A–421–701)	08/01/92–07/31/93
Russia: Titanium Sponge, (A–821–803)	08/01/92–07/31/93
Taiwan: Clear Sheet Glass, (A–583–023)	08/01/92–07/31/93
Tajikistan: Titanium Sponge, (A–842–803)	08/01/92–07/31/93
Thailand: Malleable Cast Iron Pipe Fittings, (A–549–601)	08/01/92–07/31/93
The People's Republic of China: Petroleum Wax Candles, (A–570–504)	08/01/92–07/31/93
The People's Republic of China: Sulfanilic Acid, (A–570–815)	03/18/92–07/31/93
Turkey: Acetylsalicylic Acid (Aspirin) (A–489–602)	08/01/92–07/31/93
Turkmenistan: Titanium Sponge, (A–843–803)	08/01/92–07/31/93
Ukraine: Titanium Sponge, (A–823–803)	08/01/92–07/31/93
Uzbekistan: Titanium Sponge, (A–844–803)	08/01/92–07/31/93
Venezuela: Certain Electrical Conductor Aluminum Redraw Rod, (A–307–701)	08/01/92–07/31/93
Yugoslavia: Tapered Roller Bearings, and Parts Thereof, Finished or Unfinished, (A–479–601)	08/01/92–07/31/93
Suspension Agreements:	
Japan: Erasable Programmable Read Only Memories (EPROMs), (A–588–505)	08/01/92–07/31/93
Countervailing Duty Proceedings:	
Canada: Alloy Magnesium, (C–122–815)	12/06/91–12/31/92
Canada: Live Swine, (C–122–404)	04/01/92–03/31/93
Canada: Pure Magnesium, (C–122–815)	12/06/91–12/31/92
Israel: Industrial Phosphoric Acid, (C–508–605)	01/01/92–12/31/92
Malaysia: Extruded Rubber Thread, (C–557–806)	10/01/91–12/31/92
New Zealand: Low-Fuming Brazing Copper Rod and Wire, (C–614–501)	08/01/92–07/31/93
Thailand: Certain Circular Welded Carbon Steel Pipes and Tubes, (C–549–501)	01/01/92–12/31/92
Venezuela: Certain Electrical Conductor Aluminum Redraw Rod, (C–307–702)	01/01/92–12/31/92
Zimbabwe: Carbon Steel Wire Rod, (C–796–601)	01/01/92–12/31/92

In accordance with §§ 353.22(a) and 355.22(a) of the Commerce regulations, an interested party may request in writing that the Secretary conduct an administrative review. For antidumping reviews, the interested party must specify for which individual producers or resellers covered by an antidumping finding or order it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or resellers. If the interested party intends for the Secretary to review sales of merchandise by a reseller (or a producer if that producer also resells merchandise from other suppliers) which was produced in more than one country of origin, and each country of origin is subject to a separate order, then the interested party must state specifically which reseller(s) and which countries of origin for each reseller the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping Compliance, Attention: Pamela Woods, in room 3069–A of the main Commerce building. Further, in accordance with § 353.31 or 355.31 of the Commerce regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty

Administrative Review" for requests received by August 31, 1993. If the Department does not receive, by August 31, 1993, a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: July 28, 1993.

Holly A. Kuga,

Acting Deputy Assitant Secretary for Compliance.

[FR Doc. 93–18487 Filed 8–2–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–412–602]

Preliminary Results of Antidumping Duty Administrative Review: Certain Forged Steel Crankshafts From the United Kingdom

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 3, 1993.

FOR FURTHER INFORMATION CONTACT: John Beck, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3464.

PRELIMINARY RESULTS:

Background

On September 21, 1987, the Department of Commerce (the Department) published in the **Federal Register** (52 FR 35467) an antidumping order on certain forged steel crankshafts (crankshafts) from the United Kingdom.

This third administrative review was requested by United Engineering & Forging (UEF), the respondent in the investigation and two prior reviews, on September 12, 1990, in accordance with 19 CFR 353.22(a). On September 21, 1990 (52 FR 35467), the Department published an initiation of this review for UEF. This review covers the period from September 1, 1989, to August 31, 1990. The Department is now conducting this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Case History

The Department sent a questionnaire to UEF on May 8, 1991. On June 21, 1991, UEF stated that some of its U.S. sales had no contemporaneous home market sales and requested the constructed value section of the questionnaire. The Department issued this section on June 25, 1991. UEF submitted a response to the main questionnaire on July 8, 1991 and a response to the constructed value section of the questionnaire on July 26, 1991. On August 22, 1991, the Department issued a deficiency letter to UEF for all sections of the questionnaire. UEF submitted a response to this deficiency letter on September 25, 1991.

On October 1, 1991, the Wyman-Gordon Company, petitioner in the investigation, notified the Department that it had completed the sale of its Danville, Illinois crankshaft manufacturing facility to Krupp Gerlach Crankshaft Co., a subsidiary of Krupp Stahl AG of Germany. The Wyman-Gordon Company stated that by virtue of this sale, it was no longer a domestic producer of forged steel crankshafts and therefore had no further interest in the order or the 1989–90 review. Pursuant to this notification, UEF requested on October 18, 1991, that the Department revoke the outstanding antidumping duty order on crankshafts from the United Kingdom.

On July 16, 1992, (57 FR 1898) the Department published the initiation and preliminary results of a changed circumstances antidumping duty administrative review, consideration of revocation, intent to revoke the antidumping duty order, and preliminary termination of the administrative review.

On June 2, 1992, the Department published the final results of the changed circumstances antidumping duty administrative review, determination not to revoke the antidumping duty order, and continuation of the administrative review (57 FR 23202) based on the fact that Louisville Forge and Gear Works, Inc., a domestic interested party, expressed interest in the antidumping duty order.

On June 4, 1992, the Department issued a second deficiency letter to UEF. UEF submitted a response to this deficiency letter on June 29, 1992.

On May 24–28, 1993, the Department conducted a verification of UEF's questionnaire response at UEF's Smith-Clayton Forge facility in Lincoln, England.

On July 21, 1993, the Department received comments from UEF regarding the sales verification report. However, these comments were submitted too late to be considered for purposes of these preliminary results but will be considered for the final results.

Scope of the Review

Imports covered by this review are shipments of certain forged steel crankshafts. The term "crankshafts", as used in this review, includes forged carbon or alloy steel crankshafts with a shipping weight between 40 and 750 pounds, whether machined or unmachined. The products are currently classifiable under items 8483.10.10.10, 8483.10.10.30, 8483.10.30.10, and 8483.10.30.50 of the Harmonized Tariff Schedule of the United States (HTSUS). Neither cast crankshafts nor forged crankshafts with shipping weights of less than 40 pounds or more than 750 pounds are subject to this review. Although the HTSUS subheadings are provided for convenience and Customs purposes, or written description of the scope of this proceeding is dispositive.

This review covers the period September 1, 1989, through August 31, 1990.

Use of Best Information Available

During the verification of UEF, the Department discovered serious flaws in the respondent's submissions, e.g.:

- Problems with the product matching criteria;
- Missing documentation and unexplainable discrepancies in the verification of quantity and value;
- Support documentation for home market and U.S. sales not prepared in time to be reviewed at verification;
- Discrepancies with the home market dates of shipment and receipt of payment;
- Discrepancies with the home market prices;
- Discrepancies with and missing documentation for the home market and U.S. charges and adjustments; and
- Discrepancies with the terms of sale to U.S. customers.

The nature and amount of these discrepancies make it necessary for the Department to use best information available (BIA) in calculating the relevant margin. For a detailed analysis of the Department's decision to use BIA, see the July 19, 1993 memo from Richard W. Moreland to Barbara R. Stafford.

Under section 776(b) of the Tariff Act of 1930, as amended (the Act), if the Department is unable to verify the accuracy of information submitted in an administrative review where such

verification is conducted, the Department "shall use the best information available to it as the basis for its action." Moreover § 353.37(a) (1) and (2) of the Department's regulations requires the Department to use BIA whenever it does not receive a complete, accurate, and timely response to its request for factual information or is unable to verify, within the time specified, the accuracy and completeness of the factual information submitted.

In deciding what to use as BIA, the Department's regulations provide that the Department may take into account whether a party refuses to provide requested information. 19 CFR 353.37(b). Thus, the Department may determine, on a case-by-case basis, what constitutes BIA. In past administrative reviews, the Department has applied the following two tiers of BIA in situations where it was unable to use a company's response for purposes of determining that company's dumping margin.

1. When a company refuses to cooperate with the Department or otherwise significantly impeded these proceedings, we use as BIA the higher of: (1) The highest of the rates found for any firm for the same class or kind of merchandise in the same country of origin in the less than fair value investigation or prior administrative review; or (2) the highest rate found in this review for any firm for the same class or kind of merchandise in the same country of origin.

2. When a company substantially cooperates with our requests for information including, in some cases, participation in verification, but fails to provide the information requested in a timely manner or in the form required, we use as BIA the higher of: (1) The highest rate (including the "all others" rate) ever applicable to the firm for the same class or kind of merchandise from either the less than fair value investigation or a prior administrative review: or (2) the highest calculated rate in this review for the class or kind of merchandise for any firm from the same country of origin.

Due to the fact that there is just one respondent in this administrative review, and it substantially cooperated with the Department, we are using as BIA the highest calculated margin for UEF from all past administrative reviews. The amount calculated for UEF in the second administrative review, 9.77 percent, is the highest such margin. Therefore, we are using 9.77 percent as the margin for the preliminary results.

Preliminary Results of the Review

As a result of our review, we preliminarily determine the margin to be:

Producer/exporter	Margin (percent)
United Engineering and Forging	9.77

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Upon completion of this administrative review, the Department will issue appraisement instructions concerning this rate directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of crankshafts entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed firm will be that established in the final results of this review period; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in previous reviews or the original less-than-fair-value (LTFV) investigation, the cash deposit rate will continue to be the rate published in the most recent determination for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review or the final determination from the LTFV investigation; and (4) the cash deposit rate for any future entries from all other manufacturers or exporters who are not covered in this review and who are unrelated to the reviewed firm or any other firms investigated in the original investigation, will be the "all others" rate.

On May 25, 1993, the Court of International Trade (CIT) in *Floral Trade Council* v. *United States*, Slip Op. 93–79, and *Federal-Mogul Corporation* v. *United States*, Slip Op. 93–83, decided that once an "all others" rate is established for a company, it can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to reinstate the original "all others" rate from the LTFV investigation (or that rate as amended for correction of clerical errors or as a result of litigation) in proceedings governed by antidumping duty orders for the purposes of establishing cash deposits in all current and future administrative reviews. In proceedings governed by antidumping findings, unless we are able to ascertain the "all others" rate from the Treasury LTFV investigation, the Department has determined that it is appropriate to adopt the "new shipper" rate established in the first final results of administrative review published by the Department (or that rate as amended for correction of clerical errors or as a result of litigation) as the "all others" rate for the purposes of establishing cash deposits in all current and future administrative reviews.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than August 16, 1993, and rebuttal briefs no later than August 23, 1993. We request that parties in this case provide an executive summary of no more than two pages in conjunction with case briefs on the major issues to be addressed. Further, briefs should contain a table of authorities. Citations to Commerce determinations and court decisions should include the page number where cited information appears. In preparing the briefs, please begin each issue on a separate page. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on August 25, 1993, at 9:30 a.m. at the U.S. Department of Commerce, room 1412, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B–099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: July 27, 1993.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–18488 Filed 8–2–93; 8:45 am]

BILLING CODE 3510–DS–M

[C–796–601]

Carbon Steel Wire Rod From Zimbabwe; Intent To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of Intent to Revoke Countervailing Duty Order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the countervailing duty order on carbon steel wire rod from Zimbabwe. Domestic interested parties who object to this revocation must submit their comments in writing not later than thirty days from the publication date of this notice.

EFFECTIVE DATE: August 3, 1993.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup or Cameron Cardozo, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–0983 or 482–6071.

SUPPLEMENTARY INFORMATION:

Background

On August 15, 1986, the Department of Commerce ("the Department") published a countervailing duty order on carbon steel wire rod from Zimbabwe (51 FR 29292). The Department has not received a request to conduct an administrative review of this countervailing duty order for at least four consecutive annual anniversary months.

In accordance with 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no domestic interested party objects to revocation or no interested party requests an administrative review by the last day of the fifth anniversary month. Accordingly, as required by § 355.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this order.

Opportunity to Object

Not later than thirty days after the publication date of this notice, interested parties, as defined in § 355.2 (i)(3), (i)(4), (i)(5), and (i)(6) of the Department's regulations, may object to the Department's intent to revoke this countervailing duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If no interested parties request an administrative review (pursuant to the Department's notice of opportunity to request administrative review), or if no domestic interested parties object to the Department's intent to revoke pursuant to this notice, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 355.25(d)(4)(i).

Dated: July 27, 1993.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93–18486 Filed 8–2–93; 8:45 am]

BILLING CODE 3510–DS–P

[C–614–501]

Low Fuming Brazing Copper Rod and Wire From New Zealand; Intent To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of Intent to Revoke Countervailing Duty Order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the countervailing duty order on low fuming brazing copper rod and wire from New Zealand. Domestic interested parties who object to this revocation must submit their comments in writing not later than thirty days from the publication date of this notice.

EFFECTIVE DATE: August 3, 1993.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup or Lorenza Olivas, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–0983 or 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On August 5, 1985, the Department of Commerce ("the Department") published a countervailing duty order on low fuming brazing copper rod and wire from New Zealand (50 FR 31638). The Department has not received a request to conduct an administrative review of this countervailing duty order for at least four consecutive annual anniversary months.

In accordance with 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no domestic interested party objects to revocation or no interested party requests an administrative review by the last day of the fifth anniversary month. Accordingly, as required by § 355.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this order.

Opportunity to Object

Not later than thirty days after the publication date of this notice, interested parties, as defined in § 355.2(i)(3), (i)(4), (i)(5), and (i)(6) of the Department's regulations, may object to the Department's intent to revoke this countervailing duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If no interested parties request an administrative review (pursuant to the Department's notice of opportunity to request administrative review), or if no domestic interested parties object to the Department's intent to revoke pursuant to this notice, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 355.25(d)(4)(i).

Dated: July 27, 1993.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93–18485 Filed 8–2–93; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[I.D. 072893A]

Gulf of Mexico Fishery Management Council; Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) and its Florida/Alabama, Mississippi/Louisiana, and Texas Habitat Protection Advisory Panels will hold a public meeting on August 18–19, 1993, at the

Houston Hobby Airport Hilton, 8181 Airport Boulevard, Houston, TX; telephone: 713–645–3000. On August 18 the meeting will begin at 8:30 a.m. and continue until 5 p.m. On August 19 the meeting will begin at 8:30 a.m. and continue until 3 p.m.

The following topics will be discussed:
(1) The current direction of the Gulf of Mexico program;
(2) Conserving sensitive wetlands for the future;
(3) The Marsh Management program in Louisiana;
(4) Public attitudes towards environmental quality in a time of economic recession;
(5) Mercury contamination in the environment;
(6) Problems in Florida Bay;
(7) How various State and Federal agencies are addressing Florida Bay problems;
(8) Habitat related research in National Marine Fisheries Service; (9) Current proposed legislation potentially affecting Gulf of Mexico Fisheries;
(9) Current proposed legislation potentially affecting Gulf of Mexico Fisheries;
(10) Description and mission of the Department of Interior's new National Biological survey;
(11) Mitigation banking;
(12) Water banking;
(13) Coal combustion by-products and their use as offshore reef creation;
(14) Section 216 studies on the Gulf Intracoastal Waterway (Texas); and
(15) The Corps of Engineers Galveston District's section 216 activities.

Upon conclusion of the presentation and discussion, the panels will develop recommendations for later presentation to the Council.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL; telephone: 813–228–2815.

Dated: July 28, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–18457 Filed 8–2–93; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment and Amendment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

July 28, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting and amending limits.

EFFECTIVE DATE: August 4, 1993.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for Categories 340/640 and 433 are being increased by application of swing, reducing the limit for Categories 342/642 to account for the increases. Also, the U.S. Government agreed to increase the current guaranteed access level for Category 633.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 53882, published on November 13, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 28, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 6, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Dominican Republic and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on August 4, 1993, you are directed to adjust the current limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the Dominican Republic:

Category	Adjusted twelve-month limit [1]
340/640	663,328 dozen.
342/642	422,824 dozen.
433	21,842 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1992.

Also, you are directed to increase the current Guaranteed Access Level (GAL) for Category 633 to 60,000 dozen. The GALs for Categories 340/640, 342/642 and 433 remain unchanged.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–18491 Filed 8–2–93; 8:45 am]

BILLING CODE 3510–DR–F

Amendment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Mexico

July 28, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: July 30, 1993.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6711. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The U.S. Government has agreed to increase the Special Regime limit for Categories 352/652.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see

Federal Register notice 57 FR 54976, published on November 23, 1992). Also see 58 FR 88, published on January 4, 1993.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 28, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 28, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Mexico and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on July 30, 1993, you are directed to amend the directive dated December 28, 1992 to increase the Special Regime limit for Categories 352/652 to 3,850,000 dozen [1], as provided under the terms of the current bilateral agreement between the Governments of the United States and the United Mexican States. The Normal Regime limit for Categories 352/652 remains unchanged.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–18492 Filed 8–2–93; 8:45 am]

BILLING CODE 3510–DR–F

Changes in Harmonized Tariff Schedule Classification Numbers for Cotton and Man-Made Fiber Floor Coverings from India

July 28, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending Harmonized Tariff Schedule numbers for certain floor coverings from India.

EFFECTIVE DATE: August 1, 1993.

[1] The limit has not been adjusted to account for any imports exported after December 31, 1992.

FOR FURTHER INFORMATION CONTACT: Lori E. Goldberg, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION: To facilitate implementation of the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of February 6, 1987, as amended and extended, and the existing export visa requirements between the Governments of the United States and India based on the Harmonized Tariff Schedule (HTS), certain HTS classification numbers for floor coverings in Categories 369 and 665, which are exempt from existing quota and visa requirements, are being amended for goods entered in the United States for consumption or withdrawn from warehouse for consumption on and after August 1, 1993, regardless of the date of export. These changes are being published in a supplement to the 1993 Correlation.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 57 FR 54976, published on November 23, 1992). Also see 44 FR 68504, published on November 29, 1979; and 57 FR 56329, published on November 27, 1992.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 28, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 20, 1992, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns cotton, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in India.

Also, this directive amends, but does not cancel, the directive issued to you on November 26, 1979, as amended, which concerns visa requirements for certain textiles and textile products, produced or manufactured in India.

Effective on August 1, 1993, you are directed to make the changes shown below in the aforementioned directives for floor coverings entered in the United States for consumption or withdrawn from warehouse for consumption on and after August 1, 1993, regardless of the date of export:

Category	Obsolete number	New number
369–O	5702.49.1010	5702.49.1020
665–O (for visa purposes 665)	5702.42.2010	5702.42.2020

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–18489 Filed 8–2–93; 8:45 am]

BILLING CODE 3510–DR–F

[Docket No. 930787–3187]

Special Access and Special Regime Programs; Bond Requirement for Participants

July 28, 1993.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Notice and comment.

SUMMARY: The Committee for the Implementation of Textile Agreements (CITA) issued to the Commissioner of Customs a directive to require Customs to establish a bond that all companies importing under the Special Access Program (SAP) or Special Regime Program (SRP) would be required to post with Customs. Users of the SAP and SRP requested that CITA take some type of action for violators other than suspension. In order to meet this request and to provide more flexibility in enforcing the requirements of the SAP and SRP, CITA is requiring all companies importing under either the SAP or SRP to post a bond with Customs. If an importer is found to be in violation of SAP or SRP requirements, liquidated damages would be assessed against the bond in the amount of three times the value of the released merchandise.

DATES: Comments must be submitted on or before September 2, 1993.

ADDRESSES: Chairman, Committee for the Implementation of Textile Agreements, room 3001, U.S. Department of Commerce, 14th & Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Lori E. Goldberg, International Trade Specialist, Office of Textiles and Apparel, United States Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority

Section 204 of the Agricultural Act of 1956 (7 U.S.C. 1854), as amended, and Executive Order 11651 (March 3, 1972), as amended.

Background

The United States has entered into a number of bilateral textile agreements (Agreements) with other sovereign countries that provide for quantitative limits on imports to the United States for certain categories of textile and apparel products. These limits are typically called Specific Limits (SL) or Designated Consultation Levels (DCL). In addition to SLs and DCLs, certain Agreements also provide for quantitative limits on imports of apparel that are assembled from U.S. formed and cut fabric. When this arrangement is reached with certain Caribbean countries, the limit is called a Guaranteed Access Level (GAL). In the Agreement with Mexico, limits can be either SLs or DCLs under the Special Regime. The Program implements the Agreements by setting forth the administrative guidelines that importers must follow to import apparel that will be charged to a country's GAL or Special Regime SL or DCL rather than its regular SL or DCL.

The proper implementation and enforcement of the Program is important to both the United States and the other sovereign countries with which the U.S. has Agreements because: (1) The United States must be able to accurately gauge the level of imports of textiles and apparel to avoid causing market disruption in the U.S. and to determine whether the quantitative limits (DCLs, SLs, or GALs) are set at appropriate levels, and (2) the other sovereign countries must carefully count the volume of exports that are charged to its SLs, DCLs and GALs.

Since the negotiation and subsequent implementation of these Agreements is a foreign affairs function, the requirements of E.O. 12291 do not apply to this amendment to the requirements of the Program (Amendment) because it is being issued with respect to a foreign affairs function of the United States. Furthermore, this Amendment does not contain collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), nor does it contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 12612. Finally, because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this Amendment by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, no initial or final Regulatory Flexibility Analysis has to be or will be prepared (5 U.S.C. 603(a) and 604(a)). The request for comment does not constitute a waiver of exceptions to rule making under the Administrative Procedures Act 5 U.S.C. 553(a)(1) or 553(b).

On February 20, 1986, the President announced a special program to guarantee access to the U.S. market for Caribbean-produced textile products assembled from fabric formed and cut in the United States. Since the 1986 announcement, certain Caribbean countries have entered into bilateral agreements with the United States under which guaranteed levels of access are permitted for the products made of U.S. formed and cut fabric. The Committee for the Implementation of Textile Agreements (CITA) established the SAP to implement the bilateral agreements and to monitor companies' compliance with SAP requirements. (See 51 FR 21208, June 11, 1986)

On February 17, 1988, the United States and Mexico entered into a similar arrangement pursuant to a textile agreement which established the Special Regime. The Special Regime assures preferential access for goods assembled in Mexico from U.S. formed and cut fabric. As with the SAP, the SRP was established by CITA to implement the terms of the U.S.-Mexico textile agreement and to monitor companies' compliance with SRP requirements. (See 53 FR 15724, May 3, 1988).

Although compliance has generally been excellent, some violations of the SAP and SRP (collectively referred to as the "Program") have been detected through periodic compliance reviews conducted by the United States Customs Service (Customs). Upon discovery of violations, CITA may currently only take action to suspend companies from participation in the Program. In the summer of 1992, the users of the Program approached CITA to discuss an amendment to the Program rules that would provide some type of action, other than suspension, for violations of the Program.

In order to meet this industry request and to provide more flexibility in enforcing the requirements of the Program, CITA is proposing an amendment to the requirements of the Program that would require all companies importing under either the SAP or SRP to post a Bond with Customs. If an Importer is found to be in violation of either the SAP or SRP requirements, liquidated damages would be assessed against the Bond by Customs in the amount of three times the value of the released merchandise. Pursuant to mitigation guidelines that will be published by Customs, the liquidated damages may be diminished. However, whether and how much a violation shall be mitigated is solely within the discretion of Customs.

Although CITA is not required to solicit formal comments, it will receive comments up to 30 days after the publication of this notice. The comments will be considered in the context of possible amendments to the bond requirement for the Program prior to final implementation by Customs.

The directive to the Commissioner of Customs published at the end of this notice requires Customs to establish a bond for the Special Access and Special Regime Programs based upon the specifications set forth in this notice within 45 days of publication of this notice.

1. Definitions

"Intermediate Importer" means a company that has been importing under either the SAP or SRP for less than 12 months.

"New Importer" means a company that has never imported products under either the SAP or SRP.

"Established Importer" means a company that has been importing under either the SAP or SRP for 12 months or longer.

"Program" means both the Special Access Program and Special Regime Program.

"Importer" means all Established, Intermediate and New Importers.

"Bond" means the Customs Bond that Importers importing under the Program will be required to post.

"CITA" means the Committee for the Implementation of Textile Agreements.

"United States" or "U.S." means the customs territory of the United States including the fifty States of the United States, the District of Columbia and the Commonwealth of Puerto Rico.

"Value" means value as defined in 19 U.S.C. 1401a.

2. Customs Bond Provisions

The following is the Bond that CITA proposes to require for release of goods under the Program.

Special Access and Special Regime Textile Programs Bond

A bond to comply with requirements and procedures for participation in the Special Access Program for Certain Caribbean Basin Countries and the Mexico Special Regime Program as established by the Committee for the Implementation of Textile Agreements

(CITA), shall contain the conditions listed below and shall be a continuous bond.

Special Access Program for Certain Caribbean Basin Countries and the Mexico Special Regime Program Bond

(a) The effective date of this bond is _____.

(b) The limit of liability is _____.

(c) This bond remains in force for one year beginning with the effective date and for each succeeding annual period, or until terminated. This bond constitutes a separate bond for each period in the amount listed above for liabilities that accrue in each period. The intention to terminate this bond must be conveyed within the time period and in the manner prescribed in the Customs Regulations (19 CFR 113.27).

(d) If the principal obtains release from Customs custody of any textile or apparel product (hereinafter merchandise) that is subject to the provisions of the Special Access Program for Caribbean Basin Countries, published on June 11, 1986 (51 FR 21208), July 10, 1987 (52 FR 26057) and December 6, 1989 (54 FR 50425), or the Mexico Special Regime Program, published on May 3, 1988 (53 FR 15724), August 25, 1988 (53 FR 32421) and December 6, 1989 (54 FR 50425), the principal guarantees that the merchandise complies with every provision of the applicable Program and that all necessary recordkeeping requirements have been met.

(e) If any of the released merchandise does not comply with each applicable provision of the Special Access Program or Special Regime Program or if the recordkeeping requirements of either Program have not been met, the obligors (principal or surety, jointly and severally) agree to pay liquidated damages equal to three times the value of the merchandise involved in the default (not to exceed the limit of liability stated above.) It is understood and agreed that the amount to be collected under this condition shall be based upon the quantity and value of the merchandise as determined by Customs. Value as used in these provisions means value as determined under 19 U.S.C. 1401a.

Principal _____
Surety _____
Principal's Address _____
Surety's Address _____

3. Limit of Liability on the Bond

a. General Rule

The limit of liability on the Bond will be based upon a sliding scale with a minimum of $25,000 and a maximum of $250,000. The United States Customs Service will determine the exact limit of liability by taking 10% of the value of the Importer's shipments under the Program for the most recent 12 month period.

b. Established Importers

Established Importers that have shipped goods worth $250,000 or less under the Program during the most recent 12 month period will post a Bond of $25,000. Similarly, Established Importers that have shipped goods worth $2,500,000 or more under the Program during the most recent 12 month period will post a Bond of $250,000. Established Importers that have shipped goods worth more than $250,000 but less than $2,500,000 under the Program will post a Bond equal to 10% of the value of their shipments for the most recent 12 moth period.

c. New Importers

The limit of liability on the Bond for New Importers will be calculated in the same manner as it is for Established Importers. However, in order to determine an exact limit of liability, the New Importer will provide the United States Customs Service with an estimate of the value of the shipments it expects to import under the Program during the next twelve months and a limit of liability will be based upon this figure. Then, at the end of the first twelve month period that the New Importer has been importing goods under the Program, a new Bond will be posted with a limit of liability based upon the actual shipments during that twelve month period.

d. Intermediate Importers

The limit of liability on the Bond for Intermediate Importers will be calculated in the same manner as it is for Established Importers. However, in order to determine an exact limit of liability, the value of shipments under the Program will be annualized under the following formula:

value of actual shipments under the Program + [(12 − # of months of actual shipping) × Average monthly value of actual shipments]

For example, if Importer X has shipped goods under the Program for 4 months with a total value of $400,000, then its monthly average shipment would be $100,000. The annualized value of its shipments would be

$400,000 + [(12 − 4) × $100,000]=$1,200,000

which would require Importer X to post a Bond of $120,000 (10% of $1,200,000 is $120,000). At the end of 8 months, (the amount of time needed to obtain 12 months of actual shipment data) Importer X would post a new Bond with a limit of liability based upon the actual value of its shipments under the Program during the 12 month period

4. Posting the Bond and Certifying the Bond Upon Entry

The Bond may be posted at any United States Customs Service port of entry in the United States. Upon release of apparel under either the SAP or SRP, the Importer will be required to provide a certification that it posted a Bond for a specific amount at a specific customs port on a certain date. This document will *not* be a new form, but rather, the Importer will sign a statement certifying where the Bond was posted and its value.

a. Established Importers

Except as otherwise provided, Established Importers will only need to post the Bond one time and thereafter, it will continue in force with no further action by the Importer.

b. Intermediate and New Importers

Intermediate Importers and New Importers shall post a Bond based upon an estimate of their shipments under the Program. Once Customs can establish a limit of liability based on actual shipments under the Program, the Importer will post a new Bond and it shall then continue in force just as those posted by Established Importers.

c. Periodic Review and Adjustment of Bond Limit of Liability

CITA reserves the right to direct Customs (under Customs' authority contained in 19 U.S.C. 1623 and 19 CFR 113.13) to review some or all Importers' Bonds and to require an adjustment to a Bond that was originally posted to reflect the most recent 12 months of shipments under the Program. CITA will publish notice of such review in the **Federal Register** at least 30 days prior to the review except when Customs is recalculating the limit of liability for a New or Intermediate Importer pursuant to sections 2(c) & (d) of this notice.

5. Assessing Liquidated Damages Against the Bond

Customs will assess liquidated damages against the Bond if the Importer is found to have (1) imported goods that did not comply with the fabric content requirements of either the SAP or SRP or (2) if the Importer has not complied with the record keeping requirements under either the SAP or SRP. Customs will only impose liquidated damages for a Record Keeping Violation after: (1) The Participant responds to the Director's

request for documents and an explanation and the documentation does not meet Program requirements; or (2) the Participant has failed to respond to the Director's request for documents and an explanation.

The amount of the liquidated damages assessed by Customs shall be three times the value of the merchandise involved in the default, but shall not exceed the limit of liability stated in the Bond.

If Customs assesses liquidated damages against the Bond and the Importer believes that the action taken was not equitable or correct, then its recourse shall be solely through the Customs procedures set forth in 19 CFR part 172 (1992). In addition to these procedures, Customs will publish in a separate **Federal Register** notice mitigation guidelines that may be used to cancel claims for liquidated damages upon payment of lesser amounts.

The Importer shall not have any recourse to CITA or to the administrative procedures of any of the agencies that comprise CITA to adjudicate any action taken by Customs against the Bond, except for the Department of the Treasury, but only through Customs as set forth above. In addition, Customs will not consult CITA if and when it assesses liquidated damages against an Importer's Bond or mitigates the liquidated damages.

6. CITA's Authority to Suspend an Importer

Nothing in this notice modifies or changes CITA's authority to suspend an Importer from participation in the Program.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

July 28, 1993.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Commissioner: This directive amends, but does not cancel, the directives issued to you implementing the Special Access and Special Regime Programs, by the Chairman, Committee for the Implementation of Textile Agreements. This directive requires Customs to implement a bond for the Special Access and Special Regime Programs consistent with the terms set forth in the notice above within 45 days of the publication of the notice. Customs may, however, provide importers with a 30 day grace period to post the bond.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rule making provisions of 5 U.S.C. § 553(a).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–18425 Filed 8–2–93; 8:45 am]

BILLING CODE 3510–25–P

Textile and Apparel Categories With the Harmonized Tariff Schedule of the United States; Changes to the 1993 Correlation

July 28, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Changes to the 1993 Correlation.

EFFECTIVE DATE: August 1, 1993.

FOR FURTHER INFORMATION CONTACT:

Lori E. Goldberg, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION: The Correlation: Textile and Apparel Categories based on the Harmonized Tariff Schedule of the United States (1993) presents the harmonized tariff numbers under each of the cotton, wool, man-made fiber, silk blend and other vegetable fiber categories used by the United States in monitoring imports of these textile products and in the administration of the bilateral agreement program. The Correlation should be amended to reflect the following administrative changes, effective on August 1, 1993:

Changes in the 1993 Correlation

Delete 5702.42.2010 (665).

Add 5702.42.2020 (665)-Textile carpet woven not made on a power-driven loom.

Delete 5702.42.2090 (665).

Add 5702.42.2080 (665)—Definition remains unchanged.

Delete 5702.49.1010 (369).

Add 5702.49.1020 (369)—Carpets and floor covering woven cotton pile, made-up not made on a power-driven loom.

Delete 5702.49.1090 (369).

Add 5702.49.1080 (369)—Definition remains unchanged.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–18490 Filed 8–2–93; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; DoD Privacy Systems of Records Notices

AGENCY: Department of the Defense.

ACTION: DoD Privacy systems of records notices.

SUMMARY: The Department of the Army and the United States Marine Corps have identified systems of records that were inadvertently omitted from the DOD Reissuance of Privacy Act systems of records notices published February 22, 1993, at 58 FR 10002. These systems remain current and are being republished and incorporated into the reissuance of DoD Privacy Act systems of records.

In addition, the Department of the Army is revising the preamble to its systems of records notices.

DATES: This action will be effective August 3, 1993.

ADDRESSES: If you have any comments, send them to the Defense Privacy Office, 1941 Jefferson Davis Highway, Room 920, Arlington, VA 22202–4502.

FOR FURTHER INFORMATION CONTACT: Ms. Jody Sinkler at (703) 607–2943 or DSN 327–2943.

SUPPLEMENTARY INFORMATION: The Department of the Army and the United States Marine Corps have identified systems of records notices that were inadvertently omitted from the DoD Reissuance published on February 22, 1993, at 58 FR 10002. These systems of records remain current and are being republished to be incorporated in the DoD Reissuance.

Dated: July 27, 1993.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

UNITED STATES ARMY

HOW SYSTEMS OF RECORDS ARE ARRANGED

Department of the Army records are identified by the directive number which prescribes the records created, maintained and used, and are published in numerical sequence by identification number. For example, a system of records about assignment of military personnel may be found in the 614 series; "assignments, details and transfers". Some subjects, such as investigations, are treated as sub-elements of a series, e.g., "criminal investigations", "security", and "military intelligence".

HOW TO USE THE INDEX GUIDE

To locate a particular system of records, follow this general guide. The series subject corresponds to the system identification number. For example: pay records for military and civilian personnel are in the 37 series. The first letter, 'A', represents the Army, the number (37-104-3) is the prescribing directive, and the suffix letters are internal management devices.

For more information, contact Ms. Patricia A. Turner at (602) 538–6856 or DSN 879–6856.

SUBJECT SERIES
SYSTEM IDENTIFICATION SERIES

A0001
Office Administration Housekeeping Files

A0015
Boards, Commissions, and Committees Files

A0020
Inspector General Assistance, Inspections Investigation, and Follow-up Files

A0025
Information Management Files

A0027
Legal Services Files

A0030
Food Taste Test Files

A0037
Financial Administration/ Management Files

A0040
Medical Services Files

A0055
Transportation and Travel Files

A0056
Marine Qualification Board Files

A0060
Ration/Blackmarket Monitoring Files

A0065
Postal Services Files

A0070
Research, Development, and Acquisition Files

A0095
Aviation Files

A0140
General Army Reserve Files

A0145
Senior/Junior ROTC Files

A0165
Religious Activity Files

A0190
Military Police Files

A0195
Criminal Investigation Files

A0210
Army Installations Files

A0215
Morale, Welfare, and Recreation/NAF Files

A0220
Military Personnel Data Files

A0340
Official Mail/Army Privacy Program Files

A0350
Training and Evaluation Files

A0351
Army Schools Files

A0352
Dependent Children School Program Files

A0360
Army and Public Information Files

A0380
Security Information Files

A0381
Intelligence/Counterintelligence Files

A0385
Accident and Incident Case Files

A0405
Homeowners Assistance/Real Estate Files

A0570
Human Resources Information Files

A0600
General/Military Personnel Mgt Files

A0601
Military Personnel Procurement Files

A0602
Behavioral and Social Sciences Files

A0608
Personal Affairs Files

A0614
Assignments, Details, and Transfers Files

A0621
Army/Civilian Personnel Education Files

A0635
Officer/Enlisted Personnel Separation Files

A0640
Personnel Management and Identification of Individuals Files

A0672
Decorations, Awards, and Honors

A0680
Officer/Enlisted Personnel Management Information System Files

A0690
Civilian Personnel Files

A0710
Inventory Management Files

A0715
Procurement Misconduct Files

A0725
Small Arms Sales Files

A0735
Library Borrowers'/Users Files

A0870
Army History Files

A0920
Civilian Marksmanship Program Files

A0930
Army Emergency Relief Transaction Files

A1105
COE Recreational Use Files

A1145
COE Reservoir/General Permit Files

In addition, the Department of the Army maintains systems of records in accordance with government-wide Privacy Act systems of records.

Equal Employment Opportunity Commission

EEOC/GOVT-1
Equal Employment Opportunity in the Federal Government Complaint and Appeal Records.

Federal Emergency Management Association

FEMA/GOVT-1
National Defense Executive Reserve System.

General Services Administration

GSA/GOVT-2
Employment Under Commercial Activities Contracts.

GSA/GOVT-3
Travel Charge Card Program.

GSA/GOVT-4
Contracted Travel Service Program.

Department of Labor

DOL/ESA 13
Employment Standards Administration, Office of Workers' Compensation Programs, Federal Employees' Compensation Act File.

DOL/ETA 14
Employment Training Administration.

Merit Systems Protection Board

MSPB/GOVT-1
Appeal and Case Records.

Office of Government Ethics

OGE/GOVT-1
Executive Branch Public Financial Disclosure Reports and Other Ethics Program Records.

OGE/GOVT-2
Confidential Statements of Employment and Financial Interests.

Office of Personnel Management Government

OPM/GOVT-1
General Personnel Records.

OPM/GOVT-2
Employee Performance File System Records.

OPM/GOVT-3
Records of Adverse Actions, Performance Base Reduction in Grade and Removal Actions, and Termination of Probationers.

OPM/GOVT-4
[Reserved.] Formerly Executive Branch Public Financial Disclosure Reports and Other Ethics Program Records [Replaced by OGE/GOVT-1].

OPM/GOVT-5
Recruiting, Examining, and Placement Records.

OPM/GOVT-6
Personnel Research and Test Validation Records.

OPM/GOVT-7
Applicant Race, Sex, National Origin, and Disability Status Report.

OPM/GOVT-8
[Reserved.] Formerly Confidential Statement of Employment and Financial Interest [Replaced by OGE/GOVT-2].

OPM/GOVT-9
File on Position Classification Appeals, Job Grading Appeals, and Retained Grade or Pay Appeals.

OPM/GOVT-10
Employee Medical File System Records.

DEPARTMENT OF THE ARMY SYSTEMS OF RECORDS

A0020–1bSAIG

SYSTEM NAME:

Inspector General Action Request/ Assistance Files.

SYSTEM LOCATION:

Primary location is at the U.S. Army Inspector General Agency, Department of the Army, The Pentagon, Washington, DC 20310–1700.

Secondary location is at the Offices of Inspectors General at major Army commands, field operating agencies, installations and activities, Army-wide. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any person who submits a request for assistance to an Inspector General.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's request/complaint, all related reports of inquiry, studies, memoranda, and reference material; name, component, and functional relationship or complainant to military; correspondence reflecting disposition of request.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013 and 3020.

PURPOSE(S):

To record complaints of wrongdoing and requests for assistance, to document inquiries, research facts and circumstances, sources of information, impressions and conclusions; to record action taken and notification of interested parties and agencies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of record system notices apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in binders/file folders and computer data base.

RETRIEVABILITY:

By requester's surname or by other descriptive name cross-referenced to case number.

SAFEGUARDS:

Files are stored in locked containers accessible only to authorized persons with an official need to know. Computer data base access is limited by terminal control and a password system to authorized persons with an official need to know.

RETENTION AND DISPOSAL:

Requests for assistance and/or complaints acted on by The Inspector General, Headquarters, Department of the Army, are retained for 2 years following completion and closing of case.

SYSTEM MANAGER(S) AND ADDRESS:

Office of the Inspector General, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310–1700.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Office of the Inspector General, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310–1700.

Individual should provide the full name, address, nature of request for assistance or complaint, and identification of the Inspector General's Office to which the request was submitted.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Office of the Inspector General, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310–1700.

Individual should provide the full name, address, nature of request for assistance or complaint, and identification of the Inspector General's Office to which the request was submitted.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, Army records and reports, and other sources providing or containing pertinent information.

EXEMPTIONS CLAIMED FOR THIS SYSTEM:

Portions of this system may be exempt under 5 U.S.C. 552a(k)(2) or (k)(5), as applicable.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 505. For additional information contact the system manager

A0025–55SAIS

SYSTEM NAME:

Request for Information Files.

SYSTEM LOCATION:

Headquarters, Department of the Army, staff and field operating agencies, major commands, installations and activities receiving requests to access records pursuant to the Freedom of Information Act or to declassify documents pursuant to E.O. 12356. Official mailing addresses are published as an appendix to the Army's compilation of record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual who requests an Army record under the Freedom of Information Act, or requests mandatory review of a classified document pursuant to E.O. 12356.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's request, related papers, correspondence between office of receipt and records custodians, Army staff offices and other government agencies; retained copies of classified or other exempt materials; and other selective documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552, Freedom of Information Act, as amended by Pub. L. 93–502; and E.O. 12356.

PURPOSE(S):

To control administrative processing of requests for information either pursuant to the Freedom of Information Act or to E.O. 12356, including appeals from denials.

ROUTINE USES OF RECORDS, MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of record system notices apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; microfilm.

RETRIEVABILITY:

By requester's surname.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel who are properly trained and have official need therefor.

RETENTION AND DISPOSAL:

Records reflecting granted requests are destroyed after 2 years. When requests have been denied, records are retained for 5 years; and if appealed, records are retained 4 years after final denial by the Army or 3 years after final adjudication by the courts, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Information Systems for Command, Control, Communications, and Computers, ATTN: SAIS-PDD, Department of the Army, Washington, DC 20310–0107.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Director of Information Systems for Command, Control, Communications, and Computers, ATTN: SAIS-PDD, Department of the Army, Washington, DC 20310–0107.

For verification purposes, individual should provide enough information to permit locating the record.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Director of Information Systems for Command, Control, Communications, and Computers, ATTN: SAIS-PDD, Department of the Army, Washington, DC 20310–0107.

For verification purposes, individual should provide enough information to permit locating the record.

Personal visits may be made to the office maintaining the records upon presentation of acceptable identification, such as a valid driver's license, and furnishing verbal information that can be verified.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial agency determinations by the individual concerned are published in Department of the Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, Army organizations, Department of Defense components, and other federal, state, and local government agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The majority of records in this system are not exempted. Copies of documents residing in the office of an Initial Denial Authority having a law enforcement mission which fall within 5 U.S.C. 552a(j)(2) are exempt from the following provisions of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5), (e)(8), (f), and (g).

Copies of documents maintained by other Initial Denial Authorities not having a law enforcement mission which fall within 5 U.S.C. 552a(k)(1) through (k)(7) are exempt from the following provisions of 5 U.S.C. 552a: (c)(3),(d), (e)(1), (e)(4)(G), (e)(4)(H), and (f).

A0025–6USAISC

SYSTEM NAME:

Military Affiliate Radio System.

SYSTEM LOCATION:

U.S. Army Information Systems Command, Fort Huachuca, AZ 85613–5000 for individuals on whom an investigation or inquiry has been received. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals having a valid amateur radio station license issued by the Federal Communications Commission who apply for membership in the Army Military Affiliate Radio System (MARS).

CATEGORIES OF RECORDS IN THE SYSTEM:

Applicant's name, home address and telephone number, licensing data and call-sign provided by Federal Communications Commission, Army MARS call-sign, relevant inquiries/records and reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013; DOD Directive 4650.2; and E.O. 9397.

PURPOSE(S):

To provide a potential reserve of trained radio communications personnel for military duty when needed and/or to provide auxiliary communications for military, civil, and/or disaster officials during periods of emergency.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed to Department of Army and Department of Defense communication agencies and their authorized contractors in connection with individual's participation in the Army Military Affiliate Radio System (MARS) Program and to federal supply agencies in connection with individual's participation in the Army MARS Equipment Program.

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of record system notices apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Cards; paper in file folders, computer tapes, discs, listings.

RETRIEVABILITY:

By member's name.

SAFEGUARDS:

Information is maintained in buildings having security guards and is accessible only to individuals who have need therefor to perform their duties. Automated records are further protected by a product control number assigned to designated persons.

RETENTION AND DISPOSAL:

Retained 1 year beyond the time individual is active in the program, then destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Information Systems Command, ATTN: ASOP-D, Fort Huachuca, AZ 85613–5000.

NOTIFICATION PROCEDURE:

Individual seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, U.S. Army Information Systems Command, ATTN: ASOP-D, Fort Huachuca, AZ 85613–5000.

Individual should provide the name under which licensed is the Army MARS program, Social Security Number, present address, call sign, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this record system should address written inquiries to the Commander, U.S. Army Information Systems Command, ATTN: ASOP-D, Fort Huachuca, AZ 85613–5000.

Individual should provide the name under which licensed is the Army MARS program, Social Security Number, present address, call sign, and signature.

CONTESTING RECORDS PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual and the Federal Communications Commission.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0027DAJA

SYSTEM NAME:

Civil Process Case Files.

SYSTEM LOCATION:

Office of the Judge Advocate, Headquarters, U.S. Army Europe and Seventh Army, APO New York 09403–5000; segments exist at other Army Judge Advocate Offices in the Federal Republic of Germany. Official mailing addresses are published as an appendix to the Army's compilation of record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military members of the Armed Forces, civilian employees of the U.S. Government, and their dependents upon whom service is made of documents issued by German civil courts, customs and taxing agencies, and other administrative agencies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents from German authorities regarding payment orders, execution orders, demands for payment of indebtedness, notifications to establish civil liability, customs and tax demands, assessing fines and penalties, demands for court costs or for costs for administrative proceedings summonses and subpoenas, paternity notices, complaints, judgments, briefs, final and interlocutory orders, orders of confiscation, notices, and other judicial or administrative writs; correspondence between U.S. Government authorities and the Federal Republic of Germany; identifying data on individuals concerned; and similar relevant documents and reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013; Agreement to Supplement the Agreement between the Parties to the North Atlantic Treaty regarding the Status of their Forces with respect to Foreign Forces stationed in the Federal Republic of Germany (NATO Status of Forces Supplementary Agreement).

PURPOSE(S):

To ensure that U.S. Forces obligations under the North Atlantic Treaty Organization Status of Forces Agreement are honored and the rights of U.S. Government employees are protected by making legal assistance available.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed to foreign law enforcement or investigatory or administrative authorities, to comply with requirements imposed by, or to claim rights conferred in international agreements and arrangements regulating the stationing and status in Federal Republic of Germany of Defense military and civilian personnel.

Information disclosed to authorities of the Federal Republic of Germany may be further disclosed by them to claimants, creditors or their attorneys.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records and cards in steel filing cabinets; computer disk-packs and computerized database.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

All information is maintained in areas accessible only to designated individuals having official need therefor in the performance of their duties. Records are housed in buildings protected by military police or security guards.

RETENTION AND DISPOSAL:

Paper records are destroyed 2 years after completion of case; card files are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

The Judge Advocate General, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310–2210.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address inquiries to the Office of the Judge Advocate General, Headquarters, U.S. Army Europe and Seventh Army, ATTN: Chief, International Affairs Division, APO New York 09403–5000.

Individual should provide the full name, rank/grade, service number, sufficient details to permit locating the records, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to record about themselves contained in this record system should address inquiries to the Office of the Judge Advocate General, Headquarters, U.S. Army Europe and Seventh Army, ATTN: Chief, International Affairs Division, APO New York 09403–5000.

Individual should provide the full name, rank/grade, service number, sufficient details to permit locating the records, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; German authorities; Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0027-1DAJA

SYSTEM NAME:

General Legal Files.

SYSTEM LOCATION:

Office of the Judge Advocate General, Headquarters, Department of the Army; Offices of Staff Judge Advocates; Judge Advocates; and Legal Counsels of Washington, DC 20310–2200; subordinate commands, installations, and organizations. Official mailing addresses are published as an appendix to the Army's compilation of record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been the subject of civil or criminal matters referred to the Office of the Judge Advocate General or to legal offices of subordinate commands, installations, and organizations for legal opinion, legal review, or other action.

CATEGORIES OF RECORDS IN THE SYSTEM:

Inquiries with substantiating documents, personnel actions, investigations, petitions, complaints, correspondence and responses thereto.

Examples of records include: Elimination and separation proceedings; questions pertaining to entitlement to pay; allowances, or other benefits; flying evaluation boards, line of duty investigations; reports of survey; other boards of investigating officers; DA Suitability Evaluation Board cases; DA Special Review Board efficiency report appeals; petitions to the Army Board for the Correction of Military Records; matters pertaining to on-post solicitation, revocation of privileges, and bars to entry on military installations; matters pertaining to appointments, promotions, enlistments, and discharges; matters pertaining to prohibited activities and conflicts of interest for Army personnel and employees; Article 138, UCMJ complaints; private relief legislation; military justice matters including requests for delivery of service members for trial by civilian authorities; appeals from nonjudicial punishment imposed under Article 15, UCMJ; appeals under Article 69, UCMJ; Secretarial review of officer dismissal cases; petitions for clemency, requests for pardons and requests for grants of immunity for civilian witnesses; matters pertaining to civilian employees and employees of non-appropriated fund instrumentalities including employment, pay, allowances, benefits, separations, discipline and adverse actions, grievances, equal opportunity complaints, awards, and claims processed by other agencies; and matters pertaining to attorney professional responsibility inquiries.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3037 and 3072.

PURPOSE(S):

To ensure legal sufficiency of Army operations, policies, procedures, and personnel actions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from this system of records may be disclosed to the Department of Justice for grants of immunity and requests for pardons.

Information from this system of records may also be disclosed to law students participating in a volunteer legal support program approved by the Judge Advocate General of the Army.

The 'Blanket Routine Uses' published at the beginning of the Army's compilation of record system notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; magnetic tapes/discs.

RETRIEVABILITY:

Retrieved by individual's surname.

SAFEGUARDS:

Records are maintained in locked file cabinets and/or in locked offices in buildings employing security guards or on military installations protected by military police patrols.

RETENTION AND DISPOSAL:

Records at the Office of the Judge Advocate General and Office of the Chief Counsel, Office, Chief of Engineers are permanent; at all other locations, records are destroyed upon obsolescence.

SYSTEM MANAGER(S) AND ADDRESS:

The Judge Advocate General, Headquarters, Department of the Army, Washington, DC 20310–2200.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in the record system should address written inquiries to the Judge Advocate General, Headquarters, Department of the Army, Washington, DC 20310–2200.

Individual should provide his/her full name, the address and telephone number, and any other personal data which would assist in identifying records pertaining to him/her such as current or former military status, date of birth, and, if applicable, specifics concerning the incident or event believed to be the basis for legal review.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Judge Advocate General, Headquarters, Department of the Army, Washington, DC 20310–2200.

Individual should provide his/her full name, the address and telephone number, and any other personal data which would assist in identifying records pertaining to him/her such as current or former military status, date of birth, and, if applicable, specifics concerning the incident or event believed to be the basis for legal review.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual and Army records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt under 5 U.S.C. 552a(k)(1), (k)(2), (k)(5), (k)(6), and (k)(7), as applicable.

An exemption rule for this exemption has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 505. For additional information contact the system manager.

A0027-3DAJA

SYSTEM NAME:

Legal Assistance Files.

SYSTEM LOCATION:

Army Legal Assistance, Office of the Judge Advocate General, Headquarters,

Department of the Army, Washington, DC 20310–2200; Staff Judge Advocate offices at Army commands, installations, and activities. Official mailing addresses are published as an appendix to the Army's compilation of record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty or retired military personnel and/or their dependents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, grade/rank, Social Security Number, organization, and details of problem/incident/matter on which legal assistance is sought. Records may be in the form of correspondence, memoranda, opinions of legal assistance officers, and may include interviews, summary of problems considered, advice rendered, referrals made, and documents created as a result of assistance provided.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

To respond to inquiries and settle issues; for management and statistical reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from this system of records may be disclosed to law students participating in a volunteer legal support program approved by the Judge Advocate General of the Army.

The 'Blanket Routine Uses' published at the beginning of the Army's compilation of record system notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By client's surname.

SAFEGUARDS:

Records are maintained in secured buildings, accessible only to designated authorized personnel who are properly instructed in the permissible use of the information.

RETENTION AND DISPOSAL:

Destroyed 1 year from the closing date of the case.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Army Legal Assistance, Office of the Judge Advocate General, HQDA (DAJA-LA), Washington, DC 20310–2200; and the Staff Judge Advocates of organizations listed in the address directory published as an appendix to the Army's compilation of record system notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system may inquire of the Staff Judge Advocate of the installation or command where legal assistance was sought.

Individual should provide full name, Social Security Number, and any details that will assist in locating the record.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system may inquire of the Staff Judge Advocate of the installation or command where legal assistance was sought.

Individual should provide full name, Social Security Number, and any details that will assist in locating the record.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, his/her attorney, Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

UNITED STATES MARINE CORPS SYSTEMS

MJA00010

SYSTEM NAME:

Unit Punishment Book.

SYSTEM LOCATION:

All U.S. Marine Corps and U.S. Marine Corps Reserve units, whose commander has non-judicial punishment authority.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any enlisted Marine who is charged with a violation of the Uniform Code of Military Justice.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains name, rank, Social Security Number, military occupational specialty and unit of the individual, brief summary of the alleged offense including date, time and place. Acknowledgement of rights under Article 31, Uniform Code of Military Justice, and right to demand trial by courts-martial by the individual, record of specific punishment awarded or remarks as to disposition of charge.

If punishment was awarded the individual will also acknowledge, in writing, his right to appeal.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 10 U.S.C. 815; and E.O. 9397.

PURPOSE(S):

To provide a record of nonjudicial punishments at Marine Corps commands used in the evaluation of conduct.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The 'Blanket Routine Uses' that appear at the beginning of the Marine Corps compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in loose leaf binder.

RETRIEVABILITY:

Alphabetically by last name and by year.

SAFEGUARDS:

Access limited to those with a need to know. Records kept in a locked cabinet or in a room which is locked.

RETENTION AND DISPOSAL:

Records are kept 3 years, and then destroyed by burning at end of period.

SYSTEM MANAGER(S) AND ADDRESS:

Unit Commanders of U.S. Marine Corps or U.S. Marine Corps Reserve units authorized to administer non-judicial punishment.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Unit Commanders of U.S. Marine Corps or U.S. Marine Corps Reserve units authorized to administer non-judicial punishment.

If unit imposing punishment cannot be determined, information may be sought from Director, Judge Advocate Division, Headquarters, U.S. Marine Corps, Washington, DC 20380–1775.

Provide full name, Social Security Number, and military status. Proof of identity may be established by military identification card or DD Form 214 and driver's license.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained

in this system should address written inquiries to the Unit Commanders of U.S. Marine Corps or U.S. Marine Corps Reserve units authorized to administer non-judicial punishment.

If unit imposing punishment cannot be determined, information may be sought from Director, Judge Advocate Division, Headquarters, U.S. Marine Corps, Washington, DC 20380–1775.

Provide full name, Social Security Number, and military status. Proof of identity may be established by military identification card or DD–214 and driver's license.

CONTESTING RECORD PROCEDURES:

The USMC rules for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; Marine Corps Order L5211.2; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Verbal or written charge from individual subject to Uniform Code of Military Justice, Service record book of individual, nonjudicial punishment hearing.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

MJA00012

SYSTEM NAME:

Individual Accounts of Mail Order Clothing (bill file).

SYSTEM LOCATION:

Clothing Section (MAU), Direct Support Stock Control Branch, Materiel Division, Marine Corps Logistics Support Base, Albany, GA 31704–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

File pertains to all Marine Corps personnel, active, reserve and retired who have a requirement and are authorized clothing, textiles and other related supplies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Record includes individual's name, rank, Social Security Number, military address, bill number, dollar amount of the shipment, shipping date and ZIP code.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

NAVCOMPT Manual, Part C, Collection and Reporting of Debts Due the United States; 10, U.S.C. 5031.

PURPOSE(S):

To provide a record of debts owed through clothing mail order accounts for use in follow-up to such accounts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The 'Blanket Routine Uses' that appear at the beginning of the Marine Corps compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data is stored on magnetic tapes and computer paper printouts.

RETRIEVABILITY:

Data can be retrieved by account number, name and Social Security Number.

SAFEGUARDS:

Computer printouts and source documents are retained in a single office accessible only to authorized personnel. Employees are properly trained in safeguarding information of a personal nature.

RETENTION AND DISPOSAL:

Computer records are retained until the bills are satisfied. Computer printouts and source documents are retained for a period of five years. Destruction of records is by mutilation.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding General, Marine Corps Logistics Support Base, Albany, GA 31704–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Clothing Section (MAU), Direct Support Stock Control Branch, Materiel Division, Marine Corps Logistics Support Base, Albany, GA 31704–5000.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Clothing Section (MAU), Direct Stock Control Branch, Material Division, Marine Corps Logistics Support Base, Albany, GA 31704–5000.

CONTESTING RECORD PROCEDURES:

The USMC rules for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; Marine Corps Order L5211.2; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Accounting records of the Clothing Section, Direct Support Stock Control Branch, Marine Corps Logistics Support Base, Albany, GA, supplemented with information from the employing activity of the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

MJA00013

SYSTEM NAME:

Bad Checks/Withdrawal of Check Cashing Privileges Lists.

SYSTEM LOCATION:

Each Appropriated and Non-Appropriated Fund Activity having authority to accept personal checks from authorized patrons. Located at Headquarters, U.S. Marine Corps and each major Marine Corps installation listed in MCO P5400.6G.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All military personnel, active and retired; their authorized dependents an deceased military retirees; Marine Corps Exchange employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

File bulletins containing name, rank, Social Security Number and expiration date of restriction of privileges and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 10 U.S.C. 801, et. seq.; 18 U.S.C. 13 and E.O. 9397.

PURPOSE(S):

To provide a record of individuals who have issued bad checks at Appropriated and Nonappropriated Fund Activities having authority to accept personal checks from authorized patrons. The records are used to protect activities from unnecessary losses and to initiate administrative or criminal actions due to bad check offenses.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The 'Blanket Routine Uses' that appear at the beginning of the Marine Corps compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored in Rolodex or other appropriate file in check cashing area. Published bulletin is stored in directive system of organizations.

RETRIEVABILITY:

Alphabetical by name and Social Security Number.

SAFEGUARDS:

Access limited. Secured in locked building during nonworking hours.

RETENTION AND DISPOSAL:

Destroyed when privileges are restored at the expiration of specified periods made known to the individual at the time privileges are revoked.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding Officer of activity concerned. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of system of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commanding Officer of activity concerned. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of system of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commanding Officer of activity concerned. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of system of records notices.

CONTESTING RECORD PROCEDURES:

The USMC rules for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; Marine Corps Order L5211.2; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Bad checks returned from the bank; notification from other commands, Federal Bureau of Investigation, Naval Investigative Service or other state, local or Federal investigative agencies or Treasury Department.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

MJA00014

SYSTEM NAME:

Confidential Statements of Employment/Financial Interests.

SYSTEM LOCATION:

The Director, Judge Advocate Division, Headquarters, U.S. Marine Corps, Washington, DC 20380–1775.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Marine Corps officers whose fitness reports are written by the Commandant of the Marine Corps and who are required to file confidential statements of 'Employment and Financial Interests' (DD Form 1555) in accordance with DOD Directive 5500.7.

CATEGORIES OF RECORDS IN THE SYSTEM:

The file contains copies of the 'Confidential Statements of Employment and Financial Interests' (DD Form 1555), reviews thereof, and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 10 U.S.C. 5031; and E.O. 9397.

PURPOSE(S):

To provide a record of employment and financial interests of certain Marine Corps Officers for use by the Commandant of the Marine Corps or his designee to ensure there is no conflict of interest.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The 'Blanket Routine Uses' that appear at the beginning of the Marine Corps compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folder.

RETRIEVABILITY:

Alphabetically by last name of member.

SAFEGUARDS:

The access to the files is limited. The files are kept in a locked safe during non-business hours.

RETENTION AND DISPOSAL:

Records are maintained 6 years within the command, after which they are destroyed.

If an investigation is initiated prior to end of 6 years and records are needed, they are held until completion of investigation, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

The Director, Judge Advocate Division, Headquarters, U.S. Marine Corps, Washington, DC 20380–1775.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, Judge Advocate Division, Headquarters, U.S. Marine Corps (Code JA), Washington, DC 20380–1775.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commandant of the Marine Corps, Headquarters, U.S. Marine Corps (Code JA), Washington, DC 20380–1775.

Written requests for information should contain the full name and grade of the individual concerned.

CONTESTING RECORD PROCEDURES:

The USMC rules for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; Marine Corps Order L5211.2; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

DD Form 1555 submitted by individual concerned and correspondence from and to system manager.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

MJA00016

SYSTEM NAME:

Judge Advocate Division 'D' Files.

SYSTEM LOCATION:

The Director, Judge Advocate Division, Headquarters, U.S. Marine Corps, Washington, DC 20380–1775.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Marine Corps Judge Advocates currently on active duty, in a reserve capacity and those individuals who have been selected for accession into the Marine Corps as Judge Advocates or who are in the training cycle to become Judge Advocates.

CATEGORIES OF RECORDS IN THE SYSTEM:

The file contains correspondence from the Judge Advocates and prospective Judge Advocates regarding requests for personnel actions such as transfer, school assignment, etc. Additionally, the file contains information pertaining to judge advocate qualifications such as schooling results, commendatory matters and derogatory matter which bears on the assignment and other

personnel matters relating to judge advocates.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 10 U.S.C. 5031; and E.O. 9397.

PURPOSE(S):

To provide a record of qualified judge advocates for use in transfer, school assignment and other personnel matters relating to judge advocates.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The 'Blanket Routine Uses' that appear at the beginning of the Marine Corps compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Alphabetically by last name of member.

SAFEGUARDS:

Access is limited. The records are kept in file cabinets within a locked room.

RETENTION AND DISPOSAL:

Retained for 2 years, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

The Director, Judge Advocate Division, Headquarters, U.S. Marine Corps, Washington, DC 20380–1775.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, Judge Advocate Division, Headquarters, U.S. Marine Corps (Code JA), Washington, DC 20380–1775.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Director, Judge Advocate Division, Headquarters, U. S. Marine Corps (Code JA), Washington, DC 20380–1775.

Written requests should contain the full name and grade of the individual.

CONTESTING RECORD PROCEDURES:

The USMC rules for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; Marine Corps Order L5211.2; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individuals. Service records of the individuals involved. Judge Advocates and Commanders of the individuals involved. Schools from which the individuals have obtained their graduate or undergraduate degrees or currently in residence.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

MJA00017

SYSTEM NAME:

JA Division, HQMC Correspondence Control Files.

SYSTEM LOCATION:

The Commandant of the Marine Corps (Code JAC), Headquarters, U.S. Marine Corps, Washington, DC 20380–1775.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Marines or former Marines who have been the subject of correspondence from a member of Congress, a high level Official in the Federal executive branch, parents of such an individual, individual Marines or members of the general public which correspondence concerns legal matters.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains the incoming correspondence, backup material used to respond to the correspondence, notes of the action officer and reply correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 10 U.S.C. 5031; and E.O. 9397.

PURPOSE(S):

To provide a record of action taken on all correspondence received by the Judge Advocate Division, Headquarters, Marine Corps on individual inquiries.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The 'Blanket Routine Uses' that appear at the beginning of the Marine Corps compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Alphabetical by name of correspondent or name of Marine or former Marine who is the subject of the correspondence.

SAFEGUARDS:

Limited access on a need to know basis. Maintained in a locked room.

RETENTION AND DISPOSAL:

Retained for 2 years, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

The Director, Judge Advocate Division, Headquarters, U.S. Marine Corps, Washington, DC 20380–1775.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, Judge Advocate Division, Headquarters, U.S. Marine Corps (Code JAC), Washington, DC 20380–1775.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Director, Judge Advocate Division, Headquarters, U.S. Marine Corps (Code JAC), Washington, DC 20380–1775.

Written requests for information should contain the full name and grade of the individual.

CONTESTING RECORD PROCEDURES:

The USMC rules for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; Marine Corps Order L5211.2; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Drafter of incoming correspondence.

Service records of the Marine concerning whom correspondence is written. Information furnished from the command of the Marine concerned. Information furnished from other involved Marine Commands or individuals.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

MJA00018

SYSTEM NAME:

Performance File.

SYSTEM LOCATION:

The Director, Judge Advocate Division, Headquarters, U.S. Marine Corps, Washington, DC 20380–1775.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The file pertains to all members and former members of the Marine Corps, who, while on active duty or in a reserve status, become the subject of investigation, indictment, or criminal proceedings by military or civilian authorities, whether or not such investigation, indictment or proceedings

result in a final adjudication of guilt of innocence.

CATEGORIES OF RECORDS IN THE SYSTEM:

The file contains information pertaining to civilian and military criminal matters including investigative reports, documents indicating court proceedings have begun and/or in progress, and post trial or investigative matters, as well as records of any resultant administrative action or proceedings.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 10 U.S.C. 5031; and E.O. 9397.

PURPOSE(S):

To provide a record on individuals from the initiation of investigation or indictment until the procedure is final, whether by conviction, acquittal, dismissal or by the matter being dropped, and any resultant administrative action or proceedings, for use in determining assignments, whether an individual selected for promotion should be promoted while the matter is pending.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The 'Blanket Routine Uses' that appear at the beginning of the Marine Corps compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Retrieved alphabetically by name.

SAFEGUARDS:

Access is limited. The file folders are stored in the file cabinets which are stored in a locked room during nonbusiness hours.

RETENTION AND DISPOSAL:

Files are maintained for 50 years and then destroyed. Files maintained in Judge Advocate Division at Headquarters are transferred to Federal Records Center, Suitland, MD, after three years.

SYSTEM MANAGER(S) AND ADDRESS:

The Director, Judge Advocate Division, Headquarters, U.S. Marine Corps, Washington, DC 20380–1775.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, Judge Advocate Division, Headquarters, U.S. Marine Corps (Code JA), Washington, DC 20380–1775.

Written requests for information should contain the full name and grade of the individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Director, Judge Advocate Division, Headquarters, U.S. Marine Corps (JA), Washington, DC 20380–1775.

Written requests for information should contain the full name and grade of the individual.

CONTESTING RECORD PROCEDURES:

The USMC rules for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; Marine Corps Order L5211.2; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Investigative records of arrest from civilian law enforcement sources; records of indictment of conviction from civilian law enforcement or judicial agencies; records of appellate and other post trial procedures received from civilian law enforcement and judicial agencies.

Records indicating apprehension or investigation by military authorities received from individual's command or other military agencies, law enforcement or command.

Records of nonjudicial punishment, courts-martial, pre courts-martial and post courts-martial activities relating to the individual received from the individual's command.

Records of administrative eliminative processes conducted by military authorities received from the individual's command.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

MMC00002

SYSTEM NAME:

Working Files, Inspection Division.

SYSTEM LOCATION:

Headquarters, U.S. Marine Corps, Washington, DC 20380–1775.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the U.S. Marine Corps and Marine Corps Reserve; former members of the Marine Corps and Marine Corps Reserve; retired and temporarily retired members of the Marine Corps and Marine Corps Reserve; and members of the Fleet Marine Corps Reserve; military personnel.

Dependents of Marines and other family members with respect to matters pertaining to the individual Marine or former Marine.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains information pertaining to identification, recruitment, enlistment, prior service, assignment, location addresses, promotions, reductions in rank, performance of duty, discipline, offenses and punishments under the Uniform Code of Military Justice, courts-martial, personal history, investigations, police and court records, civil arrests and convictions, Official correspondence (includes internal Marine Corps and Department of the Navy correspondence, as well as correspondence with the Executive and Legislative branches of the federal government) and other correspondence (includes correspondence from Marines, their dependents and families, attorneys, doctors, educators, clergymen and members of the general public whether addressed directly to the Marine Corps or via third parties (president, congressmen, etc.)).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 10 U.S.C. 5031; and E.O. 9397.

PURPOSE(S):

To provide a record of investigations, allegations pertaining to request mast, maltreatment and harassment for use by Officials of the Headquarters Inspection Division concerning inquiries on such matters.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The 'Blanket Routine Uses' that appear at the beginning of the Marine Corps compilation apply to this system.

Congress of the U.S. - By the Senate or the House of Representatives of the U.S. or any committee or subcommittee thereof on matters within their jurisdiction requiring disclosure of the files of the system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files as represented by card files and file folders. Files are stored in five drawer filing cabinets.

RETRIEVABILITY:

Files are accessed and retrieved by the name and card file number.

SAFEGUARDS:

Building where files are stored and maintained employs 24 hour security guards. Records are further stored in areas of controlled access and handled by personnel with a need to know in the execution of their official duties.

RETENTION AND DISPOSAL:

Congressional, military and civilian inquiry files are retained three years, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

The Commandant of the Marine Corps, Headquarters, U.S. Marine Corps, Washington, DC 20380–1775.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commandant of the Marine Corps (Code IGA), Headquarters, U.S. Marine Corps, Washington, DC 20380–1775.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commandant of the Marine Corps (Code IGA), Headquarters, U.S. Marine Corps, Washington, DC 20380–1775. However, final determination as to whether any information will be released or made available will be controlled by the system manager.

Written requests for information should contain the full name of the individual and his Social Security Number or former military service number. The following information will also be helpful in locating some records; military rank and occupational specialty, dates and places of service, and any special correspondence previously received or sent.

For personal visits, an individual may visit the Inspection Division, Headquarters, U.S. Marine Corps, Federal Building 12, Washington, DC 20380–1775. However, final determination as to whether any information will be released or made available will be controlled by the System manager.

For personal visits, the individual should be able to provide personal identification to include valid military or dependent identification card or two valid civilian items of identification, such as driver's license, social security card, medicare, etc.

CONTESTING RECORD PROCEDURES:

The USMC rules for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; Marine Corps Order L5211.2; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information in the system is obtained from the Marine Corps Manpower Management System; the Joint Uniform Military Pay System; Marine Corps Military Personnel Records to include the Service Record Book and Officer Qualification Record; Military Medical Records; Staff elements and subdivisions of Headquarters, U.S. Marine Corps; Marine Corps field commands, organizations and activities; other components of the Department of Defense; Agencies of Federal, State and local government; private citizens provided as character references by the individual; investigations related to disciplinary proceedings; and correspondence of private citizens addressed directly to the Marine Corps or via third parties such as members of Congress and other government agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

MMC00003

SYSTEM NAME:

Activity Check In/Check Out File.

SYSTEM LOCATION:

May be located at any U.S. Marine Corps or U.S. Marine Corps Reserve activity. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of system of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All members of the activity.

CATEGORIES OF RECORDS IN THE SYSTEM:

Date reported and verification of check-in - check-out procedure.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 10 U.S.C. 5031; and E.O. 9397.

PURPOSE(S):

To provide a record of members reporting to or leaving a unit for use in tracking property belonging to the unit.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The 'Blanket Routine Uses' that appear at the beginning of the Marine Corps compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

On paper in files or on clipboard.

RETRIEVABILITY:

Alphabetically by last name.

SAFEGUARDS:

Access limited to activity personnel in the performance of their official duties.

After working hours, the office and building are locked. A guard is located in the general vicinity.

RETENTION AND DISPOSAL:

Retained for 6 months after action has been completed.

SYSTEM MANAGER(S) AND ADDRESS:

Activity commander. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of system of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to or visit the activity commander. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of system of records notices.

Provide full name, Social Security Number, and military status. Proof of identity may be established by military identification card or DD–214 and driver's license.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the activity commander. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of system of records notices.

Provide full name, Social Security Number, and military status. Proof of identity may be established by military identification card or DD–214 and driver's license.

CONTESTING RECORD PROCEDURES:

The USMC rules for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; Marine Corps Order L5211.2; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Service records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

MMC00004

SYSTEM NAME:

Adjutant Services Section Discharge Working Files.

SYSTEM LOCATION:

Adjutant Services Section, Marine Corps activities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members and former members of the Marine Corps and Marine Corps Reserve. Some information about dependents and other members of families or former families of Marine Corps personnel may be included in files pertaining to the Marine. Inquiries from the general public, whether addressed directly to Base or received via a third party, may be retained together with information obtained in the course of completing required action or in preparing a response.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain information pertaining to identification; prior service; location and addresses; prior and present marital status, dissolution of prior marriages, birth and death status, adoption of children, financial responsibility, child support, medical information, personal financial records, residence, basic allowance for quarters, leave and liberty, financial assistance, extensions of emergency leave, medical bills and determinations of dependency status as pertain to discharges; investigative reports, prior and present disciplinary status, financial responsibility, conduct and personal history, police reports, correction of naval records, veterans rights, benefits and privileges, preseparation counseling and civil readjustment as they pertain to unsuitability, unfitness and misconduct discharges; financial status, college acceptance and residence as they pertain to early separation to attend college or trade school; religious beliefs and practices pertaining to applications for conscientious objector status; official correspondence (including correspondence from Marines, their families, attorneys, doctors, clergymen, administrators/executors/guardians of estates, American Red Cross and other welfare agencies and the general public, whether addressed directly to the Marine Corps or via third parties); internal routing and processing of matters; and records of interviews and telephone conversations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 10 U.S.C. 5031; E.O. 9397.

PURPOSE(S):

To provide records for use in the discharge or separation of Marines, correction of records, determination of veterans rights, benefits and privileges, welfare and family assistance and preseparation and counseling.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The 'Blanket Routine Uses' that appear at the beginning of the Marine Corps compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and card files stored in filing cabinets, shelves, tables and desks.

RETRIEVABILITY:

Files are accessed and retrieved by individual. Identification of individual is by name and Social Security Number.

SAFEGUARDS:

Building is located in base area with area guard. Outside and inside doors locked after working hours and patrolled by Duty NCO. Access to information contained in the files is limited to officials and employees of Base Headquarters acting in their official capacity upon demonstration of a need-to-know.

RETENTION AND DISPOSAL:

Files are retained two years and destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of activity concerned. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of system of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commanding officer of activity concerned. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of system of records notices.

Correspondence should contain the full name, Social Security Numbers and signature of the requester. The individual may visit the above location for review of files. Proof of identification may consist of the active, reserve, retired or dependent identification card, the Armed Forces Report of Transfer or Discharge (DD–214), discharge certificate, driver's license, social security card or by providing such other data sufficient to ensure the individual is the subject of the inquiry.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commanding officer of activity concerned. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of system of records notices.

CONTESTING RECORD PROCEDURES:

The USMC rules for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; Marine Corps Order L5211.2; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Marine Corps Manpower Management System; Joint Uniform Military Pay System; Marine Corps Military Personnel Records System.

Marine Corps Deserter Inquiry File; Staff agencies and subdivisions of Headquarters, U.S. Marine Corps; Marine Corps commands and organizations.

Other agencies of Federal, state and local governments; Educational institutions; Medical reports and psychiatric evaluations; Financial institutions and other commercial; Civil courts and law enforcement agencies.

Correspondence and telephone calls from private citizens initiated to the Marine Corps or via the U.S. Congress and other agencies; Investigative Reports; American Red Cross and similar welfare agencies;

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

MMC00005

SYSTEM NAME:

Insurance Files.

SYSTEM LOCATION:

Marine Corps Activities. U.S. Marine Corps official mailing addresses are published as an appendix to the Navy's compilation of system of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Insurance salesman requesting authority to do business at Marine Corps Activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

A record of the certification of authority to solicit insurance mutual funds, investment plans, and securities.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 10 U.S.C. 5031; E.O. 9397.

PURPOSE(S):

To provide a record of insurance agents who have requested authority to do business at Marine Corps activities and the disposition of such requests.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The 'Blanket Routine Uses' that appear at the beginning of the Marine Corps compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Files in alphabetical order by company name. Conventional indices are required for retrieval.

SAFEGUARDS:

Maintained in locked building.

RETENTION AND DISPOSAL:

Maintained as long as active. If inactive, disposed of after two years by discard into military trash system. Not transferred.

SYSTEM MANAGER(S) AND ADDRESS:

Local commanding officers. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of system of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the local commanding officers. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of system of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the local commanding officers. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of system of records notices.

CONTESTING RECORD PROCEDURES:

The USMC rules for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; Marine Corps Order L5211.2; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is supplied by the insurance companies and salesman involved.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

MMC00007

SYSTEM NAME:

Inspection of Government Property Assigned to Individual.

SYSTEM LOCATION:

Organizational elements of the U.S. Marine Corps. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of system of records notices. the Directory of Department of the Navy activities mailing addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty Marine Corps personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, badge number, and government property assigned to individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 10 U.S.C. 5031; E.O. 9397.

PURPOSE(S):

To provide a record of loss or deterioration of clothing and equipment assignment to each individual.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The 'Blanket Routine Uses' that appear at the beginning of the Marine Corps compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Name.

SAFEGUARDS:

Building locked at night - locked cabinet.

RETENTION AND DISPOSAL:

Until separation.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of the activity in question. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of system of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commanding officer of the activity in question. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of system of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commanding officer of the activity in question. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of system of records notices.

Written requests for information should contain the full name of the individual and his Social Security Number or former military service number. The following information will also be helpful in locating some records: Military rank and occupational specialty, dates and places of service, and any special correspondence and previously received or sent.

For personal visits, the individual should be able to provide personal identification to include valid military or dependent identification card or two valid civilian items of identification such as driver's license, social security card, medicare, etc.

CONTESTING RECORD PROCEDURES:

The USMC rules for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; Marine Corps Order L5211.2; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Inspection of property and clothing.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

MMC00008

SYSTEM NAME:

Message Release/Pickup Authorization File.

SYSTEM LOCATION:

Marine Corps activities. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of system of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All personnel authorized to release/pickup message traffic.

CATEGORIES OF RECORDS IN THE SYSTEM:

OPNAV Form 2160–5 (Message Release/Pickup Authorization).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 10 U.S.C. 5031; E.O. 9397.

PURPOSE(S):

To provide a record of personnel authorized to release/pickup messages at command Communication Centers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The 'Blanket Routine Uses' that appear to the beginning of the Marine Corps compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Cards are filed in a card file within the Communication Center.

RETRIEVABILITY:

Alphabetically by name.

SAFEGUARDS:

Located in a secure space within the Command Center, which is manned on a 24–hour basis.

RETENTION AND DISPOSAL:

Retained until individual is replaced or authorization is revoked by proper authority; then destroyed by burning or shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Local commanding officers. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of system of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the local commanding officer. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of system of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the local commanding officer. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of system of records notices.

CONTESTING RECORD PROCEDURES:

The USMC rules for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; Marine Corps Order L5211.2; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Organizations, departments, sections authorized to release/pickup messages for the command.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

MMC00009

SYSTEM NAME:

Narrative Biographical Data with Photos.

SYSTEM LOCATION:

Primary System - Headquarters, U.S. Marine Corps, Washington, DC 20380–1775.

Secondary System - At all Marine Corps commands and districts maintain derivative files. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of system of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Marine Corps active duty, reserve, and retired general officers and active duty colonels who submit biographical data with photographs in accordance with existing directives.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain standard biographical information as listed on NAVMC Form 10573 to include: personal identification, personal data, education background, military history, medals and decorations, combat, and chronology of Marine Corps service. A current photograph accompanies the file.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 10 U.S.C. 5031; E.O. 9397.

PURPOSE(S):

To provide a record of news releases, responses to news media queries, and information on officers scheduled for speaking engagements or public appearances.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The 'Blanket Routine Uses' that appear at the beginning of the Marine Corps compilation apply to this system.

Congress of the U.S. - By the Senate or the House of Representatives of the U.S. or any committee or subcommittee thereof, any joint committee of Congress or subcommittee of joint committee on matters within their jurisdiction requiring disclosure of the files.

News Media - To provide biographical information response to query.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Filed alphabetically by last name of officer.

SAFEGUARDS:

Buildings employ security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared, and trained.

RETENTION AND DISPOSAL:

Biographical information is maintained on all general officers while on active duty. When a general officer retires, the biographical data is retained for five years after the date of the individual officer's retirement and retained by the Historical Division (Code HD), Headquarters, U.S. Marine Corps, Washington, DC 20380–1775.

Biographical files are maintained on colonels while on active duty. Upon retirement of the officer, colonel biographical files are retained by Historical Division (Code HD),

Headquarters, U.S. Marine Corps, Washington, DC 20380–1775.

SYSTEM MANAGER(S) AND ADDRESS:

The Commandant of the Marine Corps, Headquarters, U.S. Marine Corps, Washington, DC 20380–1775, or commander of unit holding file.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commandant of the Marine Corps (Code PA), Headquarters, U.S. Marine Corps, Washington, DC 20380–1775.

Written requests to determine whether or not the system contains a record about an individual should contain the full name of the general officer or colonel concerned.

Visits are limited to Division of Information (Code PA), Headquarters, U.S. Marine Corps, Washington, DC 20380–1775.

For personal visits, the individual should be able to provide some acceptable identification, such as a military identification card, and give some verbal information that could be verified with his 'case' folder.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commandant of the Marine Corps and the commander of the unit holding the file.

CONTESTING RECORD PROCEDURES:

The USMC rules for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; Marine Corps Order L5211.2; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Biographical data provided by the individual general/colonel and from personnel files.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

MMC00010

SYSTEM NAME:

Marine Corps Marathon Automated Support System.

SYSTEM LOCATION:

Marine Corps Marathon Office, Quantico, VA 22134–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All participants in the Marine Corps Marathon.

CATEGORIES OF RECORDS IN THE SYSTEM:

System contains information as provided on the Marine Corps Marathon Liability and Publicity Release form.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Security Act of 1947 as amended by DoD Reorganization Act of 1958, 10 U.S.C. 133; 10 U.S.C. 136; 32 CFR part 237 (1982).

PURPOSE(S):

To provide a record of all participates in the annual Marine Corps Marathon for use in organizing the event.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The 'Blanket Routine Uses' at the head of the published Marine Corps system notices in the Federal Register. Additionally, the following routine uses apply:

Electronic and print media - To provide publicity on the marathon event.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on magnetic tape and disks as well as in paper files.

RETRIEVABILITY:

Records are retrieved by name, runner number, or telephone number.

SAFEGUARDS:

Records are maintained in an area accessible only to authorized personnel. The terminals are in a room with windows protected by bars and the room is locked when not being used by authorized personnel. User identification codes and passwords known only by the data input operators and their supervisors are required for access to the terminals.

RETENTION AND DISPOSAL:

Records are maintained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Marathon Coordinator, Marine Corps Marathon, PO Box 188, Quantico, VA 22134–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Marathon Coordinator, Marine Corps Marathon, PO Box 188, Quantico, VA 22134–5000.

Written requests for information should contain the full name, runner number, and telephone number. For personal visits, the individual should be able to provide identification bearing picture and signature or sufficient verbal data to ensure that the individual is the subject of inquiry.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Marathon Coordinator, Marine Corps Marathon, PO Box 188, Quantico, VA 22134–5000.

CONTESTING RECORD PROCEDURES:

The USMC rules for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; Marine Corps Order L5211.2; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information in the system is obtained from the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 93–18394 Filed 8–2–93; 8:45 am]

BILLING CODE 5000–04–F

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Application for a Department of the Army Permit; ENG Form 4345–R; OMB No. 0710–0003.

Type of Request: Reinstatement.

Average Burden Hours/Minutes Per Response: 5 hours.

Responses per Respondent: 1.

Number of Respondents: 16,500.

Annual Burden Hours: 82,500.

Annual Responses: 16,500.

Needs and Uses: This program regulates the alteration and quality of U.S. waters. The public submits application to obtain permission to undertake construction related to activities that would affect navigation channels and other U.S. waters. The impact on navigation, water quality, the environment, and other factors are considered in the Corps review.

Affected Public: Individuals or households; State or local governments; Farms; Businesses or other for-profit;

Federal agencies or employees; Non-profit institutions; and Small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Edward C. Springer. Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202-4302.

Dated: July 28, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93-18395 Filed 8-2-93; 8:45 am]

BILLING CODE 5000-04-M

DEPARTMENT OF ENERGY

United States of America Federal Energy Regulatory Commission

[Docket Nos. ER93-808-000, et al.]

Portland General Electric Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Portland General Electric Company

[Docket No. ER93-808-000]

July 26, 1993.

Take notice that on July 22, 1993, Portland General Electric Company (PGE) tendered for filing an amendment to the Grizzly Trust Agreement between the Bonneville Power Administration (BPA) and Portland General Electric Company (PGE).

PGE has served copies of this filing on:

Bonneville Power Administration, Lower Columbia Area, P.O. Box 3621, Portland, Oregon 97208-3621

Oregon Public Utility Commission, 550 Capitol Street NE., Salem, Oregon 97310-1380

Comment date: August 10, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. Midwest Power Systems, Inc.

[Docket No. ER93-560-000]

July 26, 1993.

Take notice that on July 12, 1993, Midwest Power Systems, Inc. tendered for filing Amendment No. 2 to the filing of an executed Service Schedule Agreement for wholesale electric power and energy between Midwest Power Systems, Inc. (MPSI) and the City of Wall Lake, Iowa (City), whereby MPSI will provide wholesale electric power and energy as required by the City above the amount provided by the Western Area Power Administration (Western). MPSI is filing this Agreement pursuant to the established Electric Tariff Volume No. 1, Original Issue Sheets Nos. 7, 8, and 9. Amendment No. 1 contains additional support data and information describing the relationship between MPSI and the City since 1983.

Notice of this filing has been served upon the following:

Mr. Raymond K. Vawler, Executive Secretary, Iowa Utilities Board, Lucas State Office Building, Des Moines, Iowa 50319

Mr. H.F. Schroeder, Mayor, City of Wall Lake, 418 2nd Street, Wall Lake, Iowa 51466

Comment date: August 10, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. Northeast Utilities Service Company

[Docket Nos. ER93-403-000, ER93-307-000]

July 26, 1993.

Take notice that on July 21, 1993, Northeast Utilities Service Company (NUSCO), on behalf of The Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company, Holyoke Power and Electric Company and Public Service Company of New Hampshire, tendered for filing a Revised First Amendment to Transmission Service Agreement and a First Amendment to Distribution and Transformation Agreement for service to New England Power Company (NEP). NUSCO requests consolidation of the two dockets.

NUSCO states that the filing is in accordance with part 35 of the Commission's regulations. Copies of the filing have been sent to NEP.

Comment date: August 10, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. Citizens Utilities Company

[Docket No. ES93-44-000]

July 26, 1993.

Take notice that on July 20, 1993, Citizens Utilities Company (Citizens) filed an application under section 204 of the Federal Power Act requesting an order authorizing the issuance of:

(a) Not more than 3,500,000 shares of common stock pursuant to the provisions of Citizens Management Equity Incentive Plan, and

(b) Not more than 750,000 shares of common stock pursuant to the provisions of Citizens 401(k) Employee Benefit Plan.

Also, Citizens requests exemption from the competitive bidding requirements.

Comment date: August 19, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. PSI Energy, Inc.

[Docket No. ER93-806-000]

July 26, 1993.

Take notice that on July 20, 1993, PSI Energy, Inc. (PSI), tendered for filing an Interchange Agreement, dated June 1, 1993, between PSI and The City of Piqua, Ohio (Piqua).

The Interchange Agreement provides for the following service between PSI and Piqua:

1. Service Schedule A—Emergency Service.

2. Service Schedule B—Short-Term Power and Energy.

3. Service Schedule C—Economy Energy.

4. Service Schedule D—Non-Displacement Energy.

5. Service Schedule E—Limited Term Power and Energy.

PSI and Piqua have requested an effective date of September 20, 1993.

Copies of the filing were served on The City of Piqua, Ohio, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: August 10, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. Northern States Power Company (Minnesota Company)

[Docket No. ER93-807-000]

July 26, 1993.

Take notice that on July 21, 1993, Northern States Power Company (Minnesota) (NSP) tendered for filing an Interconnection and Interchange Agreement dated March 17, 1992, and a Construction Agreement dated April 6, 1993, both agreements between NSP and the City of Blue Earth, Minnesota.

NSP requests that the Interconnection and Interchange Agreement be accepted for filing effective on the date of energization of the interconnection, approximately July 23, 1993. NSP requests waiver of Commission's notice requirements in order for the Agreement

to be accepted for filing on that date. The parties intend to establish and energize a direct transmission interconnection between their respective systems to enable the City of Blue Earth to realize a reduction in transmission service costs.

NSP also requests that the Commission determine whether or not the Construction Agreement is required to be filed with the Commission. In the event the Commission determines that such filing is required, NSP requests that the Construction Agreement be accepted for filing effective April 6, 1993. NSP requests waiver of Commission's notice requirements in order for the Agreement to be accepted for filing on that date.

Comment date: August 10, 1993, in accordance with Standard Paragraph E at the end of this notice.

7. Florida Power Corporation

[Docket No. ER93–809–000]

July 26, 1993.

Take notice that on July 22, 1993, Florida Power Corporation (Florida Power) filed a Contract For Interchange Service Between Florida Power Corporation and Big Rivers Electric Corporation. Florida Power requests that the contract become effective as a rate schedule on October 1, 1993, which is more than 60 days after the date of this filing. The contract allows for service under Schedule C, Economy Interchange Service.

Florida Power states that a copy of the filing has been mailed to the affected customer.

Comment date: August 10, 1993, in accordance with Standard Paragraph E at the end of this notice.

8. PacifiCorp

[Docket No. EL93–57–000]

July 26, 1993.

Take notice that on July 20, 1993, PacifiCorp, tendered for filing in accordance 18 CFR part 33 of the Commission's Rules and Regulations, an application seeking an order authorizing PacifiCorp to sell to the Public Utility District No. 1 of Klickitat County (Klickitat PUD) 23.45 miles of 69 kilovolt transmission line located in Klickitat County, Washington.

PacifiCorp requests that, pursuant to § 33.10 of the Commission's Regulations, the Commission accept this application for filing, to be effective forty-five (45) days after the date of filing.

Copies of the filing were supplied to Klickitat PUD and the Washington Utilities and Transmission Commission.

Comment date: August 12, 1993, in accordance with Standard Paragraph E at the end of this notice.

9. Northeast Utilities Service Company (Re North Atlantic Energy Corporation and Vermont Electric Generation and Transmission Cooperative, Inc.)

[Docket Nos. EL93–56–000; EC93–21–000]

July 26, 1993.

Take notice that on July 19, 1993, Northeast Utilities Service Company (NUSCO) tendered for filing on behalf of North Atlantic Energy Corporation (NAEC) and Vermont Electric Generation and Transmission Cooperative, Inc. (VEGT) a Petition for Declaratory Order Disclaiming Jurisdiction, or Alternatively, Application for Approval of the Acquisition By North Atlantic Energy Corporation of Jurisdictional Facilities. The transaction that is the subject of the Petition and Application stems from a settlement reached between VEGT and Public Service Company of New Hampshire (PSNH) in PSNH's bankruptcy proceedings under Chapter 11 of the Bankruptcy Code, which was approved by the United States Bankruptcy Court for the District of New Hampshire (Bankruptcy Court).

NUSCO states that VEGT is a rural electric cooperative that owns a 0.41259 percent interest in a nuclear-fueled generating plant and related pertinent facilities at a site located in Seabrook, New Hampshire (the Seabrook Project). During the PSNH bankruptcy proceeding, VEGT filed claims against PSNH relating to the construction of the Seabrook Project. In settlement of those claims, PSNH and VEGT entered into a Stipulation which was approved by the Bankruptcy Court. The Stipulation provided that VEGT was allowed a claim in the bankruptcy proceeding of $2.5 million in full settlement of its claims against PSNH and that VEGT would sell to PSNH (or to a successor designated by PSNH), free of all claims, VEGT's interest in the Seabrook Project for $6.4 million, less amounts VEGT owes PSNH and PSNH's affiliates. VEGT and PSNH agreed to cooperate in seeking approval of the sale by the Rural Electrification Administration and other necessary regulatory approvals. NUSCO states that PSNH subsequently assigned its purchase right under the Stipulation to NAEC.

NUSCO requests that the Commission either disclaim jurisdiction over the proposed transaction or, alternatively, approve the transaction without a hearing.

Comment date: August 12, 1993, in accordance with Standard Paragraph E at the end of this notice.

10. Gulf Power Company

[Docket No. ER93–792–000]

July 27,1993.

Take notice that on July 15, 1993, Gulf Power Company (Gulf Power) tendered for filing a revised tariff sheet to its FERC Electric Tariff, Original Volume No. 1 (full requirements service) and a petition for waiver of the Commission's fuel adjustment clause regulations. The purpose of this filing is to permit Gulf Power to recover from its full requirements wholesale customers and appropriate share of the cost of an interim buyout of a long-term coal supply agreement. The purchase of replacement coal at more favorable prices will produce cumulative savings to its customers in excess of the cumulative amortization of buyout costs. Gulf Power also seeks waiver of the Commission's notice requirement to permit an effective date of July 15, 1993 for the revised tariff sheet.

Comment date: August 10, 1993, in accordance with Standard Paragraph E at the end of this notice.

11. Milford Power Limited Partnership

[Docket No. ER93–493–000]

July 27, 1993.

Take notice that on July 20, 1993, Milford Power Limited Partnership tendered for filing additional information to its March 26, 1993, filing in this docket.

Comment date: Agust 11, 1993, in accordance with Standard Paragraph E at the end of this notice.

12. Central Illinois Public Service Company

[Docket No. ER93–664–000]

July 27, 1993.

Take notice that on July 21, 1993, Central Illinois Public Service Company (CIPS) tendered for filing a letter clarifying certain aspects of the Supplemental Agreement for the purchase of power by Norris Electric Cooperative (Norris) submitted for filing on May 24, 1993 in Docket No. ER93–664–000.

Copies of the filing were served on Norris and the Illinois Commerce Commission.

Comment date: August 11, 1993, in accordance with Standard Paragraph E at the end of this notice.

13. Great Bay Power Corporation

[Docket No. ER93–789–000]

July 27, 1993.

Take notice that on July 6, 1993, Great Bay Power Corporation (Great Bay) tendered for filing and unexecuted copy of an Agreement for Short-Term Sales to the Vermont Marble Power Division of OMYA, Inc. and a separate Agreement for Short-Term Sales to the Burlington Electric Light Department.

Comment date: August 10, 1993, in accordance with Standard Paragraph E end of this notice.

14. Central Illinois Public Service Company

[Docket No. ER93–418–000]

July 27, 1993.

Take notice that on July 9, 1993, Central Illinois Public Service Company (CIPS) tendered for filing a letter clarifying certain aspects of both of the First Amendment to the Power Supply Agreement between CIPS and Illinois Municipal Electric Agency (IMEA) and of the Power Supply Agreement itself.

Copies of the filing were served on IMEA and the Illinois Commerce Commission.

Comment date: August 10, 1993, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 10, 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. 93–18400 Filed 8–2–93; 8:45 am]

BILLING CODE 6717–01–M

Federal Energy Regulatory Commission

[Docket Nos. CP93–576–000, et al.]

Black Marlin Pipeline Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Black Marlin Pipeline Company

[Docket No. CP93–576–000]

July 26, 1993.

Take notice that on July 21, 1993, Black Marlin Pipeline Company (Black Marlin), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP93–576–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon firm transportation service to Union Carbide Corporation (UCC), under Black Marlin's Rate Schedule T–1 of its Gas Tariff, which was authorized in Docket No. CP66–333–000, all as more fully set forth in the application on file with the Commission and open to public inspection.

Black Marlin proposes to abandon 5,136 Mcf per day of natural gas effective, July 31, 1993, as UCC has requested termination of the related transportation agreement.

Comment date: August 16, 1993, in accordance with Standard Paragraph F at the end of this notice.

2. Great Lakes Gas Transmission Limited Partnership

[Docket No. CP93–553–000]

July 26, 1993.

Take notice that on July 15, 1993, Great Lakes Gas Transmission Limited Partnership (Great Lakes), One Woodward Avenue, suite 1600, Detroit, Michigan 48226, filed an application pursuant to section 7(b) of the Natural Gas Act, for authority to abandon natural gas firm transportation service provided to TransCanada PipeLines Limited (TransCanada) under Great Lakes' Rate Schedule T–4, all as more fully set forth in the application that is on file with the Federal Energy Regulatory Commission (Commission) and open to public inspection.

Great Lakes states that TransCanada has requested that 75,000 Mcf per day of transportation service be terminated effective April 1, 1993. Great Lakes advises that no facilities are being abandoned; that no injury will occur as a result of its partial abandonment of service to TransCanada because that capacity abandoned is being and will continue to be delivered for the account of ProGas U.S.A., Inc. (ProGas); and that, since ProGas has paid all charges related to the capacity, and not TransCanada, abandonment retroactive to April 1, 1993 will not produce injury to TransCanada.

Comment date: August 16, 1993, in accordance with Standard Paragraph F at the end of this notice.

3. Texas Eastern Transmission Corporation

[Docket No. CP93–565–000]

July 27, 1993.

Take notice that on July 19, 1993, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056–5310, filed an application in Docket No. CP93–565–000 pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing it to provide firm transportation service for Rate Schedule FTS–7 and FTS–8 customers and to construct and operate additional pipeline facilities required to render such services, all as more fully set forth in the application on file with the Commission and open to public inspection.

Texas Eastern requests the subject authorization to provide firm transportation service for The Brooklyn Union Gas Company (Brooklyn Union), Elizabethtown Gas Company (Elizabethtown), Philadelphia Electric Company (PECO) and UGI Utilities, Inc (UGI), collectively referred to as the Customers. Texas Eastern proposes to render the firm transportation service for the Customers to and from the interconnection of Texas Eastern's and CNG Transmission Corporation's (CNG) facilities at the Oakford storage field at Meter Station No. 082 in Westmoreland County, Pennsylvania. Texas Eastern states that it will deliver the requested volumes of natural gas on a firm basis for Brooklyn Union at Meter Station No. 275 in Middlesex County, New Jersey; PECO at Meter Station Nos. 035 and 036 in Delaware and Montgomery Counties, Pennsylvania, and UGI at Meter Station No. 322, in Bucks County, Pennsylvania.

Texas Eastern indicates that pursuant to Rate Schedules SS–2 and SS–3, as provided for prior to enactment of Texas Eastern's Order No. 636 restructuring order, made effective June 1, 1993, an SS–2 and/or SS–3 customer could request firm-up of all or a portion of the delivery component of their service. It is further stated that Rate Schedules SS–2 and SS–3 also provided that if Texas Eastern went forward with such request, received required authorizations and expanded its system, the costs

associated with the expansion would be borne by all Rate Schedule SS–2 and SS–3 customers with firm service. Texas Eastern notes the Rate Schedule SS–2 and SS–3 include in the firm service provisions that:

"The annual cost associated with all facilities which must be added to Seller's system to enable the establishment of and increases in the FDDQ's of Buyers hereunder shall be borne by those Buyers which have FDDQ's hereunder by means of the Firm Demand Charge."

As shown in the following table, Texas Eastern states that it has requested and received Commission approval six times previously for firm-up of Rate Schedules SS–2 and SS–3.

Docket No.	Issue date/citation	Volumes DTH/D
CP81–4–000 SS–2 Phase 1.	03/20/81 14 FERC ¶ 61,263.	89,172
CP81–291–000 SS–2 Phase 2.	07/24/81 16 FERC ¶ 61,053.	63,177
CP82–2–000 SS–2 Phase 3.	05/10/82 19 FERC ¶ 61,128.	77,055
CP85–805–000 SS–2 Phase 4.	06/04/86 35 FERC ¶ 61,291.	27,915
CP87–28–002 SS–2 Phase 5.	02/24/89 44 FERC ¶ 61,152.	23,115
CP85–803–000 SS–3 Phase 1.	06/03/86 35 FERC ¶ 61,271.	131,079

In compliance with Order 636 and the Commission's restructuring orders in Docket No. RS92–11, Texas Eastern explains that it unbundled the formerly bundled firm storage and transportation services under Rate Schedules SS–2 and SS–3. As a part of that restructuring, Texas Eastern assigned its Rate Schedule GSS storage agreement to its Rate Schedule SS–2 and SS–3 customers. The firm transportation delivery services under Rate Schedules SS–2 and SS–3 were redesignated as Rate Schedules FTS–7 and FTS–8, respectively, and these rate schedules are included in Texas Eastern's FERC Gas Tariff, Sixth Revised Volume No. 1.

Texas Eastern requests the authorization described herein to provide firm, additional transportation service to the Customers pursuant to Rate Schedules FTS–7 and FTS–8 and to construct, own and operate certain facilities necessary to provide this service.

Specifically, Texas Eastern requests authorization to:

(1) Provide firm, additional, long-term, incremental transportation service of natural gas under Rate Schedules FTS–7 and/or FTS–8 for the quantities identified for the Customers as follows:

	FTS–7 DTH/d	FTS–8 DTH/d
Brooklyn Union	871	–
Elizabethtown	583	–
PECo	987	9,850
UGI	5,880	–
Total	8,321	9,850

(2) Construct, install, own and operate facilities necessary to provide the proposed services which consist of approximately 9.34 miles of 36-inch pipeline looping in three separate segments within the state of Pennsylvania; and

(3) Adjust, effective with the commencement of service, the firm demand charges for Rate Schedules FTS–7 and FTS–8 service to reflect the cost of service for this service increase.

Texas Eastern proposes to complete the construction and installation of the incremental facilities on or about November 1, 1994, the proposed date of in-service for the firm transportation service proposed herein. The estimated total capital cost of the proposed facilities is stated to be $18,129,000. Texas Eastern states that it will finance the facilities with funds on hand and borrowings under Texas Eastern's short term financing arrangements.

Based on the annual cost of service for the facilities proposed herein, Texas Eastern proposes for Rate Schedule FTS–7, a revised reservation charge of $6.890 per dth. For Rate Schedule FTS–8, Texas Eastern estimates a revised reservation charge of $6.970 per dth. Texas Eastern asserts that provision of this service will, therefore, have no impact on the rate or services of Texas Eastern's other customers.

Comment date: August 17, 1993, in accordance with Standard Paragraph F at the end of this notice.

4. Nora Transmission Company

[Docket No. CP93–569–000]

July 27, 1993.

Take notice that on July 19, 1993, Nora Transmission Company (Nora), 3500 Park Lane, Pittsburgh, Pennsylvania 15275–1102, filed in Docket No. CP93–569–000 an application pursuant to section 7(c) of the Natural Gas Act (NGA) requesting a blanket certificate of public convenience and necessity authorizing Nora to engage in any of the activities specified in subpart F of part 157 of the Commission's Regulations, as may be amended from time to time, all as more fully set forth in the application on file with the Commission and open to public inspection.

It is stated that Nora is a "natural gas company" within the meaning of the NGA and as determined by the Commission in Docket No. CP88–28–000. It is explained that Nora is a non major interstate pipeline providing transportation service to two customers under special rate schedules. It is asserted that Nora does not have any currently effective sales or storage rate schedules or outstanding budget-type certificates.

Comment date: August 17, 1993, in accordance with Standard Paragraph F at the end of this notice.

5. Nora Transmission Company

[Docket No. CP93–568–000]

July 27, 1993.

Take notice that on July 19, 1993, Nora Transmission Company (Nora), 3500 Park Lane, Pittsburgh, Pennsylvania 15275, filed an application with the Commission Docket No. CP93–568–000 pursuant to section 7(c) of the Natural Gas Act (NGA) for a blanket certificate under § 284.224 of the Commission's Regulations under the NGA, all as more fully set forth in the application which is open to the public for inspection.

Nora requests a part 284 blanket certificate which would allow Nora to engage in the sale, transportation, and assignment of natural gas as permitted for intrastate pipelines under subparts C, D, and E of part 284 of the Regulations. Nora states that its filing includes transportation rates for firm service under Rate Schedule FTS and interruptible service under Rate Schedule ITS, and General terms and Conditions governing open access transportation. No new facilities are proposed herein.

Nora states that it intends shortly to file its Order No. 636 compliance filing. Nora, however, requests that the Commission approve its request for a blanket certificate without delay.

Comment date: August 17, 1993, in accordance with standard Paragraph F at the end of this notice.

6. United Gas Pipe Line Company

[Docket No. CP93–570–000]

July 26, 1993.

Take notice that on July 19, 1993, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP93–570–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to install

measurement facilities for the transportation of natural gas for Allied Resources USA, Inc. (Allied), under United's blanket certificate issued in Docket No. CP82–430–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

United proposes to install the facilities at an existing meter station to enable United to transport approximately 262 MMBtu per day of gas for Trade and Development Corporation (Trade) to serve Allied.

United also states that upon execution of an open-access transportation agreement, it would be able to provide transportation service to Trade without any impact on United's curtailment plan and without any adverse impact on United's ability to serve its other existing customers.

Comment date: September 9, 1993, in accordance with Standard Paragraph G at the end of this notice.

7. East Tennessee Natural Gas Company

[Docket No. CP93–573–000]

July 27, 1993.

Take notice that on July 21, 1993, East Tennessee Natural Gas Company (East Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP93–573–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a delivery tap to Virginia Gas Company (Virginia Gas) under East Tennessee's blanket certificate issued in Docket No. CP82–412–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, East Tennessee proposes to construct and operate a new delivery tap to Virginia Gas in Russell County, Virginia, to deliver gas transported by East Tennessee, to Virginia Gas. East Tennessee states that the new delivery point is required to enable Virginia Gas to provide natural gas service to additional customers in the area of Russell County, Virginia.

East Tennessee asserts that the establishment of the proposed new delivery point is not prohibited by East Tennessee's currently effective tariff and that the new delivery point will have no impact on East Tennessee's peak day and annual deliveries.

Comment date: September 10, 1993, in accordance with Standard Paragraph G at the end of this notice.

8. Southern Natural Gas Company

[Docket No. CP93–580–000]

July 27, 1993.

Take notice that on July 26, 1993, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP93–580–000 a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212, 157.216) for authorization to abandon in part and rebuild two existing meter stations and to construct and operate an additional meter under Southern's blanket certificate issued in Docket No. CP82–406–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Southern proposes to abandon in part and rebuild the Rome No. 2 and Carrollton Meter Stations serving Atlanta Gas Light Company because they are obsolete. Southern States that it will abandon and replace its two 6-inch orifice meter runs with three 6-inch orifice meter runs at the Rome No. 2 Meter Station and its three 4-inch orifice meter runs with dual 6-inch meter runs at Carrollton.

Southern also proposes to construct, install and operate an additional meter run of Southern's Ensley Meter Station which serves Alabama Gas Corporation to more accurately measure the volumes of gas currently being delivered at this location.

Comment date: September 10, 1993, in accordance with Standard Paragraph G at the end of this notice.

9. Southern Natural Gas Company

[Docket No. CP93–578–000]

July 27, 1993.

Take notice that on July 23, 1993, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP93–578–000 a request for authorization pursuant to §§ 157.205, 157.208 and 157.212 of the Commission's regulations under the Natural Gas Act (18 CFR 157.205, 157.208 and 157.212). Herein Southern proposes to modify certain measurement facilities and change the operation of an existing delivery point by altering the contract delivery pressure pursuant to Southern's blanket certificate of public convenience and necessity issued in Docket No. CP82–406–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Southern states that it is currently authorized to sell and deliver natural gas to the City of Summerville, the Town of Trion and the City of Lafayette, Georgia (Summerville-Trion-Lafayette) at the Summerville-Trion-Lafayette point of delivery (meter station) under the Exhibit A's to the service agreements between Southern and Summerville-Trion-Lafayette dated September 17, 1991.

The Municipal Gas Authority of Georgia (MGAG) has requested additional firm transportation service from Southern on behalf of Trion under Southern's part 284 blanket certificate. Further it is stated that MGAG has requested the Southern deliver gas to Summerville-Trion-Lafayette at the meter station at a contract delivery pressure of 299 psig. Southern states that it currently delivers gas supplies to Summerville-Trion-Lafayette at the meter station at a contract delivery pressure of 200 psig. Southern has stated that in order to provide the additional firm transportation and the increased delivery pressure, Southern requests authorization to add one 4-inch meter tube and auxiliary facilities at the meter station. The cost of said modifications at the meter station are estimated to be $45,582.

Southern states that the modification and increase in delivery pressure proposed in the application (1) will detriment disadvantage its other customers; (2) will have no significant impact on Southern's peak day and annual deliveries; and (3) are not prohibited by any existing tariff of Southern.

Comment date: September 10, 1993, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

10. Transcontinental Gas Pipe Line Corporation

[Docket No. CP93–303–001]

July 26, 1993.

Take notice that on July 23, 1993, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP93–303–001 an amendment to its pending application filed in Docket No. CP93–303–000 requesting authorization to move a 1,000 horsepower compressor unit from one offshore platform owned by Arco Oil and Gas Company (Arco) to a nearby platform, all as more set forth in the amendment which is on file with the Commission and open to public inspection.

Transco stated in its original application that due to declining gas production in the area, there are no longer sufficient natural gas reserves from the High Island Block A–466 and

A–467 fields to operate compressors on platforms in each block. Transco, in its original application, requested authorization to abandon by removal a 3,500 horsepower compressor from a production platform located in High Island Area Block A–467 and then move a 1,000 horsepower compressor from the production platform located in High Island Block A–466 to the production platform in Block A–467. Transco advised that it planned to move the smaller compressor from one platform to another under § 157.208 of the Commission's Regulations as a miscellaneous rearrangement. Transco states that it has been advised that the movement of the 1,000 horsepower unit from one compressor to another cannot be implemented as a miscellaneous rearrangement and that Transco must receive specific authorization under section 7 of the Natural Gas Act to move the unit. Transco now is filing for that specific authority.

Comment date: August 16, 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.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–18401 Filed 8–2–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD93–13456T Colorado–60]

Department of the Interior; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

July 28, 1993.

Take notice that on July 26, 1993, the United States Department of the Interior, Bureau of Land Management (BLM) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that a portion of the Pictured Cliffs Formation in the Ignacio Blanco Pictured Cliffs Field within the Southern Ute Indian Reservation in La Plata County, Colorado, qualifies as a tight formation under section 107(b) of the Natural Gas Act of 1978 (NGPA). The recommended area encompasses approximately 1,280 acres and consists of Sections 1 and 2, Township 32 North, Range 9 West, La Plata County, Colorado.

The notice of determination also contains BLM's findings that the referenced portion of the Pictured Cliffs 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. 93–18409 Filed 8–2–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93–454–000]

Northeast Utilities Service Co.; Notice of Filing

July 28, 1993.

Take notice that on July 2, 1993, Northeast Utilities Service Company (Northeast) tendered for filing, on behalf of The Connecticut Light and Power Company (CL&P) and Western Massachusetts Electric Company (WMECO), borderline sales tariffs and associated service agreements. According to Northeast, these tariffs govern sales by and between CL&P and WMECO and their neighboring utility, Massachusetts Electric Company, for resale to individual customers. Northeast requests that the tariffs and agreements be made effective in accordance with their terms.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 6, 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. 93–18398 Filed 8–2–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–566–000]

ANR Pipeline Co.; Application for a Presidential Permit for the Construction, Operation, Maintenance, and Connection at the United States/ Canada International Boundary, of Facilities for the Transportation of Natural Gas

July 28, 1993.

Take notice that on July 19, 1993, ANR Pipeline Company ("ANR" or "Applicant"), 500 Renaissance Center, Detroit, Michigan 48243, filed, in Docket No. CP93–566–000, an application pursuant to section 3 of the Natural Gas Act ("NGA"), §§ 153.1 and 153.10 through 153.12 of the Commission's Regulations, and Executive Order No. 10485, as amended by Executive Order No. 12038 and Secretary of Energy Delegation Order No. 0204–112. In that application, ANR requested an order authorizing the siting, construction, operation and maintenance of pipeline facilities at the United States-Canada International Boundary proximate to St. Clair, Michigan, all as more fully set forth in the applications which is on file with the Commission and open for public inspection.

ANR proposes here to site, construct, operate, maintain, and connect pipeline facilities at the International Boundary between the United States and Canada. ANR states that these facilities will be on the United States side of the International Boundary and that its proposal is part of an international project between ANR and InterCoastal Pipe Line Inc. ("ICP"), a Canadian corporation. At the border, ANR's facilities will interconnect with ICP's new one hundred and fifty-five mile natural gas transmission system in Canada.

ANR states that it will construct approximately twelve miles of new 24-inch O.D. pipeline, commencing at a proposed point of interconnection with the northern end of an existing 7.8 mile pipeline ("Muttonville Lateral") owned and operated by ANR in St. Clair County, Michigan. The proposed pipeline ("ANR Link") would traverse in an easterly direction and terminate at a point on the International Boundary proximate to St. Clair, Michigan, on the St. Clair River. In addition, a tap assembly will be provided on the ANR Link to facilitate a proposed interconnection to the facilities of Michigan Consolidated Gas Company ("MichCon") proximate to MichCon's Columbus Storage Field. At the border, ANR's proposed facilities will connect to ICP's new natural gas transmission system. ANR states that the ICP system will consist of an existing one hundred and thirty mile oil pipeline, which will be converted to natural gas service, and the construction of approximately 25-miles of new pipeline. ANR described the cost and financing of the "ANR Link" in Docket No. CP93–564–000. ANR states it will finance the project with internally generated funds. ANR estimates that the cost of the proposal will be $15 million. ANR states that the revenues from services performed for Consumers Gas will exceed the costs associated with the proposed facilities over the next ten years.

ANR states that firm transportation service across the ANR Link will initially consist of natural gas purchased and shipped by The Consumers' Gas Company Ltd. ("Consumers Gas"). ANR understands that the natural gas to be transported for Consumers Gas will first be transported through ANR's mainline facilities from the Gulf Coast and Anadarko production basins to Michigan for delivery into the pipeline facilities of Great Lakes Gas Transmission Limited Partnership ("GLGT") or MichCon. GLGT and/or MichCon will redeliver the natural gas to the ANR Link at the interconnections proposed in the application. ANR states that the gas will then be transported through the ANR Link to ICP. ICP will then transport the gas for ultimate redelivery to Consumers Gas at points near Sarnia or Toronto, Ontario.

In addition, ANR states that the proposed facilities will be made available to any other shipper that has executed a transportation service agreement with ANR and made intermediate transportation arrangements, as required. ANR also submits that the shippers who execute transportation service agreements with ANR will be required to obtain the necessary export authorization from the U.S. Department of Energy ("DOE") prior to the commencement of service.

ANR proposes to charge rates under its part 284 Tariff provisions for firm and interruptible service to all shippers. Transportation services will be provided pursuant to ANR's blanket transportation certificate authority up to the design capacity of the new facilities.

Concurrent with this application, ANR has filed an application under section 7(c) of the NGA to construct, own and operate the ANR Link. ANR states that Consumers Gas is contemporaneously applying for authority from DOE to export on the proposed facilities and that ICP has filed with Canada's National Energy Board for authority to operate the new one hundred and fifty-five mile transmission system.

Applicant has requested expedited approval of its applications and the related application filed by Consumers Gas such that all related facilities and services may be in place in time for service to commence on ANR's proposed facilities no later than November 1, 1994. ANR has requested that a preliminary determination, approving all aspects of these applications be issued by November 1, 1993, with a final determination and all appropriate certificate authorizations to follow no later than April 1, 1994.

Any person desiring to be heard or to make protest with reference to said application should on or before August 18, 1993, 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 385.214 or 385.211) 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 the 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 application 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 Applicant to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–18402 Filed 8–2–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–564–000]

ANR Pipeline Co.; Application

July 28, 1993.

Take notice that on July 19, 1993, ANR Pipeline Company ("ANR" or "Applicant"), 500 Renaissance Center, Detroit, Michigan 48243, filed, in Docket No. CP93–564–000, an application pursuant to section 7(c) the Natural Gas Act ("NGA") for a certificate of public convenience and necessity requesting authorization to construct, own, and operate certain pipeline and related facilities at the United States-Canada International Boundary proximate to St. Clair, Michigan, all as more fully set forth in the applications which are on file with the Commission and open for public inspection.

ANR proposes here to site, construct, operate, maintain, and connect pipeline facilities at the International Boundary between the United States and Canada. ANR states that these facilities will be on the United States side of the International Boundary and that its proposal is part of an international project between ANR and InterCoastal Pipe Line Inc. ("ICP"), a Canadian corporation. At the border, ANR's facilities will interconnect with ICP's new one hundred and fifty-five mile natural gas transmission system in Canada.

ANR states that it will construct approximately twelve miles of new 24-inch O.D. pipeline, commencing at a proposed point of interconnection with the northern end of an existing 7.8 mile pipeline ("Muttonville Lateral") owned and operated by ANR in St. Clair County, Michigan. The proposed pipeline ("ANR Link") would traverse in an easterly direction and terminate at a point on the International Boundary proximate to St. Clair, Michigan, on the St. Clair River. In addition, a tap assembly will be provided on the ANR Link to facilitate a proposed interconnection to the facilities of Michigan Consolidated Gas Company ("MichCon") proximate to MichCon's Columbus Storage Field. At the border, ANR's proposed facilities will connect to ICP's new natural gas transmission system. ANR states that the ICP system will consist of an existing one hundred and thirty mile oil pipeline, which will be approximately 25 miles of new pipeline.

ANR states that firm transportation service across the ANR Link will initially consist of natural gas purchased and shipped by The Consumers' Gas Company Ltd. ("Consumers Gas"). ANR understands that the natural gas to be transported for Consumers Gas will first be transported through ANR's mainline facilities from the Gulf Coast and Anadarko production basins to Michigan for delivery into the pipeline facilities of Great Lakes Gas Transmission Limited Partnership ("GLGT") or MichCon. GLGT and/or MichCon will redeliver the natural gas to ANR at the interconnections proposed in the application. ANR states that the gas will then be transported through the ANR Link to ICP. ICP will then transport the gas for ultimate redelivery to Consumers Gas at points near Sarnia or Toronto, Ontario.

In addition, ANR states that the proposed facilities will be made available to any other shipper that has executed a transportation service agreement with ANR and made intermediate transportation arrangements, as required. ANR also submits that the shippers who execute transportation service agreements with ANR will be required to obtain the necessary export authorization from the U.S. Department of Energy ("DOE") prior to the commencement of service.

ANR proposes to charge rates under its part 284 Tariff provisions for firm and interruptible service to all shippers. Transportation services will be provided pursuant to ANR's blanket transportation certificate authority up to the design capacity of the new facilities.

ANR will finance the project with internally generated funds. ANR estimates that the cost of the proposal will be $15 million. ANR states that the revenues from services performed for Consumers Gas will exceed the costs associated with the proposed facilities over the next ten years.

Concurrent with this application, ANR has filed applications under Section 3 of the NGA and for a Presidential Permit to site, construct, own and operate ANR Link. ANR states that Consumers Gas is contemporaneously applying for authority from DOE to export on the proposed facilities and that ICP has filed with Canada's National Energy Board for authority to operate the new one hundred and fifty-five mile transmission system.

Applicant has requested expedited approval of its applications and the related application filed by Consumers Gas that all related facilities and services may be in place in time for service to commence on ANR's proposed facilities no later than November 1, 1994. ANR has requested that a preliminary determination, approving all aspects of these applications be issued by November 1, 1993, with a final determination and all appropriate certificate authorizations to follow no later than May 1, 1994.

Any person desiring to be heard or to make protest with reference to said application should on or before August 18, 1993, 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 385.214 or 385.211) 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 the 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 application 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 Applicant to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–18405 Filed 8–2–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–127–001]

Columbia Gas Transmission Corp.; Compliance Filing

July 28, 1993.

Take notice that on July 15, 1993, Columbia Gas Transmission Corporation (Columbia) filed a response to The Columbia Gas Distribution Companies' (Columbia Distribution) and Washington Gas Light Company's (Washington Gas) protests as directed by

the Commission in order issued June 30, 1993, Docket No. RP93–127–000.[1]

By order issued June 30, 1993, the Commission approved a tariff filing by which Columbia sought to flow through to its customers certain amounts paid to Panhandle Eastern Pipeline Company (Panhandle) relating to Order Nos. 94 and 473 costs, and tariff language to recover Order No. 94 costs from other upstream pipeline suppliers. Columbia allocated costs based on the percent of each customer's firm sales entitlements under Rate Schedules Contract Demand Service (CDS), Winter Service (WS), and Small General Service (SGS), and firm transportation entitlements under Rates Schedule FTS.

Washington Gas and Columbia Distribution argued WS entitlements should not be included in the calculation of the allocation factors. They stated inclusion resulted in double, recovery of costs, and utilization of WS did not appropriately track the methodology by which Panhandle allocated its Order No. 94 costs, among other things.

The Commission directed Columbia to file additional information and, if necessary, revised rates to respond to the Rate Schedule WS customers' concerns regarding allocation of costs. Columbia avers inclusion of WS entitlements does not result in double counting of costs, because WS entitlements are in addition to, and not part of, CDS entitlements. Columbia asserts the use of Total Daily Entitlements and converted transportation demand to arrive at its allocation factors represents more precisely the daily entitlement Panhandle used to establish Columbia's liability.

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 August 4, 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. 93–18407 Filed 8–2–93; 8:45 am]

BILLING CODE 6717–01–M

[1] 63 FERC ¶61,352.

[Docket No. CP93–575–000]

Florida Gas Transmission Co.; Request Under Blanket Authorization

July 28, 1993.

Take notice that on July 21, 1993, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP93–575–000 a request pursuant to § 157.205 of 157.205) for authorization to construct and operate a small volume metering facility for Florida Power and Light Company (FPL) and to upgrade the existing regulators to accommodate the proposed metering facility under FGT's blanket certificate issued in Docket No. CP82–553–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

FGT proposes to construct a small volume metering facility in Putnam County, Florida; consisting of one meter, two valves, electronic flow equipment, approximately 80 feet of connecting pipe, minor bypass piping and appurtenant facilities. The proposed metering facility, it is said, would be connected to the city of Crescent City meter station and would require the upgrading of the existing regulators. It is further said that there would be no impact on FGT's capacity to serve the city of Crescent City.

FGT states that FPL would reimburse FGT for all construction costs which are estimated to be $60,000.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–18403 Filed 8–2–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–579–000]

National Fuel Gas Supply Corp.; Request Under Blanket Authorization

July 18, 1993.

Take notice that on July 26, 1993, National Fuel Gas Supply Corporation (National), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP93–579–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate 5 sales taps for service to National Fuel Distribution Corporation (Distribution), an existing wholesale customer, under National's blanket certificate issued in Docket No. CP83–4–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

National proposes to construct and operate facilities for the taps for 5 residential customers of Distribution located in Jefferson, Mercer and Clarion Counties, Pennsylvania. It is stated that National would deliver a total of 750 Mcf of gas on an annual basis, with each customer receiving 150 Mcf per year. National states that it was authorized to serve Distribution by Commission authorization in Docket No. CP73–294. It is asserted that National would make sales under its Rate Schedule RQ, or, following National's restructuring proposed in Docket No. RS92–21–000, under Rate Schedule EFT.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–18404 Filed 8–2–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93–803–000]

North Atlantic Energy Corp.; Filing

July 27, 1993.

Take notice that on July 19, 1993, North Atlantic Energy Corporation (North Atlantic) tendered for filing a unit contract between North Atlantic and Public Service Company of New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 10, 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. 93–18399 Filed 8–2–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EF93–3011–000]

United States Department of Energy—Southeastern Power Administration (Georgia-Alabama-South Carolina System of Projects; Filing

July 28, 1993.

Take notice that on July 23, 1993, the Acting Assistant Secretary of Energy for Efficiency and Renewable Energy (Acting Assistant Secretary) tendered for filing on behalf of the Southeastern Power Administration a request for final approval of rates for power from the Georgia-Alabama-South Carolina System of Projects for the period October 1, 1993 through September 30, 1998. The Acting Assistant Secretary stated that he had previously approved the rates on an interim basis.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 14, 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. 93–18406 Filed 8–2–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM93–18–29–000]

Transcontinental Gas Pipe Line Corp. Proposed Changes in FERC Gas Tariff

July 28, 1993.

Take notice that Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing on July 22, 1993 certain revised tariff sheets to Third Revised Volume No. 1 to its FERC Gas Tariff included in Appendix A attached to the filing.

TGPL states that the purpose of the instant filing is to track rate changes attributable to (1) transportation services purchased from National Fuel Gas Supply Corporation (National Fuel) under its Rate Schedule X–42 the costs of which are included in the rates and charges payable under TGPL's Rate Schedule LSS, (2) transportation services purchased from National Fuel under its Rate Schedule X–54 the costs of which are included in the rates and charges payable under TGPL's Rate Schedule SS–2, (3) storage services purchased from Penn-York Energy Corporation (Penn York) under its Rate Schedule SS–1 the costs of which are included in the rates and charges payable under TGPL's Rate Schedules LSS and SS–2, (4) storage services purchased from CNG Transmission Corporation (CNG) under its Rate Schedule GSS the costs of which are included in the rates and charges payable under TGPL's Rate Schedule LSS and (5) transportation services purchased from National Fuel under its Rate Schedule X–58 the costs of which are included in the rates and charges payable under TGPL's Niagara Import Point Project—System Expansion (NIPPs–SE). The tracking filing is being made pursuant to Section 4 of TGPL's Rate Schedule LSS, Section 4 of TGPL's Rate Schedule SS–2 and Section 8.01(i) of TGPL's NIPPs–SE Rate Schedules X–314, X–315, and X–317.

Included in Appendices B through D attached to the filing are the explanations of the rate changes and details regarding the computation of the revised LSS, SS–2 and NIPPs–SE rates.

Also included therein for filing are revised tariff sheets which incorporate the Rate Schedule LSS and SS–2 rate changes proposed therein into subsequent intervening rate filings which have been accepted or are currently pending Commission acceptance on the effective dates reflected thereon.

TGPL states that copies of the filing are being mailed to each of its LSS, SS–2 and NIPPs–SE customers, interested state commissions and other interested parties.

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 Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 4, 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. 93–18408 Filed 8–2–93; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4686–8]

Workshop Report on Developmental Neurotoxic Effects Associated With Exposure to PCBs

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of a report entitled "Workshop Report on Developmental Neurotoxic Effects Associated With Exposure to PCBs" (EPA/630/R–92/004). This report compiles discussions and presentations from a 1992 workshop sponsored by EPA's Risk Assessment Forum.

ADDRESSES: To obtain a single copy of the report, interested parties should contact the ORD Publications Office, CERI, U.S. Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, OH 45268, Tel: (513) 569–7562. Please provide your name

and mailing address, and request the document by the title and EPA number (EPA/630/R–92/004).

The summary report will also be available for public inspection at the ORD Public Information Shelf, EPA Headquarters Library, Waterside Mall, 401 M Street, SW., Washington, DC 20460, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except for federal holidays.

FOR FURTHER INFORMATION CONTACT: Clare Stine, U.S. Environmental Protection Agency, Risk Assessment Forum (RD–672), 401 M Street, SW., Washington, DC 20460, Tel: (202) 260–6743.

SUPPLEMENTARY INFORMATION: On September 14 and 15, 1992, EPA's Risk Assessment Forum sponsored a workshop to explore the current state of the science on neurotoxic effects associated with prenatal and perinatal exposure to polychlorinated biphenyls (PCBs) (57 FR 39200; 28 August 1992) for risk assessment purposes.

This report collects workshop papers and discussion on principles and methods for evaluating PCB data from animal and human studies. The report also summarizes data and other information discussed at the workshop for characterizing risk to human development, growth, survival, and function following exposure to PCBs prenatally or to infants and children.

Dated: July 22, 1993.

Gary J. Foley,

Acting Assistant Administrator for Research and Development.

[FR Doc. 93–18466 Filed 8–2–93; 8:45 am]

BILLING CODE 6560–50–M

[EPA 530–Z–93–007; FRL–L16 86–5]

Guidance to Hazardous Waste Generators on the Elements of a Waste Minimization Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim Final Guidance; extension of comment period.

SUMMARY: In response to a request for an extension of the public comment period for the Interim Final Guidance to Hazardous Waste Generators on the Elements of a Waste Minimization Program, the Environmental Protection Agency (EPA) is granting a 30-day extension to the comment period for the interim final guidance that was published in the Federal Register on May 28, 1993 (58 FR 31114).

DATES: Comments on the May 28, 1993 interim final guidance must be submitted on or before August 26, 1993.

ADDRESSES: Persons who wish to comment on the May 28, 1993 notice must provide an original and two copies of their comments, include the docket number (F–93–WMIF–FFFFF), and send them to: RCRA Information Center (OS–305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Commenters who wish to submit any information they wish to claim as Confidential Business Information must submit an original and two copies, under separate cover, to: Document Control Officer (OS–312), Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

The Public docket for this interim final guidance is located at the RCRA Information Center, room M2616, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Public comments that are not Confidential Business Information are available for viewing at the RCRA Information Center, which is open from 9 a.m. to 4 p.m. Monday through Friday, except for federal holidays. To review docket materials, the public must make an appointment by calling (202) 260–9327. Copies of docket materials cost $0.15 per page.

FOR FURTHER INFORMATION CONTACT: 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 Becky Cuthbertson, Office of Solid Waste (OS–32OW), U.S. EPA, 401 M Street SW., Washington, DC 20460, telephone (703) 308–8447.

SUPPLEMENTARY INFORMATION: The Sierra Club has requested an extension of the 60–day public comment period on the interim final guidance to hazardous waste generators on the elements of a waste minimization program. Since there is no statutory, legislative, or court-ordered deadline for finalizing the May 28, 1993 interim final guidance, and additional time could allow more parties to submit comments, EPA is granting the request. Thus, the comment period on the interim final guidance is extended for 30 days, to August 26, 1993.

Dated: July 23, 1993.

Walter W. Kovalick, Jr.,

Acting Assistant Administrator.

[FR Doc. 93–18469 Filed 8–2–93; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4686–3]

South Carolina: Adequacy Determination of State/Tribal Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of tentative determination to fully approve the adequacy of the state of South Carolina's Municipal Solid Waste Permitting Program, public hearing, and public comment period.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribe permit programs provide for interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in State/Tribes with approved permit programs can use the site-specific flexibility provided by part 258 to the extent the State/Tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the federal landfill criteria will apply to all permitted and unpermitted MSWLF facilities.

South Carolina has applied for a determination of adequacy under

section 4005 of RCRA. Region IV of EPA has reviewed South Carolina's MSWLF application and has made a tentative determination that South Carolina's MSWLF permit program meets the requirements for full program approval and ensures compliance with the revised MSWLF Criteria. South Carolina's application for program adequacy determination is available from EPA Region IV and the State for public review and comment. Although RCRA does not require EPA to hold a public hearing on a determination to approve any State/Tribe's MSWLF program, the Region has tentatively scheduled a public hearing on this determination. If a sufficient number of people express interest in participating in a hearing by writing the Region or calling the contact given below within 30 days of the date of publication of this notice, the Region will hold a hearing on the date given below in the "DATES" section. The Region will notify all persons who submit comments on this notice if it is determined that a hearing is necessary. In addition, anyone who wishes to learn whether the hearing will be held may call the person listed in the "CONTACTS" section below.

DATES: All comments on South Carolina's application for a determination of adequacy and requests for a public hearing must be received by the close of business on September 2, 1993. If there is sufficient interest, a public hearing will be held on September 20, 1993 at 7 p.m., at the South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina, in the G.S.T. Peeples Auditorium on the third floor of the Sims Building. The State will participate in the public hearing held by the EPA.

ADDRESSES: Copies of South Carolina's application for adequacy determination are available during the hours of 8 a.m. to 5 p.m. at the following addresses for inspection and copying: South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, SC 29201, Attn: Mr. William W. Culler, telephone 803–734–5200; and U.S. EPA Region IV Library, 345 Courtland Street, NE., Atlanta, Georgia, 30365, Attn: Ms. Priscilla Pride, telephone 404–347–4216. Written comments should be submitted to Ms. Patricia S. Zweig, mail code 4WD–RCRA, EPA Region IV, Office of Solid Waste, 345 Courtland Street, NE., Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: EPA Region IV, 345 Courtland St. NE., Atlanta, Georgia 30365, Attn: Ms. Patricia S. Zweig, mail code 4WD–RCRA, telephone 404–347–2091.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that MSWLFs comply with the Federal Criteria under part 258. Subtitle D also requires in section 4005 that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

The EPA intends to approve State/Tribal MSWLF permit programs prior to the promulgation of STIR. EPA interprets the requirements for States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

Region IV of EPA will determine whether a State/Tribe has submitted an "Adequate" program based on the interpretation outlined above. EPA plans to provide more specific criteria for this evaluation when it proposes the State/Tribal Implementation Rule. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

B. State of South Carolina

On June 22, 1993, the EPA, Region IV received South Carolina's final MSWLF permit program application for adequacy determination. Region IV has reviewed South Carolina's application and has tentatively determined that all portions of South Carolina's subtitle D program meet the requirements necessary to qualify for full program approval and ensures compliance with the revised Federal Criteria.

The public may submit written comments on EPA's tentative determination until September 2, 1993. Copies of South Carolina's application are available for inspection and copying at the locations indicated in the "Addresses" section of this notice. If a public hearing is held, comments may be submitted as transcribed from the discussion of the hearing or in writing at the time of the hearing.

The application includes new MSWLF regulations that were developed by the State of South Carolina to be technically comparable to the federal criteria. The format and portions of the text used by South Carolina are similar to that used in the federal regulations. The State's regulations became effective on June 25, 1993, and have been determined to be technically comparable to the federal criteria.

EPA will consider all public comments received on its tentative determination during the public comment period and during the public hearing. Issues raised by those comments may be the basis for a determination of inadequacy for South Carolina's program. The EPA will make a final decision on whether or not to approve South Carolina's program by October 9, 1993, and will give notice of it in the **Federal Register**. The notice will include a summary of the reasons for the final determination and a response to all major comments.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Compliance With Executive Order 12291

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

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. § 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: July 23, 1993.

Donald Guinyard,

Acting Regional Administrator.

[FR Doc. 93–18249 Filed 8–2–93; 8:45 am]

BILLING CODE 6560–50–P

[FRL–46867]

A Review of Ecological Assessment Case Studies From a Risk Assessment Perspective

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of a report entitled "A Review of Ecological Assessment Case Studies from a Risk Assessment Perspective" (EPA/630/R–92/005), which uses case studies to explore the relationship between the process of ecological risk assessment and common approaches used by EPA (and others) to evaluate ecological change. The cases focus on risk science issues only, and do not represent regulatory decisions.

ADDRESSES: To obtain a single copy of the report, interested parties should contact the ORD Publications Office, CERI, U.S. Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, OH 45268, Tel: (513) 569–7562. Please provide your name and mailing address, and request the document by the title and EPA number (EPA/630/R–92/005).

The case studies report also will be available for public inspection at the ORD Publication Shelf, EPA Headquarters Library, Waterside Mall, 401 M Street SW., Washington, DC 20460, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except for federal holidays.

FOR FURTHER INFORMATION CONTACT: Clare Stine, U.S. Environmental Protection Agency, Risk Assessment Forum (RD–672), 401 M Street SW., Washington, DC 20460, Tel: (202) 260–6743.

SUPPLEMENTARY INFORMATION: To gain insight into the use of scientific information for ecological risk assessment, EPA scientists have analyzed a series of 12 case studies that describe a variety of ecosystems, ecological endpoints, chemical and nonchemical stressors, and programmatic practices within the Agency.

This report uses case studies to explore the relationship between the process of ecological risk assessment and common approaches used by EPA (and others) to evaluate adverse ecological effects. The report does not address regulatory decisions.

Dated: July 22, 1993.

Gary J. Foley,

Acting Assistant Administrator for Research and Development.

[FR Doc. 93–18467 Filed 8–2–93; 8:45 am]

BILLING CODE 6560–50–M

[ECAO–RTP–0225; FRL–4686–9]

Urban Soil Lead Abatement Demonstration Project Integrated Report

AGENCY: Enviromental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: The Environmental Criteria and Assessment Office (ECAO) of EPA's Office of Health and Environmental Assessment will convene a workshop to review a draft of the Urban Soil Lead Abatement Demonstration Project (USLADP) Integrated Report.

DATES: The workshop will be held on August 25–27, 1993, in Arlington, Virginia, at the Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202, telephone 703–920–3230, FAX 703–979–6332. The meeting will begin at approximately 9 a.m., on Wednesday, August 25, and will recess at approximately 5 p.m. On Thursday and Friday, August 26–27, the meeting will reconvene at approximately 8:30 a.m. and adjourn at approximately 5 p.m. Members of the public are welcome to attend as observers and will be given an opportunity to make brief oral comments at the end of each day. Copies of the integrated report will be available for public observers at the meeting site on August 25, 1993. Prior to the meeting, interested parties may obtain a copy of the four-volume draft integrated report from the ORD Publications Center, CERI–FRN, U.S. Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, OH 45268, telephone 513–569–7562, FAX 513–569–7566. Please provide your name, mailing address, document title, Urban Soil Lead Abatement Demonstration Project (USLADP) Integrated Report, and the EPA document number EPA/600/AP–93/001a to d. The document will be available on or about August 6, 1993.

FOR FURTHER INFORMATION CONTACT: Research and Evaluation Associates, 100 Europa Drive, Suite 590, Chapel Hill, NC 27514, telephone 919–986–4961. Members of the public wishing to attend this meeting as observers should contact Research and Evaluation Associates in advance of the meeting to register. Space is limited, and registrations will be taken on a first-come, first-served basis. Lodging arrangements should be made directly with the hotel, the Crystal Gateway Marriott, at the address given previously.

SUPPLEMENTARY INFORMATION: This report summarizes the results of EPA's analyses of data provided from individual research teams that conducted urban soil lead abatement demonstration projects in each of three U.S. cities: Boston, Baltimore, and Cincinnati. Previously, the individual reports from the participating cities were reviewed and submitted to the Agency. The purpose of this meeting is to seek guidance on the validity and appropriateness of the analyses performed on the data and of the conclusions drawn from those analyses. Comments received from the reviewers will be taken into account in revising the integrated report prior to final release.

Dated: July 27, 1993.

Carl R. Gerber,

Acting Assistant Administrator for Research and Development.

[FR Doc. 93–18464 Filed 8–2–93; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4686–6]

42 U.S.C. Section 122(h); Proposed Administrative Agreement; Schmidt Hole 2, Wisconsin

AGENCY: Environmental Protection Agency (U.S. EPA).

ACTION: Proposed settlement.

SUMMARY: U.S. EPA is proposing to settle a claim under section 107 of CERCLA for response costs incurred during removal activities at Schmidt Hole #2 in Germantown, Wisconsin. Respondent has agreed to reimburse U.S. EPA in the amount of $18,000. U.S. EPA today is proposing to approve this settlement offer because it reimburses U.S. EPA, in part, for costs incurred during U.S. EPA's removal action.

DATES: Comments on this proposed settlement must be received on or before September 2, 1993.

ADDRESSES: Copies of the proposed settlement are available at the following addresses for review: (It is recommended that you telephone Philip Schutte at (312) 353–8685 before visiting the Region V Office). U.S. Environmental Protection Agency, Region V, Office of Superfund, Remedial and Enforcement Response Branch, 77 W. Jackson Blvd., Chicago, Illinois 60604.

Comments on this proposed settlement should be addressed to: (Please submit an original and three copies, if possible) Philip Schutte, Community Relations Coordinator, Office of Public Affairs, U.S. Environmental Protection Agency, Region V, 77 W. Jackson Boulevard (P–19J), Chicago, Illinois 60604. (312) 353–8685

FOR FURTHER INFORMATION CONTACT: Philip Schutte, Office of Public Affairs, at (312) 353–8685.

SUPPLEMENTARY INFORMATION: Schmidt Hole #2 is not on the National Priorities List. After receiving reports of leaking hazardous materials and possible soil contamination, U.S. EPA and contractor personnel undertook response actions designed to minimize the immediate threat, test the materials involved and stabilize the threat. (The final stage of the removal was ultimately performed by the owner of the property, a Potentially Responsible Party).

Respondent is an international corporation that generated hazardous waste while operating in an area near Schmidt Hole #2 site. A 30-day period, beginning on the date of publication is open pursuant to section 122(i) of CERCLA for comments on the proposed settlement.

Comments should be sent to the Office of Public Affairs (P–19J), U.S. Environmental Protection Agency, Region V, 77 W. Jackson Boulevard, Chicago, Illinois 60604.

Thomas P. Turner,

Assistant Regional Counsel, United States Environmental Protection Agency.

[FR Doc. 93–18465 Filed 8–2–93; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 90–571]

Telecommunications Relay Services

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the states listed below applied to the Commission for State Telecommunications Relay (TRS) Certification for a period of five years, subject to renewal, as prescribed by the Commission's Report and Order and Request for Comments (R&O) in the matter of Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990 (CC Docket No. 90–571, FCC 91–213, adopted July 11, 1991 and released July 26, 1991; 6 FCC Rcd 4657 (1991) [56 FR 36729, 8/1/91]), and that these state TRS applications have been granted.

FOR FURTHER INFORMATION CONTACT: Linda B. Dubroof, (202) 634–1808.

SUPPLEMENTARY INFORMATION: Pursuant to the R&O, parts 0 and 64 of the Commission's rules have been amended to implement the provisions of title IV of the Americans with Disabilities Act of 1990 (ADA). The R&O provides that the Commission shall give public notice of each state's TRS certification filing, including notification in the **Federal Register**, in order to inform the public of the states seeking certification.

PUBLIC NOTICES: During the period July 14, 1993, through July 28, 1993, the Domestic Facilities Division, Common Carrier Bureau, announced by public notice those state applications for TRS certification that have been granted. Copies of certification grant letters are available for public inspection at the Commission's Common Carrier Bureau, Domestic Facilities Division, room 6220, 2025 M Street, NW., Washington, DC, Monday through Thursday, 8:30 a.m. to 3 p.m. (closed 12:30 p.m. to 1:30 p.m.). Information pertinent to each state's application, as contained in the public notices, is as follows:

Public Notice Dated July 8, 1993

File No.: TRS–01–92
Applicant: Alabama Public Service Commission
State of: Alabama

File No.: TRS–02–92
Applicant: Georgia Public Service Commission
State of: Georgia

File No.: TRS–03–92
Applicant: Kentucky Public Service Commission
State of: Kentucky

File No.: TRS–04–92
Applicant: Kansas Relay Service, Inc.
State of: Kansas

File No.: TRS–05–92
Applicant: Michigan Public Service Commission
State of: Michigan

File No.: TRS–06–92
Applicant: Tennessee Public Service Commission
State of: Tennessee

File No.: TRS–07–92
Applicant: Department of Human Resources, Commission on the Deaf and Hearing Impaired
State of: Connecticut

File No.: TRS–08–92
Applicant: Colorado Public Utilities Commission
State of: Colorado

File No.: TRS–09–92
Applicant: Arizona Council for the Hearing Impaired
State of: Arizona

File No.: TRS–10–92
Applicant: California Public Utilities Commission
State of: California

File No.: TRS–11–92
Applicant: State of Wisconsin, Department of Administration
State of: Wisconsin

File No.: TRS–12–92
Applicant: Public Utilities Commission of Ohio
State of: Ohio

File No.: TRS–13–92
Applicant: Office of Management and Budget, Information Services Division
State of: North Dakota

File No.: TRS–14–92
Applicant: Oregon Public Utility Commission
State of: Oregon

File No.: TRS–16–92
Applicant: Indiana Telephone Relay Access Corporation for the Hearing Impaired
State of: Indiana

File No.: TRS–17–92
Applicant: Virginia Department for the Deaf and Hard of Hearing
State of: Virginia

File No.: TRS–18–92
Applicant: Wyoming Division of Vocational Rehabilitation
State of: Wyoming

File No.: TRS–19–92
Applicant: Department of Human Resources, Division of Services for the Deaf and the Hard of Hearing
State of: North Carolina

File No.: TRS–20–92
Applicant: Idaho Public Utilities Commission
State of: Idaho

File No.: TRS–21–92
Applicant: Nebraska Public Service Commission
State of: Nebraska

File No.: TRS–23–92
Applicant: West Virginia Public Service Commission
State of: West Virginia

File No.: TRS–24–92
Applicant: South Carolina Public

Service Commission
State of: South Carolina
File No.: TRS–25–92
Applicant: Department of General Services
State of: Maryland
File No.: TRS–26–92
Applicant: Arkansas Public Service Commission
State of: Arkansas
File No.: TRS–27–92
Applicant: Alaska Public Utilities Commission
State of: Alaska
File No.: TRS–28–92
Applicant: Telecommunications Access for Communication-Impaired Persons Board
State of: Minnesota
File No.: TRS–29–92
Applicant: Public Service Commission
State of: District of Columbia
File No.: TRS–30–92
Applicant: Puerto Rico Telecommunications Regulatory Commission
State of: Puerto Rico
File No.: TRS–31–92
Applicant: New Hampshire Public Utilities Commission
State of: New Hampshire
File No.: TRS–32–92
Applicant: Mississippi Public Service Commission
State of: Mississippi
File No.: TRS–33–92
Applicant: Public Utility Commission of Texas
State of: Texas
File No.: TRS–34–92
Applicant: Public Service Commission of Delaware
State of: Delaware
File No.: TRS–35–92
Applicant: State of New York, Department of Public Service
State of: New York
File No.: TRS–36–92
Applicant: Missouri Public Service Commission
State of: Missouri
File No.: TRS–37–92
Applicant: Governor's Committee on Telecommunication Services for the Telephone Handicapped
State of: Montana
File No.: TRS–38–92
Applicant: State of New Jersey Board of Regulatory Commissioners
State of: New Jersey
File No.: TRS–39–92
Applicant: Iowa Utilities Board
State of: Iowa
File No.: TRS–41–92
Applicant: Department of Human Services
State of: South Dakota
File No.: TRS–42–92
Applicant: Public Utilities Commission
State of: Maine
File No.: TRS–43–92
Applicant: Department of Public Service
State of: Vermont
File No.: TRS–44–92
Applicant: Louisiana Public Service Commission
State of: Louisiana
File No.: TRS–46–92
Applicant: Florida Public Service Commission
State of: Florida
File No.: TRS–48–92
Applicant: Department of Human Resources, Rehabilitation Division
State of: Nevada
File No.: TRS–49–92
Applicant: Department of Public Utilities
State of: Massachusetts
File No.: TRS–50–92
Applicant: Public Service Commission of Utah
State of: Utah

Public Notice Dated July 21, 1993

File No.: TRS–22–92
Applicant: Illinois Commerce Commission
State of: Illinois
File No.: TRS–40–92
Applicant: Pennsylvania Public Utility Commission
State of: Pennsylvania
File No.: TRS–45–92
Applicant: Public Utilities Commission
State of: Hawaii
File No.: TRS–47–92
Applicant: Public Utilities Commission
State of: Rhode Island
File No.: TRS–52–92
Applicant: General Services Department
State of: New Mexico

Public Notice Dated July 28, 1993

File No.: TRS–51–92
Applicant: Department of Social and Health Services
State of: Washington

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–18375 Filed 8–2–93; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1000–DR]

Kansas; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Kansas, (FEMA–1000–DR), dated July 22, 1993, and related determinations.

EFFECTIVE DATE: July 27, 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 a major disaster for the State of Kansas dated July 22, 1993, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 22, 1993.

The county of Pottawatomie for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–18461 Filed 8–2–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–998–DR]

Nebraska; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Nebraska, (FEMA–998–DR), dated July 19, 1993, and related determinations.

EFFECTIVE DATE: July 27, 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 a major disaster for the State of Nebraska dated July 19, 1993, is hereby amended to included the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 19, 1993.

The counties of Dawson, Gage, and Jefferson for Individual Assistance Only.

The counties of Dodge, Franklin, Frontier, Gosper, and Sherman for Individual Assistance and Public Assistance.

The counties of Adams, Butler, Clay, Colfax, Cuming, Fillmore, Hamilton, Kearney, Nemaha, Pawnee, Platte, Polk, Richardson, and Stanton for Individual

Assistance. (Already designated for Public Assistance).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–18460 Filed 8–2–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1001–DR]

North Dakota; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of North Dakota (FEMA–1001–DR), dated July 26, 1993, and related determinations.

EFFECTIVE DATE: July 26, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 26, 1993, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of North Dakota, resulting from severe storms and flooding on June 22, 1993, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of North Dakota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Steve L. Olsen of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of North Dakota to have been affected adversely by this declared major disaster:

Barnes, Burleigh, Cass, Dickey, Emmons, Grant, Hettinger, Kidder, LaMoure, Logan, McIntosh, Morton, Ransom, Richland, Sargent, Sioux, and Stutsman for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

James Lee Witt,

Director.

[FR Doc. 93–18458 Filed 8–2–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–999–DR]

South Dakota; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of South Dakota, (FEMA–999–DR), dated July 19, 1993, an related determinations.

EFFECTIVE DATE: July 27, 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 a major disaster for the State of South Dakota dated July 19, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 19, 1993.

The counties of Brown, Charles Mix, Codington, Day, Deuel, Douglas, Grant, Hamlin, Marshall, Roberts, and Spink for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–18462 Filed 8–2–93; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Lykes/Linabol Cooperative Agreement

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 232–011425.

Title: Lykes/Linabol Cooperative Agreement.

Parties: Lykes Bros. Steamship Co., Inc. Lineas Navieras Bolivianas S.A.M.

Synopsis: The proposed Agreement would authorize the parties to charter space on each other's vessels and to rationalize sailings in the trade between U.S. Atlantic and Gulf of Mexico ports and inland and coastal points (including Canadian inland and coastal points) via such ports, and ports of Mexico, Colombia, Panama, Eucaudor, Peru, and Chile, and inland and coastal points (including Bolivian inland points) via such points. The parties have requested a short review period.

Dated: July 28, 1993.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 93–18374 Filed 8–2–93; 8:45 am]

BILLING CODE 6730–01–M

[Petition No. SP45–93; P46–93]

Petitions for Temporary Exemption From Electronic Tariff Filing Requirements; World Tariff Services, Inc., Finn Container Cargo Services, Inc.; Filing

Notice is hereby given of the filing of petitions by World Tariff Services, Inc. and Finn Container Cargo Services, Inc., pursuant to 46 CFR 514.8(a), on behalf of certain common carriers for temporary exemption from the electronic tariff filing requirements of the Commission's ATFI System. Petitioners request exemption from the June 4, 1993, electronic filing deadline.

To facilitate thorough consideration of the petitions, interested persons are requested to reply to the petitions no later than August 6, 1993. Replies shall be directed to the Secretary, Federal

Maritime Commission, Washington, DC 20573–0001, shall consist of an original and 15 copies, and shall be served on the following:

P45–93—Martin Panko, President, World Tariff Services, Inc., 14 Commerce Drive, Cranford, New Jersey 07016.

P46–93—J. Arturo Castellanos, Vice President, Finn Container Cargo Services, Inc., 2020 Southwest Freeway, Suite 200, Houston, Texas 77098

Copies of the petitions are available for examination at the Washington, DC office of the Secretary of the Commission, 800 N. Capitol Street, NW., room 1046.

Joseph C. Polking,

Secretary.

[FR Doc. 93–18373 Filed 8–2–93; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Amboy-Madison National Bank Employee Stock Ownership Plan; Change in Bank Conrol Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 93-14001) published at page 33097 of the issue for Tuesday, June 15, 1993.

Under the Federal Reserve Bank of New York heading, the entry for Amboy-Madison National Bank Employee Stock Ownership Plan is revised to read as follows:

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. Amboy-Madison National Bank Employee Stock Ownership Plan, Old Bridge, New Jersey; to acquire 15 percent of the voting shares of Amboy Bancorporation, Inc., Old Bridge, New Jersey, and thereby indirectly acquire Amboy National Bank, Old Bridge, New Jersey.

Comments on this application must be received by August 17, 1993.

Board of Governors of the Federal Reserve System, July 28, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-18428 Filed 8-2-93; 8:45 am]

BILLING CODE 6210-01-F

Central Bancshares of the South, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than August 27, 1993.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Central Bancshares of the South, Inc., Birmingham, Alabama; to acquire Central Bank of the South, FSB, Birmingham, Alabama, which will be an interim thrift formed to facilitate Central Banchsares of the South's acquisition of First Federal Savings Bank of Northwest Florida, Fort Walton Beach, Florida, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 28, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-18429 Filed 8-2-93; 8:45 am]

BILLING CODE 6210-01-F

John W. Jay; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has 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 notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than August 23, 1993.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. John W. Jay, Abilene, Texas; to acquire an additional 0.75 percent of the voting shares of Roscoe Financial Corporation, Roscoe, Texas, for a total of 36.5 percent, and thereby indirectly acquire Roscoe State Bank, Roscoe, Texas.

Board of Governors of the Federal Reserve System, July 28, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-18430 Filed 8-2-93; 8:45 am]

BILLING CODE 6210-01-F

Orion Bancorporation, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the

Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 27, 1993.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Orion Bancorporation, Inc., Orion, Illinois; to acquire 100 percent of the voting shares of Henry County Bancorp, Inc., Cambridge, Illinois, and thereby indirectly acquire 88 percent of the voting shares of Peoples Bank of Cambridge, Cambridge, Illinois.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. CNB Bancshares, Inc., Evansville, Indiana; to acquire 100 percent of the voting shares of Valley Bank, Federal Savings Bank, Terre Haute, Indiana.

Board of Governors of the Federal Reserve System, July 28, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-18431 Filed 8-2-93; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement Number 335]

National Organizational Strategies for Early Detection and Control of Breast and Cervical Cancer Program

Introduction

The Centers for Disease Control and Prevention (CDC), announces the availability of funds in fiscal year (FY) 1993 for competing cooperative agreements to support the development of strategies by national organizations with access to special populations (e.g., Native Americans, Hispanics, African-Americans, older Americans, low-literacy audiences, etc.) to improve the delivery of comprehensive breast and cervical cancer early detection and control programs.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of early detection and control of breast and cervical cancer. (To order a copy of Healthy People 2000, see the section Where to Obtain Additional Information.)

Authority

This program is authorized by section 1507 (42 U.S.C. 300n-3) of the Public Health Service Act, as amended. Applications program regulations are found in 42 CFR part 51b, Project Grants for Preventive Health Service.

Eligible Applicants

Assistance will be provided to private, public, non-profit, and for profit national organizations that have established and conducted nationwide programs and advocacy activities related to health promotion and disease prevention and which represent or have access to special populations (e.g., Native Americans, Hispanics, African-Americans, older Americans, low-literacy audiences, etc.) nationwide. National organizations and their regional, state, and local constituents provide a unique opportunity to develop and conduct strategies to address barriers to screening and improve the target population's access to early cancer detection and control programs. National organizations that have established credible working relationships with special populations can identify appropriate recruitment strategies, interpersonal channels, educational messages, resources and organizational linkages, learning modules, and instructional tools that will assist increasing participation in CDC screening programs nationwide. Low-income women with limited access to health care (including health promotion activities) can be reached through national organizations having previous health promotion experience and linkages with special populations.

Availability of Funds

Approximately $400,000 is available in FY 1993 to fund approximately three awards. It is expected that the average award will be $133,000 ranging from $100,000 to $200,000. It is expected that the awards will begin on or about September 30, 1993, and are for a 12-month budget period within a project period of up to three years. Funding estimates may vary and are subject to change.

Continuation awards within the approved project period will be made on the basis of an acceptable application, satisfactory program performance, and the availability of funds. Funds may not be expended for the purchase or lease of land or buildings, construction of facilities, renovation of existing space, or the delivery of clinical and therapeutic services. The purchase of equipment is discouraged but will be considered for approval if justified on the basis of being essential to the program and not available from any other source.

Purpose

The purpose of this program is to assist national organizations to educate their constituents about breast and cervical cancer; increase access to breast and cervical screening programs to identified target populations; and develop strategies for reaching identified target populations nationwide. Options for program outcomes may include generating publications; assisting state and local health agencies to implement model educational interventions; developing technical assistance and training tools; and adopting early cancer detection and control objectives as a part of the national organization's priorities.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under A., and CDC shall be responsible for conducting activities under B.

A. Recipient Activities

1. Develop, evaluate, and disseminate programs designed to improve breast and cervical cancer early detection and control among the applicant's target population. (Year 01)

2. Develop outreach strategies for targeted populations. (Year 01)

3. Establish specific, measurable, and realistic program objectives at national, state, and local levels for the accomplishment of program activities. (Year 01)

4. Identify and select appropriate staff. (Year 01)

5. Educate constituents concerning breast and cervical cancer prevention. (Year 02)

6. Establish partnerships with CDC-funded state health departments for breast and cervical cancer early detection and control programs. (Year 01–03)

7. Participate in a minimum of two meetings with CDC to facilitate the implementation of program objectives. (Year 01–03)

8. Evaluate achievement through a well-designed evaluation plan that

assesses each objective component of the program. (Year 01–03)

9. Disseminate information nationally regarding program activities and achievements. (Year 02–03)

10. Participate in the dissemination and sharing of pertinent program information through a computerized database for health information and health promotion resources, for example the Combined Health Information Database (CHID). (Year 02–03)

B. CDC Activities

1. Collaborate with recipients in the development, implementation, and dissemination of breast and cervical cancer early detection education programs.

2. Periodically update information about public knowledge, attitudes, and practices regarding early detection and control of breast and cervical cancer.

3. Collaborate with recipients to develop meeting agendas and convene personnel from all recipient organizations and funded state health departments for regular meetings to review program activities.

4. Collaborate with recipients to evaluate program activities that include the analysis of program results and the redirection of program activities as necessary.

5. Collaborate with recipients to develop publications, manuals, modules, etc., that relate to this award.

Evaluation Criteria

The initial application will be reviewed and evaluated according to the following criteria:

A. The extent to which the applicant demonstrates an understanding of the program purpose and objectives. (10 points)

B. The extent to which the applicant identifies the target population(s) and why they should focus on innovative and unique strategies. (20 points)

C. The degree to which specific, time-related and measurable objectives and process and outcome measures are consistent with the stated purposes of the cooperative agreement. (20 points)

D. The quality and feasibility of the proposed program activities for achieving the objectives. (15 points)

E. The adequacy of proposed personnel time allocations and the extent to which proposed staff exhibit appropriate qualifications and experience to accomplish the program activities. (15 points)

F. The extent to which the applicant demonstrates the ability to access its constituents and the target populations on a national basis and to disseminate programs nationally. (10 points)

G. The quality of the evaluation plan for monitoring progress that relates to program activities and objectives. (10 points)

H. The extent to which the budget is reasonable and consistent with the purpose and objectives of the cooperative agreement. (Not Weighted)

Funding Priorities

Applicants who demonstrate and document experience in the area of breast and cervical cancer early detection and control will receive priority consideration for funding.

Comments are not being solicited regarding the Funding Priority as time does not permit solicitation and review prior to the funding date.

Recipient Financial Participation

This program has no statutory formula. No specific matching funds are required.

Executive Order 12372 Review

Applications are not subject to Executive Order 12372, Intergovernmental Review of Federal Programs.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirement.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.283.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations (45 CFR part 46) regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 (Rev. 7/92) must be submitted to Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 314, Mailstop E–18, Atlanta, Georgia 30305, on or before August 30, 1993.

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date.

(b) Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks will not be accepted as proof of timely mailing.)

2. *Late Applications:* Applications that do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures, an application package, and business management technical assistance may be obtained from Nealean K. Austin, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 314, Mailstop E–18, Atlanta, Georgia 30305, telephone (404) 842–6508.

Programmatic technical assistance may be obtained from Leonard Jack, Jr., Ph.D., Health Promotion and Training Branch, Division of Cancer Prevention and Control, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC), 4740 Buford Highway, NE., Mailstop K–56, Atlanta, Georgia 30341–3724, telephone (404) 488–4744.

Please refer to Announcement Number 335 when requesting information and submitting an application.

Potential 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)

referenced in the Introduction through the Superintendent of Documents, Government Printing Office, Washington, DC. 20402–9325, telephone (202) 783–3238.

Dated: July 26, 1993.

Ladene H. Newton,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–18421 Filed 8–2–93; 8:45 am]

BILLING CODE 4160–18–P

[CDC–316]

Announcement of Cooperative Agreement to the Association of State and Territorial Health Officials

Summary

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1993 funds for a cooperative agreement with the Association of State and Territorial Health Officials (ASTHO) to identify and track emerging HIV-related developments and issues. Approximately $200,000 is available in FY 1993 to support this project. It is expected that the award will begin on or about September 28, 1993, for a 12-month budget period within a project period of up to 3 years. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

The purpose of this cooperative agreement addresses, collaboratively with ASTHO, the need to identify and track emerging HIV-related developments and issues and facilitates the rapid exchange of critical information at the state and local levels. The CDC will provide technical advice in the development of systems to identify state HIV/AIDS policy issues; provide technical advice in the development of systems to facilitate critical HIV/AIDS policy information sharing among state and local health officials in the decision making process; and provide information, legislative and policy determination for rapid dissemination and/or coordination and implementation.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas listed in Healthy People 2000, HIV Infection. (For ordering a copy of Healthy People 2000, see the section Where to Obtain Additional Information).

Authority

This program is authorized under the Public Health Service Act: section 317(k)(3), (42 U.S.C. 247b).

Eligible Applicants

Assistance will be provided only to ASTHO for this project. No other applications are solicited. The Program Announcement and application kit have been sent to ASTHO.

ASTHO is the most appropriate and qualified agency to provide the services specified under this cooperative agreement because:

A. ASTHO is the officially established organization representing the state health officers in all 50 states and all U.S. territories. As such it represents the officials from throughout the U.S. who have legal responsibility for protecting the health of U.S. citizens, including health threats such as human immunodeficiency virus (HIV) and acquired immunodeficiency syndrome (AIDS) which results from HIV infection.

B. Health threats such as HIV are not limited by geographic boundaries, ASTHO was formed to promote coordination of health efforts between the states and territories and as an instrument to monitor and assess health issues that pose threats to the public health. HIV/AIDS is, and likely will continue to be, a major health threat to the Nation for the foreseeable future.

C. It is critical that the health officials of this country monitor the potential impact of not only the medical and economic issues that HIV/AIDS presents to them, but also the legislative and policy issues which it poses to them in protecting the public health of the Nation. As such, ASTHO needs to maintain a system to monitor the potential impact of both state and national HIV/AIDS legislation and emerging HIV-related policy issues, and a system of communicating this information with all states and territories, as well as the local health organizations that carry out the day-to-day public health programs of the country.

D. It is critical that ASTHO conduct these services since it represents the officials who will have to enforce HIV-related policies and legislation. Since ASTHO represents health officials who have ultimate responsibility for public health within their jurisdictions, it is the only organization that can reasonably evaluate the potential impact of Federal and state HIV/AIDS legislation and policy in terms of actual implementation within the states.

E. ASTHO has already established mechanisms for communicating certain types of information to the states and the political subdivisions of the states that carry out the Nation's public health programs.

Executive Order 12372 Review

This application is not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The catalog number to be used for this cooperative agreement is 93.118.

Where to Obtain Additional Information

If you are interested in obtaining additional information regarding this project, please refer to Announcement Number 316 and contact Van Malone, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mailstop E–15, Atlanta, Georgia 30305, (404) 842–6872.

A copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0), Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1), referenced in the Summary, may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: July 28, 1993.

Ladene H. Newton,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–18422 Filed 8–2–93; 8:45 am]

BILLING CODE 4160–18–P

[Program Announcement No. 344]

Development of State Health Promotion and Chronic Disease Prevention Databases/Clearinghouses

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1993 funds for a cooperative agreement program for the development of state

health promotion and chronic disease prevention databases/clearinghouses that are compatible with the Combined Health Information Database (CHID). CHID links health information and education resources into a national network of information on programs, interventions, and methods, and acts as a central mechanism for collecting, sharing, and distributing information, bibliographies, literature, and health promotion and chronic disease prevention information to professionals responsible for planning, developing, conducting, and evaluating health promotion and chronic disease prevention programs.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of physical activity and fitness, reproductive health, nutrition, tobacco, educational and community-based programs, heart disease and stroke, cancer, and diabetes and chronic disabling conditions. (For ordering a copy of Healthy People 2000, see the section Where to Obtain Additional Information.)

Authority

This program is authorized under section 301(a) [42 U.S.C. 241(a)] of the Public Health Service Act, as amended. Applicable program regulations are found in 42 CFR part 52—Grants for Research Projects.

Eligible Applicants

Eligible applicants are the official public health departments of states or their bona fide agents or instrumentalities. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and federally-recognized Indian tribal governments.

Funding is limited to one three-year project period to provide start-up costs for establishing a state database/clearinghouse. Therefore, Colorado, Minnesota, and Missouri are not eligible applicants because they were funded September 1, 1991, for a three-year project period, under Program Announcement Number: 940, entitled "Assistance Program for Chronic Disease Prevention and Control" for the activities described in this program announcement.

Availability of Funds

Approximately $90,000 is available in FY 1993 to fund approximately three awards. It is expected that the average award will be $30,000. It is expected that the awards will begin on or about September 30, 1993, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and availability of funds.

Purpose

The purpose of this cooperative agreement is to assist states in designing databases/clearinghouses to promote and provide access to programmatic health promotion and chronic disease prevention information.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under A., below, and the CDC shall be responsible for conducting activities under B., below:

A. Recipient Activities

1. Establish and maintain a database/clearinghouse compatible with CHID.
2. Establish a database/clearinghouse advisory committee.
3. Design and carry out a systematic needs assessment to determine specific needs, current resources, and communication networks of state and local health professionals.
4. Establish and implement an information acquisitions system.
5. Develop and implement a marketing plan targeting identified needs and specific audiences.
6. Provide hard copy or computer access to state and local health promotion and chronic disease prevention program staff and other identified audiences.
7. Develop and conduct an evaluation and tracking system to monitor program activity and the quality of the information placed in the database.
8. Develop a plan for continuing database/clearinghouse activities beyond the project period and for institutionalizing into the agency organizational structure.

B. CDC Activities

1. Collaborate in the design of the database/clearinghouse to ensure compatibility with CHID.
2. Collaborate in developing an information collection strategy.
3. Collaborate in developing plans for quality assurance, tracking, evaluation, and institutionalization.
4. Collaborate in the training of database/clearinghouse staff.
5. Assist in promoting the state and national information systems.
6. Coordinate with other Federal agencies, states, and organizations to ensure a coordinated, cooperative effort to build a comprehensive information sharing system.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

A. *Background and Need*: The extent to which a database/clearinghouse currently exists, the degree of need and administrative commitment to the project. (20 Points)

B. *Database/Clearinghouse Development Plan*: The appropriateness of the methodologies for developing a database/clearinghouse that is compatible with CHID and the adequacy of the plan for continuing activities beyond the project period. (20 Points)

C. Objectives: The degree to which the proposed objectives are appropriate to the need and the objectives and activities are likely to produce the projected outcomes. (15 Points)

D. Management: The extent to which the applicant demonstrates the capacity to provide adequate and appropriate staff and equipment resources. (15 Points)

E. Evaluation: The extent to which the evaluation plan determines the effectiveness of the database/clearinghouse activities. (15 Points)

F. Quality Assurance: The extent to which the quality assurance plan is adequate and appropriate. (15 Points)

G. Budget: The extent to which the budget is reasonable and consistent with the intended use of the program funds. (Not Weighted)

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372. E.O. 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants (other than federally-recognized Indian tribal governments) should contact their state Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC for each

affected state. A current list of SPOCs is included in the application kit. If SPOCs have any state process recommendations on applications submitted to CDC, they should forward them to Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 314, Mailstop E–18, Atlanta, GA 30305, no later than 60 days after the application deadline. The granting agency does not guarantee to "accommodate or explain" state process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirement.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.283.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Application Submission and Deadline

The program announcement and application kit were sent to all eligible applicants in May 1993.

Where to Obtain Additional Information

A complete program description, information on application procedures, an application package, and business management technical assistance may be obtained from Nealean K. Austin, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 314, Atlanta, GA 30305, telephone (404) 842–6508. Programmatic technical assistance may be obtained from Kathryn Sunnarborg, Technical Information Specialist, Technical Information Services Branch, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC), Mailstop K–13, 4770 Buford Highway, NE., Atlanta, GA 30341–3724, telephone (404) 488–5080.

Please refer to Announcement Number 344 when requesting information and submitting an application.

Potential 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) referenced in the Introduction through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402–9325, telephone (202) 783–3238.

Dated: July 26, 1993.

Ladene H. Newton,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention.

[FR Doc. 93–18423 Filed 8–2–93; 8:45 am]

BILLING CODE 4160–18–P

CDC Advisory Committee on the Prevention of HIV Infection (CDC ACPHI): Subcommittee on Monitoring the HIV/AIDS Epidemic Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following subcommittee meeting.

Name: CDC ACPHI Subcommittee on Monitoring the HIV/AIDS Epidemic.

Time and Dates: 8:30 a.m.–4:30 p.m., September 14–15, 1993.

Place: Swissôtel Atlanta, 3391 Peachtree Road, NE., Atlanta, Georgia 30326.

Status: Open to the public, limited only by the space available.

Purpose: The purpose of this meeting is to continue to review current behavioral, exposure, infection, and disease surveillance systems and address information needs for monitoring behaviors and exposures to HIV.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Connie Granoff, Committee Assistant, Office of the Associate Director for HIV/AIDS, CDC, 1660 Clifton Road, NE., Mailstop E–40, Atlanta, Georgia 30333, telephone 404/639–2918.

Dated: July 27, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–18417 Filed 8–2–93; 8:45 am]

BILLING CODE 4160–18–M

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS (Formerly: National Institute on Drug Abuse, ADAMHA, HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 FR 11979, 11986). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

FOR FURTHER INFORMATION CONTACT: Denise L. Goss, Program Assistant, Division of Workplace Programs, room 9–A–54, 5600 Fishers Lane, Rockville, Maryland 20857; Tel.: (301) 443–6014.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in an every-other-month performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its

letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

Aegis Analytical Laboratories, Inc., 624 Grassmere Park Road, Suite 21, Nashville, TN 37211, 615–331–5300

Alabama Reference Laboratories, Inc., 543 South Hull Street, Montgomery, AL 36103, 800–541–4931/205–263–5745

Allied Clinical Laboratories, 201 Plaza Boulevard, Hurst, TX 76053, 817–282–2257

American Medical Laboratories, Inc., 14225 Newbrook Drive, Chantilly, VA 22021, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Avenue, Suite 250, Las Vegas, NV 89119–5412, 702–733–7866

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–227–2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Bayshore Clinical Laboratory, 4555 W. Schroeder Drive, Brown Deer, WI 53223, 414–355–4444/800–877–7016

Bioran Medical Laboratory, 415 Massachusetts Avenue, Cambridge, MA 02139, 617–547–8900

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Avenue, Miami, FL 33136, 305–325–5810

Centinela Hospital Airport Toxicology Laboratory, 9601 S. Sepulveda Blvd., Los Angeles, CA 90045, 310–215–6020

Clinical Pathology Facility, Inc., 711 Bingham Street, Pittsburgh, PA 15203, 412–488–7500

Clinical Reference Lab, 11850 West 85th Street, Lenexa, KS 66214, 800–445–6917

CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919–549–8263/800–833–3984

CompuChem Laboratories, Special Division, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919–549–8263

Cox Medical Centers, Department of Toxicology, 1423 North Jefferson Avenue, Springfield, MO 65802, 800–876–3652/417–836–3093

CPF MetPath Laboratories, 21007 Southgate Park Boulevard, Cleveland, OH 44137–3054, 800–338–0166 (outside OH)/800–362–8913 (inside OH) (name changed: formerly Southgate Medical Laboratory; Southgate Medical Services, Inc.)

Damon Clinical Laboratories, 140 East Ryan Road, Oak Creek, WI 53154, 800–638–1100 (name changed: formerly Chem-Bio Corporation; CBC Clinilab)

Damon Clinical Laboratories, 8300 Esters Blvd., Suite 900, Irving, TX 75063, 214–929–0535

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, Building 38–H, Great Lakes, IL 60088–5223, 708–688–2045/708–688–4171

Dept. of the Navy, Navy Drug Screening Laboratory, Norfolk, VA, 1321 Gilbert Street, Norfolk, VA 23511–2597, 804–444–8089 ext. 317

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Drive, Valdosta, Georgia 31604, 912–244–4468

Doctors & Physicians Laboratory, 801 East Dixie Avenue, Leesburg, FL 32748, 904–787–9006

Drug Labs of Texas, 15201 I–10 East, Suite 125, Channelview, TX 77530, 713–457–3784

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, 215–674–9310

ElSohly Laboratories, Inc., 1215–1/2 Jackson Ave., Oxford, MS 38655, 601–236–2609

Employee Health Assurance Group, 405 Alderson Street, Schofield, WI 54476, 800–627–8200, (name change: formerly Alpha Medical Laboratory, Inc.)

General Medical Laboratories, 36 South Brooks Street, Madison, WI 53715, 608–267–6267

Harrison & Associates Forensic Laboratories, 606 N. Weatherford, P.O. Box 2788, Midland, TX 79702, 800–725–3784/915–687–6877

HealthCare/Preferred Laboratories, 24451 Telegraph Road, Southfield, MI 48034, 800–328–4142 (inside MI)/800–225–9414 (outside MI)

Hermann Hospital Toxicology Laboratory, Hermann Professional Building, 6410 Fannin, Suite 354, Houston, TX 77030, 713–793–6080

IHC Laboratory Services Forensic Toxicology, 930 North 500 West, Suite E, Provo, UT 84604, 800–967–9766

Jewish Hospital of Cincinnati, Inc., 3200 Burnet Avenue, Cincinnati, Ohio 45229, 513–569–2051

Laboratory of Pathology of Seattle, Inc., 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2672

Laboratory Specialists, Inc., 113 Jarrell Drive, Belle Chasse, LA 70037, 504–392–7961

Marshfield Laboratories, 1000 North Oak Avenue, Marshfield, WI 54449, 715–389–3734/800–222–5835

Mayo Medical Laboratories, 200 S.W. First Street, Rochester, MN 55905, 507–284–3631

Med-Chek Laboratories, Inc., 4900 Perry Highway, Pittsburgh, PA 15229, 412–931–7200

MedExpress/National Laboratory Center, 4022 Willow Lake Boulevard, Memphis, TN 38175, 901–795–1515

Medical Science Laboratories, 11020 W. Plank Court, Wauwatosa, WI 53226, 414–476–3400

MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc., 6160 Variel Avenue, Woodland Hills, CA 91367, 818–226–4373, (name changed: formerly Laboratory Specialists, Inc.; Abused Drug Laboratories; moved 12/21/92)

MEDTOX Bio-Analytical, 8600 West Catalpa Avenue, Chicago, IL 60656, 800–872–5221/312–714–9191, (address, phone, and name changed on 5/17/93: formerly MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc., Bio-Analytical Technologies)

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 800–832–3244/612–636–7466

Methodist Hospital of Indiana, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Boulevard, Indianapolis, IN 46202, 317–929–3587

Methodist Medical Center Toxicology Laboratory, 221 N.E. Glen Oak Avenue, Peoria, IL 61636, 800–752–1835/309–671–5199

MetPath, Inc., 1355 Mittel Boulevard, Wood Dale, IL 60191, 708–595–3888

MetPath, Inc., One Malcolm Avenue, Teterboro, NJ 07608, 201–393–5000

MetWest-BPL Toxicology Laboratory, 18700 Oxnard Street, Tarzana, CA 91356, 800–492–0800/818–343–8191

National Center for Forensic Science, 1901 Sulphur Spring Road, Baltimore, MD 21227, 410–536–1485 (name changed: formerly Maryland Medical Laboratory, Inc.)

National Drug Assessment Corporation 5419 South Western, Oklahoma City, OK 73109, 800–749–3784 (name changed: formerly Med Arts Lab)

National Health Laboratories Incorporated, 2540 Empire Drive, Winston-Salem, NC 27103–6710, 919–760–4620/800–334–8627 (outside NC)/800–642–0894 (inside NC)

National Health Laboratories Incorporated, 75 Rod Smith Place, Cranford, NJ 07016–2843, 908–272–2511

National Health Laboratories Incorporated, d.b.a. National Reference Laboratory, Substance Abuse Division, 1400 Donelson Pike, Suite A–15, Nashville, TN 37217, 615–360–3992/800–800–4522

National Health Laboratories Incorporated, 13900 Park Center Road, Herndon, VA 22071, 703–742–3100

National Psychopharmacology Laboratory, Inc., 9320 Park W. Boulevard, Knoxville, TN 37923, 800–251–9492

National Toxicology Laboratories, Inc., 1100 California Avenue, Bakersfield, CA 93304, 805–322–4250

Nichols Institute Substance Abuse Testing (NISAT), 7470–A Mission Valley Road, San Diego, CA 92108–4406, 800–446–4728/619–686–3200 (name changed: formerly Nichols Institute)

Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361

Occupational Toxicology Laboratories, Inc., 2002 20th Street, Suite 204A, Kenner, LA 70062, 504–465–0751

Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Avenue, Eugene, OR 97440–0972, 503–687–2134

Parke DeWatt Laboratories, Division of Comprehensive Medical Systems, Inc., 1810 Frontage Rd., Northbrook, IL 60062, 708–480–4680

Pathology Associates Medical Laboratories, East 11604 Indiana, Spokane, WA 99206, 509–926–2400

PDLA, Inc. (Princeton), 100 Corporate Court, So. Plainfield, NJ 07080, 908–769–8500/800–237–7352

PharmChem Laboratories, Inc., 1505–A O'Brien Drive, Menlo Park, CA 94025, 415–328–6200/800–446–5177

PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Drive, Fort Worth, TX 76118, 817–595–0294 (Formerly: Harris Medical Laboratory)
Physicians Reference Laboratory, 7800 West 110th Street, Overland Park, KS 66210, 913–338–4070/800–821–3627 (Formerly: Physicians Reference Laboratory Toxicology Laboratory)
Poisonlab, Inc., 7272 Clairemont Mesa Road, San Diego, CA 92111, 619–279–2600/800–882–7272
Precision Analytical Laboratories, Inc., 13300 Blanco Road, Suite #150, San Antonio, TX 78216, 210–493–3211
Puckett Laboratory, 4200 Mamie Street, Hattiesburg, MS 39402, 601–264–3856/800–844–8378
Regional Toxicology Services, 15305 N.E. 40th Street, Redmond, WA 98052, 206–882–3400
Resource One, Inc., Seven Pointe Circle, Greenville, SC 29615, 803–233–5639
Roche Biomedical Laboratories, 1801 First Avenue South, Birmingham, AL 35233, 205–581–4170
Roche Biomedical Laboratories, 1957 Lakeside Parkway, Suite 542, Tucker, GA 30084, 404–939–4811
Roche Biomedical Laboratories, Inc., 1120 Stateline Road, Southaven, MS 38671, 601–342–1286
Roche Biomedical Laboratories, Inc., 69 First Avenue, Raritan, NJ 08869, 800–437–4986
Scott & White Drug Testing Laboratory, 600 S. 25th Street, Temple, TX 76504, 800–749–3788
S.E.D. Medical Laboratories, 500 Walter NE., Suite 500, Albuquerque, NM 87102, 505–848–8800
Sierra Nevada Laboratories, Inc., 888 Willow Street, Reno, NV 89502, 800–648–5472
SmithKline Beecham Clinical Laboratories, 7600 Tyrone Avenue, Van Nuys, CA 91045, 818–376–2520
SmithKline Beecham Clinical Laboratories, 3175 Presidential Drive, Atlanta, GA 30340, 404–934–9205 (name changed: formerly SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 506 E. State Parkway, Schaumburg, IL 60173, 708–885–2010 (name changed: formerly International Toxicology Laboratories)
SmithKline Beecham Clinical Laboratories, 11636 Administration Drive, St. Louis, MO 63146, 314–567–3905
SmithKline Beecham Clinical Laboratories, 400 Egypt Road, Norristown, PA 19403, 800–523–5447 (name changed: formerly SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301 (name changed: formerly SmithKline Bio-Science Laboratories)
South Bend Medical Foundation, Inc., 530 N. Lafayette Boulevard, South Bend, IN 46601, 219–234–4176
Southwest Laboratories, 2727 W. Baseline Road, Suite 6, Tempe, AZ 85283, 602–438–8507
St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1000 N. Lee Street, Oklahoma City, OK 73102, 405–272–7052
St. Louis University Forensic Toxicology Laboratory, 1205 Carr Lane, St. Louis, MO 63104, 314–577–8628
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 314–882–1273
Toxicology Testing Service, Inc., 5426 NW. 79th Avenue, Miami, FL 33166, 305–593–2260

No laboratories withdrew from the National Laboratory Certification Program during July 1993.

Richard Kopanda,

Acting Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 93–18383 Filed 8–2–93; 8:45 am]

BILLING CODE 4160–20–U

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N–93–3495; FR–3161–N–01]

Federally Mandated Exclusions From Income

AGENCY: Office of the Secretary, HUD.

ACTION: Notice.

SUMMARY: Under several HUD programs (Rent Supplement under part 215; Mortgage Insurance and Interest Reduction Payment for Rental Projects under part 236; section 8 Housing Assistance programs; and the Public and Indian Housing programs), the definition of income does not include amounts of other benefits specifically exempted by Federal law. Periodically, HUD announces the list of benefits so excluded. This notice reports that, (1) earned income tax credit refunds; (2) student financial assistance under title IV of the Higher Education Act of 1965; and (3) the value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 are not to be considered as income for purposes of the programs mentioned above.

DATES: *Effective Date for Earned Income Tax Credit:* January 1, 1991.

Effective Date for Student Financial Assistance: October 1, 1992.

Effective Date for Child Care and Development Block Grant Assistance: November 4, 1992.

FOR FURTHER INFORMATION CONTACT: For Rent Supplement (section 215), section 236, and section 8 programs administered under 24 CFR parts 880, 881, and 883 through 886: James J. Tahash, Director, Planning and Procedures Division, Office of Multifamily Housing Management, room 6182, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–3944. A telecommunications device for hearing impaired persons (TDD) is available at (202) 708–4594. (These are not toll-free telephone numbers.)

For section 8 programs administered under 24 CFR part 882 (Rental Certificates, Moderate Rehabilitation) and under part 887 (Rental Vouchers), and for Public Housing programs; Edward Whipple, Director, Occupancy Division, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC, 20410, telephone: (202) 708–0744, or TDD: (202) 708–0850. (These are not toll-free telephone numbers.)

For Indian Housing programs: Dominic Nessi, Director, Office of Indian Housing, room 4140, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC, 20410, telephone: (202) 708–1015, TDD: (202) 708–0850. (These are not toll-free telephone numbers.)

Any member of the public who becomes aware of any other Federal statute that requires any other benefit to be excluded from consideration as income in these programs should submit information about the statute and the benefit program to one of the persons listed as contact or to the Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

SUPPLEMENTARY INFORMATION: Under certain HUD subsidized housing programs, annual income is a factor in determining eligibility and level of benefits. Annual income is broadly defined as the anticipated total income from all sources received by every family member. Traditionally, HUD excludes certain types of benefits from applicants' and participants' annual income. In addition, under 24 CFR 215.21(c)(11), 236.3(c)(11), 813.106(c)(11), 905.102, and 913.106(c)(11), the definition of annual income excludes amounts specifically excluded by any other Federal statute from consideration for purposes of determining eligibility for or level of benefits to be received under the HUD programs in question. HUD programs other than those specifically listed in this notice may be affected by changes in the definition of annual income. This is because some programs, for example, the sections 202 and 811 Capital Advance Programs, reference either part

813 or 913 for their definition of income.

Section 11111(b) (26 U.S.C. 32(j)) of the Omnibus Budget Reconciliation Act of 1990 (1990 OBR Act) (Pub. L. 101–508, approved November 5, 1990) excludes, for taxable years beginning after December 31, 1990, the earned income tax credit (EITC) refund from being considered as income for purposes of HUD's assisted housing programs. The earned income tax credit refund is a payment from the Internal Revenue Service to low income workers with children. Eligible workers must apply for this credit. The refund may be received over the year as a regular addition to a worker's pay, or as a single sum after filing a tax return, at the option of the worker. Under either option, no EITC refund payment received on or after January 1, 1991 is considered as income for the Department's assisted housing programs. This exclusion is added as paragraph (xiv) to the list.

Because HUD regulations promulgated before the 1990 OBR Act specifically include in annual income any earned income tax credit to the extent it exceeds income tax liability, they are being amended, in a separate rulemaking document, to remove this requirement.

Section 471 of the Higher Education Act Amendments of 1992 (HEAA 1992) (Pub. L. 102–325, approved July 23, 1992) amended section 479B of the Higher Education Act of 1965 to provide:

> Notwithstanding any other provision of law, student financial assistance received under this title, or under Bureau of Indian Affairs student assistance programs, shall not be taken into account in determining the need or eligibility of any person for benefits or assistance, or the amount of such benefits or assistance, under any Federal, State, or local program financed in whole or in part with Federal funds.

Section 2 of HEAA 1992 establishes an effective date for its amendments of October 1, 1992, "Except as otherwise provided in this Act * * *". Although section 480(b), entitled, "Effective Date For Amendments To Part F" (and section 471 appears in part F), states an effective date of July 1, 1993, this effective date applies only "with respect to determinations of need under such part F * * *". The effective date, thus, for this exclusion from income is October 1, 1992.

The Department had, under paragraph (ix) in the previous published notice of Federally mandated exclusions from income, excluded, "Amounts of scholarships funded under title IV of the Higher Education Act of 1965, including awards under the Federal work-study program or under the Bureau of Indian Affairs student Assistant programs, that are made available to cover the cost of tuition, fees, books, equipment, materials, supplies, transportation, and miscellaneous personal expenses of a student at an educational institution (20 U.S.C. 1087uu)". Paragraph (ix) is being amended in this notice to reflect the current status of the law, which places no limits on the types of scholarship costs under title IV eligible for exclusion.

Section 8(b) (42 U.S.C. 9858q) of the Juvenile Justice and Delinquency Prevention Amendments Act of 1992 (Pub. L. 102–586, approved November 4, 1992) provides that the value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 shall not be treated as income for purposes of any other Federal or Federally-assisted program that bases eligibility, or the amount of benefits, on need. The effective date of this provision is the effective date of the statute, November 4, 1992. This exclusion is added to the list as paragraph (xiii).

The Department published its last updated list of federally mandated exclusions from income on July 23, 1990 (55 FR 29905). This notice supersedes that announcement.

The following list of program benefits is the comprehensive list of benefits that currently qualify for the income exclusion stated in 24 CFR 215.21(c)(11), 236.3(c)(11), 813.106(c)(11), 905.102, and 913.106(c)(11):

(i) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017(b));

(ii) Payments to Volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058);

(iii) Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c));

(iv) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e);

(v) Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f));

(vi) Payments received under programs funded in whole or in part under the Job Training Partnership Act (29 U.S.C. 1552(b));

(vii) Income derived from the disposition of funds of the Grand River Band of Ottawa Indians (Pub. L. 94–540, 90 Stat. 2503–04;

(viii) The first $2,000.00 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the Court of Claims (25 U.S.C. 1407–08) or from funds held in trust for an Indian tribe by the Secretary of the Interior (25 U.S.C. 117b, 1407);

(ix) Amounts of scholarships funded under Title IV of the Higher Education Act of 1965, including awards under the Federal work-study program or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu);

(x) Payments received from programs funded under Title V of the Older Americans Act of 1965 (42 U.S.C. 3056(f)); and

(xi) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the *In Re Agent Orange* product liability litigation, M.D.L. No. 381 (E.D.N.Y.);

(xii) Payments received under the Maine Indian Claims Settlement Act of 1980 (Pub. L. 96–420, 94 Stat. 1785);

(xiii) The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q).

(xiii) Earned income tax credit (EITC) refund payments received on or after January 1, 1991 (26 U.S.C. 32(j)).

Dated: June 1, 1993.

Henry G. Cisneros,

Secretary.

[FR Doc. 93–18474 Filed 8–2–93; 8:45 am]

BILLING CODE 4210–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–9800–02; ES–046168, Group 193, Florida]

Notice of Filing of Plat of the Dependent Resurvey, Subdivision of Section 2 And Metes-And-Bounds Survey

The plat of the dependent resurvey of a portion of the north boundary, a portion of the subdivisional lines, and the survey of the subdivision of section 2, and the metes-and-bounds survey of certain parcels in section 2, Township 29 South, Range 19 East, Tallahassee Meridian, Florida, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on September 7, 1993.

The survey was made upon request submitted by the Bureau of Indian Affairs.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., September 7, 1993.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: July 23, 1993.

Larry Hamilton,

Acting State Director.

[FR Doc. 93–18436 Filed 8–2–93; 8:45 am]

BILLING CODE 4310–GJ–

[ES–960–9800–02; ES–046165, Group 188, Florida]

Notice of Filing of Plat of the Dependent Resurvey and Subdivision of Section 15

The plat of the dependent resurvey of a portion of the subdivisional lines, and the survey of the subdivision of section 15, and the survey of a portion of Levee L–60 right-of-way, Township 39 South, Range 33 East, Tallahassee Meridian, Florida, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on September 7, 1993.

The survey was made upon request submitted by the Bureau of Indian Affairs.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., September 7, 1993.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: July 13, 1993.

Larry Hamilton,

Acting State Director.

[FR Doc. 93–18437 Filed 8–2–93; 8:45 am]

BILLING CODE 4310–GJ

[CO–930–4920–10–4329; COC–55373]

Proposed Withdrawal and Opportunity for Public Meeting; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of Energy has requested the withdrawal of three separate sites comprised of 847 acres of public lands in Colorado for a period of 5 years. These three sites are proposed as permanent disposal sites for radioactive uranium mill tailings. If these sites are designated for permanent disposal, administrative jurisdiction will be transferred to the Department of Energy for management. This notice will segregate these lands from operation of the public land laws, including location and entry under the mining laws for up to 2 years. The lands will continue to be open to mineral leasing.

DATES: Comments on the proposed withdrawal or request for public meeting must be received on or before November 1, 1993.

ADDRESSES: Comments and meeting requests should be sent to the Colorado State Director, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215–7076.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, (303) 239–3706.

SUPPLEMENTARY INFORMATION: On July 6, 1993, the Department of Energy filed application to withdraw the following described public lands from settlement, sale location, or entry under the public land laws, including the mining laws, subject to valid existing rights, pursuant to 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:

New Mexico Principal Meridian

Site A

T. 46 N., R. 16 W.,
Sec. 25, SE¼SW¼SE¼SW¼, S½SE¼SE¼SW¼, S½SW¼SW¼SE¼, and SW¼SE¼SW¼SE¼;
Sec. 36, W½E½NW¼NE¼, W½NW¼NE¼, W½NE¼SW¼NE¼, NW¼SW¼NE¼, E½W½NE¼NW¼, E½NE¼NW¼, E½NW¼SE¼NW¼, and NE¼SE¼NW¼.

New Mexico Principal Meridian

Site B

T. 46 N., R. 18 W.,
Sec. 21, S½SW¼;
Sec. 28, NW¼NE¼, S½NE¼, N½NW¼, SE¼NW¼, and N½SE¼.

6th Principal Meridian

Site C

T. 7 N., R. 94 W.,
Sec. 19, Lots 5, 6, and 7, E½NW¼, NE¼SW¼, and W½E½.

The lands described aggregate approximately 847 acres of public land.

The purpose of requesting these withdrawals is to segregate the lands and provide protection until requirements are completed for a permanent transfer of jurisdiction to the Department of Energy, under the authority of the Uranium Mill Tailings Radiation Control Act of 1978; 42 U.S.C. 7801, as amended.

Effective on the date of publication, these lands are segregated from all forms of appropriation under the public land laws, including the mining laws. The lands remain open to mineral leasing, subject to concurrence by the Department of Energy, the Nuclear Regulatory Commission, and the Department of Interior. The lands will remain open to surface uses which are compatible with the project until the withdrawal is final.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with this proposed withdrawal. If the authorized officer determines that a meeting should be held, the meeting will be scheduled and conducted in accordance with Bureau of Land Management 43 CFR 2310.3–1(c)(2).

All persons who desire to submit comments, suggestions, or objections or who desire public meeting for the purpose of being heard on this proposed action must submit a written request with the Colorado State Director within 90 days of the date of publication of this notice.

This application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated from operation of the public land laws, as specified above, unless the application is denied or cancelled or the transfer of administrative jurisdiction takes place prior to that date.

The temporary segregation of the lands in connection with the application shall not affect the administrative jurisdiction over the lands and will not authorize any use of the land by the Department of Energy.

Robert S. Schmidt,

Chief, Branch of Realty Programs.

[FR Doc. 93–18380 Filed 8–2–93; 8:45 am]

BILLING CODE 4310–JB–M

[MT–930–4210–06; MTM 82330]

Proposed Withdrawal and Opportunity for Public Meeting; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 19,684.74 acres of public mineral estate for protection of the unique resources

within the Sweet Grass Hills (SGH) Area of Critical Environmental Concern. This notice closes the lands for up to 2 years from location and entry under the mining laws. The lands will remain open to mineral leasing.

DATES: Comments and requests for a public meeting must be received by November 1, 1993.

ADDRESSES: Comments and meeting requests should be sent to the Montana State Director, BLM, P.O. Box 36800, Billings, Montana 59107.

FOR FURTHER INFORMATION CONTACT: James Binando, BLM Montana State Office, 406–255–2935.

SUPPLEMENTARY INFORMATION: On July 28, 1993, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described lands from location and entry under the mining laws, but not from the public land laws or mineral leasing laws, subject to valid existing rights:

Principal Meridian

T. 37 N., R. 1 E.,
Sec. 1, lots 5 to 8, inclusive;
Sec. 2, lots 5 to 8, and S½SE¼;
Sec. 11, E½E½;
Sec. 12, lots 1 to 8, inclusive, and S½N½;
Sec. 13, lots 1 to 5, inclusive, W½NE¼, NW¼, N½SW¼, SE¼SW¼, and W½SE¼;
Sec. 14, lots 1 to 3, inclusive, N½, SW¼, and N½SE¼;
Sec. 15, E½E½;
Sec. 22, E½NE¼;
Sec. 23, lot 1, E½NE¼, SW¼NE¼, NW¼, S½SW¼, and SE¼;
Sec. 24, lots 1 to 4, inclusive, W½E½, and W½;
Sec. 25, lots 1 to 10, inclusive, SW¼NE¼, S½NW¼, N½SW¼, NW¼SE¼;
Sec. 26, E½NE¼, N½NW¼, and S½;
Sec. 27, NE¼NE¼, S½NW¼, NE¼SW¼, and NW¼SE¼;
Sec. 34, NE¼NE¼;
Sec. 35, NE¼, E½NW¼, and SW¼NW¼.
T. 36 N., R. 2 E.,
Sec. 5, lot 4;
Sec. 6, lots 1 and 2, and SW¼NE¼;
Sec. 23, E½NE¼ and N½SE¼;
Sec. 24, SW¼NW¼ and W½SW¼;
Sec. 25, SE¼NE¼ and E½SE¼.
T. 37 N., R. 2 E.,
Sec. 5,
Lot 8;
Sec. 6, lots 6, 7, 8, 9, and 10;
Sec. 7, lots 1 to 4, inclusive, and E½SW¼;
Sec. 17, W½SW¼;
Sec. 18, SW¼NE¼, E½SE¼, and NW¼SE¼;
Sec. 19, lots 2, 3, and 4, NE¼NE¼, SE¼NW¼, and NE¼SW¼;
Sec. 20, NW¼NE¼ and N½NW¼;
Sec. 30, lots 1 to 4, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 31, lots 1, 2, and 3, NE¼, E½NW¼, NE¼SW¼, and N½SE¼.
T. 35 N., R. 3 E.,
Sec. 3, lot 4 and SW¼NW¼;
Sec. 4, lots 1 and 2, S½NE¼.
T. 36 N., R. 3 E.,
Sec. 7, lot 2, SW¼NE¼, SE¼NW¼, E½SW¼, and NW¼SE¼;
Sec. 9, NE¼SW¼ and SE¼SE¼;
Sec. 10, S½SW¼ and SW¼SE¼;
Sec. 11, NW¼SW¼;
Sec. 15, NW¼, W½SW¼, and SE¼SW¼;
Sec. 17, lots 1 and 2, E½SW¼, and SE¼;
Sec. 18, lots 5, 6, 11, and 12, and NW¼NE¼;
Sec. 19, lots 3 and 4, E½SW¼, and S½SE¼;
Sec. 20, E½NE¼, NW¼NE¼, NE¼NW¼, W½SW¼, and SE¼SW¼;
Sec. 21, NE¼, N½NW¼, and S½SW¼;
Sec. 22, NW¼;
Sec. 28, W½NE¼, E½NW¼, NW¼NW¼, and SW¼SW¼;
Sec. 29, W½NE¼, W½, and SE¼;
Sec. 30, lots 1 and 2, N½NE¼, SW¼NE¼, E½NW¼, and SE¼SE¼;
Sec. 31, lots 2 and 3, NE¼NE¼, and SW¼SE¼;
Sec. 32, N½N½, SE¼NE¼, SW¼, W½SE¼, and SE¼SE¼;
Sec. 33, S½NE¼, N½SE¼, and SE¼SE¼;
Sec. 34, NW¼NE¼, N½NW¼, and SW¼SW¼.
T. 35 N., R. 4 E.,
Sec. 2, lot 2, SW¼NE¼, E½SW¼, and NW¼SE¼.
T. 36 N., R. 4 E.,
Sec. 1, lots 1, 2, and 3, S½NE¼, and NE¼SE¼;
Sec. 9, SE¼;
Sec. 10, lots 3 and 4, and E½SW¼;
Sec. 24, lots 1 to 4, inclusive, N½NE¼, SW¼NE¼, and NW¼NW¼;
Sec. 25, lots 1 to 6, inclusive, NE¼, SE¼NW¼, and N½SW¼;
Sec. 26, SE¼NE¼, E½SE¼, and SW¼SE¼;
Sec. 34, E½NE¼ and SW¼NE¼;
Sec. 35, E½NE¼;
Sec. 36, lots 1, 2, 3, and 5.
T. 37 N., R. 4 E.,
Sec. 34, N½N½ and SW¼NE¼;
Sec. 35, NW¼NW¼.
T. 35 N., R. 5 E.,
Sec. 5, lot 4, SW¼NW¼, and NE¼SW¼;
Sec. 6, lots 1, 2 and 5, and SW¼NE¼.
T. 36 N., R. 5 E.,
Sec. 3, lot 1 and NE¼SE¼;
Sec. 4, W½SW¼;
Sec. 5, SW¼SW¼;
Sec. 6, lot 6, NE¼SW¼, and SE¼SE¼;
Sec. 7, lot 1, N½NE¼, and NE¼NW¼;
Sec. 8, E½NE¼, NW¼NE¼, and W½NW¼;
Sec. 9, NW¼NW¼;
Sec. 14, S½SW¼;
Sec. 18, N½NE¼;
Sec. 19, lots 1 to 9, inclusive, N½NE¼, NE¼NW¼, SE¼SW¼, and SW¼SE¼;
Sec. 20, lots 1 to 5, inclusive, N½, N½SE¼;
Sec. 21, N½N½, SE¼NE¼, N½SW¼, and SE¼SE¼;
Sec. 22, W½NW¼, and E½SE¼;
Sec. 23, W½NE¼, SE¼NE¼, NE¼NW¼, S½SW¼, and SW¼SE¼;
Sec. 26, NW¼NW¼;
Sec. 27, W½W½, SE¼SW¼, and SW¼SE¼;
Sec. 28, SE¼NE¼ and SE¼;
Sec. 29, lots 1 to 5, inclusive, lots 7 to 10, inclusive, SW¼NW¼, N½SW¼, and SW¼SW¼;
Sec. 30, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 31, lots 1 to 4, inclusive, MS 3418, E½, NE¼NW¼, and SE¼SW¼;
Sec. 32, lots 1 to 5, inclusive, E½NE¼, SW¼NE¼;
Sec. 34, N½NE¼.
T. 37 N., R. 5 E.,
Sec. 29, SE¼SE¼;
Sec. 30, SE¼SW¼.

The areas described aggregate approximately 19,684.74 acres in Toole and Liberty Counties.

The purpose of the proposed withdrawal is to protect high value potential habitat for reintroduction of endangered peregrine falcons, areas of traditional religious importance to Native Americans, aquifers that currently provide the only potable water in the area, and seasonally important elk and deer habitat.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Montana State Director at the address specified above.

Notice is hereby given that a public meeting will be held in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. A notice of the time and place of the public meeting will be published in the Federal Register at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the Federal Register, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to the date.

The temporary uses which may be permitted during this segregative period are: Maintenance of existing communication sites, acceptance of applications for new communication sites on East Butte, and activities which will not disturb the surface (such as hunting, hiking, camping, Native American religious practices, water sampling and vegetation inventories). The existing road closure that is in effect for the SGH will be continued. Limited motorized use is available by permit only to livestock ranchers with

leases and selected state and federal government activities. Exploration and development on existing oil and gas leases, minor forest product sales, such as post and pole sales, livestock grazing on existing leases, maintenance and repair of livestock facilities, and collection of mineral data by the United States necessary to determine the validity of existing claims are allowed. Applications will also be accepted for supporting rights-of-way for local ranching and domestic needs.

Dated: July 29, 1993.

Robert H. Lawton,

State Director.

[FR Doc. 93–18447 Filed 8–2–93; 8:45 am]

BILLING CODE 4310–DN–M

Fish and Wildlife Service

Availability of Finding of No Significant Impact and Final Environmental Assessment and Receipt of an Application for an Incidental Take Permit for Timber Management Practices in Conecuh and Monroe Counties, AL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: International Paper Timberlands Operating Company, Ltd. (Applicant), a publicly traded partnership, has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(b) of the Endangered Species Act (Act). The proposed permit would authorize for a period of 30 years the incidental take of a threatened species, the Red Hills salamander (*Phaeognathus hubrichti*), known to occupy lands owned by the applicant in Conecuh and Monroe Counties, south-central Alabama.

The Service also announces the availability of a final environmental assessment (EA) and habitat conservation plan (HCP) for the incidental take application. Copies of the EA or HCP may be obtained by making requests to the addresses below. The Service is soliciting data on the Red Hills salamander to assist in the requirement of the intra-Service consultation. This notice also advises the public that the Service has made a preliminary determination that issuing the incidental take permit is not a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(c) of the National Environmental Policy Act of 1969, as amended. The Finding of No Significant Impact is based on information contained in the EA and HCP. The final determination will be made no sooner than 30 days from the date of this notice. This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act Regulations (40 CFR 1506.6).

DATES: Written comments on the permit application, EA, and HCP should be received on or before 30 days after publication of this notice.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Persons wishing to review the EA or HCP may obtain a copy by writing the Regional Office or the Jackson, Mississippi, Field Office. Documents will also be available for public inspection, by appointment, during normal business hours at the Regional Office, or the Field Office. Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Please reference permit under PRT 780914 in such comments.

Assistant Regional Director, U.S. Fish and Wildlife Service, Suite 1276, 75 Spring Street, SW., Atlanta, GA 30303, (telephone 404/331–3580, fax 404/730–3419).

Field Supervisor, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Suite A, Jackson, Mississippi 39213 (telephone 601/965–4900, fax 601/965–4340).

FOR FURTHER INFORMATION CONTACT: Wendell Neal at the Jackson, Mississippi, Field Office.

SUPPLEMENTARY INFORMATION: The Red Hills salamander is a plethodontid salamander and the sole member of its genus. Its range is confined to a small area of southern Alabama. Portions of the applicant's lands in the Red Hills physiographic province of south-central Alabama are occupied by this species. The applicant owns 29,463 acres of timberland within the Red Hills salamander's historic range in Conecuh and Monroe Counties. Approximately 6,400 acres are considered as occupied range. Optimal and suboptimal salamander habitat occurs in 4,514 acres of the occupied range. The two best habitat classifications (optimal and suitable but suboptimal) contain 92 percent of the occupied Red Hills salamander sites observed during the population survey conducted on the applicant's land. These habitats are characterized as having steep slopes (>30 percent), are within the Tallahatta and/or Hatchetigbee geologic formations, have moist loamy topsoils, and are forested with naturally occurring mixed hardwood/pine and pine/nardwood trees. The applicant's land with moderately steep slopes (15–30 percent), contains only 8 percent of the occupied salamander sites observed.

While the applicant proposes to conduct normal forest management practices in Red Hills salamander habitat with moderately steep slopes (15–30 percent), only 40 percent of the approximately 1,900 acres is occupied by salamanders. Should all individuals be taken as a result of normal forestry management practices, a most unlikely event, the maximum numbers that could be lost would be the salamanders associated with 754 acres of marginal habitat. The total number of salamanders associated with this marginal habitat is highly speculative. Dodd 1988, estimated an average of 5.05 burrows per 100m² (.025 acres) in optimal habitat. However, how salamander density is related to burrow density is not known, nor is their pattern of distribution. Accordingly, an estimate of the possible take would have little basis.

The EA considers the environmental consequences of three alternatives. The no action alternative would probably result in continued insidious and direct habitat loss for the Red Hills salamander resulting in further loss to the species and continued exposure of the applicant under Section 9 of the Act. This action is inconsistent with the purposes and intent of section 10 of the Act. The delisting of the Red Hills salamander as an alternative was rejected as biologically unjustifiable. Modification of the HCP as an alternative was in part accommodated during the pre-application phase through negotiations between the applicant and the Service. The proposed action alternative is issuance of the incidental take permit. This provides for long term preservation of 4,514 acres of the best available salamander habitat as mitigation to the possible loss of salamanders associated with 754 acres of marginal habitat on the applicant's lands.

Dated: July 19, 1993.

Nancy C. Coon,

Acting Assistant Regional Director, Ecological Services.

[FR Doc. 93–18378 Filed 8–2–93; 8:45 am]

BILLING CODE 4310–55–M

Availability of Draft Recovery Plan for the Wahiawa Plant Cluster Cyanea Undulata, Dubautia Pauciflorula, Hesperomannia Lydgatei, Labordia Lydgatei and Viola Helenae for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the Wahiawa Plant Cluster *(Cyanea undulata, Dubautia pauciflorula, Hesperomannia lydgatei, Labordia lydgatei* and *Viola helenae).* All of these except *H. lydgatei* occur only in the Wahiawa Drainage basin on the island of Kauai, Hawaii. *H. lydgatei* also occurs in the Waioli Stream valley on Kauai.

DATES: Comments on the draft recovery plan must be received on or before October 4, 1993 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, P.O. Box 50167, Honolulu, Hawaii 96850 (Building Address: 300 Ala Moana Boulevard, Honolulu, Hawaii 96813) (telephone 808–541–2749). Copies of the draft recovery plan are available for review at the Kauai Public Library, 4344 Hardy Street, Lihue, Kauai 96766. Written comments and materials regarding this plan should be addressed to Robert P. Smith, Field Supervisor, at the above Honolulu address. Comments and materials received are available upon request for public inspection, by appointment, during normal business hours, at the above Honolulu address.

FOR FURTHER INFORMATION CONTACT: Ms. Karen W. Rosa, Fish and Wildlife Biologist, at the Honolulu address given above.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, criteria for recognizing the recovery levels for downlisting or delisting them, and initial estimates of times and costs to implement the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. Substantive technical comments will result in changes to the plans. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plans, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individualized responses to comments will not be provided.

The species being considered in this recovery plan are *Cyanea undulata, Dubautia pauciflorula, Hesperomannia lydgatei, Labordia lydgatei* and *Viola helenae.* The areas of emphasis for recovery actions for these species are the wet forests of the Wahiawa Drainage area and the Waioli Stream valley on the island of Kauai, Hawaii. Recovery efforts will focus on securing habitat, managing it to remove threats by alien plants, insect infestations, seed predators and feral ungulates, augmenting current populations and establishing new populations.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified will be considered prior to approval of the plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 27, 1993.

William E. Martin,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 93–18420 Filed 8–2–93; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

National Register of Historic Places

Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 24, 1993. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by August 18, 1993.

Beth M. Boland,

Acting Chief of Registration, National Register.

ILLINOIS

Cook County

Garfield Park (Chicago Park District MPS), 100 N. Central Park Ave., Chicago, 93000837

Mandel Brothers Warehouse Building, 3254 N. Halsted St., Chicago, 93000841

Fulton County

Chicago, Burlington & Quincy Railroad Station, Along 4th Ave. between E. Elm St. and E. Chestnut St., Canton, 93000842

McHenry County

Memorial Hall, 10308 Main St., Richmond, 93000839

Peoria County

Wear, Washington C., House, 1 mi. S and 0.4 mi. W of jct. of IL 90 and IL 91, Princeville, 93000838

Winnebago County

Chicago & North Western Railway Stone Arch Bridge, 0.6 mi. E of IL 251. 0.6 mi. W of I-90 and 0.2 mi. S of Burr Oak Rd., Roscoe vicinity, 93000840

KANSAS

Butler County

Beaumont St. Louis and San Francisco Railroad Water Tank, Jct. of Third and D Sts., Beaumont, 93000843

MISSISSIPPI

Warren County

Uptown Vicksburg Historic District (Vicksburg MPS), Roughly bounded by Locust, South, Washington and Clay Sts., Vicksburg, 93000850

NEW YORK

Dutchess County

Bard Infant School and St. James Chapel, East Market St., Hyde Park, 93000848

Howard Mansion and Carriage House, Howard Blvd., Hyde Park, 93000862

Hyde Park Elementary School, Post Rd. N ot jct. with Fuller Ln., Hyde Park, 93000860

Hyde Park Firehouse, Post Rd. S of jct. with Market St., Hyde Park, 93000859

Langdon Estate Gatehouse, US N of jct. with Market St., Hyde Park, 93000865

Main Street—Albertson Street—Park Place Historic District, Roughly, Main St. Between Park Pl. and US 9, Park between Main and Albertson St. and Albertson adjacent to Park, Hyde Park, 93000856

Reformed Dutch Church, Parsonage and Lecture Hall, US 9 N of jct. with Market St., Hyde Park, 93000861

Rogers, Archibald, Estate, Jct. of Mansion and Garden Sts., Hyde Park, 93000864

Roosevelt Point Cottage and Boathouse, River Point Rd. at the Hudson R., Hyde Park, 93000851

Roosevelt, Isaac, House, Riverview Cir., E side, Hyde Park, 93000857

Rymph, George, House, US 9 S of Jct. with S. Cross Rd., Hyde Park, 93000863
Vanderbilt Lane Historic District, Jct. of Vanderbilt Ln. and US 9, Hyde Park, 93000855
Hales House, 23 W. Market St., Hyde Park, 93000858

Oswego County

Riverside Cemetery, E. River Rd. S of Jct. with NY 57, Oswego Vicinity, 93000854

Putnam County

Indian Brook Road Historic District, Jct. of Indian Brook Rd. and US 9, Garrison, 93000853

Rockland County

DeBaun, John A., Mill, NY 59, N Side, opposite Highview Ave., Tallman, 93000852

PENNSYLVANIA

Pike County

Nearpass House (Upper Delaware Valley, New York and Pennsylvania, MPS), Cemetery Rd., Westfall Township, Mill Rift, 93000849

SOUTH CAROLINA

Sumter County

Orange Grove, Jct. of SC 43 (Black River Rd.) and SC 441, Dalzell Vicinity, 93000845

TEXAS

Harris County

Wray, Andrew Jackson and Margaret Cullinan, House, 3 Remington Ln., Houston, 93000844

[FR Doc. 93–18416 Filed 8–2–93; 8:45 am]
BILLING CODE 4310–70–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–28,460; TA–W–28,460A]

Wichita, KS and Portland, OR; Negative Determination Regarding Application for Reconsideration

By an application dated July 16, 1993, the International Association of Machinists (IAM) requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on June 18, 1993 and published in the Federal Register on July 9, 1993 (58 FR 37028).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The workers produce aircraft fuselages exclusively for the Boeing Company. The components (fuselages) are integrated into the final product (airplanes) of the Boeing Company. The findings show that Boeing does not import fuselages.

The union claims that the worker separation are the result of foreign competition especially from the European "Airbus".

The investigation files shows that the commercial market for airplanes declined in 1992 compared to 1991 as a result of the downsizing in the U.S. airline industry. The downsizing was the result of mergers and liquidations reducing the number of major carriers from 21 to 9 by mid-1992. Coupled with this reorganization were a number of large discounted airfare sales which crippled some of the weaker airline carriers.

Company officials stated that while the market is shrinking and domestic and foreign airlines are experiencing financial difficulties and placing fewer orders, nevertheless, Boeing increased its production and share of the domestic market to over 50 percent in 1992.

Other findings show that the government market for airplanes declined in 1992 compared to 1991 as a result of cuts in the military and space spending.

Further, imports of finished articles (airplanes) cannot be considered like or directly competitive with their component parts (fuselages). Only increased imports of articles that are like or directly competitive with those produced at the workers' firm (fuselages) can be considered as contributing importantly to worker separations and declines in sales or production.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 22nd day of July 1993.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 93–18476 Filed 8–2–93; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–28,528, TA–W–28,528A]

Hilti Steel Industry Division and SISCO, Inc., Tulsa, Oklahoma; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Hilti Steel Industry Division and SISCO, Incorporated, Tulsa, Oklahoma. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–28,528 and TA–W–28,528A; Hilti Steel Industry Division and SISCO, Incorporated, Tulsa, Oklahoma (July 21, 1993).

Signed at Washington, DC, this 22nd day of July, 1993.

Violet Thompson,

Deputy Director, Office of Adjustment Assistance.

[FR Doc. 93–18478 Filed 8–2–93; 8:45 am]
BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such

request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 13, 1993.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 13, 1993.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 19th day of July, 1993.

Violet Thompson,

Deputy Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
I.C. Rainbows (wkrs)	Homestead, PA	07/19/93	07/07/93	28,863	Ladies' sweaters.
CompaAdd Computer Corp. (wkrs)	Houston, TX	07/19/93	07/01/93	28,864	Retail sales.
Commonwealth Tobacco Co. (wkrs)	Kenbridge, VA	07/19/93	07/01/93	28,865	Processed tobacco.
Eastern Stainless Steel (USWA)	Baltimore, MD	07/19/93	07/01/93	28,866	Stainless steel plates, sheets, slabs.
Frenchtown Ceramics	Frenchtown, NJ	07/19/93	07/06/93	28,867	Industrial ceramics.
G.E.C. Marconi Electronic Systems (IAM)	San Marcos, CA	07/19/93	07/06/93	28,868	Radar systems.
Gould, Inc. (IBEW)	Newburyport, MA	07/19/93	06/30/93	28,869	Electric fuses.
Great Land Directional Drilling (Co.)	Houston, TX	07/19/93	07/09/93	28,870	Oil equipment rental and services.
Hondo Oil & Gas Co. (Co.)	Calabasa, CA	07/19/93	07/09/93	28,871	Crude oil and natural gas.
Essex Garment Mfg. Corp. (ILGWU)	Newark, NJ	07/19/93	07/06/93	28,872	Ladies' undergarments.
Ivory International, Inc. (wkrs)	Miami, FL	07/19/93	07/02/93	28,873	Knit apparel.
Hecla Mining Co. (wkrs)	Coeur D'Alene, ID	07/19/93	07/07/93	28,874	Corporate office.
Seatt Corp. (wkrs)	El Paso, TX	07/19/93	06/18/93	28,875	Smoke detectors, alarms etc.
Sheldahl Co. (ACTWU)	Northfield, MN	07/19/93	06/30/93	28,876	Electronic circuitry.
Aluminum Co. of America (USWA)	Rockdale, TX	07/19/93	07/06/93	28,877	Primary aluminum.
X'Int Diskette Products, Inc. (Co.)	Allen, TX	07/19/93	07/07/93	28,878	Computer disks.
Ingersoll-Dresser Pump Co. (USWA)	Allentown, PA	07/19/93	07/01/93	28,879	Centrifugal pumps.
Elkay Mining Co. (UMWA)	Lyburn, WV	07/19/93	07/06/93	28,880	Metallurgical coal.
Rogge Forest Products (wkrs)	Bandon, OR	07/19/93	07/07/93	28,881	Softwood dimensional lumber.

[FR Doc. 93–18477 Filed 8–2–93; 8:45 am]

BILLING CODE 4510–30–M

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Clinchfield Coal Company

[Docket No. M–93–157–C]

Clinchfield Coal Company, P.O. Box 4000, Lebanon, Virginia 24266 has filed a petition to modify the application of 30 CFR 75.1710–1(a) to its McClure No. 2 Mine (I.D. No. 44–04946) located in Dickenson County, Virginia. The petitioner requests that the standard be modified so that the use of canopies is not required on the Joy 21SC center-driven shuttle cars in heights less than 48 inches, and the Joy 10SC–22 end-driven shuttle cars in heights less than 54 inches. The petitioner asserts that the use of canopies in less mining heights would result in a diminution of safety to the operator.

2. Mountain Coal Company

[Docket No. M–93–158–C]

Mountain Coal Company, P.O. Box 591, Somerset, Colorado 81434 has filed a petition to modify the application of 30 CFR 75.350, previously 30 CFR 75.326, to its West Elk Mine (I.D. No. 05–03672) located in Gunnison County, Colorado. The petitioner requests that condition number 16 of docket number M–90–061–C be deleted from the Decision and Order. Condition number 16 required sections to be designed by entry location, by number of entries, or by pressure differential to enhance the protection of the intake escapeway from contamination by fires in adjacent entries. It also required that such design be approved in the Ventilation System and Methane and Dust Control Plan for the mine.

3. Nowacki Coal Company

[Docket No. M–93–159–C]

Nowacki Coal Company, Box 1308, R.D. #1, Tamaqua, Pennsylvania 18252 has filed a petition to modify the application of 30 CFR 75.332(b)(1) and (b)(2) (working sections and working places) to its Nowacki Coal Company Slope (I.D. No. 36–07592) located in Schuylkill County, Pennsylvania. The petitioner proposes to use air passing through inaccessible abandoned workings and additional areas by mixing with the air in the intake haulage slope to ventilate the only active working section, to ensure air quality by sampling intake air during preshift and on-shift examinations, and to suspend mine production when air quality fails to meet specified criteria. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

4. Nowacki Coal Company

[Docket No. M–93–160–C]

Nowacki Coal Company, Box 1308, R.D. #1, Tamaqua, Pennsylvania 18252 has filed a petition to modify the application of 30 CFR 75.335 (construction of seals) to its Nowacki Coal Company Slope (I.D. No. 36–07592) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the standard to permit alternative methods of construction using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criteria in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs. The petitioner asserts that the

proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

5. Nowacki Coal Company

[Docket No. M–93–161–C]

Nowacki Coal Company, Box 1308, R.D. #1, Tamaqua, Pennsylvania 18252 has filed a petition to modify the application of 30 CFR 75.360 (preshift examination) to its Nowacki Coal Company Slope (I.D. No. 36–07592) located in Schuylkill County, Pennsylvania. The petitioner proposes to examine each seal for physical damage from the slope gunboat during the preshift examination after an air quantity reading is taken in by the intake portal and to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section. The petitioner proposes to physically examine the entire length of the slope once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

6. Nowacki Coal Company

[Docket No. M–93–162–C]

Nowacki Coal Company, Box 1308, R.D. #1, Tamaqua, Pennsylvania 18252 has filed a petition to modify the application of 30 CFR 75.364(b)(1), (4), and (5) (weekly examination) to its Nowacki Coal Company Slope (I.D. No. 36–07592) located in Schuylkill County, Pennsylvania. Due to hazardous conditions and roof falls, certain areas of the intake air course cannot be traveled safely. The petitioner proposes to examine the intake haulage slope and primary escapeway from the gunboat/slope car with an alternative air quality evaluation at the section's intake level, and to travel and thoroughly examine these areas for hazardous conditions once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

7. Nowacki Coal Company

[Docket No. M–93–163–C]

Nowacki Coal Company, Box 1308, R.D. #1, Tamaqua, Pennsylvania 18252 has filed a petition to modify the application of 30 CFR 75.1100–2(a)(2) (quantity and location of firefighting equipment) to its Nowacki Coal Company Slope (I.D. No. 36–07592) located in Schuylkill County, Pennsylvania. The petitioner proposes to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

8. Nowacki Coal Company

[Docket No. M–93–164–C]

Nowacki Coal Company, Box 1308, R.D. #1, Tamaqua, Pennsylvania 18252 has filed a petition to modify the application of 30 CFR 75.1200(d) and (i) (mine map) to its Nowacki Coal Company Slope (I.D. No. 36–07592) located in Schuylkill County, Pennsylvania. The petitioner proposes to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

9. Nowacki Coal Company

[Docket No. M–93–165–C]

Nowacki Coal Company, Box 1308, R.D. #1, Tamaqua, Pennsylvania 18252 has filed a petition to modify the application of 30 CFR 75.1202–1(a) (temporary notations, revisions, and supplements) to its Nowacki Coal Company Slope (I.D. No. 36–07592) located in Schuylkill County, Pennsylvania. The petitioner proposes to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

10. TITO Coal

[Docket No. M–93–166–C]

TITO Coal, RD 1, Box 67A2, Williamstown, Pennsylvania 17098 has filed a petition to modify the application of 30 CFR 75.335 (construction of seals) to its Whites Vein Slope (I.D. No. 36–06815) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the standard to permit alternative methods of construction using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criteria in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

11. TITO Coal

[Docket No. M–93–167–C]

TITO Coal, RD 1, Box 67A2, Williamstown, Pennsylvania 17098 has filed a petition to modify the application of 30 CFR 75.340 (underground electrical installations) to its Whites Vein Slope (I.D. No. 36–06815) located in Schuylkill County, Pennsylvania. The petitioner proposes to charge batteries on the mine's locomotive when all miners are out of the mine and to have intake air used to ventilate the charging station to continue through the normal route to the last open crosscut and into the monkey airway (return). The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

12. TITO Coal

[Docket No. M–93–168–C]

TITO Coal, RD 1, Box 67A2, Williamstown, Pennsylvania 17098 has filed a petition to modify the application of 30 CFR 75.1002–1 (location of other electric equipment; requirements for permissibility) to its Whites Vein Slope (I.D. No. 36–06815) located in Schuylkill County, Pennsylvania. The petitioner proposes to use nonpermissible electric equipment within 150 feet of the pillar line and to suspend equipment operation anytime the methane concentration at the equipment reaches 0.5 percent, either during operation or a preshift examination. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

13. TITO Coal

[Docket No. M–93–169–C]

TITO Coal, RD 1, Box 67A2, Williamstown, Pennsylvania 17098 has filed a petition to modify the application of 30 CFR 75.1100–2(a)(2) (quantity and location of firefighting equipment) to its Whites Vein Slope (I.D. No. 36–06815) located in Schuylkill County, Pennsylvania. The petitioner proposes to use only portable

fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

14. TITO Coal

[Docket No. M–93–170–C]

TITO Coal, RD 1, Box 67A2, Williamstown, Pennsylvania 17098 has filed a petition to modify the application of 30 CFR 75.1200(d) and (i) (mine map) to its Whites Vein Slope (I.D. No. 36–06815) located in Schuylkill County, Pennsylvania. The petitioner proposes to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

15. TITO Coal

[Docket No. M–93–171–C]

TITO Coal, RD 1, Box 67A2, Williamstown, Pennsylvania 17098 has filed a petition to modify the application of 30 CFR 75.1202–1(a) (temporary notations, revisions, and supplements) to its Whites Vein Slope (I.D. No. 36–06815) located in Schuylkill County, Pennsylvania. The petitioner proposes to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

16. Little Buck Coal Company

[Docket No. M–93–172–C]

Little Buck Coal Company, Box 395, RD #4, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.332(b)(1) and (b)(2) (working sections and working places) to its No. 2 Slope (I.D. No. 36–08299) located in Schuylkill County, Pennsylvania. The petitioner proposes to use air passing through inaccessible abandoned workings and additional areas by mixing with the air in the intake haulage slope to ventilate the only active working section, to ensure air quality by sampling intake air during preshift and on-shift examinations, and to suspend mine production when air quality fails to meet specified criteria. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

17. Little Buck Coal Company

[Docket No. M–93–173–C]

Little Buck Coal Company, Box 395, RD #4, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.335 (construction of seals) to its No. 2 Slope (I.D. No. 36–08299) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the standard to permit alternative methods of construction using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criteria in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

18. Little Buck Coal Company

[Docket No. M–93–174–C]

Little Buck Coal Company, Box 395, RD #4, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.360 (preshift examination) to its No. 2 Slope (I.D. No. 36–08299) located in Schuylkill County, Pennsylvania. The petitioner proposes to examine each seal for physical damage from the slope gunboat during the preshift examination after an air quantity reading is taken inby the intake portal and to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section. The petitioner proposes to physically examine the entire length of the slope once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

19. Little Buck Coal Company

[Docket No. M–93–175–C]

Little Buck Coal Company, Box 395, RD #4, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.364(b)(1), (4), and (5) (weekly examination) to its No. 2 Slope (I.D. No. 36–08299) located in Schuylkill County, Pennsylvania. Due to hazardous conditions and roof falls, certain areas of the intake air course cannot be traveled safely. The petitioner proposes to examine the intake haulage slope and primary escapeway from the gunboat/slope car with an alternative air quality evaluation at the section's intake level, and to travel and thoroughly examine these areas for hazardous conditions once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

20. Little Buck Coal Company

[Docket No. M–93–176–C]

Little Buck Coal Company, Box 395, RD #4, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1100–2(a)(2) (quantity and location of firefighting equipment) to its No. 2 Slope (I.D. No. 36–08299) located in Schuylkill County, Pennsylvania. The petitioner proposes to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

21. Little Buck Coal Company

[Docket No. M–93–177–C]

Little Buck Coal Company, Box 395, RD #4, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1200(d) and (i) (mine map) to its No. 2 Slope (I.D. No. 36–08299) located in Schuylkill County, Pennsylvania. The petitioner proposes to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

22. Little Buck Coal Company

[Docket No. M–93–178–C]

Little Buck Coal Company, Box 395, RD #4, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1202–1(a) (temporary notations, revisions, and

supplements) to its No. 2 Slope (I.D. No. 36–08299) located in Schuylkill County, Pennsylvania. The petitioner proposes to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

23. Primrose Coal Company

[Docket No. M–93–179–C]

Primrose Coal Company, 214 Vaux Avenue, Tremont, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.332(b)(1) and (b)(2) (working sections and working places) to its Primrose Slope (I.D. No. 36–04629) located in Schuylkill County, Pennsylvania. The petitioner proposes to use air passing through inaccessible abandoned workings and additional areas by mixing with the air in the intake haulage slope to ventilate the only active working section, to ensure air quality by sampling intake air during preshift and on-shift examinations, and to suspend mine production when air quality fails to meet specified criteria. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

24. Primrose Coal Company

[Docket No. M–93–180–C]

Primrose Coal Company, 214 Vaux Avenue, Tremont, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.335 (construction of seals) to its Primrose Slope (I.D. No. 36–04629) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the standard to permit alternative methods of construction using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criteria in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

25. Primrose Coal Company

[Docket No. M–93–181–C]

Primrose Coal Company, 214 Vaux Avenue, Tremont, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.340 (underground electrical installations) to its Primrose Slope (I.D. No. 36–04629) located in Schuylkill County, Pennsylvania. The petitioner proposes to charge batteries on the mine's locomotive when all miners are out of the mine and to have intake air used to ventilate the charging station to continue through the normal route to the last open crosscut and into the monkey airway (return). The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

26. Primrose Coal Company

[Docket No. M–93–182–C]

Primrose Coal Company, 214 Vaux Avenue, Tremont, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.360 (preshift examination) to its Primrose Slope (I.D. No. 36–04629) located in Schuylkill County, Pennsylvania. The petitioner proposes to examine each seal for physical damage from the slope gunboat during the preshift examination after an air quantity reading is taken inby the intake portal and to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section. The petitioner proposes to physically examine the entire length of the slope once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

27. Primrose Coal Company

[Docket No. M–93–183–C]

Primrose Coal Company, 214 Vaux Avenue, Tremont, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.364(b)(1), (4), and (5) (weekly examination) to its Primrose Slope (I.D. No. 36–04629) located in Schuylkill County, Pennsylvania. Due to hazardous conditions and roof falls, certain areas of the intake air course cannot be traveled safely. The petitioner proposes to examine the intake haulage slope and primary escapeway from the gunboat/slope car with an alternative air quality evaluation at the section's intake level, and to travel and thoroughly examine these areas for hazardous conditions once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

28. Primrose Coal Company

[Docket No. M–93–184–C]

Primrose Coal Company, 214 Vaux Avenue, Tremont, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.1002–1 (location of other electric equipment; requirements for permissibility) to its Primrose Slope (I.D. No. 36–04629) located in Schuylkill County, Pennsylvania. The petitioner proposes to use nonpermissible electric equipment within 150 feet of the pillar line and to suspend equipment operation anytime the methane concentration at the equipment reaches 0.5 percent, either during operation or a preshift examination. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

29. Primrose Coal Company

[Docket No. M–93–185–C]

Primrose Coal Company, 214 Vaux Avenue, Tremont, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.1100–2(a)(2) (quantity and location of firefighting equipment) to its Primrose Slope (I.D. No. 36–04629) located in Schuylkill County, Pennsylvania. The petitioner proposes to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

30. Primrose Coal Company

[Docket No. M–93–186–C]

Primrose Coal Company, 214 Vaux Avenue, Tremont, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.1200(d) and (i) (mine map) to its Primrose Slope (I.D. No. 36–04629) located in Schuylkill County, Pennsylvania. The petitioner proposes to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

31. Primrose Coal Company

[Docket No. M–93–187–C]

Primrose Coal Company, 214 Vaux Avenue, Tremont, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.1202–1(a) (temporary notations, revisions, and supplements) to its Primrose Slope (I.D. No. 36–04629) located in Schuylkill County, Pennsylvania. The petitioner proposes to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

32. Brookside Coal Company

[Docket No. M–93–188–C]

Brookside Coal Company, Church Street, Spring Glen, Pennsylvania 17978 has filed a petition to modify the application of 30 CFR 75.332(b)(1) and (b)(2) (working sections and working places) to its 4 Ft Slope (I.D. No. 36–08218) located in Schuylkill County, Pennsylvania. The petitioner proposes to use air passing through inaccessible abandoned workings and additional areas by mixing with the air in the intake haulage slope to ventilate the only active working section, to ensure air quality by sampling intake air during preshift and on-shift examinations, and to suspend mine production when air quality fails to meet specified criteria. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

33. Brookside Coal Company

[Docket No. M–93–189–C]

Brookside Coal Company, Church Street, Spring Glen, Pennsylvania 17978 has filed a petition to modify the application of 30 CFR 75.335 (construction of seals) to its 4 Ft Slope (I.D. No. 36–08218) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the standard to permit alternative methods of construction using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criteria in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

34. Brookside Coal Company

[Docket No. M–93–190–C]

Brookside Coal Company, Church Street, Spring Glen, Pennsylvania 17978 has filed a petition to modify the application of 30 CFR 75.340 (underground electrical installations) to its 4 Ft Slope (I.D. No. 36–08218) located in Schuylkill County, Pennsylvania. The petitioner proposes to charge batteries on the mine's locomotive when all miners are out of the mine and to have intake air used to ventilate the charging station to continue through the normal route to the last open crosscut and into the monkey airway (return). The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

35. Brookside Coal Company

[Docket No. M–93–191–C]

Brookside Coal Company, Church Street, Spring Glen, Pennsylvania 17978 has filed a petition to modify the application of 30 CFR 75.360 (preshift examination) to its 4 Ft Slope (I.D. No. 36–08218) located in Schuylkill County, Pennsylvania. The petitioner proposes to examine each seal for physical damage from the slope gunboat during the preshift examination after an air quantity reading is taken in by the intake portal and to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section. The petitioner proposes to physically examine the entire length of the slope once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

36. Brookside Coal Company

[Docket No. M–93–192–C]

Brookside Coal Company, Church Street, Spring Glen, Pennsylvania 17978 has filed a petition to modify the application of 30 CFR 75.364(b)(1), (4), and (5) (weekly examination) to its 4 Ft Slope (I.D. No. 36–08218) located in Schuylkill County, Pennsylvania. Due to hazardous conditions and roof falls, certain areas of the intake air course cannot be traveled safely. The petitioner proposes to examine the intake haulage slope and primary escapeway from the gunboat/slope car with an alternative air quality evaluation at the section's intake level, and to travel and thoroughly examine these areas for hazardous conditions once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

37. Brookside Coal Company

[Docket No. M–93–193–C]

Brookside Coal Company, Church Street, Spring Glen, Pennsylvania 17978 has filed a petition to modify the application of 30 CFR 75.1002–1(a) (location of other electric equipment; requirements for permissibility) to its 4 Ft Slope (I.D. No. 36–08218) located in Schuylkill County, Pennsylvania. The petitioner proposes to use nonpermissible electric equipment within 150 feet of the pillar line and to suspend equipment operation anytime the methane concentration at the equipment reaches 0.5 percent, either during operation or a preshift examination. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

38. Brookside Coal Company

[Docket No. M–93–194–C]

Brookside Coal Company, Church Street, Spring Glen, Pennsylvania 17978 has filed a petition to modify the application of 30 CFR 75.1100–2(a)(2) (quantity and location of firefighting equipment) to its 4 Ft Slope (I.D. No. 36–08218) located in Schuylkill County, Pennsylvania. The petitioner proposes to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

39. Brookside Coal Company

[Docket No. M–93–195–C]

Brookside Coal Company, Church Street, Spring Glen, Pennsylvania 17978 has filed a petition to modify the application of 30 CFR 75.1200(d) and (i) (mine map) to its 4 Ft Slope (I.D. No. 36–08218) located in Schuylkill County, Pennsylvania. The petitioner proposes to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels. The petitioner asserts that the proposed alternate method would provide at least

the same measure of protection as would the mandatory standard.

40. Brookside Coal Company

[Docket No. M–93–196–C]

Brookside Coal Company, Church Street, Spring Glen, Pennsylvania 17978 has filed a petition to modify the application of 30 CFR 75.1202–1(a) (temporary notations, revisions, and supplements) to its 4 Ft Slope (I.D. No. 36–08218) located in Schuylkill County, Pennsylvania. The petitioner proposes to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before [September 2, 1993.] Copies of these petitions are available for inspection at that address.

Dated: July 26, 1993.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 93–18484 Filed 8–2–93; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (93–063)]

NASA Advisory Council (NAC) Task Force on National Facilities; Aeronautics R&D Facilities Task Group; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NAC Task Force on National Facilities, Aeronautics R&D Facilities Task Group.

DATES: August 18, 1993, 8:30 a.m. to 4:30 p.m.; and August 19, 1993, 8:30 a.m. to 4:30 p.m.

ADDRESSES: Figge Corporation, Crystal Square 3, suite 703, 1735 Jefferson Davis Highway, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne McKinney, National Aeronautics and Space Administration, Langley Research Center, Hampton, VA 23681 (804/864–8686).

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Facility Working Group Reports
—Facility Study Office Report
—Near Term Activities

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Dated: July 28, 1993.

Timothy M. Sullivan,

Advisory Committee Management Officer.

[FR Doc. 93–18479 Filed 8–2–93; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a revision to a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Revision 3 to Regulatory Guide 1.9, "Selection, Design, Qualification, and Testing of Emergency Diesel Generator Units Used as Class 1E Onsite Electric Power Systems at Nuclear Power Plants," provides guidance acceptable to the NRC staff for complying with the Commission's requirements that diesel generator units intended for use as onsite emergency power sources in nuclear power plants be selected with sufficient capacity, be qualified, and have the necessary reliability and availability for station blackout and design basis accidents.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory Guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082, telephone (202) 512–2249 or (202) 512–2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 6th day of July 1993.

For the Nuclear Regulatory Commission.

Eric S. Beckjord,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 93–18439 Filed 8–2–93; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Notice of Request for Extension of OPM Form 1495 Submitted to OMB for Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a proposed unchanged extension to a form which collects information from the public. OPM Form 1495, Financial Eligibility Statement for Student and Summer Aid Programs, is completed by students applying for Federal positions in the Stay-in-School, Summer Aid and Federal Junior Fellowship Programs. Federal agencies use the information to determine if applications meet the financial needs criteria required by these programs. There are 10,000 individuals who respond annually for a total public burden of 2,500 hours. For copies of this proposal, call C. Ronald Trueworthy on (703) 908–8550.

DATES: Comments on this proposal should be received within thirty days from the date of this publication.

ADDRESSES: Send or deliver comments to:

C. Ronald Trueworthy, Agency Clearance Officer, U.S. Office of Personnel Management, CHP 500, 1900 E Street, NW., Washington, DC 20415
and
Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3002, New Executive Office Building, Washington, DC 20503

FOR FURTHER INFORMATION CONTACT: Paul Robinson, (202) 606–0870.

U.S. Office of Personnel Management.

Patricia W. Lattimore,

Acting Deputy Director.

[FR Doc. 93–18388 Filed 8–2–93; 8:45 am]

BILLING CODE 6325–01–M

Privacy Act of 1974: Routine Uses

AGENCY: Office of Personnel Management (OPM).

ACTION: Publication of notice of new routine uses for OPM system of records OPM/CENTRAL–1, Civil Service Retirement and Insurance Records.

SUMMARY: OPM proposes to add two new routine uses to its system of records entitled OPM/CENTRAL–1 to enable it to participate in the governmentwide Federal Salary Offset program.

DATES: The proposed new routine uses will become effective without further notice on August 1, 1993, unless comments dictate otherwise.

ADDRESSES: Send comments to Mary M. Sugar, Deputy Assistant Director for Retirement and Insurance Policy; Retirement and Insurance Group; Office of Personnel Management; P.O. Box 57; Washington, DC 20044; or deliver to OPM, Room 4351, 1900 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Joy Anderson, (202) 606–0299.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management has decided to participate in separate debt collection agreements with the Department of Defense and the U.S. Postal Service. Under these agreements, the Office of Personnel Management would furnish data on individuals who are delinquent in debts owed to the Civil Service Retirement and Disability Fund to central facilities at the Department of Defense and the U.S. Postal Service. These facilities would match the data against active and retired civilian and military employee files of the Office of Personnel Management, the Department of Defense, other Executive, Legislative and Judicial agencies and the U.S. Postal Service. The Debt Collection Act of 1982 provides authority to offset salary payments to current and former Federal employees who are delinquent in debts owed to the Federal government. Government regulations issued under that Act provide for strict due process procedures that must be followed prior to making any offset against current payments. The Government must certify that a debt cannot currently be collected under the salary offset provisions of 5 U.S.C. 5514(a)(1) prior to referring past-due legally enforceable debts to the IRS for offset against Federal income tax refunds of persons owing debts to OPM.

Office of Personnel Management.

Patricia W. Lattimore,

Acting Deputy Director.

OPM/Central–1

SYSTEM NAME:

OPM/CENTRAL–1, Civil Service Retirement and Insurance Records.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

* * * * *

The following two routine uses are to be added:

pp. To the Defense Manpower Data Center, Department of Defense, and the U.S. Postal Service to conduct computer matching programs for the purpose of identifying and locating individuals who are receiving Federal salaries or benefit payments and are delinquent in their repayment of debts owed to the U.S. Government under certain programs administered by the Office of Personnel Management in order to collect the debts under the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365) by voluntary repayment, or by administrative or salary offset procedures.

qq. To any other Federal agency for the purpose of effecting administrative or salary offset procedures against a person employed by that agency or receiving or eligible to receive some benefit payments from the agency when the Office of Personnel Management as a creditor has a claim against that person.

[FR Doc. 93–18386 Filed 8–2–93; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–32679; International Series No. 565; File No. SR–CBOE–93–05]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Listing of Reduced-Value Long-Term Index Options on the Financial Times-Stock Exchange 100 Index

July 27, 1993.

I. Introduction

On January 21, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Exchange Rule 24.9, "Terms of Index Option Contracts," to allow the Exchange to list and trade cash-settled, European-style long-term index option series ("LEAPS")[3] on a reduced-value Financial Times-Stock Exchange 100 Index ("FT–SE 100" or "Index").[4]

The proposed rule change was published for comment in Securities Exchange Act Release No. 32089 (April 1, 1993), 58 FR 18289. No comments were received on the proposed rule change.

II. Description of Proposal

A. General

The Exchange is proposing to list reduced-value FT–SE 100 LEAPS. In addition, the Exchange is also proposing certain clarifying changes that amend Exchange Rule 24.1(g), "Current and Closing Index Value," to provide that the current index value of a reduced-value LEAP is one-tenth (1/10th) of the current index value of the related index option, and to amend Exchange Rule 24.9, Interpretation and Policy .08, to provide that the current index value of the FT–SE 100 Index options shall be

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 248.19b–4 (1992).

[3] LEAPS is an acronym for Long-Term Equity Anticipation Securities.

[4] On June 8, 1993, the Exchange submitted a letter describing, among other things, the CBOE Rules applicable to the listing of expiration months for the proposed reduced-value Index LEAPS, strike price intervals, the calculation of the settlement value for the proposed reduced-value Index LEAPS, and the surveillance procedures which the Exchange plans to use to conduct surveillance of trading relating to the Index. *See* Letter from Kenneth M. Rosenzweig, Schiff Hardin & Waite, to Yvonne Fraticelli, Staff Attorney, Options Branch, Division of Market Regulation ("Division"), Commission, dated June 7, 1993 ("CBOE Letter").

one-tenth (1/10th) the value of the underlying index reported by the reporting authority.[5]

The proposed options will be cash-settled reduced-value European-style[6] LEAPS based on the Index. As noted above, the current index value of the proposed reduced-value FT–SE 100 LEAPS will be one-tenth of the current index value of the related FT–SE 100 option. Because the current index value of the full-value FT–SE 100 options traded on the CBOE is one-tenth of the value of the Index as reported by the reporting authority, the current index value for reduced-value Index LEAPS will be 1/100th of the value of the Index as reported.

B. Composition of the Index

The FT–SE 100 is an internationally recognized, capitalization-weighted stock index based on the prices of 100 of the most highly capitalized British stocks traded on the London Stock Exchange ("LSE"). All of the Index's component stocks are traded on the LSE by means of the LSE's Stock Exchange Automated Quotation System ("SEAQ"), an electronic information and communications system which provides competing market maker prices for securities traded over the system. SEAQ's quotations of the stocks traded on the LSE are available to all exchanges listing those stocks. Currently, the London International Financial Futures and Options Exchange ("LIFFE") trades futures and options on the Index, and the American Stock Exchange ("Amex"), the CBOE, the Midwest Stock Exchange ("MSE"), the New York Stock Exchange ("NYSE"), and the Pacific Stock Exchange ("PSE") are authorized to trade warrants on the Index.[7] In addition, the Commission approved the listing of options on a reduced-value FT–SE 100 Index on the CBOE.[8]

C. Index Construction and Calculation

The FT–SE 100 was created at the end of 1983 by the LSE in conjunction with the Financial Times and a committee of U.K. financial institutions. To qualify for inclusion in the Index, a company must satisfy the following conditions: (1) It must not be regarded as an overseas resident company for U.K. tax purposes; (2) it must not be a subsidiary of another Index constituent; (3) it must pay a dividend (except for existing constituents); and (4) at least 25% of its shares must be publicly held. The Index is calculated by taking the summation of the multiple of the market price for each stock in the Index times the number of shares of that stock outstanding. This sum total is then divided by another number, termed the "divisor," to produce the Index value.[9]

The Index is updated each minute the LSE is open for trading by taking the mid-point between the best bid and best offer prices currently available for each stock. The Index and the prices of the constituent stocks are disseminated by the LSE over SEAQ both in Europe and the U.S. The normal SEAQ trading hours are 9:45 a.m. to 3:30 p.m. London time (3:45 a.m. to 9:30 a.m. Chicago time).

The Index is reviewed on a quarterly basis. Newly eligible stocks and companies which have risen or fallen significantly (according to pre-defined Index criteria) are appropriately inserted or deleted. If a new issue has more than 1.5% of the Index's total market capitalization, it enters the Index at the start of the next business day.

C. Exercise

The exercise settlement values for the reduced-value Index LEAPS will be calculated in accordance with Exchange Rule 24.9(g)(5), "Other Methods of Determining Exercise Settlement Value." Under Exchange Rule 24.9(a)(5), the CBOE determines the current index value of the Index at expiration by dividing by ten the value of the Exchange Delivery Settlement Price ("EDSP") used to settle the Index options traded on the LIFFE that expire on the same date.[10] Exchange Rule 24.9(g)(5) states that the EDSP is determined on the last date preceding expiration for which Index values are published, and that the last day of trading for Index options traded on the CBOE shall be the trading day on the CBOE immediately preceding the day on which the EDSP used to calculate the current index value at the expiration of such options is determined. Under proposed Rule 24.1(g), the reduced-value Index LEAPS will be 1/10th of the current index value of the related Index option. As noted above, the current value of a FT–SE Index option is 1/10th the value of the underlying index. Accordingly, the current and closing value for the reduced-value FT–SE 100 LEAPS will be 1/100th of the reported index value and such values will be rounded to the nearest one-hundredth.[11]

D. Contract Specifications

Under CBOE Rule 24.9(b)(1)(A), the proposed Index LEAPS will expire from 12 to 36 months from listing, and there may be up to six expiration months. Other than the reduced value, all other specifications and calculations for the reduced-value Index LEAPS will remain the same. For example, the CBOE may list reduced-value LEAPS at six-month intervals and new strike prices may either be near or bracketing the current reduced index value.[12] Additional series may be added when the value of the underlying index increases or decreases by ten to fifteen percent. Under CBOE Rule 24.9, Interpretation .01(a), the strike price interval for the reduced-value Index LEAPS will be no less than $2.50.

E. Exchange Rules Applicable to Stock Index Options

The reduced-value Index options will trade independently of and in addition to the full-size Index options traded on the CBOE and will be subject to the same rules that presently govern the trading of CBOE index options, including sales practice rules, margin requirements, and position and exercise limits. CBOE Rule 24.9(b)(1)(A) provides that strike price interval, bid/ask differential and continuity rules shall not apply to index LEAPS until the time to expiration is less than 12 months.

Under CBOE Rule 24.4(e), positions in the reduced-value Index options will be aggregated with positions in full-value Index options, with ten reduced-value

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[5] Exchange Rule 24.1(h), "Reporting Authority," provides that the "term 'reporting authority' in respect of a particular index means the institution or reporting service designated by the Exchange as the official source for calculating and disseminating the current value of the index."

[6] A European-style option can be exercised only during a limited period of time before the option expires.

[7] *See* Securities Exchange Act Release Nos. 27769 (March 6, 1990), 55 FR 9380 (order approving File No. SR–Amex–90–03); 28634 (November 20, 1990), 55 FR 49729 (order approving File No. SR–MSE–90–12); 28399 (August 30, 1990), 55 FR 37390 (order approving File No. SR–NYSE–90–37); and 28106 (June 12, 1990), 55 FR 24955 (order approving File No. SR–PSE–90–15).

[8] *See* Securities Exchange Act Release No. 29722 (September 23, 1991), 56 FR 49807 (order approving File No. SR–CBOE–91–07) ("Reduced-Value FT–SE 100 Approval Order").

[9] The divisor of the Index represents the total capitalization of the Index on its base date of December 30, 1983. The divisor is adjusted to reflect changes in market capitalization, such as stock splits and stock dividends, in order to maintain the continuity of the Index.

[10] Exchange Rule 24.9, Interpretation and Policy .04 explains that the EDSP used to settle Index options traded on the LIFFE is determined currently by calculating the average (excluding the three highest and three lowest) of the Index values for each minute in the interval from 10:10 a.m. through 10:30 a.m. (London time) on the date on which the EDSP is determined. Interpretation and Policy .04 also states that if the LIFFE changes the method it uses to determine the EDSP, the CBOE will use the modified EDSP to determine the current index value at expiration for Index options.

[11] *See* CBOE Letter, *supra* note 4.

[12] *See* CBOE Rule 24.9(b)(2)(B).

contracts equal to one full-size Index option contract for purposes of aggregating the positions. The position limit for FT-SE 100 Index options is 25,000 contracts on each side of the market, provided that no more than 15,000 of the contracts are in series in the nearest expiration month.[13]

F. Surveillance Agreements

The Exchange will apply its existing index options surveillance procedures to the reduced-value Index LEAPS. The CBOE has market surveillance agreements with both the former Securities Association ("TSA") in the U.K. and with the LSE.[14] Although TSA has been succeeded by the Securities and Futures Autho9rity, the CBOE's agreement with the organization remains in effect. The CBOE continues to believe that these agreements will enable the Exchange to fulfill its regulatory responsibilities regarding surveillance of trading relating to the Index.[15]

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of section 6(b)(5).[16] Specifically, the Commission believes that the reduced-value Index LEAPS will benefit U.S. investors by providing them with a valuable hedging vehicle that should reflect accurately the overall movement of the U.K. equity market and provide investors with additional means to hedge portfolios against long-term market risk at a reduced cost. The Index options also will act as a performance measure and evaluation guide for stock portfolios with exposure to the U.K. market and will provide a surrogate instrument for trading in the U.K. equities market. In addition, the reduced-value Index LEAPS will offer investors a relatively low-cost means of altering the composition of an international portfolio of stocks without incurring substantial transaction costs.

Because the FT-SE 100 is a broad-based index of actively-traded, well-capitalized stocks, the trading of reduced-value Index LEAPS on the CBOE does not raise unique regulatory concerns.[17] Accordingly, the Commission believes that trading in the reduced-value Index LEAPS will not have an adverse impact on U.S. financial markets. Because the reduced-value Index LEAPS will be trading under the CBOE's existing regulatory regime for index options, which includes position and exercise limits, position reporting requirements, margin requirements, market maker obligations, and disclosure requirements, the Commission believes that the market for reduced-value Index LEAPS should not raise new regulatory concerns.

Specifically, the Commission notes that the trading of standardized exchange-traded options occurs in an environment that is designed to ensure, among other things, that: (1) The special risks of options are disclosed to public customers; (2) only investors capable of evaluating and bearing the risks of options trading are engaged in such trading; and (3) special compliance procedures are applicable to options accounts. According, because the reduced-value Index LEAPS will be subject to the same regulatory regime as the other standardized options currently traded on the CBOE, the Commission believes that adequate safeguards are in place to ensure the protection of investors in reduced-value Index LEAPS.

Further, the Commission believes, as it found in the Reduced-Value FT-SE 100 Approval Order, that the Memorandum between the CBOE and the former TSA (which is recognized by the successor organization, the Securities and Futures Authority)[18] is adequate to provide an oversight framework regarding potential manipulation or other trading abuses between the markets with respect to the trading of the reduced-value FT-SE 100 LEAPS and is sufficient to detect as well as deter manipulation.

The Commission believes that the proposal to amend CBOE Rules 24.1(g) and 24.9, Interpretation and Policy .08, to indicate that the current index value of a reduced-value LEAP is 1/10th of the current index value of the related index option should help to clarify the CBOE's rules by specifying the value of reduced-value index options in relation to full-value index options, which in the case of FT-SE 100 Index options is 1/10th the value of the reported Index value.

Finally, the Commission believes that it is reasonable for the CBOE to delete Exchange Rule 24.9(b)(2)[19] because the CBOE's proposal includes the definition of reduced-value LEAPS in Exchange Rule 24.1(g), and because Exchange Rule 24.9, Interpretation and Policy .01(a) states that the strike price interval for reduced-value LEAPS will be no less than $2.50. Because Exchange Rule 24.9(b)(2)(B) repeats other provisions of the CBOE's rules, the Commission believes that the deletion of CBOE Rule 24.9(b)(2)(B) should clarify the CBOE's rules by eliminating a redundant provision.

It is therefore Ordered, pursuant to section 19(b)(2) of the Act[20] that the proposed rule change (SR-CBOE-93-05) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-18410 Filed 8-2-93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-32681; File No. SR-OCC-92-24]

Self-Regulatory Organizations; The Options Clearing Corp. Order Approving a Proposed Rule Change To Expand the Cross-Margin Program Between The Options Clearing Corp. and the Board of Trade Clearing Corporation to Include Non-proprietary Positions of Market Professionals

On September 8, 1992, The Options Clearing Corporation ("OCC") filed a proposed rule change (File No. SR-OCC-92-24) with the Securities and Exchange Commission ("Commission") pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on December 7, 1992, to solicit comments from interested persons.[2] No comments

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[13] *See* Reduced-Value FT-SE 100 Approval Order, *supra* note 8.

[14] *See* Memorandum of Understanding Concerning the Provision of Information for the Purpose of Regulation and Enforcement between the CBOE and The Securities Association ("TSA") dated August 1, 1990 ("Memorandum"). The Memorandum provides for the exchange of information concerning any security traded through the facilities of the CBOE, any security underlying a derivative instrument traded through the facilities of the CBOE, and any derivative instrument based upon or including a security traded through the facilities of the CBOE. Accordingly, the Memorandum allows for the provision of information relating to the FT-SE 100 options or any securities underlying the FT-SE 100 options.

[15] *See* CBOE Letter, *supra* note 4.

[16] 15 U.S.C. 78f(b)(5) (1984).

[17] As noted above, the Commission has approved the trading of reduced-value FT-SE 100 options on the CBOE. *See* Reduced-Value FT-SE 100 Approval Order, *supra* note 8.

[18] *See* Memorandum, *supra* note 14.

[19] Exchange Rule 24.9(b)(2)(B) currently provides: "Exercise Prices. Reduced-value LEAPS will be computed at one-tenth (1/10th) the value of the underlying index. The interval between strike prices shall be no less than $2.50."

[20] 15 U.S.C. 78s(b)(2) (1982).

[21] 17 CFR 200.30-3(a)(12) (1992).

[1] 15 U.S.C. 78s(b) (1988).

[2] Securities Exchange Act Release No. 31537 (November 30, 1992), 57 FR 57854 [File No. SR-OCC-92-24].

were received. As discussed below, this order approves the proposal.

I. Description

OCC's rule change expands the cross-margining program between OCC and the Board of Trade Clearing Corporation ("BOTCC") to include non-proprietary positions carried by partipating clearing members on behalf of market professionals.[3] When OCC originally filed the OCC/BOTCC cross-margining program, it requested that the Commission approve both a proprietary and a non-proprietary cross-margining program.[4] Because BOTCC's Board of Governors had not approved at that time a non-proprietary cross-margining program, OCC amended the filing and requested that the Commission consider only the proprietary portion of the filing.[5] On October 31, 1991, the Commission approved the OCC/BOTCC proprietary cross-margining program.[6] OCC has now been advised that BOTCC's Board of Governors has approved the non-proprietary cross-margining program and that BOTCC has submitted a filing to the Commodity Futures Trading Commission ("CFTC") for formal approval.

The proposed OCC/BOTCC non-proprietary cross-margining program parallels the existing non-proprietary cross-margining program between OCC and the Chicago Mercantile Exchange ("CME"), and the Amended and Restated Cross-Margining Agreement between OCC and BOTCC ("OCC/BOTCC XM Agreement") is substantially similar to the Amend and Restated Cross-Margining Agreement between OCC and CME ("OCC/CME XM Agreement").[7] The differences between the two programs and agreements are set forth below.

First, the List of Eligible Contracts, which is set forth as Exhibit A to the OCC/BOTCC XM Agreement, is tailored for the OCC/BOTCC cross-margining program.[8] Second, section 3 of the OCC/BOTCC XM Agreement intentionally has been left blank because participating clearing members are not permitted to designate any cross-margin account as a cross-margin pledge account.[9] Third, the term affiliate has been defined in the OCC/BOTCC XM Agreement to conform to the definition set forth in the OCC/ICC/CME Cross-Margining Agreement.[10] The Definition in the OCC/BOTCC XM Agreement focuses on the relationship between the affiliates as opposed to the status of accounts carried by affiliates for one another.[11] Fourth, the language in section 6 of the OCC/BOTCC XM Agreement, Forms of Initial Margin and Method of Holding Initial Margin, provides that securities deposited as initial margin in the OCC/BOTCC cross-margining program shall be valued in accordance with OCC's Rule 604(d). Rule 604(d) now requires common stock deposited as margin to be valued at 50% of current market value. The language of section 6 allows the valuation rate used in OCC Rule 604(d) always to be used as the valuation rate for common stock deposited as initial margin for a cross-margin account without the need for an amendment to the OCC/BOTCC XM Agreement should the Rule 604(d) valuation rate change.[12]

II. Discussion

The Commission believes that the proposal is consistent with the purposes and requirements of section 17A of the Act.[13] Sections 17A(b)(3) (A) and (F) require that a clearing agency be structured and its rules designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of funds and securities in its custody and control or for which it is responsible.[14] Furthermore, in section 17A(a)(2)(A)(ii) Congress called for the establishment of linked or coordinated facilities for the clearance and settlement of transactions in securities, securities options, futures contracts, and options on futures and commodities.[15] For the reasons set forth below the Commission finds that OCC's proposal is consistent with these statutory directives.[16]

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[3] Under the non-proprietary cross-margining program between OCC and BOTCC, market professionals are defined as (1) any market-maker, specialist, or registered trader as defined in the OCC Rules and (2) any BOTCC member or affiliated exchange member to the extent he or it is trading for his or its own account and not for others provided that such market-marker, specialist, registered trader, BOTCC member, or affiliated exchange member actively trades for his or its own account eligible contracts cleared by each clearing organization.

[4] Securities Exchange Act Release No. 29142 (April 30, 1991), 56 FR 20034 [File No. SR–OCC–91–07] (notice of filing of proposed rule change to establish cross-margining program).

[5] Letter from James C. Yong, Deputy General Counsel, OCC to Jonathan Kallman, Esq., Assistant Director, Division of Market Regulation, Commission (August 27, 1991).

[6] Securities Exchange Act Release No. 29888 (October 31, 1991), 56 FR 56680 [File No. SR–OCC–91–07] (order approving the OCC/BOTCC proprietary cross-margining program).

[7] For a description of the OCC/CME cross-margining program and the OCC/CME XM Agreement, refer to Securities Exchange Act Release Nos. 27296 (September 26, 1989), 54 FR 41195 [File No. SR–OCC–89–01] (order approving OCC/CME proprietary cross-margining) and 29991 (November 26, 1991), 56 FR 61458 [File No. SR–OCC–90–01] (order approving OCC/CME non-proprietary, market professional cross-margining).

[8] The eligible contracts cleared through OCC are put and call options on the S & P 100 Index, S & P 500 Index, Major Market Index, New York Stock Exchange Composite Index, Financial News Composite Index, Institutional Index, and the Wilshire Small Cap Index. The eligible contracts cleared through BOTCC are futures on the Major Market Index, put and call options on the Major Market Index futures, futures on the Wilshire Small Cap Index, and options on the Wilshire Small Cap Index futures. The inclusion of options, futures, and options on the futures on the Wilshire Small Cap Index in the List of Eligible Contracts was approved by the Commission in Securities Act Release No. 31725 (January 11, 1993), 58 FR 5041 [File No. SR–OCC–92–23]. OCC has filed a proposed rule change to include certain options and futures on foreign currencies in the List of Eligible Contracts [File No. SR–OCC–92–12].

[9] Although section 3 of the OCC/CME XM Agreement, Establishment of Pledge Accounts, provides for the designation of XM accounts as XM pledge accounts, XM pledge accounts currently are not permitted in the OCC/CME XM program.

[10] Securities Exchange Act Release No. 32534 (June 28, 1993), 58 FR 36234 [File Nos. SR–OCC–92–28 and SR–ICC–92–05] (order approving the trilateral cross-margining agreement between OCC, ICC, and CME).

[11] The definition of affiliate as set forth in the original OCC/CME Amended Agreement stated that each entity must be a person whose account with the other entity would not be the account of a customer. This definition was originally adopted in the context of proprietary cross-margining and was intended to insure the appropriateness under Commission and CFTC rules and regulations of commingling funds beneficially owned by each of the pair of affiliates in a proprietary cross-margining account. However, there is no legal necessity for this definition to focus on the status of an account (i.e., proprietary or customer) carried by one affiliate for the other. Therefore, in order to eliminate confusion, the definition of affiliate is based on the relationship of the entities (i.e., control of one entity over the other or the entities being under under common control). The OCC/BOTCC XM Agreement defines affiliate, when used with respect to an OCC clearing member or BOTCC clearing member, as a person or entity that directly or indirectly controls such clearing member or that is directly or indirectly controlled by or under common control with such clearing member. Ownership of 10% or more of the common stock of the relevant entity will be deemed prima facie to give control of that entity. OCC/BOTCC XM Agreement, Section 1(a) and letter from James C. Yong, Vice President and Deputy General Counsel, OCC, to Jonathan Kallman, Associate Director, Division of Market Regulation, Commission (July 7, 1992).

[12] OCC has filed a proposed rule change with the Commission whereby OCC would be permitted to value debt and equity securities deposited as margin at 70% of their current market values rather than at 50%. Securities Exchange Act Release No. 31169 (September 17, 1992), 57 FR 43041 [File No. SR–OCC–92–13] (notice of filing of a proposed rule change).

[13] 15 U.S.C. 78q–1 (1988).

[14] 15 U.S.C. 78q–1(b)(3) (A) and (F) (1988).

[15] 15 U.S.C. 78q–1 (a)(2)(A)(ii) (1990). Congress added this section to Section 17A of the Act by enacting the Market Reform Act of 1990. Pub. L. 101–432, 104 Stat. 963 (1990). For a detailed discussion of the progress toward coordination or linkage in the national clearance and settlement system, refer to Commission, Report on Progress Toward Establishing Linked or Coordinated Facilities for Clearance and Settlement of Transactions in Securities, Options, and Futures (March 5, 1993).

[16] For a general discussion of the benefits of cross-margining, refer to Securities Exchange Act Release Nos. 27296 and 29991, supra note 7.

Since it granted approval of the first cross-margining program in 1988,[17] the Commission repeatedly has found that cross-margining programs are consistent with clearing agency responsibilities under section 17A of the Act. As the Commission has previously noted, cross-margining programs, among other things, tend to enhance clearing number and systemic liquidity both in times of normal trading and in times of stress.[18] Under routine trading, clearing members who participate in a cross-margining program have lower initial margin deposits. Reduced margin requirements help clearing members manage their cash flow by increasing available cash to be used for other purposes. In times of market stress and high volatility, lower initial margin requirements could prove crucial in maintaining the liquidity of clearing members and thus would enhance liquidity in the market as a whole. By enhancing market liquidity, cross-margining arrangements remove impediments to and help perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.[19]

In addition, the Commission consistently has indicated that by more accurately reflecting a clearing member's portfolio risk, cross-margining arrangements enhance clearing member liquidity and thereby reduce the risk that clearing members will become insolvent in times of extreme market stress. Enhancing clearing member liquidity thus promotes the safety of the entire clearance and settlement system by increasing the liquidity of individual participants and thereby decreasing the threat of a ripple effect of insolvencies caused by the demise of a major market participant.

Cross-margining also enhances the security of the clearing system because when one position is hedged [20] by another position based on the same underlying asset, any decrease in the value of one position will be offset by a corresponding increase in the value of the other position. The main difference between the previously approved OCC/BOTCC proprietary cross-margin program and the non-proprietary cross-margin program being approved in this order is that under the non-proprietary cross margin program the clearing members receive margin benefits for not only the clearing members' own positions but also for the positions of market professionals that the clearing members carry in the non-proprietary cross-margining account.

Unlike a clearing member's proprietary positions, where the clearing member controls the establishment and liquidation of the position, a non-proprietary position presents the risk that a market professional can affect the clearing member adversely by liquidating one side of the combined position. To reduce OCC's risk exposure, OCC has a series of safeguards, which have been subject to Commission review,[21] designed to reduce the risk that a clearing member poses to the system. These procedural safeguards, in conjunction with minimum capital qualifications established by OCC and BOTCC, provide a basis for approval of the proposed non-proprietary cross-margining program.[22]

The Commission believes that the interrelationships between the financial markets and the need for a system of margining which reflects the true risk of combined portfolios justifies cross-margining of futures and options positions. Because the non-proprietary cross-margining program being approved by this order both helps to further such a system of margining and is open to all OCC and BOTCC members that choose to participate, the Commission believes the non-proprietary cross-margining program is fully consistent with Section 17A of the Act and, therefore, is approving OCC's proposed rule change.

III. Conclusion

For the reasons stated above, the Commission finds that OCC's proposal is consistent with section 17A of the Act.[23]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[24] that the proposed rule change (File No. SR–OCC–92–24) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[25]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–18415 Filed 8–2–93; 8:45 am]

BILLING CODE 8010–01–M

[17] Securities Exchange Act Release No. 26153 (October 3, 1988), 53 FR 39567 (approving non-proprietary cross-margining program between OCC and ICC).

[18] E.g., Securities Exchange Act Release Nos. 30413 (February 26, 1992), 57 FR 7830 (order approving OCC/Kansas City Board of Trade Clearing Corporation cross-margining program for proprietary positions); 29991 (November 26, 1991), 56 FR 61458 (order approving expansion of OCC/CME cross-margining program to include positions held for market professionals); 29888 (October 31, 1991), 56 FR 56680 (order approving OCC/Board of Trade Clearing Corporation cross-margining program for proprietary positions); 27296 (September 26, 1989), 54 FR 41195 (order approving OCC/CME cross-margining program for proprietary positions).

[19] Shortly after the 1987 market break, then Treasury Secretary Nicholas F. Brady referred to the clearance and settlement system as the weakest link in the nation's financial system and noted that improvements to the clearance and settlement system, such as those provided by cross-margining arrangements, would "help ensure that a securities market failure does not become a credit market failure." The Market Reform Act of 1989; Joint Hearings on S. 648 before the Subcomm. on Securities and the Senate Comm. on Banking, Housing and Urban Affairs, 101st Cong., 1st Sess. 225 (Oct. 26, 1989) (statement of Nicholas F. Brady, Secretary of the Treasury.

[20] In this order, the terms hedge and offset refer to futures and options positions that closely correlate so that possible losses in one instrument can be reduced by possible gains in another instrument (e.g., a long futures contract on the Standard and Poor's 500 Index with a long put option contract on the Standard and Poor's 500 Index). Use of the terms hedge and offset in this order should not be read as necessarily defining or interpreting hedge or offset as those terms are defined in the Act, The Commodity Exchange Act, Bankruptcy Code, or any of the rules and regulations thereunder.

[21] Among others, these safeguards include (1) Stock Clearing Fund and Non-Equity Securities Clearing Fund (Securities Exchange Act Release No. 27410 (October 31, 1989), 54 FR 46668 [File No. SR–OCC–89–06]); (2) the Theoretical Intermarket Margining System ("TIMS") which employs option price theory to identify and measure market risk and to calculate margin requirements (Securities Exchange Act Release No. 32388 (May 28, 1993), 58 FR 31989 [File No. SR–OCC–93–06]); (3) the Concentration Monitoring System which enables OCC to analyze and address risks resulting from concentrated, undiversified options portfolios (Division, Commission, *Market Analysis of October 13, and 16, 1989*, at 137–42 (December 1990); (4) the Risk Management System which generally allows OCC to evaluate the risks associated with the entire stock, options, and futures portfolios held by its clearing members (Securities Exchange Act Release No. 30346 (February 6, 1992), 57 FR 5195 [File No. SR–OCC–91–17]); (5) the valued securities program eligibility standards for stock and corporate debt which help to ensure that a clearing member's stocks deposited as margin will have an active, liquid market to permit their sale or pledge in the event of a member default (Securities Exchange Act Release No. 29576 (August 16, 1991), 56 FR 41873 [File No. SR–OCC–88–03]) and (6) the valued securities program concentration ratio which limits the account of stock of any one issuer that can be held in an account to ten percent of the margin requirement for the account (*id.*).

[22] OCC requires that each clearing member shall have an initial net capital of not less than $1,000,000 and that the aggregate principal amount of the clearing member's satisfactory subordination agreements, other than such agreements which qualify as equity capital under Commission Rule 15c3–1(d) [17 CFR 240.15c3–1(d) (1992)], shall not initially exceed 70% of the clearing member's debt-equity total. OCC Rule 301(a).

BOTCC's By-Laws require that BOTCC members be CBOT members, which are approved by the CBOT board of directors. The BOTCC membership requirements include, but are not limited to, such things as financial and operational requirements and financial reporting requirements. BOTCC By-Law 401.

[23] 15 U.S.C. 78q–1 (1988).

[24] 14 U.S.C. 78s(b)(2) (1988).

[25] 17 CFR 200.30–3(a)(12) (1992).

[Release No. 34–32674; File No. SR–PSE–93–14]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to Its Schedule of Rates for Exchange Services

July 26, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 6, 1993, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to make certain changes to its rates as set forth in its Schedule of Rates for Exchange Services ("Schedule of Rates"). The text of the proposed rule change is available at the Office of the Secretary, PSE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PSE included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in 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 Exchange is proposing to make certain changes to its rates for services on the Exchange's options floor ("Options Floor") and equities floor ("Equities Floor") as set forth in its Schedule of Rates. First, the Exchange is proposing to modify certain of its transaction charges for manual transactions involving market-maker and firm orders, ticket data entry charges, on-line trade comparison charges, and charges for monthly reports.

Second, the Exchange proposes to amend its charges for certain transactions on the Pacific Options Exchange Trading System ("POETS"). These amendments relate to charges for market and marketable limit orders and to clearing fees.

Third, the Exchange is proposing to amend the following Options Floor and market-maker fees and charges: (i) Market-maker fee; (ii) agency stock execution fee; (iii) market-maker give-up charge; (iv) independent broker fee; (v) monthly booth charge; (vi) Quotron rental charge; (vii) general access phone charge; (viii) drop phone charge; (ix) badge fee; (x) trade match terminal fee; (xi) trade match table fee; (xii) POETS workstation fee; and (xiii) printer fee.

Finally, the Exchange is proposing a new $40.00 per month card access fee for a card to permit access through a new security system on the Equities Floor. The fee will be required for employees of member firms who need access to the Equities Floor but who do not now pay a floor privilege fee.

The Exchange believes that the proposed changes will result in charges that are more consistent with the services that the Exchange provides to its members.

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(4), in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection at the principal office of the PSE. All submissions should refer to File No. SR–PSE–93–14 and should be submitted by July 26, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–18413 Filed 8–2–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32678; File No. SR–PHLX–93–28]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Three-Year Rolling Cycle for Certain Minor Rule Plan Fines

July 27, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 28, 1993, the Philadelphia Stock Exchange, Inc. ("PHLX") or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 17 CFR 200.30–3(a)(12) (1992).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the PHLX's current minor rule violation enforcement and reporting plan ("minor rule plan")[1] and the Floor Procedure Advices ("Advices") thereunder, fines accrue on a one-year rolling calendar basis, so that a second violation of the same provision within one year is subject to the next highest fine (i.e., the second violation within that calendar year is treated as a second occurrence). If the violation is not repeated in that calendar year, then a subsequent violation of that provision is treated as the person's first violation. Pursuant to Rule 19b–4 under the Act, the PHLX proposes to amend its minor rule plan to establish a three-year rolling cycle for nine Advices.[2] Under the three-year rolling cycle, a violation of one of the nine Advices which occurs within three years of the first violation of that Advice will be treated as a second occurrence, and any violation of an Advice within three years of the previous violation of that Advice will be subject to the next highest fine. Thus, a third Advice violation within less than three years after a fine for a second Advice violation will be treated as a third violation of that Advice, even though more than three years may have elapsed since the first violation of that Advice.

The text of the proposed rule change is available at the Office of the Secretary, PHLX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Pursuant to the PHLX's current minor rule violation enforcement and reporting plan and the Advices thereunder, fines currently accrue on a one-year rolling calendar basis, so that a second violation of the same provision within one year is subject to the next highest fine (i.e., the second violation within that calendar year is treated as a second occurrence). If the violation is not repeated in that calendar year, then a subsequent violation of that provision is treated as the person's first violation. In order to further discourage the frequency of repeat violations, the PHLX proposes to place nine Advices[3] on a three-year rolling cycle.

Under the three-year rolling cycle, a violation of one of the nine Advices which occurs within three years of the first violation of that Advice will be treated as a second occurrence, and any violation of an Advice within three years of the previous violation of that Advice will be subject to the next highest fine. Thus, a third Advice violation within less than three years after a fine for a second Advice violation will be treated as a third violation of that Advice, even though more than three years may have elapsed since the first violation of that Advice.

The PHLX believes that these nine Advices are appropriate for a three-year cycle because the violations and situations addressed by these Advices are particularly important to discourage in the interest of maintaining a fair and orderly market in PHLX-traded securities. For example, Advice B–1, "Responsibility to Make Markets," requires ROTs to make a two-sided market for any option series trading in the same crowd at which the ROT is trading, when requested by a Floor Official, Specialist, or Floor Broker. The PHLX states that this requirement has been in place since the inception of the PHLX's minor rule plain in 1986 and is important to the functioning of the auction market.

The PHLX believes that the proposal is consistent with section 6 of the Act, in general, and in particular, with section 6(b)(5), in that it is designed to promote just and equitable principles of trade, and to prevent fraudulent and manipulative acts and practices, as well as to protect investors and the public interest. The PHLX believes that the proposed three-year rolling schedule should capture repeat violators of the nine Advices to which the proposal applies and should subject those violators to higher fines, which should, in turn, discourage further violations, in the interest of maintaining a fair and orderly market, consistent with section 6(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PHLX. All submissions

[1] The Exchange's minor rule plan is administered pursuant to PHLX Rule 970, "Floor Procedure Advices: Violations, Penalties, and Procedures."

[2] The following Advices will be subject to the proposed three-year rolling cycle: B–1, "Responsibility to Make Markets;" B–4, PHLX Registered Options Traders ("ROTs") Entering Orders from On-Floor and Off-Floor for Execution on the Exchange; B–8, "Use of Floor Brokers;" C–3, "Handling ROTs' Orders;" C–4, "Floor Brokers Handling Orders for Same Firm;" C–9, "Floor Brokers and Clerks Trading in Their Customer Accounts;" F–8, "Failure to Comply with an Exchange Inquiry;" F–9, "Dual Affiliations;" and F–13, "Supervisory Procedures Relating to the Insider Trading and Securities Fraud Enforcement Act of 1988" ("ITSFEA")."

[3] See note 2, supra.

should refer to File No. SR–PHLX–93–28 and should be submitted by July 26, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

[FR Doc. 93–18414 Filed 8–2–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19595; 812–8476]

Great Hall Value Ten Trust, Series 1, et al.; Application

July 26, 1993.

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

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Great Hall Value Ten Trust, Series 1 and subsequent series (the "Trust"), and Insight Investment Management, Inc. or a sponsor controlled by or under common control with Insight investment Management (the "Sponsor").

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act from sections 14(a) and 19(b) of the Act and rule 19b–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order that would exempt the Sponsor from having to take for its own account or place with others $100,000 worth of units in the Trust, and permit the Trust to distribute capital gains dividends within a reasonable time after receipt.

FILING DATE: The application was filed on June 28, 1993 and amended on July 26, 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 August 20, 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 may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, 60 South 6th Street, Minneapolis, Minnesota 55402–4422.

[4] 17 CFR 200.30–3(a)(12) (1992).

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272–3026, or Robert A. Robertson, Branch Chief, at (202) 272–3030 (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.

Applicants' Representations

1. The Trust will consist of a series of unit investment trusts, each of which will be similar but separate and designated by a different series number ("Trust Series"). Each Trust Series will invest exclusively in equity securities (including common and preferred stocks) or in equity securities and zero coupon obligations. The objective of the Trust Service will very in accordance with the nature of their respective portfolios. Each Trust Series will be registered under the Act, and under the Securities Act of 1933 by a registration statement on Form S–6.

2. Each Trust Series will be created pursuant to a trust agreement that will contain information specific to that Trust Series and that will incorporate by reference a master trust indenture between the Sponsor and a financial institution that is a bank within the meaning of section 2(a)(5) of the Act and that satisfies the criteria of section 26(a) of the Act (the "Trustee"). The trust agreement and master trust indenture are collectively referred to as the "Trust Agreement."

3. The Sponsor will perform the normal functions of a unit investment trust sponsor. The Sponsor will deposit zero coupon obligations, if any, and equity securities (collectively, "Securities") in the Trust Series at a price determined by an independent evaluator. The Sponsor expects to deposit in each Trust Series substantially more than $100,000 aggregate value of Securities. All zero coupon obligations in any one Trust Series will have essentially identical maturities, and the Sponsor will purchase all Securities from third parties.

4. Simultaneously with the deposit of Securities in a Trust Series, the Trustee will deliver to the Sponsor registered certificates for units representing undivided interests in the Trust (the "Units") that will represent the entire ownership of the Trust Series (owners of the Units are referred to as "Unitholders"). The Units in turn will be offered for sale to the public by the Sponsor following the effectiveness of the registration statement relating to the Trust Series, and clearance by the securities authorities of the various states. Applicants intend to offer each Trust Series to the public initially at prices based on the closing sale prices of listed equity securities and the ask prices of over-the-counter traded equity securities selected for deposit in the Trust Series, plus the offering side value of the zero coupon obligations contained therein, plus a sales charge.

5. With the deposit of the Securities in the Trust Series containing zero coupon obligations on the initial date of deposit, the Sponsor will have established a proportionate relationship between the zero coupon obligations and equity securities in the Trust Series. The Sponsor will be permitted to deposit additional Securities, which may result in a potential corresponding increasing in the number of Units outstanding. These Units may be continuously offered for sale to the public by means of the prospectus. The Sponsor anticipates that any additional Securities deposited in the Trust Series after the initial date of deposit will maintain the proportionate relationship between the zero coupon obligations and equity securities in the Trust Series. The original percentage relationships between zero coupon obligations and equity securities will be set forth in the prospectus and in each Trust Agreement.

6. Each Trust Series that contains zero coupon obligations will be structured so that, on the specified maturity date for each Trust Series, the initial Unitholders who purchased Units on the first date they were offered for sale will receive back at least the total amount of their original investment in the Trust Series, including the sales charge. To that end, the principal value of the maturing zero coupon obligations in each Trust Series will at least equal the original purchase price of the Units. Zero coupon obligations deposited in the Trust will be non-callable or callable at par.

7. The Trust will redeem Units at prices based on the aggregate bid side evaluation of the zero coupon obligations, if any, and the closing sale prices of listed equity securities, and the bid prices of over-the-counter traded equity securities.

8. Although not obligated to do so, the Sponsor intends to maintain a secondary market for the Units. The secondary market will reduce the number of Units tendered to the Trustee for redemption and alleviate the need to sell portfolio securities to raise the cash necessary to meet such redemptions. In the event that the Sponsor does not

maintain a secondary market, the Trust Agreement will provide that the Sponsor will not instruct the Trustee to sell zero coupon obligations from any Trust Series that contains zero coupon obligations until equity securities have been liquidated in order not to impair the protection provided by the zero coupon obligations, unless the Trustee is able to sell such zero coupon obligations and still maintain at least the original proportional relationship to Unit value. The Sponsor also will instruct the Trustee that zero coupon obligations may not be sold to meet Trust expenses.

Applicants' Legal Analysis

1. Section 14(a) of the Act generally requires that investment companies have $100,000 of net worth prior to making a public offering. Rule 14a–3 under the Act exempts unit investment trusts from the provisions of section 14(a) if certain conditions are complied with, one of which is that the trust invest only in "eligible trust securities" as defined in the rule. The Trust may not rely on this rule because equity securities are not eligible trust securities.

2. The Sponsor will deposit substantially more than $100,000 of Securities in each Trust Series. However, applicants acknowledge that the SEC has interpreted section 14(a) as requiring that the initial capital investment in an investment company be made without any intention to dispose of the investment. Under this interpretation, a Trust Series would not satisfy section 14(a) because of the Sponsor's intention to sell all the Units. Accordingly, applicants request an exemption from section 14(a). Applicants will comply in all respects with the requirements of rule 14a–3, except that the Trust will not restrict its portfolio investments to "eligible trust securities."

3. Section 19(b) of the Act and rule 19b–1 thereunder provide that no registered investment company may distribute long-term capital gains more than once every twelve months. Applicants state that these provisions were designed to remove the temptation to realize capital gains on a frequent and regular basis, and to eliminate attempts by investment advisers to time distributions to be advantageous to shareholders. Applicants also state that there was concern that investors would be confused by a failure to distinguish between regular distributions of capital gains and distributions of investment income.

4. Rule 19b–1(c), under certain circumstances, excepts a unit investment trust investing in "eligible trust securities," as defined in rule 14a–3(b), from the requirements of rule 19b–1. Applicants believe that this exception recognizes that the danger of making manipulative capital gains distributions that are detrimental to Unitholders is largely eliminated for unit investment trusts. For these trusts, the conditions under which capital gains are realized are beyond the Sponsor's control, and the capital gains are identified clearly. However, the exception provided by rule 19b–1(c) does not apply to the Trust because the Trust does not intend to invest in "eligible trust securities." Applicants request an exemption from rule 19b–1 to the extent necessary to permit capital gains earned in connection with the sale of portfolio equity securities to be distributed to Unitholders along with the Trust's regular distributions.

5. Applicants submit that the dangers that section 19(b) and rule 19b–1 are designed to prevent do not exist in the Trust. Any gains from the sale of equity securities would be triggered by the need to meet Trust expenses or by requests to redeem Units, events over which the Sponsor and Trust have no control. Applicants state that the Sponsor has control over the actual redemption of Units to the extent it makes a market in Units. However, applicants further state that the Sponsor has no incentive to redeem or to permit the redemption of Units to generate capital gains for the purpose section 19(b) and rule 19b–1 were designed to protect against. Aside from the fact that the Sponsor intends to maintain a secondary market and that the current realization and distribution of gains is not an objective of the Trust, applicants believe that cash generated from the sale of equity securities will be used to pay expenses and to meet redemptions and will not generate distributions to Unitholders. Moreover, applicants believe that because principal distributions are indicated clearly in accompanying reports to Unitholders as a return of principal and are relatively small in comparison to normal distributions, there is little danger of confusion from failure to differentiate among distributions.

6. Applicants believe that the requested exemption is consistent with the purposes and policies of the Act, and would be in the best interests of the Unitholders.

Applicants' Condition

Applicants agree to the following condition to the granting of the requested relief:

Applicants will comply in all respects with the requirements of rule 14a–3, except that the Trust will not restrict its portfolio investments to "eligible trust securities."

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–18412 Filed 8–2–93; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 19596; 812–8410]

LTV Aerospace Creditors Liquidating Trust; Application

July 26, 1993.

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

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("Act").

APPLICANT: Official Committee of Unsecured Creditors of the LTV Aerospace and Defense Company (the "Aerospace Committee"), on behalf of the LTV Aerospace Creditors Liquidating Trust (the "Trust").

RELEVANT ACT SECTIONS: Order requested under sections 6(c) and 6(e) exempting the Trust from all provisions of the Act except sections 9, 17(a) (as modified), 17(d), 17(e), 17(f), 30(d), 31, and 36 through 53, and the applicable rules thereunder.

SUMMARY OF APPLICATION: Applicant seeks an order on behalf of the Trust, which will be formed in connection with the LTV Corporation bankruptcy reorganization to liquidate certain assets assigned by LTV to the unsecured creditors of LTV Aerospace and Defense Company ("Aerospace"). The order would exempt the Trust from provisions of the Act.

FILING DATE: The application was filed on May 21, 1993, and amended on June 2, 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 applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 23, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the

request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, c/o Wilmer, Cutler & Pickering, 2445 M Street, NW., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Staff Attorney, at (202) 272–5287, or Robert A. Robertson, Branch Chief, at (202) 504–2283 (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 from the SEC's Public Reference Branch.

Applicant's Representations

1. In 1986, the LTV Corporation ("LTV") and sixty-six of its subsidiaries filed for Chapter 11 protection in the United States Bankruptcy Court for the Southern District of New York. The case is captioned *In re Chateaugay Corp., Reomar, Inc., The LTV Corp., et al., Debtors,* Case Nos. 86 B 11270–11334 inclusive, 86 B 11402, and 86 B 11464 (BRL). Among the LTV subsidiaries filing for Chapter 11 protection was Aerospace, which, prior to bankruptcy, had been engaged in the aerospace and defense business. Applicant was appointed by the United States Trustee for the Southern District of New York on July 30, 1991 to represent the interests of the unsecured creditors of Aerospace.

2. In February 1993, the Bankruptcy Court approved the Second Modified Disclosure Statement pursuant to section 1125 of the Bankruptcy Code for LTV and its subsidiaries and authorized its distribution to claimants and equity security holders. The confirmation hearings on the proposed plans of reorganization of LTV and its subsidiaries (collectively, the "Plan") were held on May 26, 1993, and the confirmation order was signed on that day. One element of the Plan is LTV's assignment of certain illiquid Aerospace assets to the unsecured creditors of Aerospace (the "Aerospace Creditors") through the formation of the Trust.[1] The sole purpose of the Trust, which will be subject to the continuing jurisdiction of the Bankruptcy Court, will be to liquidate the Trust assets in an orderly manner and distribute the proceeds.

3. The Aerospace Assets consist of assets received as consideration for the sale to Ren Acquisition Corporation ("Ren") of the assets of AM General, a debtor subsidiary of Aerospace (the "Ren Obligation"),[2] and certain litigation claims.[3] Due to the nature of the Aerospace Assets, it was impossible to make cash or in kind distributions of the Aerospace Assets to the Aerospace Creditors.

4. The Trust will issue certificates of beneficial interest ("CBIs") to certain Aerospace Creditors in proportion to the amount of their allowed claims. Other Aerospace Creditors will have the right, during the period ending ten days after the effective date for the Plan, to transfer to the Trust certain specified portions of their LTV stock distributions under the Plan in exchange for CBIs. Applicant anticipates that the CBIs, which will be freely transferable, will be listed on a national securities exchange or traded in the over-the-counter market. The CBIs will be subject to registration under the Securities Exchange Act of 1934, and the Trust will file quarterly, annual and current reports with the Commission on Forms 10–Q, 10–K and 8–K.

5. To ensure that the Trust will be operated in the manner contemplated as its sole purpose, the trust agreement will, among other things: (a) Preclude, with certain limited exceptions, the trustees of the Trust from issuing or selling any additional interests in the Trust once the distribution of CBIs to claimants is completed; (b) preclude the Trust from acquiring additional assets, except to the extent such assets are acquired in settlement of the two litigation matters or as a result of future negotiations with Ren to restructure the Ren Obligations; (c) provide that the proceeds of the Aerospace Assets shall be invested, pending distribution to CBI holders, in (i) interest-bearing deposits or short-term repurchase obligations or certificates of deposit of federally insured banks, or (ii) marketable direct obligations of, or guaranteed as to principal and interest by, the United States of America or any agency or instrumentality thereof; and (d) provide that the trustees shall establish an expense reserve to fund the operating expenses of the Trust. The Trust will have a ten-year duration unless (i) all of the assets are distributed prior to the expiration of the ten-year period, (ii) an earlier termination is required by applicable state laws, or (iii) the holders of at least eighty percent of the interests in the Trust vote to terminate the Trust.

6. Based upon the present portfolio of assets to be held and liquidated by the Trust, the Trust may be an "investment company" within the meaning of sections 3(a)(1) and 3(a)(3) of the Act. To resolve any doubts about the Trust's status under the Act, applicant requests an order exempting the Trust from most provisions of the Act.

Applicant's Legal Conclusions

1. Section 3(a)(1) provides that an investment company includes an issuer that is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities. Section 3(a)(3) provides that an investment company includes an issuer that engages or proposes to engage in the business of investing, reinvesting, or trading in securities, and owns (or proposes to acquire) investment securities exceeding forty percent of the value of its assets on an unconsolidated basis. Based upon the nature of the Trust's present assets, the Trust may be an investment company under sections 3(a)(1) and 3(a)(3).

2. Applicant requests an order under sections 6(c) and 6(e) of the Act exempting the Trust from all provisions of the Act except sections 9, 17 (as modified), 30(d), 31, and 36 through 53, and the applicable rules thereunder. Section 6(c) provides that the SEC may by order upon application exempt any person or persons, or any transaction or transactions, from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes of the Act. Section 6(e) provides that, if the SEC considers it necessary, certain provisions of the Act shall apply to an investment company that is exempt from any provision of section 7 as if

[1] Under the Plan, the Aerospace Creditors also are entitled to approximately 1.3 million shares of LTV stock and $52 million in cash. These securities and the cash will be distributed directly to the Aerospace Creditors and will not be subject to the Trust. The Trustees may, however, set aside a portion of the $52 million to establish an expense reserve to fund the operating expenses incurred by the Trust.

[2] The Ren Obligations consist of (1) a $15.2 million three-year secured promissory note bearing interest at prime to be paid at maturity (April 30, 1995); (2) up to $30 million in "earn-out" payments, payable in ten annual installments ending no later than 2002 in an amount set at the greater of (a) $3 million or (b) 25 percent of the excess of certain profits of the business acquired from AM General over $15 million; (3) $14 million in confidentiality and non-competition payments, payable in seven equal annual installments ending in 2000; and (4) a beneficial interest in a 10 percent stock interest issued by Ren, consisting of the right to put the stock back to Ren for $5 million in cash on April 30, 1995, $7.5 million in cash on April 30, 1996, or $10 million in cash or a promissory note on April 30, 1997.

[3] The litigation claims consist of (1) the first $10 million in net proceeds actually received pursuant to the claims of Aerospace in the action entitled *LTV Aerospace and Defense Co.* v. *Thomson-CSF S.A.*, Case No. 92–9531A (S.D.N.Y.); and (2) all net proceeds received as a result of the claims against McDonnell Douglas Corporation in *LTV Aerospace and Defense Co.* v. *McDonnell Douglas Corp.*, Case No. 92–11360 (Dist. Ct. Dallas County).

such company were a registered investment company.

3. Applicant believes that, in light of the Trust's limited scope of permissible activities and other circumstances and conditions, the granting of the requested order would provide appropriate protection for investors and would achieve the purposes otherwise intended by the policies and provisions of the Act.

4. Applicant also believes that it is important to recognize that the order confirming the Plan will provide that, during the pendency of the Trust, the activities of the Trust will be subject to the continuing jurisdiction of the Bankruptcy Court. Thus, many activities that might be subject to regulation under the Act also will be subject to the Bankruptcy Court's continuing jurisdiction. That concurrent jurisdiction creates the potential for regulatory duplication, and the delays and costs that would be associated therewith, as well as for conflicts between the Bankruptcy Court and the SEC.

5. Section 17(a)(2) of the Act generally makes it unlawful for any "affiliated person" of a registered investment company, or "affiliated person" of such person, to acquire any security or other property from such investment company. Under the requested exemption, applicant proposes that the Trust be allowed to sell certain assets to its affiliated persons if such sale is approved in advance by the Bankruptcy Court.

6. Accordingly, applicant believes that the issuance of the requested order pursuant to sections 6(c) and 6(e) is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant's Conditions

Applicant agrees that the order granting the requested relief shall be subject to the following conditions:

1. The Trust will not hold itself out as being an investment company, but instead will hold itself out as a trust in the process of liquidating and distributing its assets to CBI holders.

2. The Trust will be limited to making temporary investments in (a) interest-bearing deposits or short-term repurchase obligations or certificates of deposit of federally insured banking institutions, or (b) marketable direct obligations of, or guaranteed as to principal and interest by, the United States of America or any agency or instrumentality thereof.

3. Notwithstanding section 17(a)(2) of the Act, an affiliated person (as defined in section 2(a)(3) of the Act) of the Trust may engage in a transaction of the type described in section 17(a)(2) with the Trust:

(i) If such proposed transaction is first approved by the Bankruptcy Court on the basis that (a) the terms thereof, including the consideration to be paid or received, are reasonable and fair to the Trust, and (b) the transaction is consistent with the Plan; and

(ii) In connection with each such transaction, the Trust shall inform the Bankruptcy Court of (a) the identity of all of its known affiliated persons who are parties to, or have a direct or indirect financial interest in, the known financial interests of such persons in the transaction.[4]

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–18411 Filed 8–2–93; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

Bureau of Oceans and International Environmental and Scientific Affairs

[Public Notice 1841]

United States Man and the Biosphere Program: Request for Proposals for the Tropical Ecosystems Directorate

The Tropical Ecosystems Directorate (TED) of the U.S. Man and the Biosphere Program (U.S. MAB) announces a call for research and activity proposals addressing the theme of sustainable use of tropical forest resources. A small number of research and activity grants, in the range of $5,000 to $12,000, will be awarded in the Spring of 1994. Preference will be given to proposals focusing on the Maya Tri-National Region of Belize, Guatemala and/or Mexico and should complement the core project activities of the TED. Persons interested in applying for these grants are encouraged to first obtain a copy of the TED core project description from the U.S. MAB Secretariat.

Funding Objectives

U.S. MAB/TED funding should assist research teams and/or activity projects to: Add a national researcher to their effort; better integrate conservation and sustainable development; add a particular discipline to an ongoing research project; or explore the application of ongoing site-specific research to an additional site in the Maya Tri-National region; or to carry out activities complementary to the TED project in the region. U.S. MAB/TED funding will not be provided for planning purposes.

Focal Issues

Within the broad thematic focus of sustainable use of tropical forest resources in the Maya Tri-National Region, U.S. MAB/TED encourages research projects and activities addressing focal issues such as community-based production systems, tropical forest management for timber and/or non-timber forest products, economic valuation and accounting of tropical forest products and services, benefits and costs of low impact uses such as ecotourism, or integration of biodiversity conservation with production forestry.

Proposal Content

Each proposal should have a title page, a one page synopsis of the existing research project, up to five pages detailing the proposed use of U.S. MAB/TED funds that would be complementary to the TED core program, and a one-page budget, with justification. No funds are available for institutional overhead; only direct costs can be supported.

Evaulation and Review Process

Because of limited available funding, U.S. MAB/TED will give the greatest preference to those proposals that directly complement the objective of the directorate's core program. Proposals will be evaluated for the intrinsic merit of the research or activity, its policy relevance, applicability to promoting sustainable use of tropical forest resources in the Maya Tri-National Region, and the quality and demonstrated productivity of the principals. All potential proposers are encouraged to contact the Secretariat of the U.S. Man and the Biosphere Program, OES/EGC/MAB, U.S. Department of State, Washington DC, 20522–3706. Tel. (703) 235–2946 to request a description of the TED core program.

Persons interested should first submit a one- to two-page project prospectus by November 1, 1993. The U.S. MAB/TED will review the prospectuses and invite full proposals by December 31, 1993. Invitees to submit full proposals will

[4] The word "known" is utilized because there may be situations in which, notwithstanding due inquiry, the Trust will be unable to determine the identity and the extent of the financial interests of all affiliated persons due to the complexity of relationships and holdings, or due to its inability to obtain information necessary to such determination from persons it does not control.

have until March 1994 to submit a full proposal. The U.S. MAB/TED will evaluate all proposals and make final decisions by April 6, 1994. Funds will be committed to the managing institutions identified in the proposals during May 1994. Principals will receive from the U.S. MAB/TED Secretariat copies of all U.S. MAB/TED review evaluations of their proposal and a written notification of the directorate's decision on their project.

Submission of Proposals

Mail proposals to U.S. MAB/TED Secretariat, OES/EGC/MAB, room 608, SA–37, U.S. Department of State, Washington, DC 20522–3706.

Individuals choosing to submit their proposals by Express Mail, Federal Express, UPS, etc. must use the following address: U.S. MAB Secretariat, room 608, 1555 Wilson Boulevard, Rosslyn, Virginia 22209.

The Deadline for pre-proposals is November 1, 1993. The Deadline for invited proposals is March 1, 1994.

Dated: July 23, 1993.

Roger E. Soles,

Executive Director, U.S. Man and the Biosphere Program, Office of Global Change.

[FR Doc. 93–18379 Filed 8–2–93; 8:45 am]

BILLING CODE 4710–09–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–93–33]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of disposition of prior petition.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Ch. I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before October 4, 1993.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–10), Petition Docket No. _____, 800 Independence Avenue SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3939.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on July 27, 1993.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 26101.

Petitioner: America West Airlines, Inc.

Sections of the FAR Affected: 14 CFR 93.123.

Description of Relief Sought: To extend Exemption No. 5133 to allow America West Airlines to operate four special slots at Washington National Airport formerly operated by Braniff Airlines under Federal Aviation Administration Exemption No. 3927.

[FR Doc. 93–18449 Filed 8–2–93; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–93–34]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions; Correction.

SUMMARY: This action nullifies the Petition for Exemption, Docket No. 21780, published on July 22, 1993 (58 FR 39273).

DATES: Comments on petitions received must identify the petition docket number involved, and must be received on or before August 23, 1993.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of Chief Counsel, attn: Rules Docket (AGC–10), Petition Docket no. 21780, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–3939.

SUPPLEMENTARY INFORMATION: The Civil Air Patrol, Inc., petition for exemption, Docket No. 21780, was inadvertently double-published in the **Federal Register** on July 8, 1993 (58 FR 36731) and July 22, 1993 (58 FR 39273). For the purposes of announcement and public comment solicitation, only the initial publication (58 FR 36731) and comment period applies. The announcement and comment period published on July 22, 1993 (58 FR 39273) is hereby nullified.

Issued in Washington, DC., on July 27, 1993.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

[FR Doc. 93–18450 Filed 8–2–93; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–93–35]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Ch. I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket

number involved and must be received on or before August 23, 1993.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–10), Petition Docket No. ____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3939.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on July 27, 1993.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 19634.
Petitioner: Douglas Aircraft Company.
Sections of the FAR Affected: 14 CFR 121.310(d)(4).
Description of Relief Sought: To extend Exemption No. 3055, as amended, to allow operators of McDonnell Douglas Model DC–8 series aircraft to operate these aircraft in passenger-carrying operations without a cockpit control device for each emergency light.

Docket No.: 26532.
Petitioner: McCall Air Taxi, Inc.
Sections of the FAR Affected: 14 CFR 43.3(g).
Description of Relief Sought: To amend Exemption No. 5381 by deleting Cessna 320–B aircraft and adding Cessna 210 and Britten Norman Islander BN–2A aircraft and to extend Exemption No. 5381 to continue to allow properly trained pilots employed by McCall Air Taxi, Inc. to remove and reinstall cabin seats in company aircraft when certified mechanics are not available.

Docket No.: 27313.
Petitioner: Business Express.
Sections of the FAR Affected: 14 CFR 91.203(a)(b) and 47.49.
Description of Relief Sought: To allow unrestricted operation of Business Express (BE) aircraft that carry photocopies vice originals of the registration and airworthiness certificates.

Docket No.: 27315.
Petitioner: Mr. Thomas T. Gasta.
Sections of the FAR Affected: 14 CFR 135.236(b).
Description of Relief Sought: To allow petitioner to perform reserve or standby duty, and thus to perform flight duty if called, during required rest periods.

Docket No.: 27336.
Petitioner: Newport Aeronautical Development.
Sections of the FAR Affected: 14 CFR 36 and Subpart I of Part 91.
Description of Relief Sought: To allow the Lockeed L–1011, Serial No. 193E–1067, Registration No. N140SC, to exceed certified noise levels when operating under a Restrictive Category Type Certificate.

Dispositions of Petitions

Docket No.: 23858.
Petitioner: Allison Gas Turbine Division, GMC.
Sections of the FAR Affected: 14 CFR 34.21.
Description of Relief Sought/ Disposition: To amend and extend Exemption No. 5383 to allow petitioner to continue to produce very low-production engines covered by amended Type Certificate No. 282 for installation on aircraft to be exported from the United States and allow flights for short duration at infrequent intervals, to facilitate the delivery of these aircraft to be exported from the United States.
GRANT, July 16, 1993, Exemption No. 5680.

Docket No.: 25089.
Petitioner: Hawkins & Powers Aviation, Inc.
Sections of the FAR Affected: 14 CFR 137.53(c)(2).
Description of Relief Sought/ Disposition: To extend Exemption No. 5075 to continue to allow Hawkins & Powers Aviation, Inc. to conduct aerial applications of insecticide from C–118A (DC–6) aircraft, without the aircraft being equipped with a device capable of jettisoning within 45 seconds at least one-half of the aircraft's maximum authorized load of agricultural materials when operated over congested areas.

GRANT, July 12, 1993, Exemption No. 5075B.

Docket No.: 26101.
Petitioner: America West Airlines, Inc.
Sections of the FAR Affected: 14 CFR 93.123.
Description of Relief Sought/ Disposition: To extend Exemption No. 5133 to allow America West Airlines to operate four special slots at Washington National Airport formerly operated by Braniff Airlines under Federal Aviation Administration Exemption No. 3927.

GRANT, July 15, 1993, Exemption No. 5133D.

Docket No.: 26176.
Petitioner: AMR Combs.
Sections of the FAR Affected: 14 CFR 135.165(a)(1) and (6); 135.165(b)(6) and (7).
Description of Relief Sought/ Disposition: To extend Exemption No. 5334 to permit AMR Combs, Inc. (AMRC) to operate turbojet airplanes in extended overwater operations with one high-frequency (HF) communication system within certain named areas subject to certain conditions and limitations.

GRANT, July 13, 1993, Exemption No. 5334A.

Docket No.: 27050.
Petitioner: RADEAIR Servicios Aeros.
Sections of the FAR Affected: 14 CFR 91.609(e).
Description of Relief Sought/ Disposition: To permit RADEAIR to operate its Jet Commander IAI 1121B without an approved cockpit voice recorder (CVR) installed.
Denial, July 20, 1993, Exemption No. 5692.

Docket No.: 27113.
Petitioner: Mr. Mark Heath.
Sections of the FAR Affected: 14 CFR 65.71(a)(2).
Description of Relief Sought/ Disposition: To enable the petitioner to become eligible for a mechanic certificate and associated ratings although he cannot speak the English language.

GRANT, July 13, 1993, Exemption No. 5679.

Docket No.: 27135.
Petitioner: Joe Brigham Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought: To allow Joe Brigham Inc. (JBI) to operate without a TSO–C112 (Mode S) transponder installed on JBI's aircraft operating under the provisions of Part 135.

GRANT, July 20, 1993, Exemption No. 5681.

Docket No.: 27276.

Petitioner: Haines Airways, Inc.
Sections of the FAR Affected: 14 CFR 43.3(g).
Description of Relief Sought: To allow pilots employed by Haines Airways, Inc. (Haines Airways) to remove and install aircraft seats as required for a particular flight.
GRANT, July 15, 1993, Exemption No. 5678.

Docket No.: 27354.
Petitioner: A.J. Blake, Inc.
Sections of the FAR Affected: 14 CFR 137.53(c)(2).
Description of Relief Sought: To allow the petitioner to conduct aerial applications of insecticide materials from a PA–23–250 aircraft, without the aircraft being equipped with a device capable of jettisoning within 45 seconds at least one-half of the aircraft's maximum authorized load of agricultural materials when operating over a congested area.
PARTIAL GRANT, July 12, 1993, Exemption No. 5676.

[FR Doc. 93–18451 Filed 8–2–93; 8:45 am]
BILLING CODE 4910–13–M

Intent To Rule on Application To Impose and Use a Passenger Facility Charge (PFC) at Seattle-Tacoma International Airport, Seattle, WA

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Seattle-Takoma International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before September 2, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: J. Wade Bryant, Manager, Seattle Airports District Office, SEA–ADO, Federal Aviation Administration, 1601 Lind Avenue SW., suite 250, Renton, WA 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. William E. Brougher; Acting Managing Director, Aviation Division, at the following address: Port of Seattle, Seattle-Takoma International Airport, P.O. Box 68727, Seattle, Washington 98168–0727.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Port of Seattle, under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Renee M. Hall, (206) 227–2662; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW; suite 250, Renton, Washington 98055–4656. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Seattle-Tacoma International Airport, under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On July 23, 1993, the FAA determined that the application to impose and use a PFC submitted by the Port of Seattle was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 28, 1993.

The following is a brief overview of the application:

Level of the proposed PFC: $3.00
Proposed charge effective date: January 1, 1994
Proposed charge expiration date: December 31, 1995
Total estimated PFC revenue: $47,500,500.00.

Brief description of proposed projects (Impose and Use): Interconnecting taxiways; runway incursion/electrical upgrade; Runway 16R/34L rehabilitation; Runway 16L/34R safety area expansion; taxiway stop bar system; residential sound insulation; passenger terminal apron replacement; airport comprehensive development plan/3rd runway EIS; Aircraft Rescue and Fire Fighting (ARFF) vehicle; Des Moines Creek relocation design; vacuum style runway sweeper; and additional STS elevators.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under "**FOR FURTHER INFORMATION CONTACT**" and at the FAA regional Airports office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Seattle-Tacoma International Airport.

Issued in Renton, Washington on July 23, 1993.

David A. Field,
Manager, Planning, Programming, and Capacity Branch, Northwest Mountain Region.

[FR Doc. 93–18456 Filed 8–2–93; 8:45 am]
BILLING CODE 4910–13–M

Federal Railroad Administration

Petition for a Waiver of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance with certain requirements of Federal railroad safety regulations. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested and the petitioner's arguments in favor of relief.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket No. HS–93–17) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.
Communications received before August 31, 1993 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) in room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

The waiver petitions are as follows:

New Jersey Transit Railroad Operation (NJTO)

FRA Waiver Petition Docket No. HS–93–17

The NJTO seeks a permanent exemption from the record keeping requirements of 49 CFR 228.17(a)(5) (identification of enginemen and conductors and their times on duty). The NJTO states that due to its operation of several hundred trains a day and the dispatchers workload this requirement is very burdensome and they should be allowed to record the information electronically. The NJTO is presently implementing a computer assisted train dispatching system which will automatically perform all record keeping requirements. The NJTO provides service throughout the state of New Jersey and parts of New York. The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety.

Northeast Illinois Regional Commuter Railroad Corporation (METRA)

FRA Waiver Petition Docket No. RSOP–93–1

METRA seeks an exemption from the torpedo requirements of 49 CFR 218.37(a)(1)(i) (iii) and (iv). METRA states that it opposes the use of torpedoes for flag protection, because METRA railroad lines are protected by block signal system on all but a 6.6 mile subdivision. The "1–A" subdivision is 6.6 miles of non-block signal territory and due to the residential and commercial areas adjacent to the right-of-way, the use of torpedoes is not feasible. METRA also states that the South Chicago Branch of the Metra Electric District also prohibits the use of torpedoes due to the same reasons. Flag protection against following trains is performed by the use of fusees but not torpedoes. METRA records indicate no use of torpedoes for flag protection in the past five years. The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety.

Elgin, Joliet and Eastern Railway Company (EJE)

FRA Waiver Petition Docket No. RSOP–92–2

EJE seeks an exemption from the torpedo requirements of 49 CFR 218.5(1), 49 CFR 218.37(a) (iii) and (iv). EJE states that it operates automatic block signal system over approximately 200 miles of trackage, which is signalled in both directions on single track and with the current of traffic on double track territory. The railroad states that in non-signalled territory, including operating against the current of traffic, a computer assisted track warrant system automatically provides absolute block protection, which relieves the crews from providing flag protection. On-track equipment is operated in accordance with the flagging rules. The railroad states that the use of torpedoes is a potential hazard to employees and the general public. The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety.

Chicago and Illinois Midland Railway Company (CIM)

FRA Waiver Petition Docket No. HS–93–18

The CIM seeks an exemption so it may permit certain employees to remain on duty not more than 12 hours in any 24-hour period. The CIM states that it is not its intention to employ a dispatcher over 12 hours per day in a two or more shift office under normal circumstances, but this exemption, if granted, would help its operation if unusual operating conditions are encountered. The CIM provides service over 121 miles of track, (18.2 miles of single track is operated over Illinois Central (IC) and 6.4 miles of double track is operated over the Peoria and Pekin Union Railway Company (PPU)). The CIM operates primarily within the State of Illinois. The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Beech Mountain Railroad Company (BMRR)

FRA Waiver Petition Docket No. HS–93–19

The BMRR seeks an exemption so it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The BMRR states that it is not its intention to employ a train crew over 12 hours per day under normal circumstances, but this exemption, if granted, would help its operation if unusual operating conditions are encountered. The BMRR provides freight service over 8.2 miles of trackage within Upshur County, West Virginia. The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

The Atchison Topeka and Santa Fe Railway Company (ATSF)

FRA Waiver Petition Docket No. RST–93–1

The Atchison Topeka and Santa Fe Railway Company (ATSF) has petitioned the Federal Railroad Administrator for relief from compliance with the requirements of section 213.241 of the Federal Track Safety Standards (49 CFR 213.241) to the extent that ATSF be permitted to file electronic reports of track inspections instead of reporting track inspections on paper forms signed by the employee making the inspection.

ATSF employs approximately 110 track supervisors who perform various regular inspections of the railroad tracks owned by ATSF as required by the Federal Track Safety Standards (49 CFR Part 213). These inspection reports are currently written on paper forms, and mailed daily to company officers who are responsible for supervising track inspection and maintenance.

The reports are reviewed by successive levels of supervision and forwarded to the next higher level until they reach the cognizant ATSF region headquarters. There they are filed and made available to the Federal Railroad Administrator for inspection and copying when necessary. Approximately 600 such forms are processed by ATSF each week.

ATSF proposes to adopt a reporting procedure by which the track inspection reports will be entered by the inspector into an electronic mail system and transmitted in succession to the roadmaster and then to the regional office. Persons authorized access to the report would be assigned an identification code to protect the security of the report. Copies of reports could either be reviewed on a terminal screen, or printed on paper, at any location on the ATSF electronic mail system. Elimination of original paper inspection reports would render it impracticable for the reporting inspector to place a traditional personal signature on the report.

Issued in Washington, DC on July 27, 1993.

Phil Olekszyk,

Deputy Associate Administrator for Safety.

[FR Doc. 93–18446 Filed 8–2–93; 8:45 am]

BILLING CODE 4910–06–P

Order Adjusting International Cargo Rate Flexibility Level

Policy Statement PS–109, implemented by Regulation ER–1322 of the Civil Aeronautics Board and adopted by the Department, established

geographic zones of cargo pricing flexibility within which certain cargo rate tariffs filed by carriers would be subject to suspension only in extraordinary circumstances.

The Standard Foreign Rate Level (SFRL) for a particular market is the rate in effect on April 1, 1982, adjusted for the cost experience of the carriers in the applicable ratemaking entity. The first adjustment was effective April 1, 1983. By Order 93–5–40, the Department established the currently effective SFRL adjustments.

In establishing the SFRL for the two-month period beginning August 1, 1993, we have projected non-fuel costs based on the year ended March 31, 1993 data, and have determined fuel prices on the basis of the latest available experienced monthly fuel cost levels as reported to the Department.

By Order 93–7–41 cargo rates may be adjusted by the following adjustment factors over the April 1, 1982 level:

Atlantic—1.2151
Western Hemisphere—1.1048
Pacific—1.4528

For further information contact: Keith A. Shangraw (202) 366- 2439.

By the Department of Transportation: July 27, 1993.

Patrick V. Murphy,

Acting Assistant Secretary for Policy and International Affairs.

[FR Doc. 93–18444 Filed 8–2–93; 8:45 am]

BILLING CODE 4910–62–P

[Docket No. 37554]

Order Adjusting the Standard Foreign Fare Level Index

The International Air Transportation Competition Act (IATCA), Public Law 96–192, requires that the Department, as successor to the Civil Aeronautics Board, establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available seat-mile (ASM). Order 93–5–39 established the first interim SFFL, and Order 93–5–39 established the currently effective two-month SFFL applicable through July 31, 1993.

In establishing the SFFL for the two-month period beginning August 1, 1993, we have projected non-fuel costs based on the year ended March 31, 1993 data, and have determined fuel prices on the basis of the latest available experienced monthly fuel cost levels as reported to the Department.

By Order 93–7–43 fares may be increased by the following adjustment factors over the October 1979 level:

Atlantic—1.5047
Latin America—1.3432
Pacific—1.8634
Canada—1.4415

For further information contact: Keith A. Shangraw, (202) 366–2439.

By the Department of Transportation: July 27, 1993.

Patrick V. Murphy,

Acting Assistant Secretary for Policy and International Affairs.

[FR Doc. 93–18445 Filed 8–2–93; 8:45 am]

BILLING CODE 4910–62–P

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

[Docket No. 93–44; No. 1]

Chrysler Corp.; Petition for Temporary Exemption From Federal Motor Vehicle Safety Standards Nos. 108 and 111

Chrysler Corporation of Sterling Heights, Michigan, has petitioned for a temporary exemption from several requirements of Motor Vehicle Safety Standards Nos. 108 *Lamps, Reflective Devices, and Associated Equipment,* and 111 *Rearview Mirrors.* The basis of the petition is that requiring compliance would prevent it from selling a motor vehicle whose overall level of safety is equivalent to or exceeds the overall level of safety of nonexempted motor vehicles.

Notice of receipt of the petition is published in accordance with the regulations of the National Highway Traffic Safety Administration on this subject (49 CFR part 555) and does not represent any agency decision of exercise of judgment concerning the merits of the petition.

Chrysler wishes to institute a factory delivery program for two of its passenger cars, similar to programs established by European manufacturers where Americans purchase vehicles in Europe meeting the Federal motor vehicle safety standards, drive them there on holiday, and then return with them to the U.S. The purchasers of the vehicles for which exemptions are sought would be "European citizens who are either visiting or temporarily assigned to work in the U.S.", who would drive them in the U.S., and export them to their home countries. Chrysler notes that these vehicles would have to be built to European safety specifications, and that this necessitates a noncompliance with two Federal motor vehicle safety standards which, absent an exemption, precludes sale and use of the cars in the United States.

The petitioner seeks a 2-year exemption to cover, as limited by 15 U.S.C. 1410, not more than 2500 vehicles each year. These vehicles (some of them sold under different names abroad) are the Eagle Vision, Chrysler New Yorker, Plymouth/Dodge Neon, and Jeep Wrangler, Cherokee, and Grand Cherokee. The vehicles would comply with all Federal motor vehicle safety standards with the exception of portions of the standards on lighting and rearview mirrors. Specifically, the headlamps will meet European (ECE R20) photometrics rather than those of Standard No. 108, the side marker lamps and reflectors will be eliminated, and the turn signals and stop lamps will meet the photometrics of ECE R7 and R6 respectively. The outside driver's side rearview mirror will be convex, and the passenger side convex mirror will not have the words "Objects in mirror are closer than they appear" etched on them."

Chrysler argues that the noncomplying vehicles will nevertheless have an equivalent overall level of safety for the following reasons. The vehicles will be equipped with lamps not required by Standards No. 108, such as rear fog lamps and "side repeater (turn signal) lamps," which "will serve to improve the conspicuity of the vehicle, and in the aggregate should compensate for the photometric variances." It notes that the center highmounted stop lamps will be supplied but will not be wired for use while the vehicles are in the U.S. Vehicles intended for use in Norway and Sweden may be equipped with daytime running lamps. With respect to headlamp photometrics, Chrysler states that safety evaluation of U.S. and European specifications tends to be subjective, that each has trade offs, and that a number of countries "including Sweden, Switzerland, Canada, Japan, and the Persian Gulf States permit headlamps with either European or U.S. beam patterns." More specifically, it discusses beam pattern differences. On the upper beam, minimum values for test points at 9 and 12 degrees left and right of H–V will not be met (Chrysler does not specify the shortfall) but since "the primary purpose of the high beam is to provide illumination down the road, we do not believe that providing illumination below the minimum value at these wide test points poses a safety concern." As for the lower beam, the lamp provides only 80% of the minimum value at test point 2D 15R, and 67% at 1½ D 2R. But since the drivers of the cars "will be Europeans who are accustomed to the forward illumination characteristics of these vehicles" the noncompliant lighting "should provide 'equivalent safety' for

these drivers compared to vehicles with headlights complying with FMVSS 108 photometrics."

As for the noncompliance with Standard No. 111 Chrysler submits that right hand mirrors without legends are used throughout Europe. Further, many European vehicles also use convex mirrors on the driver's side. In sum, "since Europeans are more accustomed to convex mirrors than U.S. drivers, there is no safety value added by providing flat mirrors on the driver's side or the passenger side etched explanation to the users of the subject vehicles."

In addition to the supplemental lighting equipment heretofore described, the vehicles will be equipped with safety equipment not required under U.S. standards. This equipment includes "vehicle sensitive and webbing sensitive seatbelt retractors", ECE requirements for more rounded surfaces on the inside and exterior of the vehicle, and ECE requirements for antiskid braking systems. Further, the mirrors that are required by the ECE have an added safety feature in that they fold-way rearward and upward.

According to the petitioner, Volvo Cars of North America, Volkswagen of America, and Mercedes-Benz of North America have argued that European lighting and mirror requirements do not compromise the safety provided by the Federal motor vehicle safety standards.

Chrysler submits that an exemption will be in the public interest in "improving the severe trade deficit currently being suffered by the U.S.", albeit in a small way. Further, the potential exists "for this type of export activity to expand in the future to include additional car models, and perhaps make a more significant contribution to reducing the deficit, provided regulatory constraints do not preclude such activity." Finally, Chrysler believes that the program has the potential to increase tourism due to the incentive of buying a vehicle in the United States.

Interested persons are invited to submit comments on the petition of Chrysler Corporation described above. Comments should refer to the docket number and be submitted to Docket Section. Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered. The petition and supporting materials, and all comments received are available for examination in the docket both before and after the closing date. Comments received after the closing date will be considered to the extend practicable. Notice of final action on the petition will be published in the Federal Register pursuant to the authority indicated below.

Comment closing date:

Authority: 15 U.S.C. 1410; delegations of authority at 49 CFR 1.50 and 501.8.

Issued: July 27, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93-18381 Filed 8-2-93; 8:45 am]

BILLING CODE 4910-59-M

National Highway Traffic Safety Administration

[Docket No. 9351, Notice No. 1]

Criteria for the Use of the "Star of Life" Symbol by State and Federal Agencies Involved With Emergency Medical Services

AGENCY: National Highway Traffic Safety Administration, (NHTSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: This Notice requests public comments on NHTSA's guidelines for the authorized use of the blue "Star of Life" symbol for emergency medical services.

DATES: Comments on this notice are due no later than September 2, 1993.

ADDRESSES: Written comments should refer to the docket number of this notice and should be submitted to: Docket Section, room 5109, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. (Docket hours are 9:30 a.m. to 4 p.m.).

FOR FURTHER INFORMATION CONTACT: Susan D. Ryan Chief, Emergency Medical Service Division, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590; phone (202) 366-5440.

SUPPLEMENTARY INFORMATION:

I. Background

A. NHTSA's Authority

The Secretary of Transportation approved the use of the blue "Star of Life" as a Departmental program symbol in a memorandum dated November 18, 1976. On February 1, 1977, the Commissioner of Patents and Trademarks issued to NHTSA a certificate of registration for the "Star of Life" symbol.

The registration of the blue "Star of Life" gives NHTSA exclusive legal authority to control the use of the mark throughout the United States. This registration remains in effect for 20 years and may be renewed for an additional 10 years in accordance with 15 U.S.C. 1059.

B. Current Guidelines

In accordance with its registration as a certification mark, the "Star of Life" may be used on emergency medical care vehicles to certify that they meet DOT standards, by emergency medical care personnel to certify that they are trained to meet DOT standards, and on road maps and highway signs to indicate the location of or access to qualified emergency medical care services.

In a memorandum dated September 14, 1977, the Administrator of NHTSA authorized the States and the Federal agencies that are involved with emergency medical services to permit use of the "Star of Life" certification mark according to several criteria and specifications outlined in the memorandum. These criteria and specifications are listed in Appendix A of this Notice.

C. Request for Modification of Guidelines

In July 1992, a State requested an advisory opinion from NHTSA on the use of the "Star of Life" symbol in the State's Emergency Medical Services Do Not Resuscitate (EMS-DNR) program. The State proposed to use the mark to alert State certified prehospital emergency medical care providers that a person wearing a bracelet which displays the "Star of Life" and the letters "EMS-DNR" does not wish to be resuscitated. NHTSA determined that this use does not meet the criteria outlined in the September 14, 1977 memorandum. Accordingly, NHTSA denied the State's request to use the "Star of Life" in connection with the EMS-DNR program.

Since July 1992, the National Association of EMS Physicians (NAEMSP), the National Association of State Emergency Medical Services Directors (NASEMSD), and the American College of Emergency Physicians (ACEP) have contacted NHTSA regarding their support for the use of the "Star of Life" by the State's EMS-DNR program. These organizations make four primary arguments in support of the proposed use of the "Star of Life" in EMS-DNR programs. First, they contend that the proposed use would provide EMS personnel with a consistent location to look for EMS orders on terminally ill persons who desire not to undergo resuscitation. The organizations consider the proposed use appropriate

because the DNR bracelet is intended to alert EMS personnel of a medical condition or appropriate medical treatment.

Second, the organizations argue that the "Star of Life" is a unique symbol widely recognized by EMS personnel. They assert that the "Star of Life" has come to symbolize the entire EMS system rather than the limited criteria in the NHTSA Memorandum of September 14, 1977.

Third, the organizations contend that NHTSA has "historically" granted State EMS offices some discretionary authority regarding the use of the "Star of Life" within their respective States. Thus, NHTSA should allow the respective State EMS offices to determine the use of the "Star of Life" on EMS/DNR bracelets.

Finally, at the time the guidelines were developed, the possibilities for the use of the "Star of Life" on a DNR bracelet were not considered. The organizations urge NHTSA to reexamine the appropriate use of the symbol and either rescind or reissue the guidelines to permit such use.

NHTSA continues to have concerns about expanding the authorized uses of the blue "Star of Life." The agency recognizes that permitting the use of the "Star of Life" symbol for purposes other than to certify may result in cancellation of the symbol's registration as a certification mark. Lanham Act 14(e), 15 U.S.C. 1064(5). In addition, permitting the use of the "Star of Life" for too many disparate purposes may result in the symbol becoming a generic mark and hence, subject to cancellation of its registration.

NHTSA registered the "Star of Life" as a certification mark to assist the general public in identifying whether EMS personnel and equipment are certified in accordance with DOT standards and to assist the public in locating and accessing these qualified EMS personnel and equipment. The agency is concerned that the proposed DNR bracelet with the "Star of Life" symbol will confuse the general public because the public will not be able to identify clearly qualified EMS personnel. For example, a member of the general public may see a person wearing the proposed bracelet, mistakenly assume that person is a qualified EMS personnel, and spend vital moments seeking assistance from the wearer rather than from qualified EMS personnel. In addition, NHTSA questions whether authorization of the symbol for EMS–DNR bracelets will expand the use of the symbol to other personal items and alert EMS personnel to other medical conditions and treatment. NHTSA is concerned that such expansion may create not only public confusion but also dilute the symbol's strength as a certification mark.

Furthermore, there are symbols currently being used, such as the Medic Alert symbol, for the specific purpose of alerting EMS personnel to a patient's condition and the particular manner to administer treatment. NHTSA did not and does not intend for the "Star of Life" to compete with these symbols. NHTSA's experience with EMS providers leads us to believe that they have no difficulty recognizing individuals whose specific needs are identified by a Medic Alert or other private symbol.

NHTSA recognizes that its current guidelines for the use of the "Star of Life" certification mark have not been revised since their publication in September 1977. Since that time, NHTSA occasionally has been asked to and has authorized various uses of the "Star of Life" that were not originally contemplated in the guidelines. However, such uses have been and must be consistent with the purposes for which the symbol was registered and have been authorized by the agency on rare occasions only. For example, NHTSA has authorized the use of the symbol on an EMT videotape concerning prehospital management of the Alzheimer's disease patient. The agency also has authorized a toy manufacturer's use of the "Star of Life" on a toy ambulance for the educational value of teaching children to identify the "Star of Life" and to equate the symbol with qualified EMS providers.

No one could have predicted in 1977 that the agency would receive such varied requests to use the "Star of Life" certification mark or that the mark would achieve widespread recognition among the EMS community and the general public. The EMS community and the States have devoted a great deal of effort in developing the recognition of the "Star of Life" mark across the county. Therefore, it is appropriate that NHTSA reevaluates its guidelines in view of the current trends and possibilities for the symbol's use. This reevaluation also includes an examination of the symbol's purpose and whether that purpose should be expanded further at this time.

II. Written Comments

NHTSA requests public comment on whether the agency should authorize the use of the "Star of Life" symbol in EMS–DNR programs, particularly its use on personal items, such as bracelets, necklaces, etc. to identify individuals who are DNR candidates. Commenters should include the following in their discussion of this issue:

1. The benefits and disadvantages of using the "Star of Life" to identify persons requesting a particular treatment or withholding of treatment from qualified EMS personnel;

2. Examples of State EMS programs which have developed or are developing EMS–DNR identification programs and the identification symbols used in those programs;

3. In States with established EMS–DNR programs, explain the difficulties, if any, that EMS personnel are encountering with the identification symbols used for EMS–DNR candidates.

4. To what extend the proposed use of the "Star of Life" symbol will confuse the general public as to the identification and location of qualified EMS personnel and equipment;

5. The competitive effect of the proposed "EMS–DNR" bracelet/"Star of Life" symbol on private organizations that offer services which alert EMS personnel to a patient's condition; and

6. Should the agency authorize the use of the "Star of Life" symbol for services or programs that would alert EMS personnel to other medical conditions of a patient, i.e., diabetes, heart diseases, high blood pressure.

NHTSA also requests comments on whether the agency should make other revisions to its guidelines that describe the authorized uses of the "Star of Life." See Appendix A of this Notice for the criteria and specifications for the authorized use of the "Star of Life."

Commenters are requested to address the following:

1. Which criteria and specifications should be revised and why;

2. Discuss the current trends and uses of the "Star of Life" symbol;

3. Discuss other possible uses of the "Star of Life" symbol by the EMS community and whether these uses are within the current guidelines and the purpose for the symbol's registration as a certification mark;

4. Propose criteria and specifications that would reflect the current trends and uses of the "Star of Life" symbol; and

5. Discuss whether the purpose of the "Star of Life" symbol has expanded since its inception and how the agency can best reflect this purpose in its guidelines.

Interested persons are invited to submit comments on this proposal. It is requested, but not required, that ten copies be submitted.

Comments should not exceed 15 pages in length. Necessary attachments may be added to the submission without regard to the 15-page limit. This

limitation is intended to encourage commenters to detail their primary arguments in a concise manner. All comments received before the closing date indicated above will be considered and will be available for examination in the document at the above address. To the extent possible, comments filed after the closing date will also be considered. However, the issuance of new guidelines may occur at any time after that date. The agency will continue to file relevant material in the document as it becomes available after the closing date. It is recommended that interested persons continue to examine the docket for new material.

Persons who wish to be notified upon receipt of their comments in the docket should enclose a self-addressed stamped postcard in the envelope with their comments. Upon receipt of the comments, the docket supervisor will return the postcard by mail.

Issued on: July 26, 1993.

Michael Brownlee,

Associate Administrator for Traffic Safety Programs.

Appendix A—Criteria and Specifications for the Use of the "Star of Life" Symbol [1]

Criteria

a. To identify Emergency Medical Care Vehicles-Ambulances that meet DOT type and equipment criteria.

b. To identify medical equipment and supplies for installation and use in the Emergency Medical Care Vehicle-Ambulance.

c. To indicate the location of qualified emergency medical services.

d. To indicate access to qualified emergency medical services.

e. On shoulder patches to be worn only by personnel having satisfactorily completed any of the DOT training courses or an approved equivalent and those personal who by title and function administer, directly supervise, or otherwise participate in all or a specific part of a National, State, or community EMS program or service in accordance with DOT criteria for Standard 11.

f. On EMS personal items such as badges, lapel pins, plaques, buckles, name plates, etc.

g. On printed material having direct EMS application such as books, pamphlets, letterheads, plans, manuals, reports, publications, etc.

The following additional provisions apply to the use of the "Star of Life":

h. Administrative personnel who may wear the "Star of Life" include program coordinators and staff, project directors and staff, permanent EMS' committees, councils, and advisory groups.

i. Shoulder patches should be a plain blue "Star of Life" on a white square or round background. Function-identifying letters or words are to be printed on bars and attached across the bottom separately. Edges of the basic patch and functional bars are to be embroidered. National Registry patches should be awarded precedence for the Emergency Medical Technician-Ambulance (EMT-A) and Paramedic (EMT-P) when personnel become eligible.

j. In application of the "Star of Life" to personal items, functional identification and physical characteristics shall be as follows: For Administrative and dispatcher personnel the "Star of Life" is to have a silver colored edge and the staff of Aesculapius, a silver colored serpent. For EMT's and other EMS patches, the edge shall be gold in color with a gold-colored serpent. A white background for the "Star of Life" is not necessary for these items.

k. The shoulder patches, and other EMS patches, may be displayed on uniform pockets. The symbol may also be displayed on collars and headwear. Appropriate dimensions, in addition to those provided under the heading, Specifications, are as follows: For shoulder patches the "Star of Life" bars should be 3 5/16" by 1 3/16". Functional bars and lettering as indicated.

Lapel pin and collar symbol dimensions:
- Length of "Star of Life" bar—3/4"
- Width of "Star of Life" bar—3/8"
- Length of Staff—9/16"

Uniform headwear dimesions:
- Overall dimensions w/white background 2" by 2"
- Length of "Star of Life" bar—1 3/4"
- Width of "Star of Life" bar—7/8"
- Length of Staff—1 5/16"

When displayed on headwear, functional bar should be 2" by 3/8" width, 1/4" lettering.

For other uses, dimensions may be optional.

Entrepreneurs engaged in the production of goods or publication of printed material are authorized to employ the symbol in accordance with this memorandum. Its registered status must be indicated as set forth above [2]

m. Lettering is not to be superimposed on the "Star of Life."

n. The Staff of Aesculapius is to be white at all times except as indicated in subparagraph j above. When used for highway signing, colors shall be reversed.

Those concerned should be prepared to provide evidence of eligibility to procure, distribute, or display the "Star of Life" as provided for in this memorandum. Authenticated documents, such as certificates, cards, licenses, and official correspondence are examples of such evidence of eligibility.

Specifications

BILLING CODE 4910-59-M

[1] Source: NHTSA Memorandum of September 14, 1977.

[2] As a registered certification mark, the "Star of Life" must always be accompanied by the symbol consisting of a capital letter R surrounded by a circle, i.e. ®. This marking shall appear immediately adjacent to the "Star of Life" on all decals, uniform patches, printed material, plaques, pins, buckles, name plates, etc. Where the item consists solely of the "Star of Life" and does not have an adjacent surface of surrounding area (e.g., a lapel pin), the ® shall appear on the reverse side of the item. *See* NHTSA Memorandum of September 14, 1977.

Specifications



COLOR: Pure Primary Blue (approximate). Above print may be used as sample. Detailed color range data will be provided.

DIMENSIONS:

	SIZES		
	A	B	C
Length of bar	3"	12"	16"
Width of bar	3/4"	3"	4"
Length of staff	2 1/2"	9 1/2"	12 1/2"
White background (if required)	4" sq.	14" sq.	18" sq.

All angles 60°. Deviations in size must be proportionate.

The registration mark R should be centered in the manner indicated above. The diameter of the circle should be 1/4 of the width of the bar. The letter R should not touch the circle.

Location: For appropriate location on the ambulance see the Federal Specifications for Ambulance-Emergency Care Vehicle * KKK-A-1822 GSA-FSS.[1]

Note: "Star of Life" symbols are not available from the Department of Transportation. Stencils or decals for applying the symbol must be purchased locally.

[1]Available from: General Services Administration (3FRS13S), Bldg. 197, Washington Navy Yard, Washington, D.C. 20407.

EMS Patches



EMT-A	EMT-P
EMC-FR	EXTRICATION
DISPATCHER	ADMINISTRATION

Legend

EMT-A —Emergency Medical Technician-Ambulance
EMT-P —Emergency Medical Technician-Paramedic
EMC-FR—Emergency Medical Care-First Responder

Overall Patch Dimension 3 1/2" by 3 1/2"

Length of staff	2 5/8"
Length of bar	3 1/2"
Width of bar	1/2"
Width of border	1/16"
Height of letters (Ex. EMT-P)	5/16"
Height of words (Ex. DISPATCHER)	1/4"

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[FR Doc. 93-18186 Filed 8-2-93; 8:45 am]
BILLING CODE 4910-59-C

[Docket No. 93–56; Notice 1]

Porsche Cars North America, Inc.; Receipt of Petition for Determination of Inconsequential Noncompliance

Porsche Cars North America, Inc. (Porsche) of Reno, Nevada, has petitioned the agency on behalf of Dr. Ing. h.c.F. Porsche AG of Stuttgart, Germany. Porsche has determined that some of its replacement seat belts fail to comply with 49 CFR 571.209, Federal Motor Vehicle Safety Standard No. 209, "Seat Belt Assemblies," and has filed an appropriate report pursuant to 49 CFR part 573. Porsche 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 judgment concerning the merits of the petition.

Between 1967 and June 1993, Porsche manufactured approximately 14,000 replacement seat belts which did not include the installation, usage, and maintenance instructions required by Standard No. 209.

Standard No. 209, section S4.1(k) requires that "[a] seat belt assembly or retractor shall be accompanied by an instruction sheet providing sufficient information for installing the assembly in a motor vehicle except for a seat belt assembly installed in a motor vehicle by an automobile manufacturer. The installation instructions shall state whether the assembly is for universal installation or for installation only in specifically stated motor vehicles * * *." In addition, section S4.1(l) requires that "[a] seat belt assembly or retractor shall be accompanied by written instructions for the proper use of the assembly, stressing particularly the importance of wearing the assembly snugly and properly located on the body, and on the maintenance of the assembly and periodic inspection of all components. The instructions shall show the proper manner of threading webbing in the hardware of seat belt assemblies in which the webbing is not permanently fastened." The instructions pertaining to threading and nonlocking retractors do not apply to Porsche's belt designs. Porsche supports its petition for inconsequential noncompliance with the following:

Porsche has been supplying replacement seat belts since 1967 and is not aware of any complaints, incidents, or injuries attributable to the lack of installation, use, or maintenance instructions during this period of time. Like other vehicle manufacturers, Porsche maintains a detailed system of part numbers and information which is utilized by its dealer network to select and order replacement parts. The replacement seat belts are specified by location (i.e., left front seat), model type, and model year in the parts fiche or catalogs. Applicability of a seat belt is thus specified by the part number in the parts system.

Installation instructions for seat belts are provided in Porsche workshop manuals which are supplied to every Porsche dealer and which are also available for purchase [by] any customer. In addition, anyone replacing a seat belt is likely to be able to reverse the removal steps for the belt being replaced. Any concerns that the replacement belt may be incorrect can be addressed by comparison with the old belt, or if it is not available, checking for the logical fitment of the new belt. In most cases, it will be obvious to the installer whether or not the belt fits properly in the available location.

Instructions for use and maintenance are supplied in Porsche's Owner's Manuals. These instructions follow industry norms and contain no special requirements. [Porsche believes that d]ue to the small number of Porsche vehicles on the road and the very small number of replacement belts sold by Porsche, the probability of a customer needing this information and not having access to it in an owner's manual would be slight.

Porsche notes that NHTSA recently granted similar petitions from Nissan and other manufacturers on the same issue. For all the above reasons, Porsche believes that the noncompliance is inconsequential as it relates to motor vehicle safety and therefore NHTSA should grant this petition.

Interested persons are invited to submit written data, views, and arguments on the petition of Porsche, 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: September 2, 1993.

(15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: July 29, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93–18441 Filed 8–2–93; 8:45 am]

BILLING CODE 4910–59–M

Research and Special Programs Administration

Advisory Bulletin Number ADB–93–03

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation.

ACTION: Advisory to owners and operators of hazardous liquid and natural gas pipeline facilities in areas of flooding.

SUMMARY: Extended periods of rain and flooding in Midwestern states have resulted in the potential for conditions that threaten the safety of pipelines. The Office of Pipeline Safety (OPS), RSPA, has issued this advisory bulletin to pipeline operators in those flood areas to advise them of measures they should consider to assure the safety of those pipelines. In particular, pipeline operators should review emergency plans to assure that they adequately cover conditions possible in the current severe flooding.

Advisory

For compliance with 49 CFR 192.615(a)(3)(iv) Emergency Plans and 195.402(e)(2) Emergencies, pipeline operators must develop procedures for a prompt and effective response to natural disasters including flooding. In developing and reviewing emergency plans and procedures for natural disasters, operators should consider, as applicable to their pipeline systems, each of the actions outlined below:

Preventive Actions

Operators need to be alert to conditions that may adversely affect their pipelines and should consider the following actions:

- Be alert to areas of flooding and have personnel available for emergency response actions such as shutdown, isolation, and containment.
- Consider extending regulator vents and relief stacks above the level of anticipated flooding as appropriate.
- Evaluate the accessibility of pipeline facilities, such as valve settings needed to isolate water crossings or other sections of pipeline that might be jeopardized.
- Perform frequent patrols to evaluate right-of-way conditions at water crossings during flooding and after waters subside. Determine if flooding

has exposed and/or undermined pipelines as a result of forming new channels or erosion of riverbeds.

• Coordinate with other pipeline companies in the flood area and provide personnel to emergency response centers to act as a liaison for pipeline issues. Provide maps and information on pipeline location and condition to emergency responders.

• Determine if normally aboveground facilities (valves, regulator and relief sets, etc.) that have become submerged could be struck by craft operating in flooded areas and supply maps to emergency response centers and mark with buoys as appropriate.

• Perform surveys to determine the depth of cover over pipelines and notify landowners of reduced cover. Agricultural agencies may be helpful in reminding farmers of the potential hazard of reduced cover over pipelines.

• Assure that line markers are still in place and remind contractors, highway departments, and others involved in excavation and clearing activities associated with flood clean-up of the presence of pipelines and the operating hazards that could occur due to reduced pipeline cover.

Background

Damage to a pipeline may occur as a result of additional stresses imposed on piping by undermining of the support structure and by impact and/or waterborne forces. Washouts and erosion may result in loss of support for both buried and exposed pipelines. The flow of water against an exposed pipeline may also result in forces sufficient to cause a failure. These forces are increased by the accumulation of debris against the pipeline. Reduction of cover over pipelines in farmland may also result in the pipeline being struck by equipment used in farming or clean-up operations.

Additionally, the safety of valves, regulator and relief sets, and other facilities normally aboveground, or above-water, is jeopardized when covered by water. This threat is posed, not only by operational factors, but also by the possibility of damage by outside forces, floating debris, current, and craft operating on the water. Boaters involved in rescue operations, emergency support functions, sightseeing, and other activities, are generally not aware of the seriousness of an incident that could result from their craft damaging a pipeline facility that is unseen beneath the surface of the water. Depending on the size of the craft and the pipeline facility struck, significant pipeline damage may result. Pipeline failure could occur immediately or in the future.

Issued in Washington, DC, on July 29, 1993.

George W. Tenley, Jr.,

Associate Administrator for Pipeline Safety.

[FR Doc. 93–18443 Filed 8–2–93; 8:45 am]

BILLING CODE 4910–60–M

Sunshine Act Meetings

Federal Register

Vol. 58, No. 147

Tuesday, August 3, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., Tuesday, August 10, 1993.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93–18539 Filed 7–30–93; 10:02 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., Friday, August 13, 1993.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule enforcement review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93–18540 Filed 7–30–93; 10:02 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10 a.m., Tuesday, August 10, 1993.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

—Proposed rule to include an additional exemption from the prohibition contained in Rule 1.19 and an associated amendment to Rule 1.17 regarding capital requirements

—Applications for designation as a contract market in the Rolling Spot Australian Dollar futures contract and options on that futures contract/Chicago Mercantile Exchange

—Section 4(c) petitions of the Chicago Board of Trade for a "Professional Trading Market" exemption and of the Chicago Mercantile Exchange for an exemption for certain Rolling Spot futures and options contracts, and request for comment

—Consideration of upcoming Commission business

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, Secretary of the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93–18607 Filed 7–30–93; 2:43 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, August 17, 1993.

PLACE: 2033 K St., NW., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93–18608 Filed 7–30–93; 2:43 pm]

BILLING CODE 6351–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 58 FR 40859, July 30, 1993.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Wednesday, August 4, 1993.

CHANGES IN THE MEETING: Addition of the following open item to the meeting:

Discussion Agenda

1. Proposals regarding Financial Accounting Standards Board (FASB) Statement No. 115 concerning regulatory treatment of securities portfolios.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: July 30, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–18579 Filed 7–30–93; 2:40 pm]

BILLING CODE 6210–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11 a.m., Monday, August 9, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 30, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–18653 Filed 7–30–93; 3:58 pm]

BILLING CODE 6210–01–P

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE–93–23]

TIME AND DATE: August 11, 1993 at 10 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

1. Agenda for future meeting
2. Minutes
3. Ratification List
4. Inv. No. 731–TA–652 (Preliminary) Aramid Fiber Formed of Poly Paraphenylene Terephthalamide (PPD–T) from the Netherlands—briefing and vote
5. Inv. No. 731–TA–621 (Final) Compact Ductile Iron Waterworks Fittings and Accessories Thereof from China—briefing and vote
6. Outstanding action jackets
   1. ID–93–11; Final Report on Inv. No. 332–332 (Global Competitiveness of U.S. Advanced Technology Manufacturing Industries: Large Civil Aircraft
7. Any items left over from previous agenda

CONTACT PERSON FOR MORE INFORMATION: Donna R. Koehnke, Secretary, (202) 205–2000.

Issued: July 29, 1993.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–18580 Filed 7–30–93; 2:41 pm]

BILLING CODE 7020–02–P

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of August 2, 9, 16, and 23, 1993.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of August 2

Monday, August 2

3:00 p.m.
Briefing on Status of Part 100 Rule Change and Proposed Update on Source Term and Related Issues (Public Meeting)
(Contact: Leonard Soffer, 301–492–3916)

Tuesday, August 3

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Amendments to 10 CFR Part 73, to Require Annual Physical Fitness Performance Testing and Updated Day Firing Qualifications for Tactical Response Team Members, Armed Response Personnel, and Guards at Fuel Cycle Facilities Possessing Formula Quantities of Special Nuclear Material (Tentative)
(Contact: Harry Tovmassian, 301–492–3634)

Week of August 9—Tentative

Wednesday, August 11

2:00 p.m.
Briefing on Strategic Information Technology Plan (Public Meeting)
(Contact: Fran Goldberg, 301–492–7216)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of August 16—Tentative

Thursday, August 19

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of August 23—Tentative

There are no Commission meetings for the Week of August 23.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To verify the status of meeting call (recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill, (301) 504–1661.

Dated: July 29, 1993.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 93–18593 Filed 7–30–93; 2:42 pm]

BILLING CODE 7590–01–M

Corrections

Federal Register
Vol. 58, No. 147
Tuesday, August 3, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 930487-3161; I.D. 040593A]

Groundfish of the Bering Sea and Aleutian Islands Area

Correction

In rule document 93-16523 beginning on page 37660 in the issue of Tuesday, July 13, 1993, make the following corrections:

1. On page 37662, in the second column "**PART 657**" should read "**PART 675**".

2. On the same page, in the same column, in amendatory instruction 2, in the fifth line, "Figure 5" should read "Figure 2", in the sixth and seventh lines "Figure 2" should read "Figure 1", and after "Figure 1" remove "and adding in their place the words "Figure 1".

§ 675.2 [Corrected]

3. On the same page, in the third column, in § 675.2 (12), in the first line after "541" add double dashes.

§§ 675.2, 675.20, and 675.27 [Corrected]

4. On page 37663, in the third column, in amendatory instruction 5, in the third line, "work" should read "word".

§ 675.22 [Corrected]

5. On the same page, in the same column, in amendatory instruction 6, in the second and third lines, "figure 1" should read "figure 2".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3833

[WO-660-4191-02-24 1A; Circular No. 2648]
RIN 1004-AC07

Rental Fees, Mining Claim Recordation, and Assessment Work

Correction

In rule document 93-16689 beginning on page 38186 in the issue of Thursday, July 15, 1993, make the following correction:

§ 3833.1-7 [Corrected]

On page 38200, in § 3833.1-7(c), in the second line, "before October 6, 1992," should read "after October 6, 1992,".

BILLING CODE 1505-01-D

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

[RIN 2900-AF30]

Veterans Benefits; Eligibility or the Montgomery GI Bill—Active Duty

Correction

In proposed rule document 93-17455 beginning on page 39488 in the issue of Friday, July 23, 1993, make the following corrections:

§ 21.7972 [Corrected]

1. On page 39492, in the second column, in amendatory instruction 7, the first two lines should read "Sections 21.7073 and 21.7074 are redesignated as §§ 21.7074 and 21.7075 and".

BILLING CODE 1505-01-D

federal register

Tuesday
August 3, 1993

Part II

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 50 et al.

HUD Systems for Approval of Single Family Housing in Subdivisions; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 50, 200, 203, 204

[Docket No. R–93–1584; FR–3095–F–02]

RIN 2501–AB25

HUD Systems for Approval of Single Family Housing in Subdivisions

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends parts 200 and 203 (and makes conforming amendments elsewhere in HUD's environmental and single-family coinsurance regulations) to eliminate the process of prior HUD review of new residential subdivision developments when HUD is providing mortgage insurance on home loans on newly constructed individual dwellings in a subdivision, and the loans are being processed under the Direct Endorsement program. Because almost all applications for mortgage insurance are now processed by Direct Endorsement lenders, and because most local governments have adequate subdivision development regulations and land use controls, HUD believes that it is no longer necessary to perform subdivision reviews.

EFFECTIVE DATE: September 2, 1993.

FOR FURTHER INFORMATION CONTACT: Concerning 24 CFR parts 200, 203, and 204, Morris Carter, Director, Single Family Development Division, Room 9272, Telephone (202) 708–2700, TDD: (202) 708–4594. Concerning 24 CFR part 50, Richard H. Broun, Director, Office of Environment and Energy, Room 7240, Telephone (202) 708–2894, TDD: (202) 708–2565, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

The information collection requirements contained in this rule, including the revisions to information collection requirements contained in the final rule, have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

Public reporting burden for the collection of information requirements contained in this rule are estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading, *Other Matters*. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street SW., room 10276, Washington, DC 20410–0500; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for HUD.

II. The Proposed Rule

On April 16, 1992, the Department published the proposed rule in this proceeding (57 FR 13592). The rule proposed to amend the Department's regulations to eliminate prior HUD review of new residential subdivision developments when HUD is providing FHA mortgage insurance on home loans on newly constructed dwellings in the subdivision, and the loans are being processed under the Direct Endorsement program.

Because HUD, under the proposed rule, would perform no prior review of subdivisions, HUD proposed to require that the Direct Endorsement mortgagee and the appraiser sign and submit, for each mortgage, at the time HUD's endorsement is requested, an Appraiser/Underwriter Checksheet addressing flood hazards, noise levels, explosion and flammable materials storage hazards, airport runway clear zones and toxic waste hazards.

To assure continuing appropriate attention to federal fair housing requirements associated with affirmative marketing of multiple-unit housing by individual builders and developers, the proposed rule also required that any initial submission by a lender of an application for mortgage insurance on a property located in a new subdivision, where the builder or developer intends to sell five or more properties, must include an Affirmative Fair Housing Marketing Plan (AFHMP) meeting the requirements of 24 CFR part 200, subpart M.

III. The Public Comments

Twenty timely public comments were received on the proposed rule, and these and several additional late comments were considered by the Department. Commenters included a state and a national homebuilders association, four mortgage lenders, a state and a national mortgage bankers association, an organization representing manufactured housing producers, a state environmental council, two organizations representing appraisers, three builders, a consultant, an appraiser, and an individual commenter who did not identify his professional interest. Comments also were received from the U.S. Environmental Protection Agency and from the Council on Environment Quality, and the U.S. Army Corps of Engineers.

In general, the builders and builders' organizations were supportive of the rule as proposed, agreeing that there was considerable duplication of effort involved in FHA and local government subdivision approval processes. There were, however, a number of strong criticisms voiced in the public comments, including those from the organizations expressing support for the rule:

A. Criticisms of the Rule's Reliance on Appraisers and Underwriters

The Mortgage Bankers Association of America (MBA) commented that it was "encouraged" at the Department's willingness to streamline its subdivision approval process, but asserted that the proposed rule did not eliminate HUD's prior review requirements or its duplicative standards—it merely shifted the burden for compliance with existing standards from HUD field personnel to lenders and appraisers. MBA said that most lenders and appraisers would not have the necessary expert knowledge correctly to evaluate subdivisions and complete the required checksheet. Because of these concerns, MBA said it "cannot support the proposal as written."

If HUD truly intends to relinquish responsibility to state and local governments, MBA said, it should do so, as the Department of Veterans has done, instead of continuing to claim that HUD must impose "minimum requirements" of its own. By continuing to maintain specific minimum environmental requirements, the Department continues to duplicate the efforts of states and localities to the detriment of builders and developers, lenders and homebuyers. To the extent HUD retains its environmental requirements in the rule, MBA expressed concern that the

Department is making lenders—rather than itself—liable for the health and safety conditions of subdivisions. MBA found this "simply unacceptable." Lenders, in addition to being possibly subject to Mortgagee Review Board sanctions or uninsurable loans, might also be subject to civil suits brought by property owners. Singled out for objection was the Appraiser/Underwriter Checksheet described in the rule. While appraisers and underwriters may be equipped to offer an opinion concerning these conditions, MBA said, the specific questions they must answer (and certify to) are "impossible to adequately address without a high degree of technical skill." The underwriter or appraiser, by virtue of the certifications, could be held liable for faulty certifications based on inadequate or inaccurate data.

MBA suggested that if HUD must retain the "checksheet" requirement, HUD should consider modifying the language used, better to reflect the abilities of appraisers and underwriters. One such modification would be (on checksheet questions three and five) to ask whether the appraiser "observed adverse conditions, as opposed to asking whether adverse conditions exist." MBA also suggested that the required certification be modified, so that it became a certification "to the best of my knowledge and belief".

MBA stated that it would "very much like to support the proposed rule," but that there were too many liability concerns. While the Association expressed sympathy with HUD's desire to see that its environmental concerns are met, MBA said that it believes, "as HUD says it does," that the subdivision approval process is largely duplicative and should be eliminated. Finally, MBA stated that if HUD does go forward with the proposal, it would consider a limited implementation, involving HUD's retention of its local subdivision approval staff. "This way, lenders who are willing to undertake the additional responsibility will be free to do so without jeopardizing the ability of other lenders to do HUD new construction business."

The National Association of Homebuilders (NAHB) joined the MBA and several other commenters in arguing that the rule attributed expert knowledge to appraisers that they do not have, claiming that appraisers are not qualified to make highly technical and expert judgments on health and safety matters. The same argument, the commenter asserted, applies to direct endorsement underwriters.

A mortgage company echoed the observations of MBA and NAHB, stating that the rule places "entirely too much responsibility and potential liability for subdivision approval on the lender, and will have a substantial negative impact on new construction business being directed to FHA." Lenders are not experts in making environmental and architectural judgments, the commenter said. Many lenders will be reluctant to undertake new FHA construction business because of potential liability. Additionally, because each lender in a new subdivision will probably want "to perform its own due diligence," builders will ultimately pass on multiple costs to borrowers, the commenter said. Summarizing, the commenter claimed that the proposed rule "has no positive impact and ultimately is a disservice to the lending and homebuying community." It was urged that HUD not go forward with the rule.

The U.S. Army Corps of Engineers agreed, in its comments, that the rule placed an "extraordinary burden" on appraisers. The Corps of Engineers said that the rule appears to require an additional level of investigation in areas well outside an appraiser's expert knowledge. Who assures the measurements included in the proposed Checksheet? Should the measurements be taken from the physical road, railroad, or airfield—or from the right-of-way limits? What is the extent of the appraiser's responsibility? How is he/she, for example, to recognize a container storing explosive or fireprone materials? How much investigation is expected? The Corps of Engineers suggested that it might be prudent to have the developer submit a signed and certified engineering report, identifying these conditions or concerns on the checklist—rather than relying on an appraiser.

The National Association of Realtors (NAR) believed that the Checksheet would "imply an expertise in other professions beyond that of the typical appraiser" and could mislead users of the appraisal report, unless some form of disclaimer notice were included in the document. NAR also expressed concern about the "vagueness" of several checksheet questions, notably "noise" and "major road". Where easement maps are unavailable, "runway clear zones" and "toxic wastes" sites may not be evident, NAR claimed. It was suggested that the checksheet leave room for more than "yes" or "no" responses.

HUD Response

The Department understands the concerns that the commenters have expressed concerning the liability that an appraiser and underwriter might be assuming by completing the Appraiser/Underwriter Checksheet. While these concerns might have been addressed by setting out clarifications and limitations in the final rule aimed at the liability issue, the Department has instead decided to deal with the question in a more fundamental manner. The final rule has been revised substantially with reference to the site analysis requirements set out in the checksheet. In lieu of seeking completion of the checksheet by the appraiser and underwriter, the final rule adapts and expands an existing form—the HUD 92541 Builder's Certification—so that the form solicits site analysis information of the kind originally proposed for completion by an appraiser.[1]

The form would be prepared by the builder of a subdivision. As explained in the preamble to the proposed rule, a central reason for the changes that the Department proposed was "that local [subdivision] processing meets the Department's significant concerns, and that much of FHA's [subdivision] processing was redundant." The preamble noted that "[l]and development * * * is controlled primarily by city, county, township, and parish level governments." The subdivision builder is the party that must deal with these local governmental bodies to obtain needed approvals. In order to do so, and as part of the development process even in the absence of local requirements, it is the party that is most familiar with the features of the subdivision site and thus best equipped to provide site information for consideration by the appraisers and mortgages concerned with individual lots within the subdivision.

In circumstances that call for specialized professional studies of site features, builders are likely to have obtained such studies as part of seeking required local approvals and there would be little gain in requiring a different party such as the appraiser to also obtain such studies. In further response to commenters' expressed concerns, the adjustment of the final rule to provide for certification by the builder makes implicit that the site analysis information, or portions of it, may be delegated to a licensed professional—for example, an engineer—if necessary to assure accurate reportage.

[1] (The revised form HUD–92541 is to be known as the "Builder's Certification of Plans, Specifications and Site," but will be referred to in this preamble as the "Builder's Certification".)

The described changes should lessen lenders' (or appraisers') concerns about potential liability. Additionally, HUD intends to permit Direct Endorsement lenders to use either the Improved Area Process (IAP) or the new process set out in this rule. DE lenders who remain uncomfortable with the new process may use the IAP, which has been in place since 1985, and which many lenders have used without difficulty.

The Department doesn't believe that the new Builder's Certification process will result in additional costs to homebuyers. On the contrary, the new process should speed loan approvals, reduce costs to homebuyers, and reduce the cost of compliance with the requirement being imposed for site analysis information, since builders have this information more readily available to them than would appraisers.

In essence, the Department has accepted the commenters' principal concerns and has acted upon them. HUD expects builders to report, in the Builder's Certification, only those conditions that directly affect the property and that are observable on (or from) the property, and those that, while not observable, are known to the builder or should be known, based upon the builder's (or an appropriate agent of the builder's) superior knowledge of the building site. Builders should have little difficulty in completing the site analysis questions. The Builder's Certification will afford opportunity for more than a "yes or no" response to the several questions. If the builder (or other professional) completing the certification needs more room to explain the conditions or to elaborate on his or her observations, HUD will not object to the use of an addendum to the certification. It should be noted, nonetheless, that the rule does require, in addition to any volunteered elaborations of the responses contained in comments, a direct answer to the "yes" or "no" questions.

Responding generally to the numerous concerns commenters expressed about the Checksheet, the Department notes that the Builder's Certification, successor to the proposed rule's Checksheet, is being required for the limited purpose of alerting the lender and the Department to the possible existence of environmental and other problems that might warrant further exploration as part of the underwriting process. Unlike the statement of appraised value that is prepared on the basis of the appraiser's work, the Builder's Certification will not routinely be provided to the homebuyer as part of the mortgage processing, and is not prepared for the purpose of guiding the homebuyer. In any event, the change in procedure made in this final rule relative to the preparation of site analysis information by the builder should lessen the concerns expressed by many that the liability of appraisers might be increased because of the information requested in the checksheet.

Note, however, that the rule, as revised, provides explicitly that the Builder's Certification is to be furnished to the appraiser for reference in performing the property appraisal. At that point, the appraiser's only added responsibility is to conduct the appraisal and to provide comment on any apparent discrepancy between the site conditions observed and the statements included in the Builder's Certification.

In its comments, NAHB agreed that most local governments have adequate subdivision development regulations and that HUD's review duplicates that performed by local governments. However, NAHB complained that HUD has substituted an entirely new, "lot-by-lot environmental review process for the current project-wide subdivision review." NAHB objected, first, to the creation of a "new review process imbedded in a new form," because, NAHB believed, the process would eliminate reciprocity between VA and FHA. (Because the appraiser is called upon to provide a CHUMS identification number, the NAHB assumed that VA appraisers would be precluded from doing an appraisal unless they were also FHA-approved.)

HUD Response: The Department has resolved the appraiser-related concern by the earlier-discussed change in the rule to provide instead for a Builder's Certification, to include site-analysis information. These procedures will not eliminate reciprocity with the Veterans Administration. However, the Department will require that the Builder's Certification accompany the VA Certificate of Reasonable Value when VA case is submitted for HUD endorsement.

NAHB also argued that the process set out in the proposed rule would discriminate against new construction. Only two of the five concerns on the checksheet (flood hazards and runway clear zones/clear zones), NAHB said, pertain to both existing and new construction. The other three (noise, storage hazards, toxic waste hazards) apply only to new construction. "If health, safety and future marketability are the driving force behind this proposed rule, it would seem appropriate to have the checksheet apply to existing housing as well."

HUD Response: HUD's current subdivision analysis procedures are applied only to new construction in new subdivisions, so the Checksheet featured in the proposed rule was prepared for that purpose. It was not the Department's intention to implement the Checksheet for existing construction, and the Builder's Certification substituted for the Checksheet in this final rule also is inapplicable to existing construction. The commenter is incorrect, however, in its assertion that toxic waste hazards are examined only in connection with new construction. Paragraph 4–20 of HUD Handbook 4150.1, REV–1 instructs appraisers to reject a property if a toxic waste hazard endangers or seriously affects the livability of the property, its marketability, or the health and safety of occupants. Paragraph 4–20 applies to any property—proposed or existing.

NAHB also asserted that the proposed checksheet is significantly flawed in design. Question 3 asked an appraiser to determine whether a property was located "within view of any container storing explosive or fire-prone materials?" There could be instances where trees completely shield the presence of a dangerously close storage container, or, conversely, instances where a storage container is "within view" but far enough away to represent no danger.

A similar comment from the Appraisal Standards Board of the Appraisal Foundation (ASB) opposed the inclusion in the proposal of the Appraiser/Review Appraiser Checksheet, on grounds that use of this checksheet "will mislead the reader to believe that the typical appraiser has the expertise and training to identify toxic or hazardous substances." ASB also asserted that the checksheet contains redundant information and is too vague to be an effective tool. Vague items were said to include the lack of definition of terms like "major road, highway, or freeway", "within view of" and "fireprone materials". Obtaining the information included on the checksheet from qualified professionals or existing public sources is preferable to asking an appraiser to observe these items in the field, ASB concluded.

HUD Response: The Department believes that both the change from appraiser-prepared to builder-prepared site analysis and several clarifications of language employed in the site-related questions on the Builder's Certification form are responsive to the commenters' concerns. This change is expected greatly to improve the reliability of the

information provided, and should eliminate questions of "qualifications" to perform the analysis. Some adjustments have been made in the language of the site analysis questions in response to commenter criticisms. The question on "noise" has been revised, to become an inquiry whether the property is located within 1000 feet of a "highway, freeway, or heavily traveled road". Language relying on sightlines has been eliminated in favor of objective measures of distance.

NAHB argued, generally, that HUD's proposed process "second-guesses" local controls. While the preamble claims that HUD has concluded that local government subdivision processing "meets the Department's significant concerns * * *" the rule features continued examination of a series of health and safety issues, contradicting the preamble's conclusion that localities are adequately discharging their responsibility to protect citizens.

Concluding, the NAHB urged that the proposed checksheet system be abandoned in favor of reliance on local zoning and subdivision controls as well as on state and local environmental reviews to ensure safe and healthy land development. A simple certification by the developer that a lot complies with all departmental requirements should be adequate to satisfy HUD's concerns, the commenter asserted.

HUD Response: HUD's site analysis questions are focused on a limited array of health, safety and marketability concerns that the Department believes it must continue to address, either because statutes so require, or because the Department's underwriting experience has shown that particular conditions present a high insurance risk if they are not given adequate consideration in the underwriting of the mortgage. The Department has a responsibility to the insurance fund to continue to examine those factors that will affect insurance risk and the future marketability of a property. The revised final rule, relying as it does on an improved site analysis data-gathering system and calling upon the builder (instead of the appraiser) to furnish the needed data, is appropriately responsive to NAHB's suggestion and those of other commenters.

Another commenter, a major bank, supported the intent of the proposal to reduce redundant efforts by HUD and individual cities, and to reduce paperwork. However, the commenter expressed its concern that, by removing the requirement that HUD approve certain new subdivisions, the responsibility is being shifted to parties "not truly qualified to assess all of the potential hazards addressed by the required checklist." The commenter suggested that other experts might have to be consulted, requiring time and money, and (possibly) "leading back to the redundancies encountered in the current system." The commenter recommended, as an alternative, reliance on the local municipality's record. The municipality's issuance of a building permit and certificate of occupancy should be accepted as evidence that the property is habitable.

HUD Response: The revised rule's Builder's Certification process provides a greater degree of assurance to a lender, concerning underwriting considerations, than did the appraiser-dependent proposed rule, by shifting the responsibility for site analysis to the party best-qualified to provide the needed information—the builder. Based on the site analysis information included in the Builder's Certification, an experienced mortgage underwriter can make proper judgments about marketability and health and safety of the property. HUD believes that DE underwriters, after becoming familiar with this new process (especially as it has been modified in this final rule) will be able to underwrite cases without difficulty. Moreover, it is HUD's belief that in the overwhelming majority of cases, the property will not be affected by any of the conditions listed on the Builder's Certification because of adequate subdivision controls at the local or state level, and that the builder will be able to render a judgment without difficulty. By not encountering the delays often associated with HUD subdivision processing, the lender will be able to speed case processing and provide better service both to the homebuilder and the homebuyer under this new process.

The builder will be able to call upon a licensed professional (e.g., an engineer) if necessary for completion of the site analysis information included in the certification, and costs can be minimized by having the engineer inspect all of the lots in the subdivision during one site visit, since the certification process can be completed for multiple lots.

All HUD Field Offices routinely provide training for Direct Endorsement (DE) mortgagees, appraisers and builders on new program requirements and procedures. Accordingly, HUD Field Offices will provide training to DE mortgagees, appraisers and builders on the new procedures applicable to new subdivisions and the use of the revised Builder Certification form (HUD 92451).

HUD has adequate quality control procedures to assure mortgagee compliance with the new program requirements. Currently, approximately 15% of all DE cases are reviewed by HUD after the mortgage has been endorsed for insurance to assure compliance with HUD requirements. This post-endorsement review will include a desk review of the appraisal and the revised Builder Certification form 92541. In addition to these desk reviews, HUD will field review approximately 10% of all appraisals. This involves a visit to the site. These desk and field reviews will assure compliance with program requirements by the mortagee, appraiser and builder.

The Department, for the reasons stated earlier in this preamble, chooses not to rely solely on the local municipality's issuance of building and occupancy permits to assure that the property meets HUD's underwriting requirements.

B. Criticism of Environmental Features

The Council on Environmental Quality (CEQ) stated that the proposed rule would authorize HUD to eliminate from NEPA and other environmental statutes HUD approval of federal mortgage insurance for new single family subdivision processing. The rule also would permit HUD to forego consideration of practicable alternatives to construction of new developments in floodplains and wetlands.

HUD bases the exemptions, CEQ stated, on its claims that these actions have no potential for effects on the human environment, and that most local governments have adequate subdivision development and land use controls. CEQ said it strongly opposed the proposed exemptions. NEPA does not exempt any federal agency from its requirements, CEQ said. NEPA requires compliance unless there is a clear conflict of statutory authority. CEQ observed that HUD had cited several reasons for exempting these actions from NEPA, including the determination that the actions "have no potential effects on the human environment." If HUD, implementing its NEPA regulations, has found that the actions "do not individually or cumulatively have a significant effect on the human environment, then HUD should categorically exclude these actions, CEQ advised. A NEPA exemption is not the proper outlet for the actions delineated in the proposed rule.

HUD Response: HUD believes that CEQ has misconstrued the nature of the action that the rule proposed to indicate was exempt from NEPA and related

environmental laws. While the comment suggests that the proposed rule would authorize HUD to eliminate "HUD approval of federal mortgage insurance for new single family subdivision processing" from NEPA and other environmental statutes, the rule in fact proposed to eliminate HUD subdivision processing itself. Under the rule, there will *be* no Federal action involving subdivision approval. Accordingly, the only Federal action to which NEPA and related laws could apply will be HUD's endorsement of FHA insurance on an individual one- to four-family mortgage loan submitted by a DE mortgagee. The DE mortgagee would submit a request for HUD endorsement after a dwelling already has been built, and, indeed, after the dwelling has been sold to a homebuyer. HUD does believe that the proposed elimination of HUD subdivision review will not have a significant effect on the environment. However, the regulatory exemption from NEPA and related laws was proposed with respect to the remaining HUD action, *i.e.*, HUD's endorsement of mortgage insurance on an individual dwelling. Since these endorsements would be requested and processed after completion of construction, HUD believes, as stated in the proposed rule's preamble, that these actions would have no potential effects on the human environment.

In response to CEQ's comment that a categorical exclusion (rather than an exemption from NEPA) is the proper outlet for actions with no significant environmental effects, HUD has revised the final rule to remove the proposed language referencing an "exemption" from NEPA for HUD insurance endorsement of mortgage loans submitted by a DE mortgagee under this rule. HUD endorsement of insurance on these DE-processed loans will be categorically excluded from NEPA review. This categorical exclusion requires no further regulatory action, since these endorsement actions fall within the categorical exclusion that is currently provided for "[a]n individual action on a one- to four-family dwelling" (see 24 CFR 50.20(a)). In this final rule, however, HUD has included additional language in § 50.20(a) to specifically identify HUD endorsement of insurance, including endorsement under the DE program, as an example of an individual action on a one- to four-family dwelling. As discussed below in response to the comment from the Environmental Protection Agency, the final rule does retain, in modified form, a provision regarding the inapplicability of environmental laws other than NEPA.

With regard to the consideration of practical alternatives to construction of new developments in floodplains and wetlands, HUD again believes there is an apparent misunderstanding of what the rule proposed. As the preamble to the proposed rule noted, the action proposed to be exempted, through an amendment to HUD's previously proposed 24 CFR part 55, was HUD's endorsement of mortgage insurance on one- to four-family properties that are located in a wetland and have already been processed through construction and loan closing by a DE lender without HUD review. (With regard to floodplain sites, an exemption from part 55 for HUD approval of financial assistance for actions in non-wetland floodplain sites that have received a Federal Emergency Management Agency Letter of Map Approval (LOMA) or Letter of Map Revision (LOMR) had already been proposed in the original proposed rulemaking for part 55; when that rule is published for effect, it will require, consonant with the amendment in today's rule, that a LOMA or LOMR be obtained for DE-processed sites in a floodplain.) HUD continues to believe that since a dwelling would already have been built and sold to a mortgagor at the time the Department receives a request for endorsement, it is clear that there would be no practicable alternative to the action outside the Wetland and no practicable means further to minimize the impact of the action. Accordingly, it would be academic and unnecessary to subject these endorsement actions to the eight-step decisionmaking process embodied in HUD's proposed part 55, implementing the requirements of Executive Order 11990 (Protection of Wetlands). For that reason, HUD is not withdrawing the amendment to the proposed part 55, which remains pending, and which will be published as a part of the pending rulemaking entitled "HUD Procedures for Protection of Floodplains and Wetlands" (FR–865, proposed rule published at 55 FR 396, January 4, 1990).

The Environmental Protection Agency's (EPA) comment stated that EPA did not believe that HUD's "federal action" of endorsing a mortgage insurance transaction could be exempted from compliance with the federal environmental statutes, including NEPA, without specific statutory language authorizing that exemption. HUD cannot, by regulation, exempt these proposed actions based solely on the Department's determination that these actions have no potential for effects on the environment, or the fact that most local governments have adequate subdivision and land use controls. In the absence of a statutory authority, EPA objected to HUD's proceeding with this rule as proposed. If the purpose of the proposed rule is to determine that the approval actions are of the type that experience had shown do not otherwise have significant environmental impacts, EPA recommended that the rule be revised to include approval actions under 24 CFR 50.20 (NEPA categorical exclusions). Placing of these actions in 24 CFR 50.20 would satisfy NEPA requirements, but would not relieve HUD of the requirements of other appropriate environmental control statutes and regulations.

EPA also stated that the rule should contain additional information on HUD's plans for program oversight procedures to be used for direct endorsement lenders and appraisers who would be performing the environmental analyses, because final responsibility for compliance with a number of laws, regulations and executive orders will continue to rest with HUD.

HUD Response: HUD has in place control procedures for the monitoring and oversight of DE-approved lenders and appraisers. These procedures include the technical review, on a post-insurance-endorsement basis, of approximately 20 percent of all cases insured. This technical review includes a desk review of the appraisal and all documents related to the valuation of the property, along with a review of the mortgage credit of the borrower. In addition, at least 10 percent of all appraisals are field-reviewed to assess the quality of the appraisal and compliance with HUD appraisal policies. The cases that are insured under the procedures set forth in this final rule will be subject to these same technical reviews and field reviews. When post-endorsement technical reviews or field reviews reveal noncompliance with HUD requirements, appropriate sanctions are imposed upon builders, lenders or appraisers.

EPA's concerns with regard to the proposed exemption from NEPA parallel those of CEQ, and are addressed in the preceding response to the CEQ comments. EPA's comments, however, also more directly address the issue of the applicability of environmental laws and authorities other than NEPA that are listed in HUD's environmental regulations at 24 CFR 50.4. With respect to these laws and authorities, HUD published, on July 20, 1992, an interim rule that implements the Housing Opportunities for Persons with AIDS

program (57 FR 32106). That rule contains an amendment to § 50.19 that clarifies HUD's intent by revising the title of that section to read "Activities not subject to § 50.4". As the section title indicates, HUD's intention was not to attempt to create exemptions from the related laws in § 50.19, but merely to publish its finding that the actions listed in that section would not constitute the type of federal action that would trigger compliance with the requirements of any of the related laws and authorities listed in § 50.4. In the Department's view, HUD endorsement of insurance on a previously built and sold one- to four-family dwelling similarly would not trigger compliance, except that the Flood Disaster Protection Act of 1973 (FDPA) and § 51.303(a)(3) of HUD's airport siting regulation (24 CFR 51.303(a)(3)) do apply to such endorsements. EPA did not cite any specific environmental law (other than NEPA) that it believed might be triggered by HUD insurance endorsements on individual one- to four-family properties. Accordingly, in the final rule, HUD has modified § 50.19 to adopt the title contained in the current interim § 50.19. Like the proposed rule, this final rule indicates that HUD insurance endorsements are subject to the FDPA and to 24 CFR 51.303(a)(3).

An individual commenter who did not disclose his interest made three assertions:

1. The proposed rule doesn't meet NEPA requirements.
2. The rule would have negative adverse environmental impacts.
3. The rule would be detrimental to the homebuilding industry.

Enlarging on his first point, the commenter asserted that NEPA imposes an environmental review component on all federal agency decision making. NEPA, he said, has been interpreted to require environmental review not only for actions easily recognized as exceeding the threshold for an environmental impact statement, but for almost all agency actions, in order to ensure that none of them exceeds the threshold for an environmental impact statement.

HUD's proposed regulation contends that "NEPA does not mandate subdivision review where the construction has been completed before submission of the application of insurance." HUD argues that the lender is not applying for mortgage insurance until after the loan has been closed. In this case (the argument goes) the transaction would have proceeded independently of HUD, and how can a mortgage endorsement have an environmental impact?

The commenter asserted, however, that FHA mortgage insurance for new construction does not lose its federal identity, even when most of the processing has been farmed out to the private sector. "If it were this easy to avoid NEPA, then whenever an agency wished it could merely have a private party process the action and have the federal agency endorse it." The commenter stated that HUD's argument is misleading, in that the FHA mortgage insurance program "is not one where federal involvement is tacked onto a real estate transaction as an afterthought, as the proposed rule [implies]." The commenter also suggests that the Direct Endorsement program has "always been run as a federal program," with lenders specially trained, certified and monitored by HUD to insure that specific program requirements are met. The availability of federal mortgage insurance in association with the Direct Endorsement program, the commenter stated, makes clear that this is not a private mortgage insurance program.

HUD Response: HUD does not disagree with the commenter's contention that almost all agency actions require review under NEPA; however, under implementing regulations of the Council on Environmental Quality, it is clear that an environmental assessment need not be performed on classes of actions that would not have a significant effect on the environment, i.e., on "categorical exclusions" from NEPA requirements (see 40 CFR 1508.4). As discussed earlier in this preamble, HUD believes that its endorsement of mortgage insurance on one- to four-family dwellings processed by DE lenders under the proposed rule will not have such a significant effect. Accordingly, these mortgage insurance endorsements will be categorically excluded from NEPA review under HUD's environmental regulations.

However, the principal issue raised by the commenter here relates to the timing of NEPA applicability. HUD continues to believe that where the Department, *i.e.*, a federal agency, does not participate in the processing of specific properties on which mortgage insurance may later be requested until an insurance application actually is made, there is no federal action to which NEPA applies until that request has been made. While the property must meet certain HUD standards if a property is to be approved for insurance once submitted to HUD, and while lenders are trained, approved and monitored by HUD, DE lenders are not agents of HUD. In this situation, HUD does not believe that the possibility of a later submission to a federal agency converts privately contracted construction on a specific piece of private land into a "federal" action subject to pre-construction NEPA review. HUD believes that, under the Supreme Court's decision in *Kleppe* v. *Sierra Club*, 427 U.S. 390 (1976), mere contemplation of a federal action does not trigger the applicability of the environmental review requirements under NEPA.

Arguing his second point, that the proposed rule would have negative environmental impacts, the commenter asserted that many view FHA mortgage insurance, along with the Federal highway program, as one of the key sources of "Post World War II urban sprawl." The environmental impact of this sprawl, the commenter said, cannot be minimized. The proposed rule, by eliminating an environmental review that could be used to disapprove subdivisions proposed for areas not ripe for development, but which have been approved by small local governments, will promote "sprawful development" and will thus result in significant adverse impacts on the environment. The commenter then stated what he characterized as a "micro" argument that the rule itself has negative adverse impacts: He argued that the proliferation of local governments makes it possible for developers to "play one local government against the other, offering the commercial/industrial boost (tax base) in return for favorable concessions."

More specifically, the commenter listed the following requirements as examples where local requirements typically do not meet federal requirements in the subject area:

1. Floodplains and wetlands;
2. Water/sewers;
3. Landfills
4. Noise
5. Historic preservation.

HUD Response: The Department notes that whatever may have been the FHA's relative contribution to post-World War II "sprawl," the issue of environmental impact raised by the commenter is relevant only to prospective HUD activity under the rule published today. The Department estimates that, in fiscal year 1991, HUD-processed one- to four-family residential new construction cases represented less than five percent of the construction starts in the nation. Moreover, it is likely that this five percent of new construction—or much of it—would still have been built, absent FHA mortgage insurance. Thus, there is

no indication that the elimination of HUD environmental review of subdivisions will contribute significantly to preventable "sprawl" development.

The "micro" argument has not been applicable to HUD since 1974, when the CDBG program replaced several categorical grant programs which had featured areawide planning requirements. The FHA mortgage insurance program never included planning requirements. Of the five specific issues raised by the commenter, landfills and noise were addressed on the proposed rule's Checksheet, and continue to be addressed in the Builder's Certification. Regarding historic preservation, HUD's experience under the Improved Area Procedure, which employs a checksheet that covers historic and archaeological resources, has been that IAP-processed areas have not involved significant effects on those resources. Water and sewer requirements are covered by the Minimum Property Standards, as well as by local codes. Floodplains are covered by local controls required of all jurisdictions participating in the federal flood insurance program, and development in wetlands in subject to Corps of Engineers 404 permits.

The commenter argued that the rule would have a negative impact on the homebuilding industry. The primary motivation of the homebuilding industry is profit, the commenter stated. Environmental requirements will not interfere with this motivation, as long as there is a "level playing field" and all developers must deal with roughly equivalent requirements. Leaving the subdivision approval field to local government will lead to short-cutting by builders and, ultimately, to defective construction associated with poor soils that are often associated with wetlands and landfill areas. It was suggested that local approval will not always protect the builder from legal liability, and that the builder is better off financially if he or she is compelled, by federal regulation, to adhere to environmental standards.

Concluding, the commenter called the proposed rule "the last straw in a long progression of NEPA avoidance." HUD should finally recognize, he said, that compliance with NEPA is in the best interests of the Department, the public, homebuyers and the industry.

HUD Response

HUD's view is that the goals of NEPA and the related environmental laws must be balanced against the various program mandates imposed by the Congress. For the single family mortgage insurance program, this regulation presents an appropriate balance of these competing needs in light of the current practices associated with local planning, building, and financing in the United States.

HUD agrees with the commenter's observation concern about poor soils, and the Builder's Certification site analysis data has been modified to include that topic. Other potential concerns of the homebuilding industry have been raised by their major national organization and are addressed elsewhere in this preamble.

C. Miscellaneous Comments

A commenter stated that the proposed rule contained an unduly cumbersome requirement: It would require full building plans and specifications and lot grading plans relating to the building plans to be submitted at the time of endorsement. The commenter, a mortgage company, asserted that these documents are submitted at the time of the appraisal request, and that submitting them at endorsement would be redundant.

HUD Response: The Department will require only one submission of building plans and specifications and lot grading plans—at the time of the appraisal request.

A consultant commented that the proposed checklist appeared not to address the number one cause of property damage—expansive soil. The commenter strongly suggested that this issue be addressed.

HUD Response: HUD agrees with the commenters who raised this point. A question concerning expansive soil has been added to the Builder's Certification.

A state home builder's association stated its support for the rule, declaring that sufficient regulatory mechanisms are available at the local government level to preclude the need for HUD to perform what are generally duplicative and non-cost-effective subdivision reviews. However, the commenter cautioned that HUD should make clear to direct endorsement lenders that the rule is not intended to be a source of new fee-generating requirements on developers.

HUD Response: The purpose of this rule is to reduce costs to builders, developers, lenders and homebuyers, not to increase them. Accordingly, HUD will continue to control the allowable fees in these transactions.

Another commenter, a developer, stated that banks have requested FHA subdivision approval before closing on development loans. With the proposed rule, this would no longer be possible.

In the past, the commenter observed, FHA or direct endorsement approval of the subdivision made it easy to utilize many mortgage companies in a given subdivision. This created competition and helped builders to control costs. The proposed change will tend to limit a project to one lender who has taken the time fully to educate itself to the situation. While the subdivision approval process has been time-consuming and detailed, the commenter said, the changes proposed create problems of their own. The commenter advocated a more limited "desk review" subdivision approval process by HUD, based on a joint effort between the developer and the direct endorsement lender to provide HUD an information "package".

HUD Response: The Department believes that well-planned, marketable projects will be able to find development financing even though the FHA subdivision approval process has been terminated.

Another builder commented that, because of the high percentage of presale activity, it is critical that a system for fast-track approval based on development plans and specifications be identified and utilized. To avoid problems with rule interpretation, it should be spelled out that projects located closer than the specified distance to railroads and freeways are acceptable, provided that the 65db limit is met, as described in the HUD Noise Guidelines Handbook.

The commenter suggested that a change in the five-lot maximum for FHA approval for existing subdivisions, to a "75% built" standard would be more realistic, and would not create any adverse effect on existing market values.

HUD Response

The Department did not intend that the HUD Noise Guidelines handbook be employed in the circumstances set out in the Checklist. The noise standard, for purposes of the Builder's Certification, is expressed in terms of distance from the source of the noise. (Distance to noise-producing facilities is not a rejection factor, but is merely to be considered by the appraiser in assigning value.) While it would be acceptable for the builder to note mitigating circumstances with reference to the source of the noise, presence of noise barriers, and the like (including, where applicable, the fact that the Noise Guidelines decibel limit has not been surpassed), the principal inquiry in the site analysis information is directed to the specific site-related questions asked: "Are the improvements in a flood

hazard area?" "Is the property within 1000 feet of a freeway * * *."

With reference to the commenter's remarks concerning the five-lot maximum, the Department believes, (if HUD is correctly understanding the comment) that the observation reflects a misreading of § 203.12(b)(1). That provision applies the subdivision rule's requirements to new subdivisions containing five or more lots. Existing homes (homes at least one year old) are excluded from the reach of the rule, regardless of subdivision size.

The Manufactured Housing Institute (MHI) supported the rule and said that "HUD's commitment to the elimination of barriers to affordable housing is evident in this proposal."

MHI then stated that exclusionary zoning practices were widely used to prevent compatible HUD code homes from being permanently sited anywhere other than in specifically designated manufactured home parks or subdivisions. MHI suggested that HUD include questions concerning whether the subdivision in which a particular property was located allowed manufactured homes. While the response would not have an affect on the application itself, MHI believed that it would, over time, provide HUD with information that would help to determine the extent to which local jurisdictions and developers are eliminating barriers to affordable housing.

HUD Response: Zoning regulations are administered by local governments and HUD does not intend to amend the Builder's Certification form to address local zoning.

A commenter who identified himself as an FHA fee appraiser in Houston, Texas provided several examples of inappropriate construction practices, and stated that the proposed rule would aggravate an already-inadequate regulatory environment. In his area, the commenter, said, there were no zoning regulations, and environmental problems were already "out of control." It would be unwise to do away with government management in the housing industry, the commenter said.

HUD response: The final rule has been revised to provide that in areas where the local HUD field office determines that local subdivision standards do not exist, or are inadequate to protect HUD's underwriting risk, HUD may require lenders to use the Improved Area Process (IAP) and may require HUD appraisal review of the Appraiser/Review Appraiser Checksheet (Form HUD 54891) associated with the IAP before the endorsement of any cases involving properties in new subdivisions in the identified area. This procedure will provide HUD with a level of prior review that will serve as a safety valve to protect the insurance fund when a new subdivision is proposed in a jurisdiction that lacks effective local standards.

D. Expressions of Support, Suggested Expansion of Rule

A mortgage corporation expressed support for the rule, calling the current subdivision approval process a "tremendous hurdle" to providing affordable housing. The commenter suggested that the rule be expanded to allow qualified, approved HUD mortgagees to approve Planned Unit Developments under HUD guidelines. The direct endorsement underwriter, the commenter said, should be allowed to approve a subdivision with private streets, provided it meets certain HUD-required conditions. Under current procedure, the commenter said, PUD projects are submitted to the field office and, in many cases, to HUD's legal office. They also are approved by city, county and state governments. HUD should streamline its procedures for PUDs and for the approval of condominiums. A state bankers association provided comments identical to those of the mortgage corporation.

HUD Response: This rule does not address PUDs directly, because PUD requirements are distinct from the Department's subdivision requirements—although the same development may be subject to both. Subdivision approval by HUD focuses on the physical features of a new subdivision. PUD approval focuses on the financial and organizational aspects of a mandatory homeowners' association with power to enforce its assessments through liens. PUD approval procedures apply to existing as well as to new PUDs.

HUD's condominium processing procedures are unrelated to subdivision approval concerns and are not addressed in this rule.

The Florida Environmental Property Assessment Council supported the rule, but expressed its concern that the proposed underwriter checksheet was limited to only newly-constructed homes submitted under Direct Endorsement. The commenter stated its support for the use of an expanded checksheet to include all new and existing construction.

HUD Response: The Department does not plan to use the Builder's Certification process in connection with the insurance of existing properties, since subdivision processing is only applicable to new subdivision developments.

A builder provided comments "wholeheartedly endorsing" the proposed rule. The commenter agreed that local codes and requirements associated with development are generally more restrictive than those FHA requires for subdivision approval, and applauded HUD's decision to eliminate the duplication of effort.

IV. Amendments to Part 200

In addition to the several revisions contained in the final rule in response to public comments, the Department has also added additional changes to 24 CFR part 200, subpart M, the Affirmative Fair Housing Marketing regulations, designed to bring these provisions into conformity with the Fair Housing Act as it was amended by the Fair Housing Amendments Act of 1989. These amendments add references to "handicap and familial status" as newly added protected classes under the Fair Housing Act, as amended, thus adding them to the Department's affirmative marketing regulations in part 200, subpart M. The amendments in the proposed rule involving part 200 were intended to conform the affirmative marketing requirements relating to subdivision approval to the new procedures included in this rulemaking proceeding. These amendments are included in today's final rule without change. The additional amendments to subpart M are housekeeping changes involving statutory implementation only.

V. Other Matters

A Public Reporting Burden

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). The Department has determined that the following provisions contain information collection requirements.

Information collection requirement	Section of CFR affected	Number of respondents	Number of responses per respondent	Total annual response	Hours per response
Completion of Builder's Certification of Plans, Specifications and Site.	203.12(c)(2)	800	82	65,600	0.25
Total hours:					16,400

B. Executive Order 12291

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Department believes, however, that one effect of the rule will be significantly to reduce barriers to affordable housing and that, accordingly, significant cost savings for housing developers and housing purchasers will be realized as a result of the rule.

C. NEPA

An environmental assessment of the effects of this rule has been conducted by the Department and a Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

D. Regulatory Flexibility Act

The Secretary, in approving this rule for publication, has certified under 5 U.S.C. 605(b) (the Regulatory Flexibility Act) that this rule will not have a significant economic impact on a substantial number of small entities. The rule will relieve regulatory burdens on small and large businesses alike, and is expected to yield measurable cost savings to lenders.

E. Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have a potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The rule alters the administrative procedures associated with subdivision approval, but it has no direct impact on family-related concerns.

F. Executive Order 12612, Federalism

The General Counsel, as the designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule do not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and State or local governments, or on the distribution of power and responsibilities between them and other levels of government. The rule's major effects are on individuals and businesses. To the extent that the rule relies on state and local law for the supervision of subdivision development concerns, its Federalism impact is in accord with the concept of redistributing authority to local government.

G. Semiannual Agenda

This rule was listed as sequence number 1386 in the Department's Semiannual Agenda of Regulations published on April 26, 1993 (58 FR 24382, 24397) in accordance with the requirements of Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects

24 CFR Part 50

Environmental assessments, Environmental impact statements, Environmental policies and review procedures, Categorical exclusions.

24 CFR Part 200

Administrative practice and procedure, Claims equal employment opportunity, Fair housing, Home improvement, Housing standards, Lead poisoning, Loan programs—housing and community development, Mortgage insurance, Organization and functions (Government agencies), Reporting and record keeping requirements, Social security.

24 CFR Part 203

Hawaiian Natives, Home improvement, Loan programs—housing and community development, Mortgage insurance, Reporting and record keeping requirements.

24 CFR Part 204

Mortgage insurance.

Accordingly, 24 CFR parts 50, 200, 203 and 204 are amended as follows:

PART 50—PROTECTION AND ENHANCEMENT OF ENVIRONMENTAL QUALITY

1. The authority citation for part 50 is revised to read as follows:

Authority: 42 U.S.C. 3535(d); 42 U.S.C. 4332; Executive Order 11991, 42 FR 26967 (May 24, 1977).

2. In § 50.1, paragraph (c) is revised to read as follows:

§ 50.1 Purpose and authority.

* * * * *

(c) These regulations apply to all HUD policy level actions (as defined in § 50.16), and to all HUD project level actions. For programs, activities or actions not specifically identified, or when there are questions regarding the applicability of this part, the Assistant Secretary for Community Planning and Development should be consulted.

* * * * *

3. In § 50.17, the introductory paragraph and paragraph (a) are revised to read as follows:

§ 50.17 Projects.

Either an environmental assessment and a FONSI or an environmental impact statement (EIS) for individual projects shall be completed before the applicable program decision points below for projects not meeting the criteria of § 50.20, and shall be reevaluated and updated as required by § 50.37.

(a) *New Construction.* (1) Mortgage insurance or other financial assistance for multifamily housing projects,

nursing homes, hospitals, group practice facilities and manufactured home parks: Issuance of SAMA Letter, or equivalent indication of site specific HUD approval, whichever comes first;

(2) Public Housing: Notification of tentative site approval (1977 procedures) or PHA proposal approval (1980 procedures);

(3) Section 8 HAP Program: Notification of selection of preliminary proposal.

* * * * *

4. In § 50.19, the introductory paragraph is revised, and a new paragraph (i) is added, to read as follows:

§ 50.19 Activities not subject to 24 CFR 50.4.

Because certain activities assisted under HUD programs would not alter any conditions that would require review or compliance under the other Federal laws and authorities cited in § 50.4 of this part, the laws and authorities listed in § 50.4 do not apply to these activities, except to the extent that any specific law or authority remains applicable as indicated below. These activities are the following:

* * * * *

(i) HUD's endorsement of FHA insurance on mortgage loans submitted by a Direct Endorsement (DE) mortgagee, without HUD review before the completion of construction and loan closing, for newly constructed homes under the mortgage insurance programs for one- to four-family housing, except that the Flood Disaster Protection Act of 1973 and § 51.303(a)(3) of this chapter shall apply.

5. In § 50.20, paragraph (a) is revised to read as follows:

§ 50.20 Categorical exclusions.

* * * * *

(a) An individual action on a one-to-four family dwelling, including endorsement for insurance of a mortgage covering such a dwelling either through the Direct Endorsement program described in 24 CFR 203.5 or otherwise, or an individual action on a project of five-or-more units developed on scattered sites when the sites are more than 2,000 feet apart and there are not more than four units on any one site;

* * * * *

§ 50.21 [Amended]

6. In § 50.21, paragraph (b) is removed, existing paragraph (a) introductory text becomes an undesignated introductory paragraph, and paragraphs (a) (1) and (2) are redesignated as paragraphs (a) and (b), respectively.

§§ 50.22, 50.36, 50.43 [Removed]

7a. Sections 50.22, 50.36 and 50.43 are removed.

PART 200—INTRODUCTION

10. The authority citation for part 200 is revised to read as follows:

Authority: 12 U.S.C. 1701–1715z–18; 42 U.S.C. 3535(d). Subparts T and U are also issued under 42 U.S.C. 3543, and subpart T also is issued under 12 U.S.C. 1701s and 1715z–11.

Subpart M—Affirmative Fair Housing Marketing Regulations

§ 200.610 [Amended]

11. In § 200.610, after the word "sex," the words "handicap, familial status" are inserted.

12. Section 200.615(a) is revised to read as follows:

§ 200.615 Applicability.

* * * * *

(a) Multifamily projects and manufactured home parks of five or more lots, units or spaces, and initial submissions by a lender for an application for mortgage insurance on a single family property, where the property is located in a subdivision and the builder or developer intends to sell five or more properties in the subdivision; or

* * * * *

§ 200.620 [Amended]

13. Section 200.620 is amended by inserting "handicap or familial status," after the word "sex," the first time it appears in paragraph (a) of that section; to insert ", handicap or familial status" after the word "sex" the second time it appears in paragraph (a) of that section; and to insert "and the handicapped" after the word "sexes" in paragraph (b) of that section.

14. Section 200.630 is revised to read as follows:

§ 200.630 Notice of housing opportunities.

The Director of each Field Office shall prepare monthly a list of all projects covered by this subpart, and of all initial submissions by lenders for single family mortgage insurance where the property is located in a subdivision and the builder or developer intends to sell five or more properties in the subdivision, on which commitments have been issued during the preceding 30 days. The Director shall maintain a roster of interested organizations and individuals (including public agencies responsible for providing relocation assistance and local housing authorities) who have expressed a wish to receive the monthly list, and shall provide the list to these organizations and individuals.

15. Section 200.635 is amended by adding at the end of the section a new sentence, to read as follows:

§ 200.635 Compliance.

* * * The Department will enforce compliance through the procedures outlined in 24 CFR part 108.

16. Section 200.640 is revised to read as follows:

§ 200.640 Effect on other requirements.

The requirement for compliance with this part is in addition to, and not in substitution for, any other requirements imposed by or under Executive Order 11063 or the Fair Housing Act.

Subpart S—Minimum Property Standards

17. In § 200.926, paragraph (a)(1) is revised to read as follows:

§ 200.926 Minimum property standards for property which is not multifamily or care-type property.

(a) *Construction standards*—(1) *Applicable structures.* The standards identified or contained in this section and in §§ 200.926a–200.926e shall apply to single family detached homes, duplexes, three-unit homes, and to living units in a structure where the units are located side-by-side in town house fashion. Section 200.926d(c)(4)(iv) also shall apply to four-unit homes.

* * * * *

18. In § 200.926d, paragraph (c)(1)(ii) is revised, and a new paragraph (c)(4)(iv) is added, to read as follows:

§ 200.926d Construction requirements.

* * * * *

(c) *Site design*—(1) *General.* (i) * * *

(ii) With the exception of paragraph (c)(4)(iv) of this section, these site design standards are applicable only in communities that have not adopted criteria for site development applicable to one and two family dwellings.

* * * * *

(4) *Drainage and flood hazard exposure.* * * *

(iv) In all cases in which a Direct Endorsement (DE) mortgagee submits to HUD for endorsement for insurance a mortgage on a newly constructed one- to four-family dwelling (including a newly erected manufactured home) which was processed by the DE mortgagee, the DE mortgagee shall determine whether the property is located in a 100-year floodplain as designated on maps of the Federal Emergency Management Agency and, if so, shall obtain a final Letter of Map Amendment (LOMA) or final Letter

of Map Revision (LOMR) before submitting the application for insurance to HUD. Such mortgages shall not be eligible for insurance unless the DE mortgagee submits the LOMA or LOMR to HUD with the mortgagee's request for endorsement.

* * * * *

PART 203—SINGLE-FAMILY MORTGAGE INSURANCE

19. The authority citation for part 203 is revised to read as follows:

Authority: 12 U.S.C. 1709, 1715b; 42 U.S.C. 3535(d). Subpart C also is issued under 12 U.S.C. 1715u.

20. Section 203.12 is revised to read as follows:

§ 203.12 Mortgage insurance on proposed or new construction in a new subdivision.

(a) *Applicability.* This section applies to an application for insurance of a mortgage on a one- to four-family dwelling constructed in a new subdivision, unless the mortgage will be secured by a dwelling that:

(1) Was completed more than one year before the date of the application for insurance or, under the Direct Endorsement Program, was completed more than one year before the date of the appraisal;

(2) Is in a subdivision in which all development construction has been completed and accepted by the local jurisdiction and most dwellings have been completed, or which was approved under paragraph (e) or (f) of this section as in effect prior to [insert effective date of rule]; or

(3) Is being sold to a second or subsequent purchaser.

(b) *Definitions.* For purposes of this section:

(1) *Subdivision* means the total area containing all of the proposed land development activities, building or construction operations which are under centralized control, and planned principal development elements to support the creation of five or more dwelling lots (or a lesser number of lots that HUD determines to be appropriate to require applicability of this section in individual cases).

(2) *Improved area* means an area that is all or part of a subdivision and is at least the minimum size for which the local government is willing to accept the streets, or the water and sewage systems for maintenance, as appropriate.

(3) *Partially completed,* with respect to an improved area, means that:

(i) The local government has accepted the plat of a subdivision or of an improved area, and the plan for its principal development elements and rights-of-way;

(ii) All government approvals to begin development and construction in the improved area have been secured;

(iii) All development or construction of the improved area's streets, water and sewage systems and utilities has proceeded to a point that precludes any major changes; and

(iv) Provisions are in place for continuous maintenance of the streets and water and sewage systems once the improved area is substantially completed.

(4) *Substantially completed,* with respect to an improved area, means that:

(i) With the exception of delays approved by the local government and the Secretary, the improved area's principal development elements have been completed;

(ii) The local government has issued occupancy permits or their equivalent on those new dwellings being processed for conditional commitments; and

(iii) The local government accepts, or will accept, for continuous maintenance the streets and the water and sewage systems. Where local acceptance for maintenance is not available, adequate provision for private maintenance must be demonstrated. However, with respect to private water and sewer systems, the local government also must certify that public systems are economically infeasible, or that the property is served by a system approved by the Secretary under Title X of the National Housing Act.

(5) *Principal development elements* include, without being limited to, necessary grading, streets, water and sewage systems, utilities, storm drainage, and community facilities, as well as measures and devices for the abatement of nuisances and hazards.

(c) *Procedures.* (1) Applications for insurance to which this section applies will be processed in accordance with procedures prescribed by the Secretary. These procedures may only provide for endorsement for insurance of a mortgage covering a dwelling that is:

(i) located in an improved area in accordance with terms of a conditional commitment, or approval under the Direct Endorsement Program, issued as described in paragraph (d) of this section;

(ii) approved under the Direct Endorsement Program and included in a Master Appraisal Report, or in a Certificate of Reasonable Value or in a Master Certificate of Reasonable Value issued by the Department of Veterans Affairs; or

(iii) located in a subdivision approved by the Farmers Home Administration.

(2) Unless paragraph (d) of this section applies, or unless the property is located in a subdivision approved by the Farmers Home Administration, the mortgagee must submit a signed Builder's Certification of Plans, Specifications and Site (Builder's Certification). The Builder's Certification shall be in a form prescribed by the Secretary and shall cover:

(i) Flood hazards;

(ii) Noise;

(iii) Explosive and flammable materials storage hazards;

(iv) Runway clear zones/clear zones;

(v) Toxic waste hazards;

(vi) Other foreseeable hazards or adverse conditions (i.e., rock formations, unstable soils or slopes, high ground water levels, inadequate surface drainage, springs, etc.) that may affect the health and safety of the occupants or the structural soundness of the improvements. The Builder's Certification shall be provided to the appraiser for reference before the performance of an appraisal on the property.

(3) If a builder (or developer) intends to sell five or more properties in a subdivision, an Affirmative Fair Housing Marketing Plan (AFHMP) that meets the requirements of 24 CFR part 200, subpart M must be submitted and approved by HUD no later than the date of the first application for mortgage insurance in that subdivision. Thereafter, applications for insurance on other properties sold by the same builder (or developer) in the same subdivision may make reference to the existing previously approved AFHMP.

(d) *Improved areas.* (1) The conditional commitment or approval of the appraisal by the Direct Endorsement underwriter shall require that the improved area be at least substantially completed before endorsement for insurance. The conditional commitment may be issued or the appraisal may be approved for a dwelling located in an improved area when:

(i) The improved area is at least partially completed;

(ii) There is vehicular access to the finished lot at least to a line beyond the subject site or sites, and the lot and block grading are sufficiently finished to permit the appraiser to analyze the influence of adjacent areas on the subject site or sites;

(iii) Compliance with applicable requirements of the local government and the Secretary can be demonstrated; and

(iv) The mortgagee has submitted an Appraiser/Review Appraiser Checksheet, in a form prescribed by

HUD, that contains information on floodplains, site and soil suitability, proximity to natural and manmade hazards including flammable and explosive materials, historic preservation sites or areas, wetlands, coastal zones, proximity to highways or railroads, toxic waste sites, airport hazards, and other field conditions that would affect acceptability for mortgage insurance of the lots covered by the Appraiser/Review Appraiser Checksheet.

(2) If HUD determines, based upon an assessment of the adequacy of local subdivision standards and their enforcement, that the certification process described in paragraph (c)(2) of this section is inadequate to protect HUD's underwriting risk in an area, HUD may limit the endorsement of mortgages in the area to those mortgages processed in accordance with the procedures set forth in this paragraph (d). HUD will review all Appraiser/Review Appraiser Checksheets submitted in areas subject to a determination made under this paragraph (d)(2).

PART 204—COINSURANCE

21. The authority citation for part 204 continues to read as follows:

Authority: Secs. 244, 211, National Housing Act (12 U.S.C. 1715z–9, 1715b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

22. Section 204.3 is revised to read as follows:

§ 204.3 Authority to determine eligibility.

(a) A mortgagee approved for coinsurance is authorized to make determinations relating to the eligibility of the mortgage, the mortgagor, and the property, in accordance with instructions and standards issued by the Commissioner, for insurance of a mortgage with respect to any mortgage to be coinsured by the Commissioner and the mortgagee, except for mortgages financing the sale of a property by a non-occupant seller who acquired title to the property during the period beginning two years before the date of application for insurance, and ending on the date of the application for insurance.

(b) * * *

Dated: March 26, 1993.

Henry G. Cisneros,

Secretary.

[FR Doc. 93–17351 Filed 8–2–93; 8:45 am]

BILLING CODE 4210–32–M

federal register

Tuesday
August 3, 1993

Part III

Department of the Interior

Bureau of Indian Affairs

Indian Fishing, Yurok Indian Reservation; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Fishing—Yurok Indian Reservation (Subsistence Gill Net Fishing)

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Sacramento Area Director of the Bureau of Indian Affairs is making pre-season changes to the fishing regulations to assure proper management of the fisheries resources of the Klamath River.

DATES: 25 CFR Part 250.9 is amended as follows: The Fall Chinook Management Season shall be during the period of July 14, 1993, 7:01 pm through midnight December 31, 1993. The season is expected to consist of an early season and a late season. The early season is from July 14 through September 1 or 65% of the subarea quota. Fishing during the early season is permitted from Wednesday at 7 pm through Sunday at 7 pm. The late season will begin on September 1 at 7 pm and continue until December 31, 1993, or the remainder of the subarea quotas. Fishing during the late season would be permitted 24 hours a day, 7 days a week, except for a closure on Monday from 9 am to 5 pm. Any subarea allocations that are not harvested during the early season will be added to the late season allocations.

Prior to this season, the River will be closed to all fishing, and all nets must be out of the water between July 12, 1993, 9 am until July 14, 1993, 7 pm.

FOR FURTHER INFORMATION CONTACT: Ronald M. Jaeger, Area Director, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, CA 95825.

SUPPLEMENTARY INFORMATION: As authorized by 25 CFR 250.12 Indian Fishing: Hoopa Valley Indian Reservation, the Area Director of the Bureau of Indian Affairs is making the following pre-season changes to the regulations to assure proper management of the fisheries resources of the Klamath River. The total Indian allocation level will be 18,500 adult fall chinook salmon. Of this number, 14,800 will be allocated to be taken on the Yurok Indian Reservation. Subsequently, the subarea adult chinook quota would be 8,900 fish in the Management Area 1 (estuary) and 5,900 fish for Management Area 2 (U.S. 101 Bridge to Weitchpec).

Area 1 is from the confluence of the Klamath River and the ocean upstream to the Highway 101 Bridge. A quota of 5,800 adult fall chinook salmon has been established for the early season. A quota of 3,100 adult fall chinook salmon has been established for the late season.

Area 2 is the remainder of the mainstream Klamath River within the exterior boundaries of the Yurok Reservation. A quota of 3,800 adult fall chinook salmon has been established for the early season. A quota of 2,100 adult fall chinook salmon has been established for the late season.

The Blue Creek conservation zone will be closed to gill net fishing ⅛ mile above the upper portion of the Blue Creek delta (bedrock wall) and ½ mile below the lower portion of the Blue Creek delta from September 14 until December 31, 1993.

Dated: July 27, 1993.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 93–18387 Filed 8–2–93; 8:45 am]

BILLING CODE 4310–02–M

federal register

Tuesday
August 3, 1993

Part IV

Environmental Protection Agency

40 CFR Part 141

National Primary Drinking Water Regulations; Analytical Techniques (Trihalomethanes); Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[WH–FRL–4542–5]

RIN 2040–AB87

National Primary Drinking Water Regulations; Analytical Techniques; Trihalomethanes.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving two additional methods in 40 CFR 141.30 for monitoring total trihalomethanes (TTHMs) in drinking water for compliance with the maximum contaminant level (MCL). These two EPA methods, Methods 502.2 and 524.2, are capillary column methods and are already approved for the compliance monitoring of eight volatile organic chemicals (VOCs) under 40 CFR 141.24(g)(10)(iv) and (v) and unregulated VOCs under 40 CFR 141.40(g).

DATES: This rule is effective and the methods herein may be used on September 2, 1993. For the purposes of judicial review only (consistent with 40 CFR 23.7), this rule is considered issued at 1 p.m. Eastern Time on August 14, 1993.

FOR FURTHER INFORMATION CONTACT: The Safe Drinking Water Hotline, telephone (800) 426–4791. The Safe Drinking Water Hotline is open Monday through Friday, excluding Federal holidays, from 9 a.m. to 5:30 p.m. Eastern Time. For technical questions, contact Baldev Bathija, Ph.D., Office of Ground Water and Drinking Water (WH–550D), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, telephone (202) 260–3040.

SUPPLEMENTARY INFORMATION: On November 29, 1979 (44 FR 68642), EPA published a National Interim Primary Drinking Water Regulation for TTHMs in drinking water. This rule became a National Primary Drinking Water Regulation (NPDWR) on June 19, 1986, when the Safe Drinking Water Act (SDWA) was amended. This rule requires community water systems that disinfect and serve 10,000 persons or more to comply with an MCL of 0.1 mg/l for TTHMs. The concentration of TTHMs is the sum of the concentrations of four individual trihalomethanes (trichloromethane, dichlorobromomethane, chlorodibromomethane and tribromomethane). In 40 CFR 141.30(e), EPA approved two methods (501.1 and 501.2) for the analysis of TTHMs in drinking water and for determination of compliance with the MCL for TTHMs.

Only July 8, 1987 (52 FR 25690), the Agency published regulations that required monitoring for certain unregulated contaminants by all community water systems and non-transient, non-community water systems. EPA had proposed these regulations pursuant to Section 1445 of the SDWA on April 17, 1987 (52 FR 12876). The rule provided for use of the two capillary column methods for detecting a list of VOCs, but the rule did not establish MCLs for the individual chemicals on the list. This list, at § 141.40(e), includes the four individual trihalomethanes. Section 141.40(g) describes several methods available to monitor for these compounds, including EPA Methods 502.2, "Volatile Organic Compounds in Water by Purge and Trap Capillary Gas Chromatography with Photoionization and Electrolytic Conductivity Detector in Series," and EPA Method 524.2, "Volatile Organic Chemicals in Water by Purge and Trap Capillary Gas Chromatography/Mass Spectrometry." In today's action, EPA is approving use of 502.2 and 524.2 for monitoring compliance with the MCL for TTHMs under § 141.30.

EPA is promulgating today's rule without providing notice and opportunity for public comment pursuant to section 553(b)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(B)). EPA did provide notice and an opportunity for public comment on the methods in today's rule when the methods were approved for compliance monitoring for VOCs and the detection of unregulated contaminants under SDWA section 1445 (52 FR 12876, 12879, proposed April 17, 1987; and 52 FR 25690, 25702, final July 8, 1987). In the section 1445 rule, the two capillary column methods (524.2 and 502.2) were approved for the detection of the four individual trihalomethanes that are included in the definition of total trihalomethanes—trichloromethane (chloroform), dichlorobromomethane, chlorodibromomethane, and tribromomethane (bromoform). These capillary column methods were approved for determination of compliance with the MCLs for eight VOCs at 40 CFR 141.40(g) on July 8, 1987 (52 FR 25690, 25702). Today's rule approves the use of the two capillary column methods as alternate methods for determination of compliance with the MCL for TTHMs found at 40 CFR 141.30.

Because EPA has already provided an opportunity for public comment on the use of the capillary column methods for monitoring VOCs, including the four trihalomethanes, EPA finds that notice and public comment at this time is unnecessary and therefore good cause exists not to provide for notice and opportunity for public comment (5 U.S.C. 553(b)(B)). Systems may use the two capillary column methods approved in today's rule for determining compliance with the MCL for TTHMs on the effective date of today's rule.

The protocols for the two capillary column methods (502.2 and 524.2) being approved are contained in Methods for the Determination of Organic Compounds in Drinking Water, EPA/600/4–88/039 (revised July 1991). This document is available from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161. The NTIS toll-free number is 800–553–6847 and the NTIS order number is PB91–231480.

EPA is encouraging the use of the above methods for all TTHM monitoring. The Agency intends to discontinue technical support for packed column methodology for the analysis of TTHMs and other VOCs (EPA Methods 501.1, 501.2, and 501.3). This means that the Agency will no longer provide technical advice, keep copies of the method after the current stock is exhausted, or resolve technical problems that may develop. However, the Agency will continue to accept data generated with these methods.

Regulation Assessment Requirements

Executive Order 12291

Executive Order 12291 requires EPA to judge whether a regulation is "major" and, if so, to prepare a regulatory impact analysis. A rule is considered major if it has an economic impact of $100 million or more, causes a significant increase in cost or prices, or any of the other adverse effects described in the Executive Order. The objective of this rule is merely to allow the use of additional alternate methods. This does not require purchase of any new equipment by the regulated community or impose any new requirements. As such, this rule is expected to reduce the cost of monitoring by allowing the use of a single method for monitoring both VOCs and total trihalomethanes. In view of this, EPA believes that this action will either have no economic impact or have positive economic impact. Hence it is not a major rule within the meaning of the Executive Order. This notice has been reviewed by the Office of Management and Budget under Executive Order 12291

Regulatory Flexibility Act

The Regulatory Flexibility Act requires EPA to explicitly consider the effect of regulations on small entities. If there is a significant effect on a substantial number of small entities, EPA must seek to minimize the effect.

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities. The rule provides laboratories with two additional alternatives for THM testing. Because these methods are optional, and because EPA is not promulgating any new requirement, the Agency believes that this notice will not have any significant effect on a substantial number of small entities.

Paperwork Reduction Act

Today's rule places no additional information collection or record-keeping burden on respondents. Therefore, an information collection request has not been prepared and submitted to the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 141

Administrative practice and procedure, Chemicals, Intergovernmental relations, Reporting and Recordkeeping requirements, Water supply.

Dated: July 22, 1993.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 141 of title 40 of the Code of Federal Regulations is amended as follows:

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

1. The authority citation for part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, and 300j–9.

2. In § 141.30, paragraphs (e)(3) and (e)(4) are added, and two new sentences are added at the beginning of the concluding text of paragraph(e) to read as follows:

§ 141.30 Total trihalomethanes sampling, analytical and other requirements.

* * * * *

(e) * * *

(3) "Volatile Organic Compounds in Water by Purge and Trap Capillary Gas Chromatography with Photoionization and Electrolytic Conductivity Detector in Series," Method 502.2, EMSL, EPA, Cincinnati, Ohio. EPA Method 502.2 is contained in Methods for the Determination of Organic Compounds in Drinking Water, EPA/600/4–88/039 (revised July 1991).

(4) "Volatile Organic Chemicals in Water by Purge and Trap Capillary Gas Chromatography/Mass Spectrometry," Method 524.2, EMSL, EPA, Cincinnati, Ohio. EPA Method 524.2 is contained in Methods for the Determination of Organic Compounds in Drinking Water, EPA/600/4–88/039 (revised July 1991).

For the methods cited in paragraphs (e)(1) and (e)(2) of this section, see appendix C to this subpart C. The methods cited in paragraphs (e)(3) and (e)(4) of this section are available from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161 (order number PB91–231480.) * * *

* * * * *

[FR Doc. 93–18226 Filed 8–2–93; 8:45 am]

BILLING CODE 6560–50–M

federal register

Tuesday
August 3, 1993

Part V

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 210 and 211

Good Manufacturing Practice in Manufacturing, Processing, Packing, or Holding of Drugs; Revision of Labeling Controls; Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 210 and 211

[Docket No. 88N–0320]

Current Good Manufacturing Practice in Manufacturing, Processing, Packing, or Holding of Drugs; Revision of Certain Labeling Controls

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the current good manufacturing practice (CGMP) regulations for human and veterinary drug products to revise certain labeling control provisions. Specifically, the final rule defines the term "gang-printed labeling," specifies conditions for the use of gang-printed or cut labeling, exempts manufacturers that employ automated 100-percent labeling inspection systems from CGMP labeling reconciliation requirements, and requires manufacturers to identify filled drug product containers that are set aside and held in an unlabeled condition for future labeling operations. These changes are intended to reduce the frequency of drug product mislabeling and associated drug product recalls.

EFFECTIVE DATE: August 3, 1994.

FOR FURTHER INFORMATION CONTACT: Tom Kuchenberg, Center for Drug Evaluation and Research (HFD–362), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8046. or Paul J. Motise, Center for Drug Evaluation and Research (HFD–323), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8089.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 23, 1989 (54 FR 26394), FDA published a proposed rule to amend the packaging and labeling control provisions of the CGMP regulations. The proposal: (1) Specified conditions for the use of gang-printed or cut labeling, (2) exempted manufacturers that employ 100 percent labeling inspection systems from CGMP labeling reconciliation requirements, and (3) required manufacturers to identify filled drug product containers that are not immediately labeled.

The proposed amendments were based on an agency study of drug product recalls that identified label mixups as the leading cause of recalls involving mislabeled products. An agency analysis of the recalls attributed to label mixups showed that the use of cut labels, labels of similar size, shape, or color, and deviations from existing CGMP labeling requirements were the leading causes of such mixups. In contrast, three label control practices were not involved in any of the recalls attributed to label mixups: (1) the use of labels differentiated by size, shape, or color; (2) the use of dedicated packaging lines; and (3) the use of electronic 100-percent label inspection systems that validate the labeling of each drug product during finishing operations.

The proposed rule was intended to encourage desirable labeling operations and to contribute significantly to preventing drug product mislabeling and associated drug product recalls. The proposal gave interested persons an opportunity to submit written comments by August 22, 1989.

In response to a request for an extension of the comment period, in the **Federal Register** of September 8, 1989 (54 FR 37342), FDA published a notice extending the comment period for submissions to October 20, 1989.

FDA is now issuing a final rule based upon the proposal with changes made in response to public comments. These changes are discussed in the preamble to this final rule.

FDA is continuing to monitor recalls related to mislabeling, and FDA notes that the total number of these recalls for each of 3 fiscal years, 1988 to 1990, exceeded the number of these recalls in any of the 5 fiscal years, 1983 to 1987, that were covered by the agency's recall study. FDA notes also that recalls related to mislabeling are the primary cause of recalls classified by FDA as presenting a significant risk of serious health consequences or death (Class I). In many cases, mislabeled drug products subject to a Class I recall are detected by health care professionals before they are dispensed or by consumers before use. Unfortunately, mislabeled drug products continue to cause consumer injuries.

For example, a 41-year-old woman was hospitalized after becoming comatose from a medication used to lower blood sugar in diabetics that had been mislabeled as a medication to treat a bacterial infection. In another instance, a 6-year-old child was hospitalized after being given a potent liquid tranquilizer that had been mislabeled as a medication used for the treatment of cough and cold symptoms. For 3 fiscal years, 1988 to 1990, recalls related to mislabeling have accounted for almost 50 percent of Class I recalls. Further, for fiscal year 1990, mislabeling-related recalls have accounted for almost 60 percent of Class I recalls. FDA remains convinced that the CGMP regulations must address effectively this disturbing and persistent trend.

II. Comments

FDA received 44 comments on the proposed rule. These comments represented many interests—29 human drug manufacturers, 6 biological drug manufacturers, 2 veterinary drug manufacturers, 2 drug equipment suppliers, and 5 trade organizations representing manufacturers, repackers, and distributors. In general, the comments supported the agency's initiative to modify the CGMP labeling control requirements to reduce the frequency of drug product mislabeling. However, many comments suggested modifications. FDA has carefully considered all comments and suggested alternatives and has adopted those comments that would reduce the burden on manufacturers while at the same time achieving the goal of significantly reducing mislabeling-related recalls. A section-by-section summary of the comments and the agency's responses to them are set out below.

A. General Comments

1. Several comments objected to specifying a "how to" approach instead of an "objective" approach with respect to labeling control requirements. The comments argued that requiring specific labeling systems or procedures would unduly restrict innovative approaches and technological advances. The comments recommended that the regulations state the objective that is sought and leave the method of attaining that objective to the reasonable discretion and ingenuity of the manufacturer. In contrast, two comments urged that FDA adopt a "how to" approach, stating that the revised requirements should specify acceptable types of "electronic or electromechanical equipment."

The agency agrees with the view that, with few exceptions, it should generally describe "what" is to be accomplished and provide great latitude in "how" a requirement is to be achieved by manufacturers. Indeed, in many instances the CGMP regulations expressly provide manufacturers with considerable latitude to determine the manner in which requirements are to be accomplished. In this instance, because of the continuingand serious problems experienced by the industry in maintaining adequate control over cut labeling, the agency has concluded that somewhat greater labeling control is

needed. While the regulation reflects the agency's view that somewhat greater control over cut labeling is needed to reduce the incidence of drug product mislabeling, the final rule permits manufacturers considerable latitude under § 211.122(g)(1), (g)(2), and (g)(3) of these final regulations in achieving the greater degree of control.

The agency is aware that these regulations apply to a wide variety of drug products, but believes that the regulations are sufficiently flexible to permit technological innovation. Indeed, the rate of technological improvements of automated labeling inspection systems will likely accelerate with the increased use of such systems to comply with these regulations. Therefore, the agency concludes that the proposed regulations are specific enough to address a serious problem effectively while offering regulated industry sufficient flexibility to accommodate a great variety of present and future technologies.

2. Several comments addressed the scope of the proposed regulations. One comment stated that the regulations should not apply to preparation of bulk pharmaceutical chemicals. Another comment claimed that, because clinical supplies (i.e., investigational new drug products) are produced in small lots, there is less chance of labeling errors. The comment urged that such products be exempt from the regulations. Another comment suggested that medicinal oxygen repackers who handle no other compressed medical gases are not likely to experience labeling errors and, therefore, should be exempt from these regulations.

While the good manufacturing practice provisions under section 501(a)(2)(B) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351(a)(2)(B)) apply to both bulk and finished drugs, the CGMP regulations set forth in 21 CFR part 211, including the provisions governing labeling controls, apply solely to finished dosage forms, whether or not in packaged form. (See 21 CFR 211.1.) Although the revised labeling control provisions in the CGMP regulations do not apply to the preparation of bulk pharmaceutical chemicals, FDA may use these provisions as a guide in its inspections of the labeling practices of manufacturers of bulk pharmaceutical chemicals.

The revised labeling control provisions apply to the preparation of dosage forms that are under clinical investigation, whatever the size of the product lot. The small size of a product lot does not reduce the need for labeling controls. In fact, in some cases, the manufacture of many small lots may increase the opportunities for mixups and the need for label controls. Furthermore, in cases where firms label both investigational and noninvestigational products, the suggested exemption for investigational lots could create additional difficulties in labeling control for all products on the line. Therefore, the agency does not accept the suggested exemption for clinical supplies.

Finally, the agency rejects the suggested exemption for oxygen repackers who handle no other compressed medical gas. The agency notes that mixups can occur in a facility dedicated to repacking a single product among different lots or different private label distributors for the same product. Such mixups may have considerable public health significance.

3. Two comments addressed the effective date of the final rule. One comment suggested that at least 1 year would be needed, after the date of publication in the **Federal Register**, to acquire and start up new equipment. Another comment requested an 18- to 24-month time period to adopt new electronic systems or to convert from cut to roll labels.

This rule becomes effective August 3, 1994. The agency believes that the 12 months provided gives firms sufficient time to exhaust noncomplying labeling stocks and to make necessary changes to labeling control systems. The period given for compliance in this rule is the same as the period given firms to comply with the final rule requiring tamper-resistant packaging for over-the-counter drug products, a rule which, like these revisions to labeling controls, may have required some firms to install new equipment.

4. Several comments addressed the economic impact of complying with the proposed regulations. The comments argued that costs for new equipment and specially coded labeling could be especially significant for small firms that perform short labeling runs. The comments claimed that compliance would be costly if required for all labeling instead of being restricted to immediate-container labels.

As discussed in comment 13, the agency is adopting as part of the final rule a cut labeling control procedure for hand labeling operations that involves the use of visual inspection to conduct a 100-percent examination for correct labeling during or after completion of finishing operations. Because this alternative can be implemented without new equipment or specially coded labeling, small firms should be able to comply with the new requirements without incurring significant incremental costs.

The agency believes that it is crucial to apply these regulations to package inserts and other pieces of labeling in addition to immediate-container labels. Recalls involving incorrect package inserts and outer/shipping cartons continue to be a problem. The agency does not believe that it is in the public interest to disregard this part of the overall problem of drug product mislabeling. Indeed, some manufacturers already recognize the need to improve controls on all labeling and have instituted bar code control systems for all labeling.

The agency believes that this final rule will bring the regulated drug industry up to the minimum level of current good manufacturing practice necessary for the prevention of drug product mislabeling. The agency agrees that some firms may incur costs in order to adopt suitable labeling control systems, but has determined that the overall cost impact of this final rule is minimal. For those manufacturers that choose to acquire an automated labeling verification system to inspect labeling, estimated cost based on bar-coded or keyhole-coded labeling is between $10,000 and $20,000, an expense that is comparable to the cost of general purpose manufacturing equipment. A more elaborate automated machine vision system for labeling verification may cost approximately $40,000. These equipment expenses will be offset for many manufacturers by the annual cost savings realized by the exemption from the requirement to perform label reconciliation. Further, these costs are considerably less than the costs to manufacturers and the public of label mixups, including the costs of product recalls that may follow a label mixup. Such costs include potential consumer injury and death, the expense of conducting product recalls, loss of goodwill, lost sales, and product liability claims.

B. Materials Examination and Usage Criteria

5. Nearly all comments supported the proposed revision under § 211.122(f) to the provisions governing the use of gang-printed labeling. One comment favored retaining the existing regulations, contending that the existing regulations already prohibit gang printing. The comment claimed that the proposal would relax existing requirements and fail to reduce the rate of mislabeling.

FDA does not agree. Existing regulations do not prohibit use of gang printing labeling for dissimilar items.

Rather, the existing regulations require that gang printing of labeling to be used for dissimilar items "be minimized," and that gang printing in such cases take place under special control procedures for labeling and packaging operations. As revised, the regulations prohibit use of gang-printed labeling for dissimilar items unless the labeling from gang-printed sheets is adequately differentiated by size, shape, or color. As stated in the preamble to the proposed rule, the agency views the change as a positive measure that will contribute significantly to preventing drug product mislabeling.

6. Three comments recommended that the regulations define the term "gang-printed labeling." One comment described a system for label printing that prints labels two to four across on a continuous roll on a sequential basis for dozens of different lots. Identical lots of labels are then separated from the roll for final container labeling. This comment sought to distinguish this printing method from conventional gang printing methods and, thus, exclude it from the proposed restrictions on gang printing. One comment suggested a definition for gang-printed labeling that would exclude sequentially generated computer printed labels. One comment requested the agency to distinguish between sheet-printed and gang-printed labeling.

After considering these and related comments, the agency concludes that a definition of the term "gang-printed labeling" is warranted. Accordingly, the agency is revising 21 CFR 210.3 to define gang-printed labeling as labeling derived from a sheet of material on which more than one item of labeling is printed.

As discussed in the preamble to the proposed rule, the agency has found that labeling mixups related to gang printing frequently arise when the multiple items of gang-printed labeling are insufficiently differentiated by size, shape, or color. Under these conditions, the proximity of the different labeling items to each other is problematic because the items, when cut and separated from gang-printed sheets into individual stacks, are easily mixed up. These proximity-derived mixups may go undetected at the printer, or at the drug manufacturer. Thus, the agency regards even a single sheet of gang-printed labeling (when printed by a manufacturer's computer, for example) to be prone to proximity-derived mixups because separation of similar labeling items may mistakenly include adjacent different labeling items. Likewise, similar labels for different items may be gang printed across roll stock sheets that are subsequently cut into individual rolls. These rolls may be inadvertently spliced onto adjacent rolls of labeling for different items where lack of adequate differentiation can mask the splicing error. The agency considers the continuous roll labeling printing method as gang-printed labeling, and the provisions of § 211.122(f) are intended to apply to roll stock sheets as well as individual stock sheets.

7. Two comments recommended that sequentially generated computer-printed labels, i.e., similar labels for different items that are printed by computer on rolls or flat sheets and separated before application to containers, not be considered gang printing within the meaning of proposed § 211.122(f). One comment asked about the acceptability of printing incomplete identical labels on a single sheet, subsequently separating these labels, and then filling in the blanks with information unique to each different item, as appropriate.

The agency considers the printing system described by the comment to be a type of gang printing within the meaning of § 211.122(f) (see comment 6). The fact that the printing process is controlled by computers is not relevant to the problems attendant to removing individual labels from a roll or sheet, nor does the use of computerized processes reduce the need for special control and handling of individual labels to prevent mixups. At the same time, the agency notes that the use of computer-controlled labeling procedures may make differentiation of labeling by size, shape, or color easier.

Preprinting incomplete identical stock labels on a single sheet or roll is not prohibited under these regulations. The agency advises, however, that labels that have been separated from a roll or sheet are considered cut labels and are subject to the special control procedures for labeling and packaging operations under § 211.122(g) of these regulations.

8. Two comments requested that the regulations allow gang printing of labeling for different items that are not differentiated by size, shape, or color, provided special control procedures are used to separate and control each unique set of labels. One comment argued that, where a firm handles many different products, the printing of distinctive labels for each product is not practical.

The previous regulation under § 211.122(f) permitted gang printing of labeling of the same size and identical or similar format and/or color schemes with the use of special control procedures in packaging and labeling operations, taking into account sheet layout, stacking, cutting, and handling during and after printing. The agency has concluded, through its analysis of product labeling recalls and inspectional findings, that the use of special controls during and after printing cannot be relied on to prevent mixups of cut labeling derived from such gang printing. Therefore, use of undifferentiated labeling derived from such gang printing is prohibited by these final regulations. However, it should be emphasized that the regulation does not require a firm to use labeling that is differentiated by size, shape, or color for each product in a firm's entire line. Differentiation is only required when a single sheet is used for the gang printing of labeling for different drug products, or different strengths or net contents of the same drug product.

9. One comment recommended that the regulations governing the labeling of insulin products be revised to permit product differentiation by the use of color coded labels. The comment claimed that color coding would not only help manufacturers control labeling, but also help consumers distinguish between insulin products.

Color coding of labeling for insulin products is already prescribed by regulation (21 CFR 429.12). The use of color coding to differentiate insulin products is beyond the scope of this final rule. Any person who believes that the color coding of insulin products should be changed may, of course, petition the agency under the provisions of 21 CFR 10.30 to amend 21 CFR 429.12.

10. One comment recommended that the agency not apply § 211.122(f) to the use of gang-printed labeling for small labeling lots, e.g., lots fewer than 100 in number.

The agency disagrees. Mixups involving gang-printed labeling can occur in small lots. As noted above, the small size of a lot does not reduce the need for labeling controls. Therefore, the agency declines to accept this recommendation.

11. Two comments requested the agency to define cut labels. One comment asked that cut labels be restricted to "traditional print shop operations." The second comment asked whether labels removed from a roll are considered to be cut labels.

"Cut labels" and "cut labeling" are items of labeling that have been detached from printed stock material prior to being brought to a labeling line. The agency advises that labels printed on a roll but not directly applied to packaging from the roll (i.e., where the labels are removed from the roll for

subsequent storage and handling prior to actual labeling) are cut labels.

12. Two comments recommended that the proposed special control procedures for cut labeling in § 211.122(g) also apply to roll labeling. One comment noted the potential for mixups involving roll labeling when a single roll has items of labeling of similar size, shape, or color.

Although use of roll labels, in itself, does not prevent mixups, the agency has determined that the use of cut labels is much more likely to cause labeling mixups and recalls and that special labeling control procedures for cut labels are justified. Specifically, FDA has found that 76 percent of recalls due to label mixups involved the use of cut labels; only 24 percent of recalls involved the use of roll labels. The agency has determined that individual cut labeling is more liable to result in mixups than labeling that is securely affixed to a roll from the time of printing until immediate application to containers. Therefore, the agency declines to extend special labeling controls to roll labeling at this time.

13. Several comments expressed concerns about the applicability of the proposed requirement regarding cut labels under § 211.122(g) to low volume labeling operations for such products as clinical supplies, bulk pharmaceutical substances, allergenic extracts, veterinary products, and compressed medical gases, and products produced in small lots such as radiopharmaceuticals or orphan drug products. The comments stated that, in low volume labeling operations, labeling is typically applied by hand and claimed that adequate labeling control can be attained by documented 100-percent visual examination by two persons in conjunction with labeling reconciliation. The comments contended that the use of electronic or electromechanical equipment for low volume operations is unwarranted.

The agency has concluded that, for labeling runs of a low enough volume to make hand application of cut labeling practical, visual examination performed by one person with independent verification by a second person of all labeling, in conjunction with labeling reconciliation, provides reasonable assurance of labeling control. Although visual examination is somewhat less effective than electronic or electromechanical examination, differences in effectiveness are insignificant in low volume situations where operators have sufficient time to check the labeling. The agency believes that, by limiting the provision to labeling applied by hand, the labeling control procedure will be confined to reasonably low volume labeling operations where visual checks of all labeling can be both practical and effective. Accordingly, the final regulation is amended to permit as an alternative control for cut labeling the use of visual inspection to conduct a 100-percent examination for correct labeling during or after completion of finishing operations for hand-applied labeling. Documentation that all products were visually examined for correct labeling must be made a part of the batch production record (see 21 CFR 211.188(b)).

14. Several comments asked whether proposed §§ 211.122(g) and 211.125(c) would apply to labeling other than the immediate container label.

As previously noted, the regulations are intended to apply to all labeling, not just immediate-container labels, and the agency has revised the final regulations accordingly. The agency's experience with product mislabeling recalls continues to show that use of incorrect cartons or inserts constitutes a significant portion of labeling control problems.

15. Several comments requested clarification of the term "dedication" as used in § 211.122(g)(1). Specifically, the comments asked whether "dedication" meant "permanent" or "per job" dedication of labeling and packaging lines. Some comments suggested that a packaging line should be considered to be dedicated if it is physically separated from other lines and if labeling runs for different products on a given line are not conducted concurrently.

For purposes of § 211.122(g)(1), the agency considers "dedication" of a labeling or packaging line to be the exclusive use of a line for a given strength of a given product for as long as that product and its labeling are in a firm's physical inventory or catalog of marketed products. A line may only be rededicated after exhaustion of the product and its labeling from the firm's physical inventory and removal of the product from the firm's catalog of marketed products. Physical or spatial separation of different packaging and labeling lines is already required under § 211.130(a) of the CGMP regulations and is not relevant to whether those lines are considered to be dedicated. Further, the agency has decided that exclusive use for a prescribed period of time as a measure of line dedication would not assure that incorrect labeling is not brought to a labeling or packaging line.

16. One comment recommended that FDA not adopt line dedication as an alternative control for cut labeling because line dedication will not prevent mixups where cut labels are mixed up before delivery to the line.

The agency acknowledges that line dedication alone will not prevent mistakes involving the delivery of labeling to a labeling or packaging line. Compliance with the other pertinent labeling control provisions on the receiving, sampling, inspection, and acceptance of labeling, as well as subsequent storage, issuance, and use of labeling, is still necessary to reduce the risk of mixups before delivery to the line. Line dedication is intended to provide additional assurance that correct labeling is used in labeling and repackaging operations. The agency, therefore, rejects this recommendation.

17. Several comments complained that line dedication is not feasible for firms making many different products, especially where lot sizes are small. Several comments requested that the agency accept as dedicated use of a given labeling and packaging line for different products when sequential packaging/labeling runs are distinguished by a variety of conditions, such as: (1) changes in mechanical equipment on the line; (2) shut down intervals of at least 4 working hours; (3) runs of distinctively different products or identical products having distinctively different net contents; and (4) use of labeling differentiated by size, shape, and color.

The agency considers that the effectiveness of using dedicated lines to prevent cut labeling mixups can be achieved only when a given line is used solely for one strength of one drug product, thus minimizing the chance that incorrect labeling would ever be brought to that line. The schemes suggested by the comments would not be, in the agency's view, effective labeling control methods. The agency notes that, under this final rule, use of dedicated lines is not the only option open to manufacturers. Firms may use nondedicated lines if: (1) an automated examination of 100 percent of the labeling is conducted, (2) roll labeling is used; or (3) labeling is applied by hand, if a visual examination of 100 percent of the labeling is conducted. The agency notes that the latter labeling control procedure should be a viable option for small lot sizes. Thus, the agency does not believe it appropriate to delete or qualify § 211.122(g)(1).

18. One comment asked whether a line may be considered dedicated under § 211.122(g)(1) if it is used for the labeling or packaging of several strengths of a single product.

The agency has revised this provision in the final rule to make clear that a

labeling or packaging line may be dedicated only to a single strength of a drug product.

19. Several comments recommended that the differentiation of cut labels by size, shape, or color be included as a special control procedure under proposed § 211.122(g).

Although there is value as a labeling control in differentiation of cut labeling by size, shape, or color, the agency believes that the use of differentiation of cut labeling, in itself, does not adequately assure that a product has been appropriately labeled. Therefore, the agency declines to accept this recommendation.

20. Three comments objected to proposed § 211.122(g)(2) because it requires the use of appropriate electronic or electromechanical equipment to conduct a 100-percent examination for correct labeling. These comments asserted that such equipment is insufficiently reliable and does not guarantee that the correct label will be applied to the correct container.

The agency acknowledges that electronic and electromechanical inspection systems do not completely assure that the correct labeling will be applied to the correct product container. Automated labeling inspection systems are only one part of a total labeling control system. Additional labeling control procedures, including preacceptance inspection, and appropriate storage and handling, are also needed to reduce the risk of labeling mixups. However, the agency thinks that automated labeling inspection systems can serve as a significant safeguard to reduce the chance that cut labeling will be mixed up. The agency is confident that the performance characteristics of automated systems will improve greatly as demand for such systems increases.

The agency is keenly aware of the need to accommodate a wide variety of new technologies in various areas, including technologies applied to labeling controls. The agency is committed to facilitating appropriate use of technologies, consistent with the agency's mandate to protect consumers. Accordingly, any party claiming knowledge of a technology or method of assuring that correct cut labeling is used and which provides at least the same degree of protection against label mixup as the methods specifically stated in the final rule, may submit a citizen petition under 21 CFR 10.30. In addition to the requirements under 21 CFR 10.30, such a petition should be clearly identified as a "Request for Exemption from § 211.122(g) Cut Labeling Control Provisions." The petition shall provide FDA with evidence that the technology or method of labeling control advanced by the petitioner provides protection against labeling mixup either equal or superior to the methods provided for in § 211.122(g)(1), (2), or (3). If FDA agrees with the petitioner, FDA will approve the petition and may propose to amend § 211.122 to add the new control methods.

21. One comment recommended that the term "finishing operations" as used in proposed § 211.122(g)(2) be defined.

Finishing operations include all steps taken by a drug manufacturer to complete packaging and labeling of a drug product. Finishing operations for a solid oral dosage form might include, for example, placing the dosage form in an immediate container; placing a cotton fill and labeling insert in such container; applying a label, cap liner, and cap; placing the immediate container in a carton; applying a labeling outsert; and placing unit cartons in labeled shipping containers. The agency thinks that the term is well understood in the pharmaceutical industry and sees no need for the suggested revision in the definition section.

22. One comment asked whether the process of preparing labeling in an area specifically designed for control of labeling, but separate from the actual packaging operations, is a process that takes place "during or after completion of finishing operations" within the meaning of proposed § 211.122(g)(2).

Although some firms label and package products on contiguous lines, the agency notes that packaging operations may be conducted in areas separate from labeling operations. Section 211.122(g)(2) is intended to cover examination of labeling applied during or after completion of finishing operations. The provision does not pertain to the process of preparing labeling. Thus, labeling preparation is not a finishing operation within the meaning of § 211.122(g)(2).

C. Labeling Issuance

23. Many comments argued that the labeling reconciliation requirement under proposed § 211.125(c) be deleted because labeling reconciliation is not an effective means of label control, either alone or as an adjunct to other procedures. Several comments recommended that the proposed waiver for label reconciliation be expanded to the use of any labeling control procedures, such as dedicated labeling and packaging lines, 100-percent visual examination of hand applied labeling, 100-percent examination of roll labeling by automated systems, or differentiation of cut labels by size, shape, or color. Several comments supported labeling reconciliation as a cost-effective and practical alternative to automated 100-percent labeling examination, especially in low volume situations where labeling is applied by hand and visually examined.

The agency agrees that the proposed waiver of labeling reconciliation should extend to roll labeling which undergoes 100-percent automated inspection, and has revised § 211.125(c) accordingly. The agency does not believe that the other alternative labeling controls suggested by the comments are sufficiently effective labeling control measures to warrant waiver of labeling reconciliation. The agency is convinced that labeling reconciliation has prevented a number of mislabeling incidents. The agency wishes to stress, however, that reconciliation alone will not prevent labeling mixups. Compliance with other pertinent provisions of the CGMP regulations (e.g., on receiving, sampling, inspecting, accepting, storing, issuing, and using labeling) is also required.

D. Packaging and Labeling Operations

24. Several comments recommended that the word "immediately" be deleted from the phrase "not immediately labeled" under proposed § 211.130(b) because it does not take into consideration reasonable holding times between filling and labeling operations. Additionally, these comments stated that this requirement should not apply to situations where there are normal processing delays, such as employee rest breaks and product flow holding times between filling and labeling operations.

The intent of the proposed requirement was to require manufacturers to identify unlabeled filled containers that are set aside and held for future labeling operations. The proposed identification provision was not intended to apply to situations where there are reasonable delays between filling and labeling and where containers are otherwise identified during the production process by their phase of processing, as currently required under § 211.105 of the CGMP regulations. The final regulation has been revised accordingly.

25. Several comments argued that identification of unlabeled drug product containers under proposed § 211.130(b) need not include the expiration date because the inclusion of this information will not help the manufacturer identify the product. Several comments also stated that, for certain biological drug products, the

expiration date is based upon potency assays, which are not always available when containers are filled.

The agency agrees and has revised the final regulation accordingly.

26. Many comments stated that proposed § 211.130(b) would be unreasonable if the intention of this provision is to require that each unlabeled filled drug product container be uniquely identified with its name, strength, quantity of contents, lot or control number, and expiration date. These comments recommended that only groupings of such unlabeled containers need to be identified and that instead of including these specific identifiers, a system of identification, such as use of lot numbers or color coding traceable to each drug product's name, strength, quantity of contents, lot or control number, and expiration date, would suffice to prevent mixups.

The agency did not intend to require that the identifying information be affixed to each unlabeled filled drug product container. The agency's intention was to require manufacturers to incorporate into their written procedures provisions for the proper handling and identification of unlabeled containers so as to preclude mislabeling. Any identification system that permits the manufacturer to determine all of the required information is acceptable. This identification system may apply to secure groupings of containers provided that there is no question as to the correct identity of each container in the group. The final regulation has been revised to clarify the agency's intention.

Therefore, the agency is amending the CGMP regulations for human and veterinary drug products to revise certain labeling control provisions by amending § 210.3 by adding new paragraph (b)(22), by amending § 211.122 by revising paragraph (f), by redesignating paragraph (g) as paragraph (h), and by adding new paragraph (g), and by amending § 211.125 by revising paragraph (c).

III. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(10) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Economic Impact

The agency has analyzed the potential economic impact of the final rule and has determined that it requires neither a regulatory impact analysis as specified in Executive Order 12291, nor a regulatory flexibility analysis as defined in the Regulatory Flexibility Act (Pub. L. 96–354). Specifically, the final rule establishes additional conditions for the use of certain types of labeling and for the control of packaged drug products that will be labeled at a later date. In addition, the final rule provides an exemption from an existing label control requirement when certain conditions are met. The agency believes that the overall cost effect of this final rule is minimal.

As stated in both the 1989 proposal and the agency's economic assessment of this final rule, a significant number of firms already take advantage of electronic or electromechanical equipment to inspect all labeling. This final rule would result in cost reductions to those firms by exempting them from the current label reconciliation requirement. Also, most firms that choose to install automated, 100-percent labeling verification systems would achieve annual cost reductions that exceed the annualized acquisition costs of new equipment. Finally, the final rule provides for a cut-labeling control procedure for hand labeling operations that many small firms already use. Therefore, the agency believes that most firms, both large and small, will experience either unchanged or reduced regulatory costs because of these requirements. The 1989 proposal and the agency's economic assessment of this final rule are on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

In summary, the agency concludes that the final rule is not a major rule because the labeling control revisions do not result in a significant overall cost to manufacturers. Moreover, the final rule is intended to reduce the likelihood of mislabeling-related recalls and in many cases will reduce the industry's regulatory burden by relieving industry from certain CGMP labeling reconciliation requirements. For these reasons, therefore, the agency has determined that this final rule is not a major rule as defined in Executive Order 12291. Further, the agency certifies that this final rule does not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act.

V. Effective Date

To allow for sufficient time for necessary changes to labeling control operations and the consumption of existing labeling stocks made obsolete by labeling conversions, manufacturers are given until August 3, 1994 to comply with the new requirements.

List of Subjects

21 CFR Part 210

Drugs, Packaging and containers.

21 CFR Part 211

Drugs, Labeling, Laboratories, Packaging and containers, Prescription drugs, Reporting and recordkeeping requirements, Warehouses.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 210 and 211 are amended as follows:

PART 210—CURRENT GOOD MANUFACTURING PRACTICE IN MANUFACTURING, PROCESSING, PACKING, OR HOLDING OF DRUGS;GENERAL

1. The authority citation for 21 CFR part 210 continues to read as follows:

Authority: Secs. 201, 501, 502, 505, 506, 507, 512, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 355, 356, 357, 360b, 371, 374).

2. Section 210.3 is amended by adding new paragraph (b)(22) to read as follows:

§ 210.3 Definitions.

* * * * *

(b) * * *

(22) Gang-printed labeling means labeling derived from a sheet of material on which more than one item of labeling is printed.

PART 211—CURRENT GOOD MANUFACTURING PRACTICE FOR FINISHED PHARMACEUTICALS

3. The authority citation for 21 CFR part 211 continues to read as follows:

Authority: Secs. 201, 501, 502, 505, 506, 507, 512, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 355, 356, 357, 360b, 371, 374).

4. Section 211.122 is amended by revising paragraph (f), by redesignating paragraph (g) as paragraph (h), and by adding new paragraph (g) to read as follows:

§ 211.122 Materials examination and usage criteria.

* * * * *

(f) Use of gang-printed labeling for different drug products, or different strengths or net contents of the same drug product, is prohibited unless the labeling from gang-printed sheets is adequately differentiated by size, shape, or color.

(g) If cut labeling is used, packaging and labeling operations shall include

one of the following special control procedures:

(1) Dedication of labeling and packaging lines to each different strength of each different drug product;

(2) Use of appropriate electronic or electromechanical equipment to conduct a 100-percent examination for correct labeling during or after completion of finishing operations; or

(3) Use of visual inspection to conduct a 100-percent examination for correct labeling during or after completion of finishing operations for hand-applied labeling. Such examination shall be performed by one person and independently verified by a second person.

* * * * *

5. Section 211.125 is amended by revising paragraph (c) to read as follows:

§ 211.125 Labeling issuance.

* * * * *

(c) Procedures shall be used to reconcile the quantities of labeling issued, used, and returned, and shall require evaluation of discrepancies found between the quantity of drug product finished and the quantity of labeling issued when such discrepancies are outside narrow preset limits based on historical operating data. Such discrepancies shall be investigated in accordance with § 211.192. Labeling reconciliation is waived for cut or roll labeling if a 100-percent examination for correct labeling is performed in accordance with § 211.122(g)(2).

* * * * *

6. Section 211.130 is amended by redesignating paragraphs (b), (c), and (d) as paragraphs (c), (d), and (e), respectively, and by adding new paragraph (b) to read as follows:

§ 211.130 Packaging and labeling operations.

* * * * *

(b) Identification and handling of filled drug product containers that are set aside and held in unlabeled condition for future labeling operations to preclude mislabeling of individual containers, lots, or portions of lots. Identification need not be applied to each individual container but shall be sufficient to determine name, strength, quantity of contents, and lot or control number of each container.

* * * * *

Dated: March 30, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93-18377 Filed 8-2-93; 8:45 am]

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federal register

Tuesday
August 3, 1993

Part VI

Federal Trade Commission

16 CFR Part 306
Automotive Fuel Ratings, Certification and Posting; Rule

FEDERAL TRADE COMMISSION

16 CFR Part 306

Automotive Fuel Ratings, Certification and Posting

AGENCY: Federal Trade Commission.
ACTION: Final rule.

SUMMARY: The Federal Trade Commission ("Commission") amends its Octane Certification and Posting Rule ("Octane Rule") to include alternative liquid automotive fuels, including methanol, denatured ethanol, and other alcohols; blends of methanol, denatured ethanol and other alcohols with gasoline or other fuels; liquefied natural gas; and, liquefied petroleum gas. The amendments require that marketers of these fuels certify and post an automotive fuel rating that describes the fuel being marketed in terms of a minimum percentage, by volume, of its principal component. This action is being taken to comply with the Petroleum Marketing Practices Act ("PMPA"), as amended. The Commission has decided to defer a decision on whether to prescribe disclosure requirements for diesel fuel oil. The title of the rule is amended to be Automotive Fuel Ratings, Certification and Posting ("Fuel Rating Rule").

EFFECTIVE DATE: The amendments are effective October 25, 1993. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 25, 1993.

FOR FURTHER INFORMATION CONTACT: Neil Blickman, Attorney, 202–326–3038, or James Mills, Attorney, 202–326–3035, Division of Enforcement, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Statement of Basis and Purpose

I. Introduction

Section 1501 of the Energy Policy Act of 1992 ("EPA 92") [1] requires the Commission, within 270 days of enactment, to amend [2] the Commission's Octane Rule.[3] Specifically, the Commission must issue automotive fuel [4] certification and posting requirements, like those that exist now for gasoline, for all liquid alternative fuels [5] for vehicular use. These alternative liquid automotive fuels include such existing automotive fuels as methanol, denatured ethanol, liquefied petroleum gas, and liquefied natural gas. The Commission has the authority to require certification and posting of octane or other ratings for alternative liquid automotive fuels after consultation with the American Society for Testing and Materials ("ASTM").[6] For diesel fuel oil, the Commission has the discretionary authority to require certification and posting of cetane (a rating similar to octane), if the Commission finds this would be appropriate after a rulemaking proceeding.[7]

The purpose of PMPA's requirements for the certification and posting of octane ratings for gasoline sold at retail was to ensure that purchasers have the information they need to purchase gasolines with sufficient octane to prevent engine knocking while avoiding wasteful octane overbuying.[8] The purpose of the EPA 92 amendments to PMPA is to extend the Octane Rule's certification and posting requirements to alternative liquid automotive fuels to allow purchasers to compare posted octane or other fuel ratings with their engines' requirements. Thus, the amendments attempt to increase consumer confidence in and information about motor fuels. The amendments recognize "that motorists have a right to know what they pay for, and that dealers have a right to know that their competitors are not cheating." [9] Simply stated, the purpose is to give purchasers information they need to choose the correct type or grade of fuel for their vehicles.

In accordance with section 203(d)(1) of PMPA,[10] this proceeding was conducted pursuant to section 553 of the Administrative Procedure Act ("APA"),[11] except that interested persons were afforded the opportunity to present oral, as well as written, data, views and arguments. On March 26, 1993, the Commission published a Notice of Proposed Rulemaking ("NPR") in the **Federal Register** that sought comment on four proposed certification and posting options for certain alternative liquid automotive fuels and certification and posting requirements for diesel fuel oil for vehicular use.[12] (A hearing was not requested, so one was not held.) The options and the comments received are discussed in Part III, below. The final amendments appear in Part VIII.B., below. Additional technical amendments, e.g., new § 306.0—Definitions, are discussed in Part VIII.A., below.

The Commission tentatively concluded in the NPR that the proposed amendments would not have a significant economic impact on a substantial number of small entities in the alternative liquid automotive fuel industry and the diesel fuel oil industry, as defined in the Regulatory Flexibility Act.[13] The Commission, however, sought comments about these industries and the impact of the proposed amendments on small entities in them. Under the requirements of the Paperwork Reduction Act,[14] the Commission also tentatively concluded that the recordkeeping burden associated with the proposed amendments would be minimal. To ensure the accuracy of its burden estimates, however, the Commission solicited comments on the paperwork burden that the proposed amendments would impose. Lastly, in accordance with the Commission's modified ten-year regulatory schedule, the Commission sought comments about the

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[1] Pub. L. 102–486, 106 Stat. 2776. Title XV of EPA 92, Pub. L. 102–486, 106 Stat. 2776, 2996–99, amends title II of PMPA, 15 U.S.C. 2821–25.

[2] Section 1501(b) of Pub. L. 102–486, 106 Stat. 2776, 2996 (codified at 15 U.S.C. 2821).

[3] Final Rule Governing Certification and Posting of Octane Numbers Under Title II of PMPA, 44 FR 19160 (Mar. 30, 1979), codified at 16 CFR part 306.

[4] Section 1501(a)(6) of EPA 92 defines the term "automotive fuel" to mean liquid fuel of a type distributed for use as a fuel in any motor vehicle. Section 1501(a)(6) of Pub. L. 102–486, 106 Stat. 2776, 2996 (codified at 15 U.S.C. 2821(6)).

[5] Section 301(2) of EPA 92 defines the term "alternative fuel" as: Methanol, denatured ethanol, and other alcohols; mixtures containing 85 percent or more (or such other percentage, but not less than 70 percent, as determined by the Secretary [of the Department of Energy], by rule, to provide for requirements relating to cold start, safety, or vehicle functions) by volume of methanol, denatured ethanol, and other alcohols with gasoline or other fuels; natural gas; liquefied petroleum gas; hydrogen; coal-derived liquid fuels; fuels (other than alcohol) derived from biological materials; electricity (including electricity from solar energy); and any other fuel the Secretary determines, by rule, is substantially not petroleum and would yield substantial energy security benefits and substantial environmental benefits. Pub. L. 102–486, 106 Stat. 2776, 2866 (codified at 42 U.S.C. 13211).

[6] Section 1501(b) of Pub. L. 102–486, 106 Stat. 2776, 2996 (codified at 15 U.S.C. 2821(17)(C)).

[7] Section 1501(b) of Pub. L. 102–486, 106 Stat. 2776, 2996 (codified at 15 U.S.C. 2821(1)(B)).

[8] S. Rept. No. 731, 95th Cong., 1st Sess. 15–16, 19–21, reprinted 1978 U.S. Code Cong. and Adm. News 873–75, 877–79.

[9] H. Rept. No. 474 (I), 102nd Cong., 1st Sess. 151, reprinted in 1992 U.S. Code Cong. and Adm. News 1953, 1974.

[10] 15 U.S.C. 2823(d)(1).

[11] 5 U.S.C. 553.

[12] 58 FR 16464. The alternative liquid automotive fuels that the Commission identified in the NPR as currently being distributed in the marketplace are methanol; denatured ethanol; M–85 (a mixture of 85% methanol and 15% gasoline); E–85 (a mixture of 85% denatured ethanol and 15% gasoline); liquefied propane gas (LPG); and liquefied natural gas (LNG). See Part III.A., *infra*.

[13] 5 U.S.C. 605.

[14] 44 U.S.C. 3501–3520.

costs and benefits of the Octane Rule and its regulatory and economic impact.

The Commission has additional rulemaking responsibilities regarding alternative fuels under section 406 of EPA 92.[15] Although the Commission will address the requirements of section 406 in a subsequent proceeding, in the NPR the Commission invited suggestions on how to meet the requirements of both sections 406 and 1501 of EPA 92.[16] The Commission received limited comments concerning the section 406 proceeding. Those comments have been considered and will be taken into account when the Commission publishes its NPR in that proceeding.

II. Background

A. Overview of the Octane Rule

In this notice, the Commission amends the Octane Rule to include for alternative liquid automotive fuels certification and posting requirements like those now required by the Octane Rule for gasoline. On March 30, 1979, the Commission issued the Octane Rule, under section 203(c)(1) of title II of PMPA.[17] The Octane Rule, which took effect on June 1, 1979, establishes standard procedures for determining, certifying, and posting (by means of a label on the fuel dispenser) the octane rating of automotive gasoline intended for sale to consumers. The Octane Rule covers refiners, producers, importers, distributors, and retailers.[18]

Refiners, producers, and importers must determine the octane rating of the gasoline they distribute in accordance with the PMPA-prescribed formula.[19] For purposes of certification and posting, if distributors and retailers do not blend gasoline, they have the option of using the octane rating certified to them or of determining the octane rating by testing in accordance with the (R+M)/2 method.[20] If distributors or retailers blend different gasolines, they must either: (1) Test in accordance with the (R+M)/2 method; (2) use the weighted-average formula prescribed by section 202(f)(1) of PMPA; or (3) use the lowest octane rating certified to them for any of the gasolines in a mixture.[21]

The Octane Rule requires that refiners, producers, importers, and distributors certify the octane rating of gasoline that they distribute in commerce for resale. Refiners, producers and importers must certify consistent with their determination of the gasoline's octane rating. Distributors must certify consistent with the certification they received or, optionally, the octane rating determined by them. Certification can be accomplished in either of two ways: On a delivery ticket with each transfer of gasoline or by a letter of certification or other written statement. A letter or other written statement constituting certification is valid until gasoline with a lesser octane rating is shipped.[22]

Retailers must post the octane rating of all gasoline they sell to consumers. They must post a whole or half number, which must be equal to or less than the octane rating certified to them or determined by them. They must post at least one label on each face of each gasoline dispenser and, if more than one kind of gasoline is sold from a single dispenser, separate disclosures for each kind of gasoline must be put on each face of the dispenser. The label must show the octane rating preceded by the words "MINIMUM OCTANE RATING" and (R+M)/2 METHOD."[23]

Refiners, producers, importers, distributors, and retailers must keep for one year records of any delivery tickets, letters of certification, or tests upon which they based the octane ratings that they certified or posted. These records must be open for inspection by Commission and Environmental Protection Agency ("EPA") staff members or by persons authorized by the Commission or EPA.[24]

B. Amendments to the Octane Rule Required by EPA 92

Section 1501 of EPA 92 amends Title II of PMPA to extend automotive fuel certification and posting requirements to all liquid automotive fuels.[25] Specifically, under this section, the term "gasoline" is deleted from PMPA and replaced with the term "automotive fuel."[26] The term "automotive fuel" means liquid fuel of a type distributed for use in any motor vehicle.[27] For vehicular use, such fuels include the following fuels: Gasoline (including gasohol, and oxygenated and reformulated gasolines),[28] diesel fuel oil, and alternative fuels. "Alternative fuel" is defined in section 301(2) of EPA 92 as including: methanol, denatured ethanol and other alcohols (including mixtures containing 70 percent to 85 percent or more by volume of methanol, denatured ethanol and other alcohols with gasoline or other fuels), liquefied petroleum gas and liquefied natural gas.[29]

This means that all liquid automotive fuels (with the exception of diesel fuel oil), including alternative liquid automotive fuels, must post either an octane rating or another rating specified by the Commission on fuel dispensers. As delineated in EPA 92, the alternative liquid automotive fuels identified during this proceeding as being currently distributed are methanol, denatured ethanol, blends of methanol or denatured ethanol with gasoline,

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[15] Specifically, section 406 of EPA 92 requires the Commission to propose labeling requirements for alternative fuels and alternative fuel vehicles, including requirements for information about their costs and benefits to enable consumers to make choices and comparisons. The Commission has authority to consolidate this required labeling with other labels. Sec. 406, Pub. L. 102–486, 106 Stat. 2776, 2880–81 (codified at 42 U.S.C. 13232).

[16] Under section 406 of EPA 92, the Commission must issue a Notice of Proposed Rulemaking by April 24, 1994. *Id.* Section 406 requires the Commission to establish labeling requirements for alternative fuels such as compressed natural gas (CNG), hydrogen and electricity, as well as the liquid alternative fuels.

[17] 15 U.S.C. 2823.

[18] 16 CFR 306.1. This coverage parallels the coverage in PMPA's definitions of "refiner," "gasoline retailer" and "distributor."

[19] 16 CFR 306.4, .7(a), .9(c). The formula is the sum, divided by two, of the Research Method and the Motor Method, two accepted laboratory test methods for evaluating the antiknock performance of automotive gasoline. Tests using the (R+M)/2 formula must be conducted in accordance with ASTM procedures. 16 CFR 306.4(b).

[20] 16 CFR 306.7(a)(1), .9(c).

[21] *Id.*

[22] 16 CFR 306.5, .7.

[23] 16 CFR 306.9. The octane label must be put on the face of the dispenser as near as possible to the price per gallon of the gasoline and placed so it is in full view of consumers. Octane labels for gasoline must be printed in black ink on a yellow background and conform to the Octane Rule's size, type style, and dimensional requirements. No marks or information other than that called for by the Rule may appear on the label. The Commission has granted several conditional exemptions to the Octane Rule's specific posting requirements to allow use of other labels under certain conditions.

[24] 16 CFR 306.6, .8, .10.

[25] Section 1501(b) of Pub. L. 102–486, 106 Stat. 2776, 2996 (codified at 15 U.S.C. 2821(17)–(18)).

[26] Section 1501(c) of Pub. L. 102–486, 106 Stat. 2776, 2996–7 (codified at 15 U.S.C. 2821).

[27] Section 1501(b) of Pub. L. 102–486, 106 Stat. 2776, 2996 (codified at 15 U.S.C. 2821(6)).

[28] "Gasohol" is generally recognized as being a blend of approximately 90% unleaded gasoline and 10% denatured ethanol. The Commission considers gasohol to be gasoline in the traditional sense, and already covered by the Octane Rule. See Commission advisory opinion concerning gasohol dated January 8, 1993, issued to the Nebraska Gasohol Committee. Further, because gasohol is substantially gasoline, it does not fall within the definition of "alternative fuel" in EPA 92. Sec. 301(2), Pub. L. 102–486, 106 Stat. 2776, 2866 (codified at 42 U.S.C. 13211). See note 5, *supra*. Similarly, for "reformulated gasoline," which will be required to be available by the Clean Air Act in 1995, 42 U.S.C. 7545(k), and for current "oxygenated gasoline," the reformulations (to reduce emissions) will not otherwise change the inherent properties of the fuels. Because reformulated and oxygenated gasolines are not specified as alternative fuels and they are substantially gasoline, they are not alternative liquid fuels. Thus, as with other gasolines, octane ratings can and should be derived and posted for reformulated and oxygenated gasolines.

[29] Pub. L. 102–486, 106 Stat. 2776, 2866 (codified at 42 U.S.C. 13211). See note 5, *supra*.

liquefied petroleum gas ("LPG"), and liquefied natural gas ("LNG").[30] These fuels are described briefly below. The Fuel Rating Rule, however, applies to all present and future alternative liquid automotive fuels. If new types of alternative liquid automotive fuels are developed in the future, sellers can petition the Commission for further rulemaking if they believe that different or additional disclosures are necessary, or they can seek an exemption from specific certification and posting requirements if they believe those requirements are unnecessary for such new fuels.

Methanol, or wood alcohol, is commonly used in the U.S. as a raw material source (feedstock) for producing methyl tertiary butyl ether ("MTBE"), an octane-enhancing gasoline additive, and as a chemical feedstock, extractant, or solvent. It can be used in neat (100%) form as a gasoline substitute or in a blend with gasoline, most commonly as M–85 (85% methanol, 15% gasoline). The majority of methanol produced in the U.S. is from natural gas resources, but it also can be produced from coal, residual oil, and biomass.[31]

Ethanol, or grain alcohol, is also produced from biomass sources.[32] Once denatured, it can be used as a pure fuel or as a blend with gasoline, such as E–85 (85% denatured ethanol, 15% gasoline).[33]

LPG is composed primarily of propane and butanes, with smaller amounts of propylene and butylenes. About two-thirds of the LPG available today is a by-product of natural gas processing. It is supplied in four grades of different composition, with HD–5 being the grade usually recommended for automotive use. HD–5 is approximately 95% propane. The terms "LPG" and "propane" are often used interchangeably.[34]

Natural gas is a fossil fuel composed primarily of methane, along with other hydrocarbons such as ethane, propane, butane, and inert gases such as carbon dioxide, nitrogen, and helium. It is produced both in compressed ("CNG") and liquefied ("LNG") forms.[35] LNG is natural gas that has been liquefied at temperatures as low as −259°F. The amendment adopted by the Commission today covers only LNG.

C. Identification of Comments Received

Below is an alphabetical list of the comments submitted in response to the NPR. The list includes the document number assigned to the comment on the public record and a general description of the commenter and its interests relating to this proceeding (for those comments that included a description).[36] The Commission received a total of 29 comments.[37] In the remainder of this notice, each comment is referred to by its acronym or the abbreviation given in parentheses.

1. American Automobile Manufacturers Association ("AAMA")—D–7. AAMA represents producers of approximately 81% of all U.S.-built motor vehicles.

2. Advanced Business Development, Inc. ("ABDI")—E–6. ABDI is a private consulting firm.

3. Atmos Energy Corp. ("AEC")—D–20. AEC is a natural gas distribution company with operations in Kentucky, Louisiana and Texas.

4. American Gas Association ("AGA") and Natural Gas Vehicle Coalition ("NGVC")—D–11. AGA represents 250 natural gas distribution and transmission companies, which account for approximately 85% of the nation's total annual natural gas utility sales. NGVC has over 200 members, including vehicle manufacturers, natural gas vehicle component manufacturers, natural gas distribution, transmission, and production companies, natural gas development organizations, environmental and non-profit advocacy organizations, state and local government agencies, and fleet operators. NGVC is dedicated to developing long-term markets for natural gas vehicles (NGVs) and building an NGV infrastructure.

5. Association of International Automobile Manufacturers ("AIAM")—D–17. AIAM is a non-profit trade association that represents U.S. importers, distributors and manufacturers of passenger cars and light trucks produced both here and abroad.

6. American Methanol Institute ("AMI")—D–23. AMI represents the majority of the methanol industry.

7. American Petroleum Institute ("API")—D–10. API represents approximately 300 companies involved in all aspects of the oil and gas industry.

8. American Trucking Associations, Inc. ("ATAI")—D–2. ATAI is a federation with associations in every state and the District of Columbia that represents every type and class of motor carrier in the country, for-hire and private. ATAI's members collectively consume 24 billion gallons of diesel fuel oil annually.

9. Alternative Transportation Fuels Inc. ("ATFI")—D–15. ATFI is a wholly-owned subsidiary of Skelgas Propane, Inc., a propane marketer.

10. CENEX ("CENEX")—D–21. CENEX is a regional agricultural cooperative, serving 320,000 farmers and ranchers through more than 1,800 local cooperatives in 15 states from the Great Lakes across the Midwest to the Pacific Northwest. Through a joint venture, CENEX sells refined petroleum products, including gasoline and diesel fuel oil, and propane, with annual sales of up to 36 million gallons of petroleum products.

11. Clean Fuels Development Coalition ("CFDC")—D–14. CFDC promotes the use of fuels such as ethanol as a means of achieving clean air. It is a non-profit coalition comprised of ethanol producers, ethanol marketers, ETBE [ethyl tertiary butyl ether]

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[30] Sec. 301(2), Pub. L. 102–486, 106 Stat. 2776, 2866 (codified at 42 U.S.C. 13211).

[31] Fact sheet on methanol, developed by Development and Communications Office, Technical Information Program, for the U.S. Department of Energy, NREL SP–220–4315, DE91002157, Rev. Feb. 1992. "Biomass" is a renewable, virtually inexhaustible domestic resource that can be used to produce methanol and ethanol. Corn is a major biomass feedstock being used today. Other biomass sources currently being used, or subject to research as potential feedstocks, include crop residues, forage (grass) crops, wood resources (forest residues and short-rotation wood energy crops), and the cellulosic components of municipal solid waste.

[32] "Denatured ethanol," also known as "fuel ethanol," is ethanol made non-potable by being blended with unleaded gasoline or other unleaded hydrocarbons according to specific regulations of the Bureau of Alcohol, Tobacco and Firearms, U.S. Department of the Treasury. 27 CFR 19.966, .1005. Because of denaturing, an E–100 fuel would contain less than 100% ethanol.

[33] Fact sheet on ethanol, developed by the Development and Communications Office, Technical Information Program, for the U.S. Department of Energy, NREL SP–220–3587, DE91002129, Rev. Feb. 1992.

[34] Fact sheet on liquefied petroleum gas and propane, developed by the Development and Communications Office, Technical Information Program, for the U.S. Department of Energy, NREL SP–220–4066, DE 91002114, Rev. Feb. 1992.

[35] Fact sheet on compressed and liquefied natural gas, developed by the Development and Communications Office, Technical Information Program, for the U.S. Department of Energy, NREL SP–220–4005, DE 90000388, Rev. Feb. 1992. The Commission cannot include CNG in this rulemaking, because PMPA, as amended, limits the Commission's jurisdiction in the proceeding to liquid fuels. Section 1501(b) of Pub. L. 102–486, 106 Stat. 2776, 2996 (codified at 15 U.S.C. 2821). However, CNG will be included in the rulemaking proceeding the Commission conducts under sec. 406 of EPA 92. See note 16, *supra*.

[36] All public documents are filed in the Commission's Rulemaking Record No. R811005. Industry comments are filed in category "D. Industry comments." Other comments are filed in category "E. Comments from other sources." Documents are numbered sequentially in the order received, such as Document No. D–1, Document No. D–2. In this notice, comments are cited by an identification of the commenter, the comment number and the relevant page number(s), e.g., "RFA, D–1, 1–3."

[37] The Commission originally set April 26, 1993, as the deadline for submitting written comments in response to the NPR. In response to a petition, the Commission extended the comment period to May 10, 1993. 58 FR 25582 (April 27, 1993).

manufacturers, agriculture organizations, automobile manufacturers, design and engineering firms, and other related industries and interest groups.

12. Chevron U.S.A. Products Company ("Chevron")—D–5. Chevron is a multinational oil company participating in exploration, production, and refining of crude oil and marketing of petroleum products. Within the United States, Chevron's activities in these functional areas are conducted by divisions of Chevron U.S.A. Inc., a wholly owned subsidiary of Chevron.

13. U.S. Department of Energy ("DOE")—E–5. DOE coordinates and administers the energy functions of the Federal Government.

14. Engine Manufacturers Association ("EMA")—D–6. EMA represents worldwide manufacturers of internal combustion engines for all applications except passenger cars and airplanes. EMA's 31 members produce diesel engines for on-highway truck and bus applications, as well as off-highway construction and agricultural equipment.

15. Marathon Oil Company ("Marathon")—D–9. Marathon, an integrated petroleum company, represents that it is the seventh largest U.S. refiner. The company supplies over 3,800 Marathon and subsidiary-brand retail motor fuel outlets located throughout the Midwest and Southeast, and is one of the refining industry's largest suppliers of petroleum products to independent, private-brand jobbers and wholesalers.

16. Mobil Oil Corporation ("Mobil")—D–4. Mobil is a major, integrated, international petroleum company, with five domestic refiners, more than 50 marketing terminals that distribute gasoline and diesel fuel oil, and over 8,500 branded retail outlets in 29 states. Mobil currently is testing several alternative fuels at selected stations.

17. North Carolina Department of Agriculture ("NCDA")—E–1. NCDA regulates the quality specifications for motor vehicle fuels offered for sale in North Carolina.

18. National Propane Gas Association ("NPGA")—D–19. NPGA represents the LP-gas (principally propane) industry with 3,400 to 3,500 members, including affiliated state and regional associations in 46 states, which represent members in all 50 states. The largest group of members are retail marketers of propane gas. The membership also includes propane producers, transporters, and wholesalers, and manufacturers and distributors of associated equipment, containers and appliances.

19. National Soydiesel Development Board ("NSDB")—D–16. NSDB is a non-profit organization established to develop a market for biodiesel fuels in the U.S. Its members are primarily soybean growers in the U.S. and their various organizations. NSDB seeks greater use of fuels derived from biological materials as an addition to conventional diesel fuels or as replacements for them in certain applications.

20. New York Department of Agriculture and Markets ("NYDAM")—E–4. NYDAM enforces state requirements for certification and labeling of gasoline octane ratings and diesel fuel oil cetane ratings. Pending state legislation would expand NYDAM's authority to other fuels, particularly those affected by the Clean Air Act.

21. Propane Consumers Coalition ("PCC")—E–3. PCC represents residential, agricultural, and industrial propane users.

22. Phillips 66 Company ("Phillips 66")—D–3. Phillips 66 produces and markets gasoline, diesel fuel oil and alternative fuels. It has an active interest in alternative fuels and programs, including a propane evaluation and emissions test fleet of 12 vehicles operating since 1990; emission test data for a variety of vehicles and fuel combinations on LPG; full service bulk propane plants in three states; approximately 200 company vehicles operating on LPG; more than 600 customer vehicles operating on LPG; over 100 LPG vehicle refueling dispensers; and 2 CNG dispenser stations.

23. Petroleum Marketers Association of America ("PMAA")—D–18. PMAA is a federation of 44 state and regional trade associations representing more than 11,000 independent petroleum marketers throughout the U.S. These marketers sell in excess of 40% of the gasoline, 75% of the home heating oil, and 60% of the diesel fuel oil consumed in this country.

24. Railroad Commission of Texas ("RCT")—E–2. RCT regulates energy and transportation industries in Texas. It operates under statutory mandates to support technical and market research and to educate the public about propane and other alternative fuels.

25. Renewable Fuels Association ("RFA")—D–1. RFA represents the domestic fuel industry in the U.S. Its membership includes ethanol producers that represent approximately 90% of operable U.S. ethanol capacity, as well as fuel blenders, providers of equipment, supplies, and services to the industry, and other interested parties.

26. Society of Independent Gasoline Marketers of America ("SIGMA")—D–13. SIGMA represents approximately 285 private brand marketers and chain retailers who market motor fuels in all 50 states, the District of Columbia, and Puerto Rico. In 1991, SIGMA members marketed approximately 22.75 billion gallons of motor fuel, or about 17% of all motor fuels sold in the U.S. that year. Diesel fuel oil sales accounted for 4.6 billion gallons.

27. Sun Company, Inc. ("Sun")—D–8. Sun produces diesel fuel oil at five U.S. refineries and sells automotive diesel fuel oil at some service stations. Sun is evaluating alternative fuels through in-house research, through participation in alternative fuel industry programs, and through installation of alternative fuel refueling facilities in selected Sun service stations for LPG, M–85, and E–85. It is planning a CNG facility.

28. Texaco Inc. ("Texaco")—D–22. Texaco Inc. is a vertically integrated enterprise, which is directly, or through ownership in affiliated operating companies, engaged in the worldwide exploration, production, transportation, and refining and marketing of crude oil and its products, including petrochemicals.

29. Wagner & Brown, Ltd. ("W&B")—D–12. W&B produces oil and gas.

D. Comment Suggestions Beyond Commission's Authority Under PMPA

Several comments suggested that the Commission amend the Octane Rule in ways that are beyond the Commission's authority under PMPA, as amended by EPA 92. Specifically: (1) NCDA suggested the Commission address pump nozzle size and require a nozzle on all diesel fuel oil dispensers with a sufficient diameter to prevent fueling a gasoline powered vehicle with diesel fuel oil;[38] (2) AGA/NGVC[39] and PCC[40] urged the Commission to require posting based on a unit pricing concept to compare the cost of alternative fuels to that of gasoline; (3) RCT suggested that the Commission require labeling that educates consumers about alternative and conventional fuels' emissions of toxins and other pollutants;[41] (4) RCT also recommended that the Commission conduct consumer education (at least as to the advantages of HD–5 propane over other mixtures of propane) instead of requiring the posting of information;[42]

[38] NCDA, E–1, 1, 3.
[39] AGA/NGVC, D–11, 3–4, 6–8.
[40] PCC, E–3, 1–3.
[41] RCT, E–2, 3.
[42] *Id.* at 4.

and (5) AAMA,[43] AGA/NGVC,[44] Chevron,[45] Phillips 66,[46] and Sun[47] urged the Commission to include CNG in any posting requirements at this time.[48]

PMPA, as amended by EPA 92, requires the Commission to amend the Octane Rule to require posting for liquid alternative fuels of each fuel's octane rating, or of another form of rating that the Commission, after consultation with ASTM, determines to be more appropriate to carry out the purposes of PMPA's testing, certification and posting requirements.[49] Because this is a statutorily mandated rulemaking proceeding, the Commission's authority is limited to that granted by the mandating legislation.

First, PMPA does not authorize the Commission to specify nozzle sizes for pumps dispensing different types of automotive fuels. Second, although comparative unit pricing would give information to purchasers about different types of fuels, it does not constitute an alternative rating more appropriate than an octane rating. Third, labeling that educates consumers about alternative and conventional fuels' emissions of toxins and other pollutants goes beyond assisting purchasers in identifying the specific type(s) of fuel required for their vehicles and therefore is not an alternative rating more appropriate to carry out PMPA's requirements.[50] Fourth, PMPA, as amended, also does not allow the Commission discretion to require consumer education in lieu of testing, certification, and posting of ratings. Lastly, the Commission is not free to include compressed natural gas (CNG) in this rulemaking, because PMPA, as amended, limits the Commission's jurisdiction in this proceeding to liquid fuels.[51] Accordingly, the Commission does not adopt any of these suggestions.

III. Ratings Proposed in the NPR

A. Alternative Liquid Automotive Fuels

In the NPR, the Commission proposed that the Octane Rule be amended to require the certification and posting of the octane rating of alternative liquid automotive fuels. Because of information that became available to the Commission during the course of its investigation into the alternative liquid automotive fuels area, however, the Commission tentatively concluded that it may not be practical or workable to require the disclosure of octane ratings for these fuels. Consequently, after consultation with ASTM and others, the Commission also proposed three other "rating" options for alternative liquid automotive fuels in the NPR. The four options are summarized below.

Option One, as already mentioned, proposed requiring the octane rating to be certified and posted for the alternative liquid automotive fuels. Option Two proposed requiring fuel composition ratings, such as, the range of hydrocarbon content of the alcohol fuels (which relates to the cold start capability of alcohol fuels) or a minimum percentage of the principal component of the fuel. Option Three proposed requiring the posting of labels that would compare the alternative fuel to gasoline in terms of the approximate mileage one would obtain by using an equivalent volume of each fuel. The proposed labels for Option Three were based on the heating values, or energy contents, of the alternative fuels and gasoline. Option Four proposed establishing fuel descriptors based on certain material specifications such as those developed by the California Air Resources Board. This option would require certification and posting of the identity of the fuels using these descriptors and minimum specifications for each fuel. In the NPR, the Commission sought comment on whether any of the four proposed ratings or combination of ratings, or ratings not yet proposed, would be appropriate. This section contains a review and analysis of the comments on each option and a detailed discussion of the automotive fuel rating that the Commission is prescribing today.

1. Octane Rating Option

In the NPR, the Commission proposed requiring octane ratings for alternative liquid automotive fuels, but noted that other options may better implement the purposes of section 1501 of EPA 92.[52] The Commission explained that the octane rating currently required for gasoline is a measure of how well the gasoline resists engine knocking. The octane rating needed to prevent knocking varies with the engine's compression ratio, and different engines may require grades of gasoline with different octane ratings. The Octane Rule is designed to enable consumers to buy gasoline with an octane rating high enough to prevent engine knock, and to help consumers avoid "octane overbuying" or buying gasoline with an octane higher than needed to prevent engine knock.[53]

In requesting comments on its proposal to require octane ratings for alternative liquid automotive fuels, the Commission noted that, unlike gasoline, the physical and chemical properties of each such fuel may not vary much.[54] The Commission also observed that it expected that engines designed for alternative fueled vehicles would be designed to use fixed-octane alternative fuels without engine knock. The Commission further stated that there might be practical problems in implementing a reliable octane certification and posting program for alternative liquid automotive fuels, because of the lack of a standardized, such as an ASTM-approved, test method for determining octane ratings of such fuels.[55] Finally, the Commission expressed concern that the posting of high octane ratings associated with alternative liquid automotive fuels may contribute to the misperception that high-octane gasoline always is best for vehicles, and thereby aggravate existing gasoline octane overbuying.[56]

To account for the lack of significant variations in octane levels within classes of alternative liquid automotive fuels, and the lack of a standardized test method, the Commission proposed an option of assigning specified octane ratings to alternative liquid automotive fuels and requiring that these assigned octane ratings be posted at the pump and certified by suppliers through the chain of distribution.[57] The Commission proposed the following octane ratings for alternative liquid automotive fuels,

[43] AAMA, D–7, cover letter, 1, Att. A, 1.

[44] AGA/NGVC, D–11, 4–5. AGA/NGVC stated more broadly that the current rulemaking proceeding should apply to all fuels, not just to liquid fuels.

[45] Chevron, D–5, 1.

[46] Phillips 66, D–3, 1.

[47] Sun, D–8, 1.

[48] W&B stated that it understands that PMPA limits the current proceeding to liquid fuels, but urged the Commission to include in the current amendment a statement that the Commission did not overlook the significance of CNG as an alternative fuel and that CNG will be addressed in a later proceeding. W&B, D–12, 1–2.

[49] Section 1501(b) of Pub. L. 102–486, 106 Stat. 2776, 2996 (codified at 15 U.S.C. 2821).

[50] Although disclosures concerning fuel costs and emissions are not viewed as appropriate ratings for purposes of this proceeding, the Commission will consider labeling requirements about costs and benefits of alternative fuels, including gaseous, liquid and other alternative fuels, and alternative fueled vehicles in the proceeding it conducts under section 406 of EPA 92. See notes 15–16, *supra*.

[51] Section 1501(b) of Pub. L. 102–486, 106 Stat. 2776, 2996 (codified at 15 U.S.C. 2821). However, CNG and other alternative non-liquid automotive fuels will be included in the rulemaking proceeding the Commission conducts under sec. 406 of EPA 92. See note 50, *supra*.

[52] 58 FR 16464, 16465.

[53] *Id.*

[54] *Id.* at 16469.

[55] *Id.*

[56] *Id.* at 16470.

[57] *Id.* at 16469.

which are based on tests conducted by DOE's National Renewable Energy Laboratory in Golden, Colorado.

Methanol	98
Ethanol	99
M-85	95
E-85	96
LPG	104
LNG	120

Eighteen of the 24 comments that addressed the octane rating option for alternative liquid automotive fuels opposed it.[58] Opponents included major industry trade associations representing refiners, distributors, and retailers of automotive fuels, and U.S. manufacturers of motor vehicles.[59] The most common criticisms were that octane ratings for alternative liquid automotive fuels (1) do not provide useful information to consumers,[60] and (2) may mislead consumers either by implying that fuels are interchangeable or that higher octane is always better.[61]

In particular, several commenters stated that the octane ratings of a given type of alternative liquid automotive fuel tend not to vary.[62] Others said that posted ratings also have little value, because dedicated alternative fueled vehicles, as well as alternative fueled vehicles capable of using both gasoline and a alternative liquid automotive fuel,[63] use only one type of liquid alternative fuel.[64] Moreover, four commenters stated all alternative liquid automotive fuels have high enough octane ratings to prevent engine knock in vehicles designed to use alternative fuels.[65] Four commenters said that engines are not designed to take advantage of the high octane content of alternative liquid automotive fuels [66] One stated that there also is no correlation between octane ratings for alternative liquid automotive fuels and vehicle performance criteria such as mileage, cleanliness, and vehicle life.[67]

Additionally, four commenters opposed adopting the proposed octane ratings assigned to each alternative liquid automotive fuel without ASTM review of the test procedure and proof that the test results could be duplicated.[68] Four noted that there currently is no reliable, standard test method for determining the octane ratings of alternative liquid automotive fuels.[69]

Six comments supported requiring octane ratings for alternative liquid automotive fuels.[70] DOE recommended that the Commission require certification and posting of specific octane ratings for alternative liquid automotive fuels as a way of meeting the Commission's statutory obligations under EPA 92 pending consideration of additional labeling requirements in the rulemaking to be concluded by April 23, 1995, under section 406 of the EPA 92.[71] Two trade associations representing producers and sellers of natural gas and manufacturers of natural gas fueled vehicles also supported the use of octane ratings until a more satisfactory method of labeling could be developed.[72]

After considering all comments received in this proceeding, the Commission has determined not to require the posting of octane ratings for alternative liquid automotive fuels. Unlike disclosing octane ratings for gasoline, there appears to be little or no benefit to disclosing octane ratings for alternative liquid automotive fuels. Octane ratings for all alternative liquid automotive fuels are high enough to avoid engine knock problems, and such ratings do not provide information relevant to vehicle performance of alternative fueled vehicles. In addition, octane ratings for alternative liquid automotive fuels of a given composition would not vary significantly.

In contrast, there are significant disadvantages to requiring octane posting and certification for alternative liquid automotive fuels. In particular, the Commission is reluctant to require a disclosure that may mislead consumers about the significance of the high octane ratings of alternative liquid automotive fuels, all of which far exceed the minimum octane requirements of vehicles that can use such fuels. Such a disclosure may cause consumers to believe that gasoline and alternative liquid automotive fuels are interchangeable, or that different alternative liquid automotive fuels are interchangeable with one another. It also may foster consumer misperceptions that higher octane necessarily signifies higher quality and better performance. Accordingly, as authorized by EPA 92, the Commission determines that another form of rating is more appropriate, as discussed in detail below in Part III.A.5.

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[58] ATFI, D–15, 2; AAMA, D–7, 1–2; API, D–10, 3–4; CENEX, D–21, 2–3; Chevron, D–5, 1–2; CFDC, D–14, 2–3; Marathon, D–9, 2; Mobil, D–4, 1; NPGA, D–19, 2; NSDB, D–16, 5; NYDAM, E–4, 1; PMAA, D–18, 1–2; Phillips 66, D–3, 2–3; RCT, E–2, 2; RFA, D–1, 3; SIGMA, D–13, 1–2; Sun, D–8, 2, 4; Texaco, D–22, 1.

[59] See comments of API, D–10, 3–4; SIGMA, D–13, 1–2; AAMA, D–7, 1–2. But see discussion of other comments supporting interim or limited posting of the octane ratings of alternative liquid fuels, notes 70–72, *infra*.

[60] See specific reasons cited, notes 62–67, *infra*.

[61] API, D–10, 3–4 (octane ratings for liquid alternative fuels falsely will imply fuel interchangeability); Mobil, D–4, 1 (posting octane ratings for alternative fuels may lead consumers to believe higher octane alternative fuels obtain higher miles per gallon); RFA, D–1, 3 (availability of higher octane ratings on alternative fuel labels may create consumer perception that higher octane fuels are more beneficial); Marathon, D–9, 2 (octane ratings for liquid alternative fuels will confuse consumers and diminish the potential value of information relating directly to performance); SIGMA, D–13, 1–2 (octane ratings for liquid alternative fuels may deceive consumers into thinking that a particular fuel is superior because of its higher octane rating); CFDC, D–14, 2–3 (octane ratings for liquid alternative fuels may confuse consumers whose vehicles function only on one fuel); PMAA, D–18, 1–2 (consumers may be deceived into believing that higher octane for liquid alternative fuels indicate better fuel quality and performance); CENEX, D–21, 2–3 (octane ratings for liquid alternative fuels may mislead consumers to believe the fuels are interchangeable with gasoline; unduly emphasizes perhaps the least important factor in the performance of such fuels; and will not help consumers choose among fuels); Chevron, D–5, 2 (octane posting inherently implies that a higher rating is better, and may cause consumers to think that a liquid alternative fuel is interchangeable with gasoline).

[62] AAMA, D–7, 1–2; RFA, D–1, 3; Phillips 66, D–3, 2–3; NYDAM, E–4, 1; Sun, D–8, 2; Marathon, D–9, 2; CFDC, D–14, 2–3; CENEX, D–21, 2–3; Texaco, D–22, 1.

[63] Single-fuel or dedicated fuel vehicles are those that can operate only on one type of fuel. Dual-fuel vehicles can operate on two different types of fuels, but most have separate fuel tanks for the different fuels. Flexible-fuel vehicles can operate on various blends of fuel from a single tank. For example, a flexible-fuel vehicle might operate on any percentage of methanol from zero to 85 percent or more.

[64] Marathon, D–9, 2; Chevron, D–5, 2; CFDC, D–14, 2–3; PMAA, D–18, 1–2. See also Texaco, D–22, 1 (consumers choose fuel when they purchase or retrofit a vehicle for that fuel).

[65] ATFI, D–15, 2; Chevron, D–5, 1 (recommended that, if an octane label is adopted, it state that the octane rating of the fuel exceeds the octane ratings recommended by all motor vehicle manufacturers); RCT, E–2, 1 (addressed propane only); NPGA, D–19, 2 (same); Sun, D–8, 2.

[66] Phillips 66, D–3, 2–3; NYDAM, E–4, 1; Mobile, D–4, 1; Sun, D–8, 2.

[67] API, D–10, 3–4.

[68] API, D–10, 3; Phillips 66, D–3, 2; Chevron, D–5, 1–2; Mobil, D–4, 1.

[69] API, D–10, 3; Phillips 66, D–3, 2; Chevron, D–5, 1–2; ATFI, D–15, 2.

[70] Only three of these comments clearly supported requiring posting of octane ratings for all alternative liquid automotive fuels, as other than an interim measure. See ABDI, E–6, 1 (stated, without providing supporting information, that octane is a measure of performance for alternative liquid automotive fuels and that significant differences in octane could occur); AMI, D–23, 1 (suggested that erroneous perceptions about octane could be addressed through education); PCC, E–3, 3 (recommended providing octane ratings with information on energy content, driving ranges, and unit pricing per BTU). One trade association supported posting of octane ratings for oxygenated fuels, but not for LPG or LNG. AIAM, D–17, 2. See text for discussion of comments filed by DOE, and comments jointly filed by AGA and NGVC, recommending octane ratings as an interim measure.

[71] DOE, E–5, 2–3. The Commission considers section 406 to require disclosures different than the certification and posting of a fuel rating.

[72] AGA/NGVC, D–11, 3, 8.

2. Fuel Composition: Hydrocarbon, Propane and Methane Content Option

As a second option, the Commission proposed requiring the disclosure of fuel composition.[73] Specifically, for the liquefied gas fuels, the Commission proposed a requirement that the minimum propane content of LPG and the minimum methane content of LNG be certified and posted.[74] The NPR estimated that the LPG most often used in automotive applications is 95% propane and 5% butane and that the LNG most often used in automotive applications is composed of several gases—methane, ethane, propane, and nitrogen, but with methane typically accounting for 88–99% of the fuel's composition.[75] Disclosure of the minimum propane content of LPG and the minimum methane content of LNG might, in conjunction with information from the vehicle manufacturer or converter, provide consumers with comparative quality information needed for fuel purchase decisions. Under this option, consumers would be able to compare like fuels. For example, for LNG, one station may post a methane content of 90. Another station may post 95. Depending on their vehicle's requirements, consumers could then determine which fuel is better for their purposes.

For the alcohol fuels, the Commission proposed requiring certification and posting of the hydrocarbon content of each fuel.[76] The alcohol fuels are either composed entirely of methanol or fuel ethanol or are blends of methanol or fuel ethanol with up to 15% or more hydrocarbons, usually in the form of gasoline. The NPR explained that hydrocarbon content relates to the cold start property of alcohol fuels, which differs significantly from that of gasoline. Alcohol is more difficult to vaporize than gasoline and therefore more difficult to ignite in a cold engine. The addition of hydrocarbons to the alcohol fuels improves their cold start characteristics. For example, cold starts are significantly improved by using M–85 and E–85 instead of M–100 and E–100. The NPR suggested that, for each alcohol fuel, hydrocarbon content disclosures might give consumers some information about the fuel's cold starting ability. For example, consumers might want to select a fuel with a higher or lower hydrocarbon content, depending on climatic conditions or geographic region.

[73] 58 FR 16464, 16470.

[74] *Id*

[75] *Id*

[76] *Id*

The Commission proposed that the hydrocarbon content of these fuels be certified and posted in terms of a range, rather than a fixed number.[77] Hydrocarbon content of alcohol fuels can vary, primarily because some varieties of these fuels can at different times of the year also contain hydrocarbon-containing oxygenates (basically, other alcohols and ethers) in varying amounts. The Commission reasoned that disclosure of a range could eliminate the need for changing labels at various times of the year to accommodate seasonal changes in the hydrocarbon contents of the alcohol fuels.

The Commission sought comment on the following labels, each of which is pertinent to a particular alternative fuel, and asked whether they would satisfy EPA 92's intent:

1. "Liquefied Propane Gas/Minimum _____% Propane"
2. "Liquefied Natural Gas/Minimum _____ % Methane"
3. "M–100 Fuel Methanol/X%–Y% Hydrocarbons"
4. "E–100 Fuel Ethanol/X%–Y% Hydrocarbons"
5. "M–85 Fuel Methanol/X%–Y% Hydrocarbons"
6. "E–85 Fuel Ethanol/X%–Y% Hydrocarbons"

The Commission sought comment on the advantages and disadvantages of requiring such disclosures. The Commission also sought comment on whether the Commission should specify a methodology or methodologies for determining the propane, methane, and hydrocarbon contents and, if it did so, what methodology or methodologies should be specified.[78] For alcohol fuels, the Commission asked whether requiring the disclosure of any factor(s) other than the hydrocarbon content of the fuels would better assist consumers in avoiding cold-start problems.[79]

Twelve comments discussed the Commission's proposal to require composition disclosures for LPG and LNG.[80] Two contended that the petroleum gas fuel that is now used in automobiles should be classified as a gas rather than a liquid and therefore should not be regulated in this proceeding.[81] Two others urged the Commission to make clear that the P in LPG (and CPG) stands not for propane, but for petroleum, because butane, another petroleum gas, is often also used along with propane as an ingredient in these fuels.[82] RCT, however, asked the Commission to use the term 'propane' instead of 'LPG' because propane is always the principal component of the fuel and consumers are already familiar with that term.[83]

Six of the twelve comments making recommendations on this option for LPG and LNG opposed the Commission's proposed requirement for composition disclosures. Four contended that such information would not benefit consumers in any meaningful way,[84] and two argued for alternative approaches.[85] Four comments approved of the proposal to require composition disclosures for liquefied gas fuels, contending such disclosures would help consumers in making fueling choices.[86]

Two comments made other suggestions. AGA/NGVC said they were not opposed to requiring fuels to be labeled according to their composition, but preferred a disclosure requirement that "will have the greatest ability to convey the most pertinent information," which would be "the testing of energy content in the form of gasoline equivalent gallon."[87] NPGA believed the proposed rulemaking will not achieve the Commission's objectives in the most efficient and cost-effective manner possible and argued that all consideration of comparison labeling for liquefied gas fuels should be deferred until the section 406 rulemaking.[88]

Five comments addressed what items should be included when disclosing

[77] *Id.*

[78] *Id.*

[79] *Id.* at 16475.

[80] Phillips 66, D–3, 3; AAMA, D–7, 2; Sun, D–8, 2; Marathon, D–9, 2–3; AGA/NGVC, D–11, 7; W&B, D–12, 2–3, 6; ATFI, D–15, 2–4; AIAM, D–17, 3–4; NPGA, D–19, 2–3; CENEX, D–21, 3; Texaco, D–22, 1–2; RCT, E–2, 3.

[81] NPGA, D–19, 1–2; RCT, E–2, 1–2.

[82] Phillips 66, D–3, 3; W&B, D–12, 2–3.

[83] RCT, E–2, 4.

[84] AAMA, D–7, Att. A, 2 (does not provide meaningful information to the consumer); Sun, D–8, 2 (would not provide useful information to the consumer and would be confusing to most consumers); Marathon, D–9, 3 (probably too complex for most consumers); CENEX, D–21, 3 (average consumer lacks the technical expertise needed to make an informed purchasing decision on the basis of posted fuel content.)

[85] Texaco, D–22, 1 (suggested requiring a statement that the fuel meets commonly accepted industry standards); RCT, E–2, 3 (recommended that the Commission adopt a market approach by providing consumer education on the advantages that have been identified for LPG, rather than regulations).

[86] Phillips 66, D–3, 3 (the minimum fuel composition option provides the most valuable public information for making a refueling choice); W&B, D–12, 5 (supported the proposal to disclose fully the possible range of contents in alternative fuels); ATFI, D–15, 2 (fuel composition information is the most relevant to vehicle manufacturers, fuel suppliers, and the consuming public); AIAM, D–17, 2–3 (fully supported this proposal because such information would certainly be beneficial to the vehicle operator).

[87] AGA/NGVC, D–11, 7.

[88] NPGA, D–19, 2–3.

propane gas content, i.e., whether the posting and certification requirement for LPG should specify that the propane component be disclosed as all "special duty grade" propane (i.e., suitable for all automobiles using petroleum gas) or only commercial grade propane (which may not be suitable for most automobiles) or as a mixture of the two.[89] No comments addressed the issue of whether the Commission should require certain methods for determining the methane or propane/butane gas contents of the liquefied gas fuels.

With respect to the alcohol fuels, 20 comments discussed the proposal to require hydrocarbon range disclosures for methanol and fuel ethanol. Five approved of such a requirement.[90] Fifteen opposed such a requirement.[91]

Some opposing comments said that consumers lacked the technical competence to utilize the information,[92] others said that factors other than hydrocarbon content are more relevant to predicting cold start performance,[93] and still others said they would prefer different approaches.[94] NYDAM emphasized that the costs of testing and labeling necessitated by the seasonal variations in the hydrocarbon content of the alcohol fuels designed to forestall cold-starting problems would make a hydrocarbon content disclosure requirement too burdensome.[95] Two other comments said that, until there is more empirical data on cold start problems and their solutions, it would be premature to require disclosure of any factors relating to cold-start performance.[96] CENEX also urged having disclosures that simply advise consumers to follow the instructions from their vehicles' manufacturers.[97] Three comments preferred a disclosure that the fuels meet all relevant industry standards.[98] Mobil argued that requiring disclosures of ranges of hydrocarbons might give incentives to manufacturers to aim for the lowest percentage of hydrocarbons because consumers might think that fuels with the highest alcohol fuel content are always best for their vehicles.[99] Two comments approved of principal ingredient disclosures, but not hydrocarbon content disclosures.[100] Only one comment addressed the issue of whether the Commission should prescribe certain methods for determining the composition of the alcohol fuels. ATFI supported the designation of an appropriate methodology to determine fuel composition, but did not recommend any specific methodology.[101]

Based on all the comments received in this proceeding, the Commission has determined to require a modified version of the fuel composition option proposed in the NPR. As discussed in detail in Part III.A.5, below, the Commission is requiring for each alternative liquid automotive fuel the disclosure of the principal fuel ingredient by percentage of volume. The Commission has determined not to require disclosures of ranges of hydrocarbon content for alcohol fuels because the record does not show sufficiently that knowledge of hydrocarbon content would provide consumers benefits in avoiding cold-start problems or even that most consumers would understand the reason for such disclosures.

The Commission has included in the Fuel Rating Rule as an alternative liquid automotive fuel the petroleum gas fuel now used by automotive vehicles because the fuel is stored and dispensed to consumers at least substantially in a liquefied state.[102] In the NPR, the Commission proposed describing this fuel with the term "Liquified Propane Gas."[103] As explained above, several comments raised concerns about proposed disclosure requirements for LPG in light of this designation. The Commission now uses the term "Liquified Petroleum Gas" because that is the term used in the definition of "alternative fuel" in section 301 of EPA 92. The certification and posting provisions of the Fuel Rating Rule, however, as explained in Part III.A.5., below, do not require choosing between the terms "Liquified Petroleum Gas" and "Liquefied Propane Gas." Either of those designations or just the expression "LPG" or any other commonly accepted designation may be used to describe the fuel so long as the minimum percentage by volume of the propane content (*i.e.*, the principal component of the fuel) is disclosed. Finally, because the Fuel Rating Rule does not require adherence to particular fuel specifications, it is unnecessary to require that marketers specify whether LPG contains special duty grade propane or commercial grade propane, as was suggested by some of the comments.[104]

3. Heating Value (Energy Content) Option

As another option, the Commission proposed requiring a label comparing each alternative liquid automotive fuel to gasoline in terms of the approximate mileage a car would get by using an equivalent volume of each fuel.[105] The comparison would be based on the heating value, or energy content, of each fuel. The Commission proposed two alternative labels for this option: the first compared how many gallons of a given alternative liquid automotive fuel were needed to drive as far as one could drive on a gallon of gasoline, and the second compared how far one could drive on a gallon of a given alternative liquid automotive fuel as compared to how far one could drive on a gallon of gasoline. The Commission stated that the advantage of this type of label was that the disclosed information, coupled with the price of the fuel, would give consumers with flexible fuel vehicles the ability to make choices among different fuels.

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[89] W&B, D–12, ATFI, D–15, 2–3, NPGA, D–19, 2; Texaco, D–22, 2; RCT, E–2, 3.

[90] RFA, D–1, 4 (the suggested labeling format provides sufficient information for the consumer); W&B, D–12, 5 (supported fully disclosing the possible range of contents in alternative fuels); CFDC, D–14, 3–5 (a label with the type and percentage of the fuel composition has merit); ATFI, D–15, 2–3 (supported using fuel composition labeling to inform consumers about the quality of each alternative fuel); AIAM, D–17, 2–3 (fully supported this proposal because such information is beneficial to the vehicle operator).

[91] Mobil, D–4, 2–3; Chevron, D–5, 2–3; AAMA, D–7, 3–4 and Att. A, 2–3; Sun, D–8, 2–3; Marathon, D–9, 2–3; API, D–10; 4; AGA/NGVC, D–11, 7–8; SIGMA, D–13, 2–3, NSDB, D–16, 6; CENEX, D–21, 3; Texaco, D–22, 1–2; AMI, D–23, 1–2; NYDAM, E–4, 2; DOE, E–5, 3; ABDI, E–6, 1.

[92] Mobil, D–4, 2–3; Marathon, D–9, 2–3; API, D–10, 4; CENEX, D–21, 3, NYDAM, E–4, 2.

[93] Chevron, D–5, 2–3; Sun, D–8, 2–3; AMI, D–23, 1–2.

[94] AAMA D–7, 3–4 (contended there are no agreed upon methods of measuring fuel compositions); AGA/NGVC, D–11, 7–8 (not opposed to this option, but would prefer listing of energy content in the form of gasoline equivalent gallon); SIGMA, D–13, 2–3 (urged Commission to require only the posting of the type of alternative liquid fuel dispensed); NSDB, D–16, 6 (recommended the fuel descriptor option); Texaco, D–22, 1–2 (suggested simply requiring a statement that the fuel meets commonly accepted industry specifications); DOE, E–5, 3 (recommended the option of requiring posting of octane ratings for all alternative fuels); ABDI, E–6, 1 (recommended the octane posting option for all fuels).

[95] NYDAM, E–4, 2.

[96] SIGMA, D–13, 3; CENEX, D–21, 3.

[97] CENEX, D–21, 3.

[98] AAMA, D–7, 1–2; Marathon, D–9, 2; Texaco, D–22, 1.

[99] Mobil, D–4, 2.

[100] Marathon, D–9, 2–3; SIGMA, D–13, 2–3.

[101] ATFI, D–15, 2.

[102] Some comments urged the Commission to wait until the section 406 rulemaking to address the liquefied petroleum gas fuels at the same time the compressed natural gas fuels are considered. Others urged the Commission to treat the compressed natural gas fuels now along with the liquefied petroleum fuels. The Commission, however, lacks the discretion to alter the provisions of EPA 92 in this regard.

[103] For LPG, The California Air Resources Board uses the term "Liquefied Petroleum Gas." However, based on discussions the Commission's staff had with Department of Energy staff and staff at the National Propane Gas Association, in the NPR the Commission proposed using the term "Liquefied Propane Gas."

[104] See note 89, *supra*.

[105] 58 FR 16464, 16470–71.

The Commission received 24 comments regarding this option,[106] all of which opposed or criticized it.[107] Some comments stated that the heating values in the Commission's proposed Heating Values Chart (based on information obtained from the Interagency Commission on Alternative Motor Fuels and the Department of Energy) were incorrect.[108] Chevron stated that the chart did not account for the fact that heating values vary with fuel composition.[109] Two comments contended that the Heating Values Chart should list a range of values for LPG (to reflect its composition),[110] while three others contended that measuring Btu content was expensive and not appropriate for a particular batch of any of the fuels.[111] AMI commented that "a simple means of clarifying the different energy densities of the fuels is needed."[112]

Some comments stated that the proposal would not provide consumers with useful information. PMAA stated that the purported benefits to consumers were speculative and not worth the costs to industry.[113] RFA stated that posting a label declaring that ethanol has a lesser fuel economy than gasoline would incorrectly lead gasohol purchasers into believing they would suffer fuel economy penalties.[114] Other comments stated that the information was useful to consumers only when choosing a new vehicle or deciding whether to convert an existing vehicle to an alternative fuel, and not when refueling.[115]

Numerous comments stated that labels based on heating values would be confusing or misleading to consumers, for various reasons. First, they argued that driving range and fuel economy (miles per gallon) are the function of many variables (e.g., engine design, engine efficiency, driving habits) and not simply the volumetric energy content of a fuel. As a result, Btu ratings do not always accurately reflect actual fuel economy.[116] Second, three comments stated that the volumetric comparisons ignored fuel cost, and that price comparisons were the most important factors driving which fuel a consumer would purchase.[117] Finally, six comments concluded that labels based on heating values would encourage consumers to purchase gasoline (leading to engine damage if used in engines not designed for gasoline), because this labeling option makes the alternative liquid automotive fuels appear less efficient than gasoline.[118]

Some comments raised concerns with the proposed labeling formats. Mobil commented that the proposed labeling formats were flawed because they were long and cumbersome.[119] AAMA noted that both labeling options incorrectly assume that vehicle efficiencies are the same for gasoline and alternative liquid automotive fuels.[120] AGA/NGVC stated that the fuels should be rated and compared in terms of price, either by Btu's per gasoline equivalent gallon or fuel cost per fixed Btu.[121] RFA and Phillips 66 favored posting the actual heat content of the fuels in Btu's rather than comparing the fuels to gasoline.[122] Two other comments proposed disclosing the reduction in toxins and other pollutants expected by using a particular fuel.[123]

After considering the record, the Commission has decided not to require labels based on heating values. Instead of helping consumers make informed purchasing decisions, the comments indicate that this option would not benefit consumers and might instead be confusing or misleading. This is because the volumetric energy content of a fuel, as measured by its Btu rating, is an imprecise gauge of that fuel's actual fuel economy. In light of this and the other concerns and objections noted, the Commission has decided not to adopt this option.

4. Fuel Descriptor Option

As another option, the Commission proposed requiring that the alternative liquid automotive fuel pumps identify the fuels for consumers.[124] The fuel descriptors the Commission proposed were based on the terms developed by and included in the California Air Resources Board's proposed specifications for the alternative fuels. Those terms are:

"M–100 fuel methanol;"
"M–85 fuel methanol;"
"E–100 fuel ethanol;"
"E–85 fuel ethanol;"
"Liquefied Propane Gas;"[125] and,
"Liquefied Natural Gas."

The Commission proposed that the fuels would have to meet certain technical specifications, such as those proposed by the State of California, as a condition to the descriptor posting. The Commission noted that additional specifications are likely to be developed by alternative vehicle manufacturers and fuel suppliers in conjunction with ASTM (as has been done for gasoline). Noting that ASTM and DOE specifications for the alternative liquid automotive fuels may not be completed within the time allotted for this rulemaking, the Commission asked whether, as an alternative to the ASTM specifications, it should adopt specifications analogous to California's as interim specifications until ASTM or others develop and approve specifications.[126]

The Commission noted in the NPR that descriptor labeling in conjunction with fuel specifications could direct consumers to the correct fuel dispenser and assure consumers that they are purchasing a product that satisfies automobile engine minimum content

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[106] RFA, D–1; Phillips 66, D–3; Mobil, D–4; Chevron, D–5; AAMA, D–7; Sun, D–8; Marathon, D–9; API, D–10; AGA/NGVC, D–11; W&B, D–12; SIGMA, D–13; CFDC, D–14; ATFI, D–15; AIAM, D–17; PMAA, D–18; NPGA, D–19; AEC, D–20; CENEX, D–21; AMI, D–23; RCT, E–2; PPC, E–3; NYDAM, E–4; DOE, E–5; ABDI, E–6.

[107] Mobil opposed additional labeling generally but concluded that this option has "the most meaning to the public" and "has the most merit." Mobil, D–4, 2.

[108] AAMA, D–7, Att. A, 3, (heating values for LPG and LNG are incorrect; values in chart should be based on net, not gross, heating values); API, D–10, 6 (same); W&B, D–12, 4 (heating value for LPG is incorrect); AEC, D–20, 1 (same); CENEX, D–21, 3 (heating value of LNG may vary widely); ABDI, E–6, 2 (chart should be based on lower, not higher, heating values).

[109] Chevron also stated that reporting heating values to the nearest one Btu/gallon "far exceeds the accuracy of the determinations." Chevron, D–5, 3.

[110] W&B, D–12, 5; AEC, D–20, 1.

[111] Chevron, D–5, 3; AAMA, D–7, Att. A, 3; API, D–10, 5.

[112] AMI further stated that the average volume of fuel required to drive the same distance as gasoline is "commonly accepted," and that the Commission should adopt "the same approach and values as California." AMI, D–23, 1. AMI did not further explain its reasons for supporting for this option.

[113] PMAA. D–18, 2.

[114] RFA, D–1, 5.

[115] Phillips 66, D–3, 3–4; Sun, D–8, 2–4; Marathon, D–9, 3; API, D–10, 5; SIGMA, D–13, 3; CFDC, D–14 4; CENEX D–21, 3; NYDAM, E–4, 2. See also AIAM, D–17, 3 (stating generally that the information would not be useful to consumers in comparing which fuel to purchase).

[116] RFA, D–1, 5; Chevron, D–5, 3; Sun, D–8, 3–4; Marathon, D–9, 3; API, D–10, 5; AGA/NGVC, D–11, 7; CFDC, D–14, 4; NPGA, D–19, 2; CENEX, D–21, 3; RCT, E–2, 3–4; NYDAM, E–4, 2; ABDI, E–6, 1.

[117] AGA/NGVC, D–11, 5–6 (labels should disclose the cost per set amount of Btu's for all fuels); PCC, E–3, 1–2 (same); NYDAM, E–4, 2 (consumers will measure each fuel's performance to make valid price comparisons).

[118] Phillips 66, D–3, 4; API, D–10, 5; CFDC, D–14, 4; ATFI, D–15, 3; NPGA, D–19, 2; RCT, E–2, 3.

[119] Mobil, D–4, 2.

[120] AAMA, D–7, 23.

[121] AGA/NGVC, D–11, 4, 6.

[122] RFA, D–1, 5 (opposed this option generally but favored posting minimum Btu content only "if the [C]ommission finds it necessary to post some sort of information relative to energy content"); Phillips 66, D–3, 4 (same).

[123] NPGA, D–19, 2; RCT, E–2, 4. See also discussion in Part II. D., above.

[124] 58 FR 16464, 16471.

[125] See note 103 and accompanying text, *supra*.

[126] 58 FR 16464, 16471.

requirements, which may be specified in their owner's manuals. Thus, the descriptors and accompanying specifications could constitute a "rating" for the alternative liquid automotive fuels pursuant to section 1501(b) of EPA 92.[127] Under this option, the Commission suggested that it could require certification and posting of the descriptors and develop and publish in the final rule minimum specifications for the alternative fuels. The Commission specifically asked for comments on what specifications would be appropriate for each fuel.

Fifteen comments discussed the fuel descriptor option.[128] Three generally opposed the option, stating it provided little or no benefit to consumers.[129] Nine generally supported the descriptor approach, but only if use of the descriptor were based on consensus fuel standards or specifications.[130] Two comments supported the descriptor approach if the dispenser label also included a disclosure of the minimum percentage of the principal component of the fuel.[131]

Another commenter, SGMA, suggested requiring the disclosure only of a fuel descriptor, without accompanying specifications. SGMA stated that the most important information for consumers of an alternative fuel is that their vehicles will function properly using the fuel dispensed. SIGMA contended, therefore, that the pump need only be labeled to disclose that it dispenses the fuel identified by the automobile manufacturer as being appropriate for operating the consumer's vehicle.[132]

Six comments suggested that, in selecting standards on which to base use of the descriptors, the Commission should adopt ASTM or other consensus standards.[133] Under this approach, disclosure of a particular fuel descriptor would indicate that the fuel meets technical specifications established by a recognized standards-setting organization. Standards established under this process would have the advantage of being developed with input from and approval of engine manufacturers, fuel suppliers, users, and regulators. Such an approach would benefit consumers, because they could determine easily whether alternative liquid automotive fuels marketed under these descriptors are compatible with the original vehicle equipment manufacturer's requirements. In addition, this approach would allow an alternative liquid automotive fuel supplier to improve the fuel beyond the minimum specifications and promote the improved fuel over those of its competitors.[134]

As anticipated by the Commission, however, the primary objection to this option was that neither ASTM nor any other consensus standards-setting organization has developed and adopted specifications and standards for most of the alternative liquid automotive fuels.[135] Commenters noted that ASTM has developed a standard for LPG (D 1835) and has proposed a standard for M–85 (ASTM proposed specification P232).[136] ASTM's LPPG specifications may change, however, as data are collected on LPG mixtures with higher butane contents.[137] ASTM has not proposed or developed fuel specifications for E–100, M–100, E–85 or LNG. With respect to E–85, commenters noted that General Motors ("GM") has developed a standard for use with its E–85/Flexible Fuel vehicles (GM standard GM 4729M).[138] AAMA also indicated that GM has developed a standard for use with its M–85/Flexible Fuel vehicles. AAMA's comment, which incorporates comments from GM, recommended that the Commission adopt GM's E–85 and M–85 specifications on an interim basis until ASTM standards for E–85 and M–85 are accepted by the industry.[139]

Four comments also opposed Commission adoption of the alternative liquid automotive fuel specifications proposed by the California Air Resources Board, because they were not developed by a consensus process, are technically flawed, and were developed for California's particular needs and therefore could be overly restrictive for other parts of the country.[140] For example, AAMA commented that because California has a moderate climate, its specifications do not fully address the low temperature starting requirements for M–85 and E–85 in the rest of the country.[141] Also, AAMA stated that California's specifications fail to control contaminants for these fuels at a sufficiently low level to ensure good vehicle fuel system durability. AAMA states that, for example, experience with M–85 in California shows that vehicle problems, such as filter plugging, were encountered due to contaminants introduced into the alternative fuel by the dispensing system.[142]

Disclosure of a fuel descriptor based on accepted and approved fuel specifications and standards could provide meaningful information to consumers relating to the quality of the fuel they are purchasing. After considering the aforementioned comments, however, the Commission finds that adequate, generally accepted standards and specifications suitable for nationwide use do not presently exist for most alternative liquid automotive fuels. Further, the Commission has an insufficient record and basis on which to establish specifications for alternative liquid automotive fuels. Therefore, the Commission has determined not to require the certification and posting of uniform fuel descriptors, as originally proposed.

The Commission favors the development of specifications and standards that define alternative liquid automotive fuels by a consensus standards-setting organization, such as ASTM, or by a government agency with appropriate engineering and technical expertise to set such specifications and standards for nationwide use. This would permit participation by affected parties such as alternative fuel producers and providers, engine manufacturers, regulators, and consumers, among others. It would provide opportunities for review by individuals and organizations with acknowledged technical expertise, and would provide a mechanism for evaluation of any proposed test methods and procedures necessary to determine compliance with the standards. Although the Commission is not adopting the fuel descriptor option as proposed, it is adopting a variation of the fuel description and composition proposals, as discussed in detail in Part III.A.5., below.

5. Final Rule

After considering all the comments received in light of the purposes of EPA

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[127] Section 1501(b) of Pub. L. 102–486, 106 Stat. 2776, 2996 (codified at 15 U.S.C. 2821).

[128] RFA, D–1, 5; Phillips 66, D–3, 4; Mobil, D–4, 2; Chevron, D–5, 2; AAMA, D–7, 2, 4; Sun, D–8, 4; Marathon, D–9, 3; API, D–10, 1, 6; SIGMA, D–13, 2; CFDC, D–14, 4; ATFI, D–15, 3; NPGA, D–19, 3; CENEX, D–21, 3; RCT, E–2, 4; NYDAM, E–4, 1.

[129] Mobile, D–4, 2; NPGA, D–19, 3, RCT, E–2, 1.

[130] RFA, D–1, 5; Chevron, D–5, 4; AAMA, D–7 4; Sun, D–8, 2; Marathon, D–9, 2; API, D–10, 6; ATFI, D–15, 3; CENEX, D–21, 3; NYDAM, E–4, 1.

[131] Phillips 66, D–3, 3 CFDC, D–14, 5.

[132] SIGMA, D–13,2.

[133] Chevron, D–5, 4; AAMA, D–7, 4; Marathon, D–9, 2; API, D–10, 2; CENEX, D–21, 2–3; Texaco, D–22, 1.

[134] API, D–10, 6; RFA, D–1, 6.

[135] Chevron, D–5, 2; AAMA, D–7, 4; CFDC, D–14, 3.

[136] Chevron, D–5, 4; AAMA, D–7, 4; Sun, D–8, 2; API, D–10, 4–7; NPGA, D–19, 2.

[137] Sun, D–8, 4.

[138] RFA, D–1, 6; Chevron, D–5, 4; AAMA, D–7, 4; Sun, D–8, 4.

[139] AAMA, D–7, 2.

[140] Chevron, D–5, 4; AAMA, D–7, 4; Sun, D–8, 5; API, D–10, 6.

[141] AAMA, D–7, 2.

[142] *Id.*

92 and of PMPA, as amended, the Commission has determined that the automotive fuel rating for alternative liquid automotive fuels should be the commonly used name of the fuel with a disclosure of the amount, expressed as a minimum percentage by volume, of the principal component of the fuel. Those covered by the Fuel Rating Rule also may include a disclosure of other components as a minimum percentage by volume, if desired. To simplify the labels, however, the Commission is not requiring that the words "by volume" appear on the label. Those who determine the automotive fuel rating for an alternative liquid automotive fuel must have a reasonable basis, consisting of competent and reliable evidence, for the claimed percentage by volume of the principal component and any other component, of the alternative liquid automotive fuel that they certify or post.

This rating approach for the alternative liquid automotive fuels will provide consumers with information necessary to make informed fuel purchasing decisions. It also will provide fuel producers and marketers with the flexibility to develop and blend fuels appropriate for location and climate, consistent with U.S. Environmental Protection Agency and original equipment manufacturer requirements. The Commission's action, therefore, will assist in the development and use of alternative liquid automotive fuels and alternative fueled vehicles.

The Commission recognizes that the selection process between competing alternative liquid automotive fuels essentially is concluded when the alternative fueled vehicle is acquired, because the vast majority of such vehicles will not have the capability to operate on more than one fuel. Thus, efforts to provide consumers with extensive information comparing various different types of alternative fuels is best done prior to the time the vehicle is acquired, not at the refueling station. Once the alternative fueled vehicle has been purchased, the vehicle owner primarily needs information indicating that the fuel available from a particular dispenser is suitable for that vehicle.[143]

The rating requirement adopted today is consistent with many comments the Commission received on the four options proposed in the NPR, in particular comments relating to the "fuel descriptor" option. But, not all comments favor the automotive fuel rating approach the Commission is taking. Three commenters generally opposed a fuel composition label, two stating that the average consumer lacks the technical expertise needed to make an informed fuel selection decision on the basis of posted fuel content,[144] and the other stating that it does not provide meaningful information to consumers.[145]

Many of the comments, however, stressed that consumers of alternative fuels need information that directs them to the correct fuel dispenser by clearly identifying the type of fuel being dispensed, and providing information that can help them determine whether the fuel satisfies their automobile engine's minimum requirements.[146] These comments stated that such a disclosure approach, used in conjunction with the owner's manual containing the vehicle manufacturer's fuel recommendations, would provide consumers with the information necessary to select the fuel on which their vehicle has been designed to perform optimally. By allowing consumers to choose among different blends of fuels (e.g., LNG with a methane content of 90 versus 95), the Commission's approach provides a "rating" measure consistent with the purpose of the statute.[147]

W&B, for example, in its discussion of a proposed label for LPG and LNG, stated that it generally supported a requirement to disclose fully the possible range of contents in alternative fuels.[148] ATFI supported the use of fuel composition labeling to inform consumers about the quality of each alternative fuel they are purchasing. ATFI commented further that fuel composition is the most relevant information for vehicle manufacturers, fuel suppliers, and the consuming public.[149] AIAM commented that it fully supported the Commission's proposal to require a disclosure of the minimum percentage by volume of the principal component of LPG and LNG.[150] CFDC stated that requiring that a label be posted by type and percentage of fuel composition has merit. It said that a label that simply discloses what the type of fuel is, accompanied by a disclosure of the minimum percentage of the main component of the fuel, would provide assurances to consumers that the fuel purchased meets certain requirements relating to vehicle performance.[151] Phillips 66 stated that consumers of alternative fuels will pay particular attention to the fueling recommendations of the owner's manual or the directions provided by the fuel conversion center. Phillips 66 concluded, therefore, that a minimum fuel composition disclosure requirement would provide the most valuable public information for making a refueling choice. Phillips 66 further concluded that since the alternative fuels being considered are principally compounds, in contrast to gasoline and diesel fuels, which are blends, a consumer benefit could be gained by the posting of a minimum percentage of the principal compound.[152]

The fuel composition disclosure required by the Fuel Rating Rule has the further advantage of being easily applied to fuels that may be offered in the future (within the limits of the definition of "alternative fuel") that are not specifically discussed in this Notice. For example, fuel producers may market various blends of alcohols and gasoline, such as M–80 or M–90, or various combinations of liquefied petroleum gases. The Fuel Rating Rule will provide the framework for proper disclosure of the automotive fuel rating of such fuels, blends, or combinations. Because the disclosure requirements of the Fuel Rating Rule are generic and easily complied with, and because the labels are standardized for alternative liquid fuels, the Rule should assist in advising consumers about the availability of alternative liquid fuels and thus help promote development of these fuels. Further, the Fuel Rating Rule requirement that marketers disclose the principal component of each fuel should encourage the industry to develop uniform consensus specifications for all alternative liquid automotive fuels both to provide a standardized "reasonable basis" for required disclosures and to ensure the uniform quality of the fuels sold.

In addition, market forces should operate to keep any differences among sellers offering the same type of fuel, but using different test methods, within reasonable bounds. Cooperation between fuel producers and engine manufacturers is necessary to ensure that new engine developments and new fuels can be accommodated. In this respect, fuel quality and engine design depend on each other.[153] Engine

[143] Marathon, D–9, 1.

[144] API, D–10, 4; CENEX, D–21, 3.

[145] AAMA, D–7, 2.

[146] Sun, D–8, 4; Marathon, D–9, 1–3; SIGMA, D–13, 1; CFDC, D–14, 5; AIAM, D–17, 1.

[147] Section 1501(b) of Pub. L. 102–486, 106 Stat. 2776, 2996 (codified at 15 U.S.C. 2821(17)).

[148] W&B, D–12, 5.

[149] ATFI, D–15, 2.

[150] AIAM, D–17, 2.

[151] CFDC, D–14, 3–5.

[152] Phillips 66, D–3, 3–4.

[153] See AAMA, D–7, 1 (acceptance of alternative fueled vehicles depends on availability of high quality fuels). Those involved with the production and marketing of these fuels understand that fuel quality aspects can influence market share and

designers must be aware of what fuels will be available in a particular market and the fuel producers must know the fuel requirements of vehicles on the road. In any event, the use of alternative fuels and their acceptance will depend on the development of and adherence to fuel quality standards. Such standards also would include standard test methods for determining all the necessary specified properties.

Two comments stated, however, that a required fuel composition label will increase testing costs and labeling problems for the industry. One comment stated that labels for the alcohol fuels will have to be changed on a seasonal basis as the fuels' contents change to address cold-start problems.[154] The other stated that seasonal LPG labels might be necessary due to varying butane/propane concentrations.[155] The Commission's requirement that the disclosure of the amount of the principal component of the fuel be expressed as a *minimum* percentage by volume should obviate the need for frequent label changes, yet allow for seasonal label changes, if desired.

While some commenters preferred having fuel specifications set in the rule, the Commission has determined that there is not now a sufficient basis for imposing single, nationwide specifications for most of these fuels. Neither ASTM nor any other standards-setting entity has developed and adopted consensus specifications and test methods for most of the liquid alternative fuels. Nor do federal specifications currently exist. ASTM has developed a standard for LPG and has proposed a standard for M–85, but has not developed or proposed fuel specifications for E–100, M–100, E–85, or LNG. GM has developed specifications for M–85 and E–85[156] and the State of California has issued final alternative liquid automotive fuel specifications. However, there are definitional inconsistencies among these standards with respect to the contents of the alternative liquid automotive fuels. For example, ASTM's proposed specification for M–85 fuel methanol requires a minimum 85% methanol by volume, California's proposed specification requires a minimum 84% methanol, and GM's proposed specification suggests a range of minimum methanol content from 74–84%, depending on the average temperature. Although the Commission could adopt one of these specifications, there is an insufficient basis on the record for determining which is preferable. Further, in the absence of more extensive information, which may not yet exist, mandating the use of any individual proposed alternative liquid automotive fuel specifications could have unforeseen adverse effects on competition, the environment, or vehicle performance.[157]

For the same reasons, the Commission is not requiring that sellers use specific standards as their "reasonable basis" for determining the percentage by volume of each component of the fuel that they certify or post.[158] Consensus specifications that define alternative liquid automotive fuels, and that include the test methods used to determine whether fuel samples comply with the specifications, have not been developed, except for liquefied petroleum gas.[159] Further, at least one cementer suggested that ASTM's specification for LP gases may change.[160]

Nevertheless, sellers may rely upon existing standards to determine and verify the ratings for alternative liquid automotive fuels, where such standards are appropriate. For example, ASTM's proposed specification for M–85 fuel methanol contains a proposed test method for determining methanol content in fuel methanol M–85 by gas chromatography.[161] ASTM's standard specification for liquefied petroleum gases also contains a test method for analysis of liquefied petroleum gases and propane concentrates by gas chromatography. Other test methods or calculations also may constitute competent and reliable evidence to satisfy the reasonable basis requirement for determining the ratings for alternative fuels.

If test methods for determining ratings for alternative liquid automotive fuels or fuel specifications are developed in the future by consensus or are issued by an appropriate Federal agency, the Commission will consider whether they constitute a reasonable basis. The Commission expects that industry compliance with the Fuel Rating Rule, in conjunction with the need to avoid uncertainty about whether particular test methods or calculations constitute a reasonable basis, will encourage development of standardized test methods and specifications. The development of standardized test methods and standard specifications for alternative liquid automotive fuels should help facilitate widespread acceptance of these fuels.

The Fuel Rating Rule also gives sellers the discretion to disclose information about more than one component of the fuel, if this is deemed relevant. The comments suggested that liquefied petroleum gas fuels, in particular, could be developed with higher butane concentrations and that future LPG fuels may have different ranges of propane/butant compositions than current LPG fuels.[162] The Rule allows industry the flexibility necessary to develop such variations.

The specifications and layout for the automotive fuel rating label for alternative liquid automotive fuels appear in § 306.12 of the Fuel Rating Rule. The alternative liquid automotive fuels labels will be subject to many of the same specifications that are required for current octane labels. The automotive fuel ratings for the alternative fuels, however, must be lettered in black type on an orange background. The Commission chose the different color to help consumers distinguish the octane rating for gasoline (black type on a yellow background) from the ratings for the alternative liquid automotive fuels to assist consumers in making the proper fuel choice for their alternative fueled vehicles and to help them avoid misfueling.[163] In designing the label requirements, the Commission decided that requiring a different color label for each different type of alternative fuel

affect the performance of the vehicles that are designed to use them.

[154] NYDAM, E–4, 2.

[155] Sun, D–8, 2.

[156] AAMA, D–7, 4.

[157] An analysis of the proposed specifications also indicates that, to ensure fuel quality and proper automobile performance, disclosing fuel composition in terms of the minimum percentage by volume of the principal component of the fuel is important and helpful. For example, Annex A1.5 of ASTM's Proposed Specification for Fuel Methanol (M–85) for Automotive Spark-Ignition Engines states that the production of fuel methanol (M–85) requires knowledge of the methanol content to ensure acceptable commercial fuel quality. The methanol content of M–85 affects the performance of an automobile designed to run on M–85.

[158] In its comment, Chevron stated that proven standard test methods are not available for determining all of the properties necessary for alternative fuels to perform properly. Chevron commented further that this is one of the reasons that ASTM cannot develop specifications for the various fuels. Chevron, D–5, 2.

[159] RFA, D–1, 6; Chevron, D–5, 2; API, D–10, 2; CFDC, D–14, 3.

[160] Sun, D–8, 4.

[161] The proposed specification states, however, that verification of the appropriateness of this test method is underway.

[162] Phillips 66, D–3, 3; Sun, D–8, 2–4.

[163] Phillips 66, D–3, 5 (alternative fuel labels should be a distinctive color such as blue); API, D–10, 7 (alternative fuel labels should use same style and background color and should use color other than yellow to distinguish from gasoline labels); CENEX, D–21, 4 (alternative fuel labels should use format that clearly differentiates them from gasoline).

would confuse consumers and make compliance unnecessarily burdensome.

To encourage standardization in alternative liquid automotive fuel labels, the Commission is specifying a width and length for the labels. There are two sets of specifications; one is for when only the principal component is disclosed, and the other is for the principal and one additional component. However, to accommodate those desiring to disclose more information than will fit on the specified labels, the Commission has included language in § 306.12(a) (ii) and (iii), explaining that those wishing to use labels with different dimensions may petition the Commission for a variance from the Fuel Rating Rule's label specifications.[164]

B. Cetane Ratings of Diesel Fuel Oil

Section 1501 of EPA 92 amended PMPA to include a definition for "automotive fuel rating" that includes the "cetane rating" of diesel fuel oils "if provided for by the Federal Trade Commission."[165] "Cetane rating" is defined as a measure, as indicated by a cetane index or a cetane number, of the ignition quality of diesel fuel oil and of the influence of the diesel fuel oil on combustion roughness.[166] This amendment gives the Commission the discretionary authority under PMPA to add the disclosure of cetane ratings of diesel fuel oils to the requirements of the Octane Rule.

A significant quantity of diesel fuel oil is sold for vehicle use nationally, and preliminary information available to the Commission suggested that the posting of cetane ratings for the diesel fuel oil used for vehicle applications might be helpful. Further, because information suggested that higher cetane fuels can make engines start better in cold weather and run more quietly with reduced emissions, the Commission considered that there might be market incentives to produce higher cetane fuels and to make available a variety of fuels with different cetane levels. The Commission's preliminary analysis also suggested, however, that accurate posting of cetane levels nationwide at retail outlets could be difficult to achieve, and that the costs of posting might outweigh the benefits.

To obtain information about whether to amend the Octane Rule to require the certification and posting of minimum cetane ratings, the Commission in the NPR proposed amendments that would require cetane certification and posting for diesel fuel oil intended for vehicle use. The NPR asked whether the proposed regulation would have benefits and costs corresponding to those of the Octane Rule. The NPR also solicited information about the marketing, classifications, and characteristics of diesel fuel oil distributed in the United States. In addition, the NPR solicited information on the extent of the burden the proposed amendments would place on the industry if they were promulgated.

Seventeen comments addressed the cetane disclosure issue. Ten were from members of the petroleum industry,[167] four were from members of the automobile manufacturing industry,[168] two were from state agencies involved with the regulation of petroleum products marketing,[169] and one was from an organization involved in the promotion of diesel fuel from biomass.[170] Seven comments favored the proposed amendments.[171] Ten opposed their adoption.[172]

The comments that favored the proposed amendments generally stated that because there is a range of diesel fuel oil with different cetane ratings, a posting requirement would enable consumers to determine which fuels have higher cetane ratings. EMA and AAMA both commented that the higher cetane diesel fuels would start better in cold weather, run more quietly, and produce fewer emissions, although AAMA noted that consumers may have to be educated about these facts.[173]

Several commenters stated that different engines may require different, higher cetane ratings, and noted that, for those engines, diesel fuel oil with higher cetane ratings will perform better.[174] EMA and Sun said that engine manufacturers often recommend fuels with higher cetane levels because of the improvement in engine performance associated with those fuels.[175] Sun also noted that there is a range of cetane ratings of between 40 and 50 available at retail stations.[176] EMA commented that, to the extent consumers can identify the relative cetane number of diesel fuels, they will be in a better position to improve engine performance and to decide whether the more expensive high-cetane fuels are cost effective.[177]

On the other hand, four of the oil companies stated that cetane levels in excess of 40 are not necessary for diesel engines to run well.[178] Marathon distinguished between the effect of cetane rating changes in diesel fuel on diesel engines and the effects of octane changes in gasoline on gasoline engines, noting that, in general, diesel engines are not nearly as sensitive to differences in cetane quality as gasoline engines are to differences in octane.[179]

Generally, the ten comments that opposed a requirement to certify and post cetane ratings stated that the posting at retail of cetane level information is not needed, that accurate disclosure of cetane ratings at retail outlets would be very difficult to achieve, and that the requirement would, therefore, be unduly burdensome. Eight comments contended that cetane posting will be unnecessary as of October 1, 1993, when U.S. Environmental Protection Agency regulations that restrict the sulfur content of diesel fuel and establish a mandatory minimum cetane level of 40

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[164] See § 1.25 of the Commission's rules of practice, 16 CFR 1.25.

[165] Section 1501(b), Pub. L. 102-486, 106 Stat. 2776, 2996 (codified at 15 U.S.C. 2821(17)).

[166] A cetane number is a cetane rating derived by testing the fuel directly. Cetane index is a cetane rating derived through calculation. See ASTM Standard Specification for Diesel Fuel Oils, D975-91, ASTM Standard Test Methods for Calculating Cetane Index of Distillate Fuels, D976-91 and D4737-90, and ASTM Standard Test Method of Ignition Quality of Diesel Fuels by the Cetane Method, D613-86.

[167] Phillips 66, D-3; Mobil, D-4; Chevron, D-5; Sun, D-8; Marathon, D-9; API, D-10; SIGMA, D-13, PMAA, D-18; CENEX, D-21; Texaco, D-22.

[168] ATAI, D-2, EMA, D-6; AAMA, D-7; AIAM, D-17.

[169] NCDA, E-1; NYDAM, E-4.

[170] NSDB, D-16.

[171] EMA, D-6, 1-3; AAMA, D-7, 2-3; Sun, D-8, 3, 5-6; NSDB, D-16, 3-4, 5; AIAM, D-17, 3; NC, E-1, 1-3; NYDAM, E-4, 3.

[172] ATAI, D-2, 2-3; Phillips 66, D-3, 6; Mobil, D-4, 3; Chevron, D5, 1, 5-6; Marathon, D-9, 3-4; API, D-10, 1, 7-8; SIGMA, D-13, 3-5; PMAA, D-18, 2-7; CENEX, D-21, 4; Texaco, D-22, 1-2.

[173] EMA, D-6; 1; AAMA, D-7, 3. These higher cetane level benefits were noted also by two other commenters who opposed the Commission's adoption of the proposed amendments. PMAA, D-18, 2; SIGMA, D-13, 4. The potential benefits that diesel fuel with higher cetane ratings can contribute were articulated by EMA as including control of white smoke emissions, reduction of engine noise, improvement of cold-starting capabilities and assistance in the reduction of emissions of nitrogen oxides, particulate matter, hydrocarbons and carbon monoxide. EMA, D-6, 1.

[174] AAMA, D-7, 3; Sun, D-8, 5; EMA noted that its 31 member internal combustion engine manufacturers are concerned with the quality of fuel used in the engines they produce and with consumers' ability to identify the differences in cetane ratings so they can improve engine performance. EMA, D-6, 1.

[175] EMA, D-6, 2; Sun, D-8, 5.

[176] Sun, D-8, 5.

[177] EMA, D-6, 1.

[178] Phillips 66, D-3, 6; Mobil, D-4, 3 ("cetane in excess of 40 is not commonly required by motor vehicles."); Chevron, D-5, 1 ("Diesel engines are designed to run on 40 cetane number."); Marathon, D-9, 3-4.

[179] Marathon stated that while a minimum cetane rating is necessary for cold starting and warm-up, most diesel fuels marketed today meet the ASTM D-975 minimum cetane of 40, which provides adequate cold-starting performance in modern diesel engines. Marathon, D-9, 3-4.

become effective.[180] These comments indicated that the Environmental Protection Agency's regulations will result in consumer benefits (reduced emissions and a minimum cetane standard) regardless of the Commission's Fuel Rating Rule.[181]

Further, several commenters said that diesel fuel consumers (who were usually identified in the comments as truck drivers) are now and have been for years more familiar with diesel fuel than gasoline consumers are with gasoline. Because of this knowledge, diesel fuel oil consumers do not need cetane information.[182] Three associates said that diesel fuel customers (whom they identify as primarily truck drivers) generally purchase their fuel at private facilities throughout contractual arrangements that specify such items as cetane. According to the comments, these customers are often not aware of the cetane level of the fuel, do not appear interested in knowing it, and would not be likely to go "cetane shopping."[183]

According to four comments, cetane information alone could confuse or even mislead consumers as to the relative importance of cetane as a quality of diesel fuel oil.[184] Most indicated that such qualities as detergency, cold flow properties, specific gravity, cloud point, viscosity, sulfur, and additives are of at least equal significance to cetane. Phillips 66 noted that two major diesel engine suppliers reference ASTM for the fuel recommendations, which encompasses many more aspects of the fuel than just cetane, and further suggested that either viscosity, sulfur, or additives may be important considerations for consumers.[185]

In addition, SIGMA pointed out that higher cetane ratings means lower energy content, which could result in lower mileage. SIGMA speculated that consumers unaware of this fact could mistakenly think that use of more expensive, higher cetane diesel fuel oil will result in greater engine efficiency.[186] SIGMA also noted that, to the extent diesel fuel marketers sell fuel with higher cetane ratings, they are already informing their customers of this fact as a marketing tool.[187] SIGMA concluded that the number of consumers that would find cetane ratings useful is very small, and that the Commission should weigh the benefits to this small group of consumers against the costs of a posting requirement.[188]

PMAA and Chevron commented that the way diesel fuel is distributed and subjected to cetane-enhancing additives will render it extremely burdensome for distributors to determine the cetane of diesel fuel from delivery to delivery.[189] Sun noted that cetane levels at retail could change because of many factors, such as refiner capability, co-mingling of product, marketing decisions, and use of additives, and could change as frequently as each shipment, by as much as 10 points, but usually only by 2 to 4 points.[190]

As noted earlier, the authority Congress granted the Commission in section 1501(b) of EPA 92 to regulate diesel fuel oil is discretionary, and is not tied to the mandate to amend the Octane Rule to require automotive fuel ratings for alternative liquid automotive fuels.[191] Further, the time limitations in section 1502(d)(2) of EPA 92 pertaining to the alternative liquid automotive fuels proceeding do not apply to the Commission's discretionary authority to regulate diesel fuel oil.[192]

The Commission has considered whether the record supports the conclusion that the burdens on the diesel fuel oil marketing industry that would result from cetane rating certification and posting requirements for diesel fuel oil would outweigh the benefits that would accrue to diesel fuel oil consumers as a result of the requirements. The Commission has decided that it would be premature to make this cost-benefit decision at this time given current regulatory developments in the industry. In particular, the Commission is interested in how, if at all, the maximum sulfur/minimum cetane regulations of the U.S. Environmental Protection Agency will affect the marketing, use, and cetane levels of diesel fuel oil after October 1, 1993. Consequently, the Commission has decided to postpone its decision on the cetane rating proposal contained in the NPR, and to solicit further information in a second Notice of Proposal Rulemaking to be published after the public has had significant experience with the Environmental Protection Agency regulations.

IV. Regulatory Flexibility Act

The Commission stated in the NPR that the provisions of the Regulatory Flexibility Act[193] requiring a regulatory analysis were not applicable to the proposed amendments because they did not appear to have a significant economic impact on a substantial number of small entities.[194] Based on available information, the Commission stated that the amendments it proposed would have a minimal effect on all business entities within the affected industries, regardless of their size. It stated that very few companies produce and distribute these alternative liquid automotive fuels or diesel fuel oil, and that, of those that do, most are not "small entities" as that term is defined in section 601 of the Regulatory Flexibility Act and in the regulations of the Small Business Administration, found in 13 CFR part 121.

The Commission further explained that although there are some "small entities" in the retailer sectors of those industries, the proposed amendments would likely have only a minimal impact on these small entities. It also stated that any such impact would likely consist of some additional recordkeeping and of retailers placing labels on dispensers (to the extent this is not done by distributors for their retailer customers). Therefore, the Commission stated that the impact on small entities appeared to be *de minimus* and not, therefore, significant.

The Commission requested information about these industries,

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[180] The regulations will require a reduction of the maximum permissible level of sulphur in Grade 1–D diesel and Grade 2–D diesel. This will result in lower cetane levels than would otherwise be obtained. To compensate for this, the regulation will set a minimum cetane level of 40. 55 FR 34120, 34130–31 (Aug. 21, 1990). See comments of ATAI, D–2, 3; Phillips 66, D–3, 6; Mobil, D–4, 3; Marathon, D–9, 4; API, D–10, 8; SIGMA, D–13, 4; PMAA, D–18, 2–3; CENEX, D–21, 4. Several commenters also noted that ASTM Standard D975 requires Grade 2–D diesel to have a minimum cetane number of 40. See ATAI, D–2, 2; Phillips 66, D–3, 6; Chevron, D–5, 1, 6; AAMA, D–7, 2; Marathon, D–9, 4.

[181] See Phillips 66, D–3, 6.

[182] Phillips 66, D–3, 6; API, D–10, 6; CENEX, D–21, 4. None of these comments, however, discusses whether the EPA sulfur restriction regulations will change the characteristics of diesel fuel enough to have an effect on the familiarity these consumers have with the fuel.

[183] ATAI, D–2, 2 (ATAI's comment is based on "a survey of the maintenance executives of 25 trucking fleets, including the 5 largest running approximately 84,000 trucks and tractors"); SIGMA, D–13, 5; PMAA, D–18, 3.

[184] Phillips 66, D3, 6; API, D–10, 7–8; SIGMA, D–13, 2, 3–4; PMAA, D–18, 2, 5. See also AAMA, D–7, Att. A, 5 (AAMA supported the proposal, but noted the possibility that a cetane posting requirement could mislead customers).

[185] Phillips 66, D–3, 6.

[186] SIGMA, D–13, 4.

[187] "Some marketers currently market 'premium' grade diesel fuel that contains some additives and has a slightly higher cetane level. These marketers tend to inform consumers as a marketing tool about the higher cetane levels without a posting requirement. Therefore, it is unclear whether any benefits would result from a rule formulated to require them to post cetane ratings." SIGMA, D–13, 4–5.

[188] SIGMA, D–13, 5.

[189] PMAA, D–18, 4–6; Chevron, D–5, 6.

[190] Sun, D–8, 5–6.

[191] Section 1501(b), Pub. L. 102–486, 106 Stat. 2776, 2997 (codified at 15 U.S.C. 2821(17)).

[192] Section 1501(d)(2), Pub. L. 102–486, 106 Stat. 2776, 2997 (codified at 15 U.S.C. 2821 (notes)).

[193] 5 U.S.C. 603, 604.

[194] 58 FR 16464, 16473.

including the number and size of companies that produce, import and/or market (including the retail level) alternative liquid automotive fuels or diesel fuel oil. It asked whether the proposed amendments, if promulgated, would have a significant economic impact on a substantial number of small entities in these industries.

Most of the comments that discussed cost or burden addressed rating options for alternative liquid automotive fuels (octane and heating value options) the Commission has decided not to adopt, or addressed cetane posting for diesel fuel oil, on which the Commission has deferred a decision. Only Marathon, API, CFDC, NPGA, and RCT commented about the costs or burdens on small businesses of the existing Octane Rule or of other amendments the Commission proposed in the NPR.

Marathon and API addressed the costs and burden imposed by the existing Octane Rule. According to Marathon: "As it is currently implemented, we do not believe the Octane Rule places an undue economic burden on any segment of the petroleum industry, including operators of small businesses. Consequently, Marathon recommends the Octane Rule be continued in its current form." [195] API concurred, stating: "While the Octane Rule has an impact on a significant number of entities, the impact on each of those individual entities is not unreasonable, particularly in light of the consumer benefits achieved." [196] Neither Marathon nor API cited any specific figures.

CFDC, NPGA and RCT addressed the benefits and burdens of the proposed fuel composition or fuel descriptor options, which are similar to the option adopted today by the Commission. CFDC stated that posting a fuel descriptor "would provide assurances to consumers that the fuel purchased meets certain requirements, especially since the octane rating of the fuels indicated by type will not vary to any significant degree. Such a rating system would cost-effectively meet the requirements for alternative fuels of section 1501(b) of the Energy Policy Act of 1992." [197]

NPGA and RCT specifically addressed the impact on propane sellers of the four proposed amendment options. NPGA claimed: "Some 3,100 of our 3,400 member companies would classify as small businesses; these 3,100 members operate about 3,400 retail outlets for propane. Another 3,400 outlets are operated by 12 multistate corporations who are also member companies of this association. The proposed regulations would have a direct and adverse (e)ffect upon the ability of all these member companies to sell propane at retail as an alternative engine fuel." [198] RCT stated that it is: "Deeply concerned about the proposed changes. In our judgment, they would impose heavy costs on a fledgling [propane] industry while providing little or no benefit to consumers." [199] RCT further stated: "FTC's proposed rules would adversely affect 1,100 retail propane dealers in Texas alone. The proposed amendments could also adversely affect propane suppliers and consumers without providing commensurate benefits." [200] However, because the comments submitted by NPGA and RCT discussed primarily the octane and heating value posting options, and other issues not raised by the Commission, it appears that their general comments about the burdens of the options proposed in the NPR are not relevant to the amendments the Commission has adopted.

RCT also stated that a fuel composition posting requirement would require separate storage tanks and separate delivery systems to keep automotive grade HD–5 propane segregated from propane destined for residential and commercial customers, thus imposing costs on small businesses because of unnecessary duplication that "could cause some of them to turn away from the motor fuel market." [201] NPGA concurred with RCT's position.[202]

The statements by NPGA and RCT do not persuade the Commission that the posting option it has adopted will impose a significant economic impact on a substantial number of small entities. First, neither NPGA nor RCT cited specific cost or burden estimates or submitted supporting data. Second, the conclusions about cost and burden expressed by NPGA and RCT apply primarily to options (octane and heating value posting) the Commission has now rejected. Further, their comments about the burden of certification and posting fuel composition presume the Commission will require the posting of fuel composition of LPG based on tests to ensure the fuel meets test specifications for grade HD–5. For example, NPGA stated that the Commission should leave to other agencies the task of setting the specifications that fuels must meet, and recommended that the Commission limit its involvement to requiring posting the grade of the fuel being sold, or the specification it meets.[203]

The amendment adopted by the Commission requires only the certification and posting of the type of fuel and the minimum composition of its principal component, based on a reasonable basis standard. Retail outlets merely have to post consistent with the certifications they receive, so their burden is minimal. Retailers need not make the actual determinations unless they alter the fuel they receive before reselling it. Therefore, the Commission believes the certification and posting requirements it has adopted will minimize burdens on even small businesses.

On the basis of all the information now before it, including the written comments submitted in response to the NPR, the Commission has determined that the amendments will not have a significant impact on a substantial number of small entities. Consequently, the Commission concludes that a regulatory flexibility analysis is not required. In light of the above, the Commission certifies, under section 605 of the Regulatory Flexibility Act,[204] that the amendments it has adopted will not have a significant impact on a substantial number of small entities.

V. Paperwork Reduction Act

The Commission noted in the NPR that the proposed amendments contain provisions that constitute information collection requirements under the Paperwork Reduction Act.[205] The Commission explained that the proposed amendments would require refiners, producers, importers, distributors and retailers of alternative liquid automotive fuels to keep, for one year, records of any delivery tickets, letters of certification or tests upon which they based the automotive fuel ratings that they certify or post. It explained that these records would have to be open for inspection by Commission and Environmental Protection Agency staff members or by persons authorized by the Commission or the Environmental Protection Agency.

On the basis of available industry figures, the Commission estimated that, under the amendments proposed in the NPR, a total of approximately 85,000 refiners, producers, importers, distributors and retailers could possibly be affected by the recordkeeping

[195] Marathon, D–9, 4.
[196] API, D–10, 8.
[197] D–14, 5.
[198] NPGA, D–19, 3.
[199] RCT, E–2, 1.
[200] *Id.* at 4.
[201] RCT, E–2, 3.
[202] NPGA, D–19, 3.
[203] NPGA, D–19, 2–3.
[204] 5 U.S.C. 605(b).
[205] 44 U.S.C. 3501–3520.

requirements described above. It stated that certifications are usually noted on documents (shipping receipts, etc.) already in use, or are accomplished with a one-time letter of certification. It further stated that, in the case of refiners and importers, test records are typically retained for a period of one year.

The Commission noted that, in the past, the Commission estimated that the information collection burden associated with the Octane Rule's recordkeeping requirements was 20,000 hours per year (six minutes per year times 200,000 industry members).[206] This estimate was small because the records at issue were likely to be retained by the industry during the normal course of business, and the "burden," for OMB purposes, is defined to exclude effort that would be expended in any event.[207]

In the NPR the Commission stated that it believed that approximately 165,000 industry members currently were covered by the Octane Rule as it was in effect at that time (the drop in total industry members primarily being the result of closings by retail stations over the intervening years). The Commission estimated that approximately 85,000 industry members would be affected by the proposed amendments. Of these, the Commission concluded that approximately 60,000 currently sell gasoline (as well as diesel and some alternative fuels) and thus were already covered by the existing Octane Rule. For these 60,000 industry members, the Commission estimated that two additional burden minutes per member per year would cover the effort associated with coverage of the additional fuels (primarily diesel fuel oil). Further, approximately 25,000 additional industry members not currently covered by the Octane Rule would be covered by the proposed amendments because they sell only alternative liquid automotive fuels. These 25,000 would be affected by the Fuel Rating Rule's recordkeeping requirements for the first time under the proposed amendments. The Commission stated that it believed that the original estimate of six minutes per year each would be valid for these 25,000 additional industry members.

Based on these figures, the Commission estimated that the revised current total yearly burden of the existing Octane Rule's requirements would be 16,500 hours (six minutes per year times 165,000 industry members). The Commission estimated that the total additional yearly burden that would be imposed by the proposed amendments would be 4,500 hours (two minutes per year times 60,000 industry members, plus six minutes per year times 25,000 industry members). Consequently, the Commission estimated that the total burden associated with complying with the Rule's recordkeeping requirements, if amended as proposed, would be a total of approximately 21,000 hours per year for all affected industry members.

The Commission concluded that the recordkeeping burden associated with these proposed amendments is minimal. However, to ensure that no additional burden had been overlooked, the Commission requested public comment on the extent of the paperwork burden that the proposed requirements applying to alternative liquid automotive fuels and diesel fuel oil might impose, especially in terms of how many hours per year would be expended by industry members. None of the commenters challenged or specifically addressed the paperwork burden projections the Commission made in the NPR. Therefore, the Commission sees no reason to revise its projections of burden per year per covered industry member. However, because the Commission has deferred a decision about cetane posting for diesel fuel oil, the total yearly burden for all affected industry members due to the amendments adopted today will be less than the Commission estimated in the NPR.

Because the Commission is deferring a decision on certification and posting of cetane ratings for diesel fuel oil until further information has been obtained, the Commission revises its estimated total additional yearly burden imposed by today's amendments to be 2,500 hours (six minutes per year times 25,000 newly covered industry members), rather than 4,500 hours, as initially estimated. The Commission estimates the total yearly burden on gasoline sellers who already were covered by the Octane Rule to be approximately 16,500 hours (six minutes per year times 165,000 industry members). Thus, the Commission estimates the total yearly burden imposed by the Fuel Rating Rule to be approximately 19,000 hours.

Because these requirements would involve the "collection of information" as defined by the regulations of the Office of Management and Budget ("OMB"), 5 CFR 1320.7(c)(1) (1992), the Commission was required to submit the proposed requirements to OMB for clearance. 5 CFR 1320.13. The Commission did so as part of this proceeding. OMB approved the request, and assigned control number 3084–0068 to the information collection requirements.[208] This approval will expire on February 28, 1996, unless it has been extended before that date.

VI. Regulatory Review

As part of the Commission's ten-year regulatory-review plan for existing rules and guides, the Commission also specifically solicited comments in the NPR on the costs and benefits of the existing Octane Rule.[209] Based on the discussion in Parts IV and V, above, the Commission concludes that the Fuel Rating Rule will not have a significant economic impact on covered parties, and that there is a need for the Fuel Rating Rule. As explained in Parts III–V, above, the Commission has designed the amendments to minimize burdens imposed on covered industry members, including small businesses.

VII. Metric Measurements

In accordance with the Omnibus Trade and Competitiveness Act ("OTCA"), 15 U.S.C. 205b, and Executive Order 12770 ("Metric Usage in Federal Government Programs"), 56 FR 35801 (July 25, 1991), the Commission must consider metric measurements in addition to inch-pound measurements in measurement sensitive regulations. Only API addressed metric measurement issues. API recommended that the Commission specify label dimensions in both inches/picas and appropriate soft-conversion (calculated) metric units.[210] However, API stated that, because the average consumer's awareness of metric is minimal at this time, providing alternative fuel information to the consumer in metric units would not significantly benefit consumers.[211] Neither the original Octane Rule nor the amendments adopted today require disclosures to consumers of inch/pound measurement ratings. However, in accordance with OTCA and Executive Order 12770, § 306.12 of the Fuel Rating Rule includes both inch-pound and

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[206] See, e.g., Request for OMB Review of January, 1984, and Accompanying Supporting Statement for Information Collection Provisions of the Octane Certification and Posting Rule.

[207] Section 1320.7(b)(1) of the regulations implementing the Paperwork Reduction Act, 5 CFR 1320.7(b)(1), states:

The time and financial resources necessary to comply with a collection of information that would be incurred by persons in the normal course of their activities (e.g., in compiling and maintaining business records) will be excluded from the "burden" if the agency demonstrates that the reporting or recordkeeping activities needed to comply are usual and customary.

[208] Notice of Office of Management and Budget Action to Carl Hevener, Federal Trade Commission, dated May 13, 1993.

[209] 58 FR 16464, 16477.

[210] API, D–10, 8.

[211] *Id.*

metric measurements in the specifications for label size.

VIII. Amendments to the Rule

A. Discussion of Amendments

The certification and posting requirements for alternative liquid automotive fuels have been discussed in Part III.A5. As indicated in the NPR, many of the amendments to the Octane Rule involve substituting "automotive fuel" for "gasoline" and "automotive fuel rating" for "octane rating." In this section, several additional amendments to the Rule are discussed. Pursuant to EPA 92, these amendments become effective at the end of the one-year period beginning on the date of the enactment of the Act, which was on October 24, 1992.[212] However, October 24, 1993 falls on a Sunday. When an effective date falls on a weekend or holiday, the next Federal business day is used as the effective date.[213] Therefore, these amendments are effective on Monday, October 25, 1993.

Section 306.0 Definitions

The Octane Rule currently does not have a section containing definitions. Because these amendments result in an expanded and more complex regulation, the Commission is including definitions in the Fuel Rating Rule. Most of the definitions that the Commission has adopted are definitions from PMPA that are pertinent to the Fuel Rating Rule. A few other definitions were adopted from other sources (principally, EPA 92), as explained below.

Section 306.0(2) contains references to the applicable ASTM standards that contain the methodologies for determining the research octane number and motor octane number. These references to the ASTM standards are different from the references in the prior version of the Rule because they are to current versions of the standards. The ASTM references are from the "Conforming Amendments" section of section 1501 of EPA 92,[214] with the addition of the suffix that ASTM uses to indicate the year of the standard's promulgation. This suffix is part of the reference to the standard in the Fuel Rating Rule to conform with the procedures for incorporation by reference in 5 U.S.C. 552(a)(1) and 1 CFR part 51.

In § 306.0, the definitions of refiner, distributor and retailer are based on the PMPA definitions of these terms. In § 306.0(4), the Commission has added a definition for "producer" that the Commission developed from language in the PMPA definition of "refiner" and the Commission's description of "producers" that was published with the announcement of the final Octane Rule.[215]

In § 306.0(9), the Commission uses the PMPA definition for "automotive fuel." As amended by EPA 92, PMPA currently defines "automotive fuel" as "liquid fuel of a type distributed for use as a fuel in any motor vehicle." To provide more guidance to industry, the Commission has supplemented this definition by drawing on the definition for "alternative fuel" contained in section 301(2) of EPA 92[216] and specifically listing (without limiting coverage) the liquid fuels that are presently covered. The Commission also has added in this section a definition for gasoline that lists (without limiting coverage) the fuels that are presently considered "gasoline," including gasohol and reformulated and oxygenated gasolines.[217]

Section 306.4 Preemption

Section 1502(a) of EPA 92 amends section 204 of PMPA to authorize the states to use whatever investigative and enforcement action they find necessary to enforce state laws that require the certification and posting of automotive fuel ratings.[218] The purpose of this amendment is to facilitate state enforcement of any state or local regulation pertaining to automotive fuel rating disclosure by permitting the use of any remedy or penalty authorized by law. The Commission has inserted new language in § 306.4 of the Fuel Rating Rule to conform with EPA 92's amendment of section 204 of PMPA.

Section 306.5 Automotive Fuel Rating

The references to the ASTM standards have been changed in § 306.(0)(2)—Definitions to reflect the current versions of the standards, as contained in section 1501(c)(1)(B) of EPA 92.[219] The Octane Rule contained language (§ 306.4(b)(2)) detailing a procedure for updating the Rule whenever ASTM modifies the octane determination standards referenced in this section. The amendments announced today delete this section. If there are subsequent amendments to the standards that are pertinent to the Rule, any person may petition the Commission to adopt the amended version or the Commission on its own motion may initiate a proceeding to adopt the revision.

List of Subjects in 16 CFR Part 306

Energy conservation, Gasoline, Incorporation by reference, Labeling, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, title 16 of the Code of Federal Regulations will be amended as follows:

PART 306—AUTOMOTIVE FUEL RATINGS, CERTIFICATION AND POSTING

1. The authority citation for part 306 of 16 CFR is revised to read as follows:

Authority: 15 U.S.C. 2801 *et seq.*

2. Part 306 of 16 CFR is amended by revising the heading to read as set forth above.

§§ 306.0 through 306.11 [Redesignated as §§ 306.1 through 306.12]

3. Sections 306.0 through 306.11 of 16 CFR are redesignated as §§ 306.1 through 306.12, respectively.

4. Part 306 of 16 CFR is amended by adding a new § 306.0, to read as follows:

§ 306.0 Definitions.

As used in this part:

(a) *Octane rating* means the rating of the anti-knock characteristics of a grade or type of gasoline as determined by dividing by 2 the sum of the research octane number plus the motor octane number.

(b) *Research octane number* and *motor octane number* have the meanings given such terms in the specifications of the American Society for Testing and Materials ("ASTM") entitled "Standard Specification for Automotive Spark-Ignition Engine Fuel" designated D4814–92c and, with respect to any grade or type of gasoline, are determined in accordance with test methods set forth in ASTM D2699–92, "Standard Test Method for Knock Characteristics of Motor Fuels by the Research Method" and ASTM D2700–

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[212] Section 1501(d)(1) of Pub. L. 102–486, 106 Stat. 2997 (codified at 15 U.S.C. 2821 (notes)).

[213] 1 CFR 18.17.

[214] Section 1501(c)(1)(B) of Pub. L. 102–486, 106 Stat. 2776, 2996 (codified at 15 U.S.C. 2821).

[215] See 44 FR 19172 (March 30, 1979). The original proceeding to promulgate the Octane Rule revealed that there is a sector of the petroleum industry that combines component elements of gasoline into the finished product. Producers are a small group within the petroleum industry who are the originating sellers of automotive gasoline but who do not import or receive gasoline or refine it from crude oil. Rather, they purchase component parts and combine them to produce finished gasoline.

[216] Sec. 301(2), Pub. L. 102–486, 106 Stat. 2776, 2866 (codified at 42 U.S.C. 13211).

[217] Reformulated and oxygenated gasolines are produced to comply with the requirements of the Clean Air Act, 42 U.S.C. 7545 (k), (m). These fuels and gasohol were specifically discussed as gasoline in the NPR. 58 FR 16464, 16466.

[218] Section 1502(a) of Pub. L. 102–486, 106 Stat. 2776, 2997–98 (codified at 15 U.S.C. 2824).

[219] Section 1501(c)(1)(B) of Pub. L. 102–486, 106 Stat. 2776. 2996 (codified at 15 U.S.C. 2821).

92, "Standard Test Method for Knock Characteristics of Motor and Aviation Fuels by the Motor Method." These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of ASTM D4814–92c, ASTM D2699–92, and ASTM D2700–92 may be obtained from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA, 19103, or may be inspected at the Federal Trade Commission, Public Reference Room, room 130, 600 Pennsylvania Avenue, NW., Washington, DC., or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(c) *Refiner* means any person engaged in the production or importation of automotive fuel.

(d) *Producer* means any person who purchases component elements and combines them to produce and market automotive fuel.

(e) *Distributor* means any person who receives automotive fuel and distributes such automotive fuel to another person other than the ultimate purchaser.

(f) *Retailer* means any person who markets automotive fuel to the general public for ultimate consumption.

(g) *Ultimate purchaser* means, with respect to any item, the first person who purchases such item for purposes other than resale.

(h) *Person*, for purposes of applying any provision of the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*, with respect to any provision of this Part, includes a partnership and a corporation.

(i) *Automotive fuel* means liquid fuel of a type distributed for use as a fuel in any motor vehicle, and the term includes, but is not limited to:

(1) Gasoline, an automotive spark-ignition engine fuel, which includes, but is not limited to, gasohol (generally a mixture of approximately 90% unleaded gasoline and 10% denatured ethanol) and fuels developed to comply with the Clean Air Act, 42 U.S.C. 7401 *et seq.*, such as reformulated gasoline and oxygenated gasoline; and

(2) alternative liquid automotive fuels, including, but not limited to:

(i) Methanol, denatured ethanol, and other alcohols;

(ii) Mixtures containing 85 percent or more by volume of methanol, denatured ethanol, and/or other alcohols (or such other percentage, but not less than 70 percent, as determined by the Secretary of the United States Department of Energy, by rule, to provide for requirements relating to cold start, safety, or vehicle functions), with gasoline or other fuels;

(iii) Liquefied natural gas;

(iv) Liquefied petroleum gas;

(v) Coal-derived liquid fuels.

(j) *Automotive fuel rating* means—

(1) For gasoline, the octane rating; or

(2) For an alternative liquid automotive fuel, the commonly used name of the fuel with a disclosure of the amount, expressed as a minimum percentage by volume, of the principal component of the fuel. A disclosure of other components, expressed as a minimum percentage by volume, may be included, if desired.

5. Section 306.1 of 16 CFR is revised to read as follows:

§ 306.1 What this rule does.

This rule deals with the certification and posting of automotive fuel ratings in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.* It applies to persons, partnerships, and corporations. If you are covered by this regulation, breaking any of its rules is an unfair or deceptive act or practice under section 5 of that Act. You can be fined up to ten thousand dollars each time you break a rule.

6. Section 306.2 of 16 CFR is revised to read as follows:

§ 306.2 Who is covered.

You are covered by this rule if you are a refiner, importer, producer, distributor, or retailer of automotive fuel.

7. Section 306.4 of 16 CFR is revised to read as follows:

§ 306.4 Preemption.

The Petroleum Marketing Practices Act ("PMPA"), 15 U.S.C. 2801 *et seq.*, as amended, is the law that directs the FTC to enact this rule. Section 204 of PMPA, 15 U.S.C. 2824, provides:

(a) To the extent that any provision of this title applies to any act or omission, no State or any political subdivision thereof may adopt or continue in effect, except as provided in subsection (b), any provision of law or regulation with respect to such act or omission, unless such provision of such law or regulation is the same as the applicable provision of this title.

(b) A State or political subdivision thereof may provide for any investigative or enforcement action, remedy, or penalty (including procedural actions necessary to carry out such investigative or enforcement actions, remedies, or penalties) with respect to any provision of law or regulation permitted by subsection (a).

8. Section 306.5 of 16 CFR is revised to read as follows:

§ 306.5 Automotive fuel rating.

If you are a refiner, importer, or producer, you must determine the automotive fuel rating of all automotive fuel before you transfer it. You can do that yourself or through a testing lab.

(a) To determine the automotive fuel rating of gasoline, add the research octane number and the motor octane number and divide by two, as explained by the American Society for Testing and Materials ("ASTM") in ASTM D4814–92c, entitled "Standard Specifications for Automotive Spark-Ignition Engine Fuel." To determine the research octane number, use ASTM standard test method D2699–92, and to determine the motor octane number, use ASTM standard test method D2700–92.

(b) To determine automotive fuel ratings for alternative liquid automotive fuels, you must possess a reasonable basis, consisting of competent and reliable evidence, for the percentage by volume of the principal component of the alternative liquid automotive fuel that you must disclose. You also must have a reasonable basis, consisting of competent and reliable evidence, for the minimum percentages by volume of other components that you choose to disclose.

9. Section 306.6 of 16 CFR is revised to read as follows:

§ 306.6 Certification

In each transfer you make to anyone who is not a consumer, you must certify the automotive fuel rating of the automotive fuel consistent with your determination. You can do this in either of two ways:

(a) Include a delivery ticket or other paper with each transfer or automotive fuel. It may be an invoice, bill of lading, bill of sale, terminal ticket, delivery ticket, or any other written proof of transfer. It must contain at least these four items:

(1) Your name;

(2) The name of the person to whom the automotive fuel is transferred;

(3) The date of the transfer;

(4) The automotive fuel rating. Octane rating numbers may be rounded off to a whole or half number equal to or less than the number determined by you.

(b) Give the person a letter or written statement. This letter must include the date, your name, the other person's name, and the automotive fuel rating of any automotive fuel you will transfer to that person from the date of the letter onwards. Octane rating numbers may be rounded to a whole or half number equal to or less than the number determined by you. This letter of certification will be good until you transfer automotive fuel with a lower

automotive fuel rating. When this happens, you must certify the automotive fuel rating of the new automotive fuel either with a delivery ticket or by sending a new letter of certification.

(c) When you transfer automotive fuel to a common carrier, you must certify the automotive fuel rating of the automotive fuel to the common carrier, either by letter or on the delivery ticket or other paper.

10. Section 306.7 of 16 CFR is revised to read as follows:

§ 306.7 Recordkeeping.

You must keep records of how you determined automotive fuel ratings for one year. They must be available for inspection by Federal Trade Commission and Environmental Protection Agency staff members, or by people authorized by FTC or EPA.

11. Section 306.8 of 16 CFR is revised to read as follows:

§ 306.8 Certification.

If you are a distributor, you must certify the automotive fuel rating of the automotive fuel in each transfer you make to anyone who is not a consumer.

(a) In the case of gasoline, if you do not blend the gasoline with other gasoline, you must certify the gasoline's octane rating consistent with the octane rating certified to your. If you blend the gasoline with other gasoline, you must certify consistent with your determination of the average, weighted by volume, of the octane ratings certified to you for each gasoline in the blend, or consistent with the lowest octane rating certified to you for any gasoline in the blend. Whether you blend gasoline or not, you may choose to certify the octane rating of the gasoline consistent with your determination of the octane rating according to the method in § 306.5. In cases involving gasoline, the octane rating may be rounded to a whole or half number equal to or less than the number certified to you or determined by you.

(b) If you do not blend alternative liquid automotive fuels, you must certify consistent with the automotive fuel rating certified to you. If you blend alternative liquid automotive fuels, you must possess a reasonable basis, consisting of competent and reliable evidence, for the automotive fuel rating that you certify for the blend.

(c) You may certify either by using a delivery ticket with each transfer of automotive fuel, as outlined in § 306.6(a), or by using a letter of certification, as outlined in § 306.6(b).

(d) When you transfer automotive fuel to a common carrier, you must certify the automotive fuel rating of the automotive fuel to the common carrier, either by letter or on the delivery ticket or other paper. When you receive automotive fuel from a common carrier, you also must receive from the common carrier a certification of the automotive fuel rating of the automotive fuel, either by letter or on the delivery ticket or other paper.

12. Section 306.9 of 16 CFR is revised to read as follows:

§ 306.9 Recordkeeping

You must keep for one year any delivery tickets or letters of certification on which you based your automotive fuel rating certifications. You must also keep for one year records of any automotive fuel rating determinations you made according to § 306.5. They must be available for inspection by Federal Trade Commission and Environmental Protection Agency staff members, or by persons authorized by FTC or EPA.

13. Section 306.10 of 16 CFR is revised to read as follows:

§ 306.10 Automotive fuel rating posting.

(a) If you are a retailer, you must post the automotive fuel rating of all automotive fuel you sell to consumers. You must do this by putting at least one label on each face of each dispenser through which you sell automotive fuel. If you are selling two or more kinds of automotive fuel with different automotive fuel ratings from a single dispenser, you must put separate labels for each kind of automotive fuel on each face of the dispenser.

(b) (1) The label, or labels, must be placed conspicuously on the dispenser so as to be in full view of consumers and as near as reasonably practical to the price per unit of the automotive fuel.

(2) You may petition for an exemption from the placement requirements by writing the Secretary of the Federal Trade Commission, Washington, DC 20480. You must state the reasons that you want the exemption.

(c) In the case of gasoline, if you do not blend the gasoline with other gasoline, you must post the octane rating of the gasoline consistent with the octane rating certified to you. If you blend the gasoline with other gasoline, you must post consistent with your determination of the average, weighted by volume, of the octane ratings certified to you for each gasoline in the blend, or consistent with the lowest octane rating certified to you for any gasoline in the blend. Whether you blend gasoline or not, you may choose to post the octane rating of the gasoline consistent with your determination of the octane rating according to the method in § 306.5. In cases involving gasoline, the octane rating must be shown as a whole or half number equal to or less than the number certified to you or determined by you.

(d) If you do not blend alternative liquid automotive fuels, you must post consistent with the automotive fuel rating certified to you. If you blend alternative liquid automotive fuels, you must possess a reasonable basis, consisting of competent and reliable evidence, for the automotive fuel rating that you post for the blend.

(e)(1) You must maintain and replace labels as needed to make sure consumers can easily see and read them.

(2) If the labels you have are destroyed or are unusable or unreadable for some unexpected reason, you can satisfy the law by posting a temporary label as much like the required label as possible. You must still get and post the required label without delay.

(f) The following examples of automotive fuel rating disclosures for some presently available alternative liquid automotive fuels are meant to serve as illustrations of compliance with this part, but do not limit the Rule's coverage to only the mentioned fuels:

(1) "Methanol/Minimum _____% Methanol"
(2) "Ethanol/Minimum _____% Ethanol"
(3) "M–85/Minimum _____% Methanol"
(4) "E–85/Minimum _____% Ethanol"
(5) "LPG/Minimum _____% Propane" or "LPG/Minimum _____% Propane and _____% Butane"
(6) "LNG/Minimum _____% Methane"

(g) When you receive automotive fuel from a common carrier, you also must receive from the common carrier a certification of the automotive fuel rating of the automotive fuel, either by letter or on the delivery ticket or other paper.

14. Section 306.11 of 16 CFR is revised to read as follows:

§ 306.11 Recordkeeping.

You must keep for one year any delivery tickets or letters of certification on which you based your posting of automotive fuel ratings. You also must keep for one year records of any automotive fuel rating determinations you made according to § 306.5. These records may be kept at the retail outlet or at another, reasonably close location. They must be available for inspection by Federal Trade Commission and Environmental Protection Agency staff members or by persons authorized by FTC or EPA.

15. Section 306.12 is revised to read as follows:

§306.12 Labels.

All labels must meet the following specifications:

(a) Layout.—(1) For gasoline labels. The label is 3" (7.62 cm) wide x 2½" (6.35 cm) long. The illustrations appearing at the end of this rule are prototype labels that demonstrate the proper layout. "Helvetica Black" type is used throughout except for the octane rating number on octane labels, which is in Franklin gothic type. All type is centered. Spacing of the label is ¼" (.64 cm) between the top border and the first line of text, ⅛" (.32 cm) between the first and second line of text, ¼" (.64 cm) between the octane rating and the line of text above it. All text and numerals are centered within the interior borders.

(2) For alternative liquid automotive fuel labels (one principal component). The label is 3" (7.62 cm) wide × 2½" (6.35 cm) long. "Helvetica black" type is used throughout. All type is centered. The band at the top of the label contains the name of the fuel. This band should measure 1" (2.54 cm) deep. Spacing of the fuel name is ¼" (.64 cm) from the top of the label and 3/16" (.48 cm) from the bottom of the black band, centered horizontally within the black band. The first line of type beneath the black band is ⅛" (.32 cm) from the bottom of the black band. All type below the black band is centered horizontally, with ⅛" (.32 cm) between each line. The bottom line of type is 3/16" (.48 cm) from the bottom of the label. All type should fall no closer than 3/16" (.48 cm) from the side edges of the label. If you wish to change the dimensions of this single component label to accommodate a fuel descriptor that is longer than shown in the sample labels, you must petition the Federal Trade Commission. You can do this by writing to the Secretary of the Federal Trade Commission, Washington, DC 20580. You must state the size and contents of the label that you wish to use, and the reasons that you want to use it.

(3) For alternative liquid automotive fuel labels (two components). The label is 3" (7.62 cm) wide × 2½" (6.35 cm) long. "Helvetica black" type is used throughout. All type is centered. The band at the top of the label contains the name of the fuel. This band should measure 1" (2.54 cm) deep. Spacing of the fuel name is ¼" (.64 cm) from the top of the label and 3/16" (.48 cm) from the bottom of the black band, centered horizontally within the black band. The first line of type beneath the black band is 3/16" (.48 cm) from the bottom of the black band. All type below the black band is centered horizontally, with ⅛" (.32 cm) between each line. The bottom line of type is ¼" (.64 cm) from the bottom of the label. All type should fall no closer than 3/16" (.48 cm) from the side edges of the label. If you wish to change the dimensions of this two component label to accommodate additional fuel components, you must petition the Federal Trade Commission. You can do this by writing to the Secretary of the Federal Trade Commission, Washington, DC 20580. You must state the size and contents of the label that you wish to use, and the reasons that you want to use it.

(b) *Type size and setting—(1) For gasoline labels.* The Helvetica series is used for all numbers and letters with the exception of the octane rating number. Helvetica is available in a variety of phototype setting systems, by linotype, and in a variety of computer desk-top and phototype setting systems. Its name may vary, but the type must conform in style and thickness to the sample provided here. The line "Minimum Octane Rating" is set in 12 point Helvetica Bold, all capitals, with letterspace set at 12½ points. The line "(R+M)/2 METHOD" is set in 10 point Helvetica Bold, all capitals, with letterspace set at 10½ points. The octane number is set in 96 point Franklin gothic condensed with ⅛" (.32 cm) space between the numbers.

(2) *For alternative liquid automotive fuel lables (one principal component).* All type should be set in upper case (all caps) "Helvetica Black" throughout. Helvetica Black is available in a variety of computer desk-top and phototype setting systems. Its name may vary, but the type must conform in style and thickness to the sample provided here. The spacing between letters and words should be set as "normal." The type for the fuel name is 50 point (½" 1.27 cm) cap height) "Helvetica Black," knocked out of a 1" (2.54 cm) deep band. The type for the words "MINIMUM" and the principal component is 24 pt. (¼" (.64 cm) cap height.) The type for percentage is 36 pt. (⅜" (.96 cm) cap height).

(3) *For alternative liquid automotive fuel labels (two components).* All type should be set in upper case (all caps) "Helvetica Black" throughout. Helvetica Black is available in a variety of computer desk-top and phototype setting systems. Its name may vary, but the type must conform in style and thickness to the sample provided here. The spacing between letters and words should be set as "normal." The type for the fuel name is 50 point (½" 1.27 cm) cap height) "Helvetica Black," knocked out of a 1" (2.54 cm) deep band. All other type is 24 pt. (¼" (.64 cm) cap height.)

(c) *Colors—(1) For gasoline labels.* The basic color on all octane labels is process yellow. All type is process black. All borders are process black. All colors must be non-fade.

(2) *For alternative liquid automotive fuel labels.* The background color on all the labels is Orange: PMS 1495. The knock-out type within the black band is orange PMS 1495. All other type is process black. All borders are process black. All colors must be non-fade.

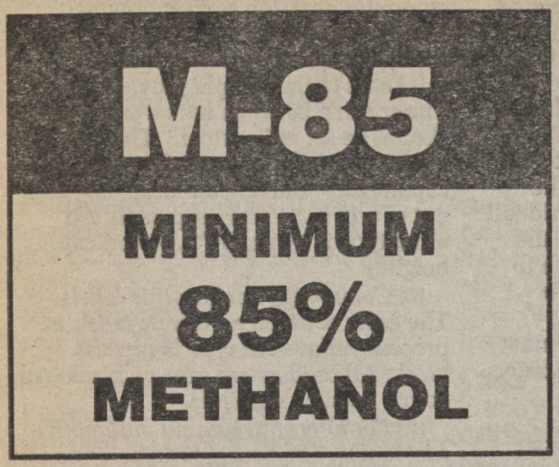
(d) *Contents.* Examples of the contents are shown in the sample labels. The proper octane rating for each gasoline must be shown. The proper automotive fuel rating for each alternative liquid automotive fuel must be shown. No marks or information other than that called for by this rule may appear on the labels.

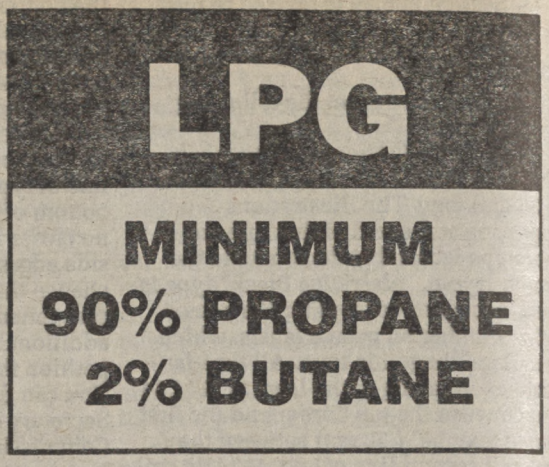
(e) *Special label protection.* All labels must be capable of withstanding extremes of weather conditions for a period of at least one year. They must be resistant to automotive fuel, oil, grease, solvents, detergents, and water.

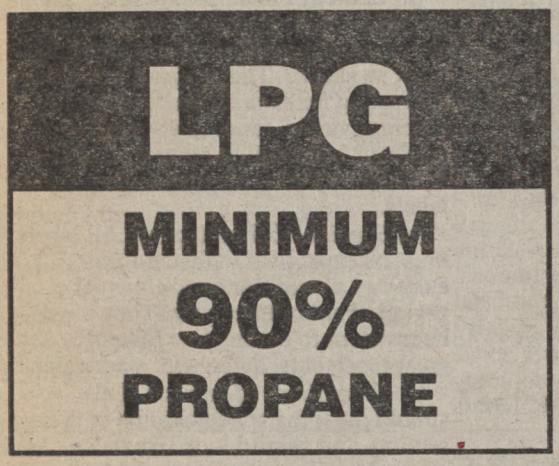
(f) *Illustrations of labels.* Labels should meet the specifications in this section, and should look like these examples, except the black print should be on the appropriately colored background.

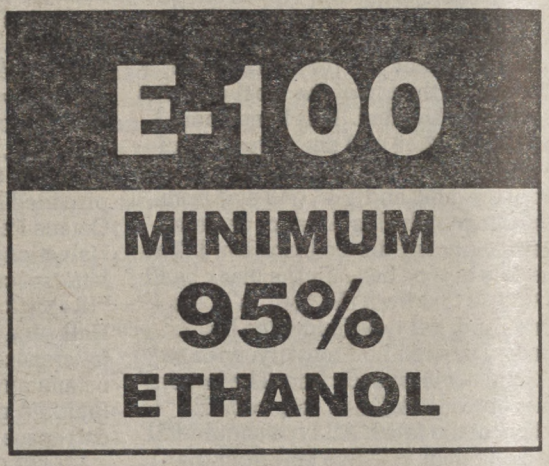
BILLING CODE 6750-01-M











BILLING CODE 6750-01-C

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 93-18339 Filed 8-2-93; 8:45 am]

BILLING CODE 6750-01-M

federal register

Tuesday
August 3, 1993

Part VII

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determinations of Endangered Status; Final Rules

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB73

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Two Plants, Arenaria Paludicola (Marsh Sandwort) and Rorippa Gambellii (Gambel's Watercress)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines endangered status pursuant to the Endangered Species Act of 1973, as amended (Act) for two plants: *Arenaria paludicola* (marsh sandwort) and *Rorippa gambellii* (Gambel's watercress). *Arenaria paludicola* was historically known from swamps and freshwater marshes in four counties in California, as well as Washington State. The sole extant population occurs at Black Lake Canyon in San Luis Obispo County, California. *Rorippa gambellii* once occurred in five California counties, as well as Mexico; today only three populations remain, all in San Luis Obispo County, California. These two species and their coastal wetland habitats are threatened primarily by urban development, alteration in hydrology, competition with alien plant species, and stochastic (random) extinction by virtue of the small number of individuals and populations that remain. This rule implements the protection and recovery provisions afforded by the Act for these plants.

EFFECTIVE DATE: August 3, 1993.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Ventura Field Office, 2140 Eastman Avenue, suite 100, Ventura, California 93003.

FOR FURTHER INFORMATION CONTACT: Carl Benz at the above address (telephone 805/644–1766 or 818/904–6040).

SUPPLEMENTARY INFORMATION:

Background

Arenaria paludicola and *Rorippa gambellii* are both historically known from swamps and freshwater marsh habitats primarily along the Pacific Coast of North America. *Arenaria paludicola* once ranged from Washington to San Bernardino County, California, and *Rorippa gambellii* from San Luis Obispo County to San Diego, California, and near Mexico City. The wetland habitats upon which they depend have been vanishing at a rapid rate due primarily to urbanization and conversion to agriculture.

In San Luis Obispo County, a series of small freshwater marshes associated with active to partially stabilized beach dunes extends a distance of 5 miles from Oceano south to the Oso Flaco Lakes area. Just inland from this "dune lakes" area lies the Nipomo Mesa, a broad mesa comprised of old Oceano sands deposited 40,000 years ago, and bisected by Black Lake Canyon. Pockets of freshwater marsh habitat in Black Lake Canyon and the dune lakes area harbor a unique flora that includes remnant populations of *Arenaria paludicola* and *Rorippa gambellii*.

Arenaria paludicola (marsh sandwort) was first described by A. Kellogg in 1863 under the name *Alsine palustre*, based on a specimen collected near Fort Point, San Francisco (Kellogg 1863). In 1876, Sereno Watson made the new combination *Arenaria palustris*, not realizing that the name had been published by Gay in 1845 in reference to a different species (Abrams 1944). Robinson noticed the duplication of names and, in his treatment of Alsineae (one of three tribes recognized within Caryophyllaceae at the time), renamed the plant *Arenaria paludicola* (Robinson 1894).

This slender perennial herb of the pink family (Caryophyllaceae) roots at the nodes of procumbent stems. The species bears small inconspicuous flowers from May through August. The singularly borne flowers in the axils of narrow opposite leaves and the smooth and angled stem separate this species from others in the genus.

Historically, the species was known from four counties of coastal California, as well as in the State of Washington, from sea level to 1,476 feet (0 to 450 meters) (Morey 1990). The Service recently contracted the Natural Heritage Program in the State of Washington to conduct a status survey for *Arenaria paludicola* in that State. The review of historical specimens revealed that all but one of the specimens had been misidentified. Field surveys conducted in 1990 focused on the area from which the one historical specimen of *A. paludicola* was located, as well as from other potential sites along the coast of Washington. No extant sites of this plant were found as a result of the surveys (Gamon 1991).

In California, historical locations were known from the Counties of San Francisco, Santa Cruz, San Luis Obispo, and San Bernardino. These populations have been eliminated due to urbanization and associated impacts such as encroachment by non-native plants and off-road vehicle activity. The only known extant location is in a small marshy area of Black Lake Canyon on the Nipomo Dunes Mesa in southwestern San Luis Obispo County. Associated species include *Epipactis gigantea* (stream orchis), *Sparganium* sp. (bur-reed), *Carex* sp. (sedges), *Juncus* sp. (rushes), and *Rorippa gambellii*. The site is in private ownership. This population was first reported in 1947 and rediscovered in 1984. Surveys done between 1988 and 1992 indicate that the location of the plants may shift over time, perhaps illustrating the dependence of the species on specific microhabitat conditions for successful germination and propagation. In 1988, only 10 plants were found in the Canyon, occupying an area less than 55 square feet (5 square meters) (Morey 1990). Although only three plants were located at the site in 1992, the existence of other pockets of suitable habitat in Black Lake Canyon and the adjacent dune lakes area holds promise that other populations may still be found.

Rorippa gambellii (Gambel's watercress) was first described by Sereno Watson as *Cardamine gambellii* in 1876, using specimens collected by Gambel near Santa Barbara, Santa Barbara County. O. E. Schulz placed the plant in the genus *Nasturtium* in 1933. However, Munz chose to recognize the placement of the taxon in the former genus in his publication on California flora (Munz 1959). Recent work by Al-Shehbaz and Rollins (1988) pointed out the inconsistency in the features historically used to distinguish the genera *Cardamine* and *Rorippa*, including flower color, presence of median nectaries, and seed coat pattern. They consequently combined several species of *Cardamine* into *Rorippa*, including *Rorippa gambellii*.

Rorippa gambellii, a member of the mustard family (Brassicaceae), is an herbaceous perennial that characteristically roots from the stem nodes of a horizontal rootstock. The species produces dense inflorescences of white flowers from April through June. The narrow fruits with seeds arranged in one row (rather than two) and the more angular and sharply toothed leaflets distinguish this species from the more common non-native *Rorippa nasturtium-aquaticum*.

Rorippa gambellii is found in freshwater or brackish marsh habitats at the margins of lakes or along slow-flowing streams, from 20 to 60 feet (6 to 18 meters) in elevation. The species requires a permanent water source.

Associated species include *Typha* sp. (cattail), *Sparganium* sp., and *Scirpus* sp. (bulrush). At the Black Lake Canyon site, *R. gambellii* co-occurs with *Arenaria paludicola* (Wickenheiser 1989).

The species was reported historically from about a dozen locations in southern California, including interior wetland areas of San Diego, San Bernardino, and Los Angeles Counties, as well as coastal wetland areas of San Luis Obispo and Santa Barbara Counties (Wickenheiser and Morey 1990) and from near Mexico City in the Valley of Mexico (Wickenheiser 1989). Historic populations in San Bernardino and San Diego Counties have been extirpated due to habitat alteration. Apparently two individuals were observed in Barka Slough on Vandenberg Air Force Base, Santa Barbara County, in 1980 (Dial 1980). However, surveys by Price (1989) were unsuccessful in relocating the plant. In San Luis Obispo County, populations near Small Twin Lake and Oceano Beach have been extirpated.

The three known extant populations of *Rorippa gambellii* occur in San Luis Obispo County at Black Lake Canyon, Oso Flaco Lake, and Little Oso Flaco Lake. Oso Flaco Lake and Little Oso Flaco Lake are on lands owned by the California Department of Parks and Recreation (DPR) (Pismo Beach State Vehicle Recreation Area); the portion of the Recreation Area containing the lakes is closed to recreational vehicles and is being managed by The Nature Conservancy. These three sites are within four aerial miles of each other. The total number of individuals counted during surveys in 1989 resulted in a total count of fewer than 1,000 individuals (Wickenheiser and Morey 1990). In 1992, the number of individuals in Black Lake Canyon had increased to approximately 1,000, up from the 100 individuals observed in 1989 surveys (CNDDB 1992). The other two populations at Oso Flaco Lake and Little Oso Flaco Lake could not be relocated, but difficulties in surveying the thickly vegetated lake margins may have obscured the populations.

Arenaria paludicola and *Rorippa gambelli* face threats from alteration of hydrology, competition with encroaching eucalyptus trees (*Eucalyptus globulus*), urban development, and stochastic extinction due to the small number of individuals and populations that remain.

Previous Federal Action

Federal government actions on one of these two plants began as a result of section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those 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.

The Service published a notice in the July 1, 1975, **Federal Register** (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act and its intention thereby to review the status of the plant taxa named therein. On June 16, 1976, the Service published a proposal in the **Federal Register** (42 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. *Arenaria paludicola* was included in the July 1, 1975, **Federal Register** document as a threatened species. General comments received in response to the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to those proposals already more than 2 years old. In the December 10, 1979, **Federal Register** (44 FR 70796), the Service published a notice of withdrawal of the June 6, 1976, proposal, along with four other proposals that had expired.

The Service published an updated notice of review for plants on December 15, 1980 (45 FR 82480). This notice included *Rorippa gambellii* as a Category 1 species, and *Arenaria paludicola* as a Category 2 species. Category 1 species are those taxa for which the Service has in its possession enough information on biological vulnerability and threats to support a proposal to list; whereas, Category 2 species are those for which data in the Service's possession indicate listing is possibly appropriate, but for which substantial data on biological vulnerability and threats are not currently known or on file to support proposed rules. On November 28, 1983, the Service published in the **Federal Register** a supplement to the Notice of Review (48 FR 53640); the plant notice was again revised on September 27, 1985 (50 FR 39526). *Arenaria paludicola* and *Rorippa gambellii* were included in both of these revisions as Category 2 species. On February 21, 1990 (55 FR 6184), the plant notice was again revised, and *Arenaria paludicola* and *Rorippa gambellii* were both included as Category 1 species.

Section 4(b)(3)(B) of the Act requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. That was the case for *Arenaria paludicola* because the 1975 Smithsonian report had been accepted as a petition. In October of 1983, 1984, 1985, 1986, 1987, 1988, 1989, and 1990, the Service found that the petitioned listing of *Arenaria paludicola* was warranted but precluded by other higher priority listing actions.

On September 30, 1991, the Service published in the **Federal Register** (56 FR 49446) a proposal to list *Arenaria paludicola* and *Rorippa gambellii* as endangered. This proposal was based primarily on information supplied by reports from the Natural Diversity Data Base and observations of botanists. The comment period originally closed on November 29, 1991. A **Federal Register** notice reopening the comment period for 30 days was published on June 8, 1992 (57 FR 24221), to receive additional information. That comment period closed on July 8, 1992.

Summary of Comments and Recommendations

In the September 30, 1991, proposed rule (56 FR 49446) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. A 60-day comment period closed on November 29, 1991. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Comments were received from three California State agencies (The Resources Agency, California Department of Parks and Recreation, and California Department of Fish and Game), and from the County of San Luis Obispo during and prior to the opening of the comment period.

A **Federal Register** notice reopening the comment period from June 8 to July 8, 1992, was published on June 8, 1992 (57 FR 24221), to receive additional information. A newspaper notice was published in the San Luis Obispo County Telegram-Tribune on June 17, 1992, inviting general public comment on the proposed rule. Six comments were received subsequent to the June 8, 1992, publication, including three from the general public and three from conservation organizations. A total of 11 comments from 10 parties were received. Seven commenters, including the California Department of Fish and

Game, The Resources Agency, California Native Plant Society, The Nature Conservancy, Center for Plant Conservation, and two other commenters supported the listing of the species. The California Department of Parks and Recreation and the County of San Luis Obispo provided additional information that has been incorporated into this rule. One commenter opposed the proposed listing; the four issues raised and the Service's response to each are summarized as follows:

Issue 1: The commenter felt that little benefit would be derived from listing species whose extinction appeared imminent.

Service Response: The Endangered Species Act of 1973, as amended, directs the Service to list species that are in danger of extinction throughout all or a significant portion of their ranges. *Arenaria paludicola* and *Rorippa gambellii* are both in danger of extinction throughout their range and, therefore, meet the definition of endangered species under the Act. Benefits to listing under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. The likelihood of imminent extinction is a reason to list a species, rather than a reason against such a decision.

Issue 2: The commenter felt that the property rights of private landowners would be compromised by a Federal listing since this would lead to land confiscation.

Service Response: Listing of *Arenaria paludicola* and *Rorippa gambellii* under the Endangered Species Act will trigger the protective measures under section 9 of the Act, prohibiting the collection, destruction or damaging of these species on any area if it is in violation of any State law (see the "Available Conservation Measures" section of this rule for a complete discussion). In addition, the Act requires that Federal agencies insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of any listed species, or destroy or adversely modify its critical habitat, if any is designated. Any activity on private land that requires Federal involvement (such as a section 404 permit under the Clean Water Act) and that may affect these species would have to be reviewed by the Service to ensure that the continued existence of the species would not be jeopardized.

Listing under the Act does not imply that private land would be "confiscated" without compensation. Recovery planning for the two subject plants may include recommendations for land acquisition or easements involving private landowners. These efforts would be undertaken with the cooperation of the landowner. In the majority of cases, private landowners are not precluded from utilizing their land in the manner originally intended.

Issue 3: The commenter believed Vandenberg Air Force Base may harbor suitable habitat for *Arenaria paludicola*, and wanted to know why a survey for the plant has not been conducted there.

Service Response: Although a focused search for *Arenaria paludicola* has never been done on Vandenberg Air Force Base, in Santa Barbara County, a number of rare plant surveys and resource inventories have been conducted (NASA 1988, Smith 1981). Two individuals of the plant were purportedly found in Barka Slough (on the base) in 1980, but no voucher was made to confirm identification (Dial 1980). It is not certain whether suitable habitat still exists in the area. Rapid succession may be eliminating the marsh habitat there, making conditions unsuitable for the plant. In the event that *Arenaria paludicola* is found from Barka Slough or from other localities (such as the dune lakes area) in the future, it is likely that any new populations would be imperiled by the same kinds of threats that the plant faces at Black Lake Canyon, and the status of the species would not be changed.

Issue 4: The commenter included excerpts from the Black Lake Canyon Enhancement Plan (Land Conservancy of San Luis Obispo County 1992) to indicate that water drawdown from development surrounding the Canyon is not a threat because in fact the water level is rising.

Service Response: The Enhancement Plan stated that the upper and lower portions of Black Lake Canyon are supplied by two different aquifers separated by an impermeable layer called an aquitard (Land Conservancy of San Luis Obispo County 1992). Thus, while the water level in the upper half of the canyon has risen in recent years, apparently from golf course and agricultural runoff, the water levels in the lower half of the canyon, where the plant occurs, continue to drop. The dropping water levels in this portion of the canyon are probably being accelerated by the presence of planted Eucalyptus trees and from well-water drawdown. Further, any change in water level (i.e., rising or dropping) could affect the ability of *Arenaria paludicola* to survive. As indicated in the "Summary of Factors Affecting the Species" section of the rule, however, alteration of hydrology is only one of several factors that threatens this plant with extinction.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Arenaria paludicola* and *Rorippa gambellii* should be classified as endangered species. Procedures found at 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 or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application of *Arenaria paludicola* Rob. (marsh sandwort) and *Rorippa gambellii* (S. Wats.) Roll. & Al-Shehbaz (Gambel's watercress) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The only known occurrence of *Arenaria paludicola* is threatened with habitat modification by the conversion of marsh habitat to more mesic habitats that support grass and shrub-dominated plant communities. The natural rate of succession from marsh habitat to more mesic upland habitat would normally occur over hundreds or thousands of years, but in Black Lake Canyon, the conversion is so rapid that it has been measurable over the past few decades. Aerial photographs from 1949 show the lower portion of the canyon as one wetland with open water and freshwater marsh or bog vegetation along its margins. By 1956, however, aerial photographs showed that willows had encroached into the wetlands and 30 percent of the area was covered with trees (Holland and McLeod 1992). Causes for the conversion are not entirely understood, but probably involve both short-term and long-term processes. The recently released Enhancement Plan for Black Lake Canyon discusses several of these processes, including the probable drop in the water table due to high water intake by planted eucalyptus trees, which were originally planted on adjacent Nipomo Mesa in the late 1800's and have spread throughout the lower half of the canyon. The eucalyptus has an extensive root system that can draw out soil moisture; that, coupled with the large evaporative surface of its foliage, has probably resulted in a significant drawdown of the water table compared to that which the surrounding native vegetation would have accomplished. It is uncertain to what degree the current

use of groundwater by agriculture and existing development has drawn down the water table, and, if so, which portions of the canyon have been affected. An increase in development and concomitant drilling of additional wells could potentially draw down the water table in at least portions of the canyon. At the same time, a recently approved golf course may contribute additional runoff into the upper portion of the canyon. While the complex relationship between the geology, groundwater table, and existing and future land uses of the surrounding watershed merits additional study, habitat for *Arenaria paludicola* has been greatly altered and dimished.

Another factor contributing to the accelerated rate of succession is an increase in sedimentation due to various human activities within the Black Lake Canyon watershed. Of 1,555 acres that were included in the Black Lake Canyon Enhancement Plan, over two-thirds have been developed, are in agriculture, or are covered with eucalyptus, with only one-third remaining in native vegetation. Approximately 200 ownership parcels exist within the watershed; a few larger parcels support orchards (avocado or citrus) or greenhouses and nurseries, but most are smaller parcels supporting individual homesites. A development proposal that includes 515 residential units and a golf course was recently approved for the upper portion of the watershed, and other parcels are currently being subdivided in preparation for development (Land Conservancy of San Luis Obispo County 1992). The sandy soils surrounding the canyon are susceptible to erosion, and trails created by motorcycles, off-road vehicles, horses, and pipeline easements have already created erosion channels that hasten the deposition of sediments from slopes to the bottomlands. Eucalyptus trees may also contribute to increased sedimentation in bog and pond areas by inhibiting the decay of debris because of acid tannins contained in the tree's leaves. Also, large or old trees that topple tend to destabilize the sandy slopes of the canyon, exposing unconsolidated patches of loose soil (Holland and McLeod 1992).

A series of below average rainfall years has resulted in a reduced base flow within Black Lake Canyon, which may already have altered the hydrological regime for the plant. It is probable that the drilling of new water wells will also have an effect on the hydrology of the canyon. One occurrence of *Rorippa gambellii* co-occurs with *Arenaria paludicola* at Black Lake Canyon and is threatened by the same alteration of hydrologic regime discussed above.

The habitat for *Rorippa gambellii* at Oso Flaco Lake is threatened with modification of habitat due to encroachment of sand from adjacent dunes. Efforts to revegetate dunes that had been previously denuded by off-road vehicle activity have been marginally successful, but are continuing (Wickenheiser 1989; DPR in litt. 1992). At Little Oso Flaco Lake, habitat for *Rorippa gambellii* is threatened by the lack of a permanent water source. This site's water source is made available in party by agricultural activities in adjacent farmlands, and may fluctuate on a seasonal and annual basis.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Although these species are not presently sought after by collectors, they are vulnerable to taking, because of their limited distribution. The increased public attention that may be brought to bear as a result of this rule could potentially increase the desirability of these species, thereby increasing the threat of collection.

C. *Disease or predation.* Not known to be applicable.

D. *The inadequacy of existing regulatory mechanisms.* Under the California Endangered Species Act (Division 3, Chapter 1.5, sec. 2050 *et seq.*), the California Fish and Game Commission has listed *Arenaria paludicola* as endangered and *Rorippa gambellii* as threatened (14 California Code of Regulations sec. 670.2). Although this statute prohibits the "take" of State-listed plants (chapter 1.5 sec. 2080), State law appears to exempt the taking of such plants via habitat modification or land use change by the landowner. After the California Department of Fish and Game notifies a landowner that a State-listed plant grows on his or her property, State law requires only that the landowner notify the agency "at least 10 days in advance of changing the land use to allow salvage of such plant" (Chapter 10 sec. 1913). State law requires State agencies to consult with the Service on projects that may potentially affect federally listed plants, thereby conferring a certain measure of protection for populations located on State Parks property.

The County of San Luis Obispo has designated a portion of Black Lake Canyon as a Sensitive Resource Area (SRA), thereby restricting land use in the area. However, the boundaries of the SRA have been a subject of discussion between the County, local landowners, and environmentalists for several years, and an amendment to the County General Plan altering the boundaries has been on hold for several years. The Black Lake Canyon Enhancement Plan was developed by the Land Conservancy of San Luis Obispo County with funds from the Coastal Conservancy in an attempt to resolve land management and planning issues surrounding Black Lake Canyon. The Plan includes recommendations to remove Eucalyptus and restore native vegetation to certain portions of the canyon. Such activities would theoretically be of benefit to *Arenaria paludicola* and *Rorippa gambellii*, but the plan has not yet been adopted by the County. The County is aware that development pressures in the Black Lake Canyon area may have adverse effects on the two plants, and have indicated that they continue to receive development applications from that part of the county (County of San Luis Obispo, in litt. 1991).

Under section 404 of the Clean Water Act, the U.S. Army Corps of Engineers (Corps) regulates the discharge of fill into waters of the United States, including wetlands. However, no permit is necessary if the fill is less than 1 acre in size, and if the fill is between 1 and 10 acres in size, a Nationwide Permit Number 26 is issue by default within 20 days unless it is determined that an individual permit is required. Ongoing activities related to urban and agricultural use of the area that may result in fill within Black Lake Canyon may, therefore, have little to no regulation by the Corps, since these areas are typically less than 10 acres in size.

E. *Other natural or manmade factors affecting its continued existence.* Eucalyptus trees were planted at Black Lake Canyon several decades ago. These non-native trees are altering the habitat of *Arenaria paludicola* by increasing the amount of shade, reducing the local water availability, and possibly introducing organic compounds that inhibit growth of other species into the surrounding substrate (Morey 1990, Holland and McLeod 1992). Eucalyptus removal is scheduled to begin on a limited basis in 1993, and on an expanded basis in future years.

Because of the limited numbers of individuals and populations, and the limited amount of remaining marsh habitat for both species, *Arenaria paludicola* and *Rorippa gambellii* are subject to several types of stochastic extinction. Genetic viability is reduced in small populations, resulting in inbreeding depression and the inability to adapt to changing environmental conditions. Limited number of

individuals and populations also leave these species vulnerable to extinction and potentially unable to recover from a single human-caused or random natural event, such as flood, drought, disease, or predation.

Arenaria paludicola is known from only one location, and only three individuals were found during recent surveys. *Rorippa gambellii* is known from only three locations, with an approximate total of 1,000 individuals. The historic range of each of these two species has been much reduced by urban development, changes in the hydrology of the watershed and ensuing rapid succession, and competition with exotic species. Because of the small number of populations and individuals remaining, and the limited amount of remaining marsh habitat, any single human-caused, or random natural event, such as flood, drought, or disease, could cause the extinction of these species. *Arenaria paludicola*, with only three individuals known to be extant, is particularly vulnerable; any disturbance event could cause the extinction of the species. Because so few individuals and/or populations remain for these two species, making them extremely vulnerable to any human-caused or random natural event, the Service finds that good cause exists for this rule to take effect immediately upon publication in accordance with 5 U.S.C. 553(d)(3).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Arenaria paludicola* (marsh sandwort) and *Rorippa gambellii* (Gambel's watercress) as endangered, because of their limited numbers and distribution, loss of freshwater marsh habitat due to changes in the hydrological regime, competition from non-native species, and encroachment of sand from adjacent coastal dunes. Because these two plants are in danger of extinction throughout all or a significant portion of their ranges, they fit the definition of endangered as defined in the Act. For reasons discussed below, the Service is not proposing to designate critical habitat for these plant species at this time.

Critical Habitat

Section 4(a)(3) of the Act requires, to the maximum extent prudent and determinable, that the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for these species. As discussed under Factor B in the "Summary of Factors Affecting the Species" section, these plants are vulnerable to taking. The publication of precise descriptions and maps required when designating critical habitat would increase the degree of threat to these plants from possible take or vandalism, and, therefore, could contribute to their decline and increase enforcement problems. The listing of species as either endangered or threatened publicizes the rarity of the plants, and, thus, can make these plants attractive to researchers, curiosity seekers, or collectors of rare plants. All involved parties and principal landowners have been notified of the location and importance of protecting these species' habitats. Protection of these species' habitats will be addressed through the recovery process and through the section 7 consultation process. Therefore, the Service finds that designation of critical habitat for these plants is not prudent at this time; such designation likely would increase the degree of threat from vandalism, collecting, or other human activities.

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 States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. section 7(a)(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 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. The Corps of Engineers, through its permitting authority under section 404 of the Clean Water Act, may become involved as a result of this listing.

Listing of these two plants as endangered will provide for the development of a recovery plan. Such a plan will bring together both State and Federal efforts for their conservation. The plan will establish a framework for cooperation and coordination among agencies in conservation efforts. The plan will set recovery priorities and estimate costs of various tasks necessary to accomplish them. It also will describe site-specific management actions necessary to achieve conservation and survival of the two plants.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 for endangered species set forth a series of general prohibitions and exceptions that apply to all endangered plants. With respect to *Arenaria paludicola* and *Rorippa gambellii*, 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 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 or foreign commerce; remove and reduce to possession the species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any area under Federal jurisdiction; or remove, cut up, dig up, damage or destroy any such endangered plants 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. The Service anticipates that few trade permits would ever by sought or issued for either of the two species, because they are not common in cultivation or in the wild. Requests for copies of the regulations on listed plants and wildlife and inquiries regarding them 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).

National Environmental Policy Act

The 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).

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Author

The primary author of this final rule is Constance Rutherford, Ventura Field Office, U.S. Fish and Wildlife Service (see **ADDRESSES** section); telephone 805/644–1766 or 818/904–6040.

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) for plants by adding the following species, in alphabetical order under the families indicated, to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	*	*	*	*	*	*
Brassicaceae—Mustard family:						
*	*	*	*	*	*	*
Rorippa gambelli	Gambel's watercress	U.S.A. (CA), Mexico	E	511	NA	NA
*	*	*	*	*	*	*
Caryophyllaceae—Pink family:						
*	*	*	*	*	*	*
Arenaria paludicola	Marsh sandwort	U.S.A. (CA, WA)	E	511	NA	NA
*	*	*	*	*	*	*

Dated: July 16, 1993.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 93–18432 Filed 8–2–93; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018—AB73

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Three Vernal Pool Plants and the Riverside Fairy Shrimp

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) determines three plants (*Pogogyne nudiuscula* (Otay Mesa mint), *Orcuttia californica* (California Orcutt grass), and *Eryngium aristulatum* var. *parishii* (San Diego button-celery)) and the Riverside fairy shrimp (*Streptocephalus woottoni*) to be endangered species throughout their respective ranges. These species collectively occur in vernal pools from southwestern Riverside County and western San Diego County, California, to northwestern Baja California, Mexico. One population of *Orcuttia californica* is known from Ventura County. One population of Riverside fairy shrimp is known from Orange County. Habitat loss and degradation due to urban and agricultural development, livestock grazing, off-road vehicle use, trampling, invasion from weedy non-native plants, and other factors threaten the continued existence of these species. This rule implements the protective provisions of the Endangered Species Act (Act) of 1973, as amended, for these four taxa.

EFFECTIVE DATE: August 3, 1993.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Carlsbad Field Office, 2730 Loker Avenue West, Carlsbad, California, 92008.

FOR FURTHER INFORMATION CONTACT: Nancy Gilbert or Ellen Berryman at the above address (619/431–9440).

SUPPLEMENTARY INFORMATION:

Background

The three plants and the fairy shrimp occur in vernal pools, a habitat that forms in areas with Mediterranean climates where slight depressions become seasonally wet or inundated following fall and winter rains. Water remains in these pools for a few months at a time, due to an impervious layer such as hard pan, clay, or basalt beneath the soil surface. Gradual drying occurs during the spring (Holland 1976). The pools form on mesa tops or valley floors and are interspersed among very low hills usually referred to as mima mounds (Zedler 1987).

Pogogyne nudiuscula is a member of the mint family (Lamiaceae), typically blooming from May through June (Munz 1974). This aromatic plant was originally described by Gray (1876), as cited by Howell (1931). *P. nudiuscula* Gray is an erect annual reaching 12 inches (in) (3 decimeters (dm)) in height. The bright green, spatulate leaves have few hairs. Bright purple flowers occur in whorls on spikes. The lack of hairs on the calyx and bracts of this plant differentiate the species from *Pogogyne abramsii*. A large population, originally identified as *P. nudiuscula*, was recently found in Valle de las Palmas, in Baja California, Mexico, 17 miles (28 kilometers (km)) south of the international border (Howard Weir, Dudek and Associates, pers. comm., 1992). However, enough evidence was gathered to describe the Mexican population as a distinct species, and a description of this taxon was expected to be published in the spring of 1993 (Scott McMillan, Department of Biology, San Diego State University, *in litt.*, 1992).

Orcuttia californica Vasey is a member of the grass family (Poaceae). It is associated with deeper pools of water than is *Pogogyne nudiuscula* and *Eryngium aristulatum* var. *parishii*. *O. californica* was first collected by Orcutt and was described by Vasey (1886). Subsequently, this plant was considered the nominate variety of *O. californica*, and several other varieties were also recognized. Reeder (1982) raised the varieties of *O. californica* to species status. This small annual grass reaches 4 in (1 dm) in height, is bright green, and secretes sticky droplets that taste bitter. Inflorescences, borne from May through June, consist of seven spikelets arranged in two ranks, with the upper spikelets overlapping on a somewhat twisted axis. *O. californica* is differentiated from other species in the genus by the following characteristics: teeth of lemma (bract enclosing the floret) 0.2 in (5 millimeters (mm)) long or less, the teeth sharp-pointed or with awns (terminal bristles) 0.2 in (0.5 mm) long or less; culms (stems) usually prostrate, caryopsis (fruit) 0.06–0.07 in (1.5–1.8 mm) long; plants sparingly pilose (bearing soft and straight spreading hairs); and spikelets remote on the axis below, crowded toward the apex.

Eryngium aristulatum Jepson var. *parishii* (Coulter and Rose, 1990) Mathias and Constance (San Diego button-celery) is a member of the parsley family (Apiaceae). It is associated with white clay bottom pools devoid of hard pans. This plant was originally described as *E. parishii* by Coulter and Rose (1900). The plant was reclassified by Jepson (1923) as *E. jepsonii* var. *parishii*. Jepson (1936) returned to the Coulter and Rose (1900) classification. Mathias and Constance (1941) separated *E. aristulatum* from *E. jepsoni* due to morphological characteristics and treated this plant as a variety of *E. aristulatum* (var. *parishii*). *E. aristulatum* var. *parishii* blooms from May through June (Constance 1977). This plant is usually an annual; however, under favorable conditions it facultatively becomes a perennial herb with a perennial tap root. The plant has spreading or ascending shape and reaches a height of 16 in (4 dm). The stems and lanceolate leaves are gray green with spinose lobes giving the plant a prickly appearance. Inflorescences form on short stalks with few-flowered greenish heads at the ends of branches. Its greenish heads, fruits with unequal scales, and bractlets without calloused margins separate *E. aristulatum* var. *parishii* from other varieties.

The Riverside fairy shrimp (*Streptocephalus woottoni*) is a small freshwater crustacean of the Order Anostraca, Family Streptocephalidae. The species was first collected in 1979 by Dr. Clyde Erickson and was identified as a new species in 1985 (Eng *et al.* 1990). The discoverers of this taxon described this animal in the Journal of Crustacean Biology as a new species, and named it *Streptocephalus woottoni* (Eng *et al.* 1990). The species most similar to *S. woottoni* is *S. seali*, discovered by Ryder in 1879. Plumose setae edge the cercopods of mature male *S. woottoni*, whereas spines replace the setae on the distal half of the cercopods in mature *S. seali*. The last abdominal segment is short in both species; however, *S. woottoni* lacks the confluent inner margins of the cercopods characteristic for male *S. seali* and *S. similis*, which was discovered by Baird in 1852. Both males and females of *S. woottoni* have the red color of the cercopods covering all of the ninth and 30 to 40 percent of the eighth abdominal segments; no red extends onto the

abdominal segments of either sex in *S. seali*.

Mature males are between 0.56 in (14 mm) and 0.92 in (23 mm) in length. The frontal appendage is cylindrical, bilobed at the tip, and extends only part way to the distal end of the basal segment of the antenna. The spur of the thumb is a simple bladelike process. The finger has two teeth; the proximal tooth is shorter than the distal tooth. The distal tooth has a lateral shoulder that is equal to about half the tooth's total length measured along the proximal edge. The cercopods are separate with plumose setae along the medial and lateral borders. Mature females are between 0.56 in (14 mm) and 0.84 in (21 mm) in total length. The brood pouch extends to abdominal segments 7, 8, or 9. The cercopods are as in the male.

The conditions that create suitable habitat for these four species are seasonal (vernal) pools of shallow freshwater, which were probably never common. However, agricultural and, more recently, urban development have eliminated the majority of suitable habitat.

A number of studies were conducted on vernal pools in San Diego County. For mapping and description purposes, a standardized system was developed for the designation of these vernal pools (Beauchamp 1979). A series letter is used to denote vernal pools in a general region, and numbers are used to designate several pool groups within the series. Examples include: *Pogogyne nudiuscula* and *Orcuttia californica* are both found in the pools of the "J" series on Otay Mesa (these two species are not known to occur in the same pool), *Eryngium aristulatum* var. *parishii* occurs in several pool series, and the Riverside fairy shrimp is known to occur within two pool series (J and U) in San Diego (the "U" series occurs on the Miramar Naval Air Station).

Historically, *Pogogyne nudiuscula* was known to exist from Otay Mesa of San Diego County (Bauder 1986) to immediately south of the international border in Baja California, Mexico (Moran 1981). The historic range of this species may have extended to the mesas east of Balboa Park and south of Mission Valley in San Diego where vernal pools contain *P. abramsii*, another endangered vernal pool plant (Bauder 1986). The sites in extreme northern Baja California, Mexico, were very likely extirpated (Moran 1981). The current known distribution of *P. nudiuscula* is restricted to some of the remaining vernal pools on Otay Mesa.

Orcuttia californica once occurred in vernal pools from San Quintin, Baja California, Mexico (Moran 1981), northward to Riverside, Los Angeles, and San Diego Counties in southern California. Historically known populations from near Downey and Lakewood in Los Angeles County and near Murietta Hot Springs in Riverside County were extirpated. This species prefers deeper water than *Pogogyne nudiuscula* or *Eryngium aristulatum* var. *parishii*. *O. californica* still occurs in vernal pools on The Nature Conservancy's Santa Rosa Plateau Preserve, in a vernal pool within Salt Creek drainage near Hemet (Dave Bramlet, botanist, *in litt.*, 1992), and in the Skunk Hollow pool in Riverside County (Lathrop 1976). In San Diego County, this species is present in pools on Otay Mesa (Bauder 1986). One population of *O. californica* is present in a vernal pool in Woodland Hills of Ventura County. The current population status of *O. californica* in Baja California, Mexico, is unknown. Agricultural development is widespread and increasing in areas where vernal pool habitat is typically found (Moran 1981).

Eryngium aristulatum var. *parishii* once occurred from Riverside County, California, south to northern Baja California, Mexico (Constance 1977). This species currently occurs on the Santa Rosa Plateau in Riverside County; on Otay Mesa, Kearny Mesa, Del Mar Mesa, Miramar Naval Station, and Camp Pendleton in San Diego County; and in northern Baja California, Mexico. A number of sites were eliminated in recent years. Although this species remains comparatively widespread within and adjacent to remaining vernal pools, vernal pool habitat has greatly declined, and most of the remaining pools face one or more threats. Additionally, the distribution of *E. aristulatum* var. *parishii* is patchy, which makes it more vulnerable to local extinction than more evenly distributed species (Bauder 1986).

The Riverside fairy shrimp is known from four vernal pools in a 37 square mile (91 square km) area near Temecula in southwestern Riverside County (Eng *et al.* 1990), and from one population in Orange County. In San Diego County in the fall of 1989, this species was discovered within vernal pools on Miramar Naval Air Station and Otay Mesa (Marie Simovich, University of San Diego, *in litt.*, 1989). However, since the 1989 discovery of the species in San Diego County, numerous vernal pool complexes in the county have been surveyed by Simovitch, but no additional populations of Riverside fairy shrimp have been found. This species was also found at two locations in Baja California, Mexico: Valle de las Palmas, 28 kilometers south of the Mexican border; and approximately 37 kilometers south of El Rosario (H. Weir, and J. Brown, Dudek and Associates, pers. comm., 1992). Urban and agricultural development currently threaten all four remaining pools supporting the fairy shrimp in Riverside County. The distribution of these three plant and one crustacean vernal pool species among pool group sites is summarized in the following table.

DISTRIBUTION OF SPECIES AMONG POOL GROUP SITES

Pool group sites	*Pogogyne nudiuscula*	*Orcuttia californica*	*Eryngium aristulatum* var. *parishii*	Riverside fairy shrimp
San Diego County:				
Otay Mesa	x	x	x	x
Kearny Mesa			x	
Miramar Naval Station			x	x
Camp Pendleton			x	
San Marcos			x	
Penasquitos			x	

DISTRIBUTION OF SPECIES AMONG POOL GROUP SITES—Continued

Pool group sites	*Pogogyne nudiuscula*	*Orcuttia californica*	*Eryngium aristulatum* var. *parishii*	Riverside fairy shrimp
Riverside County:				
Santa Rosa Plateau		x	x	
Skunk Hollow		x		x
Salt Creek		x		
Pechanga Indian Res				x
Murrieta Golf Course				x
Ventura County		x		
Orange County				x
Baja California, Mexico	x			x

Previous Federal Action

Federal action on two of the plant species began when the Secretary of the Smithsonian Institution, as directed by section 12 of the Endangered Species Act (Act) of 1973, prepared a report on those native plants considered to be endangered, threatened, or extinct in the United States. This report (House Document No. 94–51) was presented to Congress on January 9, 1975, and included *Pogogyne nudiuscula* and *Orcuttia californica*, but not *Eryngium aristulatum* var. *parishii*. On July 1, 1975, the Service published a notice accepting the report as a petition under section 4(c)(2) (now section 4(b)(3)(A)) of the Act (40 FR 27823), and gave notice of the status review of *P. nudiuscula* and *O. californica*. On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species, including *O. californica* and *E. aristulatum* var. *parishii*, but not *P. nudiuscula*, to be endangered species pursuant to section 4 of the Act. This list 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. A summary of general comments received by the Service on the 1976 proposal was published in the **Federal Register** on April 26, 1978 (43 FR 17909).

In 1978, the amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already more than 2 years old. On December 10, 1979, the Service published a notice in the **Federal Register** withdrawing the portion of the June 16, 1976, proposal that was not made final, including *Orcuttia californica* and *Eryngium aristulatum* var. *parishii*.

The Service published an updated notice of review for plants on December 15, 1980 (45 FR 82480). This notice included *Eryngium aristulatum* var. *parishii*, *Orcuttia californica*, and *Pogogyne nudiuscula* as category 1 candidates (species for which the Service has sufficient data in its possession to support a Federal listing proposal as endangered or threatened). On February 15, 1983, the Service published a notice (48 FR 6752) of its prior finding that the listing of these species may be warranted in accordance with section 4(b)(3)(A) of the Act. On October 13, 1983, the Service found that listing of these plant species was warranted but precluded in accordance with section 4(b)(3)(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.

Because it was not identified until 1985, and its existence remained known only to a few scientists until 1988, the proposed rule represented the first Federal action on the Riverside fairy shrimp. The proposed rule to list the three vernal pool plants and the Riverside fairy shrimp as endangered was published in the **Federal Register** on November 12, 1991 (56 FR 57503). A notice that the proposed rule was published in the **Federal Register**, was printed on October 14, 1992 in the Riverside "Press Enterprise" and the "San Diego Union Tribune".

Summary of Comments and Recommendations

The proposed rule and associated notifications solicited all interested parties 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. Four letters were received in support of listing the Riverside fairy shrimp, and two of these letters contributed additional information that is incorporated into the Summary of **Factors Affecting the Species** section presented below. One of the four letters, from the California Department of Fish and Game, also supported listing of the three proposed plants. No other comments were received regarding the Service's position, the proposed action, or data on the proposed species.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Orcuttia californica* Vasey (California Orcutt grass), *Pogogyne nudiuscula* Gray (Otay mesa mint), *Eryngium aristulatum* var. *parishii* (Coulter and Rose, 1990) Mathias and Constance (San Diego button-celery), and the Riverside fairy shrimp (*Streptocephalus woottoni*) should be classified as endangered species. Procedures found at section 4 of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act 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 *Orcuttia californica*, *Pogogyne nudiuscula*, *Eryngium aristulatum* var. *parishii*, and the Riverside fairy shrimp are as follows:

A. The Present or Threatened Destruction, Modification or Curtailment of Its Habitat or Range

The habitat and range of these four species has been greatly reduced. Vernal pools, existing as slight depressions on flat mesas, are found in locations that are especially vulnerable to one or more of the following habitat disturbances: Urban and agricultural development, off-road vehicle use, cattle trampling, human trampling, road development, military activities, and water management activities. Many pool groups were entirely eliminated and replaced with urban or agricultural developments.

Vernal pool habitat in San Diego County has declined by 97 percent (T. Oberbauer, Department of Planning and Land Use, San Diego County, pers. comm., 1990), and most of the remaining pools face one or more threats. Similar declines in habitat have occurred in Riverside and Ventura Counties, and to a lesser degree in Baja California, Mexico. Vernal pool habitat in Los Angeles County has been destroyed. In Orange County, 90 to 98 percent of the historical vernal pool habitat has been eliminated (F. Roberts, Service, pers. comm., 1993). Vernal pool flora in Orange County has not been well documented. Most of the remaining vernal pools face one or more threats in the rapidly growing southern California area.

The vernal pool habitat upon which these four species depend is also vulnerable to destruction due to alteration of the watershed. In some cases, an increase in pool water volume due to urban run-off has led to more prolonged periods of inundation, and at the other extreme, some pools have been drained or blocked from their source of water. *Orcuttia californica* usually occurs in the deepest portion of vernal pools and occurs in some pools with marshy elements. Hence, it is more likely to be adversely affected by the latter type of drainage alterations.

Pools have also been degraded due to the use of off-road vehicles, which have impacted the habitats of all four species. These vehicles compact soils, crush plants when water is in the pools, cause turbidity, and leave deep ruts. The damage may alter the microhydrology of the pools. Dirt roads that go through or adjacent to pools are widened as motorists try to avoid the inevitable mud puddles. Thus, pools are gradually destroyed by vehicles traveling on dirt roads. Vehicle access and damage has occurred on virtually all remaining vernal pool complexes.

Otay Mesa, where all four species occur, has the most threats of habitat damage of all the sites. The Service is aware of 37 separate proposed precise development plans and tentative maps that have been filed for Otay Mesa, as required by the California Environmental Quality Act. These plans encompass approximately 80 percent of the undeveloped portion of the mesa within the jurisdiction of the City of San Diego and virtually all but four of the remaining vernal pool complexes. Of the four remaining pool complexes, three are adversely affected by other activities or development proposals.

Preliminary designs by the California Department of Transportation for State Route 125 include alignments that sever the existing natural connection between two of the largest remaining vernal pool complexes on Otay Mesa. The construction of this new major highway access route into Otay Mesa would further facilitate its development.

The existing Brown Field Airport is presently being evaluated as a potential site for an international airport servicing San Diego. This proposal includes alternative runway alignments that would destroy portions of one of the two largest remaining vernal pool complexes. A binational airport is also being considered for Otay Mesa, although these plans are too preliminary to allow assessment of potential impacts to vernal pools. An increase in the number of vehicle trips in this area would occur as a result of the airport, and this increased traffic would likely lead to a demand for more roads, which could directly impact the pools.

Habitat trampling, and in some cases trampling of the organisms, due to livestock grazing occurs on Otay Mesa in areas where several vernal pool complexes collectively contain all four of the proposed species. Organisms within the pools may be trampled and killed by livestock prior to reproduction. Soil may become compacted or eroded, and water may be impacted with sediment. *Eryngium aristulatum* var. *parishii* is sometimes able to withstand light trampling because of the buffering effect of its perennial tap root.

Otay Mesa is a common area for travel from Mexico to the United States; hence, habitat and plants are threatened with trampling by humans. Also, the Immigration and Naturalization Service has proposed several projects at the international border, including border lighting, that could result in direct adverse impacts to vernal pools on Otay Mesa, due to construction activities.

In 1979, *Pogogyne nudiuscula* was limited to 10 pool groups on Otay Mesa containing some 170 individual vernal pools. By 1986, this species was extirpated from all but 3 pool groups encompassing about 38 pools. In two groups, the plant was limited to a single pool each and was noticeably declining in the third group. Vehicular activity was occurring in two of the remaining groups and partially explained one of the extirpations. Only one of the pool groups was described as having dense populations of *P. nudiuscula* (Bauder 1986). This site is on protected private land. In the 1990 survey of Otay Ranch, four *P. nudiuscula* populations were confirmed (California Department of Fish and Game 1991).

Pogogyne nudiuscula now only remains in four populations, all located on Otay Mesa. These pools are threatened by various activities; for example, one of the alternatives for a proposed development project would eliminate 80 of 97 of the remaining vernal pools on Otay Mesa containing *P. nudiuscula* (S. McMillan, *in litt.*, 1992). However, proposed mitigation measures for the project would preserve a minimum of 95 percent of the vernal pool habitat (no less than 330 acres south of the Otay River) within the project area. Although the developer's proposed vernal pool preservation plan would include soil stabilization, hydrologic functions could change, and adversely affect vernal pool plants. Final approval of the proposed project and mitigation measures are pending before the City of Chula Vista and County of San Diego (Otay Ranch Joint Planning Project 1992).

In 1979, *Orcuttia californica* occurred on Otay Mesa in 7 pool groups containing 34 vernal pools. By 1986, agricultural plowing had destroyed 11 of these vernal pools. *O. californica* on Otay Mesa presently occurs in only 2 vernal pool groups, which contain 10 vernal pools. All of the remaining 10 pools supporting *O. californica* on Otay Mesa are grazed by livestock; hence, the habitat and plants are impacted by trampling. Five pools were adversely affected by trampling associated with immigrants attempting to cross the Mexico—United States border (Bauder 1986).

Three vernal pool groups in southwestern Riverside County also contain *Orcuttia californica*. One of these complexes is partially preserved within The Nature Conservancy's Santa Rosa Plateau Reserve. Another complex is located within the 14-acre Skunk Hollow pool, the last remaining valley type vernal pool in Riverside County. This pool is often plowed and is within the general locale of a conditionally approved residential development. A

proposed project in the Skunk Hollow area includes major improvements to roads and utility crossings that would directly impact 0.2 acres of the Skunk Hollow watershed. Proposed mitigation consists of experimental watershed creation. Soil sedimentation could still occur as well as impacts to hydrologic function. Several tract projects, already approved within the watershed, would alter the pool hydrology and adversely impact the species therein (Trans-Pacific Consultants 1992). The Service and California Department of Fish and Game are working to find a buyer for the Skunk Hollow site.

A third population of *Orcuttia californica* exists on private unprotected land, southwest of Hemet in the Old Salt Creek drainage area. One pool near the road was disced. These pools are also potentially threatened by widening of an adjacent road.

Eryngium aristulatum var. *parishii* has the largest remaining distribution of the three plant species under consideration herein. In 1979, this species was known from 65 pool groups; by 1986, this plant remained in 61 pool groups. Although several sites receive some protection, the remaining pool groups are threatened by one or more of the following: Urban development, off-road vehicular traffic, habitat trampling associated with cattle, mowing or plowing, highway construction, drainage or watershed alterations (often due to adjacent urban development), military activities (e.g., driving equipment), and trampling associated with migrant workers illegally entering the United States (Bauder 1986).

Two pool groups in Kearny Mesa contain *Eryngium aristulatum* var. *parishii*. The first group is composed of only 5 pools and is a remnant of a broad expanse that once stretched over approximately 15 miles (Bauder 1986). These pools are surrounded by industrial development and have been invaded by weedy species. The second group is composed of 213 pools, but *E. aristulatum* var. *parishii* is only present in less than half of these pools. The southern portion of this pool group was eliminated by State Route 52.

Vernal pools in the Penasquitos area contain *Eryngium aristulatum* var. *parishii*. Two-thirds of these pools were purchased and preserved by the California Department of Transportation to mitigate impacts from highway projects. However, fences surrounding the preserve were broken, and there is evidence of damage by off-road vehicles in the pools. The remaining one-third of this pool group is on privately owned land, and development is proposed for the property.

Three pool groups in the San Marcos area contain *Eryngium aristulatum* var. *parishii*. Each group is on private property, surrounded by development. In 1991, one of these pool groups was vandalized; ditches were created in early spring thereby draining the pools and destroying vernal pool plants. It is unknown whether these pools have recovered from the disturbance.

Two pool groups on Camp Pendleton Marine Corps Base contain *Eryngium aristulatum* var. *parishii*. This species was once believed to be more common on the Base, but most of the plants have since been determined to belong to a different species currently under study (S. Blitz, San Diego State University, pers. comm., 1993). The two populations on the military base are near the unfenced boundary with a housing development. The potential exists that civilians would enter and trample the pools in the area, and that military operations such as tank activity could damage the pools.

The Riverside fairy shrimp has very narrow habitat requirements. This species is only found in deep lowland pools that retain water through the warmer weather of late spring (Clyde Eriksen, Claremont College, *in litt.*, 1992; Jamie King, University of California—Davis, *in litt.*, 1992). Riverside fairy shrimp will not hatch in pools that receive cool waters from early winter rains (Eriksen *in litt.*, 1992), such as those pools on the Santa Rosa Plateau, nor will they hatch in shallow pools.

The Riverside fairy shrimp is vulnerable to land use changes affecting the small number of pools that meet the species' strict habitat requirements. Of the four remaining pools supporting the fairy shrimp in Riverside County, only the Skunk Hollow vernal pool is greater than 1 acre in size. The Skunk Hollow vernal pool, as previously discussed, is within a planned development. Other sites supporting the fairy shrimp may lack some of the typical vegetation of vernal pools, but that condition probably reflects impacts from past agricultural activities. One pool is located within an approved tract for a housing development.

A third pool is on a parcel that is currently proposed for a housing development, adjacent to the Murrieta Golf Course and Highway 79. This pool is in an agricultural field near the Skunk Hollow pool and was disced. The Environmental Impact Report prepared by a consultant for the developer of this project failed to acknowledge the existence of the Riverside fairy shrimp on the site. Representatives of the landowner expressed a willingness to offer some protection for this site. However, as discussed above, a currently proposed road project would impact the pool.

A fourth pool that contains the Riverside fairy shrimp is located partially on private land and partially on the Pechanga Indian Reservation. The portion on private land was cultivated during 1990. The region's drought conditions over the last 2 to 3 years may have rendered the pool dry enough to be plowed. A fifth pool, located on the Pechanga Indian Reservation within a mile of the fourth pool mentioned above, was recently converted into a gravel pit (L. Dobson, Riverside County Transportation and Land Management Agency, pers. comm., 1992). Only one documented Riverside fairy shrimp population occurs in Orange County.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Overutilization is not known to be a factor for these four species; however, unrestricted collecting for scientific or horticultural purposes or excessive visits by individuals interested in seeing rare species can potentially impact these species as a result of increased publicity associated with listing under the Act.

C. Disease or Predation

Orcuttia californica is consumed by cattle in areas where vernal pools are within pastures, as discussed in Factor A. Grazing may occur prior to the setting of seed, that could affect reproductive success. The other three species are not known to be affected by disease or predation.

D. The Inadequacy of Existing Regulatory Mechanisms

Existing regulatory mechanisms are not sufficient to reduce the losses of *Orcuttia californica, Pogogyne nudiuscula, Eryngium aristulatum* var. *parishii*, or the Riverside fairy shrimp. Vernal pools, as isolated wetlands and waters of the United States, are regulated by the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act. The Corps generally does not require individual permits for impacts on less than 1 acre of wetlands or isolated waters of the United States above their headwaters. Most individual vernal pools are less than 1 acre in size.

Section 404 of the Clean Water Act has not historically provided adequate protection to these species from grading or fill activities for most pools. However, in October 1987, the Corps released a Public Notice proposing to

exercise its jurisdiction over vernal pools regardless of size or the lack of sensitive or endangered species in the pools. Since then, the Corps requires individual permits for the discharge of fill into vernal pools.

Section 404 regulates the discharge of fill material, but it does not regulate other activities such as grazing, off-road activity, and seeding with non-native species. Moreover, section 404 of the Clean Water Act does not regulate activities within the watershed (i.e., adjacent upland) of vernal pools. The watershed is an essential component of the vernal pool ecosystem. The disturbance and/or loss of watersheds can result in a greatly reduced volume and duration of water supply in vernal pools and thereby adversely affect all four of the proposed species.

Pools containing the federally listed *Pogogyne abramsii* are subject to individual permit actions under section 404 of the Clean Water Act because of the presence of an endangered species. In the past, *Pogogyne nudiuscula* may have occurred in the same pools as *P. abramsii*, east of Balboa Park and south of Mission Valley in San Diego; however, these pools were lost (Bauder 1986). *Orcuttia californica* and *P. abramsii* are not sympatric. *Eryngium aristulatum* var. *parishii* and *P. abramsii* occur in the same pool group areas in some cases, but do not share the same individual pools. The Riverside fairy shrimp and *P. abramsii* occur in the same pool group area in one case, but may not share the same individual pools. Thus, the listing of *P. abramsii* has not reduced the degree of threat to *P. nudiuscula*, *O. californica*, *E. aristulatum* var. *parishii*, or the Riverside fairy shrimp.

Pogogyne nudiuscula, *Orcuttia californica*, and *Eryngium aristulatum* var. *parishii* are listed as endangered by the California Fish and Game Commission (Commission). Listing by the Commission requires that individuals who wish to possess listed species obtain a memorandum of understanding from the California Department of Fish and Game. Under the California Endangered Species Act of 1985, State lead agencies are required to consult with the California Department of Fish and Game when their projects would affect State listed species. The prohibition against possession does not reduce the degree of threat resulting from adverse modification of vernal pool habitat incidental to other activities such as grading.

No formal programs currently exist to protect the Riverside fairy shrimp. In response to concerns expressed by conservation organizations, the California Department of Fish and Game, the Fish and Wildlife Service, and the County of Riverside conditioned one project to set one pool aside as an area for further study to provide temporary protection for the Riverside fairy shrimp. However, several proposed projects surrounding the pool are expected to adversely impact the pool watershed (Trans-Pacific Consultants 1992). On another site, the Riverside County Planning Director indicated that the County would attempt to prevent grading where an approved development would eliminate one pool. This site, however, was recently cleared. No Federal or State laws protect the Riverside fairy shrimp, and minimal protection given to the species was the result of local planning decisions.

In 1980, the City of San Diego instituted a vernal pool preservation program wherein developers pay a fee to a preservation fund when a project would destroy vernal pools. The amount of the fee required, $4,000.00 per vernal pool acre (usually only a small fraction of a typical acre of land containing vernal pools), is not sufficient to replace the lost habitat that, in some cases, sells for in excess of $100,000 per acre. The City of San Diego has accumulated approximately $700,000 (from collections and interest) through this program for the loss of over 800 pools, and has used this fund to purchase three sites consisting of a total of 21 acres, containing several vernal pools. The remaining small amount of the vernal pool preservation fund will be used for maintenance.

A study on San Diego County vernal pools conducted in 1986 revealed that little protection was afforded vernal pools (Bauder 1986). Vernal pool losses reported since 1979 indicate that 97 percent of pools covered under the City of San Diego's plan and the California Environmental Quality Act were lost. Those pool groups where permits pursuant to section 404 of the Clean Water Act were required showed a 26 percent reduction in the number of pools. Eight percent of the pools on federally-owned lands were lost (Bauder 1986).

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Other factors have greatly impacted the existence of these four vernal pool species, including introduction of non-native plant species, competition with invading species, trash dumping, fire, fire suppression activities, and drought. The low numbers of vernal pool habitats remaining and their scattered distributions make these species vulnerable to extinction due to stochastic events as well.

Many vernal pools on Otay Mesa are dominated by non-native plants such as the common grass *Lolium perenne*. This species is tolerant of inundation and crowds out the native vernal pool species such as *Pogogyne nudiuscula*, *Orcuttia californica*, and *Eryngium aristulatum* var. *parishii*. Ranchers introduced non-native species into some areas to increase the amount of forage available to livestock. Excessive cover of weedy non-native grasses was noted in six of the pool groups that contained *P. nudiuscula* and partially explained two extirpations of this species. The invasion of non-native plants and livestock grazing (as discussed in Factor C) apparently caused the extirpation of *O. californica* from 13 pools. Unprotected pool groups that contain *E. aristulatum* var. *parishii* are also threatened by invasion of weedy non-native plants.

These vernal pool plant species are also vulnerable to competition with marsh species as a result of urban water run-off, and with upland species as a result of a lack of water in pools, as discussed under Factor A. An increased domination of these marsh or upland species results in decreased abundance of obligate vernal pool taxa.

Trash dumping also degrades vernal pools. Chunks of concrete, tires, refrigerators, sofas, and other pieces of garbage or debris were found in pools containing these four species. This trash crushes or shades vernal pool plants, disrupts the hydrologic functions of the pool, and in some cases may release toxic substances. Trash dumping threatens the remaining pool groups of *Eryngium aristulatum* var. *parishii*.

During a fire in the summer of 1992, one-fourth of the *Pogogyne nudiuscula* population was burned, and extensive seed damage may have resulted. A fire break made during this fire isolated pools that were formerly connected during heavy rains, and very likely impaired the dispersal of seeds from the unburned pools to burned pools (S. McMillan, pers. comm., 1992).

In the drought year of 1989, *Pogogyne nudiuscula* was only found within 1 pool complex made up of 30 pools with a pool surface area totaling less than 1 acre (Ellen Bauder, San Diego State University, pers. comm., 1989). *P. nudiuscula* remains on a few sites on Otay Mesa in San Diego County.

The geographically restricted range and distribution of these species increases the possibility that agricultural activity, urban development, or other activities in or near these remnant vernal pool

ecosystems could destroy a significant portion of the species' remaining population and habitat. Unpredictable natural events, such as drought or fire, would be devastating to these species due to their fragmented and restricted range. This is especially important for *Orcuttia californica, Pogogyne nudiuscula,* and the Riverside fairy shrimp, as these species are restricted to a few sites.

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 make this rule final. Based on this evaluation, the preferred action is to list *Pogogyne nudiuscula, Orcuttia californica, Eryngium aristulatum* var. *parishii,* and the Riverside fairy shrimp as endangered. For the reasons discussed below, the Service is not designating critical habitat for these species.

As provided by 5 U.S.C. 553(d), the Service has determined that good cause exists to make the effective date of this rule immediate. Delay in implementation of the effective date would place the habitat of the species at risk.

Critical Habitat

Section 4(a)(3) of the Act requires, to the maximum extent prudent and determinable, that the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat for these three plant species and the Riverside fairy shrimp is not prudent at this time. As discussed under Factor A in the "Summary of Factors Affecting the Species," these plant species are vulnerable to trampling. Curiosity seekers may investigate vernal pools and inadvertently further degrade the habitat of these three plants and the Riverside fairy shrimp by trampling. Publication of precise maps and descriptions of critical habitat for the three plants would increase the degree of threat to these plants from take or vandalism as discussed in Factor B and, therefore, could contribute to their decline and increase enforcement problems. The listing of the plants as endangered publicizes their rarity and, thus, can make these plants more attractive to researchers, curiosity seekers, or collectors of rare plants. All involved parties and landowners will be notified of the general location and importance of protecting the habitat of these species. Protection of the habitat of these species will be addressed through the recovery process and through the section 7 consultation process. Therefore, the Service finds that it would not be prudent to determine critical habitat for *Pogogyne nudiuscula, Orcuttia californica, Eryngium aristulatum* var. *parishii,* and the Riverside fairy shrimp at this time, because such designation would increase the degree of threat from vandalism, collecting, or other human activities.

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 States and requires that recovery actions be carried out for all listed species. Such actions are initiated following listing. The protection required from Federal agencies, the prohibitions against taking and harm of the Riverside fairy shrimp, and 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 proposed. 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 the destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such 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 agencies expected to have involvement with these species include the Army Corps of Engineers and the Environmental Protection Agency due to their permit authority under section 404 of the Clean Water Act. Federal Aviation Administration jurisdiction would apply to vernal pools near Montgomery Field within the city limits of San Diego and at Brown Air Field on Otay Mesa. Miramar Naval Air Station contains vernal pools with not only the Riverside fairy shrimp and *Eryngium aristulatum* var. *parishii,* but also *Pogogyne abramsii,* which is presently listed as endangered. Camp Pendleton Marine Corps Base contains some vernal pools with *E. aristulatum* var. *parishii.* The Veterans Administration will be required to consider the consequences of funding housing loans where these species or their habitat occur. The Immigration and Naturalization Service will need to evaluate its activities and its effects on these species. This agency may be able to offer some help where trampling associated with Mexican citizens entering the United States is occurring. The Federal Highway Administration will likely be involved through potentially funding a portion of future highway construction that could affect these species. The Bureau of Indian Affairs may need to evaluate future proposals that may affect the Riverside fairy shrimp.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plants. With respect to the three plants considered herein, 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 or foreign commerce; remove and reduce to possession any such species from areas under Federal jurisdiction. In addition, the 1988 amendments (Pub. L. 100–478) to the Act makes it illegal to 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 can 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 plants under certain circumstances. It is anticipated that few trade permits would ever be sought or issued for the three plant species since these species are not common in cultivation or in the wild. Additionally, these species have

specific germination and growth requirements including seasonal inundation, which would be difficult to recreate in cultivation.

The Act and implementing regulations found at 50 CFR 17.21 for endangered species set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt any of these), import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed wildlife. It also would be illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that was taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits to carry out otherwise prohibited activities involving endangered wildlife are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued for a specified time to relieve undue economic hardship that would be suffered if such relief were not available. The Riverside fairy shrimp is not involved in trade, and such permit requests are not expected.

Requests for copies of the regulations on listed wildlife and plants and inquiries regarding them 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).

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

A complete list of all references cited herein is available upon request from the Carlsbad Field Office (see **ADDRESSES** section).

Author(s)

The primary author of this final rule is Ellen Berryman, U.S. Fish and Wildlife Service, Carlsbad Field Office (see **ADDRESSES** section). This rule was adapted from the proposed rule, the primary authors of which were Mr. Peter A. Stine and Ms. Nancy Gilbert, Carlsbad Field Office, and Ms. Karla Kramer, Eastside Federal Complex, 911 NE 11th Avenue, Portland, Oregon 97232–4181.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulations 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 § 17.11(h) by adding the following, in alphabetical order under Crustaceans, to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Speical rules
Common name	Scientific name						
*	*	*	*	*	*		
Crustaceans:							
*	*	*	*	*	*		*
Shrimp, Riverside fairy	*Streptocephalus woottoni.*	U.S.A. (CA), Mexico ..	NA	E	512	NA	NA
*	*	*	*	*	*		*

3. Amend § 17.12(h) by adding the following, in alphabetical order under the families indicated, to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	*	*	*	*		*
Apiaceae—Parsley family:						

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
* * *	*	* *		*		*
Eryngium aristulatum var. *parishii.*	San Diego—button-celery	U.S.A. (CA)	E	512	NA	NA
Lamiaceae—Mint family:						
* * *	*	* *		*		*
Pogogyne nudiuscula	Otay Mesa mint	U.S.A. (CA), Mexico	E	512	NA	NA
* * *	*	* *		*		*
Poaceae—Grass family:						
* * *	*	* *		*		*
Orcuttia californica	California—Orcutt grass	U.S.A. (CA)	E	512	NA	NA
* * *	*	* *		*		*

Dated: July 15, 1993.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93–18433 Filed 8–2–93; 8:45 am]

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federal register

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August 3, 1993

Part VIII

Department of Agriculture

Rural Electrification Administration

7 CFR Parts 1728 and 1755
Standards and Specifications for Timber Products for REA-Financed Electric and Telephone Systems; Rule

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Parts 1728 and 1755

Standards and Specifications for Timber Products Acceptable for Use on REA-Financed Electric and Telephone Systems

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: The Rural Electrification Administration (REA) hereby amends its regulations on Electric and Telecommunications Standards and Specifications for Materials, Equipment and Construction by incorporation by reference of Wood Poles, Stubs and Anchor Logs and by codifying REA Specification for Quality Control and Inspection of Timber Products, and REA Specification for Wood Crossarms (Solid and Laminated), Transmission Timbers and Pole Keys.

This final rule provides REA electric and telephone borrowers, manufacturers of timber products, and the public with the rules and procedures the manufacturers of timber products must follow, and the standards and specifications the finished products must meet in order to be eligible for use on REA borrowers' systems. This final rule also sets forth the plans of procurement under which the finished timber products may be purchased by or for REA financed borrowers.

EFFECTIVE DATE: This final rule is effective September 2, 1993. Pole and crossarm suppliers will be allowed until February 3, 1994 to supply borrowers with products already produced or currently in the process of manufacturing under previous Bulletins 50–17 or 50–18. Incorporation by reference of certain publications listed in this final rule is approved by the Director of the Federal Register as of September 2, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. H. Robert Lash, Transmission and Timber Specialist, Transmission Branch, Electric Staff Division, Rural Electrification Administration, room 1250-S, 14th and Independence Avenue, SW., Washington, DC 20250–1500, or telephone (202) 720–9098.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final 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 final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule 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; or

(3) require administrative proceedings before parties may file suit challenging the provisions of this rule.

Information Collection and Recordkeeping Requirements

In compliance with the Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and section 3504 of the Act, the information collection and recordkeeping requirements contained in this final 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, New Executive Office Building, Washington, DC 20503.

National Environmental Policy Act Certification

The Administrator of REA has determined that this final 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 program described by this final rule is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.850, Rural Electrification Loans and Loan Guarantees, 10.851, Rural Telephone Loans and Loan Guarantees, and 10.852, Rural Telephone Bank (RTB) Loans. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402, telephone: (202) 720–3238.

Executive Order 12372

This final rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. A Notice of Final Rule entitled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts REA loans and loan guarantees and RTB bank loans from coverage under this Order.

Regulatory Flexibility Act Certification

The Administrator of REA has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This final rule involves standards and specifications, which may increase the direct short-term costs to the REA borrower. However, the long-term direct economic costs are reduced through greater durability and lower maintenance costs over time.

Background

The Rural Electrification Administration (REA) maintains a system of bulletins containing construction standards and specifications for materials and equipment. In accordance with the REA loan contract, these standards and specifications apply to facilities constructed by REA electric and telephone borrowers and contain standard construction units, material items, and equipment units commonly used in REA electric and telephone borrowers' systems.

Presently, REA Bulletins 50–17(DT-5B), REA Specification for Wood Crossarms (Solid and Laminated), Transmission Timbers and Pole Keys; 50–18(DT-5C), REA Specification for Wood Poles, Stubs and Anchor Logs; and 50–24(DT-19), REA Specification for Quality Control and Inspection of Timber Products are incorporated by reference in 7 CFR 1728.97. These three publications contain the REA specifications for timber products to be purchased by or for REA borrowers. By letter dated January 14, 1992, the Director of the Federal Register informed REA that DT-5B(50–17) and DT-19(50–24) are no longer eligible for incorporation by reference in 7 CFR 1728.97 and 1755.97 and that REA Bulletin DT-5C is reapproved for incorporation by reference in 7 CFR 1728.97 and 1755.97.

This final rule amends 7 CFR 1728.97, Incorporation by Reference of Electric Standards and Specifications by removing REA Bulletins 50–17(DT-5B), REA Specification for Wood Crossarms (Solid and Laminated), Transmission Timbers and Pole Keys and 50–24(DT-19), REA Specification for Quality Control and Inspection of Timber Products. These specifications are codified in §§ 1728.201 and 1728.202,

respectively, and are updated to include industry changes.

Bulletin 50–18(DT-5C), REA Specification for Wood Poles, Stubs and Anchor Logs, remains incorporated by reference and is updated to include industry changes.

This final rule redesignates REA Bulletin 50–17(DT-5B) as REA Bulletin 1728H-701; REA Bulletin 50–24(DT-19) as REA Bulletin 1728H-702; REA Bulletin 50–18(DT-5C) as REA Bulletin 1728F-700.

This final rule amends 7 CFR Part 1755, Telecommunications Standards and Specifications for Materials, Equipment and Construction, by reflecting the revisions of Bulletins 1728F-700 and 1728H-702. This rule assists REA electric and telephone borrowers in their efforts to provide electric cooperative members and telephone company subscribers with the most modern and efficient electric and telephone service at the lowest reasonable cost.

This rule primarily changes the specifications and bulletins in the following ways:

(1) The addition of Copper Naphthenate (CuN) as an acceptable preservative system;

(2) Inclusion of the revisions from American National Standards Institute (ANSI) 05.1–1987 into Bulletin 1728F-700;

(3) Revision of usage areas and required retentions for poles;

(4) Removal of carrier types B, D, and E for preservatives; and

(5) Revision of the crossarm specification to include numerous changes brought about in the ANSI crossarm specification.

The addition of CuN to the specifications was requested following final approval by the American Wood-Preservers' Association (AWPA). The Environmental Protection Agency label registration for CuN is "non-restricted use" and does not require special handling or disposal. Newly redesignated REA Bulletin 1728H-701 and REA Bulletin 1728F-700 are revised to include industry changes brought about by revisions of the respective ANSI specifications. The issuance of these bulletins makes CuN treated products available for use by borrowers. REA discovered that an alarming number of cooperatives in the severe decay zone were using standard retention levels, although the heavy retention level is recommended. REA is requiring borrowers in *Use Area 1* to use the heavy retention value for poles. The additional cost of upgrading to the heavy retention level is under $10 per pole in most cases and may increase the service life of the pole by one-third. Due to lack of use by REA financed borrowers, preservative carrier types B and D have been removed from the list of REA acceptable preservatives. Since AWPA has not given preservative carrier type E full approval, REA is removing this preservative from the list of REA acceptable preservatives. Section 1728.202 covers the material that was previously set forth in Bulletin 50–24.

Comments

A notice of proposed rulemaking was published in the Federal Register on April 8, 1991, Vol. 56, No. 67 at 14217–14219. Interested parties were given 30 days in which to comment on the proposed rule. However, comments received after the date were considered. Written comments were received from seven wood treaters, inspection agencies, and other wood treating related organizations. The following relevant comments were received:

Comment

One comment stated that a number of laminating companies were in the process of withdrawing from American Institute of Timber Construction (AITC) for inspection and certification.

Response

REA has added the American Plywood Association (APA) to the list of acceptable organizations for qualifying inspection and testing of laminates. APA has been inspecting and qualifying wood products plants for many years and REA has determined that APA has a qualified staff to perform the work as required.

Comment

Two comments suggested the allowance for alternative wood crossarms was too vague; one suggested that it should not be included.

Response

REA intentionally made these requirements generic, to leave room for future advances in technology. Each product will be reviewed individually for durability, material qualifications, manufacture, quality control, and inspection. Acceptable material will appear in REA Bulletin 1728C-100, List of Materials Acceptable for Use on Systems of REA Electrification Borrowers.

Comment

One comment recommended that the Type 04 crossarm drawing not be removed from the crossarm specification.

Response

REA proposed the removal of this crossarm drawing due to lack of use by borrowers. Since it is still being requested for use by borrowers, REA will keep the crossarm drawing in the specification.

Comment

One comment suggested that borrowers between the 34th and 40th parallels be allowed the option to use either the 0.060 pounds per cubic foot (pcf) or the 0.080 pcf retention of CuN.

Response

Until more service data is obtained from users of CuN, REA is requiring that the 0.080 pcf retention be specified when purchasing poles for this area.

Comment

One comment stated that the AWPA recently approved the use of Ponderosa Pine, Red Pine, Jack Pine, and Lodgepole Pine poles treated with CuN and recommended that REA include these species of poles for treatment with CuN.

Response

While it is true these species of poles, Ponderosa Pine, Red Pine, Jack Pine, and Lodgepole Pine, have been approved by AWPA, no treaters have gone into commercial production, and the poles are not readily available to borrowers. Species of poles that prove to be treatable and are requested for use by borrowers over the next few years may be added to REA's list of acceptable species for CuN treatment.

Comment

One comment questioned the timing of the effective date of this final rule, asking that REA allow treaters in *Use Area 1* to reduce present inventories of poles with "standard retention" prior to implementing the requirements of this rule.

Response

As stated in the effective date section of this rule, producers endeavoring to eliminate their inventory of "standard retention" poles treated before the effective date of this regulation will be allowed to supply REA borrowers in *Use Area 1* with these poles for 6 months.

Comment

One crossarm supplier felt that the requirement to kiln dry all crossarms was an unnecessary burden on the industry. After the close of the comment period, REA received several requests to

continue the current practice of allowing air drying of crossarms.

Response

REA believes the benefits of kiln drying outweigh the negative aspects. Therefore, REA requires all crossarms to be kiln dried.

List of Subjects

7 CFR Part 1728

Electric power, Incorporation by reference, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 1755

Incorporation by reference, Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telephone.

Chapter XVII of title 7 of the Code of Federal Regulations is amended as follows:

PART 1728—ELECTRIC STANDARDS AND SPECIFICATIONS FOR MATERIALS AND CONSTRUCTION

1. The authority citation for part 1728 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*

2. Section 1728.97(b) is amended by removing the entries for Bulletins 50–17, 50–18, and 50–24, and adding to the list of bulletins approved for incorporation by reference, in numerical order, Bulletin 1728F-700 to read as follows:

§ 1728.97 Incorporation by reference of electric standards and specifications.

* * * * *

(b) *List of Bulletins.*

* * * * *

Bulletin 1728F-700, "REA Specification for Wood Poles, Stubs and Anchor Logs" (August 1993).

3. Sections 1728.201 and 1728.202 are added to read as follows:

§ 1728.201 REA Bulletin 1728H-701, REA Specification for Wood Crossarms (Solid and Laminated), Transmission Timbers and Pole Keys.

(a) *General provisions.* (1) This section implements contractual provisions between REA and borrowers receiving financial assistance from REA. The contractual agreement between REA and its borrowers requires the borrower's system to be constructed in accordance with REA accepted plans and specifications. Each REA electric borrower must purchase only wood crossarms produced in accordance with the specification in this section.

(2) Each REA electric borrower shall require each contractor to agree in writing to furnish only materials produced in accordance with the specification in this section.

(3) This specification describes the minimum acceptable quality of wood distribution crossarms and transmission crossarms (hereinafter called crossarms) that are purchased by or for REA borrowers. Where there is conflict between this specification and any other specification referred to in this section, this specification shall govern.

(4) Various requirements relating to quality control and inspection are contained in § 1728.202 of this part, REA Specification for Quality Control and Inspection of Timber Products. Section 1728.201 of this part and the American National Standards Institute (ANSI) 05.2, 1983, American National Standard for Wood Products—Structural Glued Laminated Timber for Utility Structures, shall be followed exactly and shall not be interpreted or subjected to judgment by the quality control person or an independent inspector.

(5) The borrower shall purchase from producers only material that meets the requirements of this specification. Each purchaser shall use a written purchase order to purchase material for use in REA financed systems in order to insure compliance with the standards and specifications of this part. The written purchase order shall contain a provision that specifically requires the producer to comply with the provisions of this part. The purchase order shall contain a provision that specifically requires the producer to make the treating plant, and storage areas available, during normal business hours, in order for representatives of either the purchaser or REA to inspect such to determine compliance with the standards and specifications of this part.

(6) The borrower shall insure that the producer provides the inspectors with full information (drawings, etc.) relating to the requirements contained in purchase order which is supplementary to this specification.

(7) The borrower shall insure that the producer maintains, or has access to, adequate laboratory facilities at or very near the treating plant. All chemical tests, assays or analyses associated with the treatment shall be independently performed in this laboratory by both the quality control designee and the borrower's inspector. If acceptable to REA on a case-by-case basis, the producer may use a central laboratory.

(8) Inspection and treatment of all timber products produced under this specification should be performed after receipt of the order from the purchaser, except as provided for reserve treated stock.

(9) The borrower shall insure that each inspection agency maintains its own central laboratory with qualified staff capable of completely analyzing the preservative and treatments. If acceptable to REA, this central laboratory may be used for the independent inspector's routine assays, with results made available the next working day.

(10) The testing and inspection of the lamination process shall be in accordance with American Institute of Timber Construction (AITC) 200–83, Inspection Manual.

(11) With the exception of reserve treated stock, all invoices for treated timber products shall be accompanied, in duplicate, by a copy of the producer's Certificate of Compliance and a copy of either the Independent Inspection Report or a Quality Assurance Plan Certificate. The certificate shall be presented to the purchaser with the invoice. For reserve treated stock, inspection reports shall be available from the inspection agency. When shipped from reserve stock, the invoice shall bear an endorsement and a further certification by the producer that the material meets the requirements of this specification and any supplementary requirements cited in the purchase order under which it is purchased.

(12) Crossarms shall be warranted to conform to this specification. If any crossarm is determined to be defective or does not conform to this specification within 1 year after shipment to the borrower, it shall be replaced as promptly as possible by the producer. In the event of failure to do so, the purchaser may make such replacement and the cost of the crossarm, at destination, recoverable from the producer.

(b) *Definitions.*

Arm refers to structural wood member used to support electrical conductors.

Certificate of compliance is a certification by an authorized employee of the producer that the material shipped meets the requirements of this specification and any supplementary requirements specified in a purchase order from a borrower or the borrower's contractor.

Crossarm is a term used interchangeably with arm.

Independent inspection relates to examination of material by an independent inspector employed by a commercial inspection agency.

Inspection means an examination of material in sufficient detail to insure conformity to all phases of the specification under which it was purchased.

Lot is a quantity of crossarms of like size, conditioning, and fabrication, usually making up one treating charge.

Producer is used to describe the party who manufactures and treats crossarms.

Purchaser refers to either the REA borrower or contractors acting as the borrower's agent, except where a part of the specification specifically refers to only the REA borrower or the contractor.

Quality control designee refers to an individual designated by the producer to be responsible for quality control.

Reserve treated stock consists of timber products treated in accordance with this specification, prior to and in anticipation of the receipt of specific orders, and held in storage ready for immediate shipment.

Supplier is a term used interchangeably with producer, or in some cases, may be the distributor selling crossarms to the borrower.

Treating plant is the organization that applies the preservative treatment to the crossarms.

(c) *Related specifications and standards incorporated by reference.*

The following specifications and standards are incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of each reference are available for inspection during normal business hours at REA, room 1250-S, U.S. Department of Agriculture, Washington, DC 20250 or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. Copies of these standards and specifications may be purchased from the addresses shown below.

(1) West Coast Lumber Inspection Bureau, Standard No. 17, Grading Rules for West Coast Lumber, September 1, 1991, available from West Coast Lumber Inspection Bureau, P.O. Box 23145, Portland, Oregon 97223, telephone (503) 639–0651, Fax (503) 684–8928.

(2) Southern Pine Inspection Bureau, Standard Grading Rules for Southern Pine Lumber, October 15, 1991, available from Southern Pine Inspection Bureau, 4709 Scenic Highway, Pensacola, Florida 32504, telephone (904) 434–2611.

(i) Southern Pine Inspection Bureau, Special Product Rules for Structural, Industrial, and Railroad-Freight Car Lumber, October 15, 1991, available from Southern Pine Inspection Bureau, 4709 Scenic Highway, Pensacola, Florida 32504, telephone (904) 434–2611.

(ii) Reserved.

(3) American Wood Preservers' Association (AWPA), Book of Standards, 1991 edition, available from AWPA, P.O. Box 286, Woodstock, Maryland 21163–0286.

(i) A1–91, Standard Methods for Analysis of Creosote and Oil-Type Preservatives.

(ii) A2–91, Standard Methods for Analysis of Waterborne Preservatives and Fire-Retardant Formulations.

(iii) A3–91, Standard Methods for Determining Penetration of Preservatives and Fire Retardants.

(iv) A5–91, Standard Methods for Analysis of Oil-Borne Preservatives.

(v) A6–89, Method for the Determination of Oil-Type Preservatives and Water in Wood.

(vi) A7–75, Standard Wet Ashing Procedure for Preparing Wood for Chemical Analysis.

(vii) A9–90, Standard Method for Analysis of Treated Wood and Treating Solutions by X-Ray Spectroscopy.

(viii) A11–83, Standard Method for Analysis of Treated Wood and Treating Solutions by Atomic Absorption Spectroscopy.

(ix) C1–91, All Timber Products—Preservative Treatment by Pressure Processes.

(x) C4–91, Poles—Preservative Treatment by Pressure Processes.

(xi) C8–91, Western Red Cedar and Alaska Yellow Cedar Poles—Preservative Treatment by the Full-Length Thermal Process.

(xii) C10–91, Lodgepole Pine Poles—Preservative Treatment by the Full-Length Thermal Process.

(xiii) C12–90, Western Larch Poles—Full-Length Preservative Treatment by Thermal Process.

(xiv) M1–90, Standard for the Purchase of Treated Wood Products.

(xv) M2–91, Standard for Inspection of Treated Timber Products.

(xvi) M3–81, Standard Quality Control Procedures for Wood Preserving Plants.

(xvii) M4–91, Standard for the Care of Preservative-Treated Wood Products.

(xviii) P1/P13–91, Standard for Coal Tar Creosote for Land and, Fresh Water and Marine (Coastal Water Use).

(xix) P5–91, Standards for Waterborne Preservatives.

(xx) P8–91, Standards for Oil-Borne Preservatives.

(xxi) P9–91, Standards for Solvents and Formulations for Organic Preservative Systems.

(4) American Institute of Timber Construction (AITC) 200–83, Inspection Manual, 1987 edition, available from AITC, 333 West Hampden Avenue, Englewood, Colorado 80110, telephone (303) 761–3212.

(5) American National Standards Institute (ANSI) 05.2–1983, American National Standard for Wood Products—Structural Glued Laminated Timber for Utility Structures, available from ANSI, 1430 Broadway, New York, New York 10018.

(6) American Society for Testing and Materials (ASTM) D9–87 (1992), Standard Terminology Relating to Wood, available from ASTM, 1916 Race Street, Philadelphia, PA 19103–1187, telephone number (215) 299–5585.

(d) *Independent inspection plan.*

This plan or a Quality Assurance Plan, as described in paragraph (e) of this section, is acceptable for supplying crossarms. All crossarms produced under the independent inspection plan for use on an REA financed system shall be inspected by a qualified independent inspector in accordance with § 1728.202 of this part.

(1) The borrower has the prerogative to contract directly with the inspection agency for service. The borrower should, where practical, select the inspection agency so that continual employment is dependent only on performance acceptable to the borrower and in accordance with this specification. The selected inspection agency shall not subcontract the service to any other inspection agency without the prior written consent by the borrower.

(2) The producer shall not be a party to the selection of the inspection agency by the borrower and shall not interfere with the work of the inspector, except to provide notification of the readiness of material for inspection. To obtain the inspection services for reserve stock, the producer may deal directly with the inspection agency. Under the Independent Inspection Plan, the producer shall not treat material before it has been properly inspected in the white, as evidenced by the inspector's hammer mark.

(3) The methods of inspection described in this section and in § 1728.202 of this part shall be used no matter which plan crossarms are produced under, i.e., Independent Inspection Plan, or Quality Assurance Plans, as described in this section. The number of crossarms actually inspected by monitors of quality control under a Quality Assurance Plan may vary from the number of crossarms inspected under the Independent Inspection Plan.

(e) *Quality assurance plans.*

The producer shall furnish crossarms conforming to this specification as monitored by a Quality Assurance Plan acceptable to REA. REA borrower groups or agents for borrower groups endeavoring to operate Quality

Assurance Plans shall submit their plan for assuring quality control to the Director, Electric Staff Division, Rural Electrification Administration, Washington, DC 20250–1500, for specific approval prior to contracting with REA borrowers under such plans.

(f) *Material requirements.* (1) *Material and grade.* All crossarms furnished under this specification shall be free of brashy wood, decay, and insect holes larger than 3/32 of an inch (0.24 cm), and shall meet additional requirements as shown on specific drawings. They shall be made of one of the following:

(i) Douglas-fir which conforms to the applicable crossarm provisions of paragraphs 170 and 170a, or the applicable transmission arm provisions of paragraphs 169 and 169a of the 1991 Standard Grading Rules for West Coast Lumber No. 17. All references to Douglas-fir shall be of coastal origin;

(ii) Southern Yellow Pine which conforms to the provisions of Dense Industrial Crossarm 65, as described in paragraph 31.2 in Southern Pine Inspection Bureau 1991 Special Product Rules for Southern Pine; or

(iii) Laminated wood crossarms shall conform to ANSI 05.2–1983, and have at least the same load carrying capacity as the solid sawn arm it replaces. The load carrying capacity of the laminated arms shall be determined by one of the procedures outlined in ANSI 05.2.

(2) Borrowers may use alternative wood crossarms that are listed in REA Bulletin 1728C-100, List of Materials Acceptable for Use on Systems of REA Electrification Borrowers.

(3) *Knots.* Sound, firm, and tight knots, if well spaced, are allowed.

(i) Slightly decayed knots are permitted, except on the top face, provided the decay extends no more than 3/4 of an inch (1.91 cm) into the knot and provided the cavities will drain water when the arm is installed. For knots to be considered well spaced, the sum of the sizes of all knots in any 6 inches (15.24 cm) of length of a piece shall not exceed twice the size of the largest knot permitted. More than one knot of maximum permissible size shall not be in the same 6 inches (15.24 cm) of length. Slightly decayed, firm, or sound "Pin knots" (3/8 of an inch (0.95 cm) or less) are not considered in size, spacing, or zone considerations.

(ii) Knots are subject to the following limits on size and location:

Knot Limits For Distribution Arms

DRAWING M-19 (SEE FIGURE 1, EXHIBIT A)

ALL DIMENSIONS IN INCHES

Class of Knot and Location	Maximum Knot Diameter	
	Close Grain	Dense Grain
Round Knots		
Single Knot: Maximum Diameter		
Center Section*		
Upper Half	3/4	1
Lower Half	1	1–1/4
Elsewhere	1–1/4	1–1/2
Sum of Diameters in a 6-Inch Length: Maximum		
Center Section		
Upper Half	1–1/2	2
Lower Half	2	2–1/2
Elsewhere	2–1/2	3

Inch	Cm
3/4	1.91
1	2.54
1–1/4	3.18
1–3/8	3.49
1–1/2	3.81
1–3/4	4.45
1–7/8	4.76
2	5.08
2–1/4	5.72
2–1/2	6.35
3–1/4	8.26
3–1/2	8.89
3–5/8	9.21
4–5/8	11.75
5–5/8	14.29
7–3/8	18.73
9–3/8	23.81

Knot Limits For Transmission Arms

(SEE FIGURE 2, EXHIBIT A)

ALL DIMENSIONS IN INCHES

Pole Mounting Hole Zone*	Maximum Diameter For Single Knot
Upper Half (inner zone)	3/4
Upper Half (outer zone)	1 for close grain 1–1/4 dense grain

Other Locations Transmission Arm Size**	Narrow Face	Wide Face (Two Sides)	
		Edge	Along Centerline
4–5/8 x 5–5/8 or less	1	1–1/4	1–1/4
5–5/8 x 7–3/8	1–1/4	1–3/8	1–7/8
3–5/8 x 9–3/8	3/4	1–3/4	2–1/4

*No knot will be closer than its diameter to the pole mounting hole.

**For cross sections not shown, refer to grading rules.

(iii) Knot clusters shall be prohibited unless the entire cluster, measured on the worst face, is equal to or less than the round knot allowed at the specific location.

(iv) Spike knots shall be prohibited in deadend arms. Any spike knot across the top face shall be limited to the equivalent displacement of a knot 3/8 of an inch (0.95 cm) deep on one face and the maximum round knot for its particular location on the worst face, with a maximum width of 1 inch (2.54 cm) measured at the midpoint of the spiked section. Elsewhere across the bottom or side faces, spike knots shall not exceed 1/2 the equivalent displacement of a round knot permitted at that location, provided that the depth of the knot on the worst face shall not exceed the maximum round knot allowed at that location.

(v) Loose knots and knot holes shall drain water when the arm is normally installed. In the center section, upper half, they shall not be greater than 1/2 the dimensions of round knots. Elsewhere, they shall not be greater than the round knot dimension. They shall be prohibited in deadend arms.

(vi) All knots except those "spike" knots intersecting a corner shall be measured on the least diameter of the knot.

(vii) A knot shall be considered to occupy a specific zone or section if the center of the knot (i.e. pith of knot) is within the zone or on the zone's boundary.

(viii) If a round or oval knot appears on two faces and is in two zones, each face shall be judged independently. When this does not occur, average the least dimension showing on both faces. Knots which occur on only one face of a free of heart center (FOHC) arm shall be permitted to be 25 percent larger than the stated size.

(ix) *Knot spacing.* Two or more knots opposite each other on any face shall be limited by a sum not to exceed the size of a maximum single knot permitted for the location. On all four faces, all knots shall be well spaced.

(x) Knots which have a maximum of 5/8 inch (1.59 cm) diameter may intersect pin holes in the center section. One inch (2.54 cm) diameter knots may intersect pin holes elsewhere.

(4) *Miscellaneous characteristics, features and requirements.*

(i) The top face of distribution crossarms shall not have more than four medium pitch and bark pockets in 8 foot (2.4 m) arms, and not more than five pitch and bark pockets in 10 foot (3.0 m) arms. Elsewhere a maximum of six medium pockets in 8 foot (2.4 m) arms and eight in 10 foot (3.0 m) arms shall

be permitted. Equivalent smaller pockets shall be permissible. An occasional large pocket is permissible.

(ii) Shakes shall be prohibited.

(iii) *Checks.* Prior to treatment on properly seasoned arms, single face checks shall not exceed an average penetration of 1/4 the depth from any face and shall be limited to 10 inches (25.40 cm) long on the top face, and 1/3 the arm length on the other faces. Checks shall not be repeated in the same line of grain in adjacent pin holes. The sum of the average depths of checks occurring in the same plane on opposite faces shall be limited to 1/4 the face depth.

(iv) Compression wood shall be prohibited on any face. It is permitted if wholly enclosed in the arm, more than six annual rings from the surface, and not over 3/8 of an inch (0.95 cm) in width.

(v) Insect holes larger than 3/32 of an inch (0.24 cm) shall be prohibited. Pin holes (i.e. holes not over 1/16 of an inch (0.16 cm) diameter) shall be allowed if scattered and not exceeding 10 percent of the arm girth.

(vi) Wane shall be allowed on one edge, limited to approximately 1 inch (2.54 cm), measured across the corner. Outside of the top center section, an aggregate length not to exceed 2 feet may have wane up to 1–1/2 inches (3.81 cm) on an occasional piece on one or both edges. Bark shall be removed.

(vii) Prior to preservative treatment, crook, bow, or twist shall not exceed 1/2 of an inch (1.27 cm) in 8 foot arms (2.4 m) and 5/8 of an inch (1.59 cm) in 10 foot (3.0 m) arms.

(g) *Manufacture.* (1) All dimensions and tolerances shall conform to those shown on the drawings in this section or drawings supplied with the purchase order. Drawings supplied shall meet or exceed minimum dimensions and tolerances shown on the drawings in this section. Cross-sectional dimensions shall be measured and judged at about 1/4 the arm length, except when the defects of "skip dressing" or "machine bite or offset" are involved.

(2) Lamination techniques shall comply with ANSI 05.2–1983.

(3) Pin and bolt holes shall be smoothly bored without undue splintering where drill bits break through the surface. The center of any hole shall be within 1/8 of an inch (0.32 cm) of the center-line locations on the face in which it appears. The holes shall be perpendicular to the starting and finishing faces.

(4) *Shape.* The shape of the arms at any cross section, except for permissible wane, shall be as shown on the respective drawings in this section or supplied with the order. The two top edges may be either chamfered or rounded 3/8 of an inch (0.95 cm) radius. The two bottom edges may be slightly eased 1/8 of an inch (0.32 cm) radius for the entire length.

(5) *Incising.* The lengthwise surfaces of Douglas-fir crossarms shall be incised approximately 1/4 of an inch (0.64 cm) deep. The incision shall be reasonably clean cut with a spacing pattern that insures uniform penetration of preservative.

(6) *Workmanship.* All crossarms shall be first quality workmanship. Crossarms shall be dressed on four sides, although "hit and miss skips" may occur on two adjacent faces on occasional pieces. Five (5) percent of a lot or shipment may be 1/8 of an inch (0.32 cm) scant in thickness or width at the ends for a length not exceeding 6 inches (15.24 cm), or may have 1/8 of an inch (0.32 cm) machine bite on offset.

(h) *Conditioning prior to treatment.* (1) All solid sawn crossarms shall be made of lumber which has been kiln-dried. Douglas-fir arms shall have an average moisture content of 19 percent or less, with a maximum not to exceed 22 percent. Southern Yellow Pine arms shall have an average moisture content of 22 percent or less, with a maximum not to exceed 30 percent.

(2) Moisture content levels shall be measured at about 1/4 the length and at a depth of about 1/5 the crossarm's thickness. Additionally, the moisture content gradient between the shell (i.e. 1/4 of an inch (0.64 cm) deep) and the core (i.e. about 1 inch (2.54 cm) deep) shall not exceed 5 percentage points.

(3) A minimum of at least 20 solid sawn crossarms per treating charge shall be measured to verify moisture content and shall be duly recorded by the quality control designee or independent inspector.

(4) The moisture content of lumber used in laminating shall, at the time of gluing, be within the range of 8 to 12 percent, inclusive.

(i) *Preservatives.* (1) The preservatives shall be:

(i) Creosote which conforms to the requirements of AWPA Standard P1 when analyzed in accordance with the methods in AWPA Standard A1, sections 2, 3, 4, either 5 or 9, and 6;

(ii) Pentachlorophenol which contains not less than 95 percent chlorinated phenols and conforms to AWPA Standard P8 when analyzed in accordance with AWPA Standard A5 or A9. The hydrocarbon solvents for introducing the preservative into the wood shall meet the requirements of AWPA Standard P9 Type A; or

(iii) Waterborne preservatives, which may only be one of the following:

(A) Ammoniacal Copper Arsenates (ACA) and Ammoniacal Copper Zinc Arsenate (ACZA) which shall meet the requirements of AWPA Standard P5, when analyzed in accordance with methods in AWPA Standards A2, A9, or A11; and

(B) Chromated Copper Arsenates (CCA) which shall meet the requirements of one of the formulations given in AWPA Standard P5, sections 4, 5 or 6, and 10. Tests to establish conformity shall be made in accordance with AWPA Standards A2, A9, or A11.

(1) The pH of treating solutions of the waterborne preservatives shown in AWPA Standard P5, section 10, shall be determined in accordance with AWPA Standard A2, section 8.

(2) Waterborne preservatives are available either as oxides, which form non-ionizing chemical compounds in the wood, or as salts, which leave ionizing compounds as well as non-ionizing compounds in the wood. Salt formulations of a waterborne preservative are more corrosive to metal than the oxide formulation and may cause surface deposits. Unless otherwise specified in the purchase order, the oxide formulations of waterborne preservatives shall be supplied.

(3) Douglas-fir crossarms shall not be treated with CCA preservatives.

(4) Materials treated with waterborne preservatives shall be free of visible surface deposits.

(iv) Copper Naphthenate (CuN) concentrate used to prepare wood preserving solutions shall contain not less than 6 percent nor more than 8 percent copper in the form of Copper Naphthenate and shall conform to AWPA Standard P8 when analyzed in accordance with AWPA Standard A5. The hydrocarbon solvents for introducing the preservative into the wood shall meet the requirements of AWPA Standard P9 Type A.

(2) Reserved.

(j) *Preservative treatment.* (1) All timber products treated under this specification shall be treated by either a pressure or a thermal (nonpressure) process.

(2) These materials may be further conditioned by steaming, or by heating in hot oil (Douglas-fir), within the following limits:

	Time Hours (max.)	Temperature Deg. F (max.)
Steam	3	220 (104.4C)
Heating in Preservative	3	210 (98.9C)

(3) A final steam or hot oil bath may be used only to meet cleanliness requirements of paragraph (k) of this section. Total duration of the final steam bath shall not exceed 2 hours and the temperature shall not exceed 240 degrees Fahrenheit (115.6C).

(k) *Results of treatments.* (1) The quality control designee shall test or supervise the testing of each treated charge for penetration and retention.

(2) *Method of sampling.* When testing penetration and retention, a borer core shall be taken from not less than 20 crossarms in each treating charge. The borings shall be taken from any face except the top face at a point as close to the end as possible, being at least 3 inches (7.62 cm) from the end of the arm and no closer than 3 inches (7.62 cm) from the edge of the holes. The bored holes shall be plugged with preservative-treated plugs driven into the arm. Borings from laminated arms shall not be taken from the same laminate unless there is an end joint separation.

(3) Penetration by the preservative, as determined in accordance with AWPA Standard A3, shall be 100 percent of the sapwood in crossarms. In the heartwood of Douglas-fir crossarms, the penetration shall be not less than 3 inches (7.62 cm) longitudinally from the edge of holes and ends, and at least 3/16 inch (0.45 cm) from the surface of any face.

(4) Retention of preservative in the outer 6/10 of an inch (1.52 cm) for Douglas-fir and one inch (2.54 cm) for Southern Yellow Pine assay zones at the treating plant shall be not less than:

Preservative	Retention (pcf)	AWPA Analysis Method
Creosote	8	A6
Pentachlorophenol	0.4*	A5
ACA, ACZA, or CCA	0.4	A2, A7, A9, or A11
Copper Naphthenate	0.04	A5, A9, or A11

*This retention is for the lime ignition method. The copper pyridine method, retention 0.36 pcf, is required when timbers may have been in contact with salt water, and for all species native to the Pacific coast region. It is not required when it specifically states on the rough sawn material invoice that this material has not been in contact with salt water or is shown by analysis to have no additional chlorides present in the wood before treating.

(5) Cleanliness of lengthwise surfaces of all crossarms shall be free from tarry, greasy, or sticky material, and from oil exudation and pentachlorophenol crystallization (blooming).

(6) Re-treatment of materials which do not meet the penetration and retention requirements of this specification may be done only twice. Initial treatment steaming time plus re-treatment steaming time, combined, shall not exceed time allowed in paragraph (i) of this section.

(l) *Marks and brands.* (1) All crossarms shall be branded (hot brand) or die-stamped legibly and to a depth of approximately 1/16 of an inch (0.16 cm) before treatment.

(2) The letters and figures shall be not less than 1/2 of an inch (1.27 cm) in height. The top of the brand shall be oriented to the top of the arm.

(3) The brand or die-stamp shall include:

(i) The manufacturer's identification symbol;

(ii) Month and year of manufacture;

(iii) Species of timber such as DF for Douglas-fir and SP for Southern Yellow Pine; and

(iv) The preservative notated with a C for creosote, P for penta, S for salts, or N for Copper Naphthenate.

(4) An example is:

M-6-72 -Manufacturer—Month—Year

DF-P Douglas-fir—penta treated

(5) The brand or stamp shall be placed on either of the wide surfaces of the arms, oriented with letters right side up towards the top of the arm and preferably about 1 foot (30.48 cm) from the midpoint of the arm.

(6) The mark should be approximately the same location on each type of crossarm of each producer.

(7) Brands, inspection marks, or quality assurance marks shall be removed from arms that do not meet these specifications.

(m) *Storage.* (1) Producers may treat crossarms for reserve stock under any of the REA approved plans. Prior to treating reserve stock, and annually thereafter, producers shall notify the Director of the Electric Staff Division of their intent to treat reserve stock. The letter of notification shall be addressed to the Director, Electric Staff Division, Rural Electrification Administration, Washington, DC 20250–1500.

(2) REA shall acknowledge, by letter, each notification of intent to treat material for reserve stock under the REA specification.

(3) REA's letter acknowledging the plant's advance notice of intent to treat material for reserve treated stock for the calendar year in question shall be evidence of compliance with the notification requirements.

(4) Producers shall notify REA of:

(i) The locations of all storage or distribution yards where reserve treated stock will be maintained;

(ii) The designation of the REA-approved plan;

(iii) The name of the selected inspection agency, where applicable; and

(iv) Any changes that occur during the year.

(5) Crossarms treated with oil-borne preservatives which have been held in storage for more than 1 year before shipment to the borrower, shall be reassayed before shipment and shall be re-treated if found nonconforming for retention on orders placed in accordance with this section.

(6) The crossarms shall meet the assay after re-treatment in accordance with paragraph (k) of this section.

(7) Crossarms which are held in storage after final acceptance shall be stacked in piles or on skids in such a manner as to assure good ventilation. The stacks shall be covered or stored indoors for protection from the sun and weather to reduce checking, bending, and loss of preservative.

(8) Borrowers or their contractors shall not purchase reserve treated stock from plants that fail to comply with the notification requirements.

(n) *Drawings.* (1) The drawings of Exhibit B of this section, Crossarm Drilling Guide, have a type number and show in detail the hole size, shape, and pattern desired for crossarms ordered under this specification.

(2) Purchase orders shall indicate the type required.

(3) Crossarms shall be furnished in accordance with the details of these drawings or in accordance with drawings attached to the purchase order.

(4) Technical drawings for transmission crossarms are published in REA Bulletin 1728F-T805B (formerly 50–1), Electric Transmission Specifications and Drawings, 115kV through 230kV, and REA Bulletin 1728F-T805A (formerly 50–2), Electric Transmission Specification and Drawings, 34.5kV through 69kV.

(5) Appropriate drawings for transmission arms are to be specified and included with purchase orders.

(o) *Destination inspection.* (1) When cross-sectional tolerances are measured at destination, average shrinkage allowance shall be considered using the arm's current moisture content and actual size.

(2) Using the average shrinkage allowances for Douglas-fir and Southern Yellow Pine as 1 percent size change for each four point moisture content change below the fiber saturation point, calculations can be made to determine if the arm met the minimum size at time

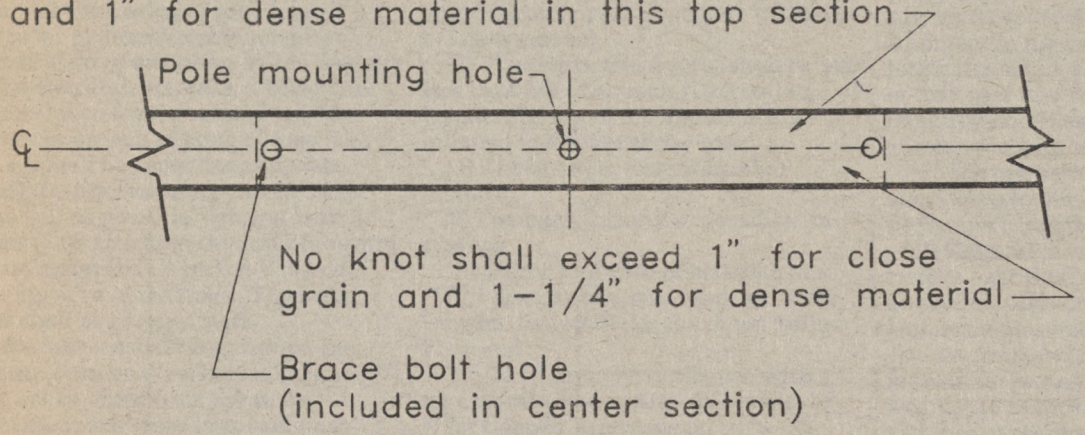
of manufacture, when the arm was to meet the average moisture content.

BILLING CODE 3410-15-F

Exhibit A to § 1728.201—Distribution and Transmission Arms

DISTRIBUTION ARMS

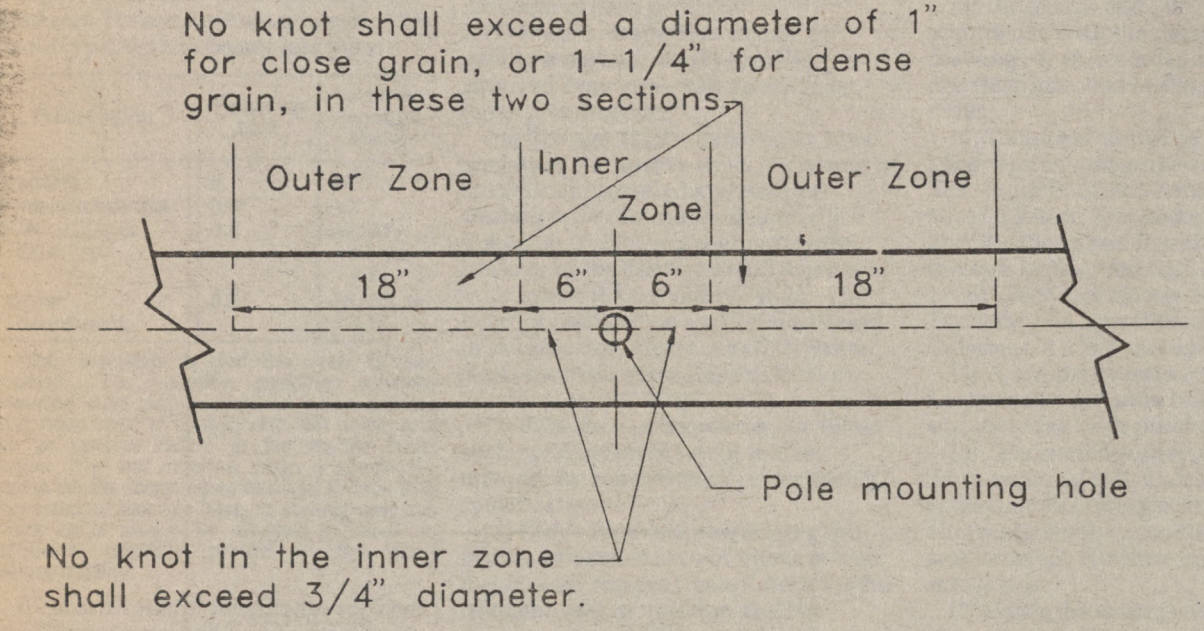
Figure 1



TRANSMISSION ARMS

POLE MOUNTING HOLE ZONE

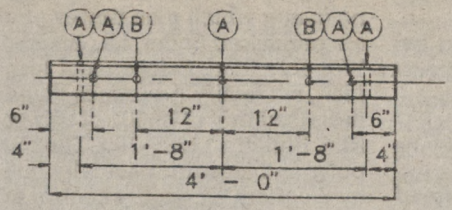
Figure 2



BILLING CODE 3410-16-C

Exhibit B to § 1728.201—Crossarm Drilling Guide

TOLERANCES AND SIZES OF HOLES			
NOMINAL		GO	NO GO
(A)	11/16"	5/8"	3/4"
(B)	7/16"	3/8"	1/2"
(C)	9/16"	1/2"	5/8"



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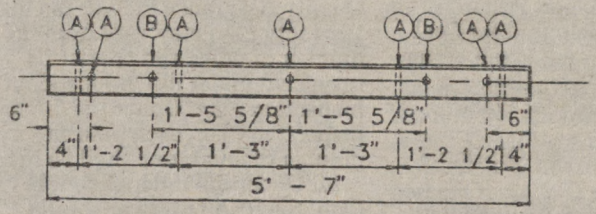

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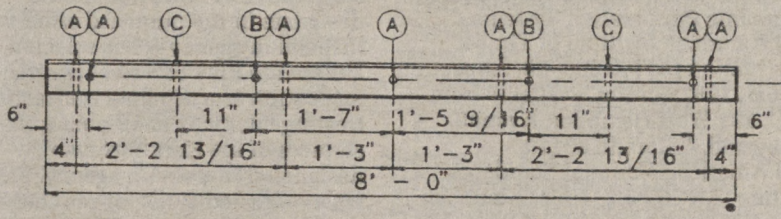

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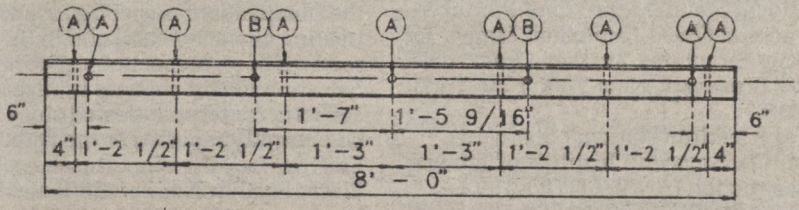

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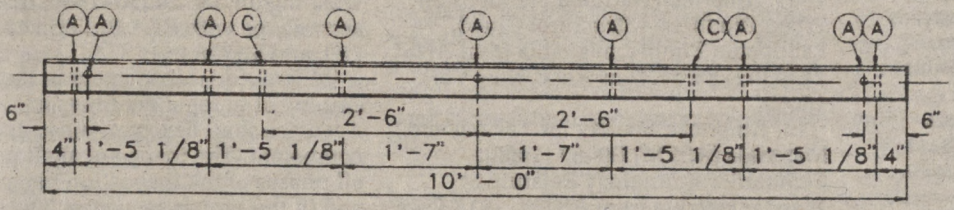

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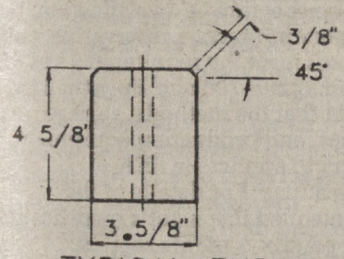

TYPICAL END SECTION

NOTES:

1. Holes are to be located within ±1/8".
2. Length of the crossarm is to be within ±1/4"
3. The tolerance of the cross section is +1/8" and −0" at time of manufacture.
4. All holes are to be drilled on centerlines of crossarm faces.

CROSSARM DRILLING GUIDE

SCALE:		M-19
N.T.S.		

BILLING CODE 3410-15-C

§ 1728.202 REA Bulletin 1728H-702, REA Specification for Quality Control and Inspection of Timber Products.

(a) *Scope.*

This specification describes in more detail the responsibilities and procedures pertaining to quality control for crossarms, as specified in § 1728.201 of this part, and poles, covered in REA Bulletin 1728F-700, incorporated by reference in § 1728.97 of this part and in § 1755.97 of 7 CFR part 1755.

(b) *Related specifications and standards incorporated by reference.*

The following specifications and standards referenced throughout this section are incorporated by reference. This incorporation by reference is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of each are available for inspection during normal business hours at REA, room 1250-S, U.S. Department of Agriculture, Washington, DC 20250 or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. Copies of these standards and specifications may be purchased from the addresses shown below.

(1) American Wood-Preservers' Association (AWPA), Book of Standards, 1991 edition, available from AWPA, P.O. Box 286, Woodstock, Maryland 21163–0286.

(i) A1–91, Standard for Coal Tar Creosote for Land and Fresh Water Use.

(ii) A2–91, Standard Methods for Analysis of Waterborne Preservatives and Fire-Retardant Formulations.

(iii) A3–91, Standard Methods for Determining Penetration of Preservatives and Fire Retardants.

(iv) A5–91, Standard Methods for Analysis of Oil-Borne Preservatives.

(v) A6–89, Method for the Determination of Water and Oil-Type Preservatives in Wood.

(vi) A7–75, Wet ashing Procedure for Preparing Wood for Chemical Analysis.

(vii) A9–90, Standard Method for Analysis of Treated Wood and Treating Solutions by X-Ray Emission Spectroscopy.

(viii) A11–83, Analysis of Treated Wood and Treating Solutions by Atomic Absorption Spectroscopy.

(ix) C1–91, Standard for Preservative Treatment by Pressure Processes All Timber Products.

(x) C4–91, Standard for the Preservative Treatment of Poles by Pressure Processes.

(xi) C8–91, Standard for the Full-Length Thermal Process Treatment of Western Red Cedar Poles.

(xii) C10–91, Lodgepole Pine Poles—Preservative Treatment by the Full-Length Thermal Process.

(xiii) C12–90, Western Larch Poles—Full-Length preservative Treatment by Thermal Process.

(xiv) M1–90, Standard for the Purchase and Preservation of Forest Products.

(xv) M2–91, Standard Instructions for the Inspection of Preservative Treatment of Wood.

(xvi) M3–81, Standard Quality Control Procedures for Wood Preserving Plants.

(xvii) M4–91, Standard for the Care of Preservative-Treated Wood Products.

(xviii) P1/P13–91, Standard for Coal Tar Creosote for Land and, Fresh Water and Marine (Coastal Water Use).

(xix) P5–91, Standards for Water-Borne Preservatives.

(xx) P8–91, Standards for Oil-Borne Preservatives.

(xxi) P9–91, Standards for Solvents for Organic Preservative Systems.

(2) American Institute of Timber Construction (AITC) 200–83, Inspection Manual, 1987 edition, available from AITC, 333 West Hampden Avenue, Englewood, Colorado 80110.

(3) American National Standards Institute (ANSI) 05.2–1983, American National Standard for Wood Products—Structural Glued Laminated Timber for Utility Structures, available from ANSI, 1430 Broadway, New York, New York 10018.

(4) American National Standards Institute/American Institute of Timber Construction (ANSI/AITC) A190.1–1983, American National Standard for Wood Products—Structural Glued Laminated Timber, available from ANSI, 1430 Broadway, New York, New York 10018.

(5) American Society for Testing and Materials (ASTM) D9–87 (1992), Standard Terminology Relating to Wood, available from ASTM, 1916 Race Street, Philadelphia, Pennsylvania 19103–1187, telephone number (215) 299–5585.

(c) *General stipulations.* (1) Each REA electric borrower shall submit to the Director, Electric Staff Division, Rural Electrification Administration, room 1250-S, 14th and Independence Avenue, SW., Washington, DC 20250–1500, in January of each year a list of plants from which it obtained poles or crossarms during the preceding calendar year.

(2) Ultimate quality control is the responsibility of the producer's management; however, a member of the producer's staff shall be designated quality control designee and charged with the responsibility for the exercise of proper quality control procedures. The requirements in American Wood Preservers' Association (AWPA) Standard M3, covering records, adequate laboratory, plant gauges, and other plant facilities including proper storage, shall be followed.

(3) The methods of inspection described in this section shall be used no matter which plan timber products are purchased under, i.e., Insured Warranty Plan, Independent Inspection Plan, or Quality Assurance Plans as described in § 1728.201 of this part or REA Bulletin 1728F-700. The number of poles and crossarms actually inspected by monitors for quality control under a Quality Assurance Plan or the Insured Warranty Plan may vary from the number of poles and crossarms inspected under the Independent Inspection Plan. Under the Independent Inspection Plan, each pole and a sample number of crossarms shall be inspected.

(4) Under the Independent Inspection Plan, the REA borrower should designate in the purchase order which inspection agency it has selected. Unless the REA borrower contracts for inspection as a separate transaction, the treating company shall obtain the services of the REA borrower's designated inspection agency. For reserve treated stock for purchase under the Independent Inspection Plan, the treating company shall obtain the services of an inspection agency. Selection of and changes in inspection agencies for reserve treated stock shall be promptly reported to the Director, Electric Staff Division, Rural Electrification Administration, Washington, DC 20250–1500, in accordance with REA Bulletin 1728F-700, and § 1728.201.

(5) Individual inspectors in the employ of Independent Inspection Agencies shall be experienced and competent. The inspector shall perform all phases of the inspection personally and in the proper sequence. The primary responsibility of the inspector is to determine, for the borrower, by careful inspection and verification, that the timber products, preservative, and treatment meet the requirements of REA Bulletin 1728F-700 and Bulletin 1728H-701 and that the methods, storage facilities, and production equipment conform to applicable REA specifications. For details of the recommended inspector's qualifications see Appendix A of this section.

(6) Laminated materials for use on REA borrower systems shall follow manufacturing and quality control requirements as specified in ANSI 05.2—1983, American National Standard for Wood Products—Structural Glued Laminated Timber for Utility Structures, and ANSI/AITC A190.1–1983, American National Standard for Wood Products—Structural Glued

Laminated Timber. The product shall be marked and certified.

(i) Laminated material shall be inspected by a qualified inspection and testing agency.

(ii) Quality control of material shall be performed to determine conformance with § 1728.201 of this part and AITC 200–83, Inspection Manual.

(d) *Quality control and inspection procedures for product acceptance.* It is the responsibility of the plant quality control designee to perform the following procedures to insure that a particular lot of material conforms to the requirements of the applicable REA specification prior to treatment. After the plant quality control designee has performed these procedures, a particular lot of material shall be released to the inspector for verification of conformance.

(1) Poles can be purchased under any of the three purchase plans. These plans are Insured Warranty Plan, Independent Inspection Plan, or a Quality Assurance Plan. Under the Independent Inspection Plan, all poles in a lot shall be inspected. Under the Insured Warranty Plan and a Quality Assurance Plan, the number of poles in a lot actually inspected may be less than every pole, depending on the terms of the plans.

(i) Ample space and assistance shall be provided by the treating plant for handling and turning to insure that the surfaces of all items can be adequately inspected.

(ii) Under the Independent Inspection Plan, all poles shall be inspected for conformance to the requirements of REA Bulletin 1728F-700. If a pole is rejected and the cause of rejection is corrected, the rejected pole may be offered again for inspection as new material.

(iii) Dimensions, length, and circumference shall be measured by a standard steel pole tape to determine that they are in agreement with the details for class and length in the brand and butt stamp. If it is obvious by visual comparison with a measured pole that the brand information is correct, individual poles need not be measured. Pole circumference dimensions made prior to treatment shall govern acceptance. Reduction in dimension due to treatment and shipping shall be not more than 2 percent below the minimum for the pole class.

(iv) If 15 percent of the poles in a lot offered for inspection are defective, the inspector shall terminate the inspection. Re-examination of an entire lot by plant quality control shall be required when the number of rejected poles equals or exceeds 15 percent of the lot inspected. All defective or nonconforming poles either shall be removed from the lot or marked out.

(v) Poles in a lot inspected for decay shall be of the same seasoning condition. If the independent inspector suspects that decay has occurred, he shall cut a slice from both ends for closer examination. If 5 percent of the inspected poles in a lot shows evidence of decay, the entire lot shall be unconditionally rejected without further sorting.

(vi) Moisture content, when limited by the purchaser, as stated on the borrower's purchase order, shall be measured by calibrated electric moisture meter. Calibration of the meter shall include not only the zero settings for the X and Y readings, but also two resistance standards for 12 and 22 percent moisture content.

(vii) Material failing to conform for moisture content may be retested upon request after a recalibration of the instrument. The results of the second test shall govern disposition of the lot.

(viii) Re-examination for any mechanical damage or deterioration and for original acceptance shall be conducted on timber products not treated within 10 days after original inspection.

(2) Crossarms can be purchased only under either of two purchase plans. These plans are the Independent Inspection Plan or Quality Assurance Plans. Under the Independent Inspection Plan, crossarms are to be inspected prior to manufacture, during manufacture, and after treatment. Under a Quality Assurance Plan, crossarms are monitored according to the terms of the quality assurance program acceptable to REA.

(i) Inspection prior to treatment shall include:

(A) Surface inspection of all ends of all arms. This is usually done on the stacks of arms prior to manufacture. Particular attention shall be paid to defects commonly found in the ends, such as compression wood, red heart and other forms of decay, shakes, splits, through checks, scantiness, honeycomb, and low density, determined by rings per inch (centimeter) and percent of summerwood. Whenever the number of nonconforming arms is found to exceed 0.5 percent of the lot or one arm, whichever is greater, the entire lot shall be rejected for excess number of defective ends. After the producer has removed or marked out the defective material, the arms may be resubmitted for inspection.

(B) Surface inspection of the lengthwise sides performed on a random representative sample. The sample size shall equal 20 percent of a lot size or 200 arms, whichever is smaller. The inspector shall examine side surfaces as they are slowly rotated. When necessary, the rotation may be stopped for closer inspection. Whenever the number of nonconforming arms is found to exceed 2 percent of the sample size, the entire lot shall be rejected. After the producer has removed or marked out the defective material, the arms may be resubmitted for inspection.

(C) Check of moisture content of the random sample by a calibrated moisture meter.

(D) Check of crossarm dimensions of the random sample measured after surfacing.

(ii) Inspection during manufacture shall consist of:

(A) Checking bolt and insulator pin holes for squareness and excessive splintering;

(B) Checking brands for completeness, location, and legibility; and

(C) Checking arms for conformance.

(iii) Under the Independent Inspection Plan, there shall be a final inspection during and after treatment for preservative retention and penetration and for damage.

(3) Structural glued laminated timber shall be tested and inspected in accordance with AITC 200–83, Inspection Manual. Grade of lumber shall be inspected by a qualified grader for specified quality, and so marked, in accordance with grading rules of the American Lumber Standards. Adhesives used for all structural arms shall meet requirements of ANSI 05.2–83, paragraph 5.2. Melamine urea adhesives shall not be used. End joint spacings and limitations shall be in accordance with ANSI 05.2–83.

(e) *Preservatives.* (1) Creosote shall conform to the requirements of AWPA Standard P1 when analyzed by AWPA Standard A1, sections 2, 3, 4, either 5 or 9, and 6.

(i) Each occasional charge, all material treated in a cylinder at one time, shall be analyzed.

(ii) The first charge and one of every five charges randomly selected in consecutive charges shall be analyzed.

(2) Solutions of waterborne preservatives shall be analyzed for components in accordance with AWPA Standards A2, A9, or A11, and shall meet the requirements of P5 for composition. AWPA A2 shall be used as a referee method.

(3) Pentachlorophenol shall contain not less than 95 percent chlorinated phenols and conform to AWPA Standard P8 in hydrocarbon solvent AWPA P9 Type A.

(4) Copper Naphthenate in hydrocarbon solvent (AWPA P9 Type A)

shall contain not less than 6 percent nor more than 8 percent copper in the form of Copper Naphthenate and conform to AWPA Standard P8 when analyzed in accordance with AWPA Standard A5.

(f) *Plant facilities and inspection during treatment.* (1) Manufacturing and treating plant facilities shall conform to AWPA Standard M3, paragraph 3. Pressure plants shall be equipped with recording instruments to register time, pressure, temperature and vacuum during each cycle of treatment. They shall also be equipped with indicating thermometers and pressure and vacuum gauges to check the accuracy of the recorders. Work tanks shall be equipped with a thermometer. Thermal treating vats shall be equipped with a time and temperature recorder and with an indicating thermometer. Temperature recording devices are not mandatory for plants treating exclusively with waterborne preservatives.

(2) Under the Independent Inspection Plan, the inspector shall be present during the treatment procedure, except at times when it may be impractical, such as during late night or early morning treatments. At such times, temperature, pressure, and vacuum data shall be taken from the recording charts.

(3) Recording instruments shall be checked with indicating gauges and thermometers. Inaccuracies shall be referred to the treating company for prompt correction. In the event of an inaccuracy, indicating possible damage to the material, the inspector shall reject the charge.

(g) *Results of treatment.* (1) Poles shall be tested for retention and penetration by means of a calibrated increment borer 0.2 inches (0.51 cm) ± 0.02 inches (0.05 cm) in diameter in accordance with procedures in AWPA Standard M2, paragraph 5.22. Under the Independent Inspection Plan, all treating charges shall be tested for retention and penetration. Plant quality control and independent inspection shall do their analyses separately. Under the Insured Warranty Plan and Quality Assurance Plans, the frequency of testing retention and penetration may vary according to the plan.

(i) Western red and northern white cedars and western larch poles shall be bored at any point of the periphery approximately 6–12 inches (15.24–30.48 cm) above ground line and all other species approximately 1 foot (30.48 cm) above or below the brand.

(ii) Penetration shall be determined in accordance with AWPA Standard A3. Chrome Azurol S and Penta-Check shall be used to determine penetration of copper containing preservatives and penta, respectively.

(iii) *Retention sampling.*

(A) When there are 20 or more poles in the treating charge, the retention sample for creosote shall consist of 20 assay zones from southern pine and Douglas-fir poles. All poles in charges with fewer than 20 poles shall be bored once. Charges with less than 15 poles shall be bored once and bored again on a random basis to obtain a minimum of 15 assay zones.

(B) Retention samples shall be taken from 20 poles in charges of 20 or more poles.

(C) Retention samples for Alaska yellow, western red, and northern white cedars shall be comprised of a minimum of 30 assay zones for creosote and waterborne preservatives. For penta charges of fewer than 30 poles, the sample shall contain the assay zone from each pole in the lot.

(D) Retention samples shall be comprised of borings, representative of pole volumes for each class and length in the charge. Further selection and marking of poles of mixed seasoning, volume, and location on the tram shall be made as illustrated in the following table:

Number of Poles	Class/Length	Vol. in cu. ft.	Total Volume	Number of Borings
27	7/30(09.1 m)	232	15	3
26	4/35(10.7 m)	447	29	6
11	5/35(10.7 m)	163	10	2
55*	6/35(10.7 m)	704	46	9
Total .		1,546		

*If a portion of these poles were green and some partially seasoned, then the number of borings should reflect the approximate percentage of each.

(iv) When material in a lot consists of fewer pieces than the designated minimum number of samples for assay, additional borings shall be taken so as to make up at least the minimum sample, and in such manner that the sample is representative of the lot of material with respect to any variations in size, seasoning condition, or other features that might affect the results of treatment.

(v) Analyses for preservative retention shall be performed.

(A) Creosote shall be analyzed by AWPA Standard A6.

(B) Penta shall be analyzed by AWPA Standard A5 or A9. Copper pyridine method is required when timber may have been in contact with salt water and for all species native to the Pacific coast region, unless the raw material invoice specifically states that the material either has not been in contact with salt water or has been shown by analysis to have contained no additional chlorides before treating.

(C) Copper Naphthenate shall be analyzed by tests in accordance with AWPA Standards A5 or A9.

(D) Waterborne preservatives shall be analyzed by tests in accordance with AWPA Standards A2, A7, A9, or A11.

(E) Prior to unloading a tram, the inspectors may take their own samples and analyze them concurrently with the quality control designee, but each shall work independently, and quality control data shall be presented before acceptance of the charge.

(vi) *Penetration sampling of poles.*

(A) Group A poles consist of poles with a circumference of 37.5 inches (95.25 cm) or less at 6 feet (1.8 m) from butt.

(1) Bore 20 Group A poles or 20 percent of the poles, whichever is greater. Accept if 100 percent of the sample conform; otherwise, bore all poles.

(2) Re-treat the charge if more than 15 percent of the borings are found to be nonconforming.

(3) Re-treat all nonconforming poles if 15 percent or fewer fail the requirement.

(B) Group B poles consist of poles with circumference greater than 37.5 inches (95.25 cm) at 6 feet (1.8 m) from the butt.

(1) For Group B poles 50 feet (15.2 m) and shorter, bore each pole and re-treat only those found to be nonconforming, unless more than 15 percent fail; in that case, re-treat the entire lot.

(2) For Group B poles longer than 50 feet (15.2 m), bore each pole twice at 90 degrees apart around the pole and accept only those poles conforming to the penetration requirement in both borings. All nonconforming poles may be re-treated only twice.

(vii) All holes (nominal 0.2 of an inch (0.05 cm) diam. bit) shall be promptly filled with treated, tight-fitting wood plugs.

(2) Under the Independent Inspection Plan, all treating charges of crossarms shall be tested for retention and penetration. Plant quality control inspectors and independent inspectors shall do their analyses *independently.* Under the Quality Assurance Plans, the frequency of testing retention and penetration may vary according to the plan.

(i) The penetration and retention sample shall consist of 20 (48 for creosote) outer 6/10 of an inch (1.52 cm) for Douglas-fir and 1 inch (2.54 cm) for Southern Yellow Pine zones from borings taken from any face except the top face at a location as close to the end as possible being at least 3 inches (7.62

cm) from the end of the arm and no closer than 3 inches from the edge of any holes. For laminated material, borings shall be taken from laminates on a random basis.

(ii) Penetration shall be tested by taking not less than 20 borings from 20 crossarms in each charge, determined in accordance with AWPA Standard A3. Chrome Azurol S and Penta-Check shall be used to determine penetration of copper containing preservatives and penta, respectively.

(3) Laminated material shall be checked for any evidence of delamination due to treatment and for the identifying quality stamp of AITC or American Plywood Association (APA).

(4) When x-ray fluorescence (XRF) instruments are used to analyze preservative or retention, Periodic Instrument Checks (PIC) shall be made by the treating plant and any outside inspection agency using the treating plant's instrument or its own. Appendix B of this section outlines a recommended procedure.

(5) At a minimum, treating plants shall perform the PIC weekly and record the results in the instrument's log, which shall be stored with the instrument. Independent inspection agencies shall use their own samples to perform the PIC on treater's instrument once per visit, not to exceed one PIC per week. Inspection agencies shall record their results in the instrument's log and state the date of its latest PIC on all treating reports.

(6) XRF instruments shall be accurate and reliable, and they shall generate reproducible results. Instruments shall have thorough instructions which should include recommendations on drying techniques, equipment, and density calculations. These drying recommendations shall be followed when using these instruments.

(h) *Product acceptance.* Under the Independent Inspection Plan, the inspector shall signify acceptance by marking each piece of accepted material with a clear, legible hammer stamp in one end prior to treatment and in the other end after treatment. The inspector shall personally mark each piece, and shall not delegate this responsibility to another person.

(i) *Charge inspection reports.*

(1) Inspection Reports shall cover the following:

(i) The total pieces in the lot, number of and causes for rejection;

(ii) The conditioning of the material prior to treatment;

(iii) The analyses of preservative identified by the analyst's signature or certification;

(iv) The details of treatment; and

(v) The results of treatment. These results shall include the following:

(A) The depth of penetration for retention sample and a summary of all poles rejected for insufficient penetration;

(B) Worksheets for retention analyses, each identified by quality control designee and independent inspector;

(C) The number of pieces offered and rejected, together with the cause(s) for rejection;

(D) The date of latest Periodic Instrument Check.

(2) On each inspection report the independent inspector and the plant quality control designee shall certify, in writing, that the material listed on the report has been inspected before, during, and after treatment, and that the preservative used was analyzed in accordance with the requirements of this section.

(3) Each inspector or inspection agency shall retain for a period of 1 year a copy or transcript of each report of inspection, together with laboratory worksheets covering retention by assay and preservative analyses for the purchaser, and on request shall furnish a copy or transcript of any of these reports to the Director, Electric Staff Division, Rural Electrification Administration, Washington, DC 20250–1500.

(j) *Charge numbers on re-treat poles.* The letter "R" shall be added to the original charge number in the butts of all poles that are re-treated for insufficient penetration or retention of preservative. All poles that fail to meet treatment requirements after two re-treatments shall be permanently rejected.

(k) *Safety provisions.* Poles intended for REA borrowers shall not be inspected when, in the opinion of the inspector, unsafe conditions are present.

Appendix A to § 1728.202—Recommended Inspectors' Qualifications

(a) Inspection agencies should see that inspectors assigned to the inspection of timber products and treatment for REA borrowers are competent and experienced.

(b) *Recommended experience.* In general, any of the following examples are recommended as minimum qualifying experience before a new inspector may be permitted to inspect timber products for REA borrowers:

(1) Three years' experience as an inspector of timber and the preservative treatment of timber.

(2) Three years' experience in timber treating plant quality control work.

(3) Under the direct supervision of an experienced, well-qualified inspector, who has performed the following:

(i) Inspected at least 2,500 poles and/or crossarms "in the white."

(ii) Checked preservative penetration results on at least 500 poles and crossarms.

(iii) Made at least 35 wood assays for preservative retention.

(iv) Made at least 25 analyses of each type preservative used on material the person is assigned to inspect.

(v) In both (b)(1) and (b)(2) of this Appendix A, the experience should be not less than that required in (b)(3)(i), (b)(3)(ii), (b)(3)(iii), and (b)(3)(iv).

(4) Inspectors experienced in the inspections of one product, such as poles, should not be qualified to inspect another product, such as crossarms, until the above experience is gained.

(5) The inspector should be especially well informed in wood preservation and the operation of a timber treating plant, and be competent in preservative analysis and other laboratory work.

(6) In all cases, an inspector should be thoroughly instructed in the application of REA specifications and the standards pertaining thereto before being permitted to independently inspect timber products and the treatments applied to them. Knowledge of these specifications and standards, as well as the inspector's proficiency, may be checked routinely by members of the REA staff.

Appendix B to § 1728.202—Periodic Instrument Check X-ray Fluorescence

(a) *General.* The following sample calibration standards and procedures may be used in lieu of comparison with analysis by wet ash or lime ignition methods.

(b) *Penta.* Until such time as AWPA approves calibration standards for penta, the following method should be used to run a salt water solution to measure Cl (chloride).

(1) *Standard Solution.* Dry approximately 15 grams of reagent grade NaCl at 105°C for 1 hour. Weigh 10.00 grams into a tared beaker. Add distilled water until the total weight is 100.00 grams. Stir until completely dissolved. This will give a 10 percent weight to weight solution of NaCl.

(2) *Baseline Check.* (i) Insure that the instrument is in good agreement with lime ignition.

(ii) Record any user correction factors.

(iii) Stabilize and standardize the instrument.

(iv) Run the salt solution five times using the PENTA-OIL calibration mode.

(v) Record the average and standard deviation of the values for percent penta. The average value will now be considered the nominal value.

(3) *Periodic Instrument Check.* Run the salt solution two times and average the results. If the value is more than ± 5 percent of the nominal value, the instrument needs further calibration, following manufacturer's recommendation.

(c) *Waterborne preservatives.* Treaters and inspection agencies should purchase AWPA Committee P-5 Standard Reference Materials to analyze on their instruments. Reference materials should be in the retention range of the material being produced at the plants. If the value is more than ± 5 percent of the nominal value, the instrument needs further

calibration. AWPA Committee P-5 Standard Reference Materials may be purchased from:

American Wood Preservers' Association, P.O. Box 286, Woodstock, Maryland 21163, Phone: (410) 456–3189.

PART 1755—TELECOMMUNICATIONS STANDARDS AND SPECIFICATIONS FOR MATERIALS, EQUIPMENT AND CONSTRUCTION

4. The authority citation for part 1755 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 7 U.S.C. 1921 *et seq.*

5. The table in § 1755.97 is amended by adding in numerical order the entry for Bulletin 1728F-700 to read as follows:

§ 1755.97 Incorporation by reference of telephone standards and specifications.

* * * * *

REA Bulletin	Spec. No.	Date Last Issued	Title
1728F-700	—	9-2-93	REA Specification for Wood Poles, Stubs and Anchor Logs

6. Section 1755.98 is amended by revising the section and its section heading to read as follows:

§ 1755.98 List of telephone standards and specifications included in other 7 CFR parts.

The following standards and specifications are included throughout 7 CFR chapter XVII. These standards and specifications are not incorporated by reference elsewhere in the chapter.

Section	Issue date	Title
1728.202	9-2-93	REA Specification for Quality Control and Inspection of Timber Products
1755.370	1–19–90	REA Specification for Seven Wire Galvanized Steel Strand
1755.397	3–6–90	REA Design Specification for Digital Lightwave Transmission Systems, REA Form 397h.

Dated: July 21, 1993.

Bob J. Nash,

Under Secretary, Small Community and Rural Development.

[FR Doc 93–18427 Filed 8–2–93; 8:45 am]

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August 3, 1993

Part IX

Department of Agriculture

Office of Finance and Management

7 CFR Parts 3015 and 3051
Audits of Institutions of Higher Education and Other Nonprofit Institutions; Rule

DEPARTMENT OF AGRICULTURE

Office of Finance and Management

7 CFR Parts 3015 and 3051

Audits of Institutions of Higher Education and Other Nonprofit Institutions

AGENCY: Office of Finance and Management, Department of Agriculture (USDA).

ACTION: Final rule.

SUMMARY: This final rule implements the Office of Management and Budget (OMB) Circular A–133, "Audits of Institutions of Higher Education and Other Nonprofit Institutions."

OMB Circular A–133 supersedes Attachment F, subparagraph 2.h., of OMB Circular A–110, "Uniform Administrative Requirements for Grants and Other Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations."

This final rule establishes USDA audit requirements and defines USDA responsibilities for implementing and monitoring such requirements for institutions of higher education and other nonprofit institutions receiving USDA awards of Federal financial assistance or Federal cost-type contracts used to buy services or goods for the use of the Federal Government.

EFFECTIVE DATE: August 3, 1993.

FOR FURTHER INFORMATION CONTACT: Catherine Cronin on (202) 720–4949.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule was reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and it was determined that it is not a "major rule." This final rule will not have an annual effect on the national economy of $100 million or more; nor will it result in a major increase in costs or prices to consumers, individual industries, government agencies, or geographic regions. This rule will not result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Executive Order 12612

USDA evaluated this final rule under Executive Order 12612, pertaining to Federalism. This final rule affects institutions of higher education and other nonprofit institutions receiving Federal awards. The rule increases their administrative discretion with regard to the conduct of audits. For this reason, USDA determined that this final rule will not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12778

The following information is given in compliance with Executive Order 12778. All state and local laws and regulations that are in conflict with this rule are preempted. No retroactive effect is to be given to this rule. This rule does not require administrative proceedings before parties may file suit in court.

Regulatory Flexibility Act

This final rule was reviewed with regard to the requirements of Public Law 96–354. The Department certifies that this rule will not, under the criteria of the Regulatory Flexibility Act, have a significant economic impact on a substantial number of small entities because it does not affect the amount of funds provided in the covered programs, but rather modifies and consolidates administrative and procedural requirements.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), any applicable reporting and recordkeeping provisions required by this final rule must be submitted to OMB and would not be effective until OMB approves them. USDA certifies that this rule does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1980.

Background

The provisions of OMB Circular A–133 apply to:

(a) Federal departments and agencies responsible for administering programs that involve grants, cost-type contracts and other agreements with institutions of higher education and other nonprofit institutions.

(b) Institutions of higher education and other nonprofit institutions whether they receive awards directly from Federal agencies or receive awards indirectly through other recipients.

This final rule adopts OMB Circular A–133 and applies the principles to institutions of higher education and other nonprofit institutions. This final rule deletes the audit requirements for institutions of higher education and other nonprofit institutions from 7 CFR 3015.77, subpart I, and establishes 7 CFR part 3051.

On April 11, 1991, USDA published a proposed rule in the **Federal Register** (56 FR 14654) for public comment. As a result, comments were received from five USDA agencies, one university, two nonprofit organizations and seven State agencies.

Most commenters expressed concern about § 3051.5(b) (listed in the proposed rule as § 3051.4(b)) which implements OMB Circular A–133 provisions for nonprofit organizations receiving $100,000 or more in Federal financial assistance (FFA). Under this provision, an organization whose FFA consists of awards under only one program may elect to obtain organization-wide audits as described in OMB Circular A–133 or audits of only that one program, but if the organization conducts more than one program, then an organization-wide audit is required. The commenters were concerned that applying this passage too literally may create unreasonable situations for many nonprofit organizations operating food assistance programs under grants from the Department's Food and Nutrition Service (FNS).

Many nonprofit organizations operate just one FNS food assistance program; many others, however, operate a cluster of assistance but receive no other FFA. For example, many private schools operate different combinations of the National School Lunch Program (NSLP), the School Breakfast Program (SBP), the Special Milk Program for Children (SMP), the Summer Food Service Program for Children (SFSPC), and the Nutrition Education and Training Program (NET). Soup kitchens and food banks may receive USDA food commodities donated not only under the Food Commodities for Soup Kitchens/Food Banks Program (SKFB) but also under The Emergency Food Assistance Program (TEFAP); some distribute commodities under the Commodity Supplemental Food Program (CSFP) as well.

Such clustering of categorical programs is fundamental to the mission of FNS, which is to provide food assistance benefits to as many members of these programs' target populations as can be reached. This intent is understood by recent legislation. For example, section 121(2)(D) of the Child Nutrition and Women, Infants and Children (WIC) Reauthorizations Act of 1989 (Pub. L. 101–147) requires FNS to promote the expansion of the SBP. This legislative mandate reflects Congressional concern that less than half the schools operating NSLP also offer SBP, with the result that benefits under SBP are not available to large numbers of needy children. In addition, the Hunger Prevention Act of 1988 (Pub. L. 100–435) amended TEFAP

authorizing legislation to permit local program operators to use TEFAP administrative funds for the costs of storing and distributing not only TEFAP commodities but also commodities donated under SKFB. These statutes demonstrate Congressional intent that the Department encourage eligible organizations to offer benefits under its food assistance programs.

Commenters were concerned that organization-wide audits, as described in OMB Circular A–133, may not be appropriate for nonprofit organizations operating such clusters of food assistance programs, even when FFA received under them aggregates $100,000 or more. Although the Catalog of Federal Domestic Assistance (CFDA) identifies each of these programs as a categorical Federal program, they are all the same type of FFA—food assistance. If there is no FFA other than these programs, there is no Federal interest in any part of the organization other than its food assistance activity. Further, only FNS is involved; therefore, no commingling of funds from different Federal sources takes place. For these reasons, the conditions that the organization-wide audit was conceived to address are not present.

The Department thus encourages eligible nonprofits to operate clusters of categorical food assistance programs, and does not necessarily need organization-wide audits of such organizations to obtain the necessary assurances. However, the language of the proposed rule may not have provided sufficient flexibility to require alternative types of audit coverage. For example, a literal reading of the proposed rule would have required a private school receiving $150,000 from FNS under NSLP and SBP collectively to obtain an organization-wide audit while permitting a school receiving the same amount but serving only lunch to obtain an audit of only its food service activity. NSLP and SBP offer the same benefit (meal service) to the same individuals; the school determines these individuals' eligibility for both meal services according to the same criteria; both programs are covered by the same agreement between the school and either FNS or a State administering agency; the administering agency pays the school its FFA for both programs in the same transaction; and the OMB Circular A–128 Audit Compliance Supplement treats these two programs as one item. Consequently, requiring one type of audit if the school serves only lunch but another type if it serves both lunch and breakfast is unreasonable.

Such an application of the rule might create other problems as well. Organization-wide audits are generally more expensive than program-specific audits. The rule as proposed might therefore have operated as a disincentive for nonprofits to accept more than one categorical food assistance program, thus denying the benefits of additional programs to eligible persons. It also would be difficult to apply. To illustrate, CFDA treats TEFAP administrative funds and TEFAP commodities as separate categorical programs. This would have raised the question whether "one program" meant "TEFAP," or each of TEFAP's administrative funding and program benefits components (CFDA Nos. 10.568 and 10.569, respectively). An organization cannot have one without the other.

The solution adopted by the Department is to define the "one program" as a cluster of closely related categorical food assistance programs, and to consider the categorical programs themselves as "awards" under that one program. The Department recognizes two such "programs:" the Child Nutrition Cluster and the Food Distribution Cluster. The categorical programs subsumed under each of these clusters are identified below, with their CFDA numbers given in parentheses.

Child Nutrition Cluster

The Child Nutrition Cluster includes SBP (10.553), the NSLP (10.555), SMP (10.556), the Child and Adult Care Food Program (CACFP) (10.558), SFSPC (10.559) and the NET Program (10.564). Food commodities distributed to schools and child care institutions by virtue of their participation in the Child Nutrition Programs are an integral part of FFA furnished under those programs, and are therefore included in the Child Nutrition Cluster.

A nonprofit organization receiving $100,000 or more under the Child Nutrition Cluster, but receiving no other FFA, has the option to obtain an organization-wide audit or an audit of that cluster of food assistance programs.

Food Distribution Cluster

The Food Distribution cluster includes TEFAP (10.568 and 10.569), CSFP (10.565), and SKFB (10.571). As with the Child Nutrition Cluster, a nonprofit organization receiving FFA of $100,000 or more that consists solely of awards within this cluster may elect to obtain either an organization-wide audit as described in OMB Circular A–133 or a program audit of just the cluster.

This cluster differs from the Child Nutrition Cluster in that FFA consists predominately of USDA donated commodities rather than cash grants. Many small organizations operating different combinations of programs within this cluster, but receiving no other FFA, may receive assistance consisting entirely or almost entirely of commodities. Commenters expressed concern that audit costs may drive large numbers of such organizations from these programs if the Department can offer no alternative relief from audit costs. Such a development would severely handicap the Department in its efforts to carry out its Congressional mandate to supplement the nutritional intake of low income and homeless persons through these programs. The following paragraphs describe the solution adopted by the Department for certain nonprofits that receive at least $25,000 but less than $100,000 under the Food Distribution Cluster.

Under TEFAP, State agencies execute agreements with subrecipients called "emergency feeding organizations" (EFO) for the distribution of commodities within their States. An EFO, in turn, may execute agreements with nonprofit organizations (called distribution sites) to carry out the actual distribution, or may function as both EFO and distribution site. In addition to the commodities, the State agencies receive some Federal funds for administrative costs; the program's authorizing statute requires that at least 40 percent of these funds be used for local level costs. The program's authorizing statute and regulations allow the State to disburse these "pass-through funds" directly for costs that benefit the local level, and/or to literally pass them through to EFOs. Administrative funds passed through to EFOs may or may not reach the distribution sites. Nevertheless, the vast majority of FFA made available under TEFAP is in the form of commodities; this may be the only FFA that reaches the distribution sites.

Distribution sites are typically responsible for determining the income eligibility of applicants for TEFAP benefits; issuing commodities to them; and reporting to EFO on the disposition of the commodities. Many of these sites operate no other Federal program. They tend to be staffed largely or entirely by volunteers, and thus have no formal payroll or administrative structure. They may make distributions as infrequently as once every calendar quarter. EFOs typically deliver commodities to the sites the night before, or early on the morning of, scheduled distributions. Since demand exceeds supply, commodities usually are gone by the end of the day. Thus, the

typical site does not maintain inventories of commodities; indeed, many lack the storage facilities necessary to do so.

Notwithstanding these characteristics, most distribution sites are nonprofit organizations within the meaning of OMB Circular A–133, and many of them do receive FFA valued at $25,000 or more. As noted above, however, most FFA consists of commodities; there is little—sometimes no—cash assistance for administrative costs such as audits. Since the cost of a TEFAP "food package" issued to a household averages $7.66, a site will make "Federal expenditures" of $25,000 if it issues 3,400 food packages per year. Many sites do not have reliable sources of non-Federal funds upon which they could draw to pay for the required audit.

The CSFP operates much like TEFAP in that State agencies engage subrecipient organizations called local agencies to deliver program benefits. Of the 67 local agencies participating in the program, some are large and receive FFA from multiple sources; others, however, serve small caseloads and receive correspondingly small amounts of administrative funding.

Under the SKFB Program, State agencies furnish USDA donated commodities to food banks for distribution to soup kitchens. Where a network of food banks does not exist, the State agency may deliver the commodities directly to the soup kitchens to prepare meals.

The Congress has not appropriated any funds expressly for administrative costs in the SKFB Program. State agencies are authorized by statute to use TEFAP administrative funds for this purpose, but such funds are generally needed for TEFAP administration. Like TEFAP distribution sites, a soup kitchen may receive commodities whose aggregate value exceeds the $25,000 FFA threshold while serving a small clientele.

Given the foregoing, any EFO or distribution site participating in TEFAP, any local agency operating CSFP, and any soup kitchen or food pantry participating in SKFB that meet certain criteria would be treated for OMB Circular A–133 purposes as an integral part of the organization from which it received its FFA under these programs. It would, therefore, be included in such organization's OMB Circular A–128 or OMB Circular A–133 audit. For example, a TEFAP distribution site meeting the criteria would be included in its EFO audit; and a soup kitchen or food pantry meeting the criteria would be included in the audit of its State agency or participating food bank, as applicable. The "parent organization" would be expected to have at least one-third of the qualifying organizations under its oversight examined in each of its audits. Distribution sites, soup kitchens, etc., that do not meet the criteria would be required to comply with OMB Circular A–133 in their own right.

The criteria would include the following:

(1) The organization receives FFA solely under TEFAP, CSFP and/or SKFB;

(2) The total FFA amounts to at least $25,000 but less than $100,000 (cash and commodities combined) in a fiscal year; and

(3) Any cash assistance included in the FFA under TEFAP and/or CSFP does not exceed $25,000 in a fiscal year.

An organization would have to meet all three criteria in order to qualify for the treatment described above. We believe this formula represents a reasonable reconciliation of the need for accountability with the need to accomplish the Department's mission. In our opinion, adopting this interpretation of OMB Circular A–133 would not entail seeking a formal exception to the Circular because it would not excuse any nonprofit organization from audit coverage.

The Department reserves the prerogative to grant exceptions on a case-by-case basis where a nonprofit organization has received FFA from FNS outside its primary cluster but can, nevertheless, demonstrate that an audit of only those categorical programs is appropriate. For example, there may be a few isolated cases of nonprofit organizations that operate both the Supplemental Food Program for WIC and CSFP. While WIC would be outside such an organization's primary cluster (Food Distribution), the services provided under WIC and CSFP are similar enough that the organization's circumstances may justify an exception. Such exceptions would apply only to the audit cycle for which they are granted.

The solutions to OMB Circular A–133 implementation problems described in this preamble comprise a reasonable audit requirement for the majority of nonprofits whose FFA consists solely of FNS food assistance programs. The Department considers this approach the most practicable way to apply OMB Circular A–133 to these programs in a manner consistent with the intent of the authorizing statutes.

Two respondents disagreed with § 3051.6(b)(1) (listed in the proposed rule as § 3051.5(b)(1)) as it pertains to submission of an audit to the cognizant or oversight agency. Since this section is identical to the provisions of OMB Circular A–133, no change is made in this rule. Additionally, respondents requested that if a provision is included in OMB Circular A–133, it should be deleted from USDA's rule. This has been done. In addition, language was added to the rule to clarify that federal cost type contracts are included within the coverage of OMB Circular A–133 and the implementing regulation.

List of Subjects

7 CFR Part 3015

Grant programs, Agriculture, Intergovernmental Relations.

7 CFR Part 3051

Accounting, Auditing, Colleges and Universities, Grant Programs, Nonprofit Organizations.

Issued at Washington, DC.

Approved: July 7, 1993.

Mike Espy,

Secretary.

Accordingly, Title 7, Chapter XXX of the Code of Federal Regulations is amended as set forth below:

PART 3015—UNIFORM FEDERAL ASSISTANCE REGULATIONS

A. Part 3015 is amended as follows:

1. The authority citation for Part 3015 continues to read as follows:

Authority: 5 U.S.C. 301.

§ 3015.77 (Removed and Reserved)

2. Section 3015.77 is removed and reserved.

B. Part 3051 is added to read as follows:

PART 3051—AUDITS OF INSTITUTIONS OF HIGHER EDUCATION AND OTHER NONPROFIT INSTITUTIONS

Sec.

3051.1 Purpose.
3051.2 Policy.
3051.3 Scope.
3051.4 Definitions.
3051.5 Basic Requirements.
3051.6 Assignment of Responsibilities.
Appendix A

Authority: 5 U.S.C. 301.

§ 3051.1 Purpose.

This part establishes audit requirements for institutions of higher education and other nonprofit institutions receiving Federal financial assistance or Federal cost-type contracts used to buy services or goods for the use of the Federal Government, from the United States Department of Agriculture

(USDA) and assigns USDA agency responsibilities for implementing and monitoring those responsibilities. Additionally, this part implements the Office of Management and Budget (OMB) Circular A–133, Audits of Institutions of Higher Education and Other Nonprofit Institutions.

§ 3051.2 Policy.

USDA requires audits from institutions of higher education and other nonprofit institutions that receive Federal financial assistance or Federal cost-type contracts used to buy services or goods for the use of the Federal Government, from USDA directly or indirectly as a subrecipient which are subject to the requirements of OMB Circular A–133, included herein as Appendix A of this part.

§ 3051.3 Scope.

This part applies whenever USDA provides Federal financial assistance or Federal cost-type contracts used to buy services or goods for the use of the Federal Government, directly or indirectly to institutions of higher education and other nonprofit institutions. The USDA Office of Finance and Management (OFM) must approve any proposed exception to or deviation from the regulations in this part. Any approved exceptions to this part based on statute, or other approved deviations, will be promulgated through USDA agency-specific program regulations. Audits shall be made by an independent auditor, as defined in OMB Circular A–133, in accordance with Government Auditing Standards covering financial audits issued by the Comptroller General of the United States and the requirements of OMB Circular A–133.

§ 3051.4 Definitions.

(a) *One program* is defined as:

(1) One categorical Federal assistance program; or

(2) A cluster of closely related categorical food assistance programs and the categorical food assistance programs are awards under the Child Nutrition Cluster or the Food Distribution Cluster; or

(3) One cost-reimbursement contract to buy services or goods for the use of the Federal Government as described in the definition of "award" in OMB Circular A–133.

(b) *Program-specific audit* is defined as:

(1) An audit of one program; and

(2) Under the Food Distribution Cluster, a program-specific audit of a parent organization includes the nonprofit organizations that operate as distribution sites or congregate meal service sites if they receive assistance through the parent organization consisting of or almost entirely of commodities, if the following criteria are met:

(i) The organization that operates the distribution site or congregate meal site receives Federal financial assistance solely under The Emergency Food Assistance Program (TEFAP), the Commodity Supplemental Food Program (CSFP), and/or the Food Commodities for Soup Kitchens/Food Banks Program (SKFB);

(ii) The total Federal financial assistance received is at least $25,000 but less than $100,000 (cash and commodities combined) in a fiscal year; and

(iii) Any cash assistance included in the Federal financial assistance under TEFAP and/or CSFP does not exceed $25,000 in a fiscal year.

§ 3051.5 Basic requirements.

(a) If not included within the scope of a single audit obtained in accordance with the Single Audit Act of 1984 and OMB Circular A–128, institutions of higher education and other nonprofit institutions that receive $100,000 or more a year in USDA Federal financial assistance or Federal cost-type contracts used to buy services and goods for the use of the Federal Government, shall have an audit conducted in accordance with the requirements of OMB Circular A–133. However, nonprofit institutions and organizations meeting the above criteria but participating in only one program have the option of having an audit in accordance with the provisions of OMB Circular A–133 or a program-specific audit. Such program-specific financial audits shall be performed in accordance with the Government Auditing Standards covering financial audits issued by the Comptroller General of the United States. In addition, the program-specific audit shall be performed in accordance with

(1) Any applicable USDA audit guide,

(2) Any applicable compliance tests contained in the OMB Compliance Supplement for the specific program involved, or

(3) any program-specific audit regulations.

(4) If the program is not covered by paragraphs (a)(1) through (3) of this section, the auditor shall design appropriate compliance tests in accordance with the Government Auditing Standards.

(b) Nonprofit institutions and organizations that receive $25,000 or more but less than $100,000 in Federal financial assistance or Federal cost-type contracts used to buy services and goods for the use of the Federal Government, may opt for an audit of each Federal award or a program-specific audit. Otherwise, an audit prepared in accordance with the provisions of appendix A of this part prevails.

(c) Nonprofit institutions and organizations that receive direct or indirect USDA Federal financial assistance or Federal cost-type contracts used to buy services and goods for the use of the Federal Government, totalling less than $25,000 are exempt from Federal audit requirements. However, records must be available for review by appropriate officials of USDA, the General Accounting Office (GAO) or a subgranting entity.

(d) USDA OFM may authorize an exception on a case-by-case basis to the requirements of this section for an organizational audit when requested by a nonprofit organization that receives Federal financial assistance under two or more programs that are substantially similar and the requesting organization can demonstrate that a more limited audit would satisfy the purposes of OMB Circular A–133.

§ 3051.6 Assignment of responsibilities.

(a) USDA OFM shall:

(1) Have lead responsibility for assuring implementation and compliance with the regulations in this part; and

(2) Coordinate, consolidate, and prepare any reports concerning the effectiveness of implementation of the regulations in this part.

(b) Each USDA awarding agency shall:

(1) Require as a term of their Federal financial assistance provided to, or cost-reimbursement contract awarded to institutions of higher education and other nonprofit institutions that an audit be conducted and report submitted in a timely manner to a designated official in the awarding agency and the OMB assigned cognizant agency, if one has been assigned. In a timely manner means the audit report shall be due within 30 days after the completion of the audit. The audit should be completed and the report submitted not later than 13 months after the end of the recipient's fiscal year unless a longer period is agreed to with the cognizant or awarding agency.

(2) Require that the recipient maintain records identifying the source and amounts of Federal awards received by using the Catalogue of Federal Domestic Assistance (CFDA) Numbers. CFDA numbers are not required for Research and Development and Student Financial Aid.

(3) Provide a copy of the regulations in this part to recipients or subrecipients, upon request.

(4) Ensure required audit reports are received from recipients to which awards have been made.

(5) Determine if an audit report adequately addresses the agency's needs or, if not, determine if a followup audit is necessary. Advise the Office of Inspector General (OIG) of any problem audits.

(6) Ensure that appropriate action is taken on all audit findings and recommendations pursuant to the Supplemental Appropriations and Rescission Act of 1980 (Pub. L. 96–304); OMB Circular A–50, Audit Followup; and Departmental Regulation 1720–1 which prescribes USDA's internal process for audit followup, management decisions and final action.

(7) Coordinate with the recipient to seek corrective action on system deficiencies and resolution of other issues identified in the audit. Seek the views of affected awarding agencies before entering into negotiations and obtain their concurrences before entering into a final agreement.

(8) Take appropriate action when the recipient neglects to obtain an audit or provide a report or take action to resolve findings and/or recommendations, and/or when the report does not meet the requirements of OMB Circular A–133, including the imposition of sanctions. If a cognizant Federal agency determines the audit is unacceptable, the cost of the audit shall not be reimbursed and other sanctions shall be considered if the recipient fails to obtain an acceptable audit.

(9) Establish and maintain appropriate records as to the effectiveness of institutions of higher education and other nonprofit organizations in carrying out the provisions of OMB Circular A–133.

(10) Coordinate the responses on audit reports from other USDA agencies when assigned as the lead agency.

(c) OIG shall:

(1) Follow the requirements set forth in OMB Circular A–133 when USDA is assigned as the cognizant agency or has general oversight responsibility.

(2) Provide or arrange for additional audit coverage, as appropriate, or when requested by an awarding agency.

(3) Designate the USDA lead agency for coordinating audit followup for cross-cutting audit findings that affect the programs of more than one USDA or non-USDA awarding agency. OIG will also coordinate the responses from other Federal agencies.

(4) Upon request or when required, if OMB has not designated a cognizant agency, OIG shall coordinate with other Federal Departments to determine which Department has general oversight responsibility.

(d) Institutions of higher education and other nonprofit institutions shall:

(1) Follow the audit arrangements and requirements set forth in appendix A to this part and the following:

(i) Use their own procedures to arrange for and prescribe the scope of independent audits, provided that such audits comply with the requirements set forth in this part.

(ii) Include provisions in audit contracts requiring the audit organization to retain audit working papers and reports in accordance with OMB Circular A–133.

(iii) Ensure that their independent auditor is responsible for:

(A) Reviewing their system for monitoring subrecipients as well as obtaining and considering the impact of the subrecipient's audit reports.

(B) Testing to determine whether these systems are functioning in accordance with prescribed procedures.

(C) Commenting on their monitoring procedure, if warranted by the circumstances.

(D) Considering whether subrecipient audits require adjustment of their financial statements, footnote disclosure, or modification of the auditor's report.

(iv) Failure of recipients to arrange for the required audits set forth in appendix A of this part, or failure to assure that acceptable audits are performed, will result in OIG coordinating with the USDA awarding agency to arrange for the necessary audit work. Recipients or subrecipients shall not charge USDA any portion of the cost of an audit not meeting USDA requirements. If a cognizant Federal agency determines the audit is unacceptable, the cost of the audit shall not be reimbursed and other sanctions shall be considered if the recipient fails to obtain an acceptable audit.

(v) Recipients are responsible for imposing like requirements upon subrecipients and may not pass on the cost of an audit that does not meet the requirements of OMB Circular A–133. However, if there is an indirect cost allocation plan with audit costs included, the following year's indirect cost allocation plan will offset the cost. In addition to sanctions, the USDA awarding agency may incorporate into the agreement that reimbursement for the additional audit costs incurred by the agency will either be withheld from future Federal financial assistance awards or by other means.

(2) Recipients must establish a system for:

(i) Assuring that subrecipients meet the requirements of the regulations in this part.

(ii) Evaluating the acceptability of subrecipient audits.

(iii) Following up on results of subrecipient audits.

(3) Recipients must ensure that subrecipient reports are transmitted by the subrecipient to the recipient. These reports shall not be routinely transmitted to USDA. Instead, the recipient shall retain all subrecipient audit reports on file as required by appendix A of this part and make them available to the awarding agency, OIG, GAO officials, or their designees, upon request.

(4) Take appropriate action on subrecipient audits and incorporate the results of these audits into their financial records and related reports. Questioned costs at the subrecipient level may be contingent liabilities as far as the recipient is concerned and should be reported as such, when appropriate.

(5) Each recipient shall establish a systematic method to assure timely and appropriate resolution of audit findings and recommendations.

Appendix A to Part 3051—OMB Circular A–133, Audits of Institutions of Higher Education and Other Nonprofit Institutions

[OBM Circular No. A–133]

To the Heads of Executive Departments and Establishments

Subject: Audits of Institutions of Higher Education and Other Nonprofit Institutions

1. *Purpose.* Circular A–133 establishes audit requirements and defines Federal responsibilities for implementing and monitoring such requirements for institutions of higher education and other nonprofit institutions receiving Federal awards.

2. *Authority.* Circular A–133 is issued under the authority of the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Procedures Act of 1950, as amended; Reorganization Plan No. 2 of 1970; and Executive Order No. 11541.

3. *Supersession.* Circular A–133 supersedes Attachment F, subparagraph 2h, of Circular A–110, "Uniform Administrative Requirements for Grants and other Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations."

4. *Applicability.* The provisions of Circular A–133 apply to:

a. Federal departments and agencies responsible for administering programs that involve grants, cost-type contracts and other agreements with institutions of higher education and other nonprofit recipients.

b. Nonprofit institutions, whether they are recipients, receiving awards directly from

Federal agencies, or are sub-recipients, receiving awards indirectly through other recipients.

These principles, to the extent permitted by law, constitute guidance to be applied by agencies consistent with and within the discretion, conferred by the statutes governing agency action.

5. *Requirements and Responsibilities.* The specific requirements and responsibilities of Federal departments and agencies and institutions of higher education and other nonprofit institutions are set forth in the attachment.

6. *Effective Date.* The provisions of Circular A–133 are effective upon publication and shall apply to audits of nonprofit institutions for fiscal years that begin on or after January 1, 1990. Earlier implementation is encouraged. However, until this Circular is implemented, the audit provisions of Attachment F to Circular A–110 shall continue to be observed.

7. *Policy Review (Sunset) Date.* Circular A–133 will have a policy review three years from the date of issuance.

8. *Inquiries.* Further information concerning Circular A–133 may be obtained by contacting the Financial Management Division, Office of Management and Budget, Washington, DC 20503, telephone (202) 395–3993.

Richard G. Darman,

Director.

[OMB Circular A–133]

Audits of Institutions of Higher Education and Other Nonprofit Institutions

Attachment

1. *Definitions.* For the purposes of this Circular, the following definitions apply:

a. "Award" means financial assistance, and Federal cost-type contracts used to buy services or goods for the use of the Federal Government. It includes awards received directly from the Federal agencies or indirectly through recipients. It does not include procurement contracts to vendors under grants or contracts, used to buy goods or services. Audits of such vendors shall be covered by the terms and conditions of the contract.

b. "Cognizant agency" means the Federal agency assigned by the Office of Management and Budget to carry out the responsibilities described in paragraph 3 of this Attachment.

c. "Coordinated audit approach" means an audit wherein the independent auditor, and other Federal and non-federal auditors consider each other's work, in determining the nature, timing, and extent of his or her own auditing procedures. A coordinated audit must be conducted in accordance with *Government Auditing Standards* and meet the objectives and reporting requirements set forth in paragraph 12(b) and 15, respectively, of this Attachment. The objective of the coordinated audit approach is to minimize duplication of audit effort, but not to limit the scope of the audit work so as to preclude the independent auditor from meeting the objectives set forth in paragraph 12(b) or issuing the reports required in paragraph 15 in a timely manner.

d. "Federal agency" has the same meaning as the term 'agency' in Section 551(1) of Title 5, United States Code.

e. "Federal Financial Assistance."

(1) "Federal financial assistance" means assistance provided by a Federal agency to a recipient or sub-recipient to carry out a program. Such assistance may be in the form of:

—grants;
—contracts;
—cooperative agreements;
—loans;
—loan guarantees;
—property;
—interest subsidies;
—insurance;
—direct appropriations;
—other non-cash assistance.

(2) Such assistance does not include direct Federal cash assistance to individuals.

(3) Such assistance includes awards received directly from Federal agencies, or indirectly when sub-recipients receive funds identified as Federal funds by recipients.

(4) The granting agency is responsible for identifying the source of funds awarded to recipients; the recipient is responsible for identifying the source of funds awarded to sub-recipients.

f. "Generally accepted accounting principles" has the meaning specified in the *Government Auditing Standards.*

g. "Independent auditor" means:

(1) A Federal, State, or local government auditor who meets the standards specified in the *Government Auditing Standards;* or

(2) A public accountant who meets such standards.

h. "Internal control structure" means the policies and procedures established to provide reasonable assurance that:

(1) Resource use is consistent with laws, regulations, and award terms;

(2) Resources are safeguarded against waste, loss, and misuse; and

(3) Reliable data are obtained, maintained, and fairly disclosed in reports.

i. "Major program" means an individual award or a number of awards in a category of Federal assistance or support for which total expenditures are the larger of three percent of total Federal funds expended or $100,000, on which the auditor will be required to express an opinion as to whether the major program is being administered in compliance with laws and regulations.

Each of the following categories of Federal awards shall constitute a major program where total expenditures are the larger of three percent of total Federal funds expended or $100,000:

—Research and Development.
—Student Financial Aid.
—Individual awards not in the student aid or research and development category.

j. "Management decision" means the evaluation by the management of an establishment of the findings and recommendations included in an audit report and the issuance of a final decision by management concerning its response to such findings and recommendations, including actions concluded to be necessary.

k. "Nonprofit institution" means any corporation, trust, association, cooperative or other organization which 1) is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest; 2) is not organized primarily for profit; and 3) uses its net proceeds to maintain, improve, and/or expand its operations. The term "nonprofit institutions" includes institutions of higher education, except those institutions that are audited as part of single audits in accordance with Circular A–128 "Audits of State and Local Governments." The term does not include hospitals which are not affiliated with an institution of higher education, or State and local governments and Indian tribes covered by Circular A–128 "Audits of State and Local Governments."

l. "Oversight" agency means the Federal agency that provides the predominant amount of direct funding to a recipient not assigned a cognizant agency, unless no direct funding is received. Where there is no direct funding, the Federal agency with the predominant indirect funding will assume the general oversight responsibilities. The duties of the oversight agency are described in paragraph 4 of this Attachment.

m. "Recipient" means an organization receiving financial assistance to carry out a program directly from Federal agencies.

n. "Research and development" includes all research activities, both basic and applied, and all development activities that are supported at universities, colleges, and other nonprofit institutions. "Research" is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. "Development" is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes.

o. "Student Financial Aid" includes those programs of general student assistance in which institutions participate, such as those authorized by Title IV of the Higher Education Act of 1965 which is administered by the U.S. Department of Education and similar programs provided by other Federal agencies. It does not include programs which provide fellowships or similar awards to students on a competitive basis, or for specified studies or research.

p. "Sub-recipient" means any person or government department, agency, establishment, or nonprofit organization that receives financial assistance to carry out a program through a primary recipient or other sub-recipient, but does not include an individual that is a beneficiary of such a program. A sub-recipient may also be a direct recipient of Federal awards under other agreements.

q. "Vendor" means an organization providing a recipient or sub-recipient with generally required goods or services that are related to the administrative support of the Federal assistance program.

2. *Audit of Nonprofit Institutions.*

a. *Requirements Based on Awards Received.*

(1) Nonprofit institutions that receive $100,000 or more a year in Federal awards shall have an audit made in accordance with

the provisions of this Circular. However, nonprofit institutions receiving $100,000 or more but receiving awards under only one program have the option of having an audit of their institution prepared in accordance with the provisions of the Circular or having an audit made of the one program. For prior or subsequent years, when an institution has only loan guarantees or outstanding loans that were made previously, the institution may be required to conduct audits for those programs, in accordance with regulations of the Federal agencies providing those guarantees or loans.

(2) Nonprofit institutions that receive at least $25,000 but less than $100,000 a year in Federal awards shall have an audit made in accordance with this Circular or have an audit made of each Federal award, in accordance with Federal laws and regulations governing the programs in which they participate.

(3) Nonprofit institutions receiving less than $25,000 a year in Federal awards are exempt from Federal audit requirements, but records must be available for review by appropriate officials of the Federal grantor agency or subgranting entity.

b. *Oversight by Federal Agencies.*

(1) To each of the larger nonprofit institutions the Office of Management and Budget (OMB) will assign a Federal agency as the cognizant agency for monitoring audits and ensuring the resolution of audit findings that affect the programs of more than one agency.

(2) Smaller institutions not assigned a cognizant agency will be under the general oversight of the Federal agency that provides them with the most funds.

(3) Assignments to Federal cognizant agencies for carrying out responsibilities in this section are set forth in a separate supplement to this Circular.

(4) Federal Government-owned, contractor-operated facilities at institutions or laboratories operated primarily for the Government are not included in the cognizance assignments. These will remain the responsibility of the contracting agencies. The listed assignments cover all of the functions in this Circular unless otherwise indicated. The Office of Management and Budget will coordinate changes in agency assignments.

3. *Cognizant Agency Responsibilities.* A cognizant agency shall:

a. Ensure that audit are made and reports are received in a timely manner and in accordance with the requirements of this Circular.

b. Provide technical advice and liaison to institutions and independent auditors.

c. Obtain or make quality control reviews of selected audits made by non-Federal audit organizations, and provide the results, when appropriate, to other interested organizations.

d. Promptly inform other affected Federal agencies and appropriate Federal law enforcement officials of any reported illegal acts or irregularities. A cognizant agency should also inform State or local law enforcement and prosecuting authorities, if not advised by the recipient, of any violation of law within their jurisdiction.

e. Advise the recipient of audits that have been found not to have met the requirements set forth in this Circular. In such instances, the recipient will work with the auditor to take corrective action. If corrective action is not taken, the cognizant agency shall notify the recipient and Federal awarding agencies of the facts and make recommendations for follow-up action. Major inadequacies or repetitive substandard performance of independent auditors shall be referred to appropriate professional bodies for disciplinary action.

f. Coordinate, to the extent practicable, audits or reviews made for Federal agencies that are in addition to the audits made pursuant to this Circular, so that the additional audits or reviews build upon audits performed in accordance with the Circular.

g. Ensure the resolution of audit findings that affect the programs of more than one agency.

h. Seek the views of other interested agencies before completing a coordinated program.

i. Help coordinate the audit work and reporting responsibilities among independent public accountants, State auditors, and both resident and non-resident Federal auditors to achieve the most cost-effective audit.

4. *Oversight Agency Responsibilities.* An oversight agency shall provide technical advice and counsel to institutions and independent auditors when requested by the recipient. The oversight agency may assume all or some of the responsibilities normally performed by a cognizant agency.

5. *Recipient Responsibilities.* A recipient that receives a Federal award and provides $25,000 or more of it during its fiscal year to a sub-recipient shall:

a. Ensure that the nonprofit institution sub-recipients that receive $25,000 or more have met the audit requirements of this Circular, and that sub-recipients subject to OMB Circular A–128 have met the audit requirements of that Circular;

b. Ensure that appropriate corrective action is taken within six months after receipt of the sub-recipient audit report in instances of noncompliance with Federal laws and regulations;

c. Consider whether sub-recipient audits necessitate adjustment of the recipient's own records; and

d. Require each sub-recipient to permit independent auditors to have access to the records and financial statements as necessary for the recipient to comply with this Circular.

6. *Relation to Other Audit Requirements.*

a. An audit made in accordance with this Circular shall be in lieu of any financial audit required under individual Federal awards. To the extent that an audit made in accordance with this Circular provides Federal agencies with the information and assurances they need to carry out their overall responsibilities, they shall rely upon and use such information. However, a Federal agency shall make any additional audits or reviews necessary to carry out responsibilities under Federal law and regulation. Any additional Federal audits or reviews shall be planned and carried out in such a way as to build upon work performed by the independent auditor.

b. Audit planning by Federal audit agencies should consider the extent to which reliance can be placed upon work performed by other auditors. Such auditors include State, local, Federal, and other independent auditors, and a recipient's internal auditors. Reliance placed upon the work of other auditors should be documented and in accordance with *Government Auditing Standards.*

c. The provisions of this Circular do not limit the authority of Federal agencies to make or contract for audits and evaluations of Federal awards, nor do they limit the authority of any Federal agency Inspector General or other Federal official.

d. The provisions of this Circular do not authorize any institution or sub-recipient thereof to constrain Federal agencies, in any manner, from carrying out additional audits, evaluations or reviews.

e. A Federal agency that makes or contracts for audits, in addition to the audits made by recipients pursuant to this Circular, shall, consistent with other applicable laws and regulations, arrange for funding the cost of such additional audits. Such additional audits or reviews include financial, performance audits and program evaluations.

7. *Frequency of Audit.* Audits shall usually be performed annually but not less frequently than every two years.

8. *Sanctions.* No audit costs may be charged to Federal awards when audits required by this Circular have not been made or have been made but not in accordance with this Circular. In cases of continued inability or unwillingness to have a proper audit in accordance with the Circular, Federal agencies must consider appropriate sanctions including:

—withholding a percentage of awards until the audit is completed satisfactorily;
—withholding or disallowing overhead costs; or
—suspending Federal awards until the audit is made.

9. *Audit Costs.* The cost of audits made in accordance with the provisions of this Circular are allowable charges to Federal awards. The charges may be considered a direct cost or an allocated indirect cost, determined in accordance with the provisions of Circular A–21, "Cost Principles for Universities" or Circular A–122, "Cost Principles for Nonprofit Organizations," FAR subpart 31, or other applicable cost principles or regulations.

10. *Auditor Selection.* In arranging for audit services institutions shall follow the procurement standards prescribed by Circular A–110, "Uniform Requirements for Grants and Agreements with Institutions of Higher Education, Hospital and other Nonprofit Organizations."

11. *Small and Minority Audit Firms.*

a. Small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in contracts awarded to fulfill the requirements of this Circular.

b. Recipients of Federal awards shall take the following steps to further this goal:

(1) Ensure that small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals are used to the fullest extent practicable;

(2) Make information on forthcoming opportunities available and arrange timeframes for the audit to encourage and facilitate participation by small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals;

(3) Consider in the contract process whether firms competing for larger audits intend to subcontract with small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals;

(4) Encourage contracting with small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals which have traditionally audited government programs, and in cases where this is not possible, assure that these firms are given consideration for audit subcontracting opportunities;

(5) Encourage contracting with consortiums of small audit firms as described in section (1), above, when a contract is too large for an individual small audit firm or audit firm owned and controlled by socially and economically disadvantaged individuals; and

(6) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration in the solicitation and utilization of small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals.

12. *Scope of Audit and Audit Objectives.*

a. The audit shall be made by an independent auditor in accordance with *Government Auditing Standards* developed by the Comptroller General of the United States covering financial audits. An audit under this Circular should be an organization-wide audit of the institution. However, there may be instances where Federal auditors are performing audits or are planning to perform audits at nonprofit institutions. In these cases, to minimize duplication of audit work, a coordinated audit approach may be agreed upon between the independent auditor, the recipient and the cognizant agency or the oversight agency. Those auditors who assume responsibility for any or all of the reports called for by paragraph 15 should follow guidance set forth in *Government Auditing Standards* in using work performed by others.

b. The auditor shall determine whether:

(1) The financial statements of the institution present fairly its financial position and the results of its operations in accordance with generally accepted accounting principles;

(2) The institution has an internal control structure to provide reasonable assurance that the institution is managing Federal awards in compliance with applicable laws and regulations, and controls that ensure compliance with the laws and regulations that could have a material impact on the financial statements; and

(3) The institution has complied with laws and regulations that may have a direct and material effect on its financial statement amounts and on each major Federal program.

13. *Internal Controls Over Federal Awards; Compliance Reviews.*

a. *General.* The independent auditor shall determine and report on whether the recipient has an internal control structure to provide reasonable assurance that it is managing Federal awards in compliance with applicable laws, regulations, and contract terms, and that it safeguards Federal funds. In performing these reviews, independent auditors should rely upon work performed by a recipient's internal auditors to the maximum extent possible. The extent of such reliance should be based upon the *Government Auditing Standards.*

b. *Internal Control Review.*

(1) In order to provide this assurance on internal controls, the auditor must obtain an understanding of the internal control structure and assess levels of internal control risk. After obtaining an understanding of the controls, the assessment must be made whether or not the auditor intends to place reliance on the internal control structure.

(2) As part of this review, the auditor shall:

(a) Perform tests of controls to evaluate the effectiveness of the design and operation of the policies and procedures in preventing or detecting material noncompliance. Tests of controls will not be required for those areas where the internal control structure policies and procedures are likely to be ineffective in preventing or detecting noncompliance, in which case a reportable condition or a material weakness should be reported in accordance with paragraph 15 c(2) of this Circular.

(b) Review the recipient's system for monitoring sub-recipients and obtaining and acting on sub-recipient audit reports.

(c) Determine whether controls are in effect to ensure direct and indirect costs were computed and billed in accordance with the guidance provided in the general requirements section of the compliance supplement to this Circular.

c. *Compliance Review.*

(1) The auditor shall determine whether the recipient has complied with laws and regulations that may have a direct and material effect on any of its major Federal programs. In addition, transactions selected for non-major programs shall be tested for compliance with Federal laws and regulations that apply to such transactions.

(2) In order to determine which major programs are to be tested for compliance, recipients shall identify, in their accounts, all Federal funds received and expended and the programs under which they were received. This shall include funds received directly from Federal agencies, through other State and local governments or other recipients. To assist recipients in identifying Federal awards, Federal agencies and primary recipients shall provide the *Catalog of Federal Domestic Assistance* (CFDA) numbers to the recipients when making the awards.

(3) The review must include the selection of an adequate number of transactions from each major Federal financial assistance program so that the auditor obtains sufficient evidence to support the opinion on compliance required by paragraph 15c(3) of this Attachment. The selection and testing of transactions shall be based on the auditors' professional judgment considering such factors as the amount of expenditures for the program; the newness of the program or changes in its conditions; prior experience with the program particularly as revealed in audits and other evaluations (*e.g.*, inspections, program reviews, or system reviews required by Federal Acquisition Regulations); the extent to which the program is carried out through sub-recipients; the extent to which the program contracts for goods or services; the level to which the program is already subject to program reviews or other forms of independent oversight; the adequacy of the controls for ensuring compliance; the expectation of adherence or lack of adherence to the applicable laws and regulations; and the potential impact of adverse findings.

(4) In making the test of transactions, the auditor shall determine whether:

—the amounts reported as expenditures were for allowable services, and

—the records show that those who received services or benefits were eligible to receive them.

(5) In addition to transaction testing, the auditor shall determine whether:

—matching requirements, levels of effort and earmarking limitations were met,

—Federal financial reports and claims for advances and reimbursement contain information that is supported by books and records from which the basic financial statements have been prepared, and

—amounts claimed or used for matching were determined in accordance with 1) OMB Circular A–21, "Cost Principles for Educational Institutions"; 2) matching or cost sharing requirements in Circular A–110, "Uniform Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations"; 3) Circular A–122, "Cost Principles for Nonprofit Organizations"; 4) FAR subpart 31 cost principles; and 5) other applicable cost principles or regulations.

(6) The principal compliance requirements of the largest Federal programs may be ascertained by referring to the "*Compliance Supplement for Single Audits of Educational Institutions and Other Nonprofit Organizations,*" and the "*Compliance Supplement for Single Audits of State and Local Governments,*" issued by OMB and available from the Government Printing Office. For those programs not covered in the Compliance Supplements, the auditor should ascertain compliance requirements by reviewing the statutes, regulations, and agreements governing individual programs.

(7) Transactions related to other awards that are selected in connection with examinations of financial statements and evaluations of internal controls shall be tested for compliance with Federal laws and regulations that apply to such transactions.

14. *Illegal Acts.* If, during or in connection with the audit of a nonprofit institution, the auditor becomes aware of illegal acts, such acts shall be reported in accordance with the provisions of the *Government Auditing Standards.*

15. *Audit Reports.*

a. Audit reports must be prepared at the completion of the audit.

b. The audit report shall state that the audit was made in accordance with the provisions of this Circular.

c. The report shall be made up of at least the following three parts:

(1) The financial statements and a schedule of Federal awards and the auditor's report on the statements and the schedule. The schedule of Federal awards should identify major programs and show the total expenditures for each program. Individual major programs other than Research and Development and Student Aid should be listed by catalog number as identified in the *Catalog of Federal Domestic Assistance*. Expenditures for Federal programs other than major programs shall be shown under the caption "other Federal assistance." Also, the value of non-cash assistance such as loan guarantees, food commodities or donated surplus properties or the outstanding balance of loans should be disclosed in the schedule.

(2) A written report of the independent auditor's understanding of the internal control structure and the assessment of control risk. The auditor's report should include as a minimum: 1) The scope of the work in obtaining understanding of the internal control structure and in assessing the control risk, 2) the nonprofit institution's significant internal controls or control structure including the controls established to ensure compliance with laws and regulations that have a material impact on the financial statements and those that provide reasonable assurance that Federal awards are being managed in compliance with applicable laws and regulations, and 3) the reportable conditions, including the identification of material weaknesses, identified as a result of the auditor's work in understanding and assessing the control risk. If the auditor limits his/her consideration of the internal control structure for any reason, the circumstances should be disclosed in the report.

(3) The auditor's report on compliance containing:

—An opinion as to whether each major Federal program was being administered in compliance with laws and regulations applicable to the matters described in paragraph 13(c)(3) of this Attachment, including compliance with laws and regulations pertaining to financial reports and claims for advances and reimbursements;

—A statement of positive assurance on those items that were tested for compliance and negative assurance on those items not tested;

—Material findings of noncompliance presented in their proper perspective:

• The size of the universe in number of items and dollars,

• The number and dollar amount of transactions tested by the auditors,

• The number and corresponding dollar amount of instances of noncompliance;

—Where findings are specific to a particular Federal award, an identification of total amounts questioned, if any, for each Federal award, as a result of noncompliance and the auditor's recommendations for necessary corrective action.

c. The three parts of the audit report may be bound into a single document, or presented at the same time as separate documents.

d. Nonmaterial findings need not be disclosed with the compliance report but should be reported in writing to the recipient in a separate communication. The recipient, in turn, should forward the findings to the Federal grantor agencies or subgrantor sources.

e. All fraud or illegal acts or indications of such acts, including all questioned costs found as the result of these acts that auditors become aware of, may be covered in a separate written report submitted in accordance with the *Government Auditing Standards*.

f. The auditor's report should disclose the status of known but uncorrected significant material findings and recommendations from prior audits that affect the current audit objective as specified in the *Government Auditing Standards*.

g. In additional to the audit report, the recipient shall provide a report of its comments on the findings and recommendations in the report, including a plan for corrective action taken or planned and comments on the status of corrective action taken on prior findings. If corrective action is not necessary, a statement describing the reason it is not should accompany the audit report.

h. Copies of the audit report shall be submitted in accordance with the reporting standards for financial audits contained in the *Government Auditing Standards*. Subrecipient auditors shall submit copies to recipients that provided Federal awards. The report shall be due within 30 days after the completion of the audit, but the audit should be completed and the report submitted not later than 13 months after the end of the recipient's fiscal year unless a longer period is agreed to with the cognizant or oversight agency.

i. Recipients of more than $100,000 in Federal awards shall submit one copy of the audit report within 30 days after issuance to a central clearinghouse to be designated by the Office of Management and Budget. The clearinghouse will keep completed audit reports on file.

j. Recipients shall keep audit reports, including subrecipient reports, on file for three years from their issuance.

16. *Audit Resolution.*

a. As provided in paragraph 3, the cognizant agency shall be responsible for ensuring the resolution of audit findings that affect the programs of more than one Federal agency. Resolution of findings that relate to the programs of a single Federal agency will be the responsibility of the recipient and the agency. Alternative arrangements may be made on case-by-case basis by agreement among the agencies concerned.

b. A management decision shall be made within six months after receipt of the report by the Federal agencies responsible for audit resolution. Corrective action should proceed as rapidly as possible.

17. *Audit Workpapers and Reports.* Workpapers and reports shall be retained for a minimum of three years from the date of the audit report, unless the auditor is notified in writing by the cognizant agency to extend the retention period. Audit workpapers shall be made available upon request to the cognizant agency or its designee or the General Accounting Office, at the completion of the audit.

[FR Doc. 93–18299 Filed 8–2–93; 8:45 am]

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Federal Register

Vol. 58, No. 147

Tuesday, August 3, 1993

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H.R. 2561/P.L. 103–54

To authorize the transfer of naval vessels to certain foreign countries. (July 28, 1993; 107 Stat. 274; 2 pages)

H.R. 1189/P.L. 103–55

Armored Car Industry Reciprocity Act of 1993 (July 28, 1993; 107 Stat. 276; 2 pages)

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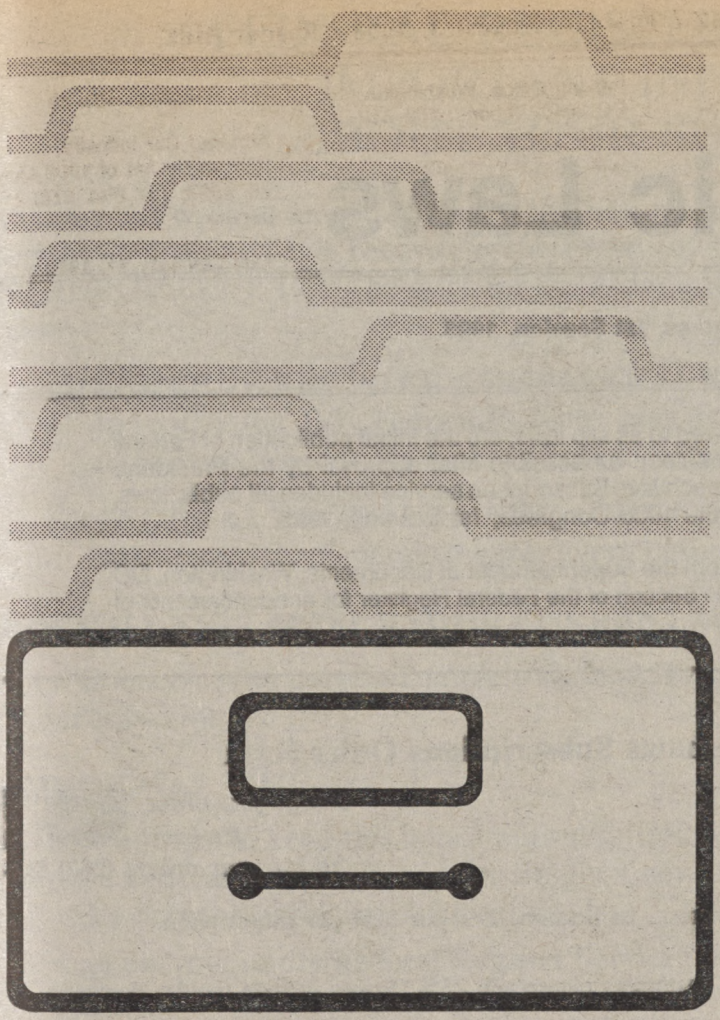

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in the Code of Federal Regulations (CFR)

GUIDE: Revised January 1, 1992

SUPPLEMENT: Revised January 1, 1993

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The various abstracts in the GUIDE tell the user (1) what records must be kept, (2) who must keep them, and (3) how long they must be kept.

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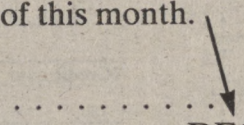

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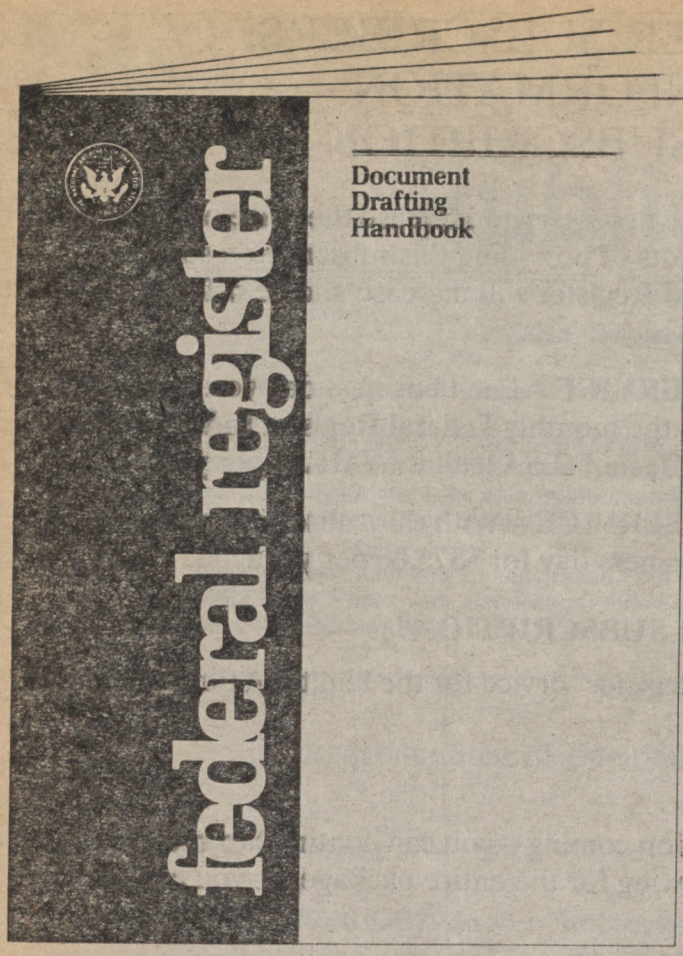

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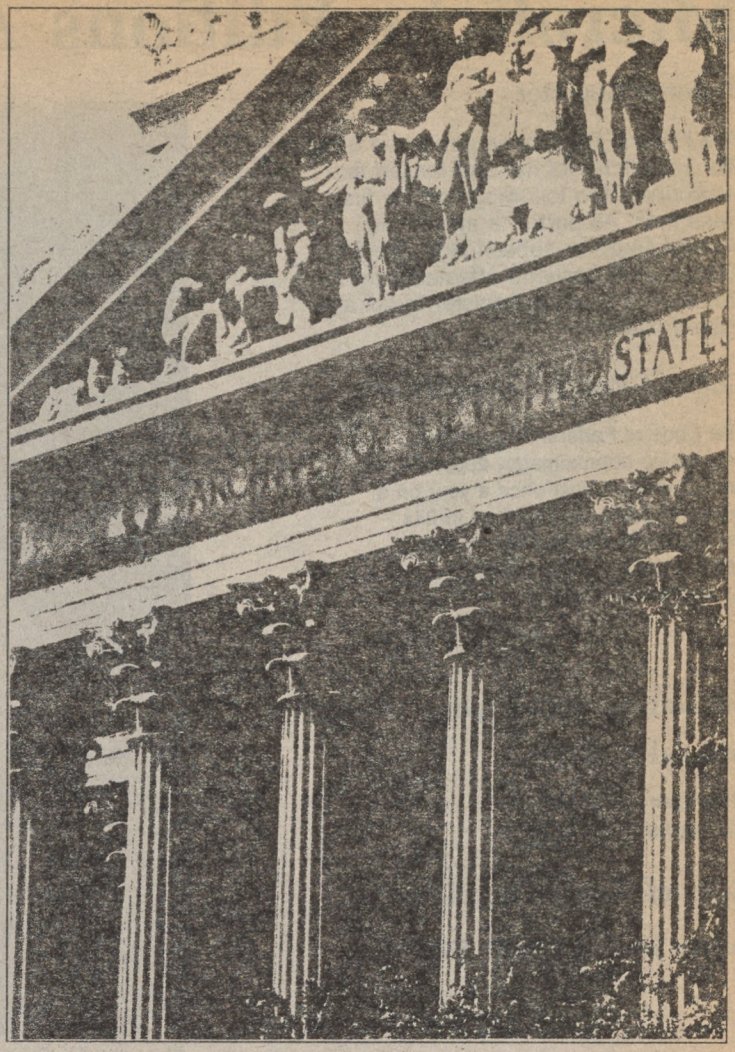

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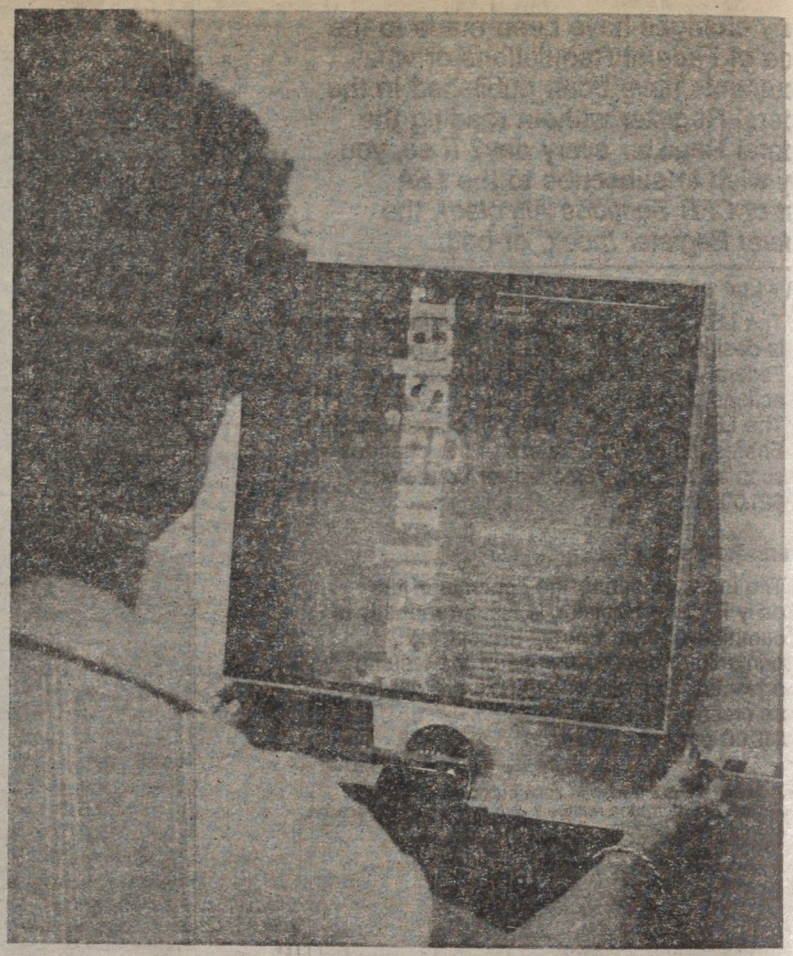

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