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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.

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2634

RIN 3209–AA00

Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divestiture

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule.

SUMMARY: This final rule makes effective a proposed amendment to 5 CFR part 2634, which was published on September 1, 1993, at 58 FR 46096–46097. No changes are necessary, based on the public comments which were received. However, one minor technical addition is being included for internal consistency.

The rule amends subpart I of 5 CFR part 2634, an interim rule on executive branch financial disclosure. The amendment exempts certain assets and income from disclosure on confidential financial disclosure reports. Specifically, it eliminates the requirement that confidential filers disclose the existence of and income from cash accounts in depository institutions, money market mutual funds and accounts, and U.S. Government obligations and securities.

EFFECTIVE DATE: November 30, 1993.

FOR FURTHER INFORMATION CONTACT: G. Sid Smith, Office of Government Ethics, telephone (202) 523–5757, FAX (202) 523–6325.

SUPPLEMENTARY INFORMATION: Executive branch employees who serve in positions which are designated for filing confidential financial disclosure reports must, according to the current requirements of subpart I of 5 CFR part 2634, disclose information about cash accounts in depository institutions, such as banks, savings and loan associations, credit unions, and similar depository financial institutions; money market mutual funds and accounts; U.S. Government obligations, including Treasury bonds, bills, notes, and savings bonds; and Government securities issued by U.S. Government agencies. However, for most confidential filers, the disclosure of this information was not considered by agencies to be critical in assessing the possibility of conflicts of interest. Furthermore, some concerns had been expressed about privacy, and disclosure of such information creates extra work for both filers and agency reviewing officials and could detract from the effectiveness and limited purpose of the confidential disclosure program.

These concerns were communicated to OGE by numerous confidential filers and agency reviewing officials over the eleven months between the time that subpart I of 5 CFR part 2634 became effective in October 1992, and the publication of this proposed amendment on September 1, 1993. Then during the public comment period on the proposed amendment, OGE received eight letters from agencies and one from a Federal employee, all very supportive of the change. During the comment period, OGE also received many phone calls and 16 letters which, though not directly responsive to this rulemaking, criticized various aspects of the confidential disclosure system, including the subject matter of this amendment.

One letter which commented on the proposal suggested that we clarify whether investment funds devoted to Federal Government obligations would be exempt from disclosure under the amendment. We do not believe that any modification to the amendment is necessary; any fund or other investment vehicle which is composed exclusively of these obligations would be exempt, since it is the underlying assets of a fund with which financial disclosure is concerned. Another comment letter suggested that the exemption for disclosure of Government securities should not apply automatically to employees of agencies which issue such securities. However, since none of the agencies which issue Government securities commented on that matter, we believe that it can be handled by separate agency rules or policies prohibiting such holdings or specially requiring their disclosure, in accordance with the appropriate procedures under 5 CFR part 2634 and part 2635.

The remaining comment letters were either general statements in favor of the amendment or suggesting that OGE expand the scope of the amendment to encompass other subject areas. Those recommendations for additional exemptions will be addressed by separate future rulemaking, if necessary.

For internal consistency, we have added the parenthetical phrase "including both demand and time deposits" to modify the phrase "accounts in depository institutions" in the text of the amendment to § 2634.907(a)(2)(i). This replicates the language already contained in the text of the proposed amendment to § 2634.907(a)(1)(i).

Accordingly, this rule amends § 2634.907 of subpart I of 5 CFR, effective November 30, 1993, to exempt all confidential filers from the requirement to disclose the specific assets detailed in the first paragraph of this Supplementary Information discussion, as well as the income therefrom. The Office of Government Ethics will also make conforming modifications to the SF 450 (Executive Branch Personnel Confidential Financial Disclosure Report), subject to Office of Management and Budget paperwork approval and General Services Administration standard form approval. If an agency finds that disclosure of the information which this rule eliminates for confidential filers is nonetheless necessary for an effective confidential disclosure system within that agency because of its mission or other special circumstances, it may seek approval from OGE, pursuant to § 2634.901(b) of subpart I of 5 CFR, for a supplemental reporting requirement, to include any or all of these elements for its employees.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(d), as Director of the Office of Government Ethics, I find good cause for waiving the 30-day delayed effective date as to this final rule amendment. The Office of Government Ethics already published a notice of this amendment as a proposed rule at 58 FR 46096–46097 (September 1, 1993) and received highly favorable comments on it. As a result, OGE is making only one technical clarification of the amendment, as proposed, for consistency in adopting it as final. In

addition, this amendment relieves the burden of confidential reporting as to the items identified for removal. It is important that this relief be provided promptly and, if possible, in time for the January 1, 1994 cut-off for inclusion in the 1994 edition of OGE's part of volume 5 of the Code of Federal Regulations.

Executive Order 12866

In promulgating this final rule amendment to the executive branch-wide Government financial disclosure regulation, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This amendment has not been reviewed by the Office of Management and Budget under that Executive order, as it is not deemed "significant."

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this amendment to the interim rule will not have a significant economic impact on a substantial number of small entities because it will affect only Federal executive branch agencies and employees.

Paperwork Reduction Act

The Paperwork Reduction Act (5 U.S.C. chapter 35) does not apply to this amendment to the interim rule because the amendment does not contain any additional information collection requirements which require the approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 2634

Administrative practice and procedure, Certificates of divestiture, Conflict of interests, Financial disclosure, Government employees, Penalties, Privacy, Reporting and recordkeeping requirements, Trusts and trustees.

Approved: November 19, 1993.

Stephen D. Potts,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is amending part 2634 of subchapter B of Chapter XVI of title 5 of the Code of Federal Regulations as follows:

PART 2634—[AMENDED]

1. The authority citation for part 2634 continues to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); 26 U.S.C. 1043; 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.

Subpart I—Confidential Financial Disclosure Reports

2. Section 2634.907 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 2634.907 Report contents.

(a) * * *

(1) *Interests in property.* All the interests in property specified by § 2634.301, except:

(i) Accounts (including both demand and time deposits) in depository institutions, including banks, savings and loan associations, credit unions, and similar depository financial institutions;

(ii) Money market mutual funds and accounts;

(iii) U.S. Government obligations, including Treasury bonds, bills, notes, and savings bonds; and

(iv) Government securities issued by U.S. Government agencies;

(2) *Income.* All the income items specified by § 2634.302, except from:

(i) Accounts (including both demand and time deposits) in depository institutions, including banks, savings and loan associations, credit unions, and similar depository financial institutions;

(ii) Money market mutual funds and accounts;

(iii) U.S. Government obligations, including Treasury bonds, bills, notes, and savings bonds; and

(iv) Government securities issued by U.S. Government agencies;

* * * * *

[FR Doc. 93–29322 Filed 11–29–93; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 92–139–5]

Pine Shoot Beetle

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the pine shoot beetle regulations by adding Cook, Du Page, Iroquois, Kankakee, and Livingston Counties, IL; De Kalb, Delaware, and Grant Counties, IN; Branch, Hillsdale, Lenawee, Washtenaw, Jackson, Calhoun, Van Buren, Wayne, Oakland, Macomb, Genesee, Shiawassee, Ionia, Montcalm, Saginaw, Isabella, Midland, Tuscola, and Allegan Counties, MI; Erie and Knox Counties, OH; and Chautauqua, Cattaraugus, Livingston, Wyoming, Genesee, Ontario, Orleans, and Monroe Counties, NY, to the list of quarantined areas. This action is necessary on an emergency basis to prevent the spread of the pine shoot beetle, a highly destructive pest of pine trees, into noninfested areas of the United States.

We are also adding a new schedule of methyl bromide fumigation treatments to the list of treatments available for cut pine Christmas trees that are to be moved interstate from pine shoot beetle quarantined areas.

DATES: Interim rule effective November 23, 1993. Consideration will be given only to comments received on or before January 31, 1994.

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. 92–139–5. 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 on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Foster, Assistant Operations Officer, Plant Protection and Quarantine, APHIS, USDA, room 642, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8247.

SUPPLEMENTARY INFORMATION:

Background

The pine shoot beetle is a highly destructive pest of pine trees. The pine shoot beetle can cause damage in weak and dying trees, where reproduction and immature stages of pine shoot beetle occur, and in the new growth of healthy trees. The "maturation feeding" of young beetles takes the form of boring up the center of pine shoots (usually of the current year's growth), causing stunted and distorted growth in the host trees. The pine shoot beetle is also an important vector of several diseases of pine trees. Adults can fly at least 1 kilometer, and the wood, nursery stock, and Christmas trees they infest are often transported long distances. This pest damages urban trees, and can cause

economic losses to the timber, Christmas tree, and nursery industries.

The regulations in 7 CFR 301.50 (referred to below as the regulations) impose restrictions on the interstate movement of regulated articles from quarantined areas in order to prevent the spread of the pine shoot beetle into noninfested areas of the United States. The regulations were established in a document effective on November 13, 1992, and published in the **Federal Register** on November 19, 1992 (57 FR 54492–54499, Docket No. 92–139–1). In a document effective on January 19, 1993, and published in the **Federal Register** on January 28, 1993, 1993 (58 FR 6346–6348, Docket No. 92–139–2), we amended the regulations by adding Will County, IL, to the list of quarantined areas and by allowing all pine nursery stock to be moved interstate after cold treatment. In a document effective and published in the **Federal Register** on May 13, 1993 (58 FR 28333–28335, Docket No. 93–139–3), we further amended the regulations by adding Ingham County, MI, to the list of quarantined areas; by removing restrictions on logs and lumber, with bark attached, of fir, larch, and spruce; by relieving certain restrictions on the interstate movement of logs and lumber of pine; by adding pine stumps and pine bark nuggets, including bark chips, to the list of regulated articles; and by providing for certification of certain pine seedlings up to 36 inches high. And, in a document effective and published in the **Federal Register** on June 29, 1993 (58 FR 34681–34683, Docket No. 93–139–4), we further amended the regulations by allowing certain pine transplants to be certified for interstate movement and by adding 5 counties in Indiana and 6 counties in Michigan to the list of quarantined areas.

Surveys recently conducted by State and Federal inspectors revealed that Cook, Du Page, Iroquois, Kankakee, and Livingston Counties, IL; De Kalb, Delaware, and Grant Counties, IN; Branch, Hillsdale, Lenawee, Washtenaw, Jackson, Calhoun, Van Buren, Wayne, Oakland, Macomb, Genesee, Shiawassee, Ionia, Montcalm, Saginaw, Isabella, Midland, Tuscola, and Allegan Counties, MI; Erie and Knox Counties, OH; and Chautauqua, Cattaraugus, Livingston, Wyoming, Genesee, Ontario, Orleans, and Monroe Counties, NY, are infested with the pine shoot beetle. The regulations in § 301.50–3 provide that the Administrator of the Animal and Plant Health Inspection Service (APHIS) will list as a quarantined area each State, or each portion of a State, in which the pine shoot beetle has been found by an inspector, in which the Administrator has reason to believe the pine shoot beetle is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which the pine shoot beetle has been found.

In accordance with these criteria, we are designating Cook, Du Page, Iroquois, Kankakee, and Livingston Counties, IL; De Kalb, Delaware, and Grant Counties, IN; Branch, Hillsdale, Lenawee, Washtenaw, Jackson, Calhoun, Van Buren, Wayne, Oakland, Macomb, Genesee, Shiawassee, Ionia, Montcalm, Saginaw, Isabella, Midland, Tuscola, and Allegan Counties, MI; Erie and Knox Counties, OH; and Chautauqua, Cattaraugus, Livingston, Wyoming, Genesee, Ontario, Orleans, and Monroe Counties, NY, as quarantined areas, and adding them to the list of quarantined areas provided in § 301.50–3(c).

We are also adding a new schedule of methyl bromide fumigation treatments for cut pine Christmas trees to the list of treatments available under § 301.50–10. Under the regulations, we require certain regulated articles to be treated for pine shoot beetle infestation in order to be certified for interstate movement from quarantined areas. Currently, we allow both methyl bromide fumigation and cold treatment for cut pine Christmas trees. However, the intensity of the currently listed methyl bromide treatments causes premature needle fall and effectively destroys the trees; they can only be used as means of killing the pine shoot beetle in unsold Christmas trees as an alternative to chipping or burning. Similarly, producers have experienced premature needle fall problems with the listed cold treatment.

Based on research conducted at the APHIS Plant Protection and Quarantine Hoboken Methods Development Center, we believe the new methyl bromide fumigation treatments effectively eliminate pine shoot beetle infestations in cut pine Christmas trees while leaving the trees in saleable condition. These treatments will, therefore, expand markets for producers who have infested trees in quarantined areas. APHIS assumes no responsibility, however, for damage to cut pine Christmas trees due to any phytotoxic effects of the methyl bromide treatments. We also recommend that trees be cut at least 14 days prior to treatment in order to reduce the possibility of phytotoxic effects.

Accordingly, we are also eliminating cut pine Christmas trees from the list of regulated articles eligible for the already listed methyl bromide fumigation treatments under § 301.50–10(a). Considering that no cut pine tree producers used these treatments due to their destructive effects, we see no reason to maintain them as treatment options for cut pine Christmas trees.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency situation exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the pine shoot beetle from spreading to noninfested areas of the United States.

Immediate action is also necessary to relieve unnecessarily burdensome restrictions on pine Christmas tree growers. Many growers in the newly quarantined areas already have negotiated 1993 sale contracts for their trees. Others intend to sell a number of their trees interstate this year. Without the addition of the new schedule of fumigation treatments, these growers will have to divert to local markets or destroy cut pine Christmas trees originally intended for interstate shipment, but now found to be infested with the pine shoot beetle. With the addition of the new fumigation treatments, however, these growers will be able to ship their infested trees interstate after treatment and thus experience only minimal economic losses.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

About 387 small nurseries and 594 Christmas tree farms are located in the 37 newly quarantined counties.

Most of the small nurseries in these counties specialize in production of deciduous landscape products. However, some also produce rooted

pine Christmas trees and pine nursery stock. About 85 of these nurseries ship approximately 30,000 rooted pine Christmas trees and pine nursery stock products interstate annually. If inspected and found to be infested with the pine shoot beetle, these trees and nursery stock products either can be diverted for sale within local markets or cold treated before interstate shipment. We estimate that about 3 per cent, or 900, of these rooted pine Christmas trees and pine nursery stock products may be found to be infested and thus would need to be cold treated before being shipped interstate.

The cold treatments for interstate shipments of rooted pine Christmas trees and pine nursery stock cost producers between $3.10 and $12.50 per plant. Per-unit treatment costs vary due to tree size and treatment facility capacity. So, as a result of this rule, we expect that cold treatment costs could increase annual expenditures of each of the 85 small nurseries by $35 to $135. Therefore, we anticipate that this interim rule will have a negligible economic impact on small nurseries within the newly quarantined counties.

Most of the small Christmas tree farms in these counties depend on the local choose-and-cut market for their annual sales and so will not be affected by this rule. However, about 100 of these farms ship approximately 650,000 cut pine Christmas trees interstate annually. If inspected and found to be infested with the pine shoot beetle, these trees either can be diverted for sale within local markets or treated in accordance with § 301.50–10 before interstate shipment. We estimate that about 3 per cent, or 19,500 of these cut pine Christmas trees may be found to be infested and thus would need to be treated before being shipped interstate.

Prior to this interim rule, the only viable treatment option available to farms wishing to ship infested cut pine Christmas trees interstate was cold treatment before shipment, at a cost of approximately $15.40 per tree. This cost makes interstate shipment of treated trees impractical, as the average value of a cut pine Christmas tree is only about $13.

We believe, therefore, that farms within the newly quarantined areas wishing to ship infested trees interstate will choose to employ one of the five new fumigation treatments also established by this rule, since each costs only about $1 per tree. Using this cost, we estimate that treatment costs will increase the annual expenditures of each of the 100 affected farms by about $195. Therefore, we anticipate a minimal economic impact on cut pine Christmas tree farms in the new quarantined areas as a result of this rule. And, the new fumigation treatments established in this rule will offer these farmers inexpensive treatment alternatives previously unavailable.

We are unable to quantify the interstate movement from the 37 newly quarantined counties of the other regulated articles affected by this rule, including pine logs, lumber, and pine bark chips and nuggets. We have determined, however, that these counties import more of these articles than they harvest or manufacture themselves. Therefore, we anticipate that this interim rule will have a minimal economic impact on producers of these regulated articles within the 37 newly quarantined counties.

Prior to this rule, approximately 27 farmers in the 55 already quarantined counties produced annually about 6,505 cut pine Christmas trees that required treatment in order to be shipped interstate. But, as stated above, the prohibitive costs of cold treatment forced these producers to either divert their infested trees to local markets or destroy the trees. We expect that the new fumigation treatments established by this rule will allow these farmers to market these 6,505 trees outside of the quarantined counties at a treatment cost of only about $1 per tree. Again assuming an average price of $13 per tree, we estimate that use of the new treatments could result in an approximate net sales increase of about $2911 per farmer in the counties quarantined prior to this rule.

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

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings 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 rule have been approved by the Office of Management and Budget (OMB), and there are no new requirements. The assigned OMB control number is 0579–0088.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this rule. The assessment provides a basis for the conclusion that the treatment of cut pine Christmas trees, under the conditions specified in this rule, will not present a risk of introducing or disseminating plant pests and will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement will not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with:

(1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.),

(2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1508),

(3) USDA Regulations Implementing NEPA (7 CFR Part 1b), and

(4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Copies of the environmental assessment and finding of no significant impact are available for public inspection 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. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended to read as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 301.50–3, paragraph (c), under Illinois, Indiana, Michigan, New York, and Ohio, new counties are added, in alphabetical order, to read as follows:

§ 301–50.3 Quarantined areas.

* * * * *

(c) * * *

Illinois

Cook. The entire county.
Du Page. The entire county.
Iroquois. The entire county.

* * * * *

Kankakee. The entire county.
Livingston. The entire county.

* * * * *

Indiana

* * * * *

De Kalb. The entire county.
Delaware. The entire county.

* * * * *

Grant. The entire county.

* * * * *

Michigan

Allegan. The entire county.

* * * * *

Branch. The entire county.
Calhoun. The entire county.

* * * * *

Genesee. The entire county.

* * * * *

Hillsdale. The entire county.

* * * * *

Ionia. The entire county.
Isabella. The entire county.
Jackson. The entire county.

* * * * *

Lenawee. The entire county.

* * * * *

Macomb. The entire county.
Midland. The entire county.

* * * * *

Montcalm. The entire county.
Oakland. The entire county.
Saginaw. The entire county.
Shiawassee. The entire county.

* * * * *

Tuscola. The entire county.
Van Buren. The entire county.
Washtenaw. The entire county.
Wayne. The entire county.

New York

Cattaraugus. The entire county.
Chautauqua. The entire county.

* * * * *

Genesee. The entire county.
Livingston. The entire county.
Monroe. The entire county.

* * * * *

Ontario. The entire county.
Orleans. The entire county.
Wyoming. The entire county.

Ohio

* * * * *

Erie. The entire county.

* * * * *

Knox. The entire county.

* * * * *

§ 301.50–10 [Amended]

3. In § 301.50–10, paragraph (a) is amended by removing the phrase "pine stumps, and pine Christmas trees," and adding "and pine stumps," in its place, and removing the phrase "stumps, and trees" and adding "and stumps" in its place.

4. In § 301.50–10, a new paragraph (c) is added to read as follows:

§ 301.50–10 Treatments.

* * * * *

(c) Any one of these fumigation treatments is authorized for use on cut pine Christmas trees. Cut pine Christmas trees may be treated with methyl bromide at normal atmospheric pressure as follows:

Temperature	Dosage: pounds per 1000 feet³	Exposure: hours	Concentration readings: ounces per 1000 feet³			
			2.0 hr	3.0 hr	3.5 hr	4.0 hr
40–49 °F	4.0	4.0	57	—	—	48
50–59 °F	4.0	3.5	57	—	48	—
50–59 °F	3.5	4.0	50	—	—	42
60 °F+	4.0	3.0	57	48	—	—
60 °F+	3.0	4.0	43	—	—	36

NOTE: APHIS assumes no responsibility for damage to cut pine Christmas trees due to possible phytotoxic effects of these treatments. Trees should be cut at least 14 days before treatment to reduce the possibility of phytotoxic effects.

Done in Washington, DC, this 23rd day of November 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–29252 Filed 11–29–93; 8:45 am]

BILLING CODE 3410–34–P

7 CFR Part 301

[Docket 91–155–9]

Mediterranean Fruit Fly; Addition to the Quarantined Areas; Treatments

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mediterranean fruit fly regulations by expanding the previously quarantined areas of Los Angeles and Orange Counties, CA, and Los Angeles and San Bernardino Counties, CA, and by adding three treatments for regulated citrus fruit. These actions are necessary on an emergency basis to prevent the spread of the Mediterranean fruit fly into noninfested areas of the United States and to lessen the restrictions on the interstate movements of regulated articles for which treatments are added.

DATES: Interim rule effective November 22, 1993. Consideration will be given only to comments received on or before January 31, 1994.

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. 91–155–9. 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 on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Operations, Plant Protection and Quarantine, APHIS, USDA, room 640, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8247.

SUPPLEMENTARY INFORMATION:

Background

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables. The Mediterranean fruit fly (Medfly) can

cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks.

We established the Mediterranean fruit fly regulations (7 CFR 301.78 through 301.78–10; referred to below as the regulations), and quarantined the Hancock Park area of Los Angeles County, CA, in an interim rule effective on November 5, 1991, and published in the **Federal Register** on November 13, 1991 (56 FR 57573–57579, Docket No. 91–155). The regulations impose restrictions on the interstate movement of regulated articles from quarantined areas in order to prevent the spread of the Medfly to noninfested areas of the United States. We have published a series of interim rules amending these regulations by adding or removing certain portions of Los Angeles, Santa Clara, Orange, San Bernardino, and San Diego Counties, CA, from the list of quarantined areas. Amendments affecting California were made effective on September 10, and November 12, 1992; and on January 19, July 16, August 3, September 22, and October 14, 1993 (57 FR 42485–42486, Docket No. 91–155–2; 57 FR 54166–54169, Docket No. 91–155–3; 58 FR 6343–6346, Docket No. 91–155–4; 58 FR 39123–39124, Docket No. 91–155–5; 58 FR 42489–42491, Docket No. 91–155–6; 58 FR 49186–49190, Docket No. 91–155–7; and 58 FR 53105–53109, Docket No. 91–155–8).

Recent trapping surveys by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service (APHIS) have revealed that additional infestations of Medfly have been discovered in the South Central Los Angeles, La Puente, and East Los Angeles areas in Los Angeles County, CA, and a portion of the Los Serranos area in San Bernardino County, CA.

The regulations in § 301.78–3 provide that the Administrator of APHIS will list as a quarantined area each State, or each portion of a State, in which the Medfly has been found by an inspector, in which the Administrator has reason to believe that the Medfly is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which the Medfly has been found.

In accordance with these criteria and the recent Medfly findings described above, we are amending § 301.78–3 by expanding the area that extends through both Los Angeles and San Bernardino Counties with the addition of an area of approximately 29 square miles in the Los Serranos area in San Bernardino County and by expanding the area which extends through both Los Angeles and Orange Counties with the addition of an area of approximately 58 square miles in the South Central, La Puente, and East Los Angeles areas in Los Angeles County. The quarantined areas as revised are as follows:

Los Angeles and Orange Counties

That portion of the counties beginning at the intersection of the Angeles National Forest boundary and Sage Hill Road; then north along an imaginary line to its intersection with Brown Mountain Road at Millard Campground; then west along Brown Mountain Road to its intersection with El Prieto Road; then southwest along El Prieto Road to its intersection with the Pasadena City Limits; then north and west along the Pasadena City Limits to the La Canada Flintridge City Limits; then west and south along the La Canada Flintridge City Limits to Foothill Boulevard; then northwest along Foothill Boulevard to its intersection with La Crescenta Avenue; then south along La Crescenta Avenue to its intersection with Shirley Jean Street; then southwest along an imaginary line to the end of Allen Avenue; then southwest along Allen Avenue to its intersection with Mountain Street; then northwest along Mountain Street to its intersection with Sunset Canyon Drive; then northwest along Sunset Canyon Drive to its intersection with Olive Avenue; then southwest along Olive Avenue to its intersection with Barham Boulevard; then south along Barham Boulevard to its intersection with State Highway 101; then southeast along State Highway 101 to its intersection with Highland Avenue; then south along Highland Avenue to its intersection with Sunset Boulevard; then west along Sunset Boulevard to its intersection with La Cienega Boulevard; then south along La Cienega Boulevard to its intersection with Washington Boulevard; then southwest along Washington Boulevard to its intersection with Culver Boulevard; then southwest along Culver Boulevard to its intersection with Vista Del Mar; then southeast along Vista Del Mar to its intersection with Rosecrans Avenue; then east along Rosecrans Avenue to its intersection with Prairie Avenue; then south along Prairie Avenue to its intersection with State Highway 91; then east along State Highway 91 to its intersection with Paramount Boulevard; then south on Paramount Boulevard to its intersection with Carson Street; then east on Carson Street to its intersection with Lakewood Boulevard; then south on Lakewood Boulevard to its intersection with Willow Street; then east on Willow Street to its intersection with Katella Avenue; then east along Katella Avenue to its intersection with Valley View Street; then south along Valley View Street to its intersection with Bolsa Chica Road; then south along Bolsa Chica Road to its intersection with Bolsa Chica Street; then south along Bolsa Chica Street to its intersection with Los Patos Avenue; then southeast along an imaginary line to the intersection of East Garden Grove Wintersburg Channel and the Bolsa Chica Ecological Reserve boundary; then southeast along the Bolsa Chica Ecological Reserve boundary to its intersection with Ellis Avenue; then east along Ellis Avenue to its intersection with Edwards Street; then south along Edwards Street to its intersection with Garfield Avenue; then east along Garfield Avenue to its intersection with North Golden West Street; then south along North Golden West Street to its intersection with Yorktown Avenue; then east along Yorktown Avenue to its intersection with Main Street; then south along Main Street to its intersection with Adams Avenue; then, east along Adams Avenue to its intersection with Fairview Road; then north along Fairview Road to its intersection with Interstate Highway 405; then east and south along Interstate Highway 405 to its intersection with Culver Drive; then northeast along Culver Drive to its intersection with Walnut Avenue; then northwest along Walnut Avenue to its intersection with Jamboree Road; then northeast along Jamboree Road to its intersection with Tustin Ranch Road; then west along Tustin Ranch Road to its intersection with Pioneer Way; then north along Pioneer Way to its intersection with Pioneer Road; then, northwest on Pioneer Road to its intersection with Foothill Boulevard; then northwest along Foothill Boulevard to its intersection with Old Foothill Boulevard; then northwest on Old Foothill Boulevard to its intersection with Hewes Street; then north on Hewes Street to its intersection with Chapman Avenue; then west along Chapman Avenue to its intersection with West Street; then north along West Street to its intersection with Katella Avenue; then west along Katella Avenue to its intersection with Western Avenue; then north along Western Avenue to its intersection with Commonwealth Avenue; then east along Commonwealth Avenue to its intersection with Beach Boulevard; then north along Beach Boulevard to its intersection with La

Mirada Boulevard; then northwest and north along La Mirada Boulevard to its intersection with Colima Road; then northeast on Colima Road to its intersection with Azusa Avenue; then north along Azusa Avenue to its intersection with Amar Road; then east along Amar Road to its intersection with Temple Avenue; then northeast along Temple Avenue to its intersection with the Walnut City Limits; then north and northeast along the Walnut City Limits to the Forest Lawn Memorial Park, Covina Hills, boundary; then northeast along that boundary to Interstate Highway 10; then east along Interstate Highway 10 to its intersection with Interstate Highway 210; then northwest along Interstate Highway 210 to its intersection with San Dimas Avenue; then east and north along San Dimas Avenue to its intersection with Foothill Boulevard; then west along Foothill Boulevard to its intersection with Alosta Avenue; then west along Alosta Avenue to its intersection with Foothill Boulevard; then west along Foothill Boulevard to its intersection with Azusa Avenue; then north along Azusa Avenue to its intersection with San Gabriel Canyon Road; then due north along an imaginary line to its intersection with the Angeles National Forest boundary; then west along this boundary to the point of beginning.

Los Angeles and San Bernardino Counties

That portion of the counties beginning at the intersection of College Way and State Highway 30 (Base Line Road); then east along State Highway 30 to its intersection with Carnelian Street; then south along Carnelian Street to its intersection with Vineyard Avenue; then south along Vineyard Avenue to its intersection with Holt Boulevard; then west along Holt Boulevard to its intersection with Grove Avenue; then south along Grove Avenue to its intersection with Mission Boulevard; then southeast along Mission Boulevard to its intersection with Vineyard Avenue; then south along Vineyard Avenue to its intersection with Riverside Drive; then west along Riverside Drive to its intersection with Walker Avenue; then south along Walker Avenue to its intersection with Eucalyptus Avenue; then west along Eucalyptus Avenue to its intersection with State Highway 83 (Euclid Avenue); then south along State Highway 83 to its intersection with State Highway 71; then southwest from this intersection, along an imaginary line to the northern intersection of the Yorba Linda City Limits and the San Bernardino County line; then northwest and north along the San Bernardino County line to its intersection with State Highway 60; then east along Highway 60 to its intersection with Garey Avenue; then north along Garey Avenue to its intersection with College Way; then northeast along College Way to the point of beginning.

Treatments

We are also amending § 301.78–10 of the regulations, which sets forth treatments for certain regulated articles, by adding additional treatments for citrus fruit. Under the regulations, a regulated article from a quarantined area is eligible for interstate movement pursuant to a certificate if, among other things, it has been treated in accordance with § 301.78–10 of the regulations, and is eligible for interstate movement with a limited permit if it is moving under certain conditions to a specified destination for the treatment. Based on research, it has been determined that there are three additional treatments for citrus fruit that are adequate to destroy the Mediterranean fruit fly. These treatments are as follows:

Regulated Citrus Fruit That Has Been Harvested

(1) Fumigation with methyl bromide at normal atmospheric pressure with 32 g/m³ (2 pounds per 1000 cubic feet) for 3½ hours at 21 °C. (70 °F.) or above.

Note: Some varieties of fruit may be injured by methyl bromide exposure. Shippers should test treat before making commercial shipments.

(2) Fumigation plus refrigeration: Fumigation with methyl bromide at normal atmospheric pressure with 32 g/m³ (2 pounds per 1000 cubic feet) at 21 °C. (70 °F.) or above.

Fumigation exposure time	Refrigeration
2 hours	4 days at 0.55 to 0.7 °C. (33 to 37 °F.); or 11 days at 3.33 to 8.3 °C. (38 to 47 °F.).
2½ hours.	4 days at 1.11 to 4.44 °C. (34 to 40 °F.); or 6 days at 5.0 to 8.33 °C. (41 to 47 °F.); or 10 days at 8.88 to 13.33 °C. (48 to 56 °F.).
3 hours	3 days at 6.11 to 8.33 °C. (43 to 47 °F.); or 6 days at 9.88 to 13.33 °C. (48 to 56 °F.).

Note: Some varieties of fruit may be injured by methyl bromide exposure. Shippers should test treat before making commercial shipments.

Time lapse between fumigation and start of cooling not to exceed 24 hours. Chamber load not to exceed 80 percent of volume.

(3) Cold treatment: 10 days at 0 °C. (32 °F.) or below; or 11 days at 0.55 °C. (33 °F.) or below; 12 days at 1.11 °C (34 °F.) or below: 14 days at 1.66 °C. (35 °F.) or below; or 16 days at 2.22 °C. (36 °F.) or below.

Adding these treatments relieves unnecessary restrictions by allowing the interstate movement of citrus fruit from quarantined areas in those instances where the risk of spreading the pest to noninfested areas can be eliminated.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the Mediterranean fruit fly from spreading to noninfested areas of the United States. Immediate action is also necessary to prevent economic losses to shippers who, without the treatments added by this rule, would be unable to move their harvested citrus fruit interstate.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12866. Based on information compiled by the Department, we have determined that this rule:

(1) Will have an effect on the economy of less than $100 million;

(2) Will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(3) Will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(4) Will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and

(5) Will not raise novel legal or policy issues arising out of legal mandates, the

President's priorities, or principles set forth in Executive Order 12866.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

This interim rule affects the interstate movement of regulated articles from the South Central Los Angeles, La Puente, and East Los Angeles areas of Los Angeles County, CA, and the Los Serranos area of San Bernardino County, CA. There are approximately 1,554 small entities that could be affected, including 501 fruit sellers, 55 nurseries, 356 distributor/wholesalers, 8 growers, 9 swapmeets, 1 certified farmers market, 575 vendors, 4 community gardens, and 35 food banks.

These small entities comprise less than 1 percent of the total number of similar small entities operating in the State of California. In addition, most of these small entities sell regulated articles primarily for local intrastate, not interstate, movement and the sale of these articles would not be affected by this interim regulation.

In the new quarantined areas in Los Angeles, Orange, and San Bernardino Counties, the effect on those few small entities that do move regulated articles interstate from parts of the quarantined areas will be minimized by the availability of various treatments that, in most cases, will allow these small entities to move regulated articles interstate with very little additional cost. Also, many of these entities sell other items in addition to the regulated articles so that the effect, if any, of this regulation on these entities should be minimal. Further, the number of affected entities is small compared with the thousands of small entities that move these articles interstate from nonquarantined areas in California and other States.

Moreover, the conditions in the Mediterranean fruit fly regulations and treatments in the Plant Protection and Quarantine Treatment Manual, incorporated by reference in the regulations, allow interstate movement of most articles without significant added costs.

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

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this rule. The assessment provides a basis for our conclusion that implementation of integrated pest management to achieve eradication of the Medfly would not have a significant impact on human health and the natural environment.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Copies of the environmental assessment and finding of no significant impact are available for public inspection 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. In addition, copies may be obtained by writing to the individual listed under "FOR FURTHER INFORMATION CONTACT."

Paperwork Reduction Act

The information collection and recordkeeping requirements contained in Subpart 301.78 have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) under OMB control number 0579–0088.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for 7 CFR part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 301.78–3, paragraph (c), the designation of the quarantined areas are amended by revising the entry for Los Angeles and Orange Counties, and the entry for Los Angeles and San Bernardino Counties, as follows:

§ 301.78–3 Quarantined areas.

* * * * *

(c) * * *

California

* * * * *

Los Angeles and Orange Counties. That portion of the counties beginning at the intersection of the Angeles National Forest boundary and Sage Hill Road; then north from the intersection along an imaginary line to its intersection with Brown Mountain Road at Millard Campground; then west along Brown Mountain Road to its intersection with El Prieto Road; then southwest along El Prieto Road to its intersection with the Pasadena City Limits; then north and west along the Pasadena City limits to its intersection with the La Canada Flintridge City Limits; then west and south along the La Canada Flintridge City Limits to its intersection with Foothill Boulevard; then northwest along Foothill Boulevard to its intersection with La Crescenta Avenue; then south along La Crescenta Avenue to its intersection with Shirley Jean Street; then southwest from this intersection along an imaginary line to the end of Allen Avenue; then southwest along Allen Avenue to its intersection with Mountain Street; then northwest along Mountain Street to its intersection with Sunset Canyon Drive; then northwest along Sunset Canyon Drive to its intersection with Olive Avenue; then southwest along Olive Avenue to its intersection with Barham Boulevard; then south along Barham Boulevard to its intersection with State Highway 101; then southeast along State Highway 101 to its intersection with Highland Avenue; then south along Highland Avenue to its intersection with Sunset Boulevard; then west along Sunset Boulevard to its intersection with La Cienega Boulevard; then south along La Cienega Boulevard to its intersection with Washington Boulevard; then southwest along Washington Boulevard to its intersection with Culver Boulevard; then southwest along Culver Boulevard to its intersection with Vista Del Mar; then southeast along Vista Del Mar to its intersection with Rosecrans Avenue; then east along Rosecrans Avenue to its intersection with Prairie Avenue; then south along Prairie Avenue to its intersection with State Highway 91; then east along State Highway 91 to its intersection with Paramount Boulevard; then south on Paramount Boulevard to its intersection with

Carson Street; then east on Carson Street to its intersection with Lakewood Boulevard; then south on Lakewood Boulevard to its intersection with Willow Street; then east on Willow Street to its intersection with Katella Avenue; then east along Katella Avenue to its intersection with Valley View Street; then, south along Valley View Street to its intersection with Bolsa Chica Road; then, south along Bolsa Chica road to its intersection with Bolsa Chica Street; then, south along Bolsa Chica Street to its intersection with Los Patos Avenue; then, southeast from this intersection along an imaginary line to the intersection of East Garden Grove Wintersburg Channel and the Bolsa Chica Ecological Reserve boundary; then, southeast along the Bolsa Chica Ecological Reserve boundary to its intersection with Ellis Avenue; then, east along Ellis Avenue to its intersection with Edwards Street; then, south along Edwards Street to its intersection with Garfield Avenue; then, east along Garfield Avenue to its intersection with North Golden West Street; then, south along North Golden West Street to its intersection with Yorktown Avenue; then, east along Yorktown Avenue to its intersection with Main Street; then, south along Main Street to its intersection with Adams Avenue; then, east along Adams Avenue to its intersection with Fairview Road; then, north along Fairview Road to its intersection with Interstate Highway 405; then, east and south along Interstate Highway 405 to its intersection with Culver Drive; then, northeast along Culver Drive to its intersection with Walnut Avenue; then, northwest along Walnut Avenue to its intersection with Jamboree Road; then, northeast along Jamboree Road to its intersection with Tustin Ranch Road; then, west along Tustin Ranch Road to its intersection with Pioneer Way; then, north along Pioneer Way to its intersection with Pioneer Road; then, northwest on Pioneer Road to its intersection with Foothill Boulevard; then, northwest along Foothill Boulevard to its intersection with Old Foothill Boulevard; then, northwest on Old Foothill Boulevard to its intersection with Hewes Street; then, north on Hewes Street to its intersection with Chapman Avenue; then, west along Chapman Avenue to its intersection with West Street; then, north along West Street to its intersection with Katella Avenue; then west along Katella Avenue to its intersection with Western Avenue; then north on Western Avenue to its intersection with Commonwealth Avenue; then east on Commonwealth Avenue to its intersection with Beach Boulevard; then north on Beach Boulevard to its intersection with La Mirada Boulevard; then northwest and north on La Mirada Boulevard to its intersection with Colima Road; then northeast on Colima Road to its intersection with Azusa Avenue; then north along Azusa Avenue to its intersection with Amar Road; then east along Amar Road to its intersection with Temple Avenue; then northeast along Temple Avenue to its intersection with the Walnut City Limits; then north and northeast along the Walnut City Limits to the Forest Lawn Memorial Park, Covina Hills, boundary; then northeast along that boundary to Interstate Highway 10; then east along Interstate Highway 10 to its intersection with Interstate Highway 210; then northwest along Interstate Highway 210 to its intersection with San Dimas Avenue; then east and north along San Dimas Avenue to its intersection with Foothill Boulevard; then west along Foothill Boulevard to its intersection with Alosta Avenue; then west along Alosta Avenue to its intersection with Foothill Boulevard; then west along Foothill Boulevard to its intersection with Azusa Avenue; then north along Azusa Avenue to its intersection with San Gabriel Canyon Road; then due north from the intersection along an imaginary line to its intersection with the Angeles National Forest boundary; then west along the boundary to the point of beginning.

Los Angeles and San Bernardino Counties. That portion of the counties beginning at the intersection of College Way and State Highway 30 (Base Line Road); then east along State Highway 30 to its intersection with Carnelian Street; then south along Carnelian Street to its intersection with Vineyard Avenue; then south along Vineyard Avenue to its intersection with Holt Boulevard; then west along Holt Boulevard to its intersection with Grove Avenue; then south along Grove Avenue to its intersection with Mission Boulevard; then southeast along Mission Boulevard to its intersection with Vineyard Avenue; then south along Vineyard Avenue to its intersection with Riverside Drive; then west along Riverside Drive to its intersection with Walker Avenue; then south along Walker Avenue to its intersection with Eucalyptus Avenue; then west along Eucalyptus Avenue to its intersection with State Highway 83 (Euclid Avenue); then south along State Highway 83 to its intersection with State Highway 71; then southwest from this intersection, along an imaginary line to the northern intersection of the Yorba Linda City Limits and the San Bernardino County line; then northwest and north along the San Bernardino County line to its intersection with State Highway 60; then east along Highway 60 to its intersection with Garey Avenue; then north along Garey Avenue to its intersection with College Way; then northeast along College Way to the point of beginning.

* * * * *

3. In § 301.78–10, paragraphs (b) and (c), are redesignated as paragraphs (c) and (d), and a new paragraph (b) is added to read as follows:

§ 301.78–10 Treatments

* * * * *

(b) *Regulated citrus fruit that has been harvested.* (1) Fumigation with methyl bromide at normal atmospheric pressure with 32 g/m³ (2 pounds per 1000 cubic feet) for 3½ hours at 21 °C. (70 °F.) or above.

Note: Some varieties of fruit may be injured by methyl bromide exposure. Shippers should test treat before making commercial shipments.

(2) Fumigation plus refrigeration: Fumigation with methyl bromide at normal atmospheric pressure with 32 g/m³ (2 pounds per 1000 cubic feet) at 21 °C. (70 °F.) or above.

Fumigation exposure time	Refrigeration
2 hours	4 days at 0.55 to 0.7 °C. (33 to 37 °F.); or 11 days at 3.33 to 8.3 °C. (38 to 47 °F.).
2½ hours .	4 days at 1.11 to 4.44 °C. (34 to 40 °F.); or 6 days at 5.0 to 8.33 °C. (41 to 47 °F.); or 10 days at 8.88 to 13.33 °C. (48 to 56 °F.).
3 hours	3 days at 6.11 to 8.33 °C. (43 to 47 °F.); or 6 days at 9.88 to 13.33 °C. (48 to 56 °F.).

Note: Some varieties of fruit may be injured by methyl bromide exposure. Shippers should test treat before making commercial shipments.

Time lapse between fumigation and start of cooling not to exceed 24 hours. Chamber load not to exceed 80 percent of volume.

(3) Cold treatment: 10 days at 0 °C. (32 °F.) or below; or 11 days at 0.55 °C. (33 °F.) or below; 12 days at 1.11 °C (34 °F.) or below: 14 days at 1.66 °C. (35 °F.) or below; or 16 days at 2.22 °C. (36 °F.) or below.

* * * * *

Done in Washington, DC, this 22nd day of November 1993.

Patricia Jensen,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–29253 Filed 11–29–93; 8:45 am]

BILLING CODE 3410–34–P

Agricultural Marketing Service

7 CFR Part 1096

[DA–93–31]

Milk in the Greater Louisiana Marketing Area; Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action suspends certain portions of a provision of the Greater Louisiana Federal milk marketing order (Order 96), beginning November 1993 and continuing through May 1995. The action will allow a plant that qualifies as a pool plant under Order 96 to retain its pool status regardless of whether a greater proportion of its route disposition is made in another order marketing area in succeeding months. The suspension was requested by Mid-America Dairymen, Inc. (Mid-America),

on behalf of Southern Milk Sales (SMS). The action is necessary to assure that producer milk which historically has been associated with the market will continue to be pooled under the order.

EFFECTIVE DATES: November 1, 1993, through May 31, 1995.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued October 15, 1993; published October 22, 1993 (58 FR 54530).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action will lessen the regulatory impact of the order on certain milk handlers and will ensure that dairy farmers will continue to have their milk priced under the order with which they have historically been associated and thereby receive the benefits that accrue from such pricing.

The Department is issuing this rule in conformance with Executive Order 12866.

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

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

Notice of proposed rulemaking was published in the **Federal Register** on October 22, 1993 [58 FR 54530], concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon. One comment was submitted in support of the action.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that for the months of November 1993 through May 1995 the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1096.7(d)(3), the words "until the third consecutive month in which a greater proportion of such route disposition is made in such other marketing area".

Statement of Consideration

This action will suspend for the months of November 1993 through May 1995 a part of the pool plant definition which requires that plants having greater route disposition in another marketing area for three consecutive months be considered as pool plants under the other order.

According to Mid-America, SMS historically has pooled milk on the Greater Louisiana marketing order through sales to Guth Dairy, a pool distributing plant located in Lake Charles, Louisiana. Mid-America stated that Guth Dairy recently was awarded school milk contracts in Houston, Texas, and that, as a result, a greater portion of the plant's packaged milk sales will be distributed in the Texas marketing order, causing the plant to switch regulation from Order 96 to the Texas marketing order.

Mid-America pointed out that for the twelve-month period ending August 1993 the Texas order blend price at Lake Charles averaged 63 cents per hundredweight less than the Greater Louisiana Federal order blend price at Lake Charles. The proponent stressed that producers supplying milk to Guth Dairy and pooled on the Greater Louisiana order could not continue to afford to supply milk to Guth Dairy if Guth Dairy became regulated under the Texas order. Likewise, Guth Dairy could not afford to pay 63 cents more to producers to compete with other handlers in the Greater Louisiana marketing area for a supply of milk.

In recent months, the disparity in blend prices has increased even more than the 12-month average. In August and September 1993, for example, the blend price per hundredweight under the Greater Louisiana order was $1.15 and $1.00, respectively, higher than the Texas order's blend price at the Lake Charles, Louisiana, location. In view of the price disparity between the two orders, the fact that Guth Dairy is located within the Greater Louisiana marketing area, the historical association of the dairy farmers supplying this plant with Order 96, and the lack of any opposition to the proposal, it is appropriate to suspend the language that would cause the plant to shift to the Texas order.

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

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area;

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

(c) Notice of proposed rulemaking was given interested parties, and they were afforded opportunity to file written data, views, or arguments concerning this suspension.

Therefore, good cause exists for making this order effective November 1, 1993.

List of Subjects in 7 CFR Part 1096

Milk marketing orders.

For the reasons set forth in the preamble, title 7 part 1096 is amended as follows:

PART 1096—MILK IN THE GREATER LOUISIANA MARKETING AREA

1. The authority citation for 7 CFR part 1096 continues to read as follows:

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

§ 1096.7 [Temporarily suspended in part]

2. In § 1096.7(d)(3), the words "until the third consecutive month in which a greater portion of such route disposition is made in such other marketing area" are suspended.

Dated: November 23, 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–29287 Filed 11–29–93; 8:45 am]

BILLING CODE 3410–02–P

Food Safety and Inspection Service

9 CFR Part 381

[Docket No. 89–008F]

RIN 0583–AB09

Use of Tricalcium Phosphate in Mechanically Deboned Chicken

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the poultry products inspection regulations to permit the use of tricalcium phosphate in mechanically deboned chicken, in accordance with current good manufacturing practices, during the dehydration process to preserve the color of such dehydrated products. The final rule will allow tricalcium phosphate at a level not to exceed 2 percent of the weight of the mechanically deboned chicken before dehydration. Use of tricalcium phosphate at such level will sequester the iron present in the blood of mechanically deboned chicken during the dehydration process, thus preventing discoloration (browning) of the product. The final rule regulation is in response to a petition submitted by Henningsen Foods, Inc.

EFFECTIVE DATE: December 30, 1993.

FOR FURTHER INFORMATION CONTACT: Charles Edwards, Director, Product Assessment Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 254–2565.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has determined that this final rule is not a major rule under Executive Order 12291. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or 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 export or domestic markets.

Executive Order 12778

This final rule has been reviewed pursuant to Executive Order 12778, Civil Justice Reform. This final rule concerns the use of substances in poultry products. States are precluded from imposing any marking, labeling, packaging, or ingredient requirements on federally inspected poultry products that are in addition to, or different than, those imposed under the Poultry Products Inspection Act (PPIA) (21 U.S.C. 467e). States may, however, exercise concurrent jurisdiction over poultry products that are outside official establishments for the purpose of preventing the distribution of poultry products that are misbranded or adulterated under the PPIA, or, in the case of imported articles which are not at such an establishment, after their entry into the United States. States that conduct poultry inspection programs must impose requirements at least equal to those imposed on federally inspected products and establishments under the PPIA. These States may, however, impose stringent requirements on such State inspected products and establishments.

No retroactive effect is to be given to this final rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule. Prior to any judicial challenge to the application of its provisions to an inspector's decision relating to any inspection, applicable administrative procedures set forth in 9 CFR 381.35 must be exhausted.

Effect on Small Entities

The Administrator, FSIS, has determined that this final rule will not have a significant economic impact on a substantial number of small entities. The final rule will permit the use of an additional substance at the manufacturer's option.

For purposes of determining the potential impact of this final rule on small entities, FSIS estimates that 10 percent of the approximate 505 manufacturers that produce mechanically deboned chicken are small entities (approximately 50). Manufacturers opting to use tricalcium phosphate in mechanically deboned chicken, as prescribed in this final rule, will be required to revise the ingredients statement on product labels to show the presence of such substance (9 CFR 381.118). This would entail approximately $1,000 in labeling costs for each product. Provided all eligible small entities opt to use tricalcium phosphate in mechanically deboned chicken, small entities would incur an estimated $50,000 overall as a result of this rulemaking.

The costs associated with new label applications are covered under existing approved paperwork burdens of FSIS's prior label approval system. Thus, this final rule does not impose new paperwork requirements on the industry.

Background

Henningsen Foods Petition

On March 4, 1988, FSIS received a petition from Henningsen Foods, Inc., Omaha, Nebraska, to amend the poultry products inspection regulations to allow the use of tricalcium phosphate in mechanically deboned chicken during dehydration to avoid discoloration of the dehydrated product. During the process of dehydrating mechanically deboned chicken, the product becomes dark brown, resulting in a dehydrated product that is aesthetically unacceptable to the petitioner's customers who purchase the product for use in further processed products such as gravies, sauces, and dehydrated soups.

The petitioner claimed that the addition of tricalcium phosphate to mechanically deboned chicken would sequester the iron present in the blood of the poultry product during dehydration and prevent discoloration of the mechanically deboned poultry product.

Supporting data submitted by the petitioner was based on a series of color tests of samples of dehydrated mechanically deboned chicken with variable amounts of tricalcium phosphate added before dehydration ranging from 0 to 3 percent of the weight of the mechanically deboned chicken. (A copy of the supporting data is available for review in the FSIS Hearing Clerk's Office.) The data showed that the color of the mechanically deboned chicken was fully preserved during dehydration with the addition of tricalcium phosphate at the 2 percent level.

Current Regulations

The Food and Drug Administration (FDA) lists tricalcium phosphate as generally recognized as safe (GRAS) in 21 CFR 182.1217 when used in accordance with current good manufacturing practices. The poultry products inspection regulations currently do not permit the use of tricalcium phosphate in any poultry product.

Proposed Rule

On August 25, 1992, FSIS published a proposed rule (57 FR 38450) to permit the use of tricalcium phosphate in mechanically deboned chicken during the dehydration process, in accordance with current good manufacturing practices, to preserve the color of such dehydrated products. FSIS proposed to

amend the table of approved substances in 9 CFR 381.147(f)(4) to allow the use of tricalcium phosphate to preserve the color of mechanically deboned chicken during dehydration by preventing the development of a brown color. Tricalcium phosphate would be permitted in such product at a level not to exceed 2 percent of the ingoing weight of the product, i.e., before dehydration.

Discussion of Comments

FSIS received two comments in response to the August 25, 1992 proposed rule. The comments were submitted by a food processor and a trade association. Both commenters fully supported the proposal and suggested that the Agency act expeditiously in promulgating the final rule.

On the basis of the record in this proceeding, the Administrator has determined that (1) the use of tricalcium phosphate in mechanically deboned chicken is in compliance with applicable FDA requirements, (2) its use is functional and suitable for the intended purpose, (3) the substance is used at the lowest level necessary to accomplish its intended technical effect, and (4) the use of this substance in mechanically deboned chicken at the stated level will not render the treated product adulterated, misbranded, or otherwise not in accordance with the requirements of the Poultry Products Inspection Act. Accordingly, FSIS is adopting the proposed rule as published.

List of Subjects in 9 CFR 381

Food additives, Food labeling, Poultry inspection.

Final Rule

For the reasons set forth in the preamble, FSIS is amending 9 CFR part 381 to read as follows:

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

1. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 450, 21 U.S.C. 451–470, 7 CFR 2.17, 2.55.

2. In the table in § 381.147(f)(4), the Class of substance "Miscellaneous" is amended by adding at the end thereof the following:

§ 381.147 Restriction on the use of substances in poultry products.

* * * * *

(f) * * *

(4) * * *

Class of substance	Substance	Purpose	Products	Amount
*	*	*	*	* * *
Miscellaneous * * *	Tricalcium phosphate	To preserve product color during dehydration process.	Mechanically deboned chicken to be dehydrated.	Not to exceed 2 percent of the weight of the mechanically deboned chicken prior to dehydration, in accordance with 21 CFR 182.1217.

* * * * *

Done at Washington, DC, on November 22, 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–29136 Filed 11–29–93; 8:45 am]

BILLING CODE 3410–DM–M

FARM CREDIT ADMINISTRATION

12 CFR Part 615

RIN 3052–AB25

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Management of Investments, Liquidity, Interest Rate Risk, and Eligible Investments

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA), by the Farm Credit Administration Board (Board) adopts final regulations that amend the regulations which govern the investment activities of Farm Credit System (FCS, System, or Farm Credit) banks. The final regulations allow Farm Credit Banks (FCBs), banks for cooperatives (BCs), and agricultural credit banks (ACBs) to hold specified eligible investments, in an amount not to exceed 30 percent of the total outstanding loans of such banks, for:

(1) Maintaining a liquidity reserve;

(2) Investing short-term surplus funds; and

(3) Managing interest rate risk (IRR).

These regulations also establish a liquidity reserve requirement for all FCS banks. These regulations require FCBs, BCs, and ACBs to measure and manage IRR in their portfolios. The FCA has also strengthened existing requirements that necessitate the board of directors of each bank to adopt investment policies and procedures that ensure that the bank's investment activities are conducted in a safe and sound manner. These regulations expand the list of eligible investments so FCS banks will further diversify their investment portfolios, but the FCA has placed limits on the amount, maturity, and credit rating of eligible investments in order to ensure the safety and soundness of such investment portfolios. The FCA is also adopting regulations governing investments by System banks in mortgage-related securities that are fully guaranteed as to principal and interest by the Federal Agricultural Mortgage Corporation (Farmer Mac).

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

FOR FURTHER INFORMATION CONTACT:

Michael J. LaVerghetta, Senior Financial Analyst, Technical and Operations Division, Office of Examination, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4231,

or

Richard A. Katz, Senior Attorney, Regulatory Operations Division, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION:

I. General

On December 18, 1991, the FCA proposed amendments to its regulations governing the investment activities of System banks. See 56 FR 65691. Essentially, the FCA proposed regulations that would have restricted the amount that each FCB, BC, or ACB could invest in certain eligible investments to 20 percent of its total outstanding loans. Under the FCA's

proposal, these eligible investments could only be used to maintain a liquidity reserve, manage short-term surplus funds, and reduce IRR. The FCA also proposed, for the first time, regulations that established a liquidity reserve and authorized investments for reducing IRR at all System banks. The proposed regulations would have also strengthened existing regulatory requirements that require the board of directors of each System bank to adopt investment policies and procedures that conform with applicable law, and ensure that competent personnel conduct the bank's investment activities in a safe and sound manner. The FCA also proposed to expand the list of eligible investments that Farm Credit banks could use to achieve permissible investment objectives. Under the proposed regulations, eligible investments would be subject to percentage of asset limitations, as well as maturity and credit rating requirements. The FCA's proposal would have required System banks to divest all ineligible investments within 6 months after final regulations became effective unless the Director of the Office of Examination granted an extension.

Although the initial comment period expired on February 18, 1992, the FCA subsequently extended the comment period until May 1, 1992, in response to the economic growth initiative of the former President of the United States. See 57 FR 7276 (March 4, 1992). The President's initiative required all Federal agencies to review their regulations, pursuant to five enumerated criteria, in order to: (1) Identify those regulations that impede economic growth; and (2) accelerate action on those regulations that promote growth. In extending the comment period, the FCA also invited commenters to evaluate the impact of the proposed regulations on economic growth by applying the five criteria in the President's initiative.

The FCA received comments about the proposed regulations from the Farm Credit Council (FCC), six FCS banks, Farmer Mac, the American Bankers' Association (ABA) and an investment banking firm. Some commenters, on their own initiative, submitted additional letters or information to supplement their original responses. The FCA received a second letter from the FCC that specifically evaluated the impact of the proposed regulations on economic growth pursuant to the criteria set forth in the President's initiative.

The FCC and one FCB requested that the FCA repropose these regulations instead of adopting final regulations. These commenters reasoned that they should have an additional opportunity to comment because: (1) The investment regulations have potentially far-reaching implications on the future management and direction of the FCS; and (2) some commenters seek substantial revisions to the FCA's proposal.

After carefully considering this request, the FCA declines to repropose these regulations. Two separate comment periods have afforded interested parties ample opportunity to communicate their views and recommendations about these regulations to the FCA. Indeed, some commenters have responded to the FCA's proposal more than once. As a result, the FCA is aware of both FCS and non-System concerns about these regulations. Accordingly, the FCA incorporated many of the commenters' substantive and technical recommendations into the final regulations, while other suggestions were rejected for the reasons set forth below. The final regulations that the FCA adopts today are the logical outgrowth of its original proposal. Differences between the proposed and final regulations are primarily attributed to comments received from interested parties.

Reproposed regulations are unlikely to provide the FCA with additional information or guidance that would be useful in crafting these final regulations. Reproposal, however, would substantially delay implementation of new investment regulations. In the interim, Farm Credit banks would continue to operate under existing regulations which all System commenters judged as obsolete.

II. Economic Impact

As noted earlier, the former President of the United States unveiled an initiative for economic growth on January 30, 1992.[1] This initiative established five criteria for determining if a regulation promoted or impeded economic growth. First, the expected benefits of the regulation to society should clearly outweigh its costs. Second, the regulation should be fashioned to maximize the net benefits to society. Third, the regulation should rely, to the maximum extent possible, on performance standards instead of prescriptive command-and-control requirements. Fourth, the regulation should, to the maximum extent possible, rely on market mechanisms. Finally, the regulation should be expressed with clarity and certainty to guide regulated entities, and it should be designed to avoid needless litigation.

Only the FCC commented on the economic impact of the FCA's proposed investment regulations by applying the five criteria. Specifically, the FCC asserted that the fixed liquidity reserve requirement of proposed § 615.5134 failed to maximize net benefits to society under the second criterion. Because proposed § 615.5133 would require the board of directors to establish limits on the amount of investments that could be placed through individual obligors, the FCC characterized the rule as imposing command-and-control requirements, instead of relying on performance standards, as suggested in the third criterion. The FCC argued that the investment ceiling in proposed § 615.5132 and the high credit ratings and constraints on mortgage-backed securities (MBSs) in proposed § 615.5140 ignored market mechanisms, in violation of the fourth criterion of the economic growth package. Finally, the FCC claimed that proposed § 615.5133, which would require the board of directors to formulate investment management policies at their banks, was not expressed with clarity or certainty, as required by the fifth criterion of the initiative.

The FCA has carefully reviewed these comments. In response, the FCA notes that its authority to promulgate regulations that promote economic growth under the guidelines is constrained by the Act. In this context, the FCA interprets the Act as requiring the cooperatively owned FCS to channel most of its funds into agricultural loans. Similarly, the FCA is responsible for ensuring that the activities of System banks are compatible with their status as government-sponsored enterprises (GSEs). These restraints make it difficult for the FCA to fully apply the criteria concerning market mechanisms and performance standards to these regulations. Nevertheless, the final investment regulations that the FCA adopts today should promote economic growth by enhancing the liquidity and financial strength of the FCS so it remains a reliable source of credit for rural America.

III. Investment Purposes

A. The FCA's Proposal

The FCA proposed to revise and redesignate an existing regulation, § 615.5135, which authorized Farm Credit banks to hold investment

[1] Presidential Memorandum dated January 28, 1992, addressed to certain Department and Agency Heads. The subject of the memorandum was "Reducing the Burden of Government Regulation."

portfolios solely for the purposes of maintaining sufficient liquidity, investing short-term funds, and managing short-term debt. The existing regulation specifically prohibited System banks from maintaining "investment portfolios primarily as a means of generating additional income."

As proposed by the FCA, redesignated § 615.5132 would have limited the size of a bank's investment portfolio to 20 percent of its outstanding loans. Farm Credit banks would be allowed to hold these investments solely for the purposes of: (1) Complying with a new liquidity reserve requirement in proposed § 615.5134; (2) managing short-term cashflow needs; and (3) reducing interest rate risk pursuant to proposed § 615.5135.

The FCA reasoned that the 20-percent limit on investments would balance two competing objectives by providing management with greater flexibility to reduce IRR and maintain adequate liquidity, while simultaneously ensuring that Farm Credit banks operated in a manner that is consistent with their GSE status. From the FCA's perspective, a liquid pool of investments affords some protection to Farm Credit banks in the event of market disruptions. Furthermore, carefully planned investment strategies enable System banks to combat maturity mismatches and interest rate fluctuations that threaten their solvency. However, the FCA proposed restrictions on the size and uses of the investment portfolio so System banks could not use their GSE status to borrow funds from the capital markets during periods of favorable interest rate spreads for the purpose of accumulating large investment portfolios for arbitrage activities. Furthermore, the proposed regulations were designed to ensure that System banks maintain adequate levels of liquidity even during times when interest rate spreads have a negative impact on balance sheets.

B. The Comments

The FCA received comments about proposed § 615.5132 from the FCC, four FCBs, two BCs, ABA, and an investment banking firm. Two other FCBs endorsed the FCC's position without further comment. Except for ABA, all commenters opined that the proposal to limit the investment portfolio to 20 percent of gross loans was too restrictive. Several commenters asserted that the FCA's approach concerning investment purposes was inflexible.

The ABA generally supported proposed § 615.5132. Since this commenter complained that System banks rely on investments to generate earnings rather than contain risks, it endorsed those provisions in proposed § 615.5132 that restricted investments to the following purposes: (1) Maintenance of a liquidity reserve; (2) IRR reduction; and (3) short-term surplus funds management. While the ABA did not specifically comment about the proposed 20-percent investment-to-loan ratio, it strongly supported the fixed 15-day liquidity reserve requirement.

The FCC claimed that it was unreasonable for the FCA to impose overall restrictions on the aggregate investment holdings of Farm Credit banks unless specific facts and circumstances demonstrated that the System engaged in unsafe and unsound investment practices. The commenter asserted that federally regulated financial institutions and other GSEs are not subject to similar restrictions. The FCC argued that any regulatory limitation on the size of System investment portfolios actually threatens safety and soundness by impeding the ability of the banks to: (1) Maintain adequate liquidity; (2) manage IRR; and (3) build capital.

As an alternative, the FCC suggested that the size of the investment portfolio be limited to 30 to 35 percent of total outstanding loans at each bank. According to the commenter, a 30 to 35-percent limit would enhance management's flexibility to safely and soundly manage the investment portfolio without unduly increasing the risks to the banks' liquidity or solvency.

The FCC also suggested that the FCA amend provisions in § 615.5132 concerning investment purposes by authorizing System banks to hold investments for the purpose of "managing," rather than "reducing" IRR. The FCC requested that the regulation explicitly state that the objectives of § 615.5132 are not violated when Farm Credit banks produce net interest income (NII) to build capital.

The FCC urged the FCA to modify its positions on how banks calculate and fund their liabilities for liquidity. Specifically, FCC requested that the FCA exclude Farm Credit investment bonds, and the Contractual Interbank Performance Agreement (CIPA) from the overall investment limit.

The Farm Credit Bank of Texas (Texas Bank) endorsed the FCC's position, but it also expressed independent opinions about proposed § 615.5132. The bank opined that the proposed regulation is arbitrary and unobjective. Although the Texas Bank stated that it could accept an investment cap of 30 to 35 percent, it viewed regulatory restrictions on the size of investment portfolios as an impediment to the maintenance of a liquidity reserve. The commenter noted the direct relationship between liquidity and refunding risk exposure at System banks. As the refunding risk exposure changes, the bank needs to adjust its actual level of liquidity. In this context, the liquidity formula also correlates to the bank's IRR.

The Texas Bank also believes that the FCA should recognize that it is not inherently wrong for Farm Credit banks to produce NII and increase capital as a by-product of managing their investments. Since Farm Credit banks must increase capital, build an insurance fund, meet CIPA targets, and retire Farm Credit System Financial Assistance Corporation (FAC) debt, the commenter argues that the FCA should allow System banks to use all of their assets to maximize their profitability.

The Texas Bank urged the FCA to amend § 615.5132 so System banks could hold investments for the purpose of managing IRR, rather than reducing it. In the commenter's opinion, the effective management of IRR is a discipline. The Texas Bank noted that there could be sound reasons for a Farm Credit bank to increase its IRR tolerance in certain scenarios.

The Farm Credit Bank of Columbia (Columbia Bank) expressed strong opposition to proposed § 615.5132. Essentially, this commenter complains that the proposed regulation: (1) Invades the legitimate commercial prerogatives of the board and managers of each bank; (2) is premised on the FCA's misunderstanding of the role of liquidity in the safe and sound management of Farm Credit banks; (3) misperceives the appropriate uses of investments in managing the risks that System banks face in a competitive market environment; and (4) imposes an arbitrary percentage limit on the size of the banks' investment portfolios.

The FCA also received a joint comment letter from the Farm Credit Bank of Springfield and the Springfield Bank for Cooperatives (Springfield Banks). The Springfield Banks agreed with the System's position that a maximum limit on investments should not be imposed by regulation. But if a limit were required, this commenter indicated that the FCA should consider the composition of each bank's loan portfolio. The Springfield Banks acknowledged that they primarily originate variable rate loans that reprice within 1 year. As a result, these banks fund their operations with short-term liabilities. This approach requires the Springfield Banks to maintain a high level of liquidity. According to the comment letter, the investment portfolios of both Springfield Banks

already exceed the proposed 20-percent limit. In this context, proposed § 615.5132 would require the Springfield Banks to adopt a different funding strategy in order to operate safely and soundly. The commenter recommended that the FCA limit the size of the investment portfolio to: (1) Forty-five (45) percent of variable rate loans and fixed rate loans that reprice within 1 year; and (2) fifteen (15) percent of all fixed rate loans with a maturity that is greater than 1 year.

The National Bank for Cooperatives (CoBank) endorsed the FCC's position on § 615.5132. However, CoBank requested that the FCA exclude Farm Credit investment bonds from the investment cap. This commenter reasoned that Farm Credit investment bonds are merely "pass through" items, and are neutral as to their effect on liquidity.

The investment banking firm supported the proposed diversification requirements as a sound basis for managing liquidity and IRR. The commenter suggested that the FCA limit the size of the investment portfolio to 50 percent of outstanding loans and further suggested suspension of this 50-percent limit if: (1) Interest rates fluctuate by more than 200 basis points during the prior 12 months; or (2) if borrowing capacity is restricted and the cost of System funds increases by more than 100 basis points in the same 12-month period.

The investment banking firm worried that the proposed 20-percent limit would actually inhibit the ability of bank portfolio managers to manage IRR. The investment banking firm also opined that proposed § 615.5132 would deprive the banks of sufficient liquidity during times of crisis, when the cost of System funds increases, and when the spreads between Farm Credit securities and United States Treasuries widen. The commenter noted that the net interest margins between the yield on earning assets and the cost of funds is narrower for the FCS banks than for commercial banks. According to information supplied by the investment banking firm, net margins for commercial banks have historically ranged from 300 to 400 basis points. Since the commenter contends that Farm Credit banks do not operate with the same profit motive as the private sector, net margins are 100 to 200 basis points narrower. The commenter argues that these compressed margins justify a limit of 50 percent of outstanding loans. From the perspective of the investment banking firm, proposed § 615.5132 exposes Farm Credit banks to margin compression, credit risk, and liquidity crisis during periods of interest rate volatility since 80 percent of bank assets are allocated to agricultural loans.

C. FCA's Revisions to § 615.5132

After carefully considering all of these comments, the FCA now adopts final § 615.5132, which authorizes each Farm Credit bank to hold eligible investments, pursuant to § 615.5140, in an amount that does not exceed 30 percent of its total outstanding loans solely for the purposes of: (1) Maintaining a liquidity reserve pursuant to § 615.5134; (2) managing surplus short-term funds; and (3) managing interest rate risk pursuant to § 615.5135. In formulating the final regulation, the FCA accepted System recommendations to: (1) Increase the size of the investment portfolio from 20 to 30 percent; and (2) recognize IRR management, rather than IRR reduction, as a sound investment purpose.

For the reasons explained below, the FCA declines to add a provision to final § 615.5132 that would explicitly authorize Farm Credit banks to hold investments for the purpose of building capital. The FCA will respond to recommendations about the treatment of certain liabilities, such as Farm Credit investment bonds and CIPA in the preamble to the liquidity regulation, § 615.5134. Similarly, the FCA will address liquidity and IRR issues at length in the preambles to §§ 615.5134 and 615.5135 respectively.

The commenters have persuaded the FCA that System banks will be better able to manage their liquidity requirements, IRR, and surplus short-term funds if their investment level is 30 percent of their total outstanding loans.

In considering alternative approaches for final § 615.5132, the FCA carefully studied the options proposed by the commenters. All FCS commenters, except Farmer Mac, advised the FCA not to impose any regulatory restrictions on the size of bank investment portfolios. These commenters implied that this matter should be left to the discretion of the bank's board of directors. If this approach is followed through to its logical conclusion, any Farm Credit bank, at the discretion of its board, could hold most of its assets in investments that are unrelated to agricultural credit.

The FCA rejects this option because it is fundamentally incompatible with the charter, status, and purpose of the FCS. Congress enacted the Federal Farm Loan Act of 1916 [2] after it concluded that commercial banks were unable to furnish adequate credit to America's farmers on a sustainable basis.[3] Congress acknowledged that its efforts to address the credit needs of farmers through the Federal Reserve Act of 1913 were largely unsuccessful, and agricultural credit was scarce because commercial banks primarily loaned money to borrowers who basically had different credit requirements than farmers.[4] The cooperative Federal Land Bank System was established to ensure that farmers had a dependable, stable, and responsive source of credit.[5] Although the scope of the FCS expanded over the years, its fundamental mission of meeting the credit needs of agricultural producers has never changed. In fact, section 1.1(a) of the Act declares that the policy of Congress is to promote a farmer-owned cooperative banking system that furnishes sound, adequate, and constructive credit to agricultural producers.

The FCA is also unable to reconcile the commenters' proposal with the FCS's cooperative principles.

Cooperatives, by law, conduct most of their business with their members, and earn most of their income from such transactions.[6] From the FCA's perspective, a Farm Credit bank is not using its charter primarily to serve the credit needs of agricultural producers and rural communities once agricultural loans to its borrower-members no longer comprise a majority of its assets.

On the funding side of the equation, the commenters' proposal also conflicts with the GSE status of the FCS. Farm Credit banks borrow money on the capital markets to fund their assets. According to recent reports by the United States Treasury Department and the General Accounting Office (GAO), GSE status significantly enhances the creditworthiness of the FCS.[7] Without GSE status, System banks would incur a substantially higher cost of funds.[8] Under these circumstances, the FCA believes that it is inappropriate for System banks, as GSEs, to borrow funds

[2] Public Law 158, 64th Cong., 1st. Sess., July 17, 1916.

[3] See H.R. 630, 64th Cong., 1st Sess., (May 3, 1916), pp. 3–4. Also see S. Rep. 144, 64th Cong., 1st Sess. (Feb. 15, 1916) pp. 2–3.

[4] *Id.*

[5] *Id.*

[6] Legal Phases of Farmer Cooperatives, United States Department of Agriculture, p. 4, 1976.

[7] See Report of the Secretary of the Treasury on Government-Sponsored Enterprises, April, 1991, p. xxi. See also Government Accounting Office, Government-Sponsored Enterprises: A Framework for Limiting the Government's Exposure to Risks, May, 1991, pp. 18–19. See also Government Accounting Office, Government-Sponsored Enterprises: The Government's Exposure to Risk, August, 1990, pp. 83–89.

[8] *Id.*

at favorable rates, and then invest most of the money in assets other than agricultural loans.

The FCA interprets the Act and its legislative history as requiring each Farm Credit bank to hold a majority of its assets in agricultural loans. Pursuant to its authorities under sections 5.17(a)(4) and (9) of the Act, 12 U.S.C. 2252(a)(4) and (9),[9] the FCA determines that a regulatory limit on investments ensures that Farm Credit banks abide by their: (1) Statutory mission of financing agriculture; and (2) cooperative principles. Accordingly, final § 615.5132 will impose a 30-percent limit on investments so that agricultural loans continue to comprise the majority of each FCS bank's assets.

Since an investment ceiling enforces compliance with the Act, the FCA rejects System arguments that only compelling safety and soundness reasons can justify restrictions on the size of bank investment portfolios. For the same reason, the FCA cannot accept the claim that an investment ceiling constitutes an unwarranted interference by the regulator in the business affairs of System banks.

System commenters also complained that an investment ceiling is unprecedented among GSEs and Federal regulators of financial institutions. In the FCA's opinion, this argument lacks merit because the FCS and these entities have fundamentally different missions, regulatory frameworks, funding mechanisms, and organizational structures. For example, commercial banks and credit unions are not legally required to furnish credit primarily to a specific economic sector. In the same context, commercial banks are predominantly stock corporations that do not operate under cooperative principles. Similarly, comparisons to other GSEs, such as the Federal National Mortgage Association (FNMA) and the Federal Home Loan Mortgage Corporation (FHLMC), are not useful here because the FCS makes loans directly to borrowers, whereas the other two GSEs operate secondary markets that provide liquidity and credit enhancements to primary mortgage lenders.

However, a comparison between the FCS and the Federal Home Loan Bank (FHLB) System and its constituent savings associations has merit. FHLBs make no retail loans. Instead, they lend to member savings associations and banks. See 12 U.S.C. 1421 *et seq.* A provision of the Federal Home Loan Bank Act, 12 U.S.C. 1431(h), authorizes FHLBs to invest only in obligations of the United States, securities backed by residential mortgages, and FNMA debt instruments. In contrast to the FCS, FHLBs are prohibited by statute from investing in any assets (except United States obligations) that are unrelated to their statutory mission of providing credit to primary residential mortgage lenders. Similarly, a comparison can be drawn between the FCS and savings associations because both are legally required to make most of their loans to specific types of borrowers. A provision in the Home Owners Loan Act (HOLA), 12 U.S.C. 1467a(m), mandates that all savings associations maintain "qualified thrift lender" status by holding at least 65 percent of their assets in home mortgages, securities backed by residential mortgages, FHLB stock, and other housing-related investments.

The FCA now responds to the Springfield banks' proposal that final § 615.5132 establish separate investment limits for loans that mature or reprice within 1 year, and fixed rate loans that have a longer term to maturity. This approach could, in effect, encourage all System banks to shift to a strategy where they would fund mostly short-term assets with short-term liabilities. The FCA is concerned that the resulting surge in short-term borrowings by the entire System could place substantial stress on the capital markets, which in turn, could widen the spread between FCS obligations and Treasury securities. Since amendments to § 615.5132 increase the investment level from 20 to 30 percent and authorize banks to manage IRR, the FCA believes that the final regulation should provide boards of directors with greater flexibility to devise funding strategies that meet the needs of their banks.

The investment banking firm advised the FCA to set the investment ceiling at 50 percent of loans, which would be suspended if: (1) Interest rates fluctuate by more than 200 basis points during the prior 12 months; or (2) cost of System funds increases by more than 100 basis points in the same 12-month period. After careful consideration, the FCA declines to adopt this commenter's recommendation. The FCA does not believe that the regulation should automatically suspend the regulatory cap on the size of bank investment portfolios if market rates rise, or the System's cost of funds increases by a certain percentage in a 12-month period. Instead, the FCA adopts final § 615.5136, which empowers the FCA Board to waive or modify restrictions on the size of the investment portfolio and/or the liquidity reserve during times of economic or financial stress. The FCA prefers the flexibility of this approach which enables this agency to tailor a specific remedy for a particular problem. The FCA does not adopt the recommendation of the investment banking firm because it allows Farm Credit banks to shift most of their assets from agricultural loans to investments simply because interest rates rise above a certain threshold.

The FCA also denies the commenter's request to allow Farm Credit banks to hold investments in an amount that does not exceed 50 percent of their total outstanding loans. As noted earlier, the investment banking firm contends that this 50-percent investment-to-loan ratio margin is justified because Farm Credit banks have historically experienced narrower net interest margins than their commercial bank competitors. The FCA declines to adopt the investment banking firm's recommendation because investments have never approached 50 percent of loans at Farm Credit banks. Furthermore, no System commenter supported the position of the investment banking firm. Although no FCS commenter endorsed a regulatory limit on the size of bank investment portfolios, these commenters recommended, in the alternative, investment ceilings that were well below the 50 percent proposed by the investment banking firm.

As noted above, § 615.5132 will restrict the investment portfolios of each System bank to 30 percent of its outstanding loans. The FCA finds several justifications for this 30-percent level. First, all System commenters, except one, assured the FCA that an investment limit of 30 to 35 percent would provide management with sufficient flexibility to safely and soundly manage risks to bank liquidity or solvency. Second, the higher investment level recognizes that the balance sheets of System banks will be better diversified against risk for a one-industry lender, and will provide sufficient cushion for System banks to maintain adequate liquidity and manage IRR. Third, the higher level of investments should help stabilize earnings and will also provide higher quality assets to improve balance sheet credit risk. In this context, the FCA believes that final § 615.5132 will actually strengthen the ability of the FCS to finance agriculture because this 30-percent investment level should enable Farm Credit banks to better

[9] Section 5.17(a)(4) of the Act authorizes the FCA to approve the issuance of System debt obligations under sections 4.2 (c) and (d) of the Act for the purpose of funding the authorized operations of FCS institutions. Section 5.17(a)(9) of the Act authorizes the FCA to prescribe rules and regulations that are necessary and appropriate for carrying out the Act.

withstand periodic stagnation in the agricultural economy.

Some commenters sought revisions to those provisions in § 615.5132 that restrict the investment activities of Farm Credit banks to specific purposes. As requested by the FCC and the Texas Bank, the FCA amended § 615.5132 so IRR management, rather than IRR reduction, is a purpose for System banks to hold investments. The FCA accepts the rationale of the Texas Bank that the effective management of IRR is a discipline, and that it could be prudent for a Farm Credit bank to increase IRR tolerances in certain scenarios. By authorizing FCBs, BCs, and ACBs, under § 615.5135, to manage their IRR with the use of investments, final § 615.5132 recognizes that IRR is one of the major risks in managing a financial institution because it impacts a major portion of net operating revenue.

In response to comments by the FCC and the Texas Bank, the FCA will now clarify its policy concerning the role of investments in building bank capital. The FCA has taken the position that the use of investments are essential for sound asset/liability management practices. Farm Credit banks could not maintain adequate liquidity, invest short-term surplus funds, or remain solvent in a constantly changing interest rate environment without liquid investments.

Investments and the income they generate help protect the viability of Farm Credit banks during times when the agricultural economy is in recession, or experiencing slow growth. However, the FCA believes, for the reasons discussed above, that Farm Credit banks should not use their GSE status to generate income from investments primarily for the purposes of building capital. Therefore, the FCA refuses requests to insert language in final § 615.5132 that would expressly recognize income generation and capital enhancement as a primary reason for Farm Credit banks to hold investments. Nevertheless, the FCA acknowledges that Farm Credit banks are likely to accumulate additional income and capital as an ancillary benefit of their compliance with the regulations in subpart E of part 615, which should improve their financial position.

IV. Investment Management

The FCA now adopts final § 615.5133, which governs investment management practices at System banks. The FCA adopted two minor revisions to this regulation in order to address concerns raised by the commenters.

Proposed § 615.5133 would require the board of directors of each FCB, BC, and ACB to adopt a comprehensive written investment management policy that complies with the Act, FCA regulations, and other applicable provisions of law. While the FCA's proposal would expressly prohibit the board of directors from delegating its responsibility to supervise and review the bank's investment practices, the board would be responsible for ensuring that portfolio managers perform their duties in accordance with board policies. Board policies adopted under the proposed regulation should preclude investment management practices that expose the bank to excessive levels of risks. Proposed § 615.5133 would also require the board of directors of each Farm Credit bank to annually review: (1) Investment policies to determine whether current investment strategies are achieving portfolio objectives; and (2) the performance and quality of the investment portfolio.

Proposed § 615.5133 would require the investment policy of each bank to address, at a minimum, the following eight areas:

(1) The purpose and objectives of the bank's investment portfolio;

(2) Liquidity requirements pursuant to § 615.5134;

(3) IRR management pursuant to § 615.5135;

(4) Permissible brokers, dealers and institutions for investing bank funds pursuant to § 615.5140 and limitations on the amount of funds that may be invested or placed with any individual intermediary;

(5) The size and quality of the investment portfolio;

(6) Risk diversification;

(7) Delegation of authority to manage investments to specific personnel and the scope of their authority; and

(8) Internal controls to monitor the performance of the bank's investments and to prevent loss, fraud, embezzlement, and unauthorized activities.

Comments about proposed § 615.5133 were received from the FCC, a BC, an FCB, and the ABA. The other System commenters either endorsed the FCC's position, or offered no opinion about proposed § 615.5133.

The ABA urged the FCA to adopt proposed § 615.5133 as a final regulation. This commenter believes that the FCA's proposal establishes proper board of director control over the investment operations at Farm Credit banks. According to the commenter, commercial banks operate under similar requirements.

The FCB expressed general support for proposed § 615.5133, but it opposed the provision that would require "System banks to place a specific dollar limit on liquidity investments that would cause such investments to be limited to 15 days of coverage." This comment apparently reflects the bank's opposition to a passage in the preamble to the proposed regulation which interpreted § 615.5133(b) as requiring board policy to identify those investments that are held in the liquidity reserve. See 56 FR 65691, 65693 (December 18, 1991). Although the FCA defers substantive discussion about the liquidity reserve requirement until the preamble to final § 615.5134, it still adheres to its position that § 615.5133(b) mandates bank board policies to identify those investments free of lien, that are held for liquidity management.

The FCC concurred that boards of directors are responsible for: (1) Adopting comprehensive investment policies; and (2) ensuring that portfolio managers conduct the bank's investment operations in accordance with such policies. The commenter also endorsed the eight broad areas that proposed § 615.5133 would require bank boards to address in an acceptable investment policy. The FCC, however, sought modifications to certain provisions in the proposed regulation.

The FCC requested clarification of the sentence that prohibits the board of directors from delegating its responsibility to supervise and review the bank's investment practices. The commenter asserted that the term "supervise" connotes day-to-day management. Accordingly, the commenter recommended that the FCA clarify this provision by substituting the term "monitor" for "supervise."

In response, the FCA agrees that § 615.5133 requires boards of directors to oversee, rather than to engage in day-to-day management, of their banks' investment activities. However, the FCA emphasizes that portfolio managers must, at all times, operate under the direction of the board, and adhere to board policies pertaining to investment operations. Similarly, boards of directors bear responsibility under § 615.5133 for enforcing compliance with its written policies.

The FCA has occasionally detected situations at some Farm Credit banks where portfolio managers have engaged in investment transactions without clear authority, and then sought ratification from the board of directors. One of the purposes of § 615.5133 is to prevent such practices. For this reason, the FCA believes that the term "monitor" does not adequately convey the intent of this regulation. Instead, the final regulation

will prohibit board of directors from delegating their responsibility to oversee and review their banks' investment practices.

The FCC also objected to a provision in proposed § 615.5133(d) that would require boards of directors to establish the amount of funds that portfolio managers are authorized to invest or place with individual brokers, dealers, or financial institutions. The commenter asserted that the board of directors should review, but not approve investment decisions made by management. Instead, the FCC believes the board should approve the overall policy that guides management in: (1) Selecting brokers, dealers, and financial institutions; and (2) establishing limits on individual investments. The commenter compared the requirements in proposed § 615.5133(d) to a hypothetical situation where bank boards would approve all individual loans originated in their Farm Credit district.

One BC commenter joined the FCC in opposition to proposed § 615.5133(d). This commenter argued that the board of directors should establish credit policy and delegate its administration to management. According to the BC's interpretation of proposed § 615.5133(d), the board of directors would be required to independently judge the creditworthiness of each institution where bank funds would be invested or placed.

The FCA responds that the board of directors, not the portfolio managers, bear ultimate responsibility for bank solvency. For this reason, § 615.5133(d) places the burden on the board of each Farm Credit bank to develop and implement appropriate policies that ensure that: (1) Bank funds are only placed through solvent brokers, dealers, and financial institutions; and (2) investment portfolios are diversified to minimize loss exposure. In this context, the board of directors must affirmatively guide the bank's investment activities, rather than passively review and "rubber stamp" investment decisions of portfolio managers.

The FCA's policy on this issue is consistent with the position of other Federal financial institutions regulators. According to a policy statement released by the Federal Financial Institutions Examination Council (FFIEC), the board of directors of commercial banks, savings associations, and credit unions are now required to periodically review and approve: (1) Lists of securities firms with whom portfolio managers are authorized to do business; and (2) limits on the amounts and types of transaction to be executed with each authorized securities firm. See 57 FR 4028, 4034 (February 3, 1992).

The FCA now explains its reasons for requiring board approval of specific brokers, dealers, and financial institutions. Frequently, small and remote depository institutions or securities firms offer attractive rates to potential investors. Information about the financial stability of these institutions can be scarce, inaccurate, incomplete, or outdated. Furthermore, a Farm Credit bank may have little knowledge of, and no investment experience with the party who is soliciting its funds. These investments may offer investors a higher rate of return because they entail a higher degree of risk. Under these circumstances, careful and deliberate investigation, research, and analysis should be conducted before the bank purchases such investments. By requiring portfolio managers to invest only through pre-approved brokers, dealers, and financial institutions, this regulation precludes hasty investment decisions that increase the risk of loss to the bank. Additionally, bank investment officers are sheltered from pressure by sales representatives of parties who are not authorized to engage in investment transactions with the bank.

The comment letters of the FCC and the BC indicate confusion in the FCS about the ambit of § 615.5133(d), and therefore, the FCA seeks to clarify the requirements of this provision. Contrary to the BC's comment, § 615.5133(d) envisions that portfolio managers will assist the board of directors in selecting brokers, dealers, and financial institutions where bank funds will be invested or placed. Bank directors may rely on information supplied by portfolio managers, nationally recognized credit rating services, and other credible sources, in ascertaining the creditworthiness of potential counterparties in investment transactions. Section 615.5133(d) does not preclude portfolio managers from recommending securities firms and financial institutions, or otherwise consulting with the board about such matters. Instead, the regulation prohibits the board of directors from delegating its ultimate responsibility to ensure that bank funds are invested solely through solvent parties, and that the investment portfolio is diversified.

Similarly, § 615.5133(d) does not require the board of directors to approve each and every investment transaction. Instead, the regulation requires board policy to establish broad parameters under which portfolio managers will conduct the bank's investment operations on a daily basis. Thus, the board will approve securities firms and financial institutions where bank funds may be invested or placed, and it will impose a maximum limit on transactions with each party, but the portfolio managers will select, purchase, manage, monitor, and sell individual investments.

Finally, the FCA is adding a new paragraph (i) to final § 615.5133, which requires the board of directors of each FCB, BC, or ACB to establish policies governing investments in mortgage-related securities and asset-backed securities pursuant to final §§ 615.5140(a)(2) and 615.5140(a)(8)(ii) of this subpart. Section 615.5133(i) requires a board policy to address such issues as maximum exposure to the MBS category, minimum pool sizes, number of loans in a pool, geographic diversity of pools, and maximum allowable premiums to be paid. This new provision is necessary because the FCA, in response to the FCC and the investment firm, significantly expanded the authorities of System banks to invest in mortgage-related securities under § 615.5140(a)(2) and asset-backed securities under § 615.5140(a)(8)(ii). The preamble to §§ 615.5140(a)(2) and 615.5140(a)(8)(ii) will explain these new authorities in greater detail.

V. Liquidity Reserve Requirement

A. The FCA's Original Proposal on Liquidity

On December 18, 1991, the FCA proposed a regulation that, for the first time, would establish a fixed liquidity reserve requirement for all FCS banks. The proposed regulation would have required all Farm Credit banks to maintain a liquidity reserve sufficient to fund their operations for approximately 15 days. More specifically, proposed § 615.5134(a) contained a formula that would require each FCB, BC, and ACB to maintain a liquidity reserve to fund: (1) Fifty (50) percent of its bonds and interest due within the next 90 days divided by 3; and (2) fifty (50) percent of discount notes due within the next 30 days. This provision would have also required each Farm Credit bank to calculate its liquidity reserve requirement as of the last calendar day of March, June, September, and December, based upon the average daily balance of outstanding loans during the same quarter. Proposed § 615.5134(b) would have prohibited Farm Credit banks from maintaining liquidity reserves in excess of authorized requirements unless the FCA Board modified or waived the requirement during an agricultural, economic,

financial, or national defense emergency.

The preamble to proposed § 615.5134 explained the FCA's policy on the role of liquidity in the FCS. The FCA noted that liquidity is based upon the ability to fund assets and pay liabilities. Since the Farm Credit System is funded through the sale of debt obligations, the liquidity of Farm Credit banks depends largely upon daily access to money and capital markets. In the event that access to these money and capital markets is totally or partially denied during a crisis, Farm Credit banks draw upon their liquidity reserve, which is an emergency source of funds, in order to meet their short-term funding needs.

Historically, the level of liquidity in the FCS and the demand for System obligations in the money and capital markets has been influenced by the Federal Reserve Board, the United States Treasury, and external economic events. If investor confidence in Systemwide obligations erodes during a crisis, Farm Credit banks can experience difficulty raising funds in the money and capital markets. As a result, System banks will be compelled to offer investors a higher rate of return in order to attract capital. This, in turn, could cause interest rate spreads relative to Treasuries to widen. When this situation occurs, Farm Credit banks generally increase their liquidity reserve so that they will be able to fund their operations for an extended period of time, if their access to the money and capital markets becomes impeded.

Conversely, several studies that the FCS conducted since 1975 determined that Farm Credit banks should maintain a minimum liquidity reserve to fund their operations for approximately 15 days when the basis point spreads to comparable maturity United States Treasuries are near their historical levels. Accordingly, System banks, acting in concert through the Board of Directors of the Federal Farm Credit Banks Funding Corporation, devised a formula that requires all FCBs, BCs, and ACBs, at a minimum, to maintain sufficient liquidity to fund a portion of their maturing obligations, interest payments, and discount notes for the next 15 days.

As noted in the preamble to the proposed regulation, most Farm Credit banks exceed this minimum liquidity requirement, on average, by at least 1.4 times, while the liquidity at some banks is between 2 and 5 times above this requirement. Although Farm Credit banks have attempted to justify these investment levels, the FCA criticized this practice in the preamble to the proposed regulation. See 56 FR 65691, 65694 (December 18, 1991). More specifically, the FCA questioned whether FCS banks should use their GSE status to build and maintain an investment portfolio for the purpose of generating additional income. The FCA also objected to the practice of issuing short-term debt obligations to fund current operations. The FCA noted that this practice actually increases the bank's short-term debt load, and thus increases the amount of liquidity that a bank must maintain in order to meet the minimum Systemwide liquidity requirement.

B. The Comments

The liquidity component was the most controversial part of the proposed investment regulations. The FCC and two FCBs opposed the FCA's position while the ABA supported it. Other Farm Credit banks endorsed the FCC's position, while the investment banking firm offered no opinion about proposed § 615.5134.

The FCC stated that the FCA's approach toward liquidity lacks flexibility. The commenter notes that liquidity "is an ever present basic and paramount risk for any bank," and that there is direct relationship between inadequate liquidity and insolvency. The commenter further asserts that during times of financial stress, both bank management and the FCA are powerless to stop investor flight that will cause illiquidity in the FCS. The FCC complains that the proposed regulation wrongfully assumes that the FCS will always have access to financial markets "under all circumstances and for whatever amounts and maturities may be required." In this context, the FCC argues that the 15-day liquidity reserve requirement in proposed § 615.5134 is inadequate and imprudent.

The FCC also expressed misgivings about the provision in proposed § 615.5134 which would enable the FCA to modify the liquidity level whenever a financial, economic, agricultural, or national defense crisis impedes the FCS's access to the capital markets. The commenter contends that the FCA cannot accurately forecast such crises until well after the fact. From the commenter's perspective, once System access to the markets is disrupted, the FCA will be unable to preempt funding problems at System banks by belatedly allowing the banks to increase their liquidity reserves.

The FCC observed that the 15-day fixed liquidity requirement of § 615.5134 would be subject to § 615.5132, which restricts the size and purpose of each bank's investment portfolio. The commenter noted that once a System bank complied with its liquidity reserve requirement by allocating certain investments to retire liabilities maturing in the next 15 days, it could manage IRR and short-term surplus funds with other investments, so long as the investment portfolio did not exceed 20 percent (now 30 percent) of its total outstanding loans. In this context, the commenter stated that the FCA's proposal precludes System banks from adopting a strategy of funding their operations primarily with short-term debt. Since a short-term funded bank needs a large pool of liquid assets in order to retire its maturing liabilities and pay operating expenses, the commenter expressed concern that §§ 615.5132 and 615.5134 will compel such a bank to allocate most or all of its investment portfolio toward its liquidity reserve requirement. As a result, a short-term funded bank may not be able to effectively manage its IRR or short-term surplus funds because the amount of investments allotted to the liquidity reserve may approach 20 percent of the bank's total outstanding loans. The commenter argues that the FCA's approach deprives FCS banks of flexibility to establish their own asset/liability management (ALM) strategy.

Since the FCC believes that access to the financial and capital markets is wholly unpredictable, it advises the FCA to adopt a final regulation that encourages System banks to constantly build more liquidity as protection against potential market disruptions. The commenter suggests that final § 615.5134 should establish a minimum liquidity reserve requirement of 15 days while allowing each bank's board of directors to determine the maximum liquidity level "consistent with [its] unique circumstances." Additionally, the FCC petitioned the FCA to adopt a final regulation that exempts the liquidity reserve requirement from the investment ceiling in § 615.5132.

The FCC also recommends several revisions to the formula for calculating the liquidity reserve requirement. First, the commenter suggests that the final regulation enable System banks to include actual cash needs in their calculation of their liquidity reserve requirement. In the FCC's view, cash needs include expected loan volume changes and other operational needs of the bank. Second, the FCC objected that System debt obligations are the only liabilities that the proposed regulation authorizes Farm Credit banks to include in their liquidity reserve calculations. The commenter suggests that the FCA amend § 615.5134(a) so that FCS banks can include other debt, such as Federal

funds purchased, stockholder debt, repurchase agreements, and commercial bank borrowings, in the calculation of their liquidity reserve. Third, the FCC advises the FCA to exclude investments which are pledged as collateral or restricted by contract (i.e. CIPA) from both the liquidity reserve requirement and the overall ceiling on investments. Fourth, the commenter requests that the final regulation require Farm Credit banks to calculate their liquidity reserve requirement at least monthly using month-end data.

The Texas Bank endorsed the FCC's position that the minimum liquidity reserve requirement should be established by FCA regulation, while the maximum liquidity reserve level of each Farm Credit bank would be determined solely by its board of directors. However, the commenter also proposed a compromise to bridge the positions of the FCA and System banks. Under the Texas Bank's alternative, the final regulation would establish a fixed liquidity reserve requirement of 30 days. This compromise would incorporate the FCC's proposal to revise the formula for calculating each bank's liquidity reserve requirement.

The Columbia Bank expressed strong opposition to proposed § 615.5134. This commenter asserted that the FCA's proposed liquidity regulation is "premised on a misunderstanding of the role of liquidity in the prudent, safe and sound management of System Banks." According to the Columbia Bank, the FCA fails to comprehend that liquidity is a primary mechanism for System banks to maintain stable income. The commenter contends that narrow spreads between System debt obligations and United States Treasury issues, in large measure, reflect investor confidence in the FCS when it generates consistent and stable earnings and return on capital. The spread between FCS debt obligations and Treasuries widens when the capital and financial markets perceive deterioration in the stable earnings and income of System banks.

In this context, the Columbia Bank notes that additional liquidity enables Farm Credit banks to offset adverse spreads between System debt obligations and United States Treasury issues. Accordingly, the commenter does not view the liquidity reserve solely as an emergency source of funds. Instead, the Columbia Bank relies on liquid investments to hedge against potential increases in the cost of System funds. Under this strategy, the bank can, in its discretion, pay operating expenses and retire maturing debt by selling liquid investments instead of issuing new debt obligations in the financial markets.

The Columbia Bank disputes FCA's contention that Farm Credit banks will abuse their GSE status by arbitraging the financial markets with their excess liquidity. This commenter claims that today's sophisticated and diversified financial markets offer Farm Credit banks no incentive to engage in arbitrage activities. The Columbia Bank argues that the FCA has adequate enforcement powers under title V of the Act to discipline any bank that arbitrages the financial markets.

The Columbia Bank recommends that final § 615.5134 require all System banks to maintain sufficient liquidity to fund their operations for no less than 15 days, but no more than 90 days. Under the commenter's proposal, a System bank that maintained a 90-day liquidity reserve could not hold an investment portfolio that exceeds 35 percent of total outstanding loans.

In contrast, the ABA praised the FCA's proposal as well crafted and balanced. From the ABA's perspective, the proposed regulations promote portfolio diversification and effective risk management at FCS banks. The commenter also opined that proposed § 615.5134 would ensure that FCS banks always maintain adequate liquidity, during both normal economic times and periods of economic and financial stress.

The ABA expressed concern that many FCS banks use investments "primarily for the purpose of increasing earnings rather than providing liquidity." The commenter complained that excess liquidity in the FCS results in abuse of GSE status. The ABA concurred with the FCA's observation that the practice of issuing short-term discount notes to fund operations actually increases the debt load of System banks, which in turn increases their need for additional liquidity. In the commenter's opinion, these short-term discount notes are "acting as the functional equivalents of deposit taking and check clearing operations." The ABA also complained that System banks channel their earnings from investments into risky "extraneous activities," instead of agriculture. The commenter concluded that proposed § 615.5134 would end these practices while enhancing the safety and soundness of the FCS.

C. FCA's Revisions to § 615.5134

The FCA continues to adhere to its original position that Farm Credit banks should maintain sufficient liquidity to fund their maturing debt and interest obligations for approximately the next 15 days, except during times of crisis when this agency shall authorize System banks to increase their liquidity reserves and/or the size of their investment portfolios. As requested by the FCC, the FCA has modified this regulation so that Farm Credit banks are required to calculate their liquidity reserve requirement on a monthly basis utilizing month-end data. Furthermore, the final regulation shall authorize Farm Credit banks to include cash, commercial bank borrowing, and shareholder investment bonds in their liquidity reserve calculation.

The FCA emphasizes that the liquidity reserve is an emergency source of funds that Farm Credit banks draw upon solely for the purpose of retiring maturing debt obligations, making current interest payments, and paying operating expenses, whenever their access to capital and financial markets is impeded as a result of a financial, economic, agricultural, or national defense crisis.

The FCA's policy contrasts sharply with the position of System commenters who assert that § 615.5134 should authorize FCS banks to use their liquidity reserves for other functions besides emergency funding. As already discussed, some Farm Credit banks issue short-term obligations to fund their current operations. This short-term funding strategy requires such banks to increase their liquidity needs in order to service their increased short-term debt load. Other FCS banks hedge against potential increases in the cost of funding FCS debt obligations by building investment portfolios that could be used to bypass the financial and capital markets.

These practices cause most Farm Credit banks to exceed the 15-day liquidity reserve requirement that the FCS banks established through the auspices of the Federal Farm Credit Banks Funding Corporation. System commenters oppose the FCA's efforts to incorporate a 15-day liquidity reserve requirement into this regulation because it would effectively require Farm Credit banks to use their liquidity reserves solely as an emergency source of funds. For this reason, System commenters petitioned the FCA to expand the size of the liquidity reserve in § 615.5134. While the FCC and two FCBs offered various alternatives to the FCA, no commenter repudiated the premise in several System studies that Farm Credit banks require a liquidity reserve to fund their operations for approximately the next 15 days, during stable economic times, when the basis point spreads between Systemwide debt obligations and comparable maturity United States

Treasury issues are near their historical levels.

From the FCA's viewpoint, Farm Credit banks can accomplish their other ALM objectives without drawing down their liquidity reserves. For example, Farm Credit banks could rely on investments held for IRR management, not liquidity, to address their exposure to basis risk, which is caused by fluctuations in the spread between System debt and competitive market securities or indicies. The FCA notes that basis risk is a form of IRR. Basis risk exposures should be addressed in loan pricing mechanisms that incorporate premiums to ensure profitability objectives are met. From FCA's perspective, Farm Credit banks should strive to manage basis risk in a disciplined manner rather than tapping into their liquidity reserve.

The FCC claims that Farm Credit banks should perpetually build their liquidity reserves to protect themselves against any potential market disruption. The FCC's approach may allow System banks to accumulate large portfolios of liquid investments during stable economic times when the spread between FCS debt obligations and Treasuries is narrow. Within time, FCS banks would accumulate large liquidity reserves that, in all likelihood, would disproportionately exceed their need for funds in the event that System access to money markets becomes impeded.

The FCA reaffirms its basic position that the practice of buying investments solely to generate additional income is not compatible with GSE status. The mission of the FCS is to finance agriculture and other specified rural credit needs. Since the FCS operates on cooperative principles, loans to member-borrowers are supposed to be the primary source of income to Farm Credit institutions. As the FCA has previously stated, investments are ALM tools to combat risks to bank solvency and liquidity.

The United States Budget for fiscal year 1992 contained a section that focused on the role of GSEs in providing credit to specific sectors of the American economy, and the financial risk they pose to the Federal government. As part of its budget review, the Office of Management and Budget (OMB) identified specific risks that each GSE poses to the United States Treasury, and it proposed reforms to reduce these risks. The following passage from the budget articulates the OMB's position:

> A System-wide standard for sound asset/liability management should be adopted. . . . Liquidity guidelines for FCS institutions should be clarified and enforced. Currently, the FCS has $51 billion in outstanding loans and well over $54 billion in outstanding debt. Some institutions have over 400 percent of the liquidity required by the Funding Corporation. . . . This implies that some institutions are creating arbitrage profits from the issuance of federally backed FCS debt.[10]

Clearly, FCA is not the only governmental agency concerned about FCS institutions' ability to arbitrage profits from the issuance of FCS debt, which is implicitly backed by the United States.

The FCA does not agree with the Columbia Bank's claim that liquidity is a primary mechanism for System banks to maintain stable earnings and return on capital, which in turn, inspires investor confidence in FCS bonds. Instead, the FCA notes that the competent management of agricultural and rural development loans should generate the earnings and returns on capital which inspire investor confidence in FCS obligations.

Accordingly, the FCA retains in final § 615.5134 a provision that requires all FCS banks to maintain a liquidity reserve sufficient to fund their operations for approximately the next 15 days. Furthermore, final § 615.5134 shall not exempt the liquidity reserve from the provision in § 615.5132 that restricts overall investments of each bank to 30 percent of its total outstanding loans.

The FCA has revised § 615.5134 so that the final regulation reinforces the concept that the liquidity reserve shall only be used as an emergency source of funds. As a result, final § 615.5134(b) shall now require each FCB, BC, and ACB to segregate investments held for liquidity from investments that are maintained for the management of IRR and short-term funds. Furthermore, final § 615.5134 shall only authorize Farm Credit banks to hold investments that are unencumbered by (free of) lien in their liquidity reserve.

Since commenters have expressed concern that the liquidity reserve formula is inflexible, the FCA now explains its approach towards enforcing § 615.5134. As noted earlier, the FCA expects Farm Credit banks to maintain a liquidity reserve that is sufficient to fund their operations for approximately 15 days. Every month, Farm Credit banks shall calculate the amount of debt that will mature within the time period prescribed by § 615.5134. This calculation determines the size of the liquidity reserve at each bank. The FCA recognizes that the size of the liquidity reserve shall fluctuate from one month to the next. FCA examiners shall exercise discretion so that Farm Credit banks will not be subject to criticism when the value of the assets held in the liquidity reserve periodically varies from the value prescribed by § 615.5134 due to the timing and deliberations required for the purchase and sale of assets and liabilities.

If a financial, economic, agricultural, or national defense crisis disrupts the capital and financial markets that provide funds for the FCS, the FCA shall waive or modify the liquidity reserve requirement by resolution of the FCA Board. Despite FCC concerns, the FCA is confident that it will be able to respond expeditiously to a crisis. The FCA constantly monitors the financial conditions of the FCS, as well as the economic environment in which it operates. Similarly, System banks and the Federal Farm Credit Banks Funding Corporation can petition the FCA to increase or waive the liquidity reserve requirement if they believe that their access to the money markets may become impeded. The FCA redesignates proposed § 615.5134(c) as final § 615.5136. In order to provide the FCA with greater flexibility in an emergency, final § 615.5136 also authorizes the FCA Board to increase the size of the investment portfolio.

As requested by the FCC, the FCA adjusts the formula in § 615.5134(a) for calculating the liquidity reserve requirement to include Farm Credit Investment Bonds within the liquidity reserve formula by amending § 615.5134(a)(1), which establishes the liquidity calculation for bonds, notes, and interest. Farm Credit investment bonds are debt obligations of individual banks that are sold directly to borrower/shareholders rather than through brokers and dealers. Furthermore, a new provision in the final regulation, § 615.5134(a)(3), requires each FCB, BC, and ACB to maintain liquidity sufficient to fund 50 percent of its commercial bank borrowing due within the next 30 days. These two revisions to § 615.5134(a) are justified because section 4.2(a) of the Act clearly contemplates that Farm Credit banks shall fund their operations by: (1) Issuing debt obligations; and (2) borrowing from commercial banks.

The FCA is amending § 615.5134 so that the final regulation permits FCS banks to include cash in their liquidity reserve. Conversely, the FCA declines the FCC's request to include Federal funds purchased, repurchase agreements, and similar instruments in the liquidity reserve formula because section 4.2 of the Act does not recognize

[10] Budget of the United States Government for fiscal year 1992; Part Two, p. 241.

these instruments as a source of FCS funding.

The FCA denies the FCC's request to exclude assets pledged under CIPA from both the liquidity reserve requirement in § 615.5134 and the overall investment ceiling in § 615.5132. CIPA requires Farm Credit banks that fail to comply with certain contractually agreed upon performance standards to establish a segregated account that consists entirely of United States government securities. CIPA forbids Farm Credit banks from drawing upon these segregated assets for current operational purposes. Accordingly, these instruments would not be available for use in a liquidity reserve.

The FCA revises § 615.5134 to require Farm Credit banks to calculate their liquidity reserve requirements monthly, rather than quarterly. This revision should enable System banks to more accurately gauge their liquidity needs.

VI. Management of Interest Rate Risk

The FCA proposed a new regulation, § 615.5135, which for the first time, identified IRR reduction as an authorized reason for holding investments for System banks. From the FCA's perspective, the effective management of IRR is among the most difficult and important challenges facing boards of directors and bank managers. Interest rate volatility can undermine the solvency of Farm Credit banks. Sudden interest rate fluctuations may significantly impact the NII and market value of equity (MVE) of Farm Credit banks. Accordingly, the FCA sought to ensure bank managers measure the impact of changing interest rates on their balance sheets so they could devise an effective investment strategy to insulate the bank from excessive IRR.

In this context, the FCA reasoned that interest rate shock tests enable bank management to gauge the bank's exposure to IRR on a continual basis, and understand its impact on NII and MVE over extended periods of time. The proposed regulation would have incorporated a provision of the FCA's current policy statement on IRR management,[11] which encourages System banks to simulate the impact of a instantaneous and sustained 200-basis-points (interest rate shock or shocking) increase and decrease in interest rates on its projected NII and MVE.

As proposed by the FCA, § 615.5135(a) would require the board of directors of each bank to adopt IRR management sections under ALM policies which establish IRR exposure limits. Under proposed § 615.5135(b), all FCBs, BCs, and ACBs would simulate, on a quarterly basis, the impact of an instantaneous and sustained 200-basis-points increase and decrease in interest rates over the next 12 months on the bank's NII and MVE. Proposed § 615.5135(c) would require each Farm Credit bank to develop, at least every quarter, the following three projections of the impact of interest rate changes on the bank's NII and MVE: (1) A best case scenario; (2) a worst case scenario; and (3) a most likely case scenario. Section 615.5135(d) of the proposed regulation would authorize Farm Credit banks to purchase and hold the eligible investments listed in § 615.5140 of this subpart in order to reduce IRR resulting from the bank's normal lending operations. Under the FCA's proposal, each bank would be required to document, prior to purchase, the reasons why a particular investment is needed to meet IRR objectives. Furthermore, the proposed regulation would require subsequent quarterly reports which indicate whether such investments are satisfying the IRR objectives of the bank.

The FCC and two FCBs commented on proposed § 615.5135. The other FCS commenters endorsed the FCC's position, while the two non-System commenters refrained from commenting on § 615.5135. As noted in the preamble to final § 615.5132, the FCC and one FCB recommended that the FCA amend § 615.5135 so it mandated the management, rather than the reduction of IRR.

Although the FCC did not fundamentally oppose proposed § 615.5135, it perceived some provisions of the regulation as prescribing management practices rather than promoting safety and soundness. While the FCC acknowledged that the FCA, as a safety and soundness regulator, has the responsibility to fully examine ALM processes at all Farm Credit banks, it asserted that the agency should not prescribe specific methods and procedures for measuring IRR. The commenter warned that proposed § 615.5135 would not necessarily provide the most accurate gauge of IRR at a System bank at a particular point in time.

Accordingly, the FCC advocated an alternative approach that would require each bank to determine the most appropriate methods for measuring the level of IRR in its portfolio. In this context, the commenter recommended an amendment to § 615.5135(a) that would require each System bank to establish the criteria for determining compliance with the IRR exposure limits of its ALM policy. The FCC asserted that its approach was less rigid and more insightful than the proposed regulation because it would enable the FCA to evaluate the risk measurement processes of all FCS banks, and to hold each bank accountable for supporting its method and conclusions.

The FCC did not oppose the quarterly 200-basis-point shock tests of proposed § 615.5135(b), but it urged the FCA to delete proposed § 615.5135(c), which would require all Farm Credit banks to develop quarterly projections of a best case, a worst case, and a most likely case scenarios concerning the impact of interest rate fluctuations on NII and MVE during the next 12 months. The FCC opined that proposed § 615.5135(c) "is ambiguous and probably not very informative." Since the commenter doubted that these three selected scenarios would realistically reflect actual future movements in interest rates, it claimed that System banks would derive little benefit from conducting the analysis required by proposed § 615.5135(c).

The FCC also opposed those provisions in § 615.5135(d) that would require each System bank to evaluate in writing, both before and after purchase, how a selected investment achieves its IRR objectives. The commenter asserted that these matters are managerial disciplines that fall exclusively within the purview of the board and management, and therefore, they do not warrant detailed procedural instructions in a regulation. The FCC also proposed a technical amendment to the first sentence in proposed § 615.5135(d), which would authorize Farm Credit banks to hold eligible investments in order to reduce IRR resulting from their normal "lending" operations. The commenter advised the FCA to delete the term "lending" from § 615.5135(d) because the regulation focuses on IRR that results from all operations at System banks.

A FCB concurred with the FCC that proposed § 615.5135 would shift FCA regulation from general oversight toward detailed bank management. This commenter complained that the proposed regulation would impose extremely burdensome documentation requirements on System banks concerning IRR management. Since the commenter claimed that the costs of proposed § 615.5135 outweighed its benefits, it urged the FCA to eliminate or substantially reduce the paperwork and simulation requirements of this regulation.

[11] See bookletter 281–OE (January 15, 1991) Re: Asset/Liability Management Practices.

Furthermore, this FCB viewed proposed § 615.5135 as impractical because liquidity maintenance and IRR management are often so closely related that it may be difficult, if not impossible, to separate the purposes behind a particular investment transaction. This commenter felt that evaluating each investment transaction to meet specific interest rate sensitivities used in the process of managing IRR imposed micro-level evaluation. This FCB warned FCA that FCS banks may not be able to meaningfully isolate IRR management functions of individual investments.

The commenters have persuaded the FCA to modify § 615.5135 so it provides System banks with more flexibility to resolve their IRR exposure within established safety and soundness parameters. As a result, the final regulation permits FCBs, BCs, and ACBs to "manage" rather than "reduce" IRR. Moreover, while final § 615.5135 sets forth fundamental safety and soundness criteria for IRR management, it no longer dictates detailed management practices to System banks.

As noted earlier, the FCA has amended §§ 615.5132 and 615.5135 so that the final regulations require FCS banks to "manage" rather than "reduce" IRR. The regulations in subpart E of part 615 require bank management to establish a framework of policies, procedures, controls, and reporting practices for safeguarding the solvency and liquidity of the bank. In this context, these practices should effectively help an institution manage its IRR, not necessarily reduce it. Reduction of IRR may be the result of managing IRR, but it may not always be the sole objective of the bank. In certain scenarios, it may be prudent for a Farm Credit bank to increase its IRR tolerance levels. By amending this regulation, the FCA is providing System banks with greater flexibility to combat their exposure to IRR.

System commenters suggested that the FCA could ensure that Farm Credit banks safely and soundly manage IRR without prescribing specific methods and procedures for measuring IRR exposure in § 615.5135. In response, the FCA acknowledges that a more flexible regulatory approach will permit System banks to incorporate other IRR strategies into their ALM practices. Since the FCA agrees with the commenters that other risk evaluation techniques may also effectively assist bank managers in their task of managing IRR, the FCA now adopts the FCC's proposed amendment to § 615.5135 which will enable each System bank to establish criteria for determining compliance with the IRR exposure limits of its ALM policy.

In crafting final § 615.5135, the FCA sought to balance the banks' need for managerial flexibility in containing IRR in their balance sheets with the agency's responsibility to ensure that all FCS institutions operate safely and soundly. For this reason, the final regulation requires each System bank to comply with certain criteria when it develops and implements an IRR management section to its ALM policy. From the FCA's perspective, final § 615.5135 establishes the minimum requirements necessary to ensure that: (1) Farm Credit banks manage their IRR in a safe and sound manner; and (2) the FCA is able to discharge its responsibility to effectively examine the ALM practices at System banks for safety and soundness.

Under final § 615.5135, each System bank shall, at a minimum, address five specific areas in the IRR management section of its ALM policy. Under § 615.5135(a), each bank shall identify and analyze the causes of risks within its existing balance sheet structure. Section 615.5135(b) requires System banks to measure the potential impact of these risks on projected earnings and market values by conducting interest rate shock tests and simulations of multiple economic scenarios at least on a quarterly basis. Although § 615.5135 continues to require Farm Credit banks to perform interest rate shock tests and develop simulations of multiple economic scenarios, it no longer specifies exact tests and simulation models. Instead, the IRR management section of each bank's ALM policy shall identify the shock tests and simulations that the bank shall use to measure its IRR exposure. System banks are required by § 615.5135(c) to explore and implement actions needed to obtain its desired risk management objectives.

Final § 615.5135(d) states that a System bank shall document the objectives it is attempting to achieve by purchasing eligible investments, while § 615.5135(e) requires quarterly evaluation and documentation to determine whether these investments have actually met the bank's objectives. The FCA emphasizes that final § 615.5135(d) and (e) do not require System banks to document, before and after purchase, how each individual investment transaction in an investment position performed in managing a specific IRR exposure. Instead, these provisions only require a bank to evaluate and document the performance of a block of investments that was acquired to manage a specific IRR exposure.

Finally, the FCA addresses the FCB's complaint that it is difficult to separate the investment purposes supporting a particular investment transaction. The FCA does not agree with this point of view. The regulations in subpart E of part 615 authorize Farm Credit banks to hold investments solely for the purposes of maintaining a liquidity reserve and managing IRR and short-term surplus funds. Furthermore, these regulation accord different treatments for investments held for IRR and liquidity. Section 615.5134 requires FCS banks to segregate investments that are held in the liquidity reserve. Conversely, Farm Credit banks must comply with the evaluative process set forth in final § 615.5135 for investments that are held to manage IRR. Since these regulations require each bank to identify whether an investment is used for liquidity or IRR management, the same investment cannot simultaneously be used for both purposes.

VII. Eligible Investments

Final § 615.5140 expands the list of eligible investments that Farm Credit banks are authorized to hold in order to comply with the requirements of § 615.5132 pertaining to liquidity, IRR, and the investment of surplus short-term funds. As the FCA noted in the preamble to the proposed regulation, only investments that can be promptly converted into cash on an established secondary market are suitable for liquidity, IRR management, and the investment of surplus short-term funds. See 56 FR 65691, 65695 (December 18, 1991). Therefore, all eligible investments listed in final § 615.5140 share the following characteristics: (1) Short-term maturities or short-term repricing mechanism; (2) a high investment grade credit rating by a nationally recognized credit rating service; (3) an active and universally recognized secondary market exists for trading these investments; and (4) these investments are valuable as collateral. Furthermore, the regulation that the FCA adopts today promotes portfolio diversification by establishing percentage limits on most eligible investments that FCBs, BCs, and ACBs may hold at any particular time.

The input that the FCA received from System commenters and the investment banking firm about eligible investments proved extremely useful in crafting final § 615.5140. The preamble to the individual provisions of § 615.5140 will analyze specific recommendations by the commenters and explain the FCA's positions concerning the final regulation.

A. Obligations of the United States, Its Agencies and Instrumentalities

As proposed by the FCA, § 615.5140(a)(1) would implement sections 1.5(15) and 3.1(13)(A) of the Act by authorizing Farm Credit banks to invest in obligations other than mortgage-backed securities MBSs issued or fully guaranteed as to principal and interest by the United States, or any of its agencies and instrumentalities. Such obligations are suitable for managing liquidity, reducing IRR, and investing short-term surplus funds, because they pose virtually no risk of default, and are marketable investments within the meaning of proposed § 615.5131(i). The FCA did not propose any restrictions on the percentage of Federal obligations that Farm Credit banks could hold in their investment portfolios because these obligations are, from a regulatory perspective, inherently safe and sound.

The FCA proposed to exclude MBSs that are issued or insured by an instrumentality of the United States from coverage under proposed § 615.5140(a)(1). Instead, these investments would be governed by proposed § 615.5140(a)(2).

The FCC suggested that § 615.5140(a)(1), not § 615.5140(a)(2), should cover MBSs that are issued by the Government National Mortgage Association (GNMA). The commenter reasoned that the provision in § 615.5140(a)(2) which limits the size of the MBS portfolio should not apply to GNMA mortgage-related securities because they are fully guaranteed as direct obligations of the United States. However, the FCC proposed revisions to § 615.5140(a)(2) that would impose a three-pronged interest rate sensitivity test for GNMA, FNMA, and FHLMC mortgage-related securities. The FCA agrees with the FCC's basic approach toward GNMA securities. Although final § 615.5140(a)(2) will continue to govern investments in GNMA mortgage-related securities, it will no longer restrict the amount of these securities that System banks may hold.

An FCB suggested that final § 615.5140(a)(1) should expressly authorize System banks to invest in MBSs that are issued by the Small Business Administration (SBA). The FCA's research reveals that the SBA provides financial assistance to small businesses, and then sells direct or guaranteed loans to investors through five separate programs. Some of these SBA securities are backed by the full faith and credit of the United States, while others are not. Similarly, while some SBA securities are backed by commercial real estate mortgages, other instruments are secured by chattels.

The FCB has not identified which SBA securities it seeks to qualify as eligible investments under § 615.5140(a)(1). The FCA notes that SBA securities could, depending on the circumstances, qualify as eligible investments under either § 615.5140(a)(1),(a)(2), or (a)(11). It is conceivable that certain SBA securities are ineligible investments under this regulation. Farm Credit banks should be vigilant so that they do not purchase or hold SBA securities that are not backed by the full faith and credit of the United States.

B. Mortgage-Backed Securities

Proposed § 615.5140(a)(2) would have authorized FCBs, BCs, and ACBs to hold MBSs issued by, or fully guaranteed as to principal and interest by the GNMA, FNMA, FHLMC, and Farmer Mac so long as: (1) All adjustable rate MBSs reprice within 12 months; or (2) all fixed-rate MBSs have an absolute final maturity of 5 years from the time of purchase. Prime derivative products of MBSs, such as Collateralized Mortgage Obligations (CMOs), Real Estate Mortgage Investment Conduits (REMICs), and Stripped Mortgage-Backed Securities (SMBSs), were excluded from coverage under proposed § 615.5140(a)(2). Although certain CMO and REMIC tranches are effective in managing IRR, the FCA concluded in the preamble to the proposed regulation that the universe of CMO and REMIC tranches available in the marketplace was too diverse for effective regulation. See 56 FR 65691, 65695 (December 18, 1991). The FCA also proposed to limit investments in qualified MBSs to 30 percent of the total investment portfolio of the bank.

The FCC, a BC, an FCB, Farmer Mac, and the investment banking firm criticized proposed § 615.5140(a)(2) as unduly restrictive. Most criticism of proposed § 615.5140(a)(2) focused on provisions that: (1) Imposed an absolute final maturity of 5 years on all fixed-rate MBSs; (2) precluded MBSs where the underlying adjustable rate mortgages (ARMs) could convert into fixed-rate mortgages; (3) prohibited all investments in CMOs and REMICs; and (4) limited MBSs to 30 percent of the investment portfolio.

All commenters recommended extensive revisions to proposed § 615.5140(a)(2). The FCA incorporated many of these changes into the final regulation because they are consistent with the FCA's objective of allowing System banks to invest only in MBSs that: (1) Have little or no risk; and (2) are suitable for maintaining a liquidity reserve, managing IRR, and investing surplus short-term funds. These amendments to the final regulations should provide bank managers with more flexibility in managing risks, and enhance the quality and diversity of investment portfolios throughout the FCS.

For these reasons, the FCA now adopts as final § 615.5140(a)(2) an alternative that was offered in part by the FCC. MBSs, CMOs, and REMICs that are issued by, or guaranteed as to both principal and interest by GNMA, FNMA, or FHLMC qualify as eligible investments under final § 615.5140(a)(2). The FCA emphasizes that CMOs and REMICs that are collateralized by the MBSs of GNMA, FNMA, or FHLMC are expressly included within the ambit of this regulation even though they are packaged and sold by a private sector investment banker. All eligible securities, except those that are issued by or guaranteed as to both principal and interest on the full faith and credit of the United States, shall be rated AAA or its equivalent by a nationally recognized credit rating service.

Final § 615.5140(a)(2) imposes certain threshold requirements for ARMs and fixed-rate mortgages that back these securities. ARMs that back eligible securities shall have a repricing mechanism of 12 months or less tied to an index. The final regulation requires that the underlying fixed-rate mortgages of MBSs, CMOs, and REMICs meet the following three conditions at the time of purchase and each quarter thereafter: (1) The expected weighted average life (WAL) [12] of the instrument does not exceed 5 years; (2) the expected WAL does not extend for more than 2 years assuming an immediate and sustained parallel shift in the yield curve of plus 300 basis points, nor shorten for more than 3 years assuming an immediate and sustained parallel shift in the yield curve of minus 300 basis points; and (3) the estimated change in price is not more than 10 percent due to an immediate and sustained parallel shift in the yield curve of plus or minus 300 basis points. The FCA deleted the provision in the proposed regulation that precluded System banks from investing in securities where the underlying ARMs are convertible into fixed-rate mortgages.

[12] The FCA adopts § 615.5131(v), which defines weighted average life as the average time to receipt of principal, weighted by the size of each principal payment. Weighted average life for MBSs, CMOs or REMICs is calculated under some specific prepayment assumption.

The FCC proposed that the final regulation adopt "weighted average maturity" (WAM) as the standard for measuring the average life and average life sensitivity of mortgage-related securities. However, the FCA's research reveals that both the industry and other Federal regulators rely on WAL as the appropriate standard for gauging the average life and average life sensitivity of these instruments. WAL calculations include some prepayment assumptions, whereas WAM assumes no prepayments.

Final § 615.5140(a)(2) requires Farm Credit banks to document both their assumptions concerning the mortgage-related security and its underlying collateral, and any subsequent changes in those assumptions. The bank shall also analyze the security prior to purchase and on a quarterly basis thereafter. The final regulation compels System banks to divest any mortgage-related security that, subsequent to purchase, fails any of the aforementioned three tests concerning interest rate sensitivity.

The final regulation also allows System banks to invest in CMO floaters. Furthermore, final § 615.5140(a)(2) exempts CMO floaters that bear a rate of interest below their contractual cap from the above-cited requirements concerning the WAL. The FCA has also expanded the definition of a CMO in § 615.5131(e) so it expressly includes a CMO floating-rate debt class. According to final § 615.5131(e), the interest rate of a CMO floater adjusts at least annually pursuant to a conventional index. Inverse CMO floaters do not qualify as eligible investments under final § 615.5140(a)(2).

Two commenters dissented from the FCC's proposal. These commenters urged the FCA to adopt the FFIEC's three-pronged test for identifying high-risk mortgage-derivative products. Under the FFIEC standards, a mortgage derivative, such as a CMO, REMIC, or SMBS, shall be classified as a high-risk security if it fails any of the following three tests: (1) The expected WAL exceeds 10 years; (2) the expected WAL of the security extends by more than 4 years assuming an immediate and sustained parallel shift in the yield curve of plus 300 basis points, or shortens by more than 6 years assuming an immediate and sustained parallel shift in yield curve of minus 300 basis points; or (3) the estimated change in the price of the mortgage-derivative product is more than 17 percent, due to an immediate and sustained parallel shift in interest rates of plus or minus 300 basis points. See 57 FR 4028, 4038–39 (February 3, 1992).

One System commenter urged the FCA to elect the FFIEC's approach over the FCC's proposal. This commenter asserted that all federally regulated financial institutions should operate under the same rule concerning mortgage derivatives, and that there is no justification for applying a different regulatory treatment to System banks.

The FCA prefers the FCC's proposal to the FFIEC policy for several reasons. First, the conservative standards advocated by the FCC apply to both securities backed by fixed-rate mortgages, and to CMOs and REMICs, whereas the FFIEC policy statement covers high-risk mortgage-derivative products, including SMBSs. Second, the FCC's approach is specifically tailored to the needs of Farm Credit banks because § 615.5140(a)(2) establishes standards for mortgage-related securities that are compatible with the investment objectives of § 615.5132. Third, the FCA notes that § 615.5140(a)(2) and the FFIEC policy statement are geared to entirely different objectives. Depository institutions, in their capacity as primarily lenders, routinely originate the residential mortgages that collateralize these securities, whereas Farm Credit institutions have only limited statutory authority to make (rural) residential loans that back these mortgage-related instruments. Thus, depository institutions are exposed to the risks of loss on the types of loans that underline these securities, while the FCS generally is not. In this context, the FCA's regulation establishes the parameters of an eligible investment. In contrast, the FFIEC policy does not prohibit depository institutions from investing in high-risk mortgage derivatives. Instead, it only establishes a three-pronged test for determining if individual mortgage-derivative products should be classified as high-risk securities.

Most commenters judged the proposed 30-percent limit on mortgage-related securities as inadequate. The FCC and all System commenters advanced the following arguments in support of their position for a higher limit: (1) The regulation already imposes the highest credit quality standards on eligible mortgage-related securities; (2) these investments are effective tools for managing IRR and enhancing liquidity; and (3) advanced computer technology provides System banks with continual access to analytical information about the performance of these securities.

As noted in the preamble to § 615.5140(a)(1), the FCC opposed any ceiling on investments by System banks in GNMA mortgage-related securities. This commenter also encouraged the FCA to raise the limit on FNMA and FHLMC mortgage-related securities from 30 to 60 percent. Another commenter advised the FCA to abolish all regulatory restrictions on the percentage of GNMA, FNMA, or FHLMC mortgage-related securities that System banks may hold in their investment portfolios. This commenter warned that other regulators and the marketplace may misconstrue the FCA's position, and conclude that the FCA is questioning the creditworthiness of GNMA, FNMA, and FHLMC. The commenter also expressed concern that other regulators may retaliate by imposing limits on the purchase of System obligations by other financial institutions or GSEs.

Final § 615.5140(a)(2)(vi) eliminates all restrictions on the amount of GNMA mortgage-related securities that Farm Credit banks may hold in their investment portfolios. The FCA notes that private sector investment firms often convert GNMA MBSs into CMOs and REMICs. The investor purchases a private label security which is fully collateralized with GNMA securities, which in turn are backed by the full faith and credit of the United States. Since GNMA mortgage-related securities pose no credit risk (insofar as principal and interest income is concerned) to the investor, the FCA has decided to authorize System banks to purchase and hold these investments without regulatory restriction as to amount. In this context, management should determine how GNMA mortgage-related securities best meet the investment objectives of the bank. Similarly, this provision applies to mortgage-related securities of the SBA or other Federal government agencies which: (1) Are backed by the full faith and credit of the United States; (2) secured by real estate; and (3) comply with the other requirements of § 615.5140(a)(2). The FCA reiterates that Farm Credit banks should be vigilant so that they do not purchase or hold mortgage-related securities that are issued or guaranteed by the SBA or another government agency unless they are backed by the full faith and credit of the United States.

The FCA has decided to raise the ceiling on FNMA and FHLMC mortgage-related securities from 30 to 50 percent of the total investment portfolio of banks. The commenters have convinced the FCA that the high credit quality of these securities warrants a more liberal approach toward System participation in this market. However, the FCA rejects a 60-percent limit because it is concerned that the investment portfolios of System banks could become too

heavily concentrated in mortgage-related securities.

Several months after the second comment period expired, Farmer Mac submitted a comment letter to the FCA concerning proposed § 615.5140(a)(2). More specifically, Farmer Mac objected to FCA's decision to include Farmer Mac securities within the ambit of this regulation. The commenter asserted that the secondary agricultural mortgage market is a logical extension of the System's agricultural lending operations. In the commenter's opinion, Farmer Mac securities enhance the credit quality and liquidity of System loan portfolios, but they do not satisfy the asset/liability management objectives of § 615.5132. For this reason, Farmer Mac argued that its securities should not be accorded the same regulatory treatment as investments which are unrelated to agricultural lending. The commenter also complained that other Federal bank regulatory agencies did not similarly impede participation by their institutions in the Farmer Mac securities market.

The FCC implied that Farmer Mac securities should be excluded from § 615.5140(a)(2) because it proposed regulatory language for § 615.5140(a)(2) that omitted all of FCA's references to Farmer Mac.

After careful reflection, the FCA has decided to exclude Farmer Mac securities from coverage under final § 615.5140(a)(2). The FCA agrees with the commenter that Farmer Mac securities fulfill a different set of investment criteria for System banks than GNMA, FNMA, and FHLMC mortgage-related securities. Accordingly, the FCA adopts new regulations in subpart F of part 615 that shall govern investments by FCS institutions in guaranteed Farmer Mac securities. This new authority shall be addressed at length in the preamble to subpart F.

C. Negotiable Certificates of Deposit

The FCA proposed substantial revision to the existing regulation governing investments by Farm Credit banks in negotiable certificates of deposit (CDs). The FCA expressed concern that: (1) The investment portfolios of Farm Credit banks are too heavily concentrated in commercial banks; and (2) CDs expose Farm Credit banks to undue financial risks because the commercial banking and thrift industries have recently experienced significant difficulties. See 56 FR 65691, 65697 (December 18, 1991). Accordingly, the FCA proposed amendments to this regulation that would remedy these problems by limiting System bank investment in negotiable CDs, and imposing credit quality standards on these instruments.

The proposed regulation would retain the existing requirement that Farm Credit banks only hold negotiable CDs. Proposed § 615.5140(a)(5) would require all FCBs, BCs, and ACBs to limit their holdings of negotiable CDs to 30 percent of their investment portfolio, while proposed § 615.5140(b) would prohibit Farm Credit banks from concentrating their CD investments in a limited number of depository institutions. The FCA also proposed that all negotiable CDs held by Farm Credit banks mature within 1 year or less. To the extent that a domestic, Yankee, or Eurodollar CD is not insured by an agency of a Federal or national government, the proposed regulation would require that: (1) The depository institution maintain at least a B, or equivalent credit rating by a nationally recognized credit rating service; and (2) the foreign country where Eurodollar CDs are held to maintain an AAA, or equivalent rating for political and economic stability from a nationally recognized credit rating service.

The FCC and a FCB offered amendments to both proposed § 615.5131(l), which defines negotiable CDs, and proposed § 615.5140(a)(5). As requested by these commenters, final (and redesignated) § 615.5131(m) defines negotiable CDs as instruments issued as "evidenced by definitive or book-entry form," rather than instruments "evidenced by a certificate." This revision is designed to conform the final regulation to current industry practices and standards concerning the issuance of negotiable CDs.

These two commenters also urged the FCA to expand this category of investments to include Eurodollar deposits at foreign banks and overseas branches of American banks. Although the commenters conceded that Eurodollar deposits are non-negotiable and less liquid than other investments, they asserted that these instruments are suitable for managing short-term cashflows at System banks. The FCC and the FCB had different views about the maximum maturity that the final regulation should impose on Eurodollar deposits.

The final regulation does not authorize System banks to hold Eurodollar deposits because they are not negotiable instruments. A non-negotiable CD contains restrictions on its transferability, which in turn, adversely impacts its marketability and liquidity. In this context, non-negotiable CDs do not accomplish the FCA's goal of reducing the exposure of System banks to the risks of the commercial banking industry.

The commenters also requested that the FCA reduce the credit ratings in § 615.5140(a)(5) to: (1) B/C for depository institutions; and (2) AA for political and economic stability of the host country where the funds are deposited. The FCA agrees to lower the credit rating for depository institutions to B/C which represents a larger universe of commercial banks that are of acceptable short-term investment grade. However, the FCA shall only permit System banks to hold Eurodollar CDs in foreign countries that achieve the highest rating for political and economic stability, and therefore, System requests to lower this standard are denied. Similarly, the FCA declines advice to expand the maximum maturity on negotiable CDs to 24 months because a time deposit with a shorter maturity is more liquid. Accordingly, final § 615.5140(a)(5) will require negotiable CDs to mature within 1 year or less.

The commenters requested that FCA further revise § 615.5140(a)(5) by doubling the limit on negotiable CDs from 30 to 60 percent. As recommended by these commenters, Farm Credit banks would be authorized to hold 30 percent of their investments in domestic CDs, 30 percent in Eurodollar and Yankee CDs, and 30 percent in Federal funds under § 615.5140(a)(6). Under the System's proposal, accounts at depository institutions could comprise 90 percent of any System bank's investment portfolio.

The System's proposal cannot be reconciled with the FCA's objective of prompting Farm Credit banks to diversify their investment portfolios so they no longer remain heavily concentrated in depository institutions. Interestingly, the ABA expressed no objection to the FCA's proposal to impose restrictions on System bank investments in CDs and Federal funds. Yet, System commenters ignored the FCA's safety and soundness concerns, and instead advocated greater concentration of System investments in the commercial banking sector.

Final § 615.5140(a)(5) prohibits FCBs, BCs, and ACBs from holding more than 25 percent of their investments in negotiable CDs. Since the FCA raised the investment ceiling in § 615.5132 from 20 to 30 percent, it lowered the limit on negotiable CDs from 30 to 25 percent. In spite of this modification, the overall level of permissible System bank investment in negotiable CDs is still slightly higher under the final

regulation than it was under the proposed regulation.

D. Federal Funds

Proposed § 615.5131(f) would define Federal funds as loans, for 1 business day or under a continuing contract, to a federally insured depository institution. Based on this definition, proposed § 615.5140(a)(6) would authorize Farm Credit banks to hold Federal funds that mature within 1 business day, or are subject to a callable contract. The proposed regulation would also limit Federal funds to 30 percent of the bank's investment portfolio in order to encourage risk diversification. From the FCA's perspective, the short maturity on Federal funds are suitable for managing liquidity and investing surplus short-term funds.

The FCC, two FCBs, and a BC proposed revisions to §§ 615.5131(f) and 615.5140(a)(6). All commenters recommended that the FCA amend § 615.5131(f) so System banks are permitted to engage in Federal funds transactions with other GSEs. The FCA adopts this amendment so System banks can more fully participate in the Federal funds market.

System commenters also urged the FCA to expand this definition to include Term Federal funds that are not subject to a callable contract, but mature within 2 to 100 days. One commenter requested that the final regulation authorize System banks to invest in callable Federal funds that mature within 2 years. In response, the FCA will amend the regulation so System banks can hold Term Federal funds that, subject to a callable contract, mature within 2 to 100 days.

From a regulatory perspective, a callable feature provides liquidity for such instruments. Investors in non-callable Term Federal fund contracts sacrifice liquidity in exchange for a higher return. The investors are exposed to loss if the issuer defaults at any time before the instrument matures. In contrast, a callable Term Federal funds contract enables the holder to withdraw its funds at any time. By restricting System bank investments to callable Term Federal funds, the FCA continues to bar the use of non-negotiable investments in subpart E.

The FCA has decided to impose a maximum maturity of 100 days on Term Federal funds for two separate reasons. First, research by the FCA reveals that the market for Term Federal funds with a maturity that exceeds 100 days is sparse. Second, a maximum maturity of 100 days is a standard that would require System banks to periodically review the creditworthiness of the issuer.

The final regulation also requires depository institutions that engage in Term Federal fund transactions with any Farm Credit bank to maintain a B/C credit rating. This safety and soundness standard is a logical extension of the System proposals to expand coverage of the regulation to Term Federal funds.

Two commenters petitioned the FCA to raise the limit on Federal funds from 30 to 60 percent. Although these commenters acknowledged that their proposal would further concentrate System investments in the commercial banking industry, they asserted that Farm Credit banks could effectively contain the attendant risks through internal credit quality control standards. These commenters urged the FCA to increase this limit in order to accommodate those System banks that depend upon large holdings of Federal funds to perpetuate short-term funding strategies. These commenters complained that the FCA's proposal would arbitrarily force such banks to abandon their current funding strategies, and divest a significant portion of their Federal funds. These two commenters claimed, without explanation, that diversification away from commercial bank investments will actually increase, rather than decrease, the exposure of Farm Credit banks to loss.

The FCA responds that no financial institution can effectively reduce its loss exposure without relying on both portfolio diversification and stringent credit quality standards. From a safety and soundness perspective, high credit ratings, short maturities, and geographic or institutional diversification cannot sufficiently alleviate the risks inherent in an investment portfolio that is heavily concentrated in a single industry.

Final § 615.5140(a)(6) authorizes Farm Credit banks to hold up to 25 percent of their investments in Federal funds and Term Federal funds. The FCA has lowered the limit on Federal funds and Term Federal funds from 30 to 25 percent in order to partially offset the increase in the overall investment ceiling in § 615.5132 from 20 to 30 percent.

E. Prime Commercial Paper

The FCA defined prime commercial paper in proposed § 615.5131(n) as an unsecured promissory note of a corporation that has a fixed maturity of no more than 270 days, and is rated A–1 or P–1 by a nationally recognized credit rating service. Proposed § 615.5140(a)(7) would authorize Farm Credit banks to hold prime commercial paper in an amount that does not exceed 30 percent of their investment portfolios, while proposed § 615.5140(b) would restrict the amount that any System bank could invest in commercial paper issued by a single issuer. In situations where the commercial paper is issued by a foreign corporation, or the overseas subsidiary of a United States corporation, the country where the issuer is incorporated would be required by proposed § 615.5140(a)(7) to receive the highest possible rating (AAA) for political and economic stability from a nationally recognized credit rating service.

The FCA received comments about proposed §§ 615.5131(n) and 615.5140(a)(7) from the FCC. As recommended by the commenter, the FCA revises the definition of prime commercial paper in redesignated § 615.5131(o) to include both secured and unsecured promissory notes of corporation. The exclusion of secured promissory notes from the proposed regulation was an inadvertent error.

The FCA rejects the FCC's advice to downgrade the credit rating for political and economic stability of foreign host countries from an AAA to an AA. The commenter's assertion that an AAA rating is "unduly restrictive" appears to be unfounded. The FCA notes that Canada, Japan, Austria, Germany, France, Luxembourg, Netherlands, Switzerland, and the United Kingdom currently qualify for an AAA rating.

F. Corporate Debt Obligations

The FCA proposed § 615.5140(a)(8), which would authorize Farm Credit banks to hold corporate debt obligations that: (1) Mature within 3 years or less; (2) are rated in the two highest investment grades (AA or AAA) by a nationally recognized credit rating service; and (3) are not convertible into equity securities. Additionally, the proposed regulation would limit corporate debt obligations to 15 percent of the bank's total investment portfolio.

The FCA proposed this new authority in order to encourage Farm Credit banks to diversify their investment portfolios. From a regulatory perspective, a short-term maturity deadline and a superior credit rating ensures that Farm Credit banks only purchase highly liquid corporate debt obligations with limited IRR. The proposed regulation would also prohibit Farm Credit banks from holding corporate debt obligations that are convertible into equity securities, because FCA believes that it is inappropriate for the banks to maintain

an ownership interest in commercial enterprises.

The FCC, one FCB, and the investment banking firm commented about proposed § 615.5140(a)(8). The FCC recommended that the FCA increase the maturity for corporate bonds from 3 to 5 years. According to this commenter, the proposed regulation would actually inhibit System banks from exercising this new investment power because corporate obligations with a 3-year maturity are rarely available in the market. This commenter also opined that a maximum maturity of 5 years is a reasonable limitation that still affords adequate safety of principal risk. The FCA is persuaded by these arguments, and therefore, it amends § 615.5140(a)(8) so that corporate obligations that mature within 5 years or less are eligible investments under the final regulation. For the reasons explained in the preambles to §§ 615.5140(a)(5) and 615.5140(a)(7), the FCA, rejects the FCC's request to downgrade the credit rating for political and economic stability of host foreign countries from AAA to AA.

In response to another FCC comment, the FCA clarifies that corporate debt obligations under § 615.5140(a)(8) include bonds, debentures, medium-term notes, and similar forms of indebtedness.

The FCB requested that the FCA modify § 615.5140(a)(8)(iv), which prohibits FCBs, BCs, and ACBs from holding corporate obligations that are convertible into equity securities. While the commenter conceded that it is inappropriate for Farm Credit banks to acquire an ownership interest in commercial enterprises, it argued that the FCA's approach was too rigid. Accordingly, the FCB suggested that the final regulation accord convertible corporate debt the status of eligible investments, but prohibit System banks from exercising the conversion option. The commenter claimed that the convertible feature on corporate debt actually adds value to the investment in certain situations.

The FCA denies the commenter's request. From the FCA's perspective, convertible corporate debt investments are not effective for IRR management because the price performance of these obligations fluctuates with the price of the underlying common stock. Additionally, investors in convertible bonds traditionally are influenced by the equity factor, and as indicated by the commenter, equity holdings are inappropriate investments for Farm Credit banks.

The FCC and the investment banking firm petitioned the FCA to expand the list of eligible investments to include asset-backed securities (ABSs). The FCC specifically recommended that the FCA classify ABSs as corporate obligations and include them within the ambit of § 615.5140(a)(8), while the investment banking firm noted the similarity between ABSs and corporate debt securities. Both commenters suggested that the regulation impose a credit rating of AAA or its equivalent on ABSs, and the FCC proposed that eligible ABSs have an absolute final maturity of 5 years. These commenters emphasized that: (1) A broad secondary market for these securities has developed in recent years; and (2) ABSs possess the characteristics that make them effective instruments for safely and soundly managing liquidity and interest rate risks. The FCC pointed out that the cashflow structures of most ABSs are simpler and more dependable than MBSs.

The FCA accedes to the commenters' request, subject to certain modifications. ABSs are similar to MBSs, except that they are backed by collateral other than real estate mortgages. A diverse array of ABSs is available in the marketplace. According to the FCA's research, investors can purchase ABSs that are collateralized by credit card receivables, accounts receivables, automobile loans, home equity loans, boat loans, recreational vehicle loans, manufactured home loans, equipment leases, delinquent loans, and junk bonds.[13]

As noted earlier, the FCA's investment policy is based on the premise that only those investments that can be promptly converted into cash on an established secondary market are suitable for liquidity, IRR management, and the investment of surplus short-term funds. In order to qualify as an eligible investment under § 615.5140(a), an asset must: (1) Have a short maturity or a repricing mechanism; (2) maintain a high investment credit rating; (3) trade on an active and universally recognized secondary market; and (4) be valuable as collateral.

After careful analysis, the FCA concludes that only public issues of ABSs that are collateralized by either credit card receivables (CARDs) or automobile loans (CARs) meet these criteria. CARDs and CARs represent approximately 80 percent of the ABS market.[14] ABSs that are collateralized by other types of assets do not qualify as eligible investments under this regulation because the FCA's research reveals that: (1) Supply is limited; (2) their market is fragmented; (3) they are not liquid; and (4) it is difficult to appraise their market value.

Accordingly, final § 615.5140(a)(8)(ii) authorizes all FCBs, BCs, and ACBs to invest in ABSs, as defined by new § 615.5131(c) that: (1) Are collateralized by CARDs and CARs; (2) mature within 5 years or less; and (3) maintain a credit rating of AAA or its equivalent by a nationally recognized credit service. Upon the FCC's recommendation, final § 615.5140(a)(8) will combine ABSs and corporate bonds into a single investment category. As a result, investments under § 615.5140(a)(8) cannot exceed 15 percent of the total investments of any Farm Credit bank.

G. Repurchase Agreements

As adopted today by the FCA, final § 615.5140(a)(9) enables FCBs, BCs, and ACBs to invest in repurchase agreements, as defined by final § 615.5131(q), that are collateralized by eligible investments authorized by § 615.5140, and mature within 100 days (generally known in the industry as "reverse repurchase agreements").

The FCA originally proposed that repurchase agreements mature within 1 business day, or are by a continuing contract. The FCA expanded the term "to maturity of 100 days or less" in response to a comment from the FCC. The commenter advised the agency that System banks usually engage in repurchase transactions near the end of a quarter, when short-term investment assets may not be readily obtainable. The FCC also noted that a shorter term to maturity would severely restrict the ability of Farm Credit banks to effectively use repurchase agreements for hedging. The FCA adopts the amendment proposed by the FCC so System banks have greater flexibility to use repurchase agreements to meet their investment objectives.

H. Other Investments

The FCA recognized in the preamble to the proposed regulation that new financial instruments are constantly being developed in financial markets, and many of these new instruments may be suitable for managing liquidity, managing interest rate risk, and investing surplus short-term funds. See 56 FR 65691, 65698 (December 18, 1991). Accordingly, the FCA proposed § 615.5140(a)(11) which would authorize Farm Credit banks to purchase, subject to FCA approval, other financial instruments that: (1) Have short maturities; (2) are marketable investments pursuant to proposed § 615.5131(j); and (3) maintain a high

[13] Lehman Brothers, Mortgage Strategies Group, (January 1993), p. 70.

[14] *Id.*

rating from a nationally recognized credit rating service. The FCA received no comments about this proposal. Accordingly, the FCA has decided to adopt § 615.5140(a)(11) as a final regulation, without any amendments. Under the regulatory framework of § 615.5140(a)(11), the FCA shall determine on a case-by-case basis whether a new financial instrument qualifies as an eligible investment.

One FCB, however, submitted a long list of instruments that it wanted the FCA to classify as eligible investments under final § 615.5140. This commenter urged the FCA to approve these investments at this time, because any postponement in resolving this issue would inevitably create confusion among System banks. Although this recommendation was not specifically made in reference to § 615.5140(a)(11), the FCA will address this comment in the context of this provision.

While the FCA wishes to accommodate the FCB's request, it is unable to do so. Unfortunately, the commenter failed to describe these instruments with enough specificity so that the FCA could properly evaluate these investments under the criteria of § 615.5140(a)(11). The commenter used generic terms that encompass several differing subcategories of investments. Sometimes the commenter referred to accounting or financing techniques rather than actual investment instruments.

The FCA is prepared to issue interpretive bookletters that respond to inquiries concerning whether particular securities qualify as eligible investment under § 615.5140(a)(11). However, petitioners should, at a minimum, submit information pertaining to: (1) The cashflow structures of such securities; (2) terms to maturity; (3) credit ratings; (4) the scope of the secondary markets where these instruments are traded; and (5) the value of such instruments as collateral. Furthermore, a party that submits an inquiry should evaluate whether the proposed investment will enable System banks to achieve their objectives of maintaining an adequate liquidity reserve, managing IRR, and prudently investing short-term funds. Without such information, the FCA will probably be unable to determine whether the proposed investment complies with the criteria of § 615.5140(a)(11).

VIII. Risk Management and Diversification

In order to compel System banks to diversify the risks in their investment portfolios for safety and soundness purposes, the FCA proposed percentage limits on the amount of capital that each bank could invest with a single obligor, issuer or financial institution. As originally proposed by the FCA, § 615.5140(b) would limit investments with individual domestic issuers, obligors or financial institutions to 20 percent of the bank's total capital, while investments with each foreign issuer, obligor or financial institution could not exceed 10 percent of a bank's total capital. The FCA justified the more stringent limit on overseas investments in the preamble to the proposed regulation by noting the political and/or economic risks in many foreign countries. See 56 FR 65691, 65698 (December 18, 1991).

The FCC objected to the disparate treatment of domestic and foreign investments. This commenter asserted that the obligor's creditworthiness, not its nationality, is the relevant issue from a safety and soundness perspective. In this context, the FCC pointed out that foreign obligors, (particularly in the commercial banking sector) are often more creditworthy than their American competitors. Accordingly, the FCC recommended that final § 615.5140(b) limit investments with individual issuers, obligors or financial institutions, whether domestic or foreign, to 20 percent of the total capital of each Farm Credit bank.

The FCA is persuaded by the FCC's arguments, and therefore, it amends § 615.5140(b) so that investments with each institution, issuer, or obligor, whether domestic or foreign, does not exceed 20 percent of the total capital of any System bank.

IX. Divestment of Impermissible Investments

The FCA realizes that some Farm Credit banks may currently hold investments that will no longer be permissible after final § 615.5140 becomes effective. Certain investments will become ineligible because they do not comply with the investment criteria (such as credit ratings or maturity deadlines) of § 615.5140(a). Conversely, other investments qualify as eligible investments under final § 615.5140, but the bank currently exceeds the percentage limitations that the regulation imposes on a certain category of investments. While the FCA intends that all Farm Credit banks dispose of ineligible investments as quickly as possible, the agency seeks to avoid situations where the banks are exposed to heavy losses.

The FCA anticipated this problem, and it originally proposed § 615.5142, which would require System banks either to dispose of all prohibited investments within 6 calendar months from the effective date of the final regulation, or in the alternative, to obtain approval from the Director of the Office of Examination for a comprehensive plan to bring the bank's portfolio into compliance with § 615.5140 over a longer period of time. Under the FCA's proposal, all applications, and all subsequent approvals or denials would be in writing. The proposed regulation would require the Director of the Office of Examination to consider all relevant factors, such as earnings and capital, when deciding whether to approve a compliance plan. Under the regulatory framework of proposed § 615.5142, an acceptable compliance program would enable a bank to divest of impermissible investments as soon as possible, without substantial loss.

The FCC endorsed the FCA's position about the divestiture of investments that will become ineligible once final § 615.5140 takes effect. Furthermore, this commenter advised the FCA that the final regulation should also apply to situations where an investment complied with final § 615.5140(a) at the time of purchase, but subsequently became ineligible. Thus, the FCC's proposal would similarly require a System bank to complete divestiture within 6 months after the investment became ineligible, unless the Director of the Office of Examination approved a comprehensive written compliance plan that authorized divestiture over a longer period of time. As recommended by the commenter, the regulation would also require the portfolio managers to report, on a quarterly basis, to the board of directors about: (1) The conditions that rendered the investment ineligible; (2) the status of the investment; and (3) the divestiture plan.

The FCA appreciates the FCC's support concerning divestiture of ineligible investments. The FCA agrees with the commenter that § 615.5142 should also apply to those assets that qualified as eligible investments under final § 615.5140(a) at the time of purchase, but later became ineligible. Several factors could cause an asset to lose its status as an eligible investment. Most investments listed in § 615.5140(a) could become ineligible after purchase if a nationally recognized credit rating service downgrades their credit rating. Mortgage-related securities would be rendered ineligible under final § 615.5140(a)(2) if, in a quarter subsequent to purchase, an immediate and sustained parallel shift in the yield curve of plus or minus 300 basis points either: (1) Extends the WAL for more than 2 years; (2) shortens the WAL for

more than 3 years; or (3) changes the price of the instrument by more than 10 percent. The FCA adopts the FCC's proposal with minor modifications and stylistic edits that enhance its clarity.

One FCB dissented from the FCC's position. This commenter advised the FCA to "grandfather" those securities that were eligible investments under the pre-existing regulation. The FCA rejects this suggestion because the FCA's approach affords Farm Credit banks protection against loss while they diversify and enhance the credit quality of their investment portfolios under the new regulation.

X. Impact of Statement of Financial Accounting Standard No. 115

System institutions are required to follow the Statement of Financial Accounting Standard No. 115 (SFAS No. 115), Accounting for Certain Investments in Debt and Equity Securities, for fiscal years beginning after December 15, 1993. The FCA now addresses the potential impact of SFAS No. 115 on investments at System institutions. SFAS No. 115 establishes generally accepted accounting principles (GAAP) for investments that System institutions are authorized to invest in accordance with §§ 615.5140 and 615.5174. All institutions are to follow GAAP in preparing their financial statements. In this regard, the FCA is of the opinion that SFAS No. 115 would generally consider most of investments held by System institutions authorized by §§ 615.5140 and 615.5174 to be considered "available-for-sale securities" as defined in SFAS No. 115. As a result of this classification, such securities considered would be measured at fair value in the statement of financial position. It is possible that some investments held by System institutions may be classified as "held-to-maturity securities" as defined in SFAS No. 115, and carried at amortized cost in the statement of financial position. Such a classification will require documentation that an institution has the positive interest and ability to hold such securities to maturity as further defined in SFAS No. 115. In summary, where an investment is classified as a "held-to-maturity security," § 615.5141 provides for divestiture in a manner that protects the bank from loss to capital and earnings. However, when an investment in an "available-for-sale" classification must be divested pursuant to § 615.5141, the mark-to-market requirements of SFAS No. 115 should cause the impact on capital to be insignificant because the security should have already been reflective of the market price.

XI. Investments in Farmer Mac Securities

As discussed earlier, System commenters opposed the FCA's original proposal to include guaranteed Farmer Mac MBSs within the ambit of § 615.5140(a)(2), which authorizes Farm Credit banks to invest in the mortgage-related securities of GNMA, FNMA, and FHLMC and other Federal Government agencies. Farmer Mac asserted that its mortgage-related securities merit a more liberal treatment under these regulations than comparable GNMA, FNMA, and FHLMC instruments, because Farmer Mac advances the mission of Farm Credit banks to provide credit to agricultural producers and rural homeowners. Farmer Mac argued that proposed § 615.5140(a)(2) would severely impede the ability of Farm Credit banks to participate in a secondary market that Congress established in order to minimize the risks inherent in agricultural lending. This commenter also complained that the FCA's proposal would place greater restrictions on FCS investments in Farmer Mac guaranteed securities than the other Federal bank regulatory agencies currently impose on their institutions. Accordingly, this commenter suggested that the FCA remedy this problem in the final regulations by exempting guaranteed Farmer Mac securities from restrictions that § 615.5140(a)(2) imposes on securities that are collateralized by mortgages that FCS institutions cannot originate. The FCC and individual Farm Credit banks implied that final § 615.5140(a)(2) should not cover Farmer Mac securities because their comments about this provision omitted all references to Farmer Mac, and instead, focused exclusively on mortgage-related securities that are issued by GNMA, FNMA, FHLMC, and the SBA.

In response, the FCA concurs that guaranteed Farmer Mac securities serve a different purpose for Farm Credit banks than the mortgage-related securities of GNMA, FNMA, FHLMC, and other Federal government agencies. In contrast to GNMA, FNMA, and FHLMC, Farmer Mac furthers the FCS's statutory mission of lending to agricultural producers and rural homeowners. As a secondary market for agricultural and rural housing loans, Farmer Mac enables FCS institutions and other agricultural lenders to reduce various credit risks that are inherent in their agricultural loan portfolios. As such, FCS institutions are unlikely to hold guaranteed Farmer Mac mortgage-related securities in order to achieve the objectives listed in § 615.5132.

For these reasons, the FCA will accede to the commenters' request to accord guaranteed Farmer Mac mortgage-related securities a different regulatory treatment in the final regulations than comparable mortgage-related securities of GNMA, FNMA, and FHLMC and other Federal agencies. While both the primary and secondary market sectors of the FCS rejected the FCA's approach in the proposed regulations for Farmer Mac securities, no commenter offered any affirmative advice about how Farmer Mac securities should be treated in the final regulations. As result, the FCA devised final § 615.5174 without the benefit of guidance from the FCS or other commenters.

The FCA decided to address FCS bank investment in guaranteed Farmer Mac securities in subpart F, rather than subpart E, of part 615. This approach will exempt guaranteed Farmer Mac securities from many of the requirements of regulations in subpart E of part 615, which establish the criteria by which Farm Credit banks purchase, hold, and divest of financial investments that are unrelated to their statutory mission of financing agriculture and rural housing.

Final § 615.5174, which the FCA adopts today, is not a comprehensive regulation that governs all aspects of System participation in the Farmer Mac secondary market. Although provisions in titles I, II, and VIII of the Act authorize FCBs and associations to originate, pool, and securitize agricultural and rural housing loans, final § 615.5174 does not implement these authorities. Instead, final § 615.5174 authorizes FCBs, BCs, and ACBs to purchase and hold guaranteed Farmer Mac mortgage-related securities as investments pursuant to sections 1.5(15), 3.1(13)(A) and 7.2(a) of the Act. In this context, final § 615.5174 authorizes BCs to purchase and hold mortgage-related securities that are guaranteed as to both principal and interest by Farmer Mac, even though such banks lack statutory authority to originate, pool, or securitize the types of agricultural and rural housing loans that collateralize Farmer Mac securities. Similarly, final § 615.5174 clarifies that ACBs are authorized to invest in guaranteed Farmer Mac securities under section 7.2 of the Act. Pursuant to sections 2.2(11), 2.2(18), 7.6(c) and 7.8(b) of the Act, § 615.5141 permits FCS associations to purchase and hold guaranteed Farmer Mac securities to the extent authorized under final

§ 615.5174, subject to the approval of their supervising banks.

A mortgage-related security qualifies as an eligible investment for Farm Credit banks under § 615.5174 to the extent that Farmer Mac guarantees the investor timely payment of both principal and interest in the event of default by either the borrower or the pooler. Conversely, this regulation does not apply to the subordinated participation interest in the pool of qualified mortgages that the originator or pooler retains under section 8.6(b) and 8.7(b) of the Act. Farmer Mac securities are eligible investments for Farm Credit banks under § 615.5174 only if they are collateralized by qualified loans, which are defined by section 8.0 of the Act as: (1) Agricultural real estate mortgages and rural housing loans that comply with specific requirements; and (2) loans guaranteed by the Farmers' Home Administration (FmHA) under the Consolidated Farm and Rural Development Act, 7 U.S.C. 1921 *et seq.* Furthermore, fixed-rate mortgages or ARMs, which reprice within 12 months pursuant to an index, shall collateralize MBSs, CMOs, and REMICs that are authorized by this regulation. Stripped MBSs, as defined by § 615.5131(r), and residuals, as defined by § 615.5131(s) are ineligible investments under § 615.5174(c) because they are extremely volatile to interest rate and price fluctuations.

This regulation allows each FCB, BC, and ACB to purchase and hold guaranteed Farmer Mac securities in an amount that does not exceed 20 percent of its total outstanding loans. The FCA has decided to limit the overall investment by Farm Credit banks in these securities for several reasons. First, recent studies of the secondary market for agricultural mortgages indicate that only about 20 percent of FCS loans will comply with Farmer Mac underwriting standards. Second, the FCA interprets Farmer Mac's comment letter as indicating that a 20-percent ceiling is appropriate for FCS investment in these instruments. In this context, the FCA notes that it has followed the recommendation of various System commenters to significantly increase, in the final regulation, the amount that Farm Credit banks may invest in the mortgage-related securities of GNMA, FNMA, FHLMC, and Farmer Mac. Third, this limit reinforces the cooperative principles of the FCS. Although Farmer Mac securities are agriculturally based financial assets, they no longer constitute loans to the shareholders of System institutions. An FCS institution, at its option, may retire the borrower's stock once the loan is sold into a Farmer Mac pool.

Final § 615.5174(d) requires the board of directors of each Farm Credit bank to adopt and enforce written policies and procedures that will guide portfolio managers whenever the bank invests in guaranteed Farmer Mac securities. Furthermore, the regulation mandates that the board of each FCB, BC, and ACB shall review these policies and procedures, and evaluate the performance of the Farmer Mac securities in its portfolio, on an annual basis. In this context, final § 615.5174(d) tailors the requirements of § 615.5133 to FCS investments in guaranteed Farmer Mac securities. This regulatory approach toward guaranteed Farmer Mac securities is consistent with the investment policy that the FCA has espoused throughout this rulemaking.

An acceptable board policy shall address, at a minimum, eight broad areas related to the bank's investment in guaranteed Farmer Mac securities. Section 615.5174(d)(1) requires the board's policy to identify the objectives that the bank plans to achieve by purchasing and holding guaranteed Farmer Mac securities. Credit enhancement, and geographic and product diversification of the bank's agricultural credit portfolio are examples of the purposes and objectives that should be addressed in the policy statement. Under § 615.5174(d)(2), the policy should establish parameters concerning the size, characteristics, and quality of the bank's investment in guaranteed Farmer Mac securities. More specifically, § 615.5174(d)(2) requires the board's policy, at a minimum, to establish: (1) The mix of guaranteed Farmer Mac securities collateralized by agricultural real estate mortgages, rural home loans, and FmHA loans; (2) product and geographic diversification in the loans that underlie the securities; (3) minimum pool sizes, the minimum number of loans in each pool, and the maximum allowable premium the bank shall pay for CMOs, REMICs, and ARMs; and (4) the mix of guaranteed Farmer Mac securities that are collateralized by either fixed-rate loans, or ARMs that are tied to an index and reprice within 12 months. While Farmer Mac underwriting standards establish basic benchmark characteristics for the mortgage pools that underlie these securities, final § 615.5174(c)(2) requires boards of directors to set criteria that guides portfolio managers in selecting Farmer Mac securities that best enhance the quality of the banks' assets.

Under § 615.5174(d)(3), the board's policy shall delegate authority to manage the bank's portfolio of guaranteed Farmer Mac securities to specific personnel or committees. The board is required by § 615.5174(d)(4) to select permissible brokers, dealers, and other intermediaries for conducting purchase and sale transactions involving guaranteed Farmer Mac securities. Section 615.5174(d)(5) incorporates the provision in § 615.5133(h) which requires the board of each Farm Credit bank to establish internal controls that prevent loss, fraud, embezzlement, and unauthorized investments.

Final § 615.5174(d)(6) requires the board of directors of each Farm Credit bank to adopt a policy pursuant to § 615.5174(e), for managing the IRR that is inherent in guaranteed Farmer Mac securities. In a related context, the board's policy under § 615.5174(d)(7) shall establish procedures to prevent losses to the capital and earnings of the bank resulting from transactions in Farmer Mac securities. Finally, § 615.5174(d)(8) requires the board's policy to establish procedures selling these securities prior to maturity, without causing financial loss to the bank.

Section 615.5174(e) requires each System bank to develop and implement a comprehensive policy for combatting IRR in guaranteed Farmer Mac securities that are collateralized by fixed-rate mortgages. Farmer Mac securities may contain IRR. If market interest rates increase, the market value of the mortgage-related security declines, and as a result, the investor may be forced to sell the instrument at a discount. However, a significant decline in market interest rates may not necessarily increase the market value of the security because many borrowers will probably exercise their contractual option to prepay their underlying mortgages. Prepayments deprive investors in mortgage-related securities of interest income. While Farmer Mac guarantees timely principal and interest payments to investors in the event of default by either the borrowers or the holders of the subordinated participation interests, it does not protect investors against prepayment or interest rate risks.

The FCA received no comments about how the final regulation should address IRR in Farmer Mac securities. The proposed regulation sought to contain the IRR exposure of Farm Credit banks to mortgage-backed securities by allowing them to invest only in GNMA, FNMA, FHLMC, and Farmer Mac pass-through securities that were collateralized by either: (1) ARMs that reprice within 12 months or less; or (2) fixed-rate mortgages with an absolute final maturity of 5 years. See 56 FR

65691, 65695–65697 (December 18, 1991). The FCC responded with an alternative that would authorize Farm Credit banks to purchase and hold certain GNMA, FNMA, and FHLMC mortgage-derivative securities that satisfied three requirements for limiting interest rate risk in their underlying fixed-rate mortgages. However, the FCC excluded Farmer Mac securities from its proposal. Farmer Mac was silent about how the regulation should treat IRR in these securities.

After careful consideration, the FCA determines that Farmer Mac securities merit a different regulatory treatment concerning IRR than comparable GNMA, FNMA, and FHLMC securities. Except for those rural housing loans that comply with FNMA or FHLMC underwriting standards, Farm Credit banks, as a general rule, lack statutory authority to originate, purchase, or hold the types of residential mortgages that back GNMA, FNMA or FHLMC mortgage-related securities. In contrast, Farmer Mac securities are collateralized with the types of agricultural and rural housing loans that FCBs and ACBs originate, hold, participate in, service, and sell in the normal course of business. As Farmer Mac warned in its comment letter, it would be illogical for the FCA to unduly restrict the ability of Farm Credit banks to hold these securities when they are authorized to originate and hold the underlying loans.

For this reason, the FCA now adopts a regulatory approach that prohibits Farm Credit banks from purchasing and holding Farmer Mac securities that contain greater IRR than the underlying loans. Final § 615.5174 requires the board of directors to establish the maximum level of interest rate risk exposure that the bank shall incur from Farmer Mac MBSs, CMOs and REMICs that are backed by fixed-rate mortgages. This regulation permits boards of directors to adopt conservative policies which significantly limit their banks' exposure to IRR from guaranteed Farmer Mac securities. For example, Farm Credit banks may adopt the standards that § 615.5140(a)(2)(iii) applies to GNMA, FNMA, and FHLMC mortgage-related securities.

Final § 615.5174(e)(1) requires the board of each Farm Credit bank to define the maximum acceptable level of IRR for guaranteed Farmer Mac securities by the: (1) Expected WAL of these securities; (2) maximum number of years that the expected WAL of these instruments will extend or shorten assuming an immediate and sustained parallel shift in the yield curve of plus or minus 300 basis points; and (3) maximum change in the price of these securities due to an immediate and sustained parallel shift in the yield curve of plus or minus 300 basis points.

The FCA's policy modifies the three-pronged FFIEC test for gauging IRR in mortgage derivative products that are backed by fixed-rate mortgages. Essentially, the FFIEC test determines the point where mortgage derivative products assume greater IRR than an underlying pool of 30-year fixed-rate loans by measuring each security for its: (1) WAL; (2) WAL sensitivity to a 300-basis point shift in interest rates; and (3) price sensitivity to a 300-basis point change in interest rates. See 57 FR 4028, 4038–39 (February 3, 1992).

As stated earlier, final § 615.5174 forbids Farm Credit banks from incurring greater IRR from guaranteed Farmer Mac securities than from the underlying loans. Since the IRR of stripped MBSs and residuals typically exceeds the IRR of the underlying mortgages, § 615.5174(c) prohibits Farm Credit banks from investing in these types of Farmer Mac securities under any circumstances.

For guaranteed Farmer Mac CMOs and REMICs that are exclusively collateralized by fixed-rate, rural housing loans, final § 615.5174(e)(3) states that no Farm Credit bank shall be exposed to IRR beyond the level where: (1) The expected WAL of security exceeds 10 years; (2) the expected WAL of the security extends by more than 4 years, assuming an immediate and sustained parallel shift in the yield curve of plus 300 basis points, or shortens by more than 6 years assuming an immediate and sustained parallel shift in the yield curve of plus 300 basis points; or (3) the estimated change in the price of the security is more than 17 percent due to an immediate and sustained parallel shift in the yield curve of plus or minus 300 basis points. Section 615.5174(e)(3) derives from the FFIEC standards. This FFIEC test, which is based on the historical experience of the secondary residential mortgage market, demarcates where a mortgage derivative product exhibits greater price volatility than a benchmark, fixed-rate, 30-year residential, mortgage-backed pass-through security. See 57 FR 4028, 4038 (February 3, 1992).

The FCA determines that this three-pronged FFIEC approach is also appropriate for guaranteed Farmer Mac CMOs and REMICs that are backed by fixed-rate agricultural mortgages. However, since this secondary market is not sufficiently developed at the present time, there is no publicly available benchmark data which pinpoints the WAL, WAL sensitivity, and price sensitivity thresholds for agricultural mortgage-related securities. These three criteria determine where the IRR of a CMO or REMIC surpasses the IRR of the underlying loans. As the secondary market for agricultural mortgages develops over time, market participants and the regulatory agencies will eventually assemble, process and disseminate information which profiles the sensitivity of agricultural real estate loans to interest rate fluctuations. In the interim, final § 615.5174(e)(2) requires Farm Credit banks to apply the three-pronged test in § 615.5174(e)(1), and determine, on a case-by-case basis, whether the IRR of a Farmer Mac security backed by fixed-rate agricultural mortgages exceeds the IRR of the underlying loans.

The FCA's approach toward guaranteed Farmer Mac securities is similar to the treatment that other Federal financial institution regulators accord to securities which are collateralized by residential mortgages that commercial banks, savings associations, and credit unions routinely originate in their capacity as primary lenders.

Final § 615.5174(e)(4) addresses situations where, subsequent to purchase, a guaranteed Farmer Mac security no longer complies with the board of directors' IRR policy. This provision requires portfolio managers to report to the bank's board of directors about the status of those Farmer Mac securities which contain interest rate risk exposure in excess of the board's policy under § 615.5174(e)(1). Furthermore, the portfolio managers shall recommend to the board a comprehensive strategy for preventing the security from causing loss to the bank's capital and earnings. This regulation requires the board of directors of each FCB, BC, or ACB to approve and implement a plan (including any amendments thereto) for preventing loss to the bank's capital and earnings.

The FCA emphasizes that § 615.5174(e)(4) does not compel the bank to divest of Farmer Mac securities which, subsequent to purchase, develop interest rate risk in excess of the level authorized by board policy, provided that there are other options for insulating the bank's capital and earnings from loss. The accounting treatment for guaranteed Farmer Mac securities is governed by SFAS No. 115, for fiscal years beginning after December 15, 1993. The application of SFAS No. 115 to bank investments was discussed in detail in Section X of the preamble.

As long as the guaranteed Farmer Mac security remains in the bank's portfolio, the portfolio managers shall report, at

least quarterly, to the board about changes in the status of the investment, and progress toward containing loss. All of the bank's documentation concerning its strategy to prevent such securities from causing loss to the bank's capital and earning shall be available for review by the Office of Examination at the FCA.

XI. Miscellaneous

The FCA received no comments about proposed § 615.5141, which addresses investment activities by FCS associations, and proposed § 615.5173, which would explicitly authorize Farm Credit banks and associations to purchase and hold Class B common stock of Farmer Mac pursuant to section 8.4 of the Act. The FCA now adopts § 615.5173 as a final regulation without any revision. The FCA now makes a technical correction to § 615.5141 so that the final regulation reflects the statutory authority of ACBs to supervise the investment activities of their affiliated associations. References to the ACBs were inadvertently excluded from the proposed regulation. Additionally, the FCA's proposal to rename subpart F as "Property and Other Investments" and to redesignate § 615.5150 as § 615.5170, § 615.5151 as § 615.5171, and § 615.5160 as § 615.5172 elicited no comments. Accordingly, these amendments are now incorporated into the final regulations. Subpart F shall contain final §§ 615.5170, 615.5171, 615.5172, 615.5173, and 615.5174.

The FCC sought a technical amendment to proposed § 615.5131(h), which defines the term "loans." Under the proposed regulation, Farm Credit banks would use the average daily balance of loans outstanding for the previous 90 days to calculate, every quarter, the investment-to-loan ratio under § 615.5132. The commenter asserted that this calculation should be based on the average daily balance of loans outstanding for the quarter then ended, rather than the previous 90 days, because a quarter may not necessarily correspond to a 90-day cycle. The FCA incorporates this revision into final (and redesignated § 615.5131(i)) because it enhances the clarity of the regulation.

List of Subjects in 12 CFR Part 615

Accounting, Agriculture, Banks, banking, Government securities, Investments, Rural areas.

For the reasons stated in the preamble, part 615 of chapter VI, title 12 of the Code of Federal Regulations is amended to read as follows:

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

1. The authority citation for part 615 is revised to read as follows:

Authority: Secs. 1.5, 1.7, 1.10, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26, 8.0, 8.4, 8.6, 8.7, 8.8, 8.10, 8.12 of the Farm Credit Act; 12 U.S.C. 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b–6, 2279aa, 2279aa–4, 2279aa–6, 2279aa–7, 2279aa–8, 2279aa–10, 2279aa–12; sec. 301(a) of Pub. L. 100–233, 101 Stat. 1568, 1608.

2. The heading of subpart E is revised to read as follows:

Subpart E—Investment Management

§§ 615.5141 and 615.5142 [Removed]

3. Subpart E is amended by removing §§ 615.5141 and 615.5142.

4. A new § 615.5131 is added to subpart E to read as follows:

§ 615.5131 Definitions.

(a) *Absolute final maturity* means the date on which the remaining principal amount of a mortgage-backed security or asset-backed security is due and payable (matures) to the registered owner. It shall not mean the average life, the expected average life, the duration, or the weighted average maturity.

(b) *Adjustable rate mortgage (ARM)* means a mortgage-backed security that features a predetermined adjustment of the interest rate at regular intervals tied to an index.

(c) *Asset-backed security (ABS)* means investment securities that provide for ownership of a fractional undivided interest, or collateral interests, in a specific asset of a trust that are sold and traded in the capital markets. For the purposes of this subpart, all eligible ABSs shall be collateralized with either loans for the sale of automobiles (CARs) or credit card receivables (CARDs).

(d) *Asset/liability management* means the process used to plan, acquire, and direct the flow of funds through a Farm Credit bank in order to generate adequate and stable earnings and to steadily build equity, while taking reasonable and measured business risks.

(e) *Collateralized mortgage obligation (CMO)* means a multi-class, pay-through bond representing a general obligation of the issuer backed by mortgage collateral. Each CMO consists of a set of, at least, four tranches of bonds with different maturities and cashflow patterns. An accrual bond is last tranche. *Floating Rate CMO* means a CMO or REMIC tranche that pays an adjustable rate of interest that is tied to a representative interest rate index.

(f) *Federal funds* means funds sold to or bought from a federally insured depository institution or government-sponsored enterprise for 1 business day which increases or decreases that institution's reserve account of immediately available funds with a Federal Reserve Bank. *Term Federal funds* means funds sold to or bought from a federally insured depository institution or government-sponsored enterprise under a callable contract with a term to maturity of 100 days or less.

(g) *Interest rate risk* means the risk of loss resulting from the impact of interest rate fluctuations upon the net interest income and market value of equity of a bank.

(h) *Liquid investments* are assets that can be promptly converted into cash without significant loss to the investor. In the money market, a security is liquid if the spread between bid and ask prices is narrow, and a reasonable amount can be sold at those prices.

(i) *Loans* is defined as in § 621.2(a)(13) of this chapter, and is calculated quarterly (as the last day of March, June, September, and December) by using the average daily balance of loans for the quarter then ended.

(j) *Marketable investment* is an asset that can be sold with reasonable promptness at a price that reasonably reflects its fair value in an active and universally recognized secondary market.

(k) *Market value of equity* measures the impact that interest rate changes have upon the market value of the bank's assets, liabilities and off-balance-sheet items.

(l) *Mortgage-backed securities (MBSs)* means investment securities collateralized with mortgage loans. MBSs provide for ownership of a fractional undivided interest in a specific pool of mortgages. Each MBS has a stated maturity, weighted average maturity, and coupon rate.

(m) *Negotiable certificates of deposit* means a negotiable large-denomination time deposit with a specific maturity, as evidenced by definitive or book-entry form. *Yankee certificate of deposit* means a certificate of deposit issued in the United States by the American branch of a foreign bank. *Eurodollar certificate of deposit* means a certificate of deposit denominated in United States dollars and issued by an overseas branch of a United States bank or by a foreign bank outside the United States.

(n) *Net interest income* means the difference between interest income and interest expense.

(o) *Prime commercial paper* means a secured or unsecured promissory note of a corporation with a fixed maturity of no more than 270 days that is rated A–1 or P–1 or an equivalent rating by a nationally recognized credit rating service.

(p) *Real estate mortgage investment conduit (REMIC)* means a nontaxable entity (created under the Tax Reform Act of 1986) formed for the sole purpose of holding a fixed pool of mortgages (both residential and commercial) secured by an interest in real property and issuing multiple classes of interests in the underlying mortgages.

(q) *Repurchase agreement* means a transaction where any Farm Credit Bank, bank for cooperatives, or agricultural credit bank agrees to purchase a security from a counterparty and to subsequently sell the same or identical security back to that counterparty for a specified price with a term to maturity of 100 days or less.

(r) *Stripped mortgage-backed securities* means securities created by segregating the cashflows from the underlying mortgages or mortgage securities to create two or more new securities, each with a specified percentage of the underlying security's principal payments, interest payments, or combination of the two. In their purest form, stripped mortgage-backed securities represent mortgage-backed securities that have been converted into interest-only (IO) securities, where the investor receives 100 percent of the interest flows, and principal-only (PO) securities, where the investor receives 100 percent of the principal cashflows.

(s) *Residual* means a "residual" interest tranche from a CMO or REMIC security that collects any cashflows remaining from the collateral after the obligations to the other tranches have been met.

(t) *Total capital* is defined as in Subpart H—Capital Adequacy, § 615.5201(l) of this chapter.

(u) *Weighted average maturity (WAM)* means the weighted average number of months to the final payment of each loan backing a mortgage security, weighted by the size of the principal loan balances.

(v) *Weighted average life (WAL)* means the average time to receipt of principal, weighted by the size of each principal payment. Weighted average life for CMOs and mortgage-backed securities is calculated under some specific prepayment assumptions.

5. The following sections in part 615 are redesignated as set forth in the table below:

REDESIGNATION TABLE

Existing section	New section	New subpart
615.5135(a)	615.5132	E
615.5135(b)	615.5133	E
615.5150	615.5170	F
615.5151	615.5171	F
615.5160	615.5172	F
615.5180	615.5141	E

6. Newly designated §§ 615.5132 and 615.5133 are revised to read as follows:

§ 615.5132 Investment purposes.

Farm Credit Banks, banks for cooperatives and agricultural credit banks are authorized to hold eligible investments, listed under § 615.5140, in an amount not to exceed 30 percent of the total outstanding loans of such banks, for the purposes of complying with the liquidity reserve requirement of § 615.5134, managing surplus short-term funds, and for managing interest rate risk under § 615.5135.

§ 615.5133 Investment management.

The board of directors of each Farm Credit Bank, bank for cooperatives, or agricultural credit bank shall adopt written policies regarding the management of the bank's investments that are consistent with the Farm Credit Act of 1971, Farm Credit Administration regulations, and all other applicable statutes and regulations. The board of directors shall also ensure that the bank's investments are safely and soundly managed in accordance with these written policies, and that appropriate internal controls are in place to preclude investment actions that undermine the solvency and liquidity of the bank. The board of directors shall not delegate its responsibility to oversee and review the investment practices of the bank. The board of directors of each Farm Credit Bank, bank for cooperatives, or agricultural credit bank shall, on an annual basis, review these policies, as well as the objectives and performance of the investment portfolio. At a minimum, the written policy should address:

(a) The purpose and objectives of the bank's investment portfolio;

(b) The liquidity needs of the bank pursuant to the requirements of § 615.5134;

(c) Interest rate risk management pursuant to § 615.5135;

(d) Permissible brokers, dealers, and institutions for investing bank funds and limitations consistent with § 615.5140 of this subpart, and the amount of funds that shall be invested or placed with any broker, dealer or institution;

(e) The size and quality of the investment portfolio;

(f) Risk diversification of the investment portfolio;

(g) Delegation of authority to manage bank investments to specific personnel or committees and a statement about the extent of their authority and responsibilities;

(h) Controls to monitor the performance of the bank's investments and to prevent loss, fraud, embezzlement, and unauthorized investments. Quarterly reports about the performance of all investments in the portfolio shall be made to the board of directors.

(i) Controls on investments in MBSs, CMOs, REMICs, and ABSs that are consistent with either §§ 615.5140(a)(2) or 615.5140(a)(8)(ii) of this subpart, as applicable, including parameters concerning the maximum amount of exposure to each category in the investment portfolio, minimum pool sizes, minimum number of loans in a pool, geographic diversification of loans in a pool, maximum allowable premiums (particularly as related to CMOs, REMICs, and ARMs).

7. Sections 615.5134, 615.5135 and 615.5136 are added to read as follows:

§ 615.5134 Liquidity reserve requirement.

(a) Each Farm Credit Bank, bank for cooperatives, and agricultural credit bank shall use cash and the eligible investments under § 615.5140 of this subpart to maintain liquidity sufficient to fund:

(1) Fifty (50) percent of the bank's bonds, notes, Farm Credit Investment Bonds, and interest due within the next 90 days divided by 3;

(2) Fifty (50) percent of the bank's discount notes due within the next 30 days; and

(3) Fifty (50) percent of the bank's commercial bank borrowing due within the next 30 days.

(b) Each Farm Credit Bank, bank for cooperatives, and agricultural credit bank shall separately identify all investments that are held for the purpose of meeting its liquidity reserve requirement under this section. All investments held in the liquidity reserve shall be free of lien.

(c) The liquidity reserve requirement shall be calculated as of the last day of each month utilizing month end data.

§ 615.5135 Management of interest rate risk.

The board of directors of each Farm Credit Bank, bank for cooperatives, and agricultural credit bank shall adopt an

interest rate risk management section of an asset/liability management policy which establishes interest rate risk exposure limits as well as the criteria to determine compliance with these limits. At a minimum, the interest rate risk management section shall establish policies and procedures for the bank to:

(a) Identify and analyze the causes of risks within its existing balance sheet structure;

(b) Measure the potential impact of these risks on projected earnings and market values by conducting interest rate shock tests and simulations of multiple economic scenarios at least on a quarterly basis.

(c) Explore and implement actions needed to obtain its desired risk management objectives;

(d) Document the objectives that the bank is attempting to achieve by purchasing eligible investments that are authorized by § 615.5140 of this subpart;

(e) Evaluate and document, at least quarterly, whether these investments have actually met the objectives stated under paragraph (d) of this section.

§ 615.5136 Emergencies impeding normal access of Farm Credit banks to capital markets.

An emergency shall be deemed to exist whenever a financial, economic, agricultural or national defense crisis could impede the normal access of Farm Credit banks to the capital markets. Whenever the Farm Credit Administration determines after consultations with the Federal Farm Credit Banks Funding Corporation that such an emergency exists, the Farm Credit Administration Board shall, in its sole discretion, adopt a resolution that:

(a) Increases the amount of eligible investments that Farm Credit Banks, banks for cooperatives and agricultural credit banks are authorized to hold pursuant to § 615.5132 of this subpart; and/or

(b) Modifies or waives the liquidity reserve requirement in § 615.5134 of this subpart.

8. Section 615.5140 is amended by revising the section heading and paragraph (a); redesignating paragraph (b) as paragraph (d); and adding new paragraphs (b) and (c) to read as follows:

§ 615.5140 Eligible investments and risk diversification.

(a) In order to comply with §§ 615.5132, 615.5134, and 615.5135 of this subpart, each Farm Credit Bank, bank for cooperatives, and agricultural credit bank is authorized to hold the following eligible investments, denominated in United States dollars:

(1) Obligations of the United States and obligations, other than mortgage-backed securities, issued and guaranteed as to both principal and interest by an agency or instrumentality of the United States;

(2) Mortgage-backed securities (MBSs), as defined by § 615.5131(l), Collateralized Mortgage Obligations (CMOs), as defined by § 615.5131(e), and Real Estate Mortgage Investment Conduits (REMICs), as defined by § 615.5131(p), that comply with the following requirements:

(i) The MBS, CMO, or REMIC shall either be:

(A) Issued by the Government National Mortgage Association or be backed solely by mortgages that are guaranteed as to both principal and interest by the full faith and credit of the United States; or

(B) Issued by and guaranteed as to both principal and interest by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation and be rated not lower than AAA (or equivalent) by a nationally recognized credit rating service;

(ii) Securities that are backed by adjustable rate mortgages, as defined by § 615.5131(b), shall have a repricing mechanism of 12 months or less tied to an index.

(iii) CMOs, REMICs, and fixed-rate MBSs shall satisfy the following three tests at the time of purchase and each quarter thereafter:

(A) The expected weighted average life (WAL) of the instrument does not exceed 5 years;

(B) The expected WAL does not extend for more than 2 years assuming an immediate and sustained parallel shift in the yield curve of plus 300 basis points, nor shorten for more than 3 years assuming an immediate and sustained parallel shift in the yield curve of minus 300 basis points; and

(C) The estimated change in price is not more than 10 percent due to an immediate and sustained parallel shift in the yield curve of plus or minus 300 basis points.

In applying the tests of paragraphs (a)(2)(iii) (A), (B), and (C) of this section, each Farm Credit Bank, bank for cooperatives, or agricultural credit bank shall rely on verifiable information to support all of its assumptions (including prepayment assumptions) concerning the collateral mortgages that back the security. All assumptions that form the basis of the bank's analysis of the security and its underlying collateral shall be available for review by the Office of Examination of the Farm Credit Administration. Subsequent changes in the bank's assumptions about the MBS, CMO, or REMIC, shall be documented in writing. The analysis of each security shall be performed prior to purchase, and each quarter subsequent to purchase. If at any time after purchase, a MBS, CMO, or REMIC, no longer complies with any requirement in paragraphs (a)(2)(iii) (A), (B), or (C) of this section, the bank shall divest the security in accordance with § 615.5142 of this part.

(iv) A floating-rate CMO debt class shall not be subject to paragraphs (a)(2)(iii) (A) and (B) of this section if at the time of purchase, or each subsequent quarter, it bears a rate of interest that is below the contractual cap on the instrument.

(v) The following instruments do not qualify as eligible investments for the purpose of this section:

(A) Stripped mortgage-backed securities, as defined in § 615.5131(r), including Interest Only (IO) and Principal Only (PO) classes;

(B) Inverse floating rate debt classes investments.

(vi) MBSs, CMOs, and REMICs that are issued by the Government National Mortgage Association, or are backed solely by mortgages that are guaranteed as to both principal and interest by the full faith and credit of the United States shall not be subject to restrictions on the amount that a bank may hold in its investment portfolio;

(vii) MBSs, CMOs, and REMICs that are issued or guaranteed as to principal and interest by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation shall not exceed 50 percent of the bank's total investment portfolio.

(3) Obligations of the International Bank for Reconstruction and Development (The World Bank);

(4) Bankers acceptances, not to exceed 30 percent of the bank's total investment portfolio;

(5) Negotiable certificates of deposit, as defined in § 615.5131(m), that mature within 1 year or less, in an amount not to exceed 25 percent of the total investment portfolio of any Farm Credit Bank, bank for cooperatives, or agricultural credit bank. Any portion of a domestic or Yankee certificate of deposit that is not insured by either the Federal Deposit Insurance Corporation or the National Credit Union Administration, shall be held in a depository institution that maintains at least a rating of B/C, or its equivalent by a nationally recognized credit rating service. Eurodollar certificates of deposit that are not insured by the Federal or national government of the host country shall be held at banks maintaining a rating of B/C or better, and the country where the account is

located shall receive an AAA rating (or equivalent) for political and economic stability from a nationally recognized credit rating service;

(6) Federal funds and Term Federal funds, as defined in § 615.5131(f) of this subpart, that are held either in federally insured depository institutions that maintain a rating of B/C or better, or with other government-sponsored enterprises. Federal funds and Term Federal funds shall not exceed 25 percent of the bank's total investment portfolio;

(7) Prime commercial paper, as defined by § 615.5131(o) of this subpart, shall not exceed 30 percent of the bank's total investment portfolio. In the event that the prime commercial paper is issued by a corporation located outside the United States, the country where the corporation is incorporated shall maintain a rating for political and economic stability of AAA or its equivalent by a nationally recognized credit rating service.

(8) Corporate debt obligations and ABSs, not to exceed 15 percent of the bank's investment portfolio, pursuant to the following requirements:

(i) Corporate debt obligations shall:

(A) Maintain at least a rating of AA, or its equivalent, by a nationally recognized credit rating service, and when applicable, the foreign country where the corporate debtor is incorporated shall maintain an AAA rating or its equivalent for political and economic stability;

(B) Qualify as a marketable investment pursuant to § 615.5131(i);

(C) Mature within 5 years or less from the time of purchase;

(D) Not be convertible into equity securities.

(ii) Asset-backed securities, as defined by § 615.5131(c) shall:

(A) Mature within 5 years or less from the time of purchase;

(B) Maintain at least a rating of AAA, or its equivalent, by a nationally recognized credit rating service.

(9) Repurchase agreements, as defined in § 615.5131(q), collateralized by eligible investments authorized by this section that mature within 100 days or less.

(10) Full faith and credit obligations of any State, territory, or possession of the United States, or political subdivision thereof, including any agency, corporation, or instrumentality of any State, territory, possession, or political subdivision thereof, provided that the obligations:

(i) Maintain at least a rating of A, or the equivalent, by a nationally recognized credit rating service;

(ii) Mature within 10 years from the date of purchase; and

(iii) Qualify as marketable investments within the meaning of § 615.5131(j) of this subpart.

(11) Other investments, as authorized by the Farm Credit Administration, that manifest the following characteristics:

(i) A short maturity;

(ii) Qualify as a marketable investment pursuant to § 615.5131(i) of this subpart;

(iii) Maintain a high investment rating by a nationally recognized credit rating service.

(b) Except for eligible investments covered by paragraphs (a)(1) and (2) of this section, each Farm Credit Bank, bank for cooperatives, or agricultural credit bank shall not invest more than twenty (20) percent of its total capital in eligible investments issued by any single institution, issuer, or obligor.

(c) Each Farm Credit Bank, bank for cooperatives, and agricultural credit bank shall perform ongoing evaluations of all eligible investments held in its portfolio. Each bank shall support its evaluation with the most recent credit rating of each investment by at least one nationally recognized credit rating service.

* * * * *

9. Newly designated § 615.5141 is revised to read as follows:

§ 615.5141 Association investment portfolios.

Each Farm Credit Bank and agricultural credit bank shall review annually as of June 30 or December 31 the investment portfolios of every Federal land bank association, production credit association, agricultural credit association, and Federal land credit association in the district. Associations are authorized to hold eligible investments pursuant to §§ 615.5140 and 615.5174 as authorized by their Farm Credit Bank or agricultural credit bank. Each Farm Credit Bank and agricultural credit bank shall assist the associations in managing their investment portfolios to reduce interest rate risk and to invest surplus short-term funds.

10. A new § 615.5142 is added to read as follows:

§ 615.5142 Disposal of ineligible investments.

(a) Any Farm Credit Bank, bank for cooperatives, or agricultural credit bank that holds investments that are not in compliance with § 615.5140 shall dispose of such investments within 6 months of the effective date of the final regulation unless the director of the Office of Examination approves in writing a comprehensive written plan to comply with § 615.5140. The Office of Examination shall consider whether the proposed plan will enable the bank to dispose of impermissible investments within a reasonable period of time, without a substantial loss to the earnings or capital of the bank.

(b) Each Farm Credit Bank, bank for cooperatives, or agricultural credit bank shall dispose of investments that complied with § 615.5140 at the time of purchase, but subsequently became ineligible, within 6 months after the date that such investments became ineligible unless the director of the Office of Examination approves in writing a comprehensive written plan to comply with § 615.5140. The Office of Examination shall consider whether the proposed plan will enable the bank to dispose of impermissible investments within a reasonable period of time, without a substantial loss to the earnings or capital of the bank. Prior to the time that the investment is actually divested, the managers of the bank's investment portfolio shall report to the board of directors, at least quarterly, the status of the investment, including the conditions causing ineligibility, and divesture plans.

11. The heading for subpart F is revised to read as follows:

Subpart F—Property and Other Investments

12. Sections 615.5173 and 615.5174 are added to read as follows:

§ 615.5173 Stock of the Federal Agricultural Mortgage Corporation.

Banks and associations of the Farm Credit System are authorized to purchase and hold Class B common stock of the Federal Agricultural Mortgage Corporation pursuant to section 8.4 of the Farm Credit Act.

§ 615.5174 Mortgage-related securities issued or guaranteed by the Federal Agricultural Mortgage Corporation.

(a) Pursuant to sections 1.5(15), 3.1(13)(A), and 7.2(a) of the Farm Credit Act, Farm Credit Banks, banks for cooperatives, and agricultural credit banks are authorized to purchase and hold mortgage-backed securities (MBSs), as defined by § 615.5131(l), collateralized mortgage obligations (CMOs), as defined by § 615.5131(e), and Real Estate Mortgage Investment Conduits (REMICs), as defined by § 615.5131(p), that are guaranteed as to both principal and interest by the Federal Agricultural Mortgage Corporation, in an amount that does not exceed 20 percent of the total outstanding loans of such banks.

(b) Eligible securities under paragraph (a) of this section shall be backed by either:

(1) Adjustable rate mortgages, as defined by § 615.5131(b), that have a repricing mechanism of 12 months or less that are tied to an index; or

(2) Fixed-rate mortgages.

(c) Stripped mortgage-backed securities, as defined in § 615.5131(r) of this part, including Interest Only (IO) and Principal Only (PO) classes, and residuals, as defined by § 615.5131(s) are not eligible investments for the purposes of this section;

(d) The board of directors of each Farm Credit Bank, bank for cooperatives, and agricultural credit bank shall adopt written policies and procedures that bank managers shall follow in purchasing, holding and managing eligible mortgage-related securities that are fully guaranteed as to both principal and interest by the Federal Agricultural Mortgage Corporation. Quarterly reports about the performance of all investments in securities that are guaranteed as to both principal and interest by the Federal Agricultural Mortgage Corporation shall be made to the board of directors. The board of directors of each Farm Credit Bank, bank for cooperatives, or agricultural credit bank shall, on an annual basis, review these policies and procedures, as well as the performance of eligible Federal Agricultural Mortgage Corporation securities that such bank holds as an investment pursuant to this section. At a minimum, the written policy should address:

(1) The purpose and objectives of the bank's investment in securities of the Federal Agricultural Mortgage Corporation;

(2) Parameters concerning the size, characteristics, and quality of guaranteed Federal Agricultural Mortgage Corporation securities that the Farm Credit bank shall purchase and hold. At a minimum, this policy should address:

(i) The mix of guaranteed Federal Agricultural Mortgage Corporation securities that are collateralized by qualified agricultural mortgages, rural housing loans, and loans guaranteed by the Farmers' Home Administration pursuant to 7 U.S.C. 1921 *et seq.*

(ii) Product and geographic diversification in the loans that underlie the securities;

(iii) Minimum pool sizes, minimum number of loans in each pool, and maximum allowable premiums for CMOs, REMICs, and ARMs; and

(iv) The mix of guaranteed Federal Agricultural Mortgage Corporation securities that are collateralized by either fixed-rate loans or adjustable rate loans that reprice at least annually, based on changes in a published index.

(3) Delegation of authority to manage bank investments in guaranteed securities of the Federal Agricultural Mortgage Corporation to specific personnel or committees and a statement about the extent of their authority and responsibility.

(4) Permissible brokers, dealers, and other intermediaries for conducting purchase and sale transactions involving securities that are guaranteed as to principal and interest by the Federal Agricultural Mortgage Corporation;

(5) Controls to monitor the performance of the bank's investments in guaranteed Federal Agricultural Mortgage Corporation securities for the purposes of preventing loss, fraud, embezzlement, and unauthorized investments;

(6) Management of interest rate risk in these securities pursuant to paragraph (e) of this section;

(7) Procedures to prevent losses to the capital and earnings of the bank;

(8) Procedures for the orderly sales of these securities prior to maturity.

(e) Each Farm Credit Bank, bank for cooperatives, and agricultural credit bank shall manage interest rate risk inherent in guaranteed mortgage-related securities of the Federal Agricultural Mortgage Corporation pursuant to the written policy that its board of directors adopts under paragraph (c)(5) of this section, subject to the following requirements:

(1) The policy of the board of directors shall establish, pursuant to the following formula, the maximum level of interest rate risk exposure that the bank shall incur from CMOs and REMICs that are backed by fixed-rate mortgages:

(i) The expected weighted average life (WAL) of the instrument;

(ii) The maximum number of years that the expected WAL of these instruments will extend assuming an immediate and sustained parallel shift in the yield curve of plus 300 basis points, or shorten assuming an immediate and sustained parallel shift in the yield curve of minus 300 basis points; and

(iii) The maximum change in the price of these securities due to an immediate and sustained parallel shift in the yield curve of plus or minus 300 basis points.

(2) For CMOs and REMICs that are guaranteed as to principal and interest by the Federal Agricultural Mortgage Corporation, and are collateralized by fixed-rate agricultural loans, the board of directors of each Farm Credit bank shall implement a policy, pursuant to the requirements of paragraph (e)(1) of this section, where at the time of purchase or any quarter thereafter, the interest rate risk of the security never exceeds the interest rate risk in the underlying mortgages.

(3) For CMOs and REMICs that are guaranteed as to principal and interest by the Federal Agricultural Mortgage Corporation, and are exclusively collateralized by fixed-rate rural housing loans, the board of directors of each Farm Credit bank shall not, under any circumstances, implement a policy pursuant to paragraph (d)(1) of this section where, at the time of purchase or each quarter thereafter:

(i) The expected WAL of security exceeds 10 years;

(ii) The expected WAL of the security extends by more than 4 years, assuming an immediate and sustained parallel shift in the yield curve of plus 300 basis points, or shortens by more than 6 years assuming an immediate and sustained parallel shift in the yield curve of plus 300 basis points; or

(iii) The estimated change in the price of the security is more than 17 percent due to an immediate and sustained parallel shift in the yield curve of plus or minus 300 basis points.

(4) If at any time subsequent to purchase, a mortgage-related security that is guaranteed as to both principal and interest by the Federal Agricultural Mortgage Corporation no longer complies with the interest rate risk policy that the bank's board of directors adopted under paragraph (d)(1) of this section:

(i) The portfolio managers shall report to the board of directors about the status of the investment, and the conditions that are causing excessive interest rate risk in the security. The portfolio managers shall also recommend to the board of directors a comprehensive plan to prevent loss to the bank's capital and earnings.

(ii) The board of directors of each Farm Credit bank shall adopt and implement a comprehensive policy to prevent the investment from causing loss to the bank's capital and earnings. Any amendment to the plan shall also be approved by the bank's board of directors;

(iii) Until the security is actually divested, the portfolio managers shall report to the board of directors, at least quarterly, about changes in the status of the investment, and the effect of the policy to prevent loss to the bank's capital and earnings.

(iv) All documentation regarding the formulation, adoption, implementation,

and revision of the plan to prevent the security from causing loss to the bank's capital and earnings shall be available for review by the Office of Examination of the Farm Credit Administration.

Dated: November 18, 1993.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 93–29138 Filed 11–29–93; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–191–AD; Amendment 39–8748; AD 93–23–12]

Airworthiness Directives; Learjet Inc. Model 60 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 Learjet Model 60 airplanes. This action requires deactivation of the auxiliary cabin and cockpit heating systems and installation of placards. This amendment is prompted by a report of a fire in the aft fuselage, resulting from miswiring that was installed in an auxiliary cabin heater during manufacture. The actions specified in this AD are intended to prevent overheating of the auxiliary cabin and cockpit heaters, which could potentially result in a fire.

DATES: Effective December 15, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 15, 1993.

Comments for inclusion in the Rules Docket must be received on or before January 31, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–191–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Learjet Inc., P.O. Box 7707, Wichita, Kansas 67277–7707. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: C. Dale Bleakney, Aerospace Engineer, Systems and Equipment Branch, ACE–130W, FAA, Small Airplane Directorate, Wichita ACO, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4135; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: The FAA has recently received a report of a fire that broke out in the aft fuselage of a Learjet Model 60 airplane during regularly scheduled ground maintenance of the airplane. A short circuit occurred in the thermal fuses, which allowed electrical current to continue to flow to the auxiliary cabin and cockpit heaters. The heaters apparently had been wired incorrectly during manufacture; therefore, when overheating occurred, the fan turned off, but the heating elements still received power. The airplane manufacturer has confirmed other cases in its fleet of miswiring of these heaters during manufacture. Normally, these heaters are wired in such a manner that they will only operate on the ground. However, in light of this incident, it is possible that a miswired heater could operate while a Model 60 airplane is in-flight. This condition, if not corrected, could result in overheating of the auxiliary cabin and cockpit heaters, which could potentially result in a fire.

The FAA has reviewed and approved Learjet Alert Service Bulletin SB A60–21–1, dated November 1, 1993, that describes procedures for deactivation of the auxiliary cabin and cockpit heating systems and installation of a placard that reads, "Cabin and Cockpit Heat Inop." The deactivation procedure entails disconnecting the electrical connectors or wiring to the auxiliary cabin and cockpit heaters. Accomplishment of this procedure will prevent overheating of the auxiliary cabin and cockpit heaters.

Since an unsafe condition has been identified that is likely to exist or develop on other Model 60 airplanes of the same type design, this AD is being issued to prevent overheating of the auxiliary cabin and cockpit heaters, which could potentially result in a fire. This AD requires deactivation of the auxiliary cabin and cockpit heating systems and installation of a placard stating, "Cabin and Cockpit Heat Inop." The actions are required to be accomplished in accordance with the service bulletin described previously.

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–191–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 that must be issued immediately to

correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. 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:

93–23–12 Learjet Inc.: Amendment 39–8748. Docket 93–NM–191–AD.

Applicability: All Model 60 airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent overheating of the auxiliary cabin and cockpit heaters, which could potentially result in a fire, accomplish the following:

(a) Within 10 flight hours after the effective date of this AD, deactivate the auxiliary cabin and cockpit heating systems; and install a placard stating, "Cabin and Cockpit Heat Inop" adjacent to the AUX HT Switch (S44) on the co-pilot's switch panel; in accordance with Learjet Alert Service Bulletin SB A60–21–1, dated November 1, 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, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

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

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

(d) The deactivation and placard installation shall be done in accordance with Learjet Alert Service Bulletin SB A60–21–1, dated November 1, 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 Learjet Inc., P.O. Box 7707, Wichita, Kansas 67277–7707. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita ACO, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on December 15, 1993.

Issued in Renton, Washington, on November 22, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–29100 Filed 11–29–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–ANE–58; Amendment 39–8745; AD 93–23–09]

Airworthiness Directives; Turbomeca Arriel 1 Series Turboshaft Engines

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 Turbomeca Arriel 1 series turboshaft engines. This action requires repetitive checks for engine rubbing noise during gas generator shutdown, and for free rotation of the gas generator by rotating the compressor manually after the last flight of the day. This amendment is prompted by a report of an engine failure due to cracking and axial movement of the 2nd stage nozzle guide vane causing a rub with the 2nd stage turbine disk. The actions specified in this AD are intended to prevent engine failure due to rubbing of the 2nd stage turbine nozzle guide vane with the 2nd stage turbine disk, which could result in complete engine failure and damage to the aircraft.

DATES: Effective December 15, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 15, 1993.

Comments for inclusion in the Rules Docket must be received on or before January 31, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–ANE–58, 12 New England Executive Park, Burlington, MA 01803–5299.

The service information referenced in this AD may be obtained from Turbomeca, 64511 Bordes Cedex, France. 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: Mark Rumizen, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7137, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: The Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the Federal Aviation Administration (FAA) that an unsafe condition may exist on certain Turbomeca Arriel 1 series turboshaft engines. The DGAC advises that they have received a report of a Turbomeca Arriel 1B engine failure, which resulted in the crash of an Aerospatiale AS350B helicopter. Turbomeca's investigation revealed that the engine failed due to thermal low cycle fatigue cracking and associated displacement of the 2nd stage turbine nozzle guide vane, which resulted in rubbing with, and failure of, the 2nd stage turbine disk. This condition, if not corrected, could result in engine failure due to rubbing of the 2nd stage turbine nozzle guide vane with the 2nd stage turbine disk, which could result in complete engine failure and damage to the aircraft.

Turbomeca has issued Service Bulletin (SB) No. 292 72 0181, dated July 23, 1993, that specifies checking for engine rubbing noise during gas generator shutdown, and for free rotation of the gas generator by rotating the compressor manually after the last flight of the day. The cracking and axial movement of the 2nd stage nozzle guide vane rubbing with the 2nd stage turbine disk can be detected in advance of failure by determining if a rubbing noise exists during engine coastdown. The

DGAC classified this service bulletin as mandatory and issued AD 93–114(B) in order to assure the airworthiness of these Turbomeca Arriel 1 series turboshaft engines in France.

This engine 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 in effect at the time of type certification. 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 Turbomeca Arriel 1 series turboshaft engines of the same type design registered in the United States, the AD would require repetitive checks for engine rubbing noise during gas generator shutdown, and for free rotation of the gas generator by rotating the compressor manually after the last flight of the day.

The checks for engine rubbing noise during gas generator shutdown must be accomplished daily for the Turbomeca Arriel turboshaft engines Models 1B that have modification TU 76 but do not have modification TU 197 or modification TU 202; and Arriel Models 1D and 1D1 that do not have modification TU 197 or modification TU 202. For Arriel Models 1A, 1A1, 1A2 that have modification TU 76 but do not have modification TU 197 or modification TU 202; and Arriel Models 1C, 1C1, and 1C2 that do not have modification TU 197 or modification TU 202; the checks for engine rubbing noise during shutdown must be accomplished at intervals not to exceed 50 hours time in service. For all affected models, however, the check for free rotation of the gas generator must be accomplished after the last flight of every day. Finally, a check for engine rubbing noise must be accomplished during each check for free rotation of the gas generator. If a rubbing noise is detected during any of the checks required by this AD, module M03 must be replaced with a serviceable part. The actions would be required to be accomplished in accordance with the service bulletin described previously.

This AD allows pilots to perform the checks for rubbing noises during gas generator shutdown. This action does not require special training beyond that already incurred by pilots of the aircraft having affected engines, or the use of tools, special measuring equipment, or reference to technical data. Accordingly, the FAA has determined that pilots may perform the checks required by paragraphs (a)(1) and (b)(1) and (2) of this AD as an exception to FAR 43.3 regarding the performance of maintenance.

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 should 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–ANE–58." 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 that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. 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:

93–23–09 Turbomeca: Amendment 39–8745. Docket 93–ANE–58.

Applicability: Turbomeca Arriel turboshaft engines Models 1B that do have modification TU 76 but do not have modification TU 197 or TU 202; Arriel Models 1D and 1D1 that do not have modification TU 197 or TU 202; Arriel Models 1A, 1A1, 1A2 that have had modification TU 76 but do not have modification TU 197 or TU 202; and Arriel Models 1C, 1C1, and 1C2 that do not have TU 197 or TU 202. These engines are installed on but not limited to Aerospatiale Models AS350B, SA365, and AS565 helicopters.

Compliance: Required as indicated, unless accomplished previously.

To prevent engine failure due to rubbing of the 2nd stage turbine nozzle guide vane with the 2nd stage turbine disk, which could result in engine failure and damage to the aircraft, accomplish the following:

(a) For Turbomeca Arriel turboshaft engines Models 1B that have modification

TU 76 but do not have modification TU 197 or TU 202; and Arriel Models 1D and 1D1 that do not have modification TU 197 or TU 202; accomplish the following:

(1) After the last flight of each day, perform a check for unusual engine rubbing noises during gas generator shutdown.

(2) After the last flight of each day check for free rotation of the gas generator by rotating the compressor manually in accordance with Section 2 of Turbomeca SB No. 292 72 0181, dated July 23, 1993.

(3) While checking for free rotation of the gas generator, perform a check for engine rubbing noise in accordance with Section 2 of Turbomeca SB No. 292 72 0181, dated July 23, 1993.

(b) For Turbomeca Arriel turboshaft engines Models 1A, 1A1, 1A2 that have modification TU 76 but do not have modification TU 197 or TU 202; and Arriel Models 1C, 1C1, and 1C2 that do not have modification TU 197 or TU 202; accomplish the following:

(1) Within 50 hours time in service (TIS) after the effective date of this AD, perform a check for unusual engine rubbing noise during gas generator shutdown.

(2) Thereafter, at intervals not to exceed 50 hours TIS since the last check, perform a check for unusual engine rubbing noise during gas generator shutdown.

(3) After the last flight of each day check for free rotation of the gas generator by rotating the compressor manually in accordance with Section 2 of Turbomeca SB No. 292 72 0181, dated July 23, 1993.

(4) While checking for free rotation of the gas generator, perform a check for engine rubbing noise in accordance with Section 2 of Turbomeca SB No. 292 72 0181, dated July 23, 1993.

(c) If any engine rubbing noise is detected during the checks required by paragraphs (a) and (b) of this AD, prior to further flight replace module M03 with a serviceable module.

(d) The checks required by paragraphs (a)(1) and (b)(1) and (2) of this AD may be performed by the pilot. The checks must be recorded in accordance with FAR § 43.9 and FAR § 91.417(a)(2)(v), and the records must be maintained as required by the applicable FAR.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA 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.

(f) 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.

(g) The checks shall be done in accordance with the following service document:

Document No.	Pages	Revision	Date
Turbomeca SB 292 72 0181	1–3	Original	July 23, 1993 .

Total pages: 3.

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 Turbomeca, 64511 Bordes Cedex, France. 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.

(h) This amendment becomes effective on December 15, 1993. Issued in Burlington, Massachusetts, on November 19, 1993.

Mark C. Fulmer,

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

[FR Doc. 93–29239 Filed 11–29–93; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 71

[Airspace Docket No. 93–AGL–7]

Amended Class E2 Airspace Area; Dickinson, ND; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the airspace designation of the Dickinson, North Dakota, Class E2 airspace area published in a final rule on October 19, 1993, Airspace Docket Number 93–AGL–7.

EFFECTIVE DATE: 0901, UTC, March 3, 1994.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 93–25634, Airspace Docket 93–AGL–7, published on October 19, 1993, (58 FR 53859), modified the description of the Dickinson, North Dakota Class E2 airspace area. An error was discovered in the grammar used for the effective dates and times of the airspace. This action corrects that error by correcting the grammar in the effective dates and times of the airspace. This change does not affect the description of the Class E2 airspace area.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the airspace designation for the Dickinson, North Dakota, Class E2 airspace, as published in the **Federal Register** on October 19, 1993 (58 FR 53859), (**Federal Register** Document 93–25634; page 53859, column 3), is corrected in the amendment to the incorporation by reference 14 CFR 71.1 as follows:

PART 71.1—[CORRECTED]

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

AGL ND E2 Dickinson, ND [Corrected]

By replacing the word "terms" in the last sentence with the word "times".

* * * * *

Issued in Des Plaines, Illinois on November 16, 1993.

John P. Cuprisin,

Manager, Air Traffic Division.

[FR Doc. 93–29290 Filed 11–29–93; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 27530; Amdt. No. 1573]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

For Examination—

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

For Purchase—

Individual SIAP copies may be obtained from:

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

By Subscription—

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

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

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

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

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

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

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

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

Issued in Washington, DC on November 19, 1993.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

2. Part 97 is amended to read as follows:

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

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

** * * Effective February 3, 1994*

Monroeville, AL, Monroe County, VOR RWY 3, Amdt. 8
Monroeville, AL, Monroe County, VOR RWY 21, Amdt. 8
Charlotte, NC, Charlotte/Douglas Intl, VOR/DME RWY 18R, Amdt. 6
Charlotte, NC, Charlotte/Douglas Intl, LOC BC RWY 23, Amdt. 9
Dayton, TN, Mark Anton, VOR/DME–A, Amdt. 2, CANCELLED
Dayton, TN, Mark Anton, NDB RWY 3, Amdt. 1
Dayton, TN, Mark Anton, RNAV RWY 21, Amdt. 1, CANCELLED

** * * Effective January 6, 1994*

Mount Sterling, IL, Mount Sterling Muni, VOR/DME–A, Orig.
Indianapolis, IN, Indianapolis Terry, VOR RWY 36, Amdt. 8
Indianapolis, IN, Indianapolis Terry, NDB RWY 36, Amdt. 4
Indianapolis, IN, Indianapolis Terry, ILS RWY 36, Amdt. 4
Indianapolis, IN, Indianapolis Terry, VOR/DME RNAV RWY 18, Amdt. 6

Great Bend, KS, Great Bend Muni, NDB–A, Amdt. 5
Great Bend, KS, Great Bend Muni, NDB RWY 35, Amdt. 2
Iola, KS, Allen County, NDB RWY 35, Amdt. 1, CANCELLED
Louisville, KY, Bowman Field, VOR RWY 14, Amdt. 9
Louisville, KY, Bowman Field, VOR RWY 24, Amdt. 6
Louisville, KY, Bowman Field, VOR RWY 32, Amdt. 14
Louisville, KY, Bowman Field, NDB RWY 32, Amdt. 15
Frenchville, ME, Northern Aroostook Regional, NDB RWY 32, Amdt. 4
Waterville, ME, Waterville Robert Lafleur, VOR/DME RWY 5, Amdt. 7
Waterville, ME, Waterville Robert Lafleur, NDB RWY 5, Amdt. 1
Waterville, ME, Waterville Robert Lafleur, ILS RWY 5, Amdt. 2
Greenville, MI, Greenville Muni, VOR/DME A, Orig.
Moose Lake, MN, Moose Lake Carlton County, NDB RWY 4, Orig.
Kansas City, MO, Kansas City Intl, ILS RWY 19R, Amdt. 9
Claremont, NH, Claremont Muni, NDB–A, Orig.
Ithaca, NY, Tompkins County, ILS RWY 32, Amdt. 4
Tiffin, OH, Seneca County, VOR RWY 6, Amdt. 8
Tiffin, OH, Seneca County, NDB RWY 24, Amdt. 7
Goldsby, OK, David Jay Perry, VOR/DME RWY 31, Orig.
Cumberland, WI, Cumberland Muni, VOR/DME RWY 27, Amdt. 2
Cumberland, WI, Cumberland Muni, NDB RWY 9, Amdt. 1
Fort Atkinson, WI, Fort Atkinson Muni, VOR–A, Orig.
Land O'Lakes, WI, Kings Land O'Lakes, NDB RWY 14, Amdt. 8
Manitowish Waters, WI, Manitowish Waters, NDB RWY 32, Orig.

* * * *Effective December 9, 1993*

Jonesboro, AR, Jonesboro Muni, ILS RWY 23, Orig.
San Bernardino, CA, San Bernardino International, ILS RWY 6, Orig.
Chicago, IL, Chicago-O'Hare Intl, ILS RWY 32R, Amdt. 20
Indianapolis, IN, Indianapolis Intl, ILS RWY 23R, Amdt. 9
Kansas City, MO, Kansas City Int'l, ILS RWY 19L, Orig.
San Angelo, TX, Mathis Field, Radar–1, Orig.

* * * *Effective November 15, 1993*

Fredericksburg, VA, Shannon, VOR RWY 24, Amdt. 7
Fredericksburg, VA, Shannon, NDB RWY 24, Amdt. 1

* * * *Effective November 11, 1993*

Tuscaloosa, AL, Tuscaloosa Muni, ILS RWY 4, Amdt. 14

* * * *Effective November 9, 1993*

Chicago, IL, Chicago Midway, VOR/DME RNAV RWY 22L, Amdt. 3

[FR Doc. 93–29292 Filed 11–29–93; 8:45 am]
BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 27531; Amdt. No. 1574]

Standard Instrument Approach Procedures: Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

For Examination—

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

For Purchase—

Individual SIAP copies may be obtained from:

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

By Subscription—

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

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

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviations Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

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

The Rule

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

conditions existing at the affected airports.

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

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

Conclusion

The FAA has determined that this regulation only involves and established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Standard Instruction Approaches, Incorporation by reference, Navigation (Air), Weather.

Issued in Washington, DC on November 19, 1993.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

2. Part 97 is amended to read as follows:

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

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

Effective	State	City	Airport	FDC No.	SIAP
11/03/93 ...	AL	Selma	Craig Field	FDC 3/6018	ILS Rwy 32 Orig–A...
11/08/93 ...	CA	Ontario	Ontario Intl	FDC 3/6089	ILS Rwy 26L Amdt 6...
11/08/93 ...	CA	Redding	Redding Muni	FDC 3/6088	LOC/DME BC Rwy 16 Amdt 6...
11/08/93 ...	CA	Sacramento	Sacramento Metropolitan	FDC 3/6090	ILS Rwy 16R Amdt 12...
11/09/93 ...	IL	Chicago	Chicago Midway	FDC 3/6106	ILS Rwy 31C, Amdt 5...
11/09/93 ...	IL	Chicago	Chicago Midway	FDC 3/6114	VOR/DME RNAV Rwy 22L Amdt 2...
11/09/93 ...	LA	Alexandria	Alexandria Esler Regional	FDC 3/6101	NDB Rwy 26 Amdt 7B...
11/09/93 ...	LA	Opelousas	St. Landry Parish-Ahart Field	FDC 3/6102	NDB Rwy 17 Amdt 1...
11/09/93 ...	LA	Winnfield	David G. Joyce	FDC 3/6100	NDB Rwy 8 Amdt 2A...
11/09/93 ...	MO	Kansas City	Kansas City Downtown	FDC 3/6108	ILS Rwy 3, Amdt 1B...
11/09/93 ...	OK	Tulsa	Tulsa Intl	FDC 3/6111	VOR/DME or TACAN Rwy 8 Amdt 3...
11/09/93 ...	OK	Tulsa	Tulsa Intl	FDC 3/6112	RADAR–1 Amdt 16...
11/10/93 ...	NC	Raleigh-Durham	Raleigh-Durham Intl	FDC 3/6126	ILS Rwy 5L Amdt 3...
11/10/93 ...	NC	Raleigh-Durham	Raleigh-Durham Intl	FDC 3/6127	ILS Rwy 5R Amdt 25...
11/10/93 ...	NC	Raleigh-Durham	Raleigh-Durham Intl	FDC 3/6128	ILS Rwy 23L Amdt 5...
11/10/93 ...	NC	Raleigh-Durham	Raleigh-Durham Intl	FDC 3/6129	ILS Rwy 23R Amdt 8...
11/10/93 ...	NE	Omaha	Eppley Airfield	FDC 3/6134	ILS Rwy 14R Amdt 3...
11/12/93 ...	CO	Montrose	Montrose Regional	FDC 3/6175	ILS/DME Rwy 17, Orig...
11/15/93 ...	VA	Fredericksburg	Shannon	FDC 3/6206	VOR Rwy 23, Amdt 6...

[FR Doc. 93–29293 Filed 11–29–93; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing Federal Housing Commissioner

24 CFR Part 207

[Docket No. R–93–1635; FR–3393–F–02]

RIN 2502–AF95

Expedited Procedures for RTC Multifamily Properties

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: The Department adopts as a final rule the interim rule which implements section 512 of the Housing and Community Development Act of 1992. Section 512 requires that the Secretary promulgate regulations to expedite the procedure for processing applications for FHA insurance for multifamily residential properties purchased from and owned by the Resolution Trust Corporation (RTC).

EFFECTIVE DATE: December 30, 1993.

FOR FURTHER INFORMATION CONTACT: Jessica Franklin, Director, Policies and Procedures Division, Office of Insured Multifamily Housing Development, 451 Seventh Street, SW., Washington, DC 20410–0500, telephone: voice (202) 708–2556; the telecommunications device for the deaf (TDD) telephone number is (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), the information collection requirements have been assigned OMB Control Number 2502–0490.

II. Background

Section 512 of the Housing and Community Development Act of 1992, Pub. L. 102–550, approved October 28, 1992 (HCD Act of 1992), requires that HUD establish an expedited procedure to assist the RTC in disposing of property in which the RTC acquires title and to ensure the timely processing of applications for loans and mortgages that will be used to purchase multifamily residential property from the RTC.

In compliance with section 512 of the HCD Act of 1992, the Department published an interim rule on February 22, 1993 (58 FR 9541) which authorized the FHA Commissioner to accept an RTC-prepared report of required repairs, additional improvements proposed by the sponsor, cost estimate of the work, and real estate appraisal—if the RTC-prepared report is completed in accordance with HUD program requirements.

In the interim rule, we explained that upon receiving an application for mortgage insurance under section 207 pursuant to section 223(f), HUD usually performs an architectural inspection of the property. During this inspection, HUD determines the required repairs and replacements necessary to place the property in an acceptable condition; assesses additional sponsor proposed improvements; determines the cost of such work; performs an environmental assessment of the site and neighborhood; and performs a real estate appraisal of the property to establish the maximum mortgage amount.

The Department either performs these tasks with its own staff, or contracts, on a project basis, with a technical discipline contractor or a delegated processor to perform some or all of these tasks, except for the environmental assessment. HUD does not use contract services for the environmental assessment.

In addition to preparing the environmental assessment when the Department uses contract services, the Department also reviews the work of the contract technical discipline or delegated processor; makes any necessary corrections to the work; makes the final underwriting decision; and determines whether to issue a conditional or firm commitment, as applicable.

The RTC also performs an architectural inspection of the property to establish required repairs and repair costs, a phase 1 environmental site assessment, and a real estate appraisal of the property.

To eliminate this duplication of work, the Department implemented the interim rule which, with some restrictions, authorizes the FHA Commissioner to accept the RTC-prepared reports. Under the interim rule, the FHA Commissioner is authorized to accept an RTC-prepared report of required repairs, additional improvements proposed by the sponsor, cost estimate of the work, and real estate appraisal—if the RTC-prepared report is completed in accordance with HUD program requirements. In the interim rule, and this final rule, HUD retains the absolute right to review the RTC-prepared report in the same manner as a report prepared under HUD contract with a technical discipline contractor or a delegated processor. If HUD determines that any RTC-prepared report is unacceptable, HUD will prepare a new report.

Although this rule allows the Department to use the RTC environmental assessment report, the Department will continue to perform its own environmental assessment. HUD is merely using the RTC-prepared report to assist the HUD appraiser in completing the HUD environmental assessment. The Department will also continue to make the final underwriting determination, as currently is done when the Department uses contract services.

Finally, this expedited procedure only applies to projects covered by section 512 of the HCD Act of 1992, i.e. multifamily residential properties purchased from the RTC. This rule does not make the RTC a delegated processor for projects that are not within the scope of section 512. However, this expedited procedure may apply to the refinancing of an RTC project to retire an RTC bridge loan on the initial purchase transaction.

III. Discussion of Public Comments from Proposed Rule

The Department received one public comment from a nonprofit developer. The following discussion summarizes that comment and provides HUD response. The commenter believed that the interim rule will assist an applicant in getting the application for FHA insurance to HUD. However, the commenter felt that the interim rule will do little to actually expedite HUD's review of the mortgage insurance application, and that HUD had not fully utilized the broad discretion granted the Department by the statute.

The Department does not agree. The interim rule provides the means for reducing the period required by HUD to review section 223(f) applications for mortgage insurance for RTC held/sold multifamily properties. This is done by allowing the RTC to complete reports consistent with HUD program and underwriting standards, thereby eliminating the need for HUD to perform duplicate field work and report preparation. Moreover, under existing procedures, the RTC may apply for a conditional commitment on properties for which it expects section 223(f) mortgage insurance to be utilized. This existing procedure permits HUD to complete all property reviews before the

RTC secures a project buyer, leaving only buyer qualification and the closing documents for review after the RTC secures a project buyer.

The commenter also proposed that the Department accelerate the application review process by treating an FHA insurance application for a property held by the RTC with the same priority given to section 202 applications in the past. The commenter believes that giving priority to RTC held properties will allow the RTC to dispose of its multifamily residential property significantly faster.

The Department's practice is to review applications as they are submitted. On occasion priority guidelines have been issued by a Notice to the Regional and Field Offices. These are to address short term problems, such as unusually heavy workloads, or to remedy inordinate pipeline delays in certain programs, including the section 202 loan program. Notices are short-lived with a one-year maximum effective period. As such, any priority guidelines are only in effect long enough to address an immediate problem or concern.

Establishing regulatory provisions giving application review preference for one category of section 223(f) mortgage insurance applicants over other section 223(f) mortgage insurance applicants, and over applicants under other programs does not appear to be supported by the text of section 512 of the HCD Act of 1992, nor congressional comment leading to its enactment.

The Department believes that application processing on the basis of the application submission date (first-come, first-served) is the most equitable procedure. The Department will, however, continue to issue short term priority guidelines in the future, where an emergency or other condition warrants prioritized staffing attention.

As a final comment, the commenter suggested that HUD refrain from using delegated processing for RTC project loans unless an expedited process is developed. The commenter stated that in its experience delegated processing actually slows down the procedure for processing FHA insured mortgages.

Delegated processing was authorized by section 328 of the Cranston-Gonzalez Affordable Housing Act of 1990, and was implemented in April 1991. It provides a system of mortgage insurance for mortgages insured under section 207, 221, 223, 232 and 241 that delegates processing functions (application review) to selected approved mortgagees. This system allows use of contract services for application review, where the workload exceeds staffing capabilities. Technical Disciplines Contracting also provides Field Offices with an additional contracting tool for bridging staffing limitations. In selecting the means for reviewing applications, Field Offices must consider overall workloads, project location in relation to the Field Office and the location of other projects in the pipeline, and the skills needed for a particular application in relation to available staff.

There is a learning period for any new program, including delegated processing. Currently, however, delegated processing is relied upon by many Field Offices for project application review. The suggested regulatory restrictions against the use of delegated processing for certain categories of section 223(f) projects appear inconsistent with section 328 of the Cranston-Gonzalez National Affordable Housing Act of 1990. It would also deny Field Offices the ability to accomplish application review responsibilities, where other means might not be readily available. The Department concludes that the Field Offices must have full use of delegated processing for the programs for which it is currently authorized in order to effectively manage the workloads of the Field Offices.

IV. Other Matters

A. Executive Order 12866

This rule was reviewed and approved without change by the Office of Management and Budget (OMB) under Executive Order 12866 on Regulatory Planning and Review, issued by the President on September 30, 1993.

B. Regulatory Flexibility Act

The Secretary in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule, and in so doing certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule only affects mortgagor entities that purchase multifamily properties from RTC. Such entities will not constitute a significant number of the mortgagors of FHA-insured mortgages.

C. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The finding is available for public inspection during regular business hours in the Office of General Counsel, the Rules Docket Clerk, room 10276, 451 Seventh Street, SW, Washington, D.C. 20410.

D. 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 will not have substantial direct effects on states or their political subdivisions, or the relationship between the Federal government and the states, or on the distribution of power and responsibilities among the various levels of government. Specifically, the rule is directed to borrowers and RTC, and will not impinge upon the relationship between the Federal Government and State and local governments. As a result, the rule is not subject to review under the order.

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 potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

F. Regulatory Agenda

This rule was listed as item no. 1534 in the Department's Semiannual Agenda of Regulations published on October 25, 1993 (58 FR 56402, 56429) in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

G. The Catalog of Federal Domestic Assistance program numbers are 14.134 and 14.555.

List of Subjects in 24 CFR Part 207

Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

Final Rule

Accordingly, the interim rule which amends title 24 of the Code of Federal Regulations to add a new paragraph (n) to § 207.32a, which was published on February 22, 1993 at 58 FR 9541, is hereby adopted as a final rule, and is amended by adding the OMB approval number to the end of the section to read as follows:

§ 207.32a [Amended]

(Approved by the Office of Management and Budget under control number 2502–0490).

Authority: 12 U.S.C. 1701z-11(e), 1713, 1715b, and 1735f-12; 42 U.S.C. 3535(d).

Dated: November 22, 1993.

Nicolas P. Retsinas,

Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 93–29227 Filed 11–29–93; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 40, 48, and 602

[T.D. 8496]

RIN 1545–AS13

Diesel Fuel Excise Tax; Registration Requirements Relating to Gasoline and Diesel Fuel Excise Tax

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the tax on diesel fuel and registration requirements for the gasoline and diesel fuel excise taxes. The temporary regulations reflect and implement certain changes made by the Omnibus Budget Reconciliation Act of 1990 (the 1990 Act) and the Omnibus Budget Reconciliation Act of 1993 (the 1993 Act). The temporary regulations affect certain blenders, enterers, refiners, terminal operators, throughputters and persons that sell, buy, or use diesel fuel for a nontaxable use. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

EFFECTIVE DATE: These regulations are effective January 1, 1994.

ADDRESSES: Send comments to: CC:DOM:CORP:T:R (PS–52–93), room 5228, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, comments may be hand delivered to: CC:DOM:CORP:T:R (PS–52–93), room 5228, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Frank Boland (202) 622–3130 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collections of information contained in these regulations have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545–1418. The estimated annual burden per respondent or recordkeeper varies from 2 hours to .1 hour, depending on individual circumstances, with an estimated average of .1 hour.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the IRS. Individual respondents or recordkeepers may require more or less time, depending on their particular circumstances.

For further information concerning this collection of information, and where to submit comments on this collection of information, the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Background

On August 26, 1993, the IRS published in the **Federal Register** (58 FR 45081) an advance notice of proposed rulemaking (ANPRM) that invited comments from the public on any issue that should be addressed in regulations relating to the 1993 Act's changes to the diesel fuel tax. The IRS received a number of comments in response to the ANPRM that were considered in drafting these temporary regulations.

This document contains temporary regulations that are effective January 1, 1994. It provides rules relating to the imposition of, and liability for, the diesel fuel tax under section 4081; the exemption for dyed diesel fuel; the back-up tax on dyed fuel used for a taxable purpose; credits and payments relating to taxed diesel fuel used for a nontaxable purpose; and registration requirements relating to both the diesel fuel and gasoline taxes. A future notice of proposed rulemaking will propose conforming amendments to the gasoline tax regulations (§§ 48.4081–1 through 48.4081–8) so that those rules will also generally apply to diesel fuel.

Fuel Distribution System and Structure of the Diesel Fuel Tax Under the Internal Revenue Code (Code)

Diesel fuel and gasoline generally are distributed from refineries and points of entry into the United States through the "bulk transfer/terminal system" to wholesale distributors and then to retailers. For a further description of this distribution system, see the preamble to the proposed gasoline regulations that were published in the **Federal Register** on August 27, 1991 (56 FR 42287).

Pre-1994. Before January 1, 1994, the federal diesel fuel tax is imposed by section 4091. Tax is imposed on the sale of diesel fuel by the producer or importer thereof. A producer is defined in section 4092 to include a registered wholesale distributor. Thus, in practice, tax is not imposed until a registered wholesale distributor sells the diesel fuel to a retailer or at the wholesaler's own retail pumps.

A producer or importer that is registered by the IRS can sell diesel fuel tax free to (1) other registered producers, (2) registered heating oil retailers for resale for use as heating oil, and (3) a buyer for any of the following uses by the buyer: (a) Use other than as a fuel in a diesel-powered highway vehicle or diesel-powered train, (b) an off-highway business use, (c) use on a farm for farming purposes, (d) the exclusive use of a State or local government, (e) export, (f) the exclusive use of a nonprofit educational organization, (g) in certain aircraft museum uses, and (h) use in certain school buses and qualified local buses. A reduced rate of tax applies to a producer's sale for use by the buyer in trains and certain intercity buses.

Congress has found that considerable evasion may be occurring under the pre-1994 taxing structure. See Shortfall in Highway Trust Fund Collections: Hearing before the Subcommittee on Investigations and Oversight of the House Committee on Public Works and Transportation, 102d Cong., 2d Sess. (1992). Congress sought to correct the weaknesses of pre-1994 law by amendments made to the Code by section 13242 of the 1993 Act.

After 1993. Effective January 1, 1994, the 1993 Act amends section 4081 to impose the diesel fuel tax in the same manner as the gasoline tax. Thus, tax will be imposed on (1) the removal of gasoline and diesel fuel (collectively *taxable fuel*) from any refinery, (2) the removal of taxable fuel from any terminal, (3) the entry of taxable fuel into the United States for consumption, use, or warehousing, and (4) the sale of taxable fuel to an unregistered person unless there was a prior taxable removal, entry, or sale of the taxable fuel. However, the tax will not apply to any entry or removal of taxable fuel transferred in bulk to a refinery or

terminal if the persons involved (including the terminal operator) are registered.

Under section 4081, there are no nonbulk removals or entries of gasoline that are exempt from tax. However, under section 4082, as amended by the 1993 Act, the tax under section 4081 does not apply to diesel fuel that (1) the IRS determines is destined for a nontaxable use (such as use on a farm for farming purposes), (2) is indelibly dyed in accordance with IRS regulations, and (3) meets any marking requirements that may be prescribed in regulations. For this purpose, nontaxable use generally includes the same uses that are exempt from tax under pre-1994 law, plus certain uses that are taxed at a reduced rate (use in any train and in certain buses). However, under section 6421, as amended by section 13163 of the 1993 Act, diesel fuel used in noncommercial boats is no longer exempt from tax. The pre-1994 exemption continues, however, for diesel fuel used in boats for commercial fishing, transportation of persons or property for compensation or hire, or for business use other than use predominantly for entertainment, amusement, or recreation.

If diesel fuel that was exempt from tax under section 4082 is later sold for use or used for a purpose that is not a nontaxable use (for example, use as a fuel in a registered diesel-powered highway vehicle), revised section 4041(a)(1) imposes a tax on such sale or use. A reduced rate of tax applies to diesel fuel sold for use or used as a fuel in trains and certain intercity buses.

New section 6714 imposes an assessable penalty if (1) any dyed fuel is sold or held for sale by any person for any use that such person knows or has reason to know is not a nontaxable use of such fuel, (2) any dyed fuel is held for use or used by any person for a use other than a nontaxable use and such person knew, or had reason to know, that such fuel was so dyed, or (3) any person willfully alters, or attempts to alter, the strength or composition of any dye or marker in any dyed fuel. Under this section, dyed fuel means any dyed diesel fuel, whether or not dyed pursuant to section 4082.

The amount of the penalty is $10 for every gallon of fuel involved or $1,000, whichever is greater. The penalty increases with subsequent violations by multiplying the penalty amount by the number of prior violations. Also, if the penalty is imposed on any business entity, each officer, employee, or agent of the entity who willfully participated in any act giving rise to the penalty is jointly and severally liable with the entity for the penalty.

As under pre-1994 law, a credit or payment may be allowed if diesel fuel on which tax has been imposed is used in a nontaxable use. Under pre-1994 law, only the ultimate purchaser of the fuel (that is, the person that bought the fuel for consumption or export and not for resale) is eligible to claim the credit or payment. If at least $750 is payable to a purchaser at the end of any of the first three quarters of its income tax year, the purchaser may make a quarterly claim for that payment if the claim is filed during the first quarter following the last quarter included in the claim. Any amounts not claimed for these quarters and any amounts for the fourth quarter of the claimant's income tax year generally must be claimed as a credit against the claimant's income tax.

The 1993 Act continues these rules after 1993 except for taxed fuel used on a farm for farming purposes or by a State or local government. In these two cases, revised section 6427(l) provides that only the registered ultimate vendor of diesel fuel (rather than the farmer or governmental unit) may obtain the credit or payment. The ultimate vendor may file a claim for any period for which $200 or more is payable and which is not less than one week. The claim must be filed by the end of the quarter following the earliest quarter included in the claim. If the claim is not paid within 20 days after it is filed, interest will be paid on the claim.

The 1993 Act gives the IRS additional authority to enforce the diesel fuel tax. For example, new section 4083(c) provides that the IRS has the authority to inspect terminals, dyes and dyeing equipment, and fuel storage facilities; to stop, detain and inspect vehicles; and to establish inspection sites. Also, new section 4082(c) provides that the IRS may require conspicuous labeling of retail diesel fuel pumps and other delivery facilities where dyed diesel fuel is dispensed.

Explanation of the Temporary Regulations; Diesel Fuel Tax

Definition of diesel fuel. The temporary regulations define diesel fuel as any liquid that is commonly or commercially known or sold as a fuel that is suitable for use in a diesel-powered highway vehicle, diesel-powered train, or diesel-powered boat. A liquid meets this requirement if, without further processing or blending, the liquid has practical and commercial fitness for use in the propulsion engine of the vehicle, train, or boat.

Kerosene is not treated as diesel fuel before July 1, 1994. Thus, the dyeing requirements of the temporary regulations do not apply to kerosene. However, a person that blends previously-taxed diesel fuel with kerosene outside the bulk transfer/terminal system is liable for tax on its removal or sale of the resulting blend. Only the untaxed portion of the mixture (that is, the added kerosene) is subject to tax.

Comments are requested on the treatment of kerosene after June 30, 1994.

Imposition of tax; the position holder rule. As under the gasoline tax regulations, these temporary regulations provide that tax is imposed on diesel fuel removed from the terminal at the rack. The position holder is liable for this tax and the terminal operator may be jointly and severally liable for the tax if the position holder is not registered under section 4101. Also, tax is imposed on the nonbulk removal of diesel fuel from a refinery, on the entry of diesel fuel into the United States, and on the sale or removal of blended diesel fuel by the blender thereof.

Exemption for dyed diesel fuel. Under the temporary regulations, tax is not imposed on the removal, entry, or sale of diesel fuel if (1) the person otherwise liable for tax (for example, the position holder) is a taxable fuel registrant, (2) in the case of removal from a terminal, the terminal is operated by a taxable fuel registrant, and (3) the fuel contains either a blue dye (if high sulfur fuel) or red dye (if low sulfur fuel) of a prescribed type and concentration. Other dyes may be used in low sulfur fuel but only if they are approved by the Commissioner.

The blue dye described in the temporary regulations is the same dye prescribed by the Environmental Protection Agency (EPA) as an identifier of high sulfur diesel fuel, which, under EPA rules, is not to be used in diesel motor vehicles. However, the EPA does not require the blue dye to be of a specific concentration. The temporary regulations, although requiring a specific concentration, provide a transitional rule permitting a lower concentration for stocks of fuel previously dyed for EPA purposes. Comments are requested on these standards.

The temporary regulations do not require that dyed fuel also contain a colorless marker. A colorless marker is a material that does not reveal its presence until the fuel into which it is introduced is subjected to a special test. The IRS believes, however, that the use of markers is a valuable enforcement tool and will require markers beginning July 1, 1994. Further comment is

requested on the type and concentration of marker to be required. Ideally, any required marker should be economical to use, easy to detect in diesel fuel by use of a roadside test, difficult and expensive to remove from the fuel, and capable of manufacture by different producers.

The person receiving dyed fuel at the terminal rack is not required to be registered by the IRS and is not required to give the terminal operator or position holder an exemption certificate. However, under the temporary regulations, each terminal operator must keep records sufficient to identify each person that receives dyed diesel fuel at the rack of each terminal it operates. If the terminal operator provides any person with any bill of lading, shipping paper, or similar document that indicates that diesel fuel removed at the rack is dyed when in fact it is not dyed, then the terminal operator is jointly and severally liable for tax on the removal.

Notice relating to sales and removals of dyed diesel fuel. Under section 4082, dyed diesel fuel may only be used for nontaxable purposes; tax and a penalty may be imposed on any other use. The temporary regulations provide that terminal operators and others who sell dyed fuel are responsible for informing their customers of this restriction on the use of dyed diesel fuel. Any person that fails to provide this information as required by the temporary regulations will, for purposes of the penalty imposed by section 6714, be presumed to know that the dyed diesel fuel will be used for a taxable use.

Dye injection systems. The temporary regulations do not require the use of dye injection systems or visual inspection devices. The IRS believes, however, that such systems and devices can contribute to effective tax enforcement. Thus, a future notice of proposed rulemaking will propose rules regarding these systems and devices. These rules will be proposed to be effective July 1, 1994. Until specific dye injection systems are required, any means of dyeing, including "splash" dyeing at the terminal, is acceptable.

Back-up tax. Under section 4041, a back-up tax applies to dyed diesel fuel or diesel fuel on which a credit or payment has been allowed under section 6427 if the fuel is delivered into the fuel supply tank of a diesel-powered highway vehicle, diesel-powered train, or diesel-powered boat for a taxable use. The operator of the vehicle, boat, or train is liable for the tax. In addition, the seller of the diesel fuel generally is jointly and severally liable for the tax if the seller knows or has reason to know that the fuel will be used for a taxable use. However, a seller of diesel fuel is not jointly and severally liable for tax on fuel delivered into the fuel supply tank of a bus or train.

Because the back-up tax is imposed only on the delivery of diesel fuel into the fuel supply tank of a vehicle, boat, or train, tax is not imposed on the use of diesel fuel as heating oil or in stationary engines. In addition, the tax does not apply to a delivery of diesel fuel for several enumerated uses.

Exemption for use in certain boats. Generally, the pre-1994 exemption for diesel fuel used in a boat continues for a boat employed in (1) the business of commercial fishing or transporting persons or property for compensation or hire, or (2) any other trade or business unless the boat is used in any activity of a type generally considered to constitute entertainment, amusement, or recreation. This limitation on entertainment, amusement, or recreation activities does not apply to a boat used in a trade or business of commercial fishing or transporting persons or property for compensation or hire. Thus, diesel fuel used in a boat in the conduct of a trade or business of transporting passengers for compensation or hire (such as a cruise ship, sightseeing boat, or any charter vessel that includes a captain who is responsible for operating the boat) is exempt from tax even if the passengers engage in activities that could be considered entertainment, amusement, or recreation.

Administrative authority. The temporary regulations provide rules relating to inspections of terminals, dyes and dyeing equipment, fuel storage facilities, and vehicles. Credits and payments. The temporary regulations set forth the conditions that must be met before a claim for credit or payment is allowed with respect to taxed diesel fuel that has been used for nontaxable uses. Only the ultimate purchaser may make the claim with respect to taxed fuel used in nontaxable uses other than use on a farm for farming purposes or by a State or local government.

Only a registered ultimate vendor may make the claim with respect to taxed diesel fuel sold for use on a farm for farming purposes or by a State or local government. Generally, a person becomes registered for this purpose only if it meets the tests set forth in the temporary regulations. As a transitional rule, however, a person that is registered as a diesel fuel producer on December 31, 1993, generally will be considered to be a registered ultimate vendor during 1994.

As a condition to making a claim, a registered ultimate vendor must have received a prescribed certificate from the farmer or State or local government to whom it sold the fuel. As a transitional rule, however, claims relating to sales before April 1, 1994, may be supported with certain exemption certificates used to support tax-free sales of diesel fuel under pre-1994 law.

Registration and Reporting Provisions of the Code

The Code provisions relating to registration with respect to the gasoline and diesel fuel taxes are sections 4101, 4222, 7232, and 7272.

Section 4101(a), as amended by the 1990 Act, provides that every person required by the IRS to register with respect to the tax imposed by section 4081 must register with the IRS at the time, in the form and manner, and subject to the terms and conditions, as may be prescribed by regulations.

Section 4101(b) provides that the IRS may require, as a condition of permitting any person to be registered, that the person give the IRS a bond in a sum that the IRS deems appropriate and agree to the imposition of a lien on property of such person used in the trade or business for which the registration is sought.

Section 4101(c) provides that, with regard to the denial, revocation, or suspension of registration, rules similar to the rules of section 4222(c) apply. Section 4222(c) provides that the registration of any person can be denied, revoked, or suspended if the IRS determines that (1) the person has used its registration to avoid payment of tax, or to postpone or in any manner to interfere with the collection of tax, or (2) denial, revocation, or suspension is necessary to protect the revenue.

Section 4101(d) provides that the IRS may require information reporting by persons registered under section 4101.

Section 7232 imposes a criminal penalty on any person that fails to register as required by section 4101, falsely represents itself to be registered, or willfully makes any false statement in an application for registration. Section 7272 imposes a civil penalty on any person that fails to register as required by section 4101.

Explanation of the Temporary Regulations; Registration and Reporting

Overview. The temporary regulations update and clarify the rules under section 4101 relating to registration for purposes of the taxable fuel excise tax imposed under section 4081. The temporary regulations describe persons that must be or are allowed to be registered for these purposes, the

standards for qualification to be registered, and the terms and conditions of registration. Submission of an application for registration does not make the applicant a registrant; a person becomes a registrant only if the district director approves the application and issues the person a registration letter.

Registration standards. The district director will register an applicant only if the district director determines that the applicant meets certain prescribed tests: the activity test, the acceptable risk test, and the adequate security test. However, a district director will register an applicant as an ultimate vendor of diesel fuel if the applicant meets only the activity test and the district director is satisfied with the tax history of the applicant and any person related to the applicant.

Action on the application by the district director. If the district director determines that an applicant meets all of the applicable registration tests, the district director is to register the applicant and issue the applicant a letter of registration containing the effective date of the registration. The effective date will be no earlier than the date on which the letter of registration is signed by the district director.

The letter of registration replaces the certificate of registry that is issued by the district director under present practice. Unlike present practice, the letter of registration will not be a copy of the applicant's approved application for registration.

Terms and conditions of registration. After an applicant has been registered, it must follow certain rules to retain its registration and avoid certain other adverse consequences. For example, a registrant must make deposits, file returns, and pay taxes as required, and must notify the district director that issued its letter of registration of any changes in the information it has submitted in connection with its application. In addition, a registrant may not make any false statement on, or violate the terms of, a notification certificate, or allow another person to use its registration. It is expected that the district director will regularly review each registration to ensure that each registrant has followed these rules.

Effective July 1, 1994, additional conditions apply to terminal operators, throughputters, and gasohol blenders. Under the temporary regulations, these registrants must report specified information at the time, place, and in the manner prescribed by the IRS.

The district director must revoke or suspend a registration if the district director determines that a registrant has used its registration to evade the taxable fuel tax or interfere with the collection of the tax. Revocation or suspension also is required if the district director determines that the registrant does not meet one or more of the registration tests and the deficiency has not been corrected within a reasonable period of time after notification by the district director.

If the district director determines that a registrant has failed to comply with other terms and conditions of its registration, has made a false statement in its application, or otherwise has used its registration in a manner that creates a significant threat to the revenue, the district director may revoke or suspend registration. Alternatively, the district director may require the registrant to give a bond as a condition of retaining its registration, require the registrant to file monthly or semimonthly returns, or both.

Special Analyses

It has been determined that this Treasury Decision is not a significant regulatory action as defined in Executive Order 12866. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Frank Boland, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR parts 40 and 48

Excise taxes, Reporting and recordkeeping requirements.

26 CFR part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 40, 48, and 602 are amended as follows:

PART 40—EXCISE TAX PROCEDURAL REGULATIONS

Paragraph 1. The authority citation for part 40 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 40.6011(a)–3T also issued under 26 U.S.C. 6011(a). * * *

Par. 2. Section 40.6011(a)–3T is added to read as follows:

§ 40.6011(a)–3T Monthly and semimonthly returns from certain persons liable for tax on taxable fuel (temporary).

(a) *In general.* The district director may require a person to make a return of tax for a monthly or semimonthly period in the manner prescribed in § 40.6011(a)–1(b) if the person—

(1) Is a bonded registrant (described in § 48.4101–3T(b)(2) of this chapter) at any time during the period;

(2) Has been registered under section 4101 for less than one year at the beginning of the period;

(3) Meets the acceptable risk test of § 48.4101–3T(f)(3) of this chapter by reason of § 48.4101–3T(f)(3)(i)(B) of this chapter at any time during the period;

(4) Has failed to comply with the applicable provisions of § 48.4101–3T(h) of this chapter (relating to the terms and conditions of registration); or

(5) Is liable for tax under § 48.4082–4T(a) of this chapter (relating to the back-up tax on diesel fuel) at any time during the period.

(b) *Effective date.* This section is effective January 1, 1994.

PART 48—MANUFACTURERS AND RETAILERS EXCISE TAXES

Par. 3. The authority citation for part 48 is amended by removing the entry for "Section 48.4101–2T" and adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Sections 48.4082–1T and 48.4082–2T also issued under 26 U.S.C. 4082.

Section 48.4101–3T also issued under 26 U.S.C. 4101(a) and (b).

Section 48.4101–4T also issued under 26 U.S.C. 4101(d).

Sections 48.6427–8T and 48.6427–9T also issued under 26 U.S.C. 6427(n).

Par. 4. Section 48.4041–0T is added to read as follows:

§ 48.4041–0T Applicability of regulations relating to diesel fuel after December 31, 1993 (temporary).

Sections 48.4041–1 through 48.4041–17 do not apply to sales or uses of diesel fuel after December 31, 1993. For rules relating to the diesel fuel tax imposed

by section 4041 after December 31, 1993, see § 48.4082–4T.

Par. 5. Sections 48.4081–10T through 48.4081–12T are added to read as follows:

§ 48.4081–10T Diesel fuel tax; definitions (temporary).

(a) *Definitions.*

Diesel fuel means any liquid that is commonly or commercially known or sold as a fuel that is suitable for use in a diesel-powered highway vehicle, diesel-powered train, or diesel-powered boat. A liquid meets this requirement if, without further processing or blending, the liquid has practical and commercial fitness for use in the propulsion engine of the vehicle, train, or boat. A liquid may possess this practical and commercial fitness even though the specified use is not the liquid's predominant use. However, a liquid does not possess this practical and commercial fitness solely by reason of its possible or rare use as a fuel in the propulsion engine of such a vehicle, train, or boat.

(1) *Kerosene; before July 1, 1994.* Before July 1, 1994, kerosene is not treated as diesel fuel. For rules relating to the imposition of tax on kerosene that is blended with diesel fuel, see § 48.4081–12T.

(2) *Kerosene; after June 30, 1994.* [Reserved]

Diesel-powered boat means any waterborne vessel of any size or configuration that is propelled, in whole or in part, by a diesel-powered engine.

Diesel-powered highway vehicle means a highway vehicle, as defined in § 48.4041–8(b), that is propelled by a diesel-powered engine.

Diesel-powered train means any diesel-powered equipment or machinery that rides on rails, including equipment or machinery that transports passengers, freight, or a combination of both passengers and freight, and equipment or machinery that only carries freight or passengers of the operator thereof. Thus, the term includes a locomotive, work train, switching engine, and track maintenance machine.

(b) *Effective date.* This section is effective January 1, 1994.

§ 48.4081–11T Diesel fuel tax; tax on removal at a terminal rack (temporary).

(a) *Imposition of tax.* Except as provided in § 48.4082–1T (relating to exemption for dyed diesel fuel), tax is imposed on the removal of diesel fuel from a terminal if the diesel fuel is removed at the rack.

(b) *Liability for tax*—(1) *In general.* The position holder with respect to the diesel fuel is liable for the tax imposed under paragraph (a) of this section.

(2) *Joint and several liability of terminal operator; unregistered position holder*—(i) *In general.* The terminal operator is jointly and severally liable for the tax imposed under paragraph (a) of this section if—

(A) The position holder with respect to the diesel fuel is a person other than the terminal operator and is not a taxable fuel registrant; and

(B) The terminal operator has not met the conditions of paragraph (b)(2)(ii) of this section.

(ii) *Conditions for avoidance of liability.* A terminal operator is not liable for tax under paragraph (b)(2)(i) of this section if, at the time of the removal, the terminal operator—

(A) Is a taxable fuel registrant;

(B) Has an unexpired notification certificate (described in § 48.4081–5) from the position holder; and

(C) Has no reason to believe that any information in the certificate is false.

(3) *Joint and several liability of terminal operator; incorrect information provided.* The terminal operator is jointly and severally liable for the tax imposed under paragraph (a) of this section if, in connection with the removal of diesel fuel that is not dyed and marked in accordance with § 48.4082–1T, the terminal operator provides any person with any bill of lading, shipping paper, or similar document indicating that the diesel fuel is dyed and marked in accordance with § 48.4082–1T.

(c) *Rate of tax.* For the rate of tax, see section 4081(a).

(d) *Effective date.* This section is effective January 1, 1994.

§ 48.4081–12T Diesel fuel tax; taxable events other than removal at the terminal rack (temporary).

(a) *Tax on removal from a refinery*—(1) *In general.* Except as provided in § 48.4082–1T (relating to exemption for dyed diesel fuel) and paragraph (a)(2) of this section (relating to an exemption for certain refineries), tax is imposed on the removal of diesel fuel from a refinery if—

(i) The removal is by bulk transfer and the refiner or the owner of the diesel fuel immediately before the removal is not a taxable fuel registrant; or

(ii) The removal is at the refinery rack.

(2) *Exemption for certain refineries.* The tax imposed under paragraph (a)(1)(ii) of this section does not apply to a removal of diesel fuel if—

(i) The diesel fuel is removed by rail car from an approved refinery and is received at an approved terminal;

(ii) The refinery and the terminal are operated by the same taxable fuel registrant; and

(iii) The refinery is not served by pipeline (other than a pipeline for the receipt of crude oil) or vessel.

(3) *Liability for tax.* The refiner is liable for the tax imposed under paragraph (a)(1) of this section.

(4) *Rate of tax.* For the rate of tax, see section 4081(a).

(b) *Tax on entry into the United States*—(1) *Imposition of tax.* Except as provided in § 48.4082–1T (relating to dyed diesel fuel), tax is imposed on the entry of diesel fuel into the United States if—

(i) The entry is by bulk transfer and the enterer is not a taxable fuel registrant; or

(ii) The entry is not by bulk transfer.

(2) *Liability for tax.* The enterer is liable for the tax imposed under paragraph (b)(1) of this section.

(3) *Rate of tax.* For the rate of tax, see section 4081(a).

(c) *Blended diesel fuel; tax on removal or sale by the blender*—(1) *Imposition of tax.* Blended diesel fuel is any mixture of diesel fuel with respect to which tax has been imposed under section 4041(a)(1) or 4081(a), and any other liquid (such as kerosene) on which tax has not been imposed under section 4081 (other than diesel fuel dyed in accordance with § 48.4082–1T(b)). Tax is imposed on the removal or sale of blended diesel fuel by the blender thereof. The number of gallons of blended diesel fuel subject to tax is the difference between the total number of gallons of blended diesel fuel removed or sold and the number of gallons of previously taxed diesel fuel used to produce the blended diesel fuel.

(2) *Liability for tax.* The person that produces the blended diesel fuel outside the bulk transfer/terminal system (the blender) is liable for the tax imposed under paragraph (c)(1) of this section.

(3) *Rate of tax.* For the rate of tax, see section 4081(a).

(d) *Effective date.* This section is effective January 1, 1994.

Par. 6. Sections 48.4082–1T through 48.4083–1T are added to read as follows:

§ 48.4082–1T Diesel fuel tax; exemption (temporary).

(a) *Exemption.* Tax is not imposed by section 4081 on the removal, entry, or sale of any diesel fuel if—

(1) The person otherwise liable for tax is a taxable fuel registrant;

(2) In the case of a removal from a terminal, the terminal is an approved terminal; and

(3) The diesel fuel satisfies the dyeing and marking requirements of paragraph (b) of this section.

(b) *Dyeing and marking requirements*—(1) *Dyeing; high sulfur*

fuel. Diesel fuel that is required to be dyed blue pursuant to the Environmental Protection Agency's high sulfur diesel fuel requirement (40 CFR 80.29) satisfies the dyeing requirement of this paragraph (b) only if it contains the blue dye 1,4 dialkyamino-anthraquinone in a concentration of at least 10 pounds (3 pounds before April 1, 1994) of active liquid Solvent Blue 98 per thousand barrels of diesel fuel.

(2) *Dyeing; low sulfur fuel.* Diesel fuel that is not described in paragraph (b)(1) of this section satisfies the dyeing requirement of this paragraph (b) only if it contains—

(i) The red dye red disazo in a concentration of at least 5.6 pounds of active liquid Solvent Red 164 per thousand barrels of diesel fuel; or

(ii) Any other dye of a type and in a concentration that is approved by the Commissioner.

(3) *Marking.* [Reserved]

(c) *Effective date.* This section is effective January 1, 1994.

§ 48.4082–2T Diesel fuel tax; notice required with respect to dyed diesel fuel (temporary).

(a) *In general.* A notice stating: *DYED DIESEL FUEL, NONTAXABLE USE ONLY, PENALTY FOR TAXABLE USE* must be—

(1) Provided by the terminal operator to any person that receives dyed diesel fuel at a terminal rack of that operator;

(2) Provided by any seller of dyed diesel fuel to its buyer if the fuel is located outside the bulk transfer/terminal system and is not sold from a retail pump posted in accordance with the requirements of paragraph (a)(3) of this section; and

(3) Posted by a seller on any retail pump where it sells dyed diesel fuel for use by its buyer.

(b) *Form.* The notice required under paragraph (a)(1) or (2) of this section must be provided by the time of the removal or sale and must appear on shipping papers, bills of lading, and invoices accompanying the sale or removal of the fuel.

(c) *Penalty.* Any person that fails to provide or post the required notice with respect to any dyed diesel fuel is, for purposes of the penalty imposed by section 6714, presumed to know that the fuel will be used for a taxable use.

(d) *Effective date.* This section is effective January 1, 1994.

§ 48.4082–3T Diesel; dye injection systems and visual inspection devices (temporary). [Reserved]

§ 48.4082–4T Diesel fuel; back-up tax (temporary).

(a) *Imposition of tax*—(1) *In general.* Tax is imposed by section 4041 on the delivery into the fuel supply tank of the propulsion engine of a diesel-powered highway vehicle (other than an automobile bus) or diesel-powered boat of—

(i) Any diesel fuel that contains a dye;

(ii) Any diesel fuel on which a credit or payment has been allowed under section 6427; or

(iii) Any liquid other than gasoline or diesel fuel on which tax has not been imposed by section 4081.

(2) *Liability for tax*—(i) *In general.* The operator of the vehicle or boat into which the fuel is delivered is liable for the tax imposed under paragraph (a)(1) of this section.

(ii) *Joint and several liability of the seller.* The seller of the diesel fuel is jointly and severally liable for the tax imposed under paragraph (a)(1) of this section if the seller knows or has reason to know that the fuel will not be used in a nontaxable use.

(3) *Rate of tax.* The rate of tax is the rate imposed on diesel fuel by section 4081(a).

(b) *Tax on diesel fuel; buses and trains*—(1) *In general.* Tax is imposed by section 4041 on the delivery into the fuel supply tank of the propulsion engine of an automobile bus or a diesel-powered train of—

(i) Any diesel fuel that contains a dye;

(ii) Any diesel fuel on which a credit or payment has been allowed under section 6427; or

(iii) Any liquid other than gasoline or diesel fuel on which tax has not been imposed by section 4081.

(2) *Liability for tax.* The operator of the bus or train into which the fuel is delivered is liable for the tax imposed under paragraph (b)(1) of this section.

(3) *Rate of tax*—(i) *Buses*—(A) *In general.* The rate of tax on the delivery of diesel fuel into an automobile bus is the sum of the rates described in sections 4041(a)(1)(C)(iii)(I) and 4041(d)(1) (the bus rate), if the bus is used to furnish (for compensation) passenger land transportation available to the general public and either such transportation is scheduled and along regular routes or the seating capacity of the bus is at least 20 adults (not including the driver). A bus is available to the general public if the bus is available for hire to more than a limited number of persons, groups, or organizations.

(B) *Other uses.* The rate of tax on the delivery of diesel fuel into an automobile bus is the rate of tax imposed by section 4081(a) if the bus is used for a purpose other than that described in paragraph (b)(3)(i)(A) of this section.

(ii) *Trains.* The rate of tax on the delivery of diesel fuel into a diesel-powered train is the rate prescribed in section 4041 for diesel fuel sold for use in a train (the train rate).

(4) *Cross reference.* For the registration requirement relating to certain bus and train operators, see § 48.4101–3T(c)(2).

(c) *Exemptions.* The taxes imposed under paragraphs (a) and (b) of this section do not apply to a delivery of diesel fuel for—

(1) Use on a farm for farming purposes as that term and related terms are defined in § 48.6420–4(a) through (g);

(2) The exclusive use of a State, any political subdivision of a State, or the District of Columbia;

(3) Use described in section 4041(h) (relating to use in a vehicle owned by an aircraft museum);

(4) The exclusive use of the American Red Cross;

(5) Use in a boat employed in—

(A) The business of commercial fishing;

(B) The business of transporting persons or property for compensation or hire; or

(C) Any other trade or business, unless the boat is used in any activity of a type generally considered to constitute entertainment, amusement, or recreation (within the meaning of section 274(a)(1)(A) and the regulations under that section);

(6) Use in an automobile bus while the bus is engaged in the transportation of students and employees of schools (as defined in the last sentence of section 4221(d)(7)(C));

(7) Use in a qualified local bus (described in section 6427(b)(2)(D)) while the bus is engaged in furnishing (for compensation) intracity passenger land transportation that is available to the general public and is scheduled and along regular routes;

(8) Use in a highway vehicle that is not registered (and is not required to be registered) for highway use under the laws of any State or foreign country;

(9) The exclusive use of a nonprofit educational organization, as defined in § 48.4221–6(b);

(10) Use in a highway vehicle owned by the United States that is not used on the highway; or

(11) Use in a vessel of war of the United States or any foreign nation, as described in § 48.4221–4(b)(5).

(d) *Effective date.* This section is effective January 1, 1994.

§ 48.4083 Administrative authority (temporary).

(a) *In general*—(1) *Authority to inspect.* Officers or employees of the IRS

designated by the Commissioner, upon presenting appropriate credentials and a written notice to the owner, operator, or agent in charge, are authorized to enter any place and to conduct inspections in accordance with paragraphs (a) through (c) of this section.

(2) *Reasonableness.* Inspections will be performed in a reasonable manner and at times that are reasonable under the circumstances, taking into consideration the normal business hours of the place to be entered.

(b) *Place of inspection*—(1) *In general.* Inspections may be at any place at which taxable fuel is (or may be) produced or stored or at any inspection site where evidence of activities described in section 6714(a) may be discovered. These places may include, but are not limited to—

(i) Any terminal;

(ii) Any fuel storage facility that is not a terminal;

(iii) Any retail fuel facility; or

(iv) Any designated inspection site.

(2) *Designated inspection sites.* A designated inspection site is any State highway inspection station, weigh station, agricultural inspection station, mobile station, or other location designated by the Commissioner to be used as a fuel inspection site. A designated inspection site will be identified as a fuel inspection site.

(c) *Scope of inspection*—(1) *Inspection.* Officers or employees may physically inspect, examine or otherwise search any tank, reservoir, or other container that can or may be used for the production, storage, or transportation of fuel, fuel dyes, or fuel markers. Inspection may also be made of any equipment used for, or in connection with, production, storage, or transportation of fuel, fuel dyes or fuel markers. This includes any equipment used for the dyeing or marking of fuel. This also includes the books and records kept to determine excise tax liability under section 4081.

(2) *Detainment.* Officers or employees may detain any vehicle, train, or boat for the purpose of inspecting its fuel tanks and storage tanks. Detainment will be either on the premises under inspection or at a designated inspection site. Detainment may continue for such reasonable period of time as is necessary to determine the amount and composition of the fuel.

(3) *Removal of samples.* Officers or employees may take and remove samples of fuel in such reasonable quantities as are necessary to determine its composition.

(d) *Refusal to submit to inspection*—(1) *Imposition of penalty.* Any person that refuses to allow an inspection will be fined $1,000 for each refusal. This penalty is in addition to any other penalty or tax that may be imposed upon that person or any other person liable for tax under section 4081 or penalty under section 6714.

(2) *Assessment of penalty.* This penalty is an assessable penalty and is assessed in accordance with section 6671.

(e) *Effective date.* This section is effective January 1, 1994.

Par. 7. Sections 48.4101–3T and 48.4101–4T are added to read as follows:

§ 48.4101–3T Registration (temporary).

(a) *Overview.* This section provides rules relating to registration under section 4101 for purposes of the federal excise tax on taxable fuel imposed by section 4081 and the credit or payment allowed to registered ultimate vendors of diesel fuel under section 6427. This section describes persons that must be, or are allowed to be, registered; standards for qualification to be registered; and the terms and conditions of registration. A person is registered under section 4101 only if the district director has issued a registration letter to the person and the registration has not been revoked or suspended. Each business unit that has, or is required to have, a separate employer identification number is treated as a separate person. Thus, two business units (for example, a parent corporation and a subsidiary corporation, or a proprietorship and a related partnership), each of which has a different employer identification number, are two persons.

(b) *Definitions*—(1) *Applicant.* An *applicant* is a person that has applied for registration under paragraph (e) of this section.

(2) *Bonded registrant.* A *bonded registrant* is a person that has given a bond to the district director under paragraph (j) of this section as a condition of registration.

(3) *Gasohol bonding amount.* The *gasohol bonding amount* is the product of—

(i) The rate of tax applicable to later separation, as described in § 48.4081–6(g)(1)(iii); and

(ii) The total number of gallons of gasoline expected to be bought at the gasohol production tax rate by the gasohol blender during a representative 6-month period (as determined by the district director).

(4) *Penalized for a wrongful act.* A person has been *penalized for a wrongful act* if the person has—

(i) Been assessed any penalty under chapter 68 of the Internal Revenue Code (or similar provision of the law of any State or the District of Columbia) for fraudulently failing to file any return or pay any tax, and the penalty has not been wholly abated, refunded, or credited;

(ii) Been assessed any penalty under chapter 68 of the Internal Revenue Code, such penalty has not been wholly abated, refunded, or credited, and the district director determines that the conduct resulting in the penalty is part of a consistent pattern of failing to deposit, pay, or pay over a substantial amount of tax;

(iii) Been convicted of a crime under chapter 75 of the Internal Revenue Code (or similar provision of the law of any State or the District of Columbia), or of conspiracy to commit such a crime, and the conviction has not been wholly reversed by a court of competent jurisdiction;

(iv) Been convicted, under the laws of the United States, any State, or the District of Columbia, of a felony for which an element of the offense is theft, fraud, or the making of false statements, and the conviction has not been wholly reversed by a court of competent jurisdiction;

(v) Been assessed any tax under section 4103 and the tax has not been wholly abated, refunded, or credited; or

(vi) Had its registration under section 4101 or 4222 revoked.

(5) *Related person.* A person is related to an applicant if the person—

(i) Directly or indirectly exercises control over an activity of the applicant and the activity is described in paragraph (c)(1) or (d) of this section;

(ii) Owns, directly or indirectly, five percent or more of the applicant;

(iii) Is under a duty to assure the payment of a tax for which the applicant is responsible;

(iv) Is a member, with the applicant, of a group of organizations (as defined in § 1.52–1(b) of this chapter) that would be treated as a group of trades or businesses under common control for purposes of § 1.52–1 of this chapter; or

(v) Distributed or transferred assets to the applicant in a transaction in which the applicant's basis in the assets is determined by reference to the basis of the assets in the hands of the distributor or transferor.

(6) *Registrant.* A *registrant* is a person that the district director has, in accordance with paragraph (g)(3) of this section, registered under section 4101 and whose registration has not been revoked or suspended.

(c) *Persons required to be registered*—(1) *In general.* A person is required to be registered under section 4101 if the person is engaged in the activity of a—

(i) Blender, as defined in § 48.4081–1(d);

(ii) Enterer, as defined in § 48.4081–1(g);

(iii) Refiner, as defined in § 48.4081–1(o);

(iv) Terminal operator, as defined in § 48.4081–1(t); or

(v) Throughputter, as defined in § 48.4081–1(u)(2) (a throughputter that is a position holder).

(2) *Bus and train operators.* Every operator of a bus or train is required to be registered under section 4101 at any time it incurs any liability for tax under § 48.4082–4T at the bus rate (as described in § 48.4082–4T(b)(3)(i)) or the train rate (as described in § 48.4082–4T(b)(3)(ii)).

(3) *Consequences of failing to register.* For the criminal penalty imposed for failure to register, see section 7232. For the civil penalty imposed for failure to register, see section 7272.

(d) *Persons that may, but are not required to, be registered.* A person may, but is not required to, be registered under section 4101 if the person is engaged in the activity of—

(1) A gasohol blender, as defined in § 48.4081–6(b)(3);

(2) An industrial user, as defined in § 48.4081–1(l);

(3) A throughputter, as defined § 48.4081–1(u)(1) (a throughputter that is not a position holder); or

(4) An ultimate vendor of diesel fuel, as defined in § 48.6427–9T(a)(1).

(e) *Application instructions.* Application for registration under section 4101 must be made in accordance with the instructions for Form 637 (or such other form as the Commissioner may designate).

(f) *Registration tests*—(1) *In general*—(i) *Persons other than ultimate vendors.* Except as provided in paragraph (f)(1)(ii) of this section, the district director will register an applicant only if the district director determines that the applicant meets the three following tests (collectively, the registration tests):

(A) The activity test of paragraph (f)(2) of this section;

(B) The acceptable risk test of paragraph (f)(3) of this section; and

(C) The adequate security test of paragraph (f)(4) of this section.

(ii) *Ultimate vendors.* The district director will register an applicant as an ultimate vendor of diesel fuel only if the district director—

(A) Determines that the applicant meets the activity test of paragraph (f)(2) of this section; and

(B) Is satisfied with the filing, deposit, payment, and claim history for all federal taxes of the applicant and any related person.

(2) *The activity test.* An applicant meets the activity test of this paragraph (f)(2) only if the district director determines that the applicant—

(i) Is, in the course of its trade or business, regularly engaged in an activity described in paragraph (c)(1) or (d) of this section; or

(ii) Is likely to be (because of such factors as the applicant's business experience, financial standing, or trade connections), in the course of its trade or business, regularly engaged in an activity described in paragraph (c)(1) or (d) of this section within a reasonable time after becoming registered under section 4101.

(3) *Acceptable risk test*—(i) *In general.* An applicant meets the acceptable risk test of this paragraph (f)(3) only if—

(A) Neither the applicant nor a related person has been penalized for a wrongful act; or

(B) Even though the applicant or a related person has been penalized for a wrongful act, the district director determines, after review of evidence offered by the applicant, that the registration of the applicant does not create a significant risk of nonpayment or late payment of the tax imposed by section 4081.

(ii) *Significant risk of nonpayment or late payment of tax.* In making the determination described in paragraph (f)(3)(i)(B) of this section, the district director may consider factors such as the following:

(A) The time elapsed since the applicant or related person was penalized for a wrongful act.

(B) The present relationship between the applicant and any related person that was penalized for any wrongful act.

(C) The degree of rehabilitation of the person penalized for any wrongful act.

(D) The amount of bond given by the applicant. In this regard, the district director may accept a bond under paragraph (j) of this section, without regard to the limits on the amount of the bond set by paragraph (j)(2) of this section.

(4) *Adequate security test*—(i) *In general.* An applicant meets the adequate security test of this paragraph (f)(4) only if the district director determines that the applicant has both adequate financial resources and a satisfactory tax history, or the applicant gives the district director a bond (under the provisions of paragraph (j) of this section).

(ii) *Adequate financial resources*—(A) *In general.* An applicant has adequate financial resources only if the district director determines that the applicant is financially capable of paying—

(*1*) Its expected tax liability under section 4081 for a representative 6-month period (as determined by the district director);

(*2*) In the case of a terminal operator, the expected tax liability under section 4081 of persons other than the terminal operator with respect to taxable fuel removed at the racks of its terminals during a representative 1-month period (as determined by the district director); and

(*3*) In the case of a gasohol blender, the gasohol bonding amount.

(B) *Basis for determination.* The determination under this paragraph (f)(4)(ii) must be based on financial information such as the applicant's income statement, balance sheet or bond ratings, or other information related to the applicant's financial status.

(iii) *Satisfactory tax history.* An applicant has a satisfactory tax history only if the district director is satisfied with the filing, deposit, and payment history for all federal taxes of the applicant and any related person.

(g) *Action on the application by the district director*—(1) *Review of application.* The district director may investigate the accuracy and completeness of any representations made by an applicant, request any additional relevant information from the applicant, and inspect the applicant's premises during normal business hours without advance notice.

(2) *Denial.* If the district director determines that an applicant does not meet all of the applicable registration tests described in paragraph (f) of this section, the district director must notify the applicant, in writing, that its application for registration is denied and state the basis for the denial.

(3) *Approval.* If the district director determines that an applicant meets all of the applicable registration tests described in paragraph (f) of this section, the district director must register the applicant under section 4101 and issue the applicant a letter of registration containing the effective date of the registration. The effective date of the registration must be no earlier than the date on which the district director signs the letter of registration. A copy of an application for registration (Form 637) is not a letter of registration.

(h) *Terms and conditions of registration*—(1) *Affirmative duties.* Each registrant must—

(i) Make deposits, file returns, and pay taxes required by the Internal Revenue Code and the regulations thereunder;

(ii) Keep records sufficient to show the registrant's tax liability under

section 4081 and payments or deposits of such liability;

(iii) Make all information reports required under section 4101(d) and § 48.4101–4T;

(iv) Make available for inspection on demand by the Internal Revenue Service during normal business hours records relevant to a determination of tax liability under section 4081; and

(v) Notify the district director of any change (such as a change in ownership) in the information the registrant submitted in connection with its application for registration, or previously submitted under this paragraph (h)(1)(v), within 10 days after the change occurs.

(2) *Prohibited actions.* A registrant may not—

(i) Sell, lease or otherwise allow another person to use its registration;

(ii) Make any false statement to the district director in connection with a submission under paragraph (h) (1) or (3) of this section; or

(iii) Make any false statement on, or violate the terms of—

(A) A notification certificate of a taxable fuel registrant (as described in § 48.4081–5(b)); or

(B) A certificate of a registered gasohol blender (as described in § 48.4081–6(c)(2)).

(3) *Additional terms and conditions for terminal operators*—(i) *Records to be maintained relating to removals of diesel fuel.* Each terminal operator described in § 48.4081–1(t) must keep the following information with respect to each rack removal of diesel fuel at each terminal it operates:

(A) The bill of lading or other shipping document.

(B) The record of whether the fuel was dyed in accordance with § 48.4082–1T(b).

(C) The volume and date of the removal.

(D) The identity of the person that received the fuel.

(E) Any other information required by the Commissioner.

(ii) *Retention of information.* In addition to any other requirement relating to the retention of records, the terminal operator must maintain the information described in paragraph (h)(3)(i) of this section at the terminal from which the removal occurred for at least 3 months after the removal to which it relates.

(i) *Adverse actions by the district director against a registrant*—(1) *Mandatory revocation or suspension.* The district director must revoke or suspend the registration of any registrant if the district director determines that the registrant, at any time—

(i) Does not meet one or more of the applicable registration tests under paragraph (f) of this section and has not corrected the deficiency within a reasonable period of time after notification by the district director;

(ii) Has used its registration to evade, or attempt to evade, the payment of any tax imposed by section 4081, or to postpone or in any manner to interfere with the collection of any such tax, or to make a fraudulent claim for a credit or payment;

(iii) Has aided or abetted another person in evading, or attempting to evade, payment of any tax imposed by section 4081, or in making a fraudulent claim for a credit or payment; or

(iv) Has sold, leased, or otherwise allowed another person to use its registration.

(2) *Remedial action permitted in other cases.* If the district director determines that a registrant, at any time, has failed to comply with the terms and conditions of registration under paragraph (h) of this section, made a false statement to the district director in connection with its application for registration or retention of registration, or otherwise used its registration in a manner that creates a significant risk of nonpayment or late payment of tax, then the district director may—

(i) Revoke or suspend the registrant's registration;

(ii) In the case of a registrant other than an ultimate vendor, require the registrant to give a bond under the provisions of paragraph (j) of this section as a condition of retaining its registration; and

(iii) In the case of a registrant other than an ultimate vendor, require the registrant to file monthly or semimonthly returns under § 40.6011(a)–3T of this chapter as a condition of retaining its registration.

(3) *Action by the district director to revoke or suspend a registration.* If the district director revokes or suspends a registration, the district director must so notify the registrant in writing and state the basis for the revocation or suspension. The effective date of the revocation or suspension may not be earlier than the date on which the district director notifies the registrant.

(j) *Bonds*—(1) *Form.* Each bond given to the district director as a condition of registration under paragraph (f)(4)(i) or (i)(2)(ii) of this section must be executed in the form prescribed by the district director. Each bond must be—

(i) A public debt obligation of the United States Government;

(ii) An obligation the principal and interest of which are unconditionally guaranteed by the United States Government;

(iii) A bond executed by a surety company listed in Department of the Treasury Circular 570 as an acceptable surety or reinsurer of federal bonds (a surety bond); or

(iv) Any other bond with security (including liens under section 4101(b)(1)(B)) considered acceptable by the district director.

(2) *Amount of bond.* A bond given under this paragraph (j) must be in an amount that the district director determines will ensure timely collection of the taxes imposed by section 4081, taking into account the applicant's financial capabilities, tax history, and expected liability under section 4081. The district director may increase or decrease the amount of the required bond to take into account changes in the applicant's financial capabilities, tax history, and expected liability under section 4081. However, in no case may the amount of the bond be greater than the amount that the district director determines is equal to—

(i) The applicant's expected tax liability under section 4081 for a representative 6-month period (as determined by the district director);

(ii) In the case of a terminal operator, the expected tax liability of persons other than the terminal operator under section 4081 with respect to taxable fuel removed at the racks of its terminals during a representative 1-month period (as determined by the district director); and

(iii) In the case of a gasohol blender, the gasohol bonding amount.

(3) *Collection of taxes from a bond.* If a bonded registrant does not pay the amount of tax it incurs under section 4081 by the time prescribed in section 6151 for paying that tax, the district director may collect the amount of the unpaid tax (including penalties and interest with respect to that tax) from the bonded registrant's bond.

(4) *Termination of bonds*—(i) *Surety bonds.* A surety on a bond may give written notice to the district director and the bonded registrant that the surety desires to be relieved of liability under the bond after a certain date, which date must be at least 60 days after the receipt of the notice by the district director. The surety will be relieved of any liability that the bonded registrant incurs after the date named in the notice. However, the surety remains liable for the amount of tax that the bonded registrant incurred under section 4081 during the term of the bond and for penalties and interest with respect to that tax.

(ii) *Other bonds.* A bond (other than a surety bond) given to the district

director may be returned to the bonded registrant only after the earlier of—

(A) The district director's determination that the bonded registrant has paid all taxes that the bonded registrant incurred under section 4081 during the period covered by the bond and any penalties and interest with respect to the taxes;

(B) The expiration of the period for assessment of the section 4081 tax of the bonded registrant, as determined under the provisions of subchapter A of chapter 66 of the Internal Revenue Code, for the period covered by the bond; or

(C) The date that the district director receives from the registrant a substitute bond given under this paragraph (j).

(5) *Determination that bond is no longer required.* If the district director determines that the bonded registrant meets the adequate security test of paragraph (f)(4) of this section without a bond, the registrant is to be released from the obligation to give a bond as a condition of registration under section 4101.

(k) *Cross references*—(1) For a rule relating to the filing of monthly and semimonthly returns by certain persons that are registered under section 4101, see § 40.6011(a)–3T of this chapter.

(2) For regulations relating to the gasoline tax imposed by section 4081, see §§ 48.4081–0 through 48.4081–8. For regulations relating to the diesel fuel tax imposed by section 4081, see §§ 48.4081–10T through 48.4081–12T.

(l) *Effective date*—(1) Except as otherwise provided in this paragraph (l), this section is effective January 1, 1994.

(2) Paragraph (c)(1) of this section (relating to persons required to be registered) is effective January 1, 1995.

(3) A registration in effect on December 31, 1993, with respect to the tax on gasoline or diesel fuel is subject to the district director's review, and to revocation or suspension, under the standards set forth in this section, but remains in effect until the earlier of—

(i) The effective date of a registration issued under paragraph (g)(3) of this section; or

(ii) The effective date of the revocation or suspension of the registration under paragraph (i) of this section.

§ 48.4101–4T Information reporting (temporary).

(a) *In general*—(1) *Terminal operators.* Each terminal operator described in § 48.4081–1(t) must make a return showing—

(i) The name and registration number of any person that is a position holder (as described in § 48.4081–1(m)) at any terminal it operates;

(ii) The identity of the position holder with respect to—

(A) All rack removals of taxable fuel from each terminal it operates, and the volume and dates of the removals; and

(B) In the case of rack removals of diesel fuel, whether the fuel was dyed at the operator's terminal in accordance with § 48.4082–1T(b); and

(iii) Any other information required by the Commissioner.

(2) *Throughputters.* Each throughputter described in § 48.4081–1(u) must make a return showing—

(i) The name and registration number of the operator of each terminal at which it holds an inventory position in taxable fuel; and

(ii) Any other information required by the Commissioner.

(3) *Gasohol blenders.* Each registered gasohol blender described in § 48.4081–6(b)(4) must make a return showing, with respect to each batch of gasohol it produced from gasoline it bought at the gasohol production tax rate—

(i) The name and registration number of the person that sold the blender the gasoline;

(ii) The date and location of the purchase of the gasoline;

(iii) The volume of the gasoline;

(iv) The name, address, and employer identification number of the person that sold the blender the alcohol;

(v) The date and location of the purchase of the alcohol;

(vi) The volume and type of the alcohol; and

(vii) Any other information required by the Commissioner.

(b) *Form and time of return.* Each return required under this section must be made at the time and in the form required by the Commissioner.

(c) *Consequences for failure to make a return.* For the consequences for failing to make an information return required by this section, see § 48.4101–3T(i) (relating to adverse actions against a registrant) and section 6721 (relating to a penalty for failure to file an information return).

(d) *Effective date.* This section is effective July 1, 1994.

Par. 8. Sections 48.6427–8T and 48.6427–9T are added to read as follows:

§ 48.6427–8T Credit or payment with respect to diesel fuel used in a nontaxable use (other than on a farm for farming purposes or by a State or local government) (temporary).

(a) *Conditions to allowance of credit or payment.* A claim for credit or payment with respect to diesel fuel is allowed under this section only if—

(1) Tax was imposed by section 4081 on the diesel fuel to which the claim relates;

(2) The claimant bought the fuel and did not resell it in the United States;

(3) The claimant has filed a timely claim for a credit or payment that contains the information required under paragraph (c) of this section; and

(4) The fuel was either—

(i) Used in a use described in §§ 48.4082–4T(c)(3) through (11);

(ii) Exported;

(iii) Used other than as a fuel in a propulsion engine of a diesel-powered highway vehicle or diesel-powered boat;

(iv) Used as a fuel in a propulsion engine of a diesel-powered train; or

(v) Used as a fuel in the propulsion engine of an automobile bus if the bus was used in a use described in section 6427(b)(1) (after the application of section 6427(b)(3)).

(b) *Form of claim.* Each claim for an income tax credit under this section must be made on Form 4136, Credit for Federal Tax Paid on Fuels, or on such other form as the Commissioner may designate, in accordance with the instructions for that form. Each claim for a payment under this section must be made on Form 843, Claim for Refund and Request for Abatement, or on such other form as the Commissioner may designate, in accordance with the instructions for that form.

(c) *Content of claim*—(1) *In general.* Each claim for credit or payment under this section must contain the following information with respect to all the diesel fuel covered by the claim:

(i) The name, address, telephone number, and employer identification number of the person(s) that sold the diesel fuel to the claimant and the date(s) of the purchase(s).

(ii) A statement by the claimant that the diesel fuel covered by the claim did not contain visible evidence of dye.

(iii) A statement (which may appear on the invoice or similar document) by the person that sold the fuel to the claimant that the diesel fuel sold did not contain visible evidence of dye.

(iv) The total amount of diesel fuel covered by the claim.

(v) The use made of the diesel fuel covered by the claim described by reference to specific categories listed in paragraph (a)(4) of this section (such as use in a boat employed in commercial fishing or use by a nonprofit educational organization).

(vi) If the diesel fuel covered by the claim was exported, a statement that the claimant has the proof of exportation described in § 48.4221–3(d)(1).

(d) *Time and place for filing claim.* For rules relating to the time for filing

a claim under section 6427, see section 6427(i).

(e) *Effective date.* This section is effective January 1, 1994.

§ 48.6427–9T Credit or payment with respect to diesel fuel sold for use on a farm for farming purposes or by a State or local government (temporary).

(a) *Definitions*—(1) An *ultimate vendor,* as used in this section, is a person that sells undyed diesel fuel to the user of the fuel (the ultimate purchaser) for use on a farm for farming purposes or for the exclusive use of any State, political subdivision of a State, or the District of Columbia.

(2) A *registered ultimate vendor* is—

(i) An ultimate vendor that is registered under section 4101 as an ultimate vendor; or

(ii) With respect to a claim filed before January 1, 1995, an ultimate vendor that is registered as a producer of diesel fuel on December 31, 1993, if the registration has not been revoked or suspended.

(b) *Conditions to allowance of credit or payment.* A claim for credit or payment with respect to diesel fuel is allowed under this section only if—

(1) Tax was imposed by section 4081 on the diesel fuel to which the claim relates;

(2) The claimant sold the diesel fuel to the ultimate purchaser for—

(i) Use on a farm for farming purposes (as defined in § 48.6420–4); or

(ii) The exclusive use of a State, political subdivision of a State, or the District of Columbia;

(3) The claimant is a registered ultimate vendor; and

(4) The claimant has filed a timely claim for a credit or payment that contains the information required under paragraph (d) of this section.

(c) *Form of claim.* Each claim for an income tax credit under this section must be made on Form 4136, Credit for Federal Tax Paid on Fuels, or on such other form as the Commissioner may designate, in accordance with the instructions for that form. Each claim for a payment under this section must be made on Form 843, Claim for Refund and Request for Abatement, or on such other form as the Commissioner may designate, in accordance with the instructions for that form.

(d) *Content of claim*—(1) *In general.* Each claim for credit or payment under this section must contain the following information with respect to all the diesel fuel covered by the claim:

(i) A copy of the claimant's letter of registration or, if applicable, its certificate of registration.

(ii) The name, address, telephone number, and employer identification number of each person that sold the diesel fuel to the claimant and the date of the purchase.

(iii) The name, address, telephone number, and taxpayer identification number of each farmer or governmental unit that bought the diesel fuel from the claimant and the number of gallons that the claimant sold to each.

(iv) A statement that the diesel fuel covered by the claim did not contain visible evidence of dye.

(v) The total amount of diesel fuel covered by the claim.

(vi) A statement that the claimant has not included the amount of the tax in its sales price of the diesel fuel and has not collected the amount of tax from its buyer.

(vii) For claims relating to sales by the claimant after March 31, 1994, a statement that the claimant has in its possession an unexpired certificate described in paragraph (d)(2) of this section and the claimant has no reason to believe any information in the certificate is false.

(viii) For claims relating to sales by the vendor before April 1, 1994, either the statement described in paragraph (d)(1)(vii) of this section or a statement that—

(A) The claimant has in its possession an unexpired exemption certificate relating to tax-free sales of diesel fuel for use on a farm for farming purposes or for the exclusive use of a State, political subdivision of a State, or the District of Columbia;

(B) The certificate was received from the buyer before January 1, 1994; and

(C) The claimant has no reason to believe any information in the certificate is false.

(2) *Certificate*—(i) *In general.* The certificate to be provided to the ultimate vendor consists of a statement that is signed under penalties of perjury by a person with authority to bind the buyer, is in substantially the same form as the model certificate provided in paragraph (d)(2)(ii) of this section, and contains all information necessary to complete such model certificate. A new certificate must be given if any information in the current certificate changes. The certificate may be included as part of any business records normally used to document a sale. The certificate expires on the earliest of the following dates:

(A) The date one year after the effective date of the certificate (which may be no earlier than the date it is signed).

(B) The date a new certificate is provided to the seller.

(ii) *Model certificate.*

CERTIFICATE OF FARMER OR STATE OR LOCAL GOVERNMENTAL UNIT

(To support vendor's claim for a credit or payment under section 6427 of the Internal Revenue Code.)

_____

_____

Name, address, and employer identification number of seller

The undersigned buyer ("Buyer") hereby certifies the following under penalties of perjury:

Buyer will use the diesel fuel to which this certificate relates either—(check one)

_____On a farm for farming purposes (as that term is defined in § 48.6420–4 of the Manufacturers and Retailers Excise Tax Regulations); or

_____For the exclusive use of a State, political subdivision of a State, or the District of Columbia.

This certificate applies to the following (complete as applicable):

If this is a single purchase certificate, check here ____ and enter:

1. Invoice or delivery ticket number _____

2. _____ (number of gallons)

If this is a certificate covering all purchases under a specified account or order number, check here _____ and enter:

1. Effective date _____

2. Expiration date _____

(period not to exceed 1 year after the effective date)

3. Buyer account or order number _____

Buyer will provide a new certificate to the seller if any information in this certificate changes.

If Buyer uses the diesel fuel to which this certificate relates for a purpose other than stated in the certificate Buyer will be liable for tax.

Buyer understands that the fraudulent use of this certificate may subject Buyer and all parties making such fraudulent use of this certificate to a fine or imprisonment, or both, together with the costs of prosecution.

_____

Signature and date signed

_____

Printed or typed name of person signing

_____

Title of person signing

_____

Name of Buyer

_____

Employer identification number

_____

Address of Buyer

(e) *Time and place for filing claim.* For rules relating to the time for filing a claim under section 6427, see section 6427(i). A claim under this section is not filed unless it contains all the information required by paragraph (d) of this section and is filed at the place required by the form.

(f) *Effective date.* This section is effective January 1, 1994.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 9. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 10. Section 602.101(c) is amended by adding the following entries in numerical order to the table to read as follows:

§ 602.101 OMB control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
48.4082–2T	1545–1418
48.4101–3T	1545–1418
48.4101–4T	1545–1418
48.6427–8T	1545–1418
48.6427–9T	1545–1418
* * * * *	

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: November 10, 1993.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 93–28647 Filed 11–23–93; 2:30 pm]

BILLING CODE 4830–01–U

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2603, 2606, 2607, 2608, 2610, 2615, 2616, 2617, 2618, 2622, 2641, 2642, 2643, 2645, 2646, 2648, 2672, 2673, 2674, 2675, and 2677

Change of Address and Telephone Numbers

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation is amending its regulations to reflect the agency's anticipated move to a new location in Washington, DC, and changes in the agency's organization.

EFFECTIVE DATE: December 6, 1993.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel (Code 22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006–1860, 202–778–8850 (202–778–1958 for TTY and TDD); 202–326–4024 (as of December 20, 1993) (202–326–4179 for TTY and TDD (as of January 24, 1994)). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: As indicated in a notice published elsewhere in today's **Federal Register**, the Pension Benefit Guaranty Corporation ("PBGC"), which currently is located at 2020 K Street, NW., Washington, DC 20006–1860, is relocating during the months of December 1993 and January 1994. The PBGC's new address is: Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026. (This change is limited to the PBGC's offices; post office box numbers and other addresses (e.g., the Georgia addresses used for filing premium forms and payments) are not affected. Telephone numbers will be changing, as indicated in the PBGC's notice.)

The PBGC will begin accepting mail and delivery at the new 1200 K Street address on December 6, 1993. By the time the move has been completed in late January 1994, the United States Postal Service will not be delivering mail to the old 2020 K Street address, and the PBGC will not be accepting hand delivery at that address.

Most of the amendments in the final rule simply substitute the address of the new location of the PBGC's offices for the old address. In many instances, the address appears in rules for submitting notices and other documents and information to the PBGC. The filing rules in the PBGC's regulations generally fall into one of two categories: (1) The filing date is determined by the date of receipt at the PBGC (see, e.g., 29 CFR 2616.7(a) and 2617.8(a)), or (2) the filing date is determined by the postmark, with a receipt-based date as the "alternative" filing date in the absence of a legible postmark (see, e.g., 29 CFR 2615.6(a), 2622.10(a), and 2673.4). In the second category, a document is generally considered filed on the date of the United States Postal Service postmark only if it "was mailed postage prepaid, properly packaged and addressed to the PBGC"; otherwise, a receipt-based deadline applies.

The PBGC recognizes that some persons may not become aware of the address change for a period of time. Accordingly, for approximately the next year (i.e., with respect to filings due no later than December 31, 1994, when the 1994 Code of Regulations including the regulations, as amended by this rule, will be generally available), the PBGC will not consider a submission to be improperly addressed if it is addressed to the agency at the 2020 K Street, NW., address. Similarly, with respect to a receipt-based filing requirement, when the facts and circumstances of a particular delivery addressed to 2020 K Street, NW., indicate that delivery at that address would have occurred by the deadline if the PBGC had not relocated, the PBGC will, during this period, consider the submission to have been timely received.

The PBGC also is amending several regulations to reflect organizational changes that have occurred since they were last modified (see, e.g., 29 CFR 2607.2, 2641.13(c), and 2643.2(c)).

Finally, one of the amendments needs further explanation. Section 2610.4 of the PBGC's premium regulation is amended in this final rule, although it did not include a street address for the PBGC. That section provided that all premium forms and payments should be mailed to a post office box or delivered to a lockbox in Georgia. In order to more readily deal with possible future change in either address, § 2610.4 is amended in this final rule to provide that forms and payments should be filed at the address specified in the PBGC's Annual Premium Payment Package.

Because the amendments made by this rule are limited to the location of the agency's offices, its organization, and rules of practice or procedure, the notice and comment and delayed effective date requirements of the Administrative Procedure Act do not apply (5 U.S.C. 533 (a)(2) and (b)(B) and (d)), and the PBGC is issuing these amendments as a final rule, effective December 6, 1993.

E.O. 12866

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866 because it will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

List of Subjects

29 CFR Part 2603

Freedom of Information.

29 CFR Part 2606

Administrative practice and procedure, Organization and functions

(Government agencies), Pension insurance, Pensions.

29 CFR Part 2607

Privacy.

29 CFR Part 2608

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

29 CFR Part 2610

Employee benefit plans, Penalties, Pension insurance, Pensions, Reporting requirements.

29 CFR Parts 2615, 2616, 2617, and 2642

Employee benefit plans, Pension insurance, Pensions, Reporting requirements.

29 CFR Part 2618

Employee benefit plans, Pension insurance, Pensions.

29 CFR Parts 2622 and 2643

Business and industry, Employee benefit plans, Pension insurance, Pensions, Reporting requirements, Small businesses.

29 CFR Part 2641

Business and industry, Employee benefit plans, Pensions, Small businesses.

29 CFR Parts 2645 and 2677

Employee benefit plans, Pensions.

29 CFR Parts 2646 and 2675

Employee benefit plans, Pensions, Reporting requirements.

29 CFR Parts 2648 and 2672

Employee benefit plans, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 2673

Employee benefit plans, Pension insurance.

29 CFR Part 2674

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

For the reasons set forth above, the PBGC is amending 29 CFR parts 2603, 2606, 2607, 2608, 2610, 2615, 2616, 2617, 2618, 2622, 2641, 2642, 2643, 2645, 2646, 2648, 2672, 2673, 2674, 2675, and 2677 as follows:

PART 2603—EXAMINATION AND COPYING OF PENSION BENEFIT GUARANTY CORPORATION RECORDS

1. The authority citation for part 2603 continues to read as follows:

Authority: 5 U.S.C. 552; 29 U.S.C. 1302(b)(3); E.O. 12600, 52 FR 23781.

§ 2603.28 [Amended]

2. Section 2603.28 is amended by removing "2020 K Street NW., Washington, DC" and adding, in its place, "1200 K Street NW., Washington, DC 20005–4026".

§§ 2603.32 and 2603.39 [Amended]

3. Sections 2603.32(a) and 2603.39 are amended by removing "2020 K Street NW., Washington, DC 20006" and adding, in its place, "1200 K Street NW., Washington, DC 20005–4026".

PART 2606—RULES FOR ADMINISTRATIVE REVIEW OF AGENCY DECISIONS

4. The authority citation for part 2606 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3).

§§ 2606.9 and 2606.54 [Amended]

5. Sections 2606.9(b) and 2606.54 are amended by removing "2020 K Street NW., Washington, DC 20006" and adding, in its place, "1200 K Street NW., Washington, DC 20005–4026".

§ 2606.56 [Amended]

6. Section 2606.56 is amended by removing "2020 K Street NW., Washington, DC" and adding, in its place, "1200 K Street NW., Washington, DC 20005–4026".

PART 2607—DISCLOSURE AND AMENDMENT OF RECORDS UNDER THE PRIVACY ACT

7. The authority citation for part 2607 is revised to read as follows:

Authority: 5 U.S.C. 552a.

§§ 2607.2 through 2607.8 [Amended]

8. In § 2607.2(a), the definition of disclosure officer is amended by removing "Office of the Executive Director of the" and adding, in its place, "Communications and Public Affairs Department,".

9. Sections 2607.3(a), 2607.4(a), 2607.6(a), and 2607.8(c) are amended by removing "to the Disclosure Officer, Office of the Executive Director, Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006" and adding, in its place, "to the Disclosure Officer, Communications and Public Affairs Department, Pension Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026".

10. Sections 2607.3(a), 2607.4(a), and 2607.6(a) are further amended by removing "at the Office of the Executive Director, Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC" and adding, in its place, "at the above address".

11. Section 2607.5(a) is amended by removing "Office of the Executive Director, Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC" and adding, in its place, "Communications and Public Affairs Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026".

12. Sections 2607.6(c), 2607.7(c), and 2607.8(a) are amended by removing "2020 K Street NW., Washington, DC 20006" and adding, in its place, "1200 K Street NW., Washington, DC 20005–4026".

PART 2608—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE PENSION BENEFIT GUARANTY CORPORATION

13. The authority citation for part 2608 is revised to read as follows:

Authority: 29 U.S.C. 794, 1302(b)(3).

§ 2608.170 [Amended]

14. Section 2608.170(c) is amended by removing "Pension Benefit Guaranty Corporation, 2020 K Street NW., Room 3700–A, Washington, DC 20006" and adding, in its place, "Equal Opportunity Manager, Human Resources Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026".

PART 2610—PAYMENT OF PREMIUMS

15. The authority citation for part 2610 is revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1306, 1307.

16. Section 2610.4 is revised to read as follows:

§ 2610.4 Filing address.

Plan administrators shall file all forms required to be filed under this part and all payments for premiums, interest, and penalties required to be made under this part at the address specified in the PBGC Annual Premium Payment Package.

PART 2615—CERTAIN REPORTING AND NOTIFICATION REQUIREMENTS

17. The authority citation for part 2615 is revised to read as follows:

Authority: 29 U.S.C. 1082(f), 1302(b)(3), 1343, 1365.

§ 2615.3 [Amended]

18. Section 2615.3(e) is amended by removing "Room 5500 (Code 45000), 2020 K Street NW., Washington, DC 20006" and adding, in its place, "1200 K Street NW., Washington, DC 20005–4026".

PART 2616—DISTRESS TERMINATION OF SINGLE-EMPLOYER PLANS

19. The authority citation for part 2616 is revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1341, 1344.

§ 2616.7 [Amended]

20. Section 2616.7(b) is amended by removing "Pension Benefit Guaranty Corporation, Case Operations and Compliance Department, Code 45000, 2020 K Street NW., Washington, DC 20006–1806" and adding, in its place, "Case Operations and Compliance Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026".

PART 2617—STANDARD TERMINATIONS OF SINGLE-EMPLOYER PLANS

21. The authority citation for part 2617 is revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1341, 1344.

§ 2617.8 [Amended]

22. Section 2617.8(b) is amended by removing "Pension Benefit Guaranty Corporation, Case Operations and Compliance Department, Code 45000, 2020 K Street NW., Washington, DC 20006–1806" and adding, in its place, "Case Operations and Compliance Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026".

§ 2617.25 [Amended]

23. Section 2617.25(b)(2) is amended by removing "Pension Benefit Guaranty Corporation, Case Operations and Compliance Department, Code 45000, 2020 K Street NW., Washington, DC 20006–1860" and adding, in its place, "Case Operations and Compliance Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026".

PART 2618—ALLOCATION OF ASSETS IN NON-MULTIEMPLOYER PLANS

24. The authority citation for part 2618 is revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1344.

§ 2618.31 [Amended]

25. Section 2618.31(d) is amended by removing "Office of Program Operations, Code 500, Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006" and adding, in its place, "Insurance Operations Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026".

PART 2622—LIABILITY ON TERMINATION OF OR WITHDRAWAL FROM A SINGLE-EMPLOYER PLAN

26. The authority citation for part 2622 is revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1362–1364, 1367–1368.

§ 2622.10 [Amended]

27. Section 2622.10(b) is amended by removing "2020 K Street, N.W., Washington, DC 20006 (202–778–8802)" and adding, in its place, "1200 K Street, NW., Washington, DC 20005–4026" and by removing "(Code 33500)" and "(Code 41000)".

PART 2641—ARBITRATION OF DISPUTES IN MULTIEMPLOYER PLANS

28. The authority citation for part 2641 is revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1401.

§ 2641.13 [Amended]

29. Section 2641.13(c) is amended by removing "Case Classification and Control Division, Code 542, Insurance Operations Department, Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006" and adding, in its place, "Case Operations and Compliance Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026".

PART 2642—ALLOCATING UNFUNDED VESTED BENEFITS

30. The authority citation for part 2642 is revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3); 1391(c)(1), (c)(2)(D), (c)(5)(A), (c)(5)(B), (c)(5)(D), and (f).

§ 2642.12 [Amended]

31. Section 2642.12(c) is amended by removing "Insurance Operations Department, Control Branch (Code 25420), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006" and adding, in its place, "Case Operations and Compliance Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026" and by removing "Room 5300A at that address" and adding, in its place, "the above address".

PART 2643—VARIANCES FOR SALE OF ASSETS

32. The authority citation for part 2643 is revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1384(c).

§ 2643.2 [Amended]

33. Section 2643.2(c) is amended by removing "Office of Program Operations (542), Pension Benefit Guaranty Corporation, Room 5300A, 2020 K Street, NW., Washington, DC 20006" and adding, in its place, "Case Operations and Compliance Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026".

PART 2645—EXTENSION OF SPECIAL WITHDRAWAL LIABILITY RULES

34. The authority citation for part 2645 is revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1383(f), 1388(e)(3).

§ 2645.3 [Amended]

35. Section 2645.3(c) is amended by removing "Division of Case Classification and Control, Office of Program Operations (542), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006" and adding, in its place, "Case Operations and Compliance Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026".

PART 2646—REDUCTION OR WAIVER OF PARTIAL WITHDRAWAL LIABILITY

36. The authority citation for part 2646 is revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1388 (c) and (e).

§ 2646.8 [Amended]

37. Section 2646.8(c) is amended by removing "Case Operations and Compliance Department (45200), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006" and adding, in its place, "Case Operations and Compliance Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026".

PART 2648—REDETERMINATION OF WITHDRAWAL LIABILITY UPON MASS WITHDRAWAL

38. The authority citation for part 2648 is revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1389 (c) and (d), 1399(c)(1)(D).

§ 2648.8 [Amended]

39. Section 2648.8(d) is amended by removing "Case Classification and Control Division (25400) [hand deliveries to Room 5300], Insurance Operations Department, Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006" and adding, in its place, "Case Operations and Compliance Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026".

PART 2672—MERGERS AND TRANSFERS BETWEEN MULTIEMPLOYER PLANS

40. The authority citation for part 2672 is revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1411.

§ 2672.7 [Amended]

41. Section 2672.7(c) is amended by removing "Division of Case Classification and Control (542), Office of Program Operations, Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006" and adding, in its place, "Case Operations and Compliance Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026".

PART 2673—NOTICE OF TERMINATION FOR MULTIEMPLOYER PLANS

42. The authority citation for part 2673 is revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1341a(f)(2).

§ 2673.2 [Amended]

43. Section 2673.2(d) is amended by removing "Office of Program Operations, Division of Case Classification and Control (542), Pension Benefit Guaranty Corporation, Room 5300A, 2020 K Street NW., Washington, DC 20006" and adding, in its place, "Case Operations and Compliance Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026".

PART 2674—NOTICE OF INSOLVENCY

44. The authority citation for part 2674 is revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1426(e).

§ 2674.6 [Amended]

45. Section 2674.6 is amended by removing "Case Classification and Control Division (542), Insurance Operations Department, Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006" and adding, in its place, "Case Operations and Compliance Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026".

PART 2675—POWERS AND DUTIES OF PLAN SPONSOR OF PLAN TERMINATED BY MASS WITHDRAWAL

46. The authority citation for part 2675 is revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1341a, 1441.

§ 2675.2 [Amended]

47. Section 2675.2(b) is amended by removing "Case Classification and Control Division (25400), Insurance Operations Department, Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006" and adding, in its place, "Case Operations and Compliance Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026".

PART 2677—PROCEDURES FOR PBGC APPROVAL OF PLAN AMENDMENTS

48. The authority citation for part 2677 is revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1400.

§ 2677.2 [Amended]

49. Section 2677.2(c) is amended by removing "Case Classification and Control Division (542), Insurance Operations Department, Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006" and adding, in its place, "Case Operations and Compliance Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026".

Issued in Washington, DC, on this 23rd day of November 1993.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 93–29267 Filed 11–29–93; 8:45 am]

BILLING CODE 7708–01–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 500

Foreign Assets Control Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule; amendments.

SUMMARY: This rule amends the Foreign Assets Control Regulations to announce the availability of specific licenses authorizing on a case-by-case basis the provision of training and orientation services by U.S. entities to Vietnamese nationals.

EFFECTIVE DATE: November 30, 1993.

FOR FURTHER INFORMATION CONTACT: Steven I. Pinter, Chief of Licensing, tel.: 202/622–2480, or William B. Hoffman, Chief Counsel, tel.: 202/622–2410, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Electronic Availability: This document is available as an electronic file on *The Federal Bulletin Board* the day of publication in the **Federal Register**. By modem dial 202/512–1387 or call 202/512–1530 for disks or paper copies. This file is available in Postscript, WordPerfect 5.1 and ASCII.

Background: The Office of Foreign Assets Control ("FAC") is amending the Foreign Assets Control Regulations, 31 CFR part 500 (the "Regulations"), to add § 500.575, announcing the availability of specific licenses authorizing the provision of training and orientation services by U.S. companies to Vietnamese nationals. Upon the issuance of a specific license, Vietnamese nationals may participate in general orientation programs in the United States or a third country concerning particular industries or commercial processes, or receive training with regard to the maintenance and operation of specific equipment and related technical data both of which are eligible for export under general license to Country Group Y as set forth in Supplement No. 1 to part 770 of the Export Administration Regulations, 15 CFR parts 768–799, administered by the Bureau of Export Administration of the U.S. Department of Commerce. Training with respect to the design and manufacture of equipment will not be authorized. Section 500.566 is also being revised to permit the payment of travel and maintenance expenses on behalf of Vietnamese nationals authorized to participate in such programs. It is anticipated that this

licensing policy will better enable U.S. companies to establish contacts with Vietnamese nationals and organizations to facilitate future commercial transactions at such time as the Vietnam embargo is modified to permit such transactions.

Because the Regulations involve a foreign affairs function, the Executive order on regulatory review and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply.

List of Subjects in 31 CFR Part 500

Services, Travel restrictions, Vietnam.

For the reasons set forth in the preamble, 31 CFR part 500 is amended as set forth below:

PART 500—FOREIGN ASSETS CONTROL REGULATIONS

1. The authority citation for part 500 continues to read as follows:

Authority: 50 U.S.C. App. 1–44; E.O. 9193, 3 CFR, 1938–1943 Comp., p. 1174; E.O. 9989, 3 CFR, 1943–1948 Comp., p. 748.

Subpart E—Licenses, Authorizations and Statements of Licensing Policy

2. Section 500.566 is amended by revising the section heading, by amending paragraph (a) introductory text to revise "paragraph (b)" to read "paragraph (c) of this section", by redesignating paragraph (b) as paragraph (c) and revising it, and by adding new paragraph (b), to read as follows:

§ 500.566 Certain transactions authorized on behalf of designated nationals incident to their travel and maintenance expenses.

* * * * *

(b) Except as provided in paragraph (c) of this section, the following transactions are authorized on behalf of nationals of Vietnam when directly related to the orientation and training of such nationals in a third country pursuant to § 500.575:

(1) All transactions ordinarily incident to travel between Vietnam and a third country, except transactions involving a carrier that is owned, controlled, or chartered by Vietnam, or a carrier that is owned or controlled by a person subject to the jurisdiction of the United States with respect to flights into or out of Vietnam;

(2) All transactions ordinarily incident to travel and maintenance within such third country, including payment of living expenses and the acquisition of goods for personal use;

(3) Normal banking transactions involving foreign currency drafts, traveler's checks, or other instruments negotiated incident to travel and maintenance in such third country.

(c) This section does not authorize any debit to a blocked account.

3. Section 500.575 is added to read as follows:

§ 500.575 Certain services to Vietnamese nationals authorized.

(a) Specific licenses may be issued on a case-by-case basis for the provision in the United States or a third country of business orientation or training services to Vietnamese nationals. The orientation or training program may pertain only to industrial or commercial processes, or to specific equipment and related technical data both of which are eligible for export under a general license to Country Group Y, as set forth in Supplement No. 1 to part 770 of the Export Administration Regulations, 15 CFR parts 768–799. Licenses issued pursuant to this section will not authorize Vietnamese participation in orientation and training programs with respect to specific equipment and related technical data that may not be exported under a general license to Country Group Y pursuant to the Export Administration Regulations. Training programs may involve instruction on the maintenance or operation of a particular product, but may not involve instruction in a product's design or manufacture.

Note: The transfer of mass-market software and certain technical data eligible for export to most destinations under General License GTDU to Vietnamese nationals may require additional authorization from the U.S. Department of Commerce pursuant to the Export Administration Regulations.

(b) Transactions directly incident to the travel and maintenance expenses of the Vietnamese nationals for purposes of orientation or training programs are authorized pursuant to § 500.566. Payment of salaries or other fees to Vietnamese nationals participating in orientation or training programs is not authorized. (c) Applications for specific licenses should be submitted by the orientation or training program sponsor and should include a full description of the program to be offered, including the participants, the identity of their employers, and the capacities in which the participants are employed.

Dated: July 13, 1993.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: July 31, 1993.

Ronald K. Noble,

Assistant Secretary for Enforcement.

[FR Doc. 93–29241 Filed 11–24–93; 11:18 am]

BILLING CODE 4810–25–F

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 290

[DCAA 5410.8]

Defense Contract Audit Agency (DCAA) Freedom of Information Act Program

AGENCY: Office of the Secretary, Department of Defense (DOD).

ACTION: Final rule.

SUMMARY: The Defense Contract Audit Agency is amending its implementation of the Freedom of Information Act of 1974, as amended (5 U.S.C. 552) (32 CFR part 290). This administrative change updates the availability of publications cited in the miscellaneous section of Appendix B to part 290.

DATES: This change will be effective January 25, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Dave Henshall, (703) 274–4400.

SUPPLEMENTARY INFORMATION: The Agency's final rule was published in the **Federal Register** on Tuesday, October 1, 1991 (56 FR 49685). It was amended on November 7, 1991 (56 FR 56932), April 27, 1992 (57 FR 15254), and July 13, 1992 (57 FR 30904).

List of Subjects in 32 CFR Part 290

Freedom of Information.

Accordingly 32 CFR part 290 is amended as follows:

PART 290—DEFENSE CONTRACT AUDIT AGENCY (DCAA) FREEDOM OF INFORMATION ACT PROGRAM

1. The authority citation for 32 CFR part 290 continues to read as follows:

Authority: 5 U.S.C. 552.

Appendix B to part 290 [Amended]

2. Appendix B to part 290 is amended by revising the entry VIRGINIA, paragraph (a) and reserving paragraph (b) to read as follows:

(a) Miscellaneous.

(1) The following publications may be obtained from the Defense Contract Audit Agency, ATTN: CMO, Cameron Station,

Alexandria, VA 22304–6178, (703) 274–5821. Since these materials are publicly available, requesters need not invoke the Freedom of Information Act to obtain copies of the publications selected.

(i) Contractor Alpha Listing. This product identifies contractors audited by the Agency by name, address, city, state, zip code, and telephone number. The alpha listing is available both in a 8½" × 11" hard copy version or a 3½" disk set. The disk version includes instructions for manipulating data to specific sorts (e.g. contractors by state, etc. * * *).

(ii) DCAAI 5025.2, Index of Numbered Publications, lists Agency publications.

(iii) DCAAP 1421.3, Catalog of Training Courses, lists training courses available from the Defense Contract Audit Institute, Specific training courses are also available.

(2) Although the following publication is publicly available, the memorandums listed may or may not be subject to withholding under the Freedom of Information Act. Those memorandums marked with an "(R)", denoting releasable (e.g. 94–PFD–063R)), are available from the above address. However, Memorandums for Regional Directors (MRDs) marked "(NR)", meaning not releasable, cannot be obtained from this source. Requests for (NR) MRDs should be sought under the auspices of the Freedom of Information Act from the Defense Contract Audit Agency, ATTN: CMR, Cameron Station, Alexandria, VA 22304–6178.

(i) DCAAI 5025.13, Index of DCAA Memorandums for Regional Directors (MRDs), lists numbered memorandums pertaining to Agency policy, procedure, and informational topics.

(3) Requesters should plainly display the words "Freedom of Information Act Request" on the lower left hand corner of the envelope to ensure prompt handling.

(b) [Reserved].

Dated: November 24, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–29283 Filed 11–29–93; 8:45 am]

BILLING CODE 5000–04–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD3–3–5904; A–1-FRL–4797–6]

Approval and Promulgation of Air Quality Implementation Plans; Maryland–COMAR 26.11.19.15C; Standards for Adhesive Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maryland. This revision establishes and requires the emission standards for adhesive application. This revision contains additions and corrections to volatile organic compound (VOC) regulations applicable in the Baltimore and Washington, DC nonattainment areas in Maryland, including Baltimore City and Anne Arundel, Baltimore, Carroll, Harford, Howard, Montgomery, and Prince George's Counties. The intended effect of this action is to approve Maryland's revised VOC regulations to correct deficiencies in Maryland's ozone SIP. This action is being taken in accordance with the SIP submittal and the provisions in the Clean Air Act (the Act) regarding SIP submittal and approval.

EFFECTIVE DATE: This rule will become effective on December 30, 1993.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; Jerry Kurtzweg ANR–443, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: Ms. Maria A. Pino at: (215) 597–9337.

SUPPLEMENTARY INFORMATION: On February 16, 1993 (58 FR 8565), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland. The NPR proposed approval of revisions to Maryland's VOC reasonably available control technology (RACT) regulations, pursuant to section 182(a)(2)(A) of the Act, U.S.C. 7511(a)(2)(A). The formal SIP revision was submitted by Maryland on April 5, 1991. Specifically, these changes pertain to COMAR 26.11.19.15C, Standards for Adhesive Application.

EPA proposed approval of COMAR 26.11.19.15C under a procedure known as parallel processing. The NPR for this rulemaking was published while Maryland was in the process of correcting an administrative error found in the version of COMAR 26.11.19.15C contained in the official April 5, 1991 SIP revision submittal. Maryland has adopted the correction to this administrative error, and formally submitted it to EPA as a SIP revision on January 18, 1993.

This action is approving into the Maryland SIP the addition of COMAR 26.11.19.15C as contained in Maryland's April 5, 1991 submittal, and the correction to COMAR 26.11.19.15C contained in Maryland's January 18, 1993 submittal. Both the April 5, 1991 and January 18, 1993 submittals contained revisions to other Maryland SIP regulations. These other SIP revisions are the subject of separate rulemaking actions. The provisions of COMAR 26.11.19.15C are summarized as follows:

(a) The adoption of a RACT regulation for honeycomb core installations which apply VOC-containing adhesive to flat aluminum sheets, which are then corrugated to produce a honeycomb structure. Honeycomb core manufacturing is a source category for which EPA has not issued a CTG, a so called "non-CTG" source category. This non-CTG RACT regulation: (1) Requires installations discharging >50 lbs VOC/day (9.125 tons/year (TPY)) to use adhesive with ≤5.8 lbs VOC/gal as applied (minus water); and (2) contains a 200 lbs VOC/day (36.5 TPY) emissions cap (COMAR 26.11.19.15C(1));

(b) Adoption of regulations applicable to footwear manufacturing, including a maximum allowable VOC emission level (0.5 lbs VOC/pair of boots) for specialty footwear manufacturers and a requirement to maintain records and submit monthly reports to Maryland on total materials used and VOC emissions (COMAR 26.11.19.15C(2));

(c) Adoption of a non-CTG RACT regulation for spiral tube winding and impregnating sources. This regulation prohibits spiral tube winding and impregnating installations from: (1) Using adhesive with >5 lbs VOC/gal as applied (minus water) to manufacture specialty spiral tubes, (2) using adhesive with >2.9 lbs VOC/gal as applied (minus water) to manufacture non-specialty spiral tubes, (3) discharging >200 lbs VOC/day (36.5 TPY) from any specialty spiral tube winding, or (4) using resin with >4 lbs VOC/gal as applied (minus water) (COMAR 26.11.19.15C(3)); and

(d) The adoption of a general emission standard for adhesive applications not regulated under COMAR 26.11.19.15A-C or COMAR 26.11.19.03 to .14. This regulation prohibits all adhesive application installations at the same source from discharging >3.8 lbs VOC/gal of adhesive applied (minus water) unless emissions are reduced by 80% overall if they discharge >50 lbs VOC/day (9.125 TPY) and are not otherwise regulated (COMAR 26.11.19.15C(4)).

Other specific requirements of COMAR 26.11.19.15C, Standards for Adhesive Application, and the rationale for EPA's action are explained in the NPR and the accompanying technical support document (TSD) and will not be restated here. No public comments were received on the NPR. A detailed

evaluation of these SIP revisions has been performed by EPA in a TSD for this action. A copy of this TSD is available upon request from the EPA Regional Office listed in the ADDRESSES section of this document.

Final Action

EPA is approving the addition of COMAR 26.11.19.15C, Standards for Adhesive Application, as a revision to the Maryland ozone SIP. This SIP revision was submitted to EPA on April 5, 1991. EPA is also approving a revision to COMAR 26.11.19.15C formally submitted on January 18, 1993.

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

This action has been classified as a Table 2 Action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions from the requirement of section 3 of Executive Order 12291 for a period of two years. U.S. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on U.S. EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action, pertaining to the addition of COMAR 26.11.19.15C, Standards for Adhesive Application, into the Maryland ozone SIP, must be filed in the United States Court of Appeals for the appropriate circuit by January 31, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: September 10, 1993.

W.T. Wisniewski,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart V—Maryland

2. Section 52.1070 is amended by adding paragraph (c)(98) to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(98) Revisions to the Maryland State Implementation Plan submitted on April 5, 1991 and amended on January 18, 1993 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Letters of April 5, 1991 and January 18, 1993 from the Maryland Department of the Environment transmitting additions and revisions to Maryland's State Implementation Plan, pertaining to volatile organic compound regulations in Maryland's air quality regulations, Code of Maryland Administrative Regulations (COMAR) 26.11.

(B) The addition of COMAR 26.11.19.15C (proposed as COMAR 10.18.19.15C), Standards for Adhesive Application, adopted by the Secretary of Health and Hygiene on June 10, 1987, effective August 10, 1987;

(C) Amendments to COMAR 26.11.19.15C adopted by the Secretary of the Environment on March 9, 1991, effective May 8, 1991; and

(D) Amendments to COMAR 26.11.19.15C(4) adopted by the Secretary of the Environment on January 18, 1992, effective February 15, 1993.

(ii) Additional material.

(A) Remainder of April 5, 1991 and January 18, 1993 State submittals pertaining to COMAR 26.11.19.15C, Standards for Adhesive Application.

(B) Letter of April 17, 1992 from the Maryland Department of the Environment clarifying the intent of its April 5, 1991 letter transmitting revisions and additions to Maryland's State Implementation Plan.

(C) Letter of July 10, 1992 from the Maryland Department of the Environment clarifying Maryland's intent regarding COMAR 26.11.19.15C(4) and stating that Maryland was working to correct the administrative error in COMAR 26.11.19.15C(4) contained in the April 5, 1991 submittal.

[FR Doc. 93–29236 Filed 11–29–93; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter 1

[PR Docket No. 90–34; FCC 93–439]

Waivers of the Commission's Rules for Applicants in the Specialized Mobile Radio Service

AGENCY: Federal Communications Commission.

ACTION: Final rule; Petition for reconsideration.

SUMMARY: On October 21, 1992, Motorola, Inc. (Motorola) filed a Petition for Partial Further Reconsideration of the Memorandum Opinion and Order (MO&O) adopted August 4, 1992, in this proceeding. Specifically, Motorola sought reconsideration of the standard the Commission uses to evaluate short-spacing waiver requests in the Specialized Mobile Radio service. The Commission found that Motorola's concerns had been specifically addressed on reconsideration in the MO&O and, therefore, dismissed Motorola's petition.

EFFECTIVE DATE: September 15, 1993.

FOR FURTHER INFORMATION CONTACT: Steve Sharkey, Private Radio Bureau, (202) 632–7125.

SUPPLEMENTARY INFORMATION:

1. This item was adopted on September, 15, 1993, and released October 27, 1993. On October 21, 1992, Motorola, Inc. (Motorola) filed a Petition for Partial Further Reconsideration (Petition) of the Memorandum Opinion and Order (MO&O) adopted August 4, 1992, in this proceeding.[1] The MO&O affirmed our Report and Order (R&O) adopted July 19, 1991,[2] codifying two methods of short-spacing Specialized Mobile Radio (SMR) facilities and clarifying the standard we use to evaluate short-spacing waiver requests.[3] Motorola seeks reconsideration of this standard. For the following reasons we dismiss Motorola's petition.

[1] Memorandum Opinion and Order, PR Docket No. 90–34, 57 FR 43408, September 21, 1992.

[2] Report and Order, PR Docket No. 90–34, 56 FR 41467, August 21, 1991.

[3] See 47 CFR 90.621(b) identifying the co-channel distance separation criteria for systems operating on SMRS Category frequencies.

2. Motorola petitions us to reconsider the short-spacing waiver policy for SMR stations based upon the 40/30 dBu contour protection ratio. The MO&O addressed this very issue, and affirmed the waiver standard established in the R&O.[4] On reconsideration, we did not modify the rule adopted by the R&O. Therefore, pursuant to § 1.429(i) of the Commission's Rules, 47 CFR 1.429(i), we dismiss Motorola's Petition as repetitious.[5] We note, however, that on March 11, 1993, we adopted a Notice of Proposed Rule Making in PR Docket No. 93–60,[6] proposing modification of the co-channel protection criteria for all 800 MHz and 900 MHz systems regulated under 47 CFR part 90, subpart S. Because Motorola's Petition contains information relevant to the disposition of PR Docket No. 93–60, we will treat the Petition as a comment to be incorporated into the record of PR Docket No. 93–60.[7]

3. Accordingly, pursuant to the authority contained in 47 CFR 1.429(i), it is ordered that the Petition for Partial Further Reconsideration is dismissed as repetitious.

4. It is further ordered that this proceeding is terminated.

5. For further information concerning this Order, contact Steve Sharkey, Land Mobile and Microwave Division, Private Radio Bureau, (202) 634–2443, or Freda Lippert Thyden, Land Mobile and Microwave Division, Private Radio Bureau, (202) 632–7125.

Federal Communications Commission.

William F. Caton.

Acting Secretary.

[FR Doc. 93–29183 Filed 11–29–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 1

[FCC 93–448]

Format Requirements for Pleadings and Documents

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its rules to establish a uniform standard for Commission filings. The intended effect will ensure that parties do not circumvent the page limitations contained in other parts of the Commission's Rules by utilizing printing reduction processes.

EFFECTIVE DATE: November 30, 1993.

FOR FURTHER INFORMATION CONTACT: A. Holly Berland, Office of General Counsel, Federal Communications Commission, (202) 254–6530

SUPPLEMENTARY INFORMATION:

Order

In the matter of Amendment of § 1.49 of the Commission's Rules.

Adopted: September 17, 1993.
Released: September 29, 1993.

1. The Commission on its own motion is issuing this Order to amend § 1.49 of its rules. Section 1.49 specifies the general format requirements to which most pleadings and other documents filed with the Commission must conform. By this Order, we are amending § 1.49 to require that Commission filings utilize 10- or 12-point type print.

2. Since by definition 10- and 12-point type print consists of 10 and 12 characters per inch, respectively, adoption of the type print requirement will ensure that the page limitations for filings, contained in other sections of the Commission's rules, will not be circumvented by the use of printing reduction processes. The type print requirement adopted here also is consistent with that relating to briefs contained in § 1.50 of the Commission's rules and thus will establish a uniform standard for Commission filings.

3. Accordingly, pursuant to sections 4(i), 4(j) and 303(r) of the Communications Act of 1934, as amended, *it is ordered*, That part 1 of the Commission's Rules is amended as set forth below, effective upon publication in the **Federal Register**. This proceeding involves agency practice and procedure, and thus the notice and comment effective date provisions of the Administrative Procedure Act are inapplicable. See 5 U.S.C. 553(b)(A), (d).

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Change

Part 1 of Chapter 1 of title 47 of the Code of Federal Regulations is amended as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303: Implement, 5 U.S.C. 552 and 21 U.S.C. 853a, unless otherwise noted.

2. Section 1.49 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 1.49 Specifications as to pleadings and documents.

(a) All pleadings and documents filed in any proceeding shall be on A4 (21 cm × 29.7 cm) or 8.5 in × 11 in (21.6 cm × 27.9 cm) paper, and shall be typewritten or prepared by mechanical processing methods, in 10- or 12-point type. * * *

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[FR Doc. 93–29184 Filed 11–29–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 76

[MM Docket No. 92–266; FCC 93–519]

Cable Act of 1992—Rate Regulation

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: By this *Third Report and Order*, the Commission amends its Rules to require cable operators facing regulation of both the basic and cable programming services tiers to select the same method of initial rate regulation for both tiers. Specifically, the Commission will require that if an operator subject to rate regulation for the first time selects the benchmark rate-setting approach for one tier, the operator must also adopt the benchmark approach for all other tiers that become subject to regulation in the same year. This requirement is necessary to avoid inconsistent rate-setting methods of rate regulation during the initial rate-setting process.

EFFECTIVE DATE: November 30, 1993.

FOR FURTHER INFORMATION CONTACT: Amy Zoslov, (202) 632–3922, Mass Media Bureau, or Kathleen O'Brien Ham, (202) 632–7792.

SUPPLEMENTARY INFORMATION:

Synopsis of Third Report and Order

I. Introduction

1. By this Third Report and Order ("*Third R & O*") we amend § 76.922(b) of the Commission's Rules to require cable operators facing regulation of both the basic and cable programming

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[4] MO&O at 6070.

[5] For other Commission decisions dismissing petitions for reconsideration as repetitious, See Order on Further Reconsideration, CC Docket No. 85–166, 6 FCC Rcd 76 (1991), and Order, MM Docket No. 87–121, 7 FCC Rcd 2954 (1992).

[6] 58 FR 19397, April 14, 1993.

[7] Subsequent to adoption of this Order a Report and Order was adopted in PR Docket No. 93–60. Report and Order, PR Docket No. 93–60, 58 FR 53431, October 15, 1993.

services tiers to select the same method of initial rate regulation for both tiers.[1] Specifically, the *Third R & O* will require that if an operator subject to rate regulation for the first time selects the benchmark rate-setting approach for one tier, the operator must also adopt the benchmark approach for all other tiers that become subject to regulation in the same year.[2] Similarly, if an operator chooses to justify rates for one regulated tier based upon a cost-of-service showing, the operator must also seek a cost-of-service determination on all other regulated tiers that same year. This requirement of applying a consistent rate evaluation approach across tiers is taken as a precautionary measure to prevent operators from engaging in retiering and cost-shifting strategies during the initial rate-setting process that would undermine the tier neutral rate-setting principles underlying the benchmark regulatory framework.[3]

II. Background

2. In the *Rate Order*, we established a benchmark and price cap approach as the primary method for setting the rates of regulated cable services.[4] We based our adoption of this regulatory regime on an evaluation of its advantages over traditional cost-of-service regulation. Under the benchmark approach, existing rates for cable service are compared to a benchmark that reflects the rates charged by cable systems that are subject to effective competition, with a given number of subscribers, regulated channels, and satellite-delivered signals. Once initial rates are determined by comparison to the benchmark, rates are governed on a going-forward basis by a price cap mechanism. The price cap permits annual adjustments for inflation and a recovery of increases in external costs, including programming costs, costs of franchise requirements, taxes, and franchise fees. As a "backstop" to the benchmark/price cap approach, we established an opportunity for cable operators to justify rates above benchmark or capped levels based on costs. In this regard, we recently sought comment on adoption of uniform cost-of-service standards for application to this alternative method of rate determination.[5]

3. The Commission also determined in the *Rate Order* that the regulatory framework for rate regulation based on the benchmark approach should be "tier neutral." In other words, we stated that we would apply the same substantive standard for calculating reasonable rates for both the basic and cable programming services tiers. The practical outcome of this approach is that it achieves a permitted charge per channel that, prior to adjustments for inflation and external costs, is the same for all tiers of regulated service. We found this approach to be preferable to one that would, for example, suppress rates for the basic service tier and allow higher earnings for cable programming services tiers. In this regard, we determined that the potential benefits of a low-priced basic tier were outweighed by the fact that such an approach would create incentives for cable operators to move programming to higher tiers where they would charge higher rates to the detriment of subscribers. We also indicated that different rate standards for the basic and cable programming services tiers could significantly increase the complexity of rate regulation.[6]

4. In the *Rate Order*, we did not specify whether a cable operator is permitted to choose the cost-of-service approach for one tier and the benchmark approach for another regulated tier, or whether parallel treatment for both tiers is required in setting initial rates. Several parties identified this as a problem on reconsideration for our *Rate Order* and we issued a *Third Further Notice of Proposed Rulemaking* ("*Third Further NPRM*") seeking comment on the matter.[7] Specifically, we requested comment on whether cable operators should be permitted to choose the cost-of-service approach for one regulated tier of cable service and the benchmark approach for another regulated cable service tier, or whether consistent treatment for both tiers is required in setting initial rates. We tentatively concluded that cable operators should be required to elect the same regulatory approach for all regulated tiers. Thus, if a system became subject to regulation at the local level, and sought to justify its basic service rates using the benchmark system, the reasonableness of its cable programming services rates would also be based on the benchmark, if the Commission were considering a complaint filed against those rates. In reaching this tentative conclusion, we sought to prevent cable operators from moving more expensive programming services from the benchmark-regulated tier to the tier regulated by a cost-of-service showing and ultimately recovering more than compensatory rates. We tentatively concluded that this was the best way to preserve the tier neutral approach to rate setting adopted in the *Rate Order*.[8]

5. We also requested comment on what procedural requirements, if any, we should adopt to provide for coordination between local franchising authorities and the Commission in the event that a cable operator chooses to make concurrent cost-of-service showings before each jurisdiction. We inquired as to whether we should require that the determination of one jurisdiction will govern, or be given considerable weight in setting rates for the tier subject to the oversight of the other jurisdiction. We solicited comment on whether cable operators should be allowed to switch from benchmarking to cost-of-service and *vice-versa*. We also questioned whether we should impose a specific timetable for any sort of "switching" activity that is allowed.[9]

III. Comments

6. In response to the *Third Further NPRM*, cable operator commenters uniformly oppose enforcement of a consistent rate approach for all regulated tiers.[10] They make four primary arguments in support of their position. First, they argue that allowing

[1] *See* the rule amendments.

[2] Thus, an operator that becomes subject to basic rate regulation on December 1, 1993 and selects the benchmark rate-setting approach must also choose the benchmark approach if the operator becomes subject to regulation of its non-basic tiers at any time up until December 1, 1994. Upon expiration of this one year time frame after initial rates have been set, the operator can adopt different rate determination methods for its service tiers.

[3] In order to avoid the application of inconsistent rate-setting methods by operators during this early phase of rate regulation when initial permitted per channel charges are being established, we find the need to make the rule changes adopted herein operative immediately. Accordingly, we find good cause for making our amendments to Section 76.922(b) effective upon publication in the Federal Register. 5 U.S.C. Section 553(d)(3).

[4] *See Report and Order and Further Notice of Proposed Rulemaking* in MM Docket No. 92–266, FCC 93–177, 8 FCC Rcd 5631 (1993) ("*Rate Order*"), 58 FR 29736, May 21, 1993.

[5] *See Notice of Proposed Rulemaking* in MM Docket No. 93–215, FCC 93–353 (released July 16, 1993), 58 FR 40762 (July 30, 1993) ("*Cost-of-Service Notice*").

[6] The benchmark formula is based on prices that are averaged across all tiers of regulated services. We indicated in the *Rate Order* that a "tier neutral" per channel rate calculated as an average of charges across all tiers and compared to the benchmark is simpler for cable operators and regulators to administer and would discourage the shifting of programming services away from the basic services tier. *Rate Order*, 8 FCC Rcd at 5759–60 and n. 501.

[7] *See Third Further Notice* in MM Docket No. 92–266, FCC 93–428 (released Aug. 27, 1993), 58 FR 46737 (Sept. 2, 1993).

[8] *Id.* at paras. 146–152. *See also Rate Order*, 8 FCC Rcd at 5759.

[9] *Third Further NPRM* at paras. 146–52.

[10] *See* Appendix for a complete list of commenting parties.

operators to choose between the different rate-setting methods for the different tiers does not promote "gaming" because the Commission can consider overall costs and rates for all regulated services in setting rates for the cable programming services tier. Second, they contend that the Commission's price cap rules provide a disincentive to shift costs between tiers. Third, they argue that consistent rate treatment abandons the Cable Act's dichotomy between local and federal regulation of the different tiers. Fourth, they believe that requiring a consistent rate-setting approach will promote more cost-of-service showings for the tiers for which the cable operator would otherwise have adopted the benchmark approach.[11]

7. Holding the opposite view on this issue, municipalities and one telephone company support enforcement of a consistent rate-setting methodology. These commenters argue that such a requirement will reduce hidden costs passed on to subscribers due to "gaming"; lead to fewer cost-of-service proceedings, which will only be initiated if the benchmarks overall are inadequate; and promote the same initial permitted per-channel rates on each tier.[12]

8. Commenters' suggestions on procedural requirements were varied in nature. These suggestions include: (1) Consolidating all cost-of-service hearings at the Commission; (2) requiring the sharing of cost-of-service data between the franchising authorities and the Commission; (3) allowing either the local franchising authority or the Commission to use the other jurisdiction's rate determination as binding or informative; and (4) requiring notification to all other local jurisdictions in which the same company has initiated a cost-of-service proceeding for the purpose of consolidation.[13] The commenters generally advocate imposing some type of time limitation on a consistent rate structure requirement, suggesting that cable operators should be able to switch from one rate-setting method to another after a period of six months[14], one year[15], or whenever there is a reasonable basis for doing so.[16]

IV. Decision

9. After carefully considering the record before us, we affirm our tentative conclusion that cable operators facing regulation of the basic and cable programming services tiers should be required to select the same method of initial rate-setting for both tiers. Thus, if a cable operator's basic service tier becomes subject to regulation at the local level (or in some instances, at the federal level), and the cable operator selects the benchmark approach, it must also adopt the benchmark approach if its cable programming services tier becomes subject to a complaint at the Commission within the same year. Similarly, if the cable operator chooses to make a cost-of-service showing in response to regulation of the basic service tier, then the operator must also make a cost-of-service showing in response to a cable programming services complaint filed within that year. On balance, we believe this approach is a necessary part of the tier neutral and rate averaging principles built into the benchmark system, particularly because it eliminates the incentive for cable operators to shift costs among tiers to the detriment of consumers.

10. Requiring operators to select the same rate determination method for all regulated tiers when initial rates are being set is necessary because it bolsters our ability to ensure that subscribers to all regulated tiers of service pay reasonable rates. Asymmetric treatment of the two tiers would hamper the ability of both local franchising authorities and the Commission to apply the benchmark's permitted per channel rate in a consistent manner across tiers. In particular, operators able to choose a different rate-setting approach for each of its cable services tiers could selectively apply the benchmark in a manner that would enable the operator to charge higher overall rates than would be allowed if either the benchmark or the cost-of-service approach had been applied consistently across all program tiers. Specifically, an operator could retier its services and place its most expensive programming on the tier regulated by a cost-of-service determination. The operator would then be allowed to charge a per channel rate for the low cost tier based on the benchmark (which is an average rate) that actually far exceeds its costs for that tier (and, thus, the rate it would be able to charge under a cost-of-service showing). At the same time, the operator may be able to charge a higher-than-benchmark rate for the other service tier through a cost-of-service showing, based on its higher costs for that tier. The end result would be rates that exceed the reasonableness standard set forth in the 1992 Cable Act.[17] Thus, we conclude that a requirement that operators apply consistent rate-setting approaches across tiers is needed to uphold the concept of tier neutrality and prevent cost-shifting, thereby making the process of setting initial benchmark rates work effectively and as intended.[18] We will, however, review this policy after 18 months to determine whether it is necessary and appropriate to serve the purposes for which we are adopting it.

11. Additionally, we note that we are restricting our requirement that operators must use the same rate-setting method to one year from the date that the operator first becomes subject to regulation at either the local or federal level. Thus, after the expiration of its first year of initial rate regulation on a service tier, an operator is free to adopt different rate determination methods for its other service tiers. We take this approach for two reasons. First, we have given operators the ability to use either of two rate-setting methodologies on the possibility that there may be some systems for which benchmark rates may not provide adequate recompense because of that system's particular cost structure. Any system's cost structure

[11] *See e.g.*, Comments of Cablevision Industries Corp., *et al.* ("Joint Parties") at 11–14; National Cable Television Association ("NCTA") at 15–17; Tele-Communications, Inc. ("TCI") at 4–9; Continental Cablevision ("Continental") at 2–5; Media General Cable of Fairfax County, Inc. ("Media General") at 2–3; Time Warner Entertainment Co., L.P. ("Time Warner"); Falcon Cable TV, *et al.* ("Falcon") at 14–17; Cable Operators and Associations ("Cable Operators") at 6. *See also* Reply Comments of Continental at 11–12; Joint Parties at 10–12; Time Warner at 6–7.

[12] *See, e.g.*, Comments of Municipal Franchising Authorities ("MFA") at 3–7; Austin, Texas, *et al.* ("Coalition") at 9–13; National Association of Telecommunications Officers and Advisors, *et al.* ("NATOA") at 11–12; New York State Commission on Cable Television ("New York") at 5–7; GTE Service Corp. ("GTE") at 10–11. *See also* Reply Comments of Coalition at 15–18; GTE at 7–10.

[13] *See e.g.*, Comments of MFA at 7–8; Massachusetts Community Antenna Television Commission ("MCATC") at 8; NATOA at 12–14. *See also* Reply Comments of Joint Parties at 13–14; KBLCOM, *et al.*, at 1–3; Viacom International, Inc. at 9–11.

[14] Comments of Falcon at 18.

[15] *See* Comments of NATOA at 11 n.6.

[16] *See, e.g.*, Comments of Coalition at 11–12; Time Warner at 10.

[17] Indeed, in the *First Order On Reconsideration*, we stated that one reason for the adoption of tier neutrality was to eliminate any incentive for operators to move services to other tiers where they could charge relatively higher prices without necessarily corresponding higher costs. *See First Order on Reconsideration* in MM Docket No. 92–266, FCC 93–428 (58 FR 46718, September 2, 1993) (released August 27, 1993) at para. 31. *See also Rate Order* at para. 196.

[18] We have adopted similar safeguards to address concerns of cost-shifting in other regulatory contexts. *See, e.g., Policy and Rules Concerning Rates for Dominant Carriers*, 5 FCC Rcd 6786, 6819 (para. 271) 1990, *recon.*, 6 FCC Rcd 2537 (1991), *aff'd sub nom. National Rural Telecom Ass'n v. FCC*, 988 F.2d 174 (D.C. Cir. 1993) (Commission adopted "all-or-nothing" rule to eliminate incentive for local exchange carriers to shift costs from affiliates subject to price cap regulation to rate of return affiliates).

may vary substantially over time, however, so that a rate-setting methodology that is appropriate at the initial date of regulation for both tiers of service may not be appropriate much later for both tiers of service. Moreover, after the initial rates have been set for a tier, those rates will change over time, pursuant to the going forward rules governing rate increases. As this occurs, our concern for tier neutrality in rates and rate-setting will likely not be as acute as in this period of transition to regulation. We recognize that over time, the cost structure of cable services from tier to tier may legitimately evolve to the point where consistent rate treatment across tiers might be overly restrictive. Accordingly, we have decided to grant cable operators the flexibility to use different rate-setting methods across tiers after the passage of one year of initial rate regulation so that bona fide structural and operational changes may be made as rate-making proceeds.

12. We take this opportunity to respond to the specific arguments that cable operators have made in support of differential treatment of basic and cable programming tiers. The first is that a tier-neutral approach is not necessary to achieve the goals of rate regulation. Specifically, cable commenters contend that as long as regulators are entitled to consider a cable system's overall costs and rates for all regulated services, then operators will be unable to shift costs from tier to tier.[19] One commenter suggests that the Commission should require any operator who elects cost-of-service treatment of the non-basic tier to demonstrate that its overall return for both basic and cable programming services is reasonable.[20]

13. We acknowledge that, in reviewing the cost-of-service showings made by operators for cable services, regulators will need to examine how costs are allocated among the regulated tiers. We have adopted and are in the process of developing additional cost allocation rules that will help to accomplish this goal.[21] However, even with cost allocation rules in place, the Commission, in evaluating a cost-of-service showing for non-basic service, cannot call into question the rates charged for basic service without undermining the Cable Act's shared jurisdictional scheme. Basic tier rates generally are regulated by local franchising authorities. Therefore, in most instances, even where we uncover unreasonable cost-shifting, we could not compel the operators to justify their rates across all tiers and adjust them accordingly.[22]

14. The second argument made by cable commenters has to do with the creation of rules that remove incentives for cost-shifting. Specifically, cable commenters argue that they have no incentive to manipulate the rate process under the Commission's price cap regime. Specifically, they allege that since operators can pass through programming costs directly to subscribers as external to the benchmark rates, they can effectively recover such costs without having to shift them disproportionately to the tier regulated by cost-of-service.[23] They also observe that if an operator attempts to lower its programming costs on the basic tier, the Commission's external price cap adjustment rules require the operator to decrease the price of its basic service to reflect the reduction in costs.[24] Thus, operators believe it is not possible for them to manipulate costs between tiers under price cap rate regulation.

15. These arguments address the ability of operators potentially to manipulate the rate process in the context of our future price cap regime, but they do not address the probability that operators might engage in such practices now, while initial rates are being set. We believe that a tier-neutral approach is important to diminish any incentive or opportunity for operators to manipulate the initial rate-setting process to warrant the adoption of a requirement of consistent rate approaches as a solution to the problem. As the cable operators suggest, the future price cap regime may effectively prevent operators from shifting basic service programming costs to the non-basic tier. As we gain experience in rate regulation, we will reevaluate our position in light of these arguments. For the time being, however, we will require consistent rate approaches across tiers to guard against cost-shifting retiering strategies that subvert the initial rate-setting process.

16. We are also not persuaded that consistent rate treatment abandons the Cable Act's dichotomy between local and federal regulation of the different tiers, as cable operators allege. We have previously rejected the argument that the statute requires different substantive rate-setting standards.[25] As we have observed before, the Cable Act establishes different procedural regulatory schemes rather than a dichotomy of substantive rate standards for the regulation of service tiers. Accordingly, the statute's procedural dichotomy does not require that we allow cable operators to pick and choose substantive rate-setting standards.

17. Cable commenters also have not demonstrated that requiring consistent rate-setting across tiers will increase the number of cost-of-service showings made either at the Commission or at the local level. Indeed, other commenters contend the opposite.[26] We expect cable operators to submit cost-of-service showings in every case where such a showing is essential to ensure that systems are allowed to recover their costs plus a reasonable return. Furthermore, even if consistent rate treatment were to produce a greater number of cost-of-service proceedings, the preservation of the tier neutral benchmark system and the protection it affords subscribers (*i.e.*, elimination of the incentive for operators to shift costs), outweighs the administrative burden posed by such additional proceedings.

18. In essence, the cable operators urge us to allow them flexibility to pick and choose between benchmark and cost-of-service regulation in order to enable them to maximize total revenues derived from all regulated tiers. However, as we have noted previously in this docket, there is no "constitutional or statutory requirement that the Commission's regulatory scheme must enable operators to select the option that maximizes their

[19] Joint Parties Comments at 12; Continental Cablevision Comments at 4; Media General Comments at 3.

[20] Continental Cablevision Comments at 4.

[21] *See Cost-of-Service Notice supra* at note 5.

[22] If we required operators electing cost-of-service for the upper tier and benchmark for the lower tier to justify their overall return for both basic and cable programming services, as Continental Cablevision suggests, we would effectively be imposing a cost-of-service showing for both services. Not only would this be undermining the jurisdiction of the local franchising authority to regulate rates, but it would also be second-guessing the authority's benchmark analysis. The Cable Act vests in franchising authorities the primary responsibility to regulate basic rates and only in limited instances do we regulate basic rates. *See Rate Order* at para. 55.

[23] NCTA Comments at 16; TCI Comments at 8. We reject TCI's argument that the Commission's proposed solutions to the "gaming" problem come "dangerously close to taking editorial control over the placement of programming." TCI Comments at 8. To the extent that TCI raises First Amendment concerns, we have found that rate regulation under the 1992 Cable Act pursuant to content-neutral standards does not implicate the First Amendment. *See Memorandum Opinion and Order and Further Notice of Proposed Rulemaking* in MM Docket 92–266, 8 FCC Rcd at 5588 n. 30. (1993). *See also Daniels Cablevision, Inc. v. FCC*, Civil Action No. 92–2292, slip op. at 13 (D.D.C. Sept. 16, 1993) (holding that the rate regulation provisions of the 1992 Cable Act are compatible with the First Amendment).

[24] TCI Comments at 16.

[25] *See Rate Order*, 8 FCC Rcd at 5875–76; *First Order on Reconsideration* at paras. 31–36.

[26] *See supra* note 12.

financial position."[27] Moreover, as discussed above, the cable operators' proposal would undermine our policies regarding tier neutrality and cost shifting, which are designed to protect consumers from excessive rates. We therefore will require cable operators to use a consistent method of rate-setting for all regulated tiers during the first year of regulation.

19. For any cable operators that have become subject to regulation of basic or cable programming services and have filed rate justifications before the effective date of the amendment to Section 76.922(b) adopted herein, we will apply the following procedures. Where the cable operator has selected one rate-setting approach for one tier, the operator is bound to select the same rate-setting approach for all other tiers that become subject to regulation within one year of the date of initial regulation. Any such cable operator will have thirty (30) days from the effective date of this *Third R & O* to change a rate-setting justification filed prior to the effective date of this order. In such cases, the amended filing will govern initial rates as of the date it is filed. In this circumstance, the operator may rely, if it chooses, on its initial rate justification to justify its rates from September 1, 1993, (when potential refund liability would begin) until the date of its amended filing. Where a cable operator has already filed justifications for both basic and cable programming service tiers, and has selected different rate-setting approaches for different tiers of service, we will require such operators to establish consistent rate-setting methodologies for the period after the effective date of this order. Specifically, in such cases, the operator must refile within thirty (30) days of the effective date of this order, the rate-setting approach for one of the tiers, and this rate-setting election will govern initial rates for that tier as of the date it is filed. As in the first circumstance described above, cable operators who have filed inconsistent rate justifications may rely on those initial rate justifications to justify rates from September 1, 1993, until the date of their amended filings.

20. Finally, because we are not requiring consistent rate justification indefinitely, we perceive no need to adopt rules today to govern the sharing of cost-of-service data among franchising authorities or between franchising authorities and the Commission. Rather, as we stated in the *Rate Order* at para. 149, we will review the franchising authority's cost-of service determination on appeal pursuant to Section 76.944 of our rules to determine if there is a rational basis for that decision. To resolve any uniformity problems, if there is a complaint on file at the Commission regarding cable programming services tier rates at the same time an appeal is filed, we will endeavor to consider the complaint and the appeal simultaneously. We will, however, reverse the franchising authority's determination, and remand the case to the franchising authority, only if there is a misapplication of an existing Commission rule or policy.[28] If the Commission makes a determination on a cable programming services complaint based on a cost-of-service showing, the local franchising authority should use the analysis developed by the Commission with respect to the allocation of costs among tiers when evaluating any subsequent cost-of-service showing for the basic tier.

V. Administrative Matters

21. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis with respect to the *Third Report and Order* is as follows:

Need and purpose for this action: This action is taken to preserve the integrity of the tier neutrality and rate averaging principles underlying the benchmark regulatory approach established in the *Report and Order and Further Notice of Proposed Rulemaking* in MM Docket 92–266.

Summary of issues raised by comments in response to the Initial Regulatory Flexibility Analysis: No comments were received in response to the request for comments to the Initial Regulatory Flexibility Analysis.

Significant alternatives considered and rejected: The Commission considered and rejected allowing cable operators to choose different rate-setting methods across tiers when establishing initial rates.

VI. Ordering Clauses

22. Accordingly, *it is Ordered* That, pursuant to authority granted in Sections 4(i), 4(j), 303(r), and 623 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), and 543, this Third Report and Order *is Adopted* amending Part 76 of the Commission's rules, 47 CFR Part 76, as indicated.

23. *It is further ordered* That, the Secretary shall send a copy of this Third Report and Order to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. §§ 601 *et seq.* (1981).

24. *It is further ordered* That the requirements and regulations established in this *Third Report and Order* shall become effective upon publication in the Federal Register.[29]

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Change

Part 76 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 76 CABLE TELEVISION SERVICE

1. The authority citation for part 76 continues to read as follows:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085, 1101; 47 U.S.C. Secs. 152, 153, 154, 301, 303, 307, 308, 309, 532, 533, 535, 542, 543, 553 as amended, 106 Stat. 1460.

2. Section 76.922 is amended by revising paragraph (b)(1)(i) and the introductory text of paragraph (b)(1)(ii) to read as follows:

§ 76.922 Rates for the basic service tier and cable programming services tiers.

* * * * *

(b) * * *

(1) The permitted per channel charge on the initial date of regulation shall be, at the election of the cable operator, either

(i) A charge determined pursuant to a cost-of-service proceeding; or

(ii) The charge specified in paragraphs (b)(1)(ii) (A), (B) or (C) of this section as applicable. Provided, however, that if within one year of becoming subject to initial regulation of one service tier, a cable operator becomes subject to initial regulation of another service tier or tiers, the cable operator must elect the same method of determining the permitted per channel charge for all

[27] *See Memorandum Opinion and Order and Further Notice of Proposed Rulemaking* in MM Docket No. 92–266, 8 FCC Rcd 5585, 5588 (1993), 58 FR 43816, August 18, 1993.

[28] Although this may on occasion result in different resolutions of question of fact by the Commission and the local franchising authority, this is a result contemplated by the Act in creating a dual jurisdiction regulatory scheme for cable rates. Moreover, we anticipate that in most cases, the second regulator will be informed by the decision reached by the first regulator.

[29] For reasons set forth in note 3 *supra*, we find good cause for making our amendments to Section 76.922(b) effective upon publication in the Federal Register. *See* 5 U.S.C. 553(d)(3).

regulated service tiers. The cable operator must maintain a consistent method for determining the permitted per channel charge across all service tiers for a period of one year from the date that the cable operator first becomes subject to regulation on either the basic service or cable programming service tiers.

* * * * *

Appendix

Note: This appendix will not appear in the Code of Federal Regulations.

Comments

MM Docket No. 92–266

Austin, Texas, *et. al*
Cable Operators and Associations
Cablevision Industries, *et. al*
Community Antenna Television Association
Continental Cablevision, Inc.
Falcon Cable TV, *et. al*
GTE Service Corporation
Massachusetts Community Antenna Television Commission
Media General Cable of Fairfax County, Inc.
Municipal Franchising Authorities
National Association of Telecommunications Officers and Advisors, *et. al*
National Cable Television Association
New York State Commission on Cable Television
Tele-Communications, Inc.
Time Warner Entertainment Co., L.P.

Reply Comments

Austin, Texas, *et. al*
Cable Industries Corp., *et. al*
Continental Cablevision, Inc.
GTE Service Corporation
KBLCOM, *et. al*
Media General Cable of Fairfax County, Inc.
National Cable Television Association
Time Warner Entertainment Co., L.P.
Viacom International, Inc.

[FR Doc. 93–29325 Filed 11–29–93; 8:45 am]
BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR parts 37 and 38

[Docket No. 48463]

RIN 2105–AB53

Transportation for Individuals with Disabilities

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Final rule.

SUMMARY: The Department is amending its rules implementing the Americans with Disabilities Act (ADA) in several respects. The first change would extend until July 1994 the compliance date for retrofitting key rail station platforms with detectable warnings. The second modification would except a particular model of lifts from the requirement that transportation providers permit standees to use lifts. The third change would modify the Department's procedures for responding to requests for equivalent facilitation determinations. The fourth change clarifies the responsibility of transit providers to make seat or wheelchair securement space available to people who need it: The fifth amendment would reflect a recent statutory change in the name of the Department's transit agency from the Urban Mass Transportation Administration (UMTA) to the Federal Transit Administration (FTA). The sixth change would modify the good faith efforts that Amtrak and commuter rail operators would have to make in order to lease used rail vehicles. The Department is also making two minor technical corrections to its rule establishing standards for accessible vehicles.

EFFECTIVE DATE: This rule is effective December 30, 1993.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street, SW., room 10424, Washington, DC. 20590. (202) 366–9306 (voice); (202) 755–7687 (TDD). Copies of the final rule are available in alternative formats on request.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Department published its notice of proposed rulemaking (NPRM) on the issues covered by this rule on November 17, 1992. At the request of commenters, the original January 19, 1993, comment closing date was extended through February 19, 1993. The Department received over 550 comments on the NPRM, most of which came from individuals with disabilities or organizations representing them, state and local agencies working on disability matters, state and local transportation agencies, and equipment manufacturers.

I. Detectable Warnings

Background

Under appendix A of part 37, which adopts as part of a DOT regulation the Architectural and Transportation Barriers Compliance Board (Access Board) guidelines for accessible facilities, sections 10.3.1 and 10.3.2, require that an accessible rail station have a 24-inch wide detectable warning strip running the entire length of the platform edge. The warning strip must include a pattern of "truncated domes" (i.e., small raised rounded surfaces) as required by section 4.29 of appendix A. The purpose of the detectable warning is to inform blind or visually impaired passengers that they are nearing the platform edge. The warning must be of a contrasting color (i.e., dark vs. light) and texture (i.e., truncated domes vs. smooth surface), as well as (in the case of interior surfaces) differing from the platform in resiliency and sound-on-cane contact.

The Department stated in the NPRM that having an adequate detectable warning system to warn blind and visually impaired passengers that they are near a platform edge is a vital safety matter for these passengers. For example, in one rapid rail system lacking adequate detectable warnings, according to testimony from blind passengers at a 1992 public hearing on the system's proposed key station plan, 15 blind or visually impaired passengers have fallen off the platform in recent years (at least one of them was killed by a train). At the same time, the Department was aware that rail operators had expressed a number of concerns about the detectable warnings requirement. For example, a petition that the Access Board and the Department received, prior to the issuance of the NPRM, from several rail operators cited what they called "extraordinary costs" and unanswered questions about the materials' "durability, maintainability * * * safety, and usability by persons with visual and mobility impairments." The petition requested that the detectable warnings standard be suspended, pending further research.

In issuing the NPRM, the Department stated that the existing design for detectable warnings standard fulfills detectability and safety requirements. Nevertheless, the Department said that rail operators may have legitimate concerns about the installation of detectable warning materials as they retrofit key stations for accessibility. These concerns include the possibility of adhesive failures and "lift-off" (i.e., the corners of segments of the materials may come up) as well as durability. For example, if the corners of a tile segment curl up, people can trip on them. If passengers expect detectable warning materials to be on the edge of the entire platform, and several feet of material is missing because the adhesive has failed, someone could fall off the platform because the expected warning was absent.

In the NPRM, the Department emphasized that its concerns were neither about the basic design of the

detectable warnings or their usefulness to people with vision impairments. Rather, they went to the question of how best to apply detectable warning materials to an existing station platform in a retrofit situation. The Department said that these concerns do not apply with the same force to a new construction situation, where detectable warnings can be made an integral part of the platform design (e.g., through concrete stamping or other methods not involving retrofit). The NPRM also noted that the Department's concerns did not relate to the cost of installing detectable warnings in key stations. To the extent that installation of detectable warnings involves an extraordinarily expensive structural change to a particular station, the rail operator could use the cost of the installation as part of its rationale for requesting an extension of time to make the key station accessible.

The Department's proposal was based on a belief that rail operators may need additional time to resolve concerns over adhesion, durability, and maintainability of detectable warning materials in the context of key station modifications. Consequently, the NPRM proposed to extend for 18 months the key station compliance date with respect to detectable warnings. Under the present rule, except where the Department has extended time for completion of modifications to a key station, rail operators had to make key stations accessible by July 26, 1993. This means, of course, that detectable warnings were to be in place by that date. Under the proposal, rail operators would have had until January 26, 1995, to *complete* installation of detectable warnings.

Comments

A substantial number of commenters opposed the Department's proposal, asserting that the detectable warnings requirement, as written, should go into effect without any postponement. We received this comment from 101 commenters, 80 of whom were disability organizations or individuals with disabilities. These were primarily, but not exclusively, from the blind community. Thirteen of the remaining comments were from manufacturers of detectable warnings and associated products, with four from state or local agencies working on disability matters and two each from state or local transportation agencies and other commenters.

The comments from the disability community emphasized the safety need for detectable warnings, particularly for blind and visually impaired persons. They mentioned numerous cases of persons falling off platforms in various rail systems (18 in a system other than the one mentioned in the NPRM), sometimes resulting in death or injury. These situations, some of which were recounted by fall victims themselves in detail, were in addition to cases in which visually-impaired passengers almost fell off, or had become very fearful of walking on, rail station platforms.

Some letters mentioned the need for detectable warnings for persons who use dogs, as well as those who use canes, as a mobility aid. A number mentioned the crowded, noisy, distracting atmosphere of rush hour train stations as being a situation in which a tactile cue like a detectable warning is particularly important. Comments mentioned successful experiences with detectable warnings in some systems. They also asked why we seemed to assume that detectable warnings shouldn't be installed until we were sure they were maintenance-free, when we do not assume this for any other component of a rail system.

The manufacturers said that the problems the NPRM had cited with adhesion, lift-up, etc. of detectable warning materials had been the result of a combination of first-generation materials and improper installation and/or maintenance by rail properties. Current products (including some developed specifically for the rail platform market), they asserted, had solved these problems, and no delay in installation requirements was needed.

Fourteen commenters supported the NPRM provision as drafted. Nine of these were state or local transportation agencies, four were disability community commenters, and one was a state or local agency working on disability matters. Seven additional commenters favored longer delays.

The basic view of these commenters was that the proposed extension of the completion date was needed to address the concerns cited in the NPRM. In particular, transit authorities said that safety (e.g., a potential tripping hazard), durability, and maintainability questions about detectable warnings had not been answered satisfactorily. (Since few transit authorities have actually installed detectable warnings to date, most commenters could not assert that they had directly experienced problems, however.) One rail operator cited a 1991 study performed by a consultant for DOT that noted a number of problems that had occurred in early installations of detectable warnings. Some commenters expressed particular concern about detectable warnings at outdoor stations in the winter, with respect to snow and ice removal and potential slipping hazards to passengers.

Some commenters pointed out that the American National Standards Institute (ANSI) had not adopted a detectable warnings standard, drawing the conclusion that this placed the viability of the current Federal standard in question. Others said that they did not want to spend substantial sums of money on detectable warnings until there was certainty about what design would best answer the concerns that have been raised. Two organizations that represent a constituency consisting primarily of persons with mobility impairments said that additional research was needed on the issue of whether detectable warnings were an obstacle or hazard to persons with mobility impairments.

In support of its request for an indefinite, or, alternatively, five-year, postponement of the requirement, a rail operator cited the need to look at safety, durability, and maintainability issues, which it said current DOT research has not addressed. It said that while new products have been developed, they have not yet been independently tested. Another transit property also asked for a 5-year delay, while a third suggested making the requirement effective in July 1995, to coincide with the one-car-per-train requirement. Making the requirements effective at the same time made sense, they said, because they relate to an accessible car-station interface. Four rail operators suggested that the 18 months should start to run from the time that FTA or the Access Board completed its research on detectable warnings.

A few comments alluded to reported opposition to detectable warnings on the part of one organization representing individuals with visual impairments. However, this organization did not comment on the NPRM, and there were no comments to the NPRM from any blind or visually impaired individuals or organizations representing them opposing detectable warnings on rail station platform edges.

Among other comments on this subject, one of the rail operators mentioned above thought that the postponement should apply to new and altered platforms as well as those being retrofitted. It also mentioned a technical safety concern relating to the interface of the detectable warning strip and the yellow safety stripe at the platform edge. A disability community commenter suggested handrails, as well as detectable warnings, at intervals along platforms. Another commenter said the Access Board specification for

detectable warnings should be made more precise, and that the "pathfinder" design had some international acceptance. A transit provider said that, in case the Access Board changed its standard, detectable warnings that had been installed in the meantime should be grandfathered.

DOT Response

This issue is a difficult one, because the comments favoring and opposing the proposed 18-month delay both make reasonable and persuasive points. It is important to remember that the NPRM never raised the issue of *whether* detectable warnings should be installed on rail platform edges, only the issue of *when* installation should be completed. The discussion below pertains to this timing issue.

While manufacturers' and consumers' comments assert that cited problems concerning the materials have largely been solved, it is clear that rail operators are not persuaded that their concerns about installation, safety, durability, and maintainability have been fully addressed. From a transportation policy point of view, requiring materials to be installed without providing a reasonable amount of time for rail operators to resolve these very practical issues could be counterproductive. Disability group comments expressing concern about the effects of detectable warnings on transit accessibility for persons with mobility impairments are also worthy of consideration. Finally, the need of transit properties for time to determine which specific detectable warning product is best for their systems and to go through their procurement processes is reasonable to take into account.

The rulemaking record also provides a sound basis for the propositions that detectable warnings address a significant safety need for persons with impaired vision and that an effective tactile cue that a person is reaching the platform edge is very important, particularly given factors in the rail station environment that may diminish the utility of aural and other cues to persons with impaired vision. It is fair to conclude from comments to the rule that one of the consequences of having a serious visual impairment is the need to concentrate very hard on mobility and orientation matters that sighted persons handle routinely. All it takes is a brief moment of fatigue, or distraction, or disorientation, in the complex and sometimes confusing environment of a rail station, and even a very experienced blind rail system user can make what, in context, is a fatal misstep. Detectable warnings can prevent that last mistaken step.

The drop-offs at the edges of rail station platforms create a clear, documented, and unacceptable hazard to persons with visual impairments. The Department believes that existing research adequately documents the detectability of warning materials meeting or exceeding the current Access Board requirement, and, therefore, that the materials will mitigate this hazard. These factors make a persuasive case for not unduly postponing the installation of detectable warning materials that can prevent death, injuries, and narrow escapes of the kind cited in the record.

The case of installing detectable warnings sooner, rather than later, is made stronger by three publicly reported deaths of visually impaired passengers in the time since the comment period for this rulemaking closed, of which the Department takes notice. In none of these cases did the platform edge have a detectable warning. In Boston, a blind individual received fatal injuries when she fell off a platform and received a shock from the electrified "third rail." According to a press report of the incident, the individual asserted that, had a detectable warning strip been in place, her fall would have been prevented. In New York, a blind passenger using a guide dog fell off a platform and was killed by an oncoming train. In this case, according to a press report, the platform's edge was "marked with abrasive material" in an attempt to provide a warning to persons with vision impairments. It is the Department's understanding that this material involves a flat, painted-on surface with a sandpaper-like texture, which does not meet the Federal standard for a detectable warning. In the most recent case, a visually impaired individual apparently fell onto the tracks of a Maryland commuter rail system and was also fatally injured by a train. In addition, in December 1992, a visually impaired passenger fell to the tracks on Baltimore's subway system, and was struck and injured by a train.

The 1991 study referred to by a commenter ("Innovative Solutions for Disabled Transit Accessibility" Thomas J. McGean, October 1991) evaluates detectable warning materials that had been installed up to that time. The study affirms the excellent detectability of materials meeting Federal standards. The study does not point to any safety problems created by the materials for passengers, beyond those that can be inferred from "lift-off." Different transit properties that have installed the tiles reported different experiences with cleaning and maintenance, some reporting substantial difficulty and others having few problems. (The study suggests that frequent cleaning is important.) Lift-off problems were reported in some stations (for example, one BART station had a high lift-off rate, of about a third of tiles after 18 months, while other BART stations had low lift-off rates in the 1–10 percent range.) The study identified cleaning, maintenance, and installation deficiencies as factors leading to lift-off, in addition to adhesive failure and temperature effects. The study also noted ongoing efforts at improving detectable warning materials. The conclusion the Department draws from this study is that there are documented practical problems with the installation and maintenance of some detectable warning materials, which it is necessary for transit properties to address if their installation of detectable warnings is to be successful. However, nothing in the study suggests that these problems appear insuperable; nor does the study suggest that a prolonged period of time (e.g., five years) is needed for rail operators to solve these problems.

Any decision in a matter of this kind requires the Department to strike a balance between the legitimate concerns that commenters have expressed. We believe that a reasonable balance is best achieved, in this case, by allowing transit authorities a limited period of time to resolve practical problems concerning detectable warnings. Doing so will increase the likelihood that, when installed, detectable warnings do their intended job well without creating unnecessary problems for either passengers or transit providers. In other words, we believe it is more important to do the job right than to do it immediately. Given the urgency of the concerns expressed by disability community comments and the strong safety rationale for installing detectable warnings, the Department will not adopt the proposed 18-month extension, however.

The Department will extend the required completion date for the installation of detectable warnings in existing key stations to July 26, 1994. The Department believes that this period should give transit properties sufficient time to work out the installation and related problems to which the comments referred, without unduly delaying the addition of this important safety feature. The Department encourages rail operators to install detectable warnings before the required date.

This extension applies only to detectable warnings. Other key station accessibility requirements, if not covered by a time extension for

"extraordinarily expensive" changes, must still have been completed by July 26, 1993. For any key station modification which, because of an extension of time for extraordinarily expensive changes, does not have to be completed until after July 26, 1994, detectable warnings would have to be installed on the same date as other modifications had to be completed.

The existing detectable warning requirement, without change or postponement, will continue to apply to construction of new stations and alterations of existing stations platforms. One commenter suggested that the postponement apply here, as well. Given that installation methods not raising the technical problems said to affect retrofit are possible in this situation (even though retrofit-like methods could also be used), the Department does not believe that a postponement is necessary.

The Department believes that, given the safety-related reasons for a detectable warning requirement documented in the rulemaking record, deleting the requirement postponing it indefinitely, or postponing it for a lengthy period (e.g., five years) would be inadvisable. (Deletion or indefinite suspension, in any case, would appear to exceed the scope of the notice for this rulemaking.) Moreover, unlike the falls of visually-impaired persons from platforms, allegations mentioned by some commenters that properly installed detectable warnings cause safety problems (e.g., for persons using crutches or walkers, or pedestrians wearing high heels) are not supported by any evidence of these problems actually having occurred. It would not be appropriate for the Department to indefinitely suspend a requirement that addresses a known safety problem on the basis of speculation about a safety problem that has not been shown to exist.

The Department is aware that the Access Board (along with the Department of Justice and Department of Transportation) proposed to suspend, until January 1995, the requirement for detectable warnings in contexts such as curb ramps and parking lots, with the expectation of conducting further research. The Access Board's proposed action does not apply to detectable warnings on rail platform edges. Even should the ultimate result of the Access Board's rulemaking process be to delete or modify the requirement for detectable warnings in other contexts, there would not be any inconsistency between the Access Board guidelines and DOT regulations, since the guidelines serve as minimum requirements that DOT may exceed in its standards.

The situations covered by the Access Board proposal are distinguishable from the situation of rail platform edges, and a decision by the Access Board to delete the detectable warning requirement in the former would not affect the requirement in the latter for detectable warnings on platform edges, particularly given the safety consequences of falls from rail station platforms. The Department is free to consider safety or reliability information that may be developed by the Access Board as it reviews detectable warnings.

If, as the result of research the Department is conducting, or further research or determinations by the Access Board, some change in the technical standard for detectable warnings may be indicated, the Department is free to propose changes, which can exceed the minimum requirements of the Access Board guidelines. If the technical standard changes at this or any future point, the Department could, in appropriate situations, apply the grandfathering provision in the Department's ADA rule (49 CFR 37.9) to avoid making rail operators re-install detectable warnings meeting the revised standard.

We decline to adopt suggestions that the completion date for installation of detectable warnings be established only after certain research is completed. Rail properties need to begin working now with manufacturers and construction contractors to ensure that materials are installed in the way that best serves everyone's interest in adhesion, durability, and maintainability. (It is our understanding that a number of rail properties have begun this task.) It is not fair to burden research with the expectation that it will solve all practical problems, which probably are best worked out in actual planning and installation. The extension we have provided in this rule should be adequate to permit an aggressive effort by rail properties to address successfully practical concerns about installation. We also do not believe there is a strong connection between the July 1995 one car per train deadline (which pertains mostly to making service for persons with mobility impairments accessible) and the installation of detectable warnings (which pertains mostly to making platforms safe for visually impaired passengers).

In response to the disability group concerns about possible problems detectable warnings may create for people with mobility impairments, the FTA is available to work with rail properties that have installed or are testing detectable warning systems (and users of these systems who have mobility impairments) to determine whether such problems exist and merit any change in the detectable warning requirement. The ability to gather this information is an additional reason for providing the extension.

The Department believes that one commenter's concerns about the relationship of the yellow safety strip or "bumpers" (i.e., strips of material along the outward-facing edges of platforms to protect the rail cars and platform edges from abrasion) on some of its platforms can be addressed successfully without regulatory change, and the Department will work with rail operators to that end. Safety railings on platforms, while perhaps useful for safety of visually impaired passengers, could create crowding and obstacles for other passengers, and might not be practical given that train doors do not always stop at the same point on a platform.

II. Use of Lifts by Standees

Background

The background of this issue is the following: § 37.165 of the Department's final ADA rule (49 CFR part 37; 56 FR 45584, 45640; September 6, 1991) provides that

> The entity shall permit individuals with disabilities who do not use wheelchairs, including standees, to use a vehicle's lift or ramp to enter the vehicle.

In the preamble to the final rule, the Department made the following comments on the origin of this provision:

> In the NPRM, the Department neglected to discuss the use of lifts by standees, an oversight that was brought to our attention by a substantial number of disability community commenters. Some comments from transit providers suggested there be limits on the use of lifts by standees (e.g., only where there are handrails, only in a wheelchair provided by the transit authority). Other transit provider comments opposed all standee lift use on safety grounds.
>
> Consistent with requirements of the ADA discussed above, persons who use canes or walkers and other standees with disabilities who cannot readily climb steps into a vehicle must be permitted to use lifts. This is important, among other reasons, because based on the premise that standees can use lifts, the Access Board found it unnecessary to establish a standard for stair riser heights in vehicles that use lifts. Lifts meeting Access Board standards will have handrails. We have some doubts about the practicality of providers carrying wheelchairs on their vehicles to use for standees who are trying to access a vehicle via the lift. (56 FR 45618).

The explanatory appendix to part 37 made the following comment on the regulatory requirement:

People using canes or walkers and other standees with disabilities who do not use wheelchairs but have difficulty using steps (e.g., an elderly person who can walk on a plane without use of a mobility aid but cannot raise his or her legs sufficiently to climb bus steps) must also be permitted to use the lift, on request. (56 FR 45755).

Before the issuance of the NPRM, the Department of Transportation received a number of inquiries from transportation providers concerning whether the regulatory provision on standees applies to all existing bus lifts, or only to lifts meeting the requirements of 49 CFR part 38 (the Department's adoption as its standards of the Architectural and Transportation Barriers Compliance Board accessibility guidelines for vehicles). The concern expressed by these providers was essentially that some older models of lifts have no handrails or other means of preventing a standee user from losing his or her balance and falling while the lift is in operation. For safety and liability reasons, they would prefer not to carry standees on such lifts. DOT staff were also contacted by a disability group representative who believes that standees should be accommodated on all lifts.

The NPRM proposed to modify the existing regulatory language to require transit providers to allow standees on lifts which meet part 38 specifications, or which are equipped with handrails or other devices that can assist standees in maintaining their balance. The Department sought comment on whether this change would improve safety significantly, what the effect would be on consumer access to vehicles, and any other measures that could mitigate any potential safety problems involved with the use of existing lifts while having less significant effects on access.

Comments

This issue attracted, by far, the greatest number of comments of any issue raised by the NPRM. A total of 434 commenters opposed the NPRM's proposal, asserting that the existing regulatory provision should be retained. The bulk of these—388 comments—were from individuals with disabilities or organizations representing them. Many of these letters appeared to be generated by a letter-writing campaign organized by the Disability Rights Education and Defense Fund (DREDF), whose comment is probably the most thorough and typical statement of the disability community's objections to the proposal.

The DREDF comment asserted, first, that there was no documentation of actual safety problems—data or even anecdotes—necessitating a restriction on the kinds of lifts that standees should be allowed to use. It is inappropriate under a nondiscrimination statute like the ADA, DREDF argued, to restrict the availability of a service to persons with disabilities based only on speculation or apprehension about possible risks. DREDF also cited ADA legislative history favoring use of lifts by standees, the practices of some transit agencies which allow standees to use lifts, extra costs to paratransit systems if ridership on fixed route systems by standees were limited, and a general concern that ADA regulations' protections should not be weakened. DREDF also alluded to a DOT study which found that standees could use lifts successfully.

Five transit agencies noted that they provided lift service to standees without significant problems. Thirty-one state and local agencies working with disability matters, three private transportation providers, three members of Congress (Senators Harkin and Kennedy and Representative Mineta), and four other commenters also advocated not changing the existing rule.

Seventeen commenters supported restricting the access of standees to lifts. Thirteen of these, including ten state or local transportation agencies, supported the NPRM proposal. (An equipment manufacturer, a person with a disability, and one other commenter also took this position). Four transit agencies went further, asserting that standees should be permitted to use only those buses that fully meet the requirements of 49 CFR part 38 (the Department's ADA vehicle standards). The latter group of commenters said that, in a vehicle that did not meet part 38 standards, there were safety concerns relating to door height, smoothness of operation etc. that continued to exist even if the lift had a handrail.

The main point of all commenters supporting a restriction on the use of lifts by standees was the safety risk that they believe to exist. That is, they were concerned that passengers would lose their balance and fall, hit their head, or otherwise suffer injury, as the result of using the lift. These commenters, while making clear their concern about safety, did not present any data or anecdotal information that would demonstrate that an actual safety problem existed. Their focus was on what could happen.

One partial exception to this pattern was a comment from the New York State Public Transportation Safety Board (PTSB). PTSB described, in some detail, how the design and operation of a particular lift model (a front door "arcing" lift manufactured by EEC, Inc., Model 141) could create specific hazards for standees. The problematical features of this lift, as described by the PTSB, include an unusually low head clearance, the tilting action of the lift as it enters the bus, and a "pit" between the lift and the bus entrance when the lift is fully raised but has not entered the bus. All of these, in PTSB's view, present clear safety hazards to standees. The Department understands that this lift model is no longer being manufactured, but remains in use on some buses.

Three commenters suggested that buses carry an on-board wheelchair that standees could choose to use. Five requested that handrails be retrofitted on existing lifts, and one commenter opposed this idea. One disability community commenter said it was inappropriate for a transit authority to require a standee to use the handrail (i.e., because it might be more dangerous for the passenger to release his or her grip on a walker or crutch to grasp the handrail); one transit authority wanted to be able to impose such a requirement. A disability community commenter suggested that if a passenger decided using a lift was too dangerous, that passenger should be eligible for paratransit.

DOT Response

The key point in the comments, from the Department's point of view, is the absence of information documenting a safety problem resulting from standees' use of lifts. The ADA is a nondiscrimination statute, intended to ensure, among other things, that people with disabilities have access to transportation services. To permit a transportation provider to exclude a category of persons with disabilities from using a device that provides access to a vehicle on the basis of a perceived safety hazard, absent information in the rulemaking record that the hazard is real, would be inconsistent with the statute (c.f., the discussion of the transportation of three-wheeled mobility devices in the preamble to the Department's September 6, 1991, final ADA rule (56 FR 45617)). While we understand the concerns of transit agency commenters about the potential safety risks that may be involved, the Department does not have a basis in the rulemaking record for authorizing a restriction on lift use by standees.

The DOT study alluded to by commenters, with some qualifications, does support the proposition that standees may use lifts safely and successfully. The qualifications are that, in the situations studied, both drivers

and standee users were trained in the proper use of lifts, handrails were available on the lifts, and operators were not required to transport a standee who refused to use the handrail. The Department strongly urges such training programs to transit providers, both as a way of improving customer service and of reducing any risks which transit providers believe may be created by the use of lifts by standees.

With the exception noted below, the existing § 37.165(g)—which requires transportation providers to permit standees to use lifts, without restriction—will remain in effect. The one exception concerns the EEC, Inc. "arcing" lift cited in the New York PTSB comment. The information cited in the comment—which is consistent with the Department's information about this lift model—provides a reasonable basis for believing that its operation may be particularly hazardous to standees. For this reason, the final rule will permit transit providers who operate buses having this lift model to deny its use to standees (who would, of course, be eligible for paratransit as a result). The transit provider would notify users (e.g., via signage on affected buses) that this particular bus lift was not available to standees.

Transit providers may, if they choose, provide additional accommodations, such as retrofitted handrails on existing lifts or on-board wheelchairs. The Department encourages the use of such accommodations, in the interest of improving safe and convenient service to passengers. We do not believe that such accommodations should be required, however. Requirements by transportation providers that passengers use a particular accommodation are also inappropriate under the ADA. For example, if a transit authority provides an on-board wheelchair for use by standees on lifts, the transit authority could not insist that a standee sit in the wheelchair in order to use the lift.

III. Equivalent Facilitation

Background

Part 38 and appendix A to part 37 both contain provisions concerning equivalent facilitation. The language reads as follows:

> Departures from particular technical and scoping requirements of these guidelines by the use of other designs or technologies are permitted where the alternative designs and technologies used will provide substantially equivalent or greater access to and usability of the facility [vehicle]. (49 CFR part 37, Appendix A, § 2.2; 49 CFR part 38, 38.2)

Further, 49 CFR 37.7 and 37.9 establish a procedure through which an entity may obtain a determination of equivalent facilitation for vehicles and facilities, respectively:

> For purposes of implementing the equivalent facilitation provision * * * a determination of compliance will be made by the (Federal Transit) Administrator or the Federal Railroad Administrator, as applicable, on a case-by-case basis. An entity wishing to employ equivalent facilitation * * * shall submit a request to UMTA or FRA, as applicable, and include the following information: (list of five items of information).

When it drafted these provisions, the Department contemplated a small number of requests from transit providers concerning individual facility or vehicle problems on which flexibility in applying accessibility standards could be provided without negative effects on accessibility. The Department, instead, received a substantial number of requests for equivalent facilitation determinations from manufacturers relating to approvals of particular products. The NPRM proposed to amend the rule to reflect this situation, allowing equivalent facilitation requests to be made by manufacturers and by transportation entities in other modes.

In drafting the existing regulatory language, the Department also assumed that equivalent facilitation requests would be made in the rail and transit contexts. Consequently, the rule gives equivalent facilitation authority to the FTA and FRA Administrators. There could be other situations in which requests were made pertaining to airport, highway, or other DOT programs. To cover these situations, we proposed changing the rule to authorize the Administrator of the concerned operating Administration to make such a determination, with the concurrence of the Assistant Secretary for Policy and International Affairs in order to ensure consistency.

The NPRM also proposed to clarify the public participation obligations of parties asking for equivalent facilitation determinations. The obligations would differ depending on whether the requester is a transportation entity or a manufacturer (in the latter case, the requirement would be a consultation requirement, since there is not a single community whose representatives could be involved in the normal sense of public participation).

Comments

Commenters had a variety of points of view on this proposal. Sixteen commenters—including both transportation agencies and disability community commenters, among others—favored the NPRM's proposal. Most of these commenters did not provide a detailed basis for their position, essentially endorsing the NPRM's rationale. One of these commenters opposed the public hearing requirement, while another said public participation should receive greater emphasis.

Nine commenters, eight of whom were equipment manufacturers, said that there should not be separate equivalent facilitation procedures for public and private entities. They viewed the separate provision for private entities (such as manufacturers) as being a less stringent standard, which would allow manufacturers to circumvent the standards in the rule. The less stringent standard could also encourage misleading or unethical practices, they said. They suggested that public and private entities be subject to the same procedures. One of these commenters simply said that the current rule should be left in place, without change. Two manufacturers thought equivalent facilitation should be deleted from the rule altogether.

Four state or local transportation agencies asked that FTA (or perhaps APTA) publish, in the **Federal Register** or elsewhere, its approvals of requests for equivalent facilitation, so that other transit authorities would know what products or accommodations were acceptable.

Other comments addressed a variety of concerns. One transit authority thought it should be able to self-certify as to an equivalent facilitation, without FTA approval. A manufacturer said it should not have to consult with disability groups: it had tried, and had a hard time finding anyone who would respond or who was technically qualified to help. A transit authority and an "elderly and handicapped" advisory committee sought assurance that transit authorities and advisory committees, respectively, would be part of the public participation process. Other commenters expressed concern about delay (one suggesting a 90-day FTA deadline) or about misleading manufacturer claims of "DOT approved" products.

Four commenters—three disability community commenters and one manufacturer—said that there should be no equivalent facilitation available for detectable warning materials. The main reason for this was that, in the commenters' view, detectable warning materials need to be uniform nationwide. Moreover, some fairly subtle differences among designs could produce differences in effectiveness that might not be apparent to manufacturers or DOT.

DOT Response

The first issue to be considered is whether the Department should continue making equivalent facilitation determinations. The Department of Justice and the Access Board do not: In non-transportation contexts, if a facility owner determines that it has made an equivalent facilitation, if need not seek approval or confirmation from any Federal agency. The facility owner simply makes its own determination, which may be challenged in court or administrative proceedings as failing to comply with ADA requirements. The commenters who suggested that DOT not make equivalent facilitation determinations are suggesting, in effect, that DOT adopt this approach.

Taking this approach would have the advantage of reducing the Department's administrative workload. However, the Department continues to believe that making equivalent facilitation determinations available also has important advantages. It is a way of encouraging innovation and the application of newer technologies. It is a way of providing needed flexibility as entities find ways to achieve accessibility in ways that differ from existing design standards. It is a way of providing a reasonable sense of security to regulated parties that accessibility modifications they make will comply with ADA requirements. Making decisions about equivalent facilitation in advance, through an agency administrative process, seems more efficient than making them after the fact, through litigation.

For these reasons, the Department will continue to make equivalent facilitation determinations. We believe the changes to the process suggested in the NPRM—concerning the ability of the various DOT operating administrations to make these determinations and having different procedural steps for manufacturers and transportation providers—are reasonable. Manufacturers and transit providers are different kinds of entities, in different situations (e.g., a transit authority has a local "public" for which it makes sense to hold a public hearing; a manufacturer probably does not). Consequently, we have not adopted the comments of manufacturers that opposed different procedures for manufacturers and transportation providers. While the procedures differ, the substantive standard is not less stringent for manufacturers: any party seeking a determination of equivalent facilitation must convince the Department that its proposal really results in equivalent or greater access. If manufacturers or other parties have a problem in obtaining disability group input, they can document their efforts as part of their application for an equivalent facilitation determination. The Department can also attempt to assist in obtaining disability group input.

The equivalent facilitation sections for vehicles and facilities are basically parallel. In view of the close relationship between the coverage of airport facilities under the ADA, section 504 of the Rehabilitation Act, and the Air Carrier Access Act, the Department is clarifying the facilities section to specifically include requests for equivalent facilitation that arise concerning airport facilities under all three statutes. Since the situation of air carriers making equivalent facilitation requests concerning facilities at public airports is very similar to that of the airport sponsors themselves, we decided to apply the same procedural requirements to both.

The Department believes that the suggestion to publish its equivalent facilitation determinations is a good one. While it need not be part of this rule, the Department will take appropriate steps to provide general notice of these decisions. The Department will also endeavor to respond to requests for equivalent facilitation as soon as possible. A regulatory deadline would not be that useful, in our view.

We do not believe that it is necessary to prohibit applications for equivalent facilitation concerning detectable warnings. Equivalent facilitation is a useful provision of the Access Board guidelines and the Department's rules that applies to all accessibility features. Technology and product differentiation in the detectable warnings field does not stand still, and equivalent facilitation is an appropriate means to recognize evolution and innovation in these products. At the same time, as a matter of policy, the Department will scrutinize closely applications for equivalent facilitation concerning detectable warning materials to make sure that, in all respects, a proposed "equivalent" material truly provides equal or greater detectability and safety benefits. The uniformity considerations mentioned by commenters will be taken into account in this process.

The Department also wants to clarify an equivalent facilitation decision it had earlier made concerning detectable warnings. Engineered Plastics, Inc. (EPI) requested a finding of equivalent facilitation for its detectable warning product, "Armor-Tile." This product did not meet the original Access Board design requirement for detectable warnings. On January 10, 1992, the FTA Administrator determined that the criteria under 49 CFR 37.9 had been met, and he advised EPI that the detectability of the Armor-Tile warning strip was equivalent to those meeting the Access Board guidelines.

At the time the Access Board guidelines were published, the specifications for detectable warning surfaces were ambiguous, particularly concerning the pattern and design of the surfaces. This was due, in part, to the absence of a diagram illustrating the required pattern. Several manufacturers of detectable warning surfaces requested clarification. The FTA Administrator sent letter to a number of manufacturers to inform them that their designs appeared to meet the dimensional requirements intended by the Access Board.

The FTA has learned that some manufacturers have been marketing products as "U.S. Government-Approved" or "ADA-Approved." Other firms claim that their products comply, even though the products differ from those diagrams which were submitted to FTA. The FTA never intended its letters to be used as product endorsements or certifications of compliance. Any such use of these letters, or reliance on these letters in marketing materials, is unauthorized, and potential customers for these products should disregard claims of this kind. The final rule specifically bars claims by manufacturers that an equivalent facilitation determination constitutes a product endorsement by the Department.

Since the FTA issued these letters, the Access Board published Bulletin #1 in May 1992, clarifying many of the ambiguities left by its original guidelines and containing a diagram illustrating the pattern prescribed for detectable warning surfaces. Bulletin #1 also contains a list of products which are claimed by their manufacturers to meet the technical specifications for detectable warnings, but the Access Board neither reviews products for compliance nor certifies the suitability of such products or systems for the purposes for which they are intended.

The Department believes that the ambiguities in the original Access Board guidelines have been resolved by Bulletin #1, and that FTA letters concerning compliance with the Access Board requirements are no longer necessary. Prospective purchasers are advised to evaluate carefully all proposed products and designs against the Access Board requirements for compliance with technical

specifications, applications, designs, and installations.

IV. Obligation To Ensure the Availability of Seating

Background

An FTA regulation (49 CFR 609.15(d)) requires FTA-assisted public transit authorities to designate priority seating near the front of vehicles for elderly and handicapped persons. Parts 37 and 38 require wheelchair securement locations in vehicles, though transit providers may have fold-down seats that other persons can use when there are no wheelchair users on the vehicle. Transit providers have asked the Department whether they have an obligation under the ADA to direct other passengers to move from designated priority seats or from fold-down seats over a wheelchair securement location when a passenger with a disability enters the vehicle.

There are reasons to have such a requirement. For example, a wheelchair user may not be able to use a bus safely and securely if he or she does not have access to the securement location. An ambulatory person with a disability may be unable to stand for long periods, meaning that the person would be effectively denied access to transportation if he or she could not sit down on a crowded bus. It is not enough, under the ADA, to permit a passenger with a disability to enter a vehicle; the person must be able to use the vehicle for transportation. The availability of seating or securement space is an integral part of accessibility (i.e., having a vehicle that is "readily * * * usable by" an individual with a disability).

To clarify this point, the NPRM proposed adding to § 37.167 a new paragraph spelling out this obligation, which would apply to private as well as public transportation entities.

Comments

Twenty-six commenters favored the NPRM approach. The proposal received support from both disability community commenters (12) and state or local transportation agencies (10), with the remainder of comments (4) coming from state or local agencies working on disability matters. These commenters generally viewed the proposal as a necessary step to make sure that passengers with disabilities actually received transportation service they could use. Only one commenter, a person with a disability, opposed the proposal, saying it could cause litigation and a backlash against disabled riders.

There were several suggestions for refining the NPRM proposal, some of which came from some of the same commenters who endorsed the proposal in general. Nine transit agencies and one state or local agency working on disability matters suggested that the final rule require the driver to ask someone sitting in a priority seat to move, or to make good faith efforts to clear the seat, but not to have to enforce the request. Some of these commenters expressed the concern that requiring enforcement could lead to confrontations between drivers and passengers or could disrupt service.

Two commenters suggested that it would help matters if the standard language on the sign above the priority seats was reworded to say that other passengers were expected to move if a disabled person showed up and needed the space. Two commenters suggested that, when possible, the driver seat disabled passengers on the right side of the bus, so that the driver could see if a passenger had problems with the securement device or needed a stop announcement. One transit agency asked that the rule state that non-disabled passengers do not have to get off the bus to let a disabled passenger on.

One transit agency suggested explicitly excluding paratransit vans used for passengers with disabilities from this policy. A disability community commenter objected to the "to the extent practicable" clause for rail systems. Commenters also asked for more clarification or guidance on certain subjects. Four transit agencies asked for guidance on how to identify people with hidden disabilities for priority seating purposes (one of these commenters suggested that such passengers self-disclose). Three transit agencies asked how to prioritize among different disabled passengers (e.g., ambulatory vs. non-ambulatory). One of these commenters also asked for guidance on how to treat non-disabled personal care attendants who may want to sit next to a disabled passenger.

DOT Response

Virtually all commenters supported the proposal, agreeing with the rationale articulated above. The Department will adopt the proposal, believing that requests by drivers that other passengers move from priority seats will assist in making transportation genuinely accessible for passengers with disabilities. At the same time, given the modification discussed below, it will not impose onerous new duties on transit personnel.

We agree with the commenters who suggested modifying the proposal to specify that drivers or other personnel on vehicles not be required to enforce a request for someone to move from a priority seat (e.g., by physically removing a recalcitrant passenger or parking the bus and calling the police.) This "ask, don't tell" approach should help to avoid confrontations and disruptions of service while resulting in seating being made available for passengers who need priority seating in the vast majority of instances. The rule would not impose a uniform procedure; each transit system may devise a means best suited to its operations to carry out the requirement. It would be appropriate for transit operators to establish a mechanism based on local circumstances, consultation with drivers, and input from the local community. The FTA will oversee such mechanisms as part of the triennial review process.

We also agree with the commenters who suggested that priority seating signs should specify that non-disabled persons should move to make room for someone who needs a priority seat. This will inform passengers that such a request may be made and that they should comply. The requirement will apply to newly acquired vehicles and to new or replacement signs in existing vehicles.

The Department is not making other suggested changes in the regulatory language, believing that reasonable implementation of the provision can address the issues commenters raised. As a matter of guidance, we believe it is reasonable that if a passenger with a "hidden" disability wants a driver to ask someone to make room for use of a priority seat, the individual should tell the driver about the disability. A driver cannot be expected to intuit the existence of a disability that is not apparent. A personal care attendant (as distinct from a friend or traveling companion) should be permitted to sit near a person with a disability, since the attendant may be needed to perform personal tasks for the individual with a disability during the course of the ride.

Priority seats are intended for people with disabilities in general; a seat near the front of the bus may be as important to a blind individual as to an individual with a mobility impairment. Obviously, a wheelchair user needs access to a securement location. It is appropriate for a driver, under this provision, to ask an ambulatory passenger with a disability to move to clear a wheelchair securement location when needed to accommodate a wheelchair user. If a van is being used for specialized paratransit service for individuals with disabilities, then this provision—which addresses only to those vehicles covered by FTA

regulations concerning priority seating—would not apply.

The language which applies the "driver request" provision to rail systems only to the extent practicable seems necessary. If, as in many systems, the only transit employee aboard the train is in the driver's compartment in the front car, the employee will not be in a position to see who is sitting in a priority seat in the third car in the train, let alone ask someone to move from it. If there are conductors or other transit personnel present in the passenger compartments, they would make the request when they saw a situation calling for it.

V. Name Change

The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) changed the name of the former Urban Mass Transportation Administration (UMTA) to Federal Transit Administration (FTA). The NPRM proposed updating the terms used in the Department's ADA rules to conform to the ISTEA changes. FTA previously made this change for all the regulations in Subchapter VI of Title 49 of the Code of Federal Regulations. However, the ADA regulation is in Subchapter I of that Title. Not surprisingly, there were few comments on this matter; a handful of commenters noted it approvingly. The Department is adopting this proposal without change.

VI. Lease of Used Rail Cars by Amtrak and Commuter Rail Operators

Background

Section 37.87 of the Department's ADA regulation provides that when Amtrak or a commuter authority purchases or leases or used intercity or commuter rail car, it must either obtain an accessible car or demonstrate the good faith efforts it has made to do so. These good faith efforts are the same that apply to purchases of used rolling stock (e.g., buses) by mass transit systems—an initial solicitation for accessible vehicles, a nationwide search for accessible vehicles, including advertising in trade publications and contacting trade associations.

Before the NPRM was issued, Amtrak told DOT staff that this provision is not appropriate in an important situation in which it leases rail cars. Frequently (e.g., at holiday times or other high-demand periods), Amtrak must obtain additional cars from nearby commuter rail authorities on short notice for a short period of time. For example, Amtrak may need a certain number of cars to carry overflow traffic at Thanksgiving or Christmas on the Northeast Corridor. Amtrak may have a standing reimbursable agreement with Boston or Washington/Baltimore area commuter authorities to borrow commuter rail cars on short notice in these situations. There is no time to make a nationwide search or advertise in trade publications, and no point in seeking cars from distant commuter authorities (which may not meet dimensional requirements for Northeast Corridor service and which would take too long to arrive).

To accommodate this situation, the Department proposed to add a new paragraph to this section, which would allow good faith efforts to be documented in a different way. For a short-term lease of commuter rail cars (i.e., for a period of seven days or less; the Department sought comment on whether this is the appropriate period), Amtrak and commuter authorities could have, in standing agreements with one another, a provision requiring available accessible cars to be provided before other cars in the donor agency's fleet. The proposal would also require that if the borrower had a choice of obtaining cars from more than one source, it would obtain the cars from a source that had accessible cars before it obtained inaccessible cars from the other source.

For example, suppose there is a standing agreement between Amtrak and Commuter Authority B. The agreement would provide that when Amtrak borrowed cars from B, B would make available and Amtrak would take its accessible cars first, to the extent they are available (e.g., B would not have to provide cars that were in the repair shop or that it was impossible to make available for Amtrak's use in a timely fashion). Also, if Amtrak could obtain cars for a particular area of its service from both Commuter Authority B and Commuter Authority C, and C had more accessible cars available than B, Amtrak would borrow C's accessible cars before it borrowed inaccessible cars from B.

Comments

Eleven commenters (eight disability community commenters, Amtrak and one other transit provider, and one state or local agency working on disability matters) favored the NPRM approach. Other commenters suggested adding safeguards to ensure accessibility. One disability community commenter and one state or local agency working on disability matters recommended that, regardless of other considerations, each train always have at least one accessible car (after July 1955, presumably). Another disability community commenter suggested a requirement that the lease of rail cars by Amtrak not be permitted to decrease the overall percentage of Amtrak's fleet that was accessible (i.e., that if Amtrak leased inaccessible cars from a commuter authority, Amtrak would have to obtain accessible cars elsewhere in order to maintain the same percentage of accessibility in its fleet that it had before the lease).

DOT Response

The Department will adopt the proposed provision, which appears workable both to Amtrak and disability community commenters. We do not believe it is necessary to add language concerning the "one car per train" requirement. The existing rule's one car per train requirement applies, after July 1995, both to Amtrak and the commuter authorities involved. Every train that Amtrak or a commuter authority operates after that date will have to have an accessible car. Even when Amtrak leases an entire consist from a commuter authority after that date, the consist will necessarily include at least one accessible car, assuming the commuter authority lessor is in compliance with the rule. We assume that Amtrak would prefer to lease trains from commuter authorities that comply with their ADA obligations. Given the differences between the bus and rail contexts, and the specific requirements that the ADA applies to rail, it does not seem appropriate to apply the "don't diminish fleet accessibility percentage" rule to this situation.

VII. Automatic Fare Vending Machines

Background

In Appendix A to part 37, section 10.3.1(7) requires automatic fare vending equipment and related devices to conform, among other things, to the requirements of sections 4.34.2–4.34.4, concerning automated teller machines (ATMs). Last fall, the Access Board proposed amending its guidelines for ATMs. See 57 FR 41006, September 8, 1992. The proposed changes concerned the "reach range" (e.g., how far a person must reach to operate the controls) of ATMs. The ADA requires the Department to adopt standards consistent with the Access Board guidelines. In the NPRM, the Department sought comment on how the proposed Access Board ATM standard modifications would affect automatic fare vending and collection systems.

Comments

Nine commenters supported the NPRM proposal to adopt the Access

Board proposed amendment for ATMs, which would also apply to fare vending systems. These commenters included four disability community commenters, two transit agencies, two state or local agencies working on disability matters, and one consultant. One commenter said that, if the specifications were changed, existing models of fare vending systems had installed should be grandfathered, so that retrofit was not necessary.

Five commenters (four transit agencies and a manufacturer) said that the purpose and design of fare vending machines were different enough from those of ATMs to warrant a different standard, at least with respect to some specifications. Five commenters (one of the above transit agencies plus four of the commenters who favored the NPRM provision) said that additional provision (e.g., a voice synthesizer system) was needed on fare vending systems to serve persons with visual impairments.

DOT Response

The Department believes that the Access Board proposal, which focuses on the reach range requirements for ATMs, is reasonable for fare vending machines as well. The two types of machines are similar enough in the operations that consumers must perform that the same requirements make sense in both contexts. Those commenters who asserted that the two types of machines should have different requirements did not provide sufficient information on which the Department or the Access Board could base a separate standard.

The Access Board standard already requires information about the machines to be provided in a way that persons with impaired vision can use; specifying a voice synthesis capability does not seem necessary and is, in any event, beyond the scope of a proposal focusing on reach range. The Department would apply 49 CFR 37.9, concerning grandfathering, to fare vending systems that meet the current ADA standard in the same way as that section applies to other features of transportation facilities.

In a joint Access Board/DOT rule issued prior to this document, the Department adopted the proposal discussed above. The comments to this docket were considered in context of that rulemaking and were reflected in its preamble. Because this action had already been taken, it is not necessary for this document to further amend the regulatory text.

VIII. Technical Corrections to 49 CFR Part 38

In the course of preparing this document, DOT staff noticed two technical errors in 49 CFR part 38. The first was the designation of the last paragraph of § 38.113 (concerning signage) as (3), rather than (e). The second was the omission of part of the language concerning wheelchair locations in § 38.125(d)(2). This language should parallel that of § 38.95(d). The rule makes these corrections, which have no substantive effects.

Regulatory Analyses and Notices

This rule is not a significant rule under the Executive Order on Regulatory Planning and Review. It is a significant rule under the Department's Regulatory Policies and Procedures, since it amends the Department's Americans with Disabilities Act rule, which is a significant rule. We expect economic impacts to be minimal, so we have not prepared a regulatory evaluation. There are no Federalism impacts sufficient to warrant the preparation of a Federalism assessment. The Department certifies that the rule will not have a significant economic impact on a substantial number of small entities. This is because the economic effects of the rule in general should be minimal; to the extent that the rule reduces costs (e.g., by delaying the requirement for completing the installation of detectable warnings), this beneficial effect will affect only large entities.

Issued this 25th day of October, 1993, at Washington, D.C.

Federico Peña,

Secretary of Transportation.

For the reasons set forth in the Preamble, the Department of Transportation amends 49 CFR parts 37 and 38 as follows:

PART 37—[AMENDED]

1. The authority citation for 49 CFR part 37 continues to read as follows:

Authority: Americans with Disabilities Act of 1990 (42 U.S.C. 12101–12213); 49 U.S.C. 322.

2. In 49 CFR part 37, the words "Urban Mass Transportation Administration" are changed to the words "Federal Transit Administration" in every instance in which those words appear; the letters "UMTA" are changed to the letters "FTA" in every instance in which those letters appear; and the words "UMT Act" and "Urban Mass Transportation Act" are changed to the words "FT Act" and "Federal Transit Act" in every instance in which those words appear, and the definition of "FT Act" is moved to the proper alphabetical order.

3. In § 37.7, paragraph(b) is revised to read as follows:

§ 37.7 Standards for accessible vehicles.

* * * * *

(b)(1) For purposes of implementing the equivalent facilitation provision in § 38.2 of this subtitle, the following parties may submit to the Administrator of the applicable operating administration a request for a determination of equivalent facilitation:

(i) A public or private entity that provides transportation services and is subject to the provisions of subpart D or subpart E this part; or

(ii) The manufacturer of a vehicle or a vehicle component or subsystem to be used by such entity to comply with this part.

(2) The requesting party shall provide the following information with its request:

(i) Entity name, address, contact person and telephone;

(ii) Specific provision of part 38 of this subtitle with which the entity is unable to comply;

(iii) Reasons for inability to comply;

(iv) Alternative method of compliance, with demonstration of how the alternative meets or exceeds the level of accessibility or usability of the vehicle provided in part 38 of this subtitle; and

(v) Documentation of the public participation used in developing an alternative method of compliance.

(3) In the case of a request by a public entity that provides transportation services subject to the provisions of subpart D of this part, the required public participation shall include the following:

(i) The entity shall contact individuals with disabilities and groups representing them in the community. Consultation with these individuals and groups shall take place at all stages of the development of the request for equivalent facilitation. All documents and other information concerning the request shall be available, upon request, to members of the public.

(ii) The entity shall make its proposed request available for public comment before the request is made final or transmitted to DOT. In making the request available for public review, the entity shall ensure that it is available, upon request, in accessible formats.

(iii) The entity shall sponsor at least one public hearing on the request and shall provide adequate notice of the hearing, including advertisement in

appropriate media, such as newspapers of general and special interest circulation and radio announcements.

(4) In the case of a request by a private entity that provides transportation services subject to the provisions of subpart E of this part or a manufacturer, the private entity or manufacturer shall consult, in person, in writing, or by other appropriate means, with representatives of national and local organizations representing people with those disabilities who would be affected by the request.

(5) A determination of compliance will be made by the Administrator of the concerned operating administration on a case-by-case basis, with the concurrence of the Assistant Secretary for Policy and International Affairs.

(6) Determinations of equivalent facilitation are made only with respect to vehicles or vehicle components used in the provision of transportation services covered by subpart D or subpart E of this part, and pertain only to the specific situation concerning which the determination is made. Entities shall not cite these determinations as indicating that a product or method constitute equivalent facilitations in situations other than those to which the determinations specifically pertain. Entities shall not claim that a determination of equivalent facilitation indicates approval or endorsement of any product or method by the Federal government, the Department of Transportation, or any of its operating administrations.

* * * * *

4. In § 37.9, paragraph (d) is revised to read as follows:

§ 37.9 Standards for accessible transportation facilities.

* * * * *

(d)(1) For purposes of implementing the equivalent facilitation provision in section 2.2 of appendix A to this part, the following parties may submit to the Administrator of the applicable operating administration a request for a determination of equivalent facilitation:

(i)(A) A public or private entity that provides transportation facilities subject to the provisions of subpart C this part, or other appropriate party with the concurrence of the Administrator;

(ii) With respect to airport facilities, an entity that is an airport operator subject to the requirements of 49 CFR part 27 or regulations implementing the Americans with Disabilities Act, an air carrier subject to the requirements of 14 CFR part 382, or other appropriate party with the concurrence of the Administrator.

(B) The manufacturer of a product or accessibility feature to be used in the facility of such entity to comply with this part.

(2) The requesting party shall provide the following information with its request:

(i) Entity name, address, contact person and telephone;

(ii) Specific provision of appendix A to this part with which the entity is unable to comply;

(iii) Reasons for inability to comply;

(iv) Alternative method of compliance, with demonstration of how the alternative meets or exceeds the level of accessibility or usability of the vehicle provided in appendix A to this part; and

(v) Documentation of the public participation used in developing an alternative method of compliance.

(3) In the case of a request by a public entity that provides transportation facilities (including an airport operator), or a request by an air carrier with respect to airport facilities, the required public participation shall include the following:

(i) The entity shall contact individuals with disabilities and groups representing them in the community. Consultation with these individuals and groups shall take place at all stages of the development of the request for equivalent facilitation. All documents and other information concerning the request shall be available, upon request, to members of the public.

(ii) The entity shall make its proposed request available for public comment before the request is made final or transmitted to DOT. In making the request available for public review, the entity shall ensure that it is available, upon request, in accessible formats.

(iii) The entity shall sponsor at least one public hearing on the request and shall provide adequate notice of the hearing, including advertisement in appropriate media, such as newspapers of general and special interest circulation and radio announcements.

(4) In the case of a request by a manufacturer or a private entity other than an air carrier, the manufacturer or private entity shall consult, in person, in writing, or by other appropriate means, with representatives of national and local organizations representing people with those disabilities who would be affected by the request.

(5) A determination of compliance will be made by the Administrator of the concerned operating administration on a case-by-case basis, with the concurrence of the Assistant Secretary for Policy and International Affairs.

(6) Determinations of equivalent facilitation are made only with respect to transportation facilities, and pertain only to the specific situation concerning which the determination is made. Entities shall not cite these determinations as indicating that a products or methods constitute equivalent facilitations in situations other than those to which the determinations specifically pertain. Entities shall not claim that a determination of equivalent facilitation indicates approval or endorsement of any product or method by the Federal government, the Department of Transportation, or any of its operating administrations.

5. Section 37.47(c)(1) is revised to read as follows:

§ 37.47 Key stations in light and rapid rail systems.

* * * * *

(c)(1) Unless an entity receives an extension under paragraph (c)(2) of this section, the public entity shall achieve accessibility of key stations as soon as possible, but in no case later than July 26, 1993, except that an entity is not required to complete installation of detectable warnings required by section 10.3.2(2) of appendix A to this part until July 26, 1994.

* * * * *

6. Section 37.51(c)(1) is revised to read as follows:

§ 37.51 Key stations in commuter rail systems.

* * * * *

(c)(1) Except as provided in this paragraph, the responsible person(s) shall achieve accessibility of key stations as soon as possible, but in no case later than July 26, 1993, except that an entity is not required to complete installation of detectable warnings required by section 10.3.2(2) of appendix A to this part until July 26, 1994.

* * * * *

7. Section 37.87 is amended by redesignating the present paragraph (d) as paragraph (e) and adding a new paragraph (d) to read as follows:

§ 37.87 Purchase or lease of used intercity and commuter rail cars.

* * * * *

(d) When Amtrak or a commuter authority leases a used intercity or commuter rail car for a period of seven days or less, Amtrak or the commuter authority may make and document good faith efforts as provided in this paragraph instead of in the ways provided in paragraph (c) of this section:

(1) By having and implementing, in its agreement with any intercity railroad or commuter authority that serves as a source of used intercity or commuter rail cars for a lease of seven days or less, a provision requiring that the lessor provide all available accessible rail cars before providing any inaccessible rail cars.

(2) By documenting that, when there is more than one source of intercity or commuter rail cars for a lease of seven days or less, the lessee has obtained all available accessible intercity or commuter rail cars from all sources before obtaining inaccessible intercity or commuter rail cars from any source.

* * * * *

8. In § 37.165, paragraph (g) is revised to read as follows:

§ 37.165 Lift and securement use.

* * * * *

(g) The entity shall permit individuals with disabilities who do not use wheelchairs, including standees, to use a vehicle's lift or ramp to enter the vehicle. *Provided,* that an entity is not required to permit such individuals to use a lift Model 141 manufactured by EEC, Inc. If the entity chooses not to allow such individuals to use such a lift, it shall clearly notify consumers of this fact by signage on the exterior of the vehicle (adjacent to and of equivalent size with the accessibility symbol).

9. In § 37.167, a new paragraph (j) is added, to read as follows:

§ 37.167 Other service requirements.

* * * * *

(j)(1) When an individual with a disability enters a vehicle, and because of a disability, the individual needs to sit in a seat or occupy a wheelchair securement location, the entity shall ask the following persons to move in order to allow the individual with a disability to occupy the seat or securement location:

(i) Individuals, except other individuals with a disability or elderly persons, sitting in a location designated as priority seating for elderly and handicapped persons (or other seat as necessary);

(ii) Individuals sitting in or a fold-down or other movable seat in a wheelchair securement location.

(2) This requirement applies to light rail, rapid rail, and commuter rail systems only to the extent practicable.

(3) The entity is not required to enforce the request that other passengers move from priority seating areas or wheelchair securement locations.

(4) In all signage designating priority seating areas for elderly persons and persons with disabilities, or designating wheelchair securement areas, the entity shall include language informing persons sitting in these locations that they should comply with requests by transit provider personnel to vacate their seats to make room for an individual with a disability. This requirement applies to all fixed route vehicles when they are acquired by the entity or to new or replacement signage in the entity's existing fixed route vehicles.

PART 38—[AMENDED]

10. The authority citation for 49 CFR part 38 is revised to read as follows:

Authority: Americans with Disabilities Act of 1990 (42 U.S.C. 12101–12213); 49 U.S.C. 322.

§ 38.113 [Amended]

11. The last paragraph of § 38.113, entitled *Signage* and currently designated as paragraph (3), is redesignated as paragraph (e).

12. In § 38.125, paragraph (d)(2) is revised to read as follows:

§ 38.125 Mobility aid accessibility.

* * * * *

(d) * * *

(2) *Wheelchair or mobility aid spaces.* Spaces for persons who wish to remain in their wheelchairs or mobility aids shall have a minimum clear floor space 48 inches by 30 inches. Such spaces shall adjoin, and may overlap, an accessible path. Not more than 6 inches of the required clear floor space may be accommodated for footrests under another seat provided there is a minimum of 9 inches from the floor to the lowest part of the seat overhanging the space. Seating spaces may have fold-down or removable seats to accommodate other passengers when a wheelchair or mobility aid user is not occupying the area, provided the seats, when folded up, do not obstruct the clear floor space provided (See Fig. 2).

* * * * *

[FR Doc. 93–29257 Filed 11–29–93; 8:45 am]
BILLING CODE 4910–62–P–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1180

[Ex Parte No. 282; Sub-No. 17]

Railroad Consolidation Procedures: Definition of, and Requirements Applicable to, "Significant" Transactions

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission is revising the definition of "significant transaction" in rail carrier consolidation cases, and is eliminating certain requirements currently applicable to applications seeking approval of significant transactions. The revised definition will rationalize the rail carrier consolidation scheme, and the reduction of required information will relieve rail carriers of the burden of submitting information not relevant to the statutory standard applicable to such cases.

EFFECTIVE DATE: This action is effective on December 30, 1993.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 927–5660; TDD for hearing impaired: (202) 927–5721.

SUPPLEMENTARY INFORMATION: On August 10, 1992, at 57 FR 35559, we requested comments on our proposals (1) to revise the 49 CFR 1180.2(b) "significant transaction" definition, and (2) to reduce the required contents of applications seeking approval for significant transactions.

Comments were filed by the Association of American Railroads (on behalf of itself and its member railroads) and by Patrick W. Simmons (on behalf of the Illinois Legislative Board of the United Transportation Union).

We have concluded that the 49 CFR 1180.2(b) "significant transaction" definition should be revised, and that the required contents of significant transaction applications should be reduced, as we proposed.

For further information, see the Commission's printed decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. Assistance for the hearing impaired is available through TDD service (202) 927–5721.

We reaffirm our preliminary conclusion that this action will not significantly affect either the quality of the human environment or the conservation of energy resources.

We also reaffirm our preliminary conclusion that this action will not have a significant impact on a substantial number of small entities. The revision of the "significant transaction" definition merely rationalizes our analysis of the dividing line between significant transactions and minor transactions. The reduction of the required contents of significant transaction applications may have a limited impact on small

entities, but that impact will be a positive one. The reduction of the information requirements applicable to significant transaction applications should reduce the expenses applicants must incur to process these transactions.

List of Subjects in 49 CFR Part 1180

Administrative practice and procedure, Bankruptcy, Railroads, Reporting and recordkeeping requirements.

Decided: November 12, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden. Vice Chairman Simmons and Commissioner Walden dissented in part with separate expressions.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1180 of the Code of Federal Regulations is amended as follows:

PART 1180—RAILROAD ACQUISITION, CONTROL, MERGER, CONSOLIDATION PROJECT, TRACKAGE RIGHTS, AND LEASE PROCEDURES

1. The authority citation for part 1180 continues to read as follows:

Authority: 49 U.S.C. 10321, 10505, 11341, 11343–11346; 5 U.S.C. 553 and 559; and 11 U.S.C. 1172.

2. Section 1180.0 is amended by removing the 7th and 8th sentences and by adding in lieu thereof three new sentences to read as follows:

§ 1180.0 Scope and purpose.

* * * A *major* application must contain the information required in §§ 1180.6(a), 1180.6(b), 1180.7, 1180.8(a), and 1180.9. A *significant* application must contain the information required in §§ 1180.6(a), 1180.6(c), 1180.7, and 1180.8(a). A *minor* application must contain the information required in §§ 1180.6(a) and 1180.8(b). * * *

3. In § 1180.2, paragraph (b) is revised to read as follows:

§ 1180.2 Types of transactions.

* * * * *

(b) A *significant* transaction is a transaction not involving the control or merger of two or more class I railroads that is of regional or national transportation significance as that phrase is used in 49 U.S.C. 11345(a)(2) and (c). A transaction not involving the control or merger of two or more class I railroads is not significant if a determination can be made either:

(1) That the transaction clearly will not have any anticompetitive effects, or

(2) That any anticompetitive effects of the transaction will clearly be outweighed by the transaction's anticipated contribution to the public interest in meeting significant transportation needs.

A transaction not involving the control or merger of two or more class I railroads is significant if neither such determination can clearly be made.

* * * * *

4. In § 1180.4, paragraph (b)(1)(iv) is revised to read as follows:

§ 1180.4 Procedures.

* * * * *

(b) * * *

(1) * * *

(iv) Indicate why the transaction is *major* or *significant.*

* * * * *

5. In § 1180.6, the introductory text of paragraph (b) is revised, and a new paragraph (c) is added, to read as follows:

§ 1180.6 Supporting information.

* * * * *

(b) In a *major* transaction, submit the following information:

* * * * *

(c) In a *significant* transaction, submit the information specified in paragraphs (b)(3), (b)(5), (b)(6), (b)(7), and (b)(8) of this section.

6. In § 1180.9, the introductory text is revised to read as follows:

§ 1180.9 Financial information.

The following information shall be provided for *major* transactions, and for carriers shall conform to the Commission's Uniform System of Accounts, 49 CFR part 1201:

* * * * *

[FR Doc. 93–29324 Filed 11–29–93; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[I.D. 112293C]

Atlantic Tuna Fisheries; Bluefin Tuna

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

ACTION: Notice of Closure of the Incidental Catch Category.

SUMMARY: NMFS closes the Incidental Catch category of the Atlantic bluefin tuna fishery, as required by regulations governing this fishery. The intent of this action is to prevent overharvest of the quota established for this fishery.

EFFECTIVE DATE: The closure of the Incidental Catch category is effective at 0001 hours local time November 27, 1993, through December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Raymond E. Baglin, 301–713–2347.

SUPPLEMENTARY INFORMATION: Regulations promulgated under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971) regulating the harvest of Atlantic bluefin tuna by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 285.

Section 285.22(e) provides for the total amount of Atlantic bluefin tuna which may be caught and retained in the regulatory area by vessels permitted in the Incidental Catch category under § 285.21(b). The Incidental Catch category was adjusted by notice in the **Federal Register** (58 FR 32872) to a total of 89 metric tons (mt) effective June 8, 1993, under authority of § 285.22(h). The Incidental Catch quota was further adjusted to 84 mt effective October 8, 1993 (58 FR 53434), under authority of § 285.22(i). This quota was subdivided as follows: (1) 82 mt for longline vessels, of which not more than 54 mt may be taken in the area south of 36°00'N. latitude; and (2) 2 mt for vessels fishing for species of fish other than tuna. The quota for the southern area Incidental Catch category was attained and closed on May 4, 1993 (58 FR 26921, May 6, 1993).

The AA is authorized under § 285.20(b)(1) to monitor the catch and landing statistics and, on the basis of these statistics, to project a date when the catch of Atlantic bluefin tuna will equal its quota. The AA is further authorized under § 285.31(a)(2) to prohibit fishing for, catching, possessing, or landing Atlantic bluefin tuna by those fishing in the category subject to the quota when the catch of tuna equals the quota established under § 285.22 except under the provisions of § 285.27. The AA has determined, based on the estimated catch, that the northern adjusted annual quota of the Incidental Catch category will be attained by November 27, 1993. Therefore, the entire Incidental Catch category, including the "Incidental other" category, will be closed effective at 0001 hours local time on November 27, 1993.

This closure will remain in effect for the remainder of 1993.

Classification

This action is taken under the authority of 50 CFR 285.20 (b)(1) and 50 CFR 285.22(e).

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

List of Subjects in 50 CFR Part 285

Fisheries, Penalties, Reporting and recordkeeping requirements, and Treaties.

Dated: November 23, 1993.

David S. Crestin,

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

[FR Doc. 93–29195 Filed 11–23–93; 4:30 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 58, No. 228
Tuesday, November 30, 1993

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

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Part 729

Commodity Credit Corporation

7 CFR Part 1421

RIN 0560–AD20

1994-Crop Peanut National Poundage Quota and Minimum CCC Export Edible Sales Price for Additional Peanuts

AGENCY: Agricultural Stabilization and Conservation Service and Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Adjustment Act of 1938, as amended (the 1938 Act), requires that the national peanut poundage quota for the 1994 crop be announced by December 15, 1993. This proposed rule sets forth a proposed national poundage quota of 1,350,000 short tons (st) and the minimum Commodity Credit Corporation (CCC) sales price for additional peanuts for export edible use of $400 per st. Comments are also requested on whether or not USDA should adjust the proposed national poundage quota for the 1994 crop for abnormal carryover stocks and/or undermarketings.

DATES: Comments must be received by December 2, 1993, in order to be assured of consideration.

ADDRESSES: Comments must be mailed to Deputy Administrator, Policy Analysis, Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture, room 3090, South Building, P.O. Box 2415, Washington, DC 20013–2415. All written submissions will be made available for public inspection from 8:15 a.m. to 4:45 p.m., Monday through Friday, in room 3739-South Building, 14th and Independence Avenue, SW, Washington, DC 20013–2415.

FOR FURTHER INFORMATION CONTACT: Robert Miller, Director, Tobacco and Peanuts Analysis Division, ASCS, USDA, room 3732, South Building, P.O. Box 2415, Washington, DC 20013–2415, telephone 202–720–7477.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule is issued in conformance with Executive Order 12866. Based on information compiled by the Department, it has been determined that this proposed rule: (1) Would have an annual effect on the economy of less than $100 million; (2) would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (3) would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (4) would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and (5) would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

Preliminary Regulatory Impact Analysis

The Preliminary Regulatory Impact Analysis discussing the impacts of the established quota and minimum CCC sales price of additional peanuts for export edible use is available from the above-named person.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies, are Commodity Loans and Purchases—10.051.

Executive Order 12372

This program/activity is not subject to the provisions of Executive Order No. 12372 relating to intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Executive Order 12778

This rule has been reviewed in accordance with Executive Order 12778. The provisions of this rule do not preempt State law, are not retroactive, and do not involve administrative appeals.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable because neither ASCS nor CCC is required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject of these determinations.

Paperwork Reduction Act

The amendments to 7 CFR parts 729 and 1421 set forth in this proposed rule do not contain information collections that require clearance by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35.

Discussion

This proposed rule would amend 7 CFR part 729 to set forth the 1994-crop peanut national poundage quota, and 7 CFR part 1421 to set forth the minimum CCC sales price for 1994-crop additional peanuts sold for export edible use.

A. National Poundage Quota

Section 358–1(a)(1) of the 1938 Act requires that the national poundage quota for peanuts for each of the 1991 through 1995 marketing years (MY's) be established at a level that is equal to the estimated quantity of peanuts (in tons) that will be devoted in the MY to domestic edible, seed, and related uses. Section 358–1(a)(1) of the 1938 Act further provides that the national poundage quota for a MY shall not be less than 1,350,000 st. The MY for 1993-crop peanuts will be from August 1, 1993, through July 31, 1994. Poundage quotas for the 1991 through 1995 crops of peanuts were approved by 98.2 percent of peanut growers voting in a referendum conducted from December 10 through December 13, 1990. The referendum was conducted pursuant to section 358–1(d) of the 1938 Act.

The national poundage quota for MY 1993 was 1,496,000 st. It is proposed that the national poundage quota for MY 1994 be established at the minimum level of 1,350,000 st based on the following data:

ESTIMATED DOMESTIC EDIBLE, SEED AND RELATED USES FOR 1994–CROP PEANUTS

Item	Short tons
Domestic Edible:	
Domestic food	986,000
On farm and local sales	22,000
Subtotal	1,008,000
Seed	97,000
Related Uses:	
Crushing residual	133,000
Shrinkage and other losses	40,000
Segregation 2 and 3 loan transfers to quota loan	20,000
Subtotal	193,000
TOTAL	*1,298,000

*The total is 52,000 st less than the statutory minimum national poundage quota of 1,350,000 st.

The estimate of 1994 domestic food use was developed in two steps. First, total domestic edible utilization of 1,000,000 st was estimated by the USDA Interagency Commodity Estimates Committee. Second, to account for peanut butter exports, the estimate of domestic edible disappearance was reduced by 14,000 st. Although estimates of domestic edible utilization typically include product exports, peanut butter exports are generally either made from, or may otherwise be credited under section 358e(e)(1) of the 1938 Act as being made from, additional peanuts.

The estimate for MY 1994 farm use and local sales was derived by increasing the MY 1993 estimate by the annual growth trend rate of 2 percent.

Seed use was estimated based on the expected 1995-crop planted acreage for peanuts and the farmer stock equivalent of the seed needed to plant such acreage.

The crushing residual represents the farmer stock equivalent weight of crushing grade kernels shelled from quota peanuts. In any given load of quota farmer stock peanuts, a portion of such peanuts is only suitable for the crushing market. The quota must be sufficient to provide for the shelling of both edible and crushing grades. The crushing residual identified above reflects the assumption that crushing peanuts will be about 12 percent, on a farmer stock basis, of the total of MY 1994 domestic food and seed production.

The allowance for shrinkage and other losses is an estimate of reduced kernel weight available for milling as well as for kernel losses due to damage, fire, and spillage. These losses were estimated by multiplying a factor of 0.04 times domestic food use. This factor is the minimum shrinkage generally allowed for calculating obligations of handlers under section 359a(d)(2)(B)(iv) and is believed to be a fair estimate of such shrinkage taking into account all factors. Also, excess moisture and weight loss due to foreign material in delivered farmer stock peanuts were not considered because these factors are considered at buying points and consequently do not affect quota marketing tonnage.

Segregation 2 and 3 transfers represent peanuts that would otherwise be eligible for use as quota peanuts but which will not qualify for such use due to quality problems. Such transfers to quota peanut price support loan pools occur when quota peanut producers, due to no fault of their own, would otherwise have insufficient Segregation 1 peanuts to fulfill their quota. In such instances, Segregation 2 and 3 peanuts placed under an additional peanut price support loan may be transferred to the quota price support loan. The CCC will then ensure that such peanuts are crushed for oil.

B. 1994 Quota Allowance for Carryover Stocks and Undermarketings

The foregoing estimation process does not adjust for either abnormal carryover stocks at the beginning of MY 1994 or the application of prior undermarketings to the 1994 quota. As peanut usage has grown, carryover stocks have also grown. But, since 1980, carryover stocks have varied more from year to year than earlier. Also, current law allows a farm's quota to be increased by the amount by which marketings for prior years back to and including 1989 were less than the farm's quota. The total of all such increases nationally may not exceed 10 percent of the national poundage quota.

In addition to comments on other issues comments are particularly requested on whether or not the Secretary may and should consider, for purposes of setting the 1994-crop quota, the effect on market demand for peanuts, as well as on CCC exposure to price support loan losses, from abnormal carryover stocks and the undermarketing adjustment. Comments favoring either or both potential adjustments should specify an actual amount for the adjustment.

C. Minimum CCC Sales Price for Additional Peanuts Sold for Export Edible Use

A minimum price, at which additional peanuts owned or controlled by CCC may be sold for use as edible peanuts in export markets, is expected to be announced on or before February 15, 1994, at the same time that the quota and additional peanut support levels for the 1994 crop are announced. The announcement of that price provides producers and handlers with information to facilitate the negotiation of private contracts for the sale of additional peanuts.

An overly high price may create an unrealistic expectation of high pool dividends and discourage private sales. If too low, the minimum price could have an unnecessary, adverse affect on prices paid to producers for additional peanuts.

It is proposed that the minimum price at which 1994-crop additional peanuts owned or controlled by CCC may be sold for use as edible peanuts in export markets be established at $400 per st, unchanged from the 1993 crop. This level will provide price stability for additional peanuts sold under contract and provide some assurance to handlers that CCC will not undercut the handlers' export contracting efforts by offerings of additional peanuts for export edible sale below the historic minimum sales price.

Accordingly, comments are requested with respect to these foregoing issues.

List of Subjects

7 CFR Part 729

Poundage quotas, Peanuts, Penalties, Reporting and recordkeeping requirements.

7 CFR Part 1421

Grains, Loan programs—agriculture, Oilseeds, Peanuts, Price support programs, Reporting and recordkeeping requirements, Soybeans, Surety bonds, Warehouses.

Accordingly, it is proposed that 7 CFR parts 729 and 1421 be amended as follows:

PART 729—PEANUTS

1. The authority citation for 7 CFR part 729 continues to read as follows:

Authority: 7 U.S.C. 1301, 1357 *et seq.*, 1372, 1373, 1375; 7 U.S.C. 1445c–3.

2. Section 729.214 is amended by adding paragraph (d) to read as follows:

§ 729.214 National poundage quota.

* * * * *

(d) The national poundage quota for quota peanuts for marketing year 1994 is 1,350,000 short tons.

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

3. The authority citation for 7 CFR part 1421 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1425, 1441z, 1444f–1, 1445b–3a, 1445c–3, 1445e, and 1446f; 15 U.S.C. 714b and 714c.

4. Section 1421.27 is amended by:

A. Removing the word "and" at the end of paragraph (a)(2)(ii),

B. Removing the period at the end of paragraph (a)(2)(iii) and inserting a semicolon in its place, and

C. Adding paragraph a(2)(iv) to read as follows:

§ 1421.27 Producer-handler purchases of additional peanuts pledged as collateral for a loan.

(a) * * *

(2) * * *

(iv) The 1994 minimum CCC sales price for additional peanuts sold for export edible use is $400 per short ton.

* * * * *

Signed at Washington, DC on November 24, 1993.

Bruce R. Weber,

Acting Administrator, Agricultural Stabilization and Conservation Service and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 93–29314 Filed 11–24–93; 3:15 pm]

BILLING CODE 3410–05–P

Agricultural Marketing Service

7 CFR Part 930

[Docket No. AO–370–A5; FV93–930–1]

Proposed Tart Cherry Marketing Agreement and Order; Promulgation Hearing

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearings on proposed marketing agreement and order.

SUMMARY: Notice is hereby given of public hearings to be held to consider a proposed marketing agreement and order to cover tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin. The proposed agreement and order would authorize volume regulation, grade, size, maturity, pack and container regulations including mandatory inspection. The proposed order would also authorize production, processing and marketing research and promotion projects. The proposal was submitted by the Cherry Marketing Institute (CMI), a major industry organization, on behalf of interested cherry growers and processors (handlers). The program would be financed by assessments levied on handlers. The assessment rate would be established by the Secretary of Agriculture, based on the recommendation of a committee that would administer the program. The committee, appointed by the Secretary, would be composed of 18 members (17 growers and handlers and a public member).

DATES: A hearing will be held in Grand Rapids, Michigan, beginning on December 15, 1993, at 9 a.m. Additional sessions, if necessary, will be held on December 16 and 17, beginning at 9 a.m.

ADDRESSES: The hearings will be held at the Holiday Inn/East, 3333 28th Street, SE., Grand Rapids, Michigan. Additional hearings on the proposed tart cherry marketing order will be held in Provo, Utah; Rochester, New York; and Portland, Oregon. Dates and locations for these hearings will be determined and publicly announced at a later date.

FOR FURTHER INFORMATION CONTACT:

(1) R. Charles Martin or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, room 2523–S, AMS, USDA, P.O. Box 96456, Washington, DC 20090–6456; telephone number (202) 720–5053.

(2) Robert Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 SW. Third Avenue, room 369, Portland, Oregon, 97204; telephone: (503) 326–2725.

SUPPLEMENTARY INFORMATION: This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and is therefore excluded from the requirements of Executive Order 12866. The hearings are called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937 (Act), as amended (7 U.S.C. 601 et seq.), and applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900).

The Regulatory Flexibility Act (95 U.S.C. 601 et seq.) applies, and seeks to ensure that, within the statutory authority of a program, the regulatory and informational requirements of the program are tailored to the size and nature of small businesses. Interested persons are invited to present evidence at the hearings on the informational requirements and probable economic impact of the proposal on small businesses.

The marketing agreement and order proposed herein have been reviewed under Executive Order 12778, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed agreement and order would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with the proposal.

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

Proponents of the order contend that tart cherries, more than any other horticultural crop, are subject to severe swings in production due to climatic factors. In 1991, tart cherry production reached 190 million pounds whereas production in 1992 totalled 334 million pounds. The proponents developed the proposed marketing order as a means of stabilizing supply conditions, expanding markets for tart cherries, and improving grower returns.

On October 8, 1993, the Department issued a press release to announce the receipt of the proposal submitted by the CMI and to provide the opportunity for interested parties to submit additional or alternative proposals through November 8. The Department received six written responses to the press release announcement concerning the proposal to establish a red tart cherry marketing order. Some of the responses contained additional or alternative proposals.

Mr. Calvin C. Lutz, a tart cherry grower, Kaleva, Michigan, recommended that the Department hold hearings on the proposed marketing order as soon as possible, and that the marketing order be made effective for the 1994 crop. The U.S. Department of Justice (DOJ) urged the Department to reject, without hearings, the CMI proposal or any other marketing order proposal that would impose volume

controls. The DOJ also opposed those provisions in the proposed marketing order providing for minimum quality standards for tart cherries. The DOJ did not oppose that part of the proposed order providing for the establishment of market research and promotional activities.

The remaining four responses to the press release announcement contained additional or alternative proposals or recommendations concerning provisions of the CMI proposal. However, no specific regulatory language was provided. Accordingly, included in this notice of hearing is a discussion of these four responses.

Submitted by Mr. Lee Schrepel, Chairman, Oregon Tart Cherry Association

(Note: While Mr. Schrepel submitted no specific regulatory language, his proposals referenced certain sections of the CMI proposal under consideration. His references are included in the following summary.)

(1) The Department should not issue a marketing order for tart cherries;

(2) If a marketing order for tart cherries is issued, all red tart cherry producing states other than Michigan, New York, Pennsylvania, Utah and Wisconsin should be permanently excluded and exempted from any and all terms of the order;

(3) Hot pack, pie filling, and culls should also be addressed in the listing of products defining a handler (§ 930.10);

(4) Any district in which the annual production dwindles to an average of five million pounds should be permanently exempted from the terms of the order (§ 930.14);

(5) Every district should at least have both a grower and a processor representative (§ 930.20);

(6) Equal representation should be given to all the districts on a 15-member Board (§ 930.20);

(7) One or two year terms of office for Board members (§ 930.22);

(8) A grower who has his crop (all or part) custom-processed, and retains title to the finished product to sell in competition with other processors, should also be allowed to vote as a handler if he is assuming the risk normally associated with the processor (§ 930.23);

(9) Handlers who do not hold title to the product but process and sell the product for a fee (i.e., custom packers) should also have the same rights and privileges as other processors (§ 930.23);

(10) A grower-handler should be able to serve as either a grower or handler member on the Board (§ 930.23);

(11) The Board should be responsible for the cost of attendance at all meetings by members and alternates to the Board (§§ 930.27 and 930.32);

(12) Omit § 930.30(s);

(13) A quorum should be defined as 14 members or three-fourths of the full membership of the Board. Actions involving the enactment of supply control, assessment levels and changes in procedures and qualifications for inspections and grading should require passage by at least a two-thirds affirmative vote of the entire Board (§ 930.31(a));

(14) Assessments for reimbursement of storage costs should only be levied upon product produced in States which are under supply regulation for that respective season (§ 930.41(c));

(15) Assessment rates should be established based upon some relationship of product value after initial processing to grower price or pound of raw product from the grower. These rates should be stipulated as a fixed formula relating to raw product equivalent pounds. All products identified in § 930.10 should be listed, with provisions for additions and variations not currently identified (§ 930.41);

(16) Exemptions should be provided for very small handlers, very small packs and special packs for which grading may be inappropriate. Inspection costs should be assumed by the Board or a fixed cost per pound should be established each year that will apply to all participants (§ 930.44(a) and (b));

(17) Grading of finished product should only be required of product entering the inventory reserve (§ 930.44);

(18) Include a provision for paid advertising (§ 930.48);

(19) The desirable carry-out inventory should be a fixed percentage (20%) of average annual sales. Formulas used in establishing volume regulations should encourage market growth by at least 10% per year. Unregulated states should be deducted from the USDA crop estimate before an optimum supply is established (§ 930.50(a) and (b));

(20) July 1 should not be fixed as the date by which the Board must fix a preliminary free market tonnage percentage (§ 930.50);

(21) The suggested formula for establishment of the preliminary free market percentage should allow for the desirable carry-in to the next season (§ 930.50);

(22) The proposal for volume control should be rejected (§ 930.50);

(23) Western handlers should be excluded from the provisions of § 930.50;

(24) The reserve tonnage that can be sold as free tonnage should be equivalent to at least an additional 20% of the average sales of the prior three years and should be automatic rather than at the option of the Board (§ 930.50(g));

(25) Do not cap the primary reserve at 50 million pounds (§ 930.50(i));

(26) Section 930.50(k) of the proposed order should be deleted;

(27) Section 930.52 should be revised to use production of 20 million pounds. This exemption figure should be allowed to increase. A district should be subject to volume control only during years of production greater than that specified in § 930.52(a), and not permanently under the life of the order (§ 930.52);

(28) Automatic regulation under the order should be based on an estimated crop of 200 percent of production during 1989 through 1992 (§ 920.52(c));

(29) If the trigger for regulation is to be 150 percent (or 200 percent) of certain crop years, the trigger for permanent involvement should tie that increase concretely to an increase of 150 percent (or 200 percent) in producing acreage and processing plant capacity (§ 930.52(d));

(30) Growth in sales nationwide in all market segments should allow for a proportionate increase in each segment of processed product. The same should be the case for uses which are currently "secondary". If the productive capacity in a particular district decreases, meaning less productive acreage and processing capacity, that district should have a relaxed trigger threshold (§ 930.52(e));

(31) Section 930.53 should be omitted;

(32) Handlers should be able to dispose of cherries in the inventory reserve by destruction without authority being granted by any other party. Such action should then be communicated to the Board (§ 930.55(a));

(33) Allow for releases from the reserve in different areas at different times, based upon availability of local unrestricted product (§ 930.55(b);

(34) In § 930.56(b), the forms of cherries cited should conform to those listed in § 930.10. Handlers should be allowed the flexibility to determine what form they wish to hold as primary inventory reserve. The Board should not have the authority to limit segments in the reserve by type or product;

(35) The Board should only have the authority to regulate quality as it relates

to what is reserved from the market (§ 930.56(c));

(36) Charitable purposes should be allowed under § 930.59(b);

(37) No authority should be provided to allow handlers to transfer their equity in the primary inventory reserve (§ 930.61(a));

(38) The phrase "for any other use" should be omitted from § 930.63. Any handler processing one million pounds or less per season should be exempt from regulation, including reporting and recordkeeping requirements;

(39) Referenda for continuation of the order should require the support of two-thirds of all known growers by number and representing two-thirds of the total volume by weight of the most current crop season within the seven districts herein established. Support of the handlers must be shown to the same extent (two-thirds by number of all known handlers and representing two-thirds of the total volume by weight of raw product processed) (§ 930.83(c));

(40) Continuance referenda should be held at every fourth anniversary of enactment of the order (§ 930.83(d).

Submitted by Mr. James G. Fulleton, President, Ridgecrest Fruit Corporation, Wenatchee, Washington

(1) The State of Washington should be excluded from any Federal marketing order for tart cherries.

Submitted by Mr. Roy J. Dukesherer, Benton Harbor, Michigan

(1) The Federal government shall register all cherry producers and the election shall be by secret ballot. One vote shall be given to the person or entity who owns the cherry trees and has produced one crop from these trees. One person shall have only one vote.

(2) The USDA shall monitor the collection and disbursement of "check-off" funds. Money collected shall not be granted to private organizations specifically named in this act (i.e., the Cherry Marketing Institute and the Red Tart Cherry Growers Division of the Michigan Agricultural Commodities Marketing Association);

(3) Only Grade "A" cherries shall be frozen. All substandard cherries shall be juiced or destroyed.

Submitted by Mr. David A Pahl, President, Northwest Food Processors Association

(1) Exempt the States of Oregon and Washington from any Federal marketing order for red tart cherries.

None of the recommendations or proposals discussed herein have received approval by the Secretary of Agriculture.

Testimony is invited at the hearings on the proposed order and on all the recommendations and proposals contained in this notice, as well as any appropriate modifications or alternatives.

The hearings will be held for the purposes of:

(a) Receiving evidence about the economic and marketing conditions which relate to the proposed marketing agreement and order and to any appropriate modifications thereof;

(b) Determining whether the handling of tart cherries produced in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs or affects interstate or foreign commerce;

(c) Determining whether there is a need for a marketing agreement and order for tart cherries;

(d) Determining the economic impact of the proposed marketing agreement and order on the industry in the production area and on the public affected by such a program;

(e) Determining whether the proposed marketing agreement and order or any appropriate modification of them will tend to effectuate the declared policy of the Act.

All persons wishing to submit written material as evidence at the hearing should be prepared to submit four copies of such material at the hearing and should have prepared testimony available for presentation at the hearing.

From the time this hearing notice is issued and until the issuance of a final decision in this proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. The prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture; Office of the Administrator, Agricultural Marketing Service; Office of the General Counsel; and the Fruit and Vegetable Division, Agricultural Marketing Service.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Provisions of the CMI proposed marketing agreement and order follow. Those sections identified with an asterisk (*) apply only to the proposed marketing agreement, and are proposed by the Agricultural Marketing Service.

List of Subjects in Proposed 7 CFR Part 930

Marketing agreements and orders, tart cherries, Michigan, New York, Oregon, Pennsylvania, Utah, Washington, Wisconsin.

The marketing agreement and order proposed by the Cherry Marketing Institute would add a new part 930 to read as follows:

PART 930—TART CHERRIES GROWN IN MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON AND WISCONSIN

Sec.

930.1 Act.
930.2 Board.
930.3 Cherries.
930.4 Crop year.
930.5 Department or USDA.
930.6 District.
930.7 Fiscal period.
930.8 Free market tonnage percentage cherries.
930.9 Grower.
930.10 Handle.
930.11 Handler.
930.12 Person.
930.13 Primary inventory reserve.
930.14 Production area.
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930.16 Sales constituency.
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Administrative Body

930.20 Establishment and membership.
930.21 Reestablishment
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930.29 Powers.
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Expenses and Assessments

930.40 Expenses.
930.41 Assessments.
930.42 Accounting.

Quality Control

930.44 Quality Control.

Research, Market Development and Promotion

930.48 Research, Market Development and Promotion.

Regulations

930.50 Marketing policy.
930.51 Issuance of volume regulations.
930.52 Establishment of districts subject to volume regulations.
930.53 Issuance of regulations.
930.54 Modification, suspension, or termination of regulations.
930.55 Prohibition on the use or disposition of inventory reserve cherries.
930.56 Primary inventory reserves.
930.57 Off-premise inventory reserve.
930.58 Secondary inventory reserve.
930.59 Grower diversion privilege.

Sec

930.60 Handler diversion privilege.
930.61 Equity holders.
930.62 Handler compensation.
930.63 Exemptions.
930.64 Expansion of production area.

Reports and Records

930.70 Reports.
930.71 Records.
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Miscellaneous Provisions

930.80 Compliance.
930.81 Right of the Secretary.
930.82 Effective time.
930.83 Termination.
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930.85 Effect of termination or amendment.
930.86 Duration of immunities.
930.87 Agents.
930.88 Derogation.
930.89 Personal liability.
930.90 Separability.
930.91 Amendments.
930.92 Counterparts.
930.93 Additional parties.
930.94 Order with marketing agreement.

Authority: 7 U.S.C. 601.

§ 930.1 Act.

Act means Public Act No. 10, 73d Congress (May 12, 1933), as amended, and as reenacted and amended by the Agriculture Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended, 68 Stat. 906, 1047; 7 U.S.C. 601, et seq.).

§ 930.2 Board.

Board means the Cherry Industry Administrative Board established pursuant to § 930.20.

§ 930.3 Cherries.

Cherries means all cherries grown in the production area classified botanically as Prunus cerasus.

§ 930.4 Crop year.

Crop year means the 12-month period beginning on July 1 of any year and ending on June 30 of the following year, or such other period as the Board, with the approval of the Secretary, may establish.

§ 930.5 Department or USDA.

Department or *USDA* means the United States Department of Agriculture.

§ 930.6 District.

District means the applicable one of the subdivisions of the production area described in § 930.20(c), or such other subdivisions as may be established pursuant to § 930.21, or any subdivision added pursuant to § 930.64.

§ 930.7 Fiscal period.

Fiscal period is synonymous with fiscal year and means the 12-month period beginning on July 1 of any year and ending on June 30 of the following year, or such other period as the Board, with the approval of the Secretary, may establish: Provided, That the initial fiscal period shall begin on the effective date of this part.

§ 930.8 Free market tonnage percentage cherries.

Free market tonnage percentage cherries means that proportion of cherries handled in a crop year which are free to be marketed in normal commercial outlets in that crop year under any volume regulation established pursuant to § 930.50 or § 930.51 and, in the absence of a restricted percentage being established for a crop year pursuant to § 930.50 or § 930.51, all cherries received by handlers in that crop year.

§ 930.9 Grower.

Grower is synonymous with "producer" and means any person who produces cherries to be marketed in canned, frozen, or other processed form and who has a proprietary interest therein.

§ 930.10 Handle.

Handle means to brine, can, concentrate, freeze, dehydrate, pit, press or puree cherries, or in any other way convert cherries commercially into a processed product or obtain from growers diversion certificates issued pursuant to § 930.59, or otherwise place cherries into the current of commerce within the production area or from the area to points outside thereof: Provided, That the term "handle" shall not include, (a) the brining, canning, concentrating, freezing, dehydration, pitting, pressing or the converting, in any other way, of cherries into a processed product for home use and not for resale; or (b) the diversion of cherries pursuant to § 930.60, into a processed product, or (c) the transportation within the production area of cherries from the orchard where grown to a processing facility located within such area for preparation for market; or (d) the delivery of such cherries to such processing facility for such preparation; or (e) the sale or transportation of cherries by a producer to a handler of record within the production area.

§ 930.11 Handler.

Handler means any person who first handles cherries or causes cherries to be handled.

§ 930.12 Person.

Person means an individual, partnership, corporation, association, or any other business unit.

§ 930.13 Primary inventory reserve.

Primary inventory reserve means that portion of handled cherries that are placed into inventory in accordance with any restricted percentage established pursuant to § 930.50 or § 930.51 and for which the storage costs are paid, via reimbursement, to the handler holding such cherries.

§ 930.14 Production area.

Production area means the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin and any other state in which the annual production of cherries, as defined in § 930.3, reaches five million pounds and such state is added to the production area pursuant to § 930.64 of this part.

§ 930.15 Restricted percentage cherries.

Restricted percentage cherries means that proportion of cherries handled in a crop year which must be either placed into inventory in accordance with § 930.56 or § 930.58 or otherwise diverted in accordance with § 930.60 and thereby withheld from marketing in normal commercial outlets in that crop year under any volume regulation established pursuant to § 930.50 or § 930.51.

§ 930.16 Sales constituency.

Sales constituency means a common marketing organization or brokerage firm or individual representing a group of handlers or growers.

§ 930.17 Secondary inventory reserve.

Secondary inventory reserve means any portion of handled cherries voluntarily placed into inventory by a handler under § 930.58.

§ 930.18 Secretary.

Secretary means the Secretary of Agriculture of the United States, or any officer or employee of the U.S. Department of Agriculture to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

Administrative Body

§ 930.20 Establishment and membership.

(a) There is hereby established a Cherry Industry Administrative Board (Board) consisting of 18 members. Seventeen of these members shall be qualified growers and handlers selected pursuant to this part, each of whom shall have an alternate having the same qualifications as the member for whom the person is an alternate. The remaining member of the Board, for whom there shall be no alternate, shall

be elected by the Board from the general public.

(b) District representation on the Board shall be as follows:

District 1: Two grower members and two handler members.

District 2: One grower member and two handler members.

District 3: One grower member and one handler member.

District 4: One grower member and one handler member.

District 5: One member who may be either a grower or handler member.

District 6: One member who may be either a grower or handler member.

District 7: One grower member and one handler member.

District 8: One member who may be either a grower or handler member.

District 9: One member who may be either a grower or handler member.

(c) Upon the adoption of this part, the production area shall be divided into the following described subdivisions for purposes of this section:

District 1—Northern Michigan: that portion of the State of Michigan which is north of a line drawn along the northern boundary of Mason County and extended east to Lake Huron.

District 2—Central Michigan: that portion of the State of Michigan which is south of District 1 and north of a line drawn along the southern boundary of Muskegon County and extended east to Lake Huron.

District 3—Southern Michigan: That portion of the State of Michigan not included in Districts 1 and 2.

District 4—The State of New York.

District 5—The State of Oregon.

District 6—The State of Pennsylvania.

District 7—The State of Utah.

District 8—The State of Washington.

District 9—The State of Wisconsin.

(d) The ratio of grower to handler representation in District 2 shall alternate each time a term expires of a Board member from that representative group having two seats from that district. During the initial period of the order, the ratio shall be as designated in subsection (b) above.

(e) Board members from Districts 5, 6, 8 and 9 may be either grower or handler members and will be nominated and elected as outlined in § 930.22.

(f) In those districts having more than one seat on the Board, not more than one voting Board member may be elected from a single sales constituency. There is, however, no prohibition on the number of voting Board members from differing districts that may be elected from a single sales constituency which may have operations in more than one district. However, as provided in § 930.22, a handler may only nominate Board members and vote in one district.

(g) Subject to the approval of the Secretary, the Board may annually elect from among any of its members a chairperson and a vice-chairperson.

§ 930.21 Reestablishment.

Districts, subdivisions of districts, and the distribution of representation among growers and handlers within a respective district or subdivision thereof, or among the subdivision of districts, may be reestablished by the Secretary based upon recommendations by the Board. In recommending any such changes, the Board shall consider (a) the relative importance of new producing areas, (b) relative production, (c) the geographic locations of producing areas as they would affect the efficiency of administration of this part, (d) shifts in cherry production within the districts and the production area, (e) changes in the proportion and role of growers and handlers within the districts, and (f) other relevant factors.

§ 930.22 Term of office.

The term of office of each member and alternate member of the Board, except for the public voting members, shall be for three fiscal years: Provided, (a) that of the nine initial members and alternates from the combination of Districts 1, 2 and 3, one-third of such initial members and alternates shall serve only one fiscal year, and one-third of such members and alternates shall serve only two fiscal years; and (b) that one-half of the initial members and alternates from Districts 4 and 7 shall serve only one fiscal year, and one-half of such initial members and alternates shall serve two fiscal years (determination of which of the initial members and their alternates shall serve for 1 fiscal year, 2 fiscal years, and 3 fiscal years shall be by lot). The term of office of the public voting member shall be one fiscal year. Members and alternate members shall serve in such capacity for the portion of the term of office for which they are selected and have qualified until their respective successors are selected, have qualified and are appointed. The consecutive terms of office of members shall be limited to two 3-year terms, excluding any initial term lasting less than 3 years. [If this part becomes effective on a date such that the initial fiscal period is less than six months in duration, then the tolling of the time for purposes of this section shall not begin until the beginning of the first 12-month fiscal period.]

§ 930.23 Nomination and election.

(a) Nomination and election of initial and successor members and alternate members of the Board shall be conducted through balloting distributed to all eligible growers and handlers via the U.S. Postal Service.

(b) Nomination:

(1) In order for a grower to be on the nomination ballot, the submission of the nominee's name must be accompanied by a petition form, to be supplied by the Secretary or the Board, which contains at least five signatures of growers eligible to vote in the referendum which states they are in support of the nominee. There is no similar petition required for handler nominees.

(2) Only growers, including duly authorized officers or employees of growers, who are eligible to serve as grower members of the Board shall participate in the nomination of grower members and alternate grower members of the Board. No grower shall participate in the submission of nominees in more than one district during any fiscal period. If a producer produces cherries in more than one district, they shall participate in the district in which they produce the largest tonnage of cherries.

(3) Only handlers, including duly authorized officers or employees of handlers, who are eligible to serve as handler members of the Board shall participate in the nomination of handler members and alternate handler members of the Board. No handler shall participate in the selection of nominees in more than one district during any fiscal period. If a person is a grower and a grower-handler only because some of their cherries were custom packed, but they do not own or lease and operate a processing facility, such person may vote only as a grower.

(4) In Districts 5, 6, 8 and 9, both growers and handlers may be nominated for the district's Board seat. Grower nominations must follow the petition procedure outlined in paragraph (b)(1) of this section.

(5) All eligible growers and handlers in all districts may submit the name(s) of the nominee(s) for the public voting member of the Board.

(6) After the appointment of the initial Board, the Secretary or the Board shall announce at least 180 days in advance when a Board member's term is expiring and shall solicit nominations for that position in the manner described in this section. Nominations for such position should be submitted to the Secretary or the Board not less than 120 days prior to the expiration of such term.

(c) Election:

(1) After receiving the nominations, the Secretary or the Board shall distribute ballots via the U.S. Postal Service to all eligible growers and handlers containing the names of the

nominees by district for the respective seats on the Board, excluding the public voting member seat. The ballots will clearly indicate that growers and handlers may only rank or otherwise vote for nominees in their own district.

(2) Except as provided in paragraph (c)(4) of this section, only growers, including duly authorized officers or employees of growers, who are eligible to serve as grower members of the Board shall participate in the election of grower members and alternate grower members of the Board. No grower shall participate in the election of Board members in more than one district during any fiscal period. If a grower produces cherries in more than one district, they will participate in the district in which they produce the largest tonnage of cherries.

(3) Except as provided in paragraph (c)(4) of this section, only handlers, including duly authorized officers or employees of handlers, who are eligible to serve as handler members of the Board shall participate in the election of handler members and alternate handler members of the Board. No handler shall participate in the election of Board members in more than one district during any fiscal period. If a person is a grower and a grower-handler only because some of their cherries were custom packed, but they do not own or lease and operate a processing facility, such person may vote only as a grower.

(4) In Districts 5, 6, 8 and 9, growers and handlers may vote for either the grower or handler nominee(s) for the single seat allocated to those districts.

(d) The members of the Board appointed by the Secretary pursuant to § 930.24 shall, at the first meeting and whenever necessary thereafter, by at least a two-thirds vote of the entire Board, select an individual to serve as a public voting member of the Board from the list of nominees received from growers and handlers pursuant to paragraph (b) of this section or from other persons nominated by the Board. The person selected shall be subject to appointment by the Secretary under § 930.24.

§ 930.24 Appointment.

The selection of nominees made pursuant to § 930.23(c) shall be presented to the Secretary in a format which indicates the nominees by district, with the nominee receiving the highest number of votes at the top and the number of votes received being clearly indicated. The Secretary shall appoint from those nominees the grower and handler members of the Board and an alternate for each such member on the basis of the representation provided for in § 930.20 or as provided for in any reestablishment undertaken pursuant to § 930.21. The Secretary shall also appoint the public voting member elected by the Board pursuant to § 930.23(d).

§ 930.25 Acceptance.

Each person to be appointed by the Secretary as a member or as an alternate member of the Board shall, prior to such appointment, qualify by advising the Secretary that he/she agrees to serve in the position for which nominated for selection.

§ 930.26 Vacancies.

To fill any vacancy occasioned by the failure of any person appointed as a member or as an alternate member of the Board to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the Board, a successor for the unexpired term of such member or alternate member of the Board shall be appointed by the Secretary from the most recent list of nominations for the Board made by individual growers and handlers, or from nominations made by the Board, which appointment shall be made on the basis of representation provided for in § 930.20 or as provided for in any reestablishment undertaken pursuant to § 930.21.

§ 930.27 Alternate members.

An alternate member of the Board, during the absence of the member for whom they serve as an alternate, shall act in the place and stead of such member and perform such other duties as assigned. However, if a member is in attendance at a meeting of the Board, an alternate member may not act in the place and stead of such member. In the event of the death, removal, resignation, or disqualification of a member, the alternate shall act for the member until a successor for such member is appointed and has qualified.

§ 930.28 Eligibility for membership on Cherry Industry Administrative Board.

(a) Each grower member and each grower alternate member of the Board shall be a grower, or an officer or employee of a grower, in the district for which nominated or appointed.

(b) Each handler member and each handler alternate member of the Board shall be a handler, or an officer or employee of a handler, who owns, or leases, and operates a cherry processing facility in the district for which nominated or appointed.

§ 930.29 Powers.

The Board shall have the following powers: (a) To administer this part in accordance with its terms and provisions;

(b) To make rules and regulations to effectuate the terms and provisions of this part;

(c) To receive, investigate, and report to the Secretary complaints of violations of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 930.30 Duties.

The Board shall have, among others, the following duties:

(a) To select such officers, including a chairperson and vice-chairperson, as may be necessary, and to define the duties of such officers and the duties of the chairperson and the vice-chairperson;

(b) To employ or contract with such persons or agents as the Board deems necessary and to determine the duties and compensation of such persons or agents;

(c) To select committees and subcommittees of the Board members, to adopt bylaws, and to adopt such rules for the conduct of its business as it may deem advisable;

(d) To submit to the Secretary a budget for each fiscal period, including a report explaining the items appearing therein and a recommendation as to the rates of assessments for such period;

(e) To keep minutes, books, and records which will reflect all of the acts and transactions of the Board and which shall be subject to examination by the Secretary;

(f) To prepare periodic statements of the financial operations of the Board and to make copies of each statement available to growers and handlers for examination at the office of the Board;

(g) To cause its books to be audited by a certified public accountant at least once each fiscal year and at such times as the Secretary may request;

(h) To act as intermediary between the Secretary and any grower or handler with respect to the operations of this part;

(i) To investigate and assemble data on the growing, handling, and marketing conditions with respect to cherries;

(j) To submit to the Secretary the same notice of meetings of the Board as is given to its members;

(k) To submit to the Secretary such available information as the Secretary may request;

(l) To investigate compliance with the provisions of this part;

(m) To develop and submit an annual marketing policy for approval by the

Secretary containing the optimum supply of cherries for the crop year established pursuant to § 930.50 and recommending such action(s) necessary to achieve such optimum supply;

(n) To implement such quantity regulations called for by the marketing policy established under § 930.50 and established by the Secretary under § 930.51, including the release of any inventory reserves;

(o) To provide thorough communication to growers and handlers regarding the activities of the Board and to respond to industry inquiries about Board activities;

(p) To oversee the collection of assessments levied under this part;

(q) To enter into contracts or agreements, with the approval of the Secretary, with such persons and organizations as the Board may approve for the development and conduct of activities, including research and promotion activities, authorized under this part or for the provision of services required by this part and for the payment of the cost thereof with funds collected through assessments pursuant to § 930.41 and income from such assessments. Any such contract or agreement shall provide that:

(1) The contractors shall develop and submit to the Board a plan or project or schedule of services together with a budget(s) which shall show the estimated cost to be incurred for such plan, project or services;

(2) Any such plan, project or contract shall become effective upon approval of the Secretary; and

(3) The contracting party shall keep accurate records of all of its transactions and make periodic reports to the Board of activities conducted and an accounting for funds received and expended, and such other reports as the Secretary or the Board may require. The Secretary or employees of the Board may audit periodically the records of the contracting party.

(r) Pending disbursement pursuant to its budget, the Board, with the approval of the Secretary, may invest, in accordance with applicable Departmental policies, funds collected through assessments authorized under § 930.41 and income from such assessments;

(s) With the approval of the Secretary, the Board may establish standards, grades, or pack requirements for cherries and for frozen and canned cherry products after the Board has polled affected growers and handlers;

(t) To borrow such funds, subject to the approval of the Secretary, as are necessary for administering its responsibilities and obligations under this part. Assessments to become due to the Board may be pledged as collateral against such borrowed funds;

(u) To establish, with the approval of the Secretary, such rules and procedures relative to administration of this part as may be consistent with the provisions contained in this part and as may be necessary to accomplish the purposes of the Act and the efficient administration of this part.

§ 930.31 Procedure.

(a) Twelve members of the Board, including alternates acting for members, shall constitute a quorum and any action of the Board, except the election of the public voting member, shall require a majority vote of those present. As noted in § 930.23(d), at least a two-thirds vote of the entire Board is required for the election of the public voting member.

(b) The Board may provide through its own rules and regulations, subject to approval by the Secretary, for simultaneous meetings of groups of its members assembled at different locations and for votes to be conducted by telephone or other means of communication.

(c) All meetings of the Board are open to the public, although the Board may hold portions of meetings in executive session for the consideration of certain business. The Board will establish pursuant to rules and regulations, with the approval of the Secretary, a means of notification sufficient for a vast majority of growers and handlers to receive advance notice of Board meetings.

§ 930.32 Expenses and compensation.

The members of the Board, and alternates when acting as members shall serve without compensation but shall be reimbursed for necessary and reasonable expenses, as approved by the Board, incurred by them in the performance of their duties under this part. The Board at its discretion may request the attendance of one or more alternates at any or all meetings, notwithstanding the expected or actual presence of the respective member(s), and may pay expenses as aforesaid.

Expenses and Assessments

§ 930.40 Expenses.

The Board is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by the Board for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this part. The funds to cover such expenses shall be acquired by the levying of assessments as provided for in § 930.41.

§ 930.41 Assessments.

(a) Separate assessments may be levied upon handlers under this part to cover (1) the administrative costs of the Board; (2) storage costs of primary inventory reserve cherries; and (3) research, development and promotion activities initiated by the Board under § 930.48.

(b) Each separate assessment must be approved by the Board and the Secretary and any notification or other statement regarding assessments provided to handlers must clearly indicate each individual assessment and the purpose from paragraph (a) for which it is being collected.

(c) As a pro rata share of the administrative expenses, storage costs, or research, development and promotion expenses which the Secretary finds reasonable and likely to be incurred by the Board during a fiscal period, each handler shall pay to the Board assessments on all cherries handled, as the handler thereof, during such period: *Provided*, (1) the Board may levy a fair and reasonable assessment to cover the storage costs of a primary inventory reserve prior to the creation of the first such reserve or during a subsequent period in which no primary inventory reserve exists; and (2) a handler who diverts cherries through approved methods or obtains grower diversion certificates issued pursuant to § 930.59(b)(2) shall be exempt from any storage cost assessment to the extent that the amount of crop diverted and/or covered by grower diversion certificates offsets the amount of crop the handler was obligated to restrict from circulation in normal commercial outlets that year.

(d) The Secretary, after consideration of the advice and recommendation of the Board, shall fix the rate of assessment to be paid by each handler during the fiscal period in an amount designed to secure sufficient funds to cover the expenses which may be incurred during such period. At any time during or after the fiscal period, the Secretary may increase the rate of assessment in order to secure sufficient funds to cover any later finding by the Secretary relative to the expenses which may be incurred. Such increase shall be applied to all cherries handled during the applicable fiscal period. In order to provide funds for the administration of the provisions of this part during the first part of a fiscal period before sufficient operating income is available from assessments, the Board may accept the payment of assessments in advance,

and may borrow money for such purposes.

(e) Assessments not paid within a time prescribed by the Board may be made subject to interest or late payment charges, or both. The period of time, rate of interest, and late payment charge will be as recommended by the Board and approved by the Secretary: *Provided*, That when interest or late payment charges are in effect, they shall be applied to all assessments not paid within the prescribed period of time.

(f) Assessments will be calculated on the basis of pounds of cherries handled: *Provided*, That the formula adopted by the Board and approved by the Secretary for determining the rate of assessment will compensate for differences in the number pounds of cherries utilized for various cherry products and the relative market values of such cherry products: *Provided further*, That the formula adopted should result in a rate of assessment for juice cherries which is 50 percent of the rate for frozen, canned or other forms of cherries.

§ 930.42 Accounting.

(a) If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, the Board, with the approval of the Secretary, may carry over all or any portion of such excess into subsequent fiscal periods as reserve. Such reserve funds may be used (1) to cover any expenses authorized by this part; and (2) to cover necessary expenses of liquidation in the event of termination of this part. If any such excess is not retained in a reserve, it shall be refunded proportionately to the handlers from whom the excess was collected. The amount held in reserve for purposes of administrative expenses may not exceed approximately one year's operational expenses; that held for inventory reserve storage costs may not exceed the estimated cost of a 50 million pound reserve for two years unless additional reserve is approved by the Secretary; that held for research and promotion activities may not exceed approximately one year's expenditures for such activities; or such lower levels that the Board, with the approval of the Secretary may establish. Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such a manner as the Secretary may determine to be appropriate: *Provided*, That to the extent practicable, such funds shall be returned pro rata to the persons from whom such funds were collected.

(b) All funds received by the Board pursuant to the provisions of this part shall be used solely for the purpose specified in this part and shall be accounted for in the manner provided in this part. The Secretary may at any time require the Board and its members to account for all receipts and disbursements.

Quality Control

§ 930.44 Quality Control.

(a) *Quality standards.* The Board may establish, with the approval of the Secretary, such minimum quality and inspection requirements applicable to cherries to be handled and to processed cherry products as will contribute to orderly marketing or be in the public interest. If such requirements are adopted, no handler shall process cherries into manufactured products or sell manufactured products in the current of commerce unless such cherries and/or such products meet the applicable requirements as evidenced by certification acceptable to the Board. The Board, with the approval of the Secretary, may establish rules and regulations necessary and incidental to the administration of this section.

(b) *Inspection and certification.* Whenever the handling of any cherries requires inspection pursuant to this part, each handler who handles cherries shall cause such cherries to be inspected by the appropriate division of the Department, and certified by it as meeting the applicable requirements of such regulation: Provided, That inspection and certification shall be required for cherries which previously have been so inspected and certified only if such cherries have been regraded, resorted, repackaged, or in any other way further prepared for market. Promptly after inspection and certification, each such handler shall submit, or cause to be submitted, to the Board a copy of the certificate of inspection issued with respect to such cherries.

Research, Market Development and Promotion

§ 930.48 Research, Market Development and Promotion.

The Board, with the approval of the Secretary, may establish or provide for the establishment of production and processing research, market research and development, and/or promotional activities designed to assist, improve or promote the efficient production and processing, marketing, distribution, and consumption of cherries subject to this part. The expense of such projects shall be paid from funds collected pursuant to this part and the income from such funds.

Regulations

§ 930.50 Marketing policy.

(a) *Optimum supply.* On or about July 1 of each crop year, the Board shall hold a meeting to review sales data, inventory data, current crop forecasts and market conditions in order to establish an optimum supply level for the crop year. The optimum supply volume shall be calculated as 100 percent of the average sales of the prior three years to which shall be added a desirable carryout inventory not to exceed 20 million pounds. This optimum supply volume shall be announced by the Board in accordance with paragraph (h) of this section.

(b) *Preliminary percentages.* On or about July 1 of each crop year, the Board shall establish a preliminary free market tonnage percentage which shall be calculated as follows: from the optimum supply computed in paragraph (a) of this section, the Board shall deduct the carryin inventory to determine the tonnage requirements (adjusted to a raw fruit equivalent) for the current crop year which will be divided by the current year USDA crop forecast. If the resulting quotient is 100 percent or more, the Board shall establish a preliminary free market tonnage percentage of 100 percent. If the quotient is less than 100 percent, the Board shall establish a preliminary free market tonnage percentage equivalent to the quotient, rounded to the nearest whole percent, with the complement being the preliminary restricted percentage. The Board shall announce these preliminary percentages in accordance with paragraph (h) of this section.

(c) *Interim percentages.* Between July 1 and September 15 of each crop year, the Board may modify the preliminary free market tonnage and restricted percentages to adjust to the actual pack occurring in the industry. The Board shall announce any interim percentages in accordance with paragraph (h) of this section.

(d) *Final percentages.* No later than September 15 of each crop year, the Board shall review actual production during the current crop year and make such adjustments as are necessary between free and restricted tonnage to achieve optimum supply and recommend such final free market tonnage and restricted percentages to the Secretary and announce them in accordance with paragraph (h) of this section. The difference between any final free market tonnage percentage designated by the Secretary and 100 percent shall be the final restricted percentage. With its recommendation,

the Board shall report on its consideration of the factors in paragraph (e) of this section.

(e) *Factors.* When computing preliminary and interim percentages, or determining final percentages for recommendation to the Secretary, the Board shall give consideration to the following factors:

(1) The estimated total production of cherries;

(2) The estimated size of the crop to be handled;

(3) The expected general quality of such cherry production;

(4) The expected carryover as of July 1 of canned and frozen cherries and other cherry products;

(5) The expected demand conditions for cherries in different market segments;

(6) Supplies of competing commodities;

(7) An analysis of economic factors having a bearing on the marketing of cherries;

(8) The estimated tonnage held by handlers in primary or secondary inventory reserves;

(9) Any estimated release of primary or secondary inventory reserve cherries during the crop year.

(f) *Modification.* In the event the Board subsequently deems it advisable to modify its marketing policy, because of national emergency, crop failure, or other major change in economic conditions, it shall hold a meeting for that purpose, and file a report thereof with the Secretary within 5 days (exclusive of Saturdays, Sundays, and holidays) after the holding of such meeting, which report shall show such modification and the basis therefor.

(g) *Reserve tonnage to sell as free tonnage.* In addition, the Board shall, after polling all handlers, make available tonnage equivalent to an additional 10 percent, if available, of the average sales of the prior 3 years for market expansion. Polling of handlers shall be weighted by the tonnage each handled in the current crop year.

(h) *Publicity.* The Board shall promptly give reasonable publicity to growers and handlers of each meeting to consider a marketing policy or any modification thereof, and each such meeting shall be open to them. Similar publicity shall be given to growers and handlers of each marketing policy report or modification thereof, filed with the Secretary and of the Secretary's action thereon. Copies of all marketing policy reports shall be maintained in the office of the Board, where they shall be made available for examination by any grower or handler. The Board shall notify handlers, and give reasonable publicity to growers of its computation of the optimum supply, preliminary percentages, and interim percentages and shall notify handlers of the Secretary's action on percentages by registered or certified mail.

(i) *Restricted percentages.* Restricted percentage requirements established under paragraphs (b), (c) or (d) of this section may be fulfilled by handlers by either establishing an inventory reserve in accordance with § 930.56 or § 930.58 or by diversion of product in accordance with § 930.60; however, in years where required, the Board shall establish a maximum percentage of the restricted quantity which may be established as a primary inventory reserve such that the total primary inventory reserve does not exceed 50 million pounds. Handlers will be permitted to divert (at plant or with grower-diversion certificates) as much of the restricted percentage requirement as they deem appropriate, but may not establish a primary inventory reserve in excess of the percentage established by the Board for restricted cherries. In the event handlers wish to establish inventory reserve in excess of this amount, they may do so, in which case it will be classified as a secondary inventory reserve and be regulated accordingly.

(j) *Inventory reserve release.* In years when the expected availability from the current crop plus expected carryin inventory does not fulfill the targeted availability of 100 percent of the average annual sales in the prior 3 years, the Board shall release not later than November 1st of the current crop year such volume from the inventory reserve, if available, as will fulfill the targeted availability.

(k) *Adjustments, free market tonnage releases.* Should the Board acknowledge that a bargaining agency on behalf of growers has been established, the Board shall be empowered to release less than 100 percent of free market tonnage for sale contingent upon establishment of a grower price. Such release may be not less than 65 percent of total free market tonnage by September 1 of the current crop year. In the event that no grower price is established by September 1 of the current crop year, the Board shall release 100 percent of the free market tonnage supply target.

§ 930.51 Issuance of volume regulations.

(a) Whenever the Secretary finds, from the recommendation and supporting information supplied by the Board, that to designate final free market tonnage and restricted percentages for any cherries acquired by handlers during the crop year will tend to effectuate the declared policy of the Act, the Secretary shall designate such percentages. Such regulation shall fix the free market tonnage and restricted percentages, totaling 100 percent, which shall be applied in accordance with § 930.56 to cherries harvested in regulated districts, as determined under § 930.52, and acquired by handlers during such fiscal period.

(b) The Board shall be informed immediately of any such regulation issued by the Secretary, and the Board shall promptly give notice thereof to handlers.

§ 930.52 Establishment of districts subject to volume regulations.

(a) Upon adoption of this part, the districts subject to any volume regulations implemented in accordance with this part shall be those districts, except as provided in paragraphs (c) and (d) of this section, in which the average annual production of cherries over the prior three years has exceeded 15 million pounds.

(b) Handlers in the districts other than those identified in paragraph (a) of this section would not be subject to volume regulations except to the extent to which they handle cherries which were grown in a district identified in paragraph (a). In such a case, the handler must place in inventory reserve pursuant to § 930.56 or § 930.58 or divert pursuant to § 930.60 the required restricted percentage of the crop originating in the regulated district.

(c) Handlers in districts not meeting the production requirement of paragraph (a) would automatically be subject to regulation in the marketing year in which the production of cherries in the district is projected to exceed 150 per centum of the average production experienced in 1989 through 1992, or in the case of District 8, the average production experienced in 1991 and 1992, if data is not available for prior years.

(d) Should a district's production exceed 150 per centum of its average production for the periods specified in paragraph (c) of this section due to increased plantings or capacity, such district would be permanently subject to volume regulation any time such is implemented under this part. Determinations as to whether districts triggering regulation under paragraph (c) have materially added to capacity such as to require them to be permanently regulated shall be made by the Board, subject to approval by the Secretary.

(e) The Board shall annually review the regulation factors for districts triggering regulation under paragraph (c) to assure that such districts are

permitted to participate in any market growth on a proportionate basis.

(f) Any district which produces a crop which is less than 50 percent of the maximum annual processed production in the previous five years would be exempt from any volume regulation if, in that year, a restricted percentage is established.

§ 930.53 Issuance of regulations.

(a) The Secretary shall regulate, in the manner specified in this section, the handling of cherries whenever the Secretary finds, from the recommendations and information submitted by the Board, or from other available information, that such regulations will tend to effectuate the declared policy of the Act. Such regulations may:

(1) Limit, during any period or periods, the shipment of any particular grade, size, quality, maturity, or pack, or any combination thereof, of cherries grown in any district or districts of the production area;

(2) Limit the shipment of cherries by establishing, in terms of grades, sizes, or both, minimum standards of quality and maturity;

(3) Fix the size, capacity, weight, dimensions, or pack of the container, or containers, which may be used in the packaging or handling of cherries.

(b) The Board shall be informed immediately of any such regulation issued by the Secretary, and the Board shall promptly give notice thereof to growers and handlers.

§ 930.54 Modification, suspension, or termination of regulations.

(a) In the event the Board at any time finds that, by reason of changed conditions, any regulations issued pursuant to § 930.53 should be modified, suspended, or terminated, it shall so recommend to the Secretary.

(b) Whenever the Secretary finds, from the recommendations and information submitted by the Board or from other available information, that a regulation should be modified, suspended or terminated with respect to any or all shipments of cherries in order to effectuate the declared policy of the Act, the Secretary shall modify, suspend, or terminate such regulation. On the same basis and in like manner the Secretary may terminate any such modification or suspension. If the Secretary finds that a regulation obstructs or does not tend to effectuate the declared policy of the Act, the Secretary shall suspend or terminate such regulation. On the same basis and in like manner the Secretary may terminate any such suspension.

§ 930.55 Prohibition on the use or disposition of inventory reserve cherries.

(a) *Release of primary and secondary inventory reserve cherries.* Except as provided in § 930.50 and paragraph (b) of this section, cherries that are placed in inventory reserve pursuant to the requirements of § 930.50, § 930.51, § 930.56, or § 930.58 shall not be used or disposed of by any handler or any other person: *Provided,* That if the Board determines that the total available supplies for use in normal commercial outlets do not at least equal the amount, as estimated by the Board, needed to meet the demand in such outlets, the Board shall recommend to the Secretary and provide such justification that, during such period as may be recommended by the Board and approved by the Secretary, a portion or all of the primary and/or secondary inventory reserve cherries be released for such use.

(b) *Allowable reserve distributions.* The Board shall establish, by regulation approved by the Secretary, circumstances in which a handler may sell any or all of their inventory reserve cherries for charitable uses; state government, USDA or other non-military federal agency purchases; any experimental purposes; for any nonhuman use, including animal feed; or any use other than normal commercial outlets.

§ 930.56 Primary inventory reserves.

(a) Whenever the Secretary has fixed the free market tonnage and restricted percentages for any fiscal period, as provided for in § 930.51(a), each handler in a regulated district shall place in the primary inventory reserve for such period, at such time, and in such manner, as the Board may prescribe, or otherwise divert, according to § 930.60, a portion of the cherries acquired during such period.

(b) The form of the cherries, frozen, canned in any form, dried, or concentrated juice, placed in the primary inventory reserve is at the option of the handler subject to any limits placed by the Board upon the size of the reserve which may be dedicated to the different forms of processed cherries in its annual marketing policy. Except as otherwise permitted pursuant to § 930.60 and § 930.63, such inventory reserve portion shall be equal to the sum of the products obtained by multiplying the weight or volume of the cherries in each lot of cherries acquired during the fiscal period by the then effective restricted percentage fixed by the Secretary: *Provided,* That in converting cherries in each lot to the form prescribed by the Board the inventory reserve obligations shall be adjusted, in accordance with uniform rules adopted by the Board, to recognize shrinkage and loss resulting from processing.

(c) Inventory reserve cherries shall meet such standards of grade, quality, or condition as the Board, with the approval of the Secretary, may establish. All such cherries shall be inspected by the Department. A certificate of such inspection shall be issued which shall show, among other things, the name and address of the handler, the number and type of containers in the lot, the grade of the product, the location where the lot is stored, identification marks (can codes or lot stamp), and a certification that the cherries meet the prescribed standards. Promptly after inspection and certification, each such handler shall submit, or cause to be submitted, to the Board, at the place designated by the Board, a copy of the certificate of inspection issued with respect to such cherries. The costs of such inspections shall be paid by the handlers.

(d) All matters dealing with inventory reserves, including, but not being limited to, the costs for which handlers are to be compensated and the reporting of cherries placed in, rotated in and out, or released from an inventory reserve shall be in accordance with rules and procedures established by the Board, with the approval of the Secretary.

(e) Except as provided in § 930.55, handlers may not sell inventory reserve cherries prior to their official release by the Board. Handlers may rotate cherries in inventory reserve with prior notification to the Board.

§ 930.57 Off-premise inventory reserve.

No handler may transfer an inventory reserve obligation, but any handler may, upon notification to the Board, arrange to hold inventory reserve, of their own production or which was purchased, on the premises of another handler or in an approved commercial storage facility in the same manner as though the inventory reserve were on their own premises.

§ 930.58 Secondary inventory reserve.

(a) In the event the inventory reserve established under § 930.56 of this part is at its maximum volume, and the Board has announced, in accordance with § 930.50, that some type of volume regulation in the form of a diversion will be necessary to maintain an orderly supply of quality cherries for the market, handlers in a regulated district may elect to place in a secondary inventory reserve all or a portion of the cherries the volume regulation would otherwise require them to divert in accordance with § 930.60.

(b) Should any handler in a regulated district exercise their right to establish a secondary inventory reserve under paragraph (a) of this section, all costs of maintaining that reserve will be the responsibility of the individual handler.

(c) The secondary inventory reserve shall be established in accordance with §§ 930.56 (b) and (c) and such other rules and regulations which the Board, with the approval of the Secretary, may establish.

(d) The Board shall retain control over the release of any cherries from the secondary inventory reserve. No cherries may be released from the secondary reserve until all cherries in any primary inventory reserve established under § 930.56 have been released. Any release of the secondary inventory reserve shall be in accordance with the annual marketing policy and with § 930.55.

§ 930.59 Grower diversion privilege.

(a) *In general.* Any grower may voluntarily elect to divert, in accordance with provisions of this section, all or a portion of the cherries which otherwise, upon delivery to a handler, would become restricted percentage cherries. Upon such diversion and compliance with the provisions of this section, the Board shall issue to the diverting producer a grower diversion certificate which shall entitle such producer to deliver to a handler, and such handler to receive, the specified weight of cherries free from all inventory reserve requirements.

(b) *Eligible diversion.* Grower diversion certificates shall be issued to producers only if the cherries are diverted in accordance with the following terms and conditions or such other terms and conditions that the Board, with the approval of the Secretary, may establish. Diversion may take such of the following forms which the Board, with the approval of the Secretary, may designate: uses exempt under § 930.63; nonhuman food uses; or other uses, including diversion by leaving such cherries unharvested.

(1) *Application/mapping.* The producer electing to so divert cherries shall first make application to the Board for permission to do so. Such application shall describe in detail the manner in which the applicant proposes to divert cherries. The Board may require mapping if the diversion is to be by means of leaving the cherries unharvested. It shall also contain an agreement that the proposed diversion is to be carried out under the supervision of the Board at the expense of the Board. The Board, pursuant to rules and regulations approved by the Secretary, may establish fees applicable to handlers utilizing grower diversion certificates to help offset the cost of the supervision of the growers' diversion.

(2) *Diversion certificate.* If the Board approves the application it shall so notify the applicant and conduct such supervision of the applicant's diversion of cherries as may be necessary to assure that the cherries are diverted. After the diversion has been accomplished, the Board shall issue to the diverting producer a grower diversion certificate stating the weight of cherries diverted. Where diversion is carried out by leaving the cherries unharvested, the Board shall estimate the weight of cherries diverted on the basis of such uniform rule as the Board, with the approval of the Secretary, may prescribe.

§ 930.60 Handler diversion privilege.

(a) *In general.* Handlers handling cherries harvested in a regulated district may fulfill any restricted percentage requirement in full or in part by voluntarily diverting cherry products in an approved program, as established by the Board, rather than placing cherries in an inventory reserve. If any primary inventory reserve established under § 930.56 has reached its maximum volume limitation, diversion could be required in which case the handler would still have the option of establishing a secondary inventory reserve as provided in § 930.58. Upon such diversion and compliance with the provisions of this section, the Board shall issue to the diverting handler a handler diversion certificate which shall satisfy any restricted percentage or diversion requirement to the extent of the Board or Department inspected weight of the cherries diverted.

(b) *Eligible diversion.* Handler diversion certificates shall be issued to handlers only if the cherries are diverted in accordance with the following terms and conditions or such other terms and conditions that the Board, with the approval of the Secretary, may establish. Such diversion may take place in any of the following forms which the Board, with the approval of the Secretary, may designate: uses exempt under § 930.63; contribution to a Board approved food bank or other approved charitable organization; acquisition of grower diversion certificates that have been issued in accordance with § 930.59; or other uses, including diversion by destruction of the cherries at the handler's facilities.

(1) *Notification.* The handler electing to divert cherries through traditional, approved means, not including uses exempt under § 930.63, shall first notify the Board of such election. Such notification shall describe in detail the manner in which the handler proposes to divert cherries including, if the diversion is to be by means of destruction of the cherries, a detailed description of the means of destruction and ultimate disposition of the cherries. It shall also contain an agreement that the proposed diversion is to be carried out under the supervision of the Board and that the cost of such supervision is to be paid by the handler. Uniform fees for such supervision shall be established by the Board, pursuant to rules and regulations approved by the Secretary.

(2) *Application.* The handler electing to divert cherries by utilizing an exemption under § 930.63 shall first apply to the Board for approval of such diversion; no diversion should take place prior to such approval. Such application shall describe in detail the uses to which the diverted cherries will be put. It shall also contain an agreement that the proposed diversion is to be carried out under the supervision of the Board and that the cost of such supervision is to be paid by the applicant. The Board shall notify the applicant of the Board's approval or disapproval of the submitted application.

(3) *Diversion certificate.* The Board shall conduct such supervision of the handler's diversion of cherries after notification under paragraph (b)(1) of this section or approval of any application submitted under paragraph (b)(2) as may be necessary to assure that the cherries are diverted. After the diversion has been accomplished, the Board shall issue to the diverting handler a handler diversion certificate stating the Board or Department inspected weight of cherries which may be used to offset, to the extent of the weight of cherries diverted, any restricted percentage requirement.

§ 930.61 Equity holders.

(a) *Inventory reserve ownership.* The inventory reserve shall be the sole property of the handlers who place products into the inventory reserve. A handler's equity in the primary inventory reserve may be transferred to another person upon notification to the Board.

(b) *Agreements with growers.* Individual handlers are encouraged to have written agreements with growers who deliver their cherries to the handler as to how any restricted percentage cherries delivered to the handler will be handled and what share, if any, the grower will have in the eventual sale of any inventory reserve cherries. Handlers

would be permitted to provide in such agreements that any equity of a grower in inventory reserve cherries established under such a written agreement may be purchased at any time by the handler upon agreement to such a sale by both parties.

§ 930.62 Handler compensation.

Each handler handling cherries from a regulated district that is subject to volume regulations shall be compensated by the Board for storage and such other costs relating to the primary inventory reserve as the Board may deem to be appropriate. The Board shall, as near the beginning of the fiscal year as may be practicable, with the approval of the Secretary, establish a schedule of reimbursement levels for storage and any other approved costs related to the inventory reserve in accordance with uniform rules and regulations established by this part or otherwise adopted by the Board and approved by the Secretary.

§ 930.63 Exemptions.

The Board, with the approval of the Secretary, may exempt from the provisions of § 930.51 through § 930.58 cherries: diverted in accordance with § 930.60; used for new product and new market development; used for experimental purposes or for any other use designated by the Board, including cherries processed into products for markets for which less than 5 percent of the preceding 5-year average production of cherries were utilized. The Board, with the approval of the Secretary, shall prescribe such rules, regulations, and safeguards as it may deem necessary to ensure that cherries handled under the provisions of this section are handled only as authorized.

§ 930.64 Expansion of production area.

(a) An amendment to this part shall be submitted by the Board to the Secretary which shall provide for the expansion of the production area subject to this part to include any state not included in the production area, as originally specified in § 930.14, in which the annual production of cherries reaches at least five million pounds.

(b) The Secretary may then propose such amendment to the growers and handlers in both the then current production area and the proposed expanded production area for approval by referendum if the Secretary finds such action, based upon information supplied by the Board or other relevant information, would tend to effectuate the declared policy of the Act.

(c) Any state added to the production area pursuant to this section will be designated as a district and shall be provided a seat on the Board. Nomination, election, appointment, acceptance, and other matters concerning the Board member and the alternate Board member for any new district will be in accordance with §§ 930.23 through 930.25.

(d) The initial term of office of any Board member added pursuant to this section shall be three years and they shall be eligible to serve one additional three-year term.

(e) The amendment submitted pursuant to paragraph (a) of this section shall also provide for the expansion of the Board pursuant to paragraph (c) and any changes in the procedure, including the size of the required quorum, which may be necessary to insure fair and equitable representation of any added district and to insure the continued efficient operation of the Board in fulfilling its duties under this part.

Reports and Records

§ 930.70 Reports.

(a) *Weekly production, monthly sales, and inventory data.* Each handler shall, upon request of the Board, file promptly with an independent certified public accountant retained by the Board, reports showing weekly production data; monthly sales and inventory data; and such other information, including the volume of any cherries placed in or released from a primary or secondary inventory reserve or diverted, as the Board shall specify with respect to any cherries handled by the handler. Such information may be provided to the Board members in summary or aggregated form only without any reference to the individual sources of the information.

(b) *Other reports.* Upon the request of the Board, with the approval of the Secretary, each handler shall furnish to the Board such other information with respect to the cherries acquired, handled, and disposed of by such handler as may be necessary to enable the Board to exercise its powers and perform its duties under this part.

(c) *Protection of proprietary information.* Under no circumstances shall any information or reports be made available to the Board members or others which will reveal the proprietary information of an individual handler.

§ 930.71 Records.

Each handler shall maintain such records of all cherries acquired, handled, or sold, or otherwise disposed of as will substantiate the required reports and as may be prescribed by the Board. All such records shall be maintained for not less than two years after the termination of the fiscal year in which the transactions occurred or for such lesser period as the Board may direct with the approval of the Secretary.

§ 930.72 Verification of reports and records.

For the purpose of assuring compliance and checking and verifying the reports filed by handlers, the Secretary and the Board, through its duly authorized agents, shall have access to any premises where applicable records are maintained, where cherries are received, stored, or handled, and, at any time during reasonable business hours, shall be permitted to inspect such handlers' premises and any and all records of such handlers with respect to matters within the purview of this part.

§ 930.73 Confidential information.

All reports and records furnished or submitted by handlers to the Board and its authorized agents which include data or information constituting a trade secret or disclosing trade position, financial condition, or business operations of the particular handler from whom received, shall be received by and at all times kept in the custody and under the control of one or more employees of the Board or its agent, who shall disclose such information to no person other than the Secretary.

Miscellaneous Provisions

§ 930.80 Compliance.

Except as provided in this part, no person may handle cherries, the handling of which has been prohibited by the Secretary under this part, and no person shall handle cherries except in conformity with the provisions of this part. No person may handle any cherries for which a diversion certificate has been issued other than as provided in § 930.59(b) and § 930.60(b).

§ 930.81 Right of the Secretary.

Members of the Board (including successors and alternates), and any agents, employees, or representatives thereof, shall be subject to removal or suspension by the Secretary at any time. Each and every regulation, decision, determination, or other act of the Board shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the Board shall be deemed null and void, except as to acts done in reliance thereon or in accordance therewith prior to such disapproval by the Secretary.

§ 930.82 Effective time.

The provisions of this part shall become effective at such time as the Secretary may declare above the Secretary's signature and shall continue in force until terminated in one of the ways specified in § 930.83.

§ 930.83 Termination.

(a) The Secretary at any time may terminate the provisions of this part by giving at least 1 day's notice by means of a press notice or in any other manner in which the Secretary may determine.

(b) The Secretary shall terminate or suspend the operation of any and all of the provisions of this part whenever the Secretary finds that such provisions do not tend to effectuate the declared policy of the Act.

(c) The Secretary shall terminate the provisions of this part whenever the Secretary finds by referendum or otherwise that such termination is favored by a majority of the growers: *Provided*, That such majority has, during the current fiscal year, produced more than 50 percent of the volume of the cherries which were produced within the production area. Such termination shall become effective on the last day of April subsequent to the announcement thereof by the Secretary.

(d) The Secretary shall conduct a referendum within the month of March of every sixth year after the effective date of this part to ascertain whether continuation of this part is favored by the growers and handlers. If it develops from said referenda that (1) more than 50 percent of the producers by number or volume of production represented in the referendum; or (2) more than 50 percent of the handlers who, during the current fiscal period, handled more than 50 percent of the total volume of cherries processed within the production area by those handlers voting in the referendum favor termination of this part, the Secretary shall give consideration to terminating the provisions of this part in accordance with paragraph (c) of this section.

(e) The provisions of this part shall, in any event, terminate whenever the provisions of the Act authorizing them cease to be in effect.

§ 930.84 Proceedings after termination.

(a) Upon the termination of the provisions of this part, the then functioning members of the Board shall, for the purpose of liquidating the affairs of the Board, continue as trustees of all the funds and property then in its possession, or under its control, including claims for any funds unpaid or property not delivered at the time of such termination.

(b) The said trustees shall (1) continue in such capacity until discharged by the Secretary; (2) from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and of the trustees, to such person as the Secretary may direct; and (3) upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the Board or in the trustees pursuant to this part.

(c) Any person to whom funds, property, and claims have been transferred or delivered, pursuant to this section, shall be subject to the same obligations imposed upon the Board and upon the trustees.

§ 930.85 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this part shall not: (a) Affect or waive any right, duty, obligation, or liability which shall have risen or which may thereafter arise in connection with any provision of this part; or (b) release or extinguish any violation of this part; or (c) affect or impair any rights or remedies of the Secretary or any other person with respect to any such violation.

§ 930.86 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this part shall cease upon its termination, except with respect to acts done under and during the existence of this part.

§ 930.87 Agents.

The Secretary may, by designation in writing, name any officer or employee of the United States, or name any agency or division in the U.S. Department of Agriculture, to act as the Secretary's agent or representative in connection with any provisions of this part.

§ 930.88 Derogation.

Nothing contained in this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States (a) to exercise any powers granted by the Act or otherwise; or (b) in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 930.89 Personal liability.

No member or alternate member of the Board and no employee or agent of the Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate member, employee, or agent, except for acts of dishonesty, willful misconduct, or gross negligence.

§ 930.90 Separability.

If any provision of this part is declared invalid or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

§ 930.91 Amendments.

Amendments to this part may be proposed, from time to time, by the committee or by the Secretary.

Marketing Agreement

***§ 930.92 Counterparts.**

This agreement may be executed in multiple counterparts and when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original.

*** § 930.93 Additional parties.**

After the effective date thereof, any handler may become a party to this agreement if a counterpart is executed by such handler and delivered to the Secretary. This agreement shall take effect as to such new contracting part at the time such counterpart is delivered to the Secretary, and the benefits, privileges, and immunities conferred by this agreement shall then be effective as to such new contracting party.

***§ 930.94 Order with marketing agreement.**

Each signatory hereby requests the Secretary to issue, pursuant to the Act, an order providing for regulating the handling of tart cherries in the same manner as is provided for in this agreement.

Dated: November 23, 1993.

Lon Hatamiya,

Administrator.

[FR Doc. 93–29265 Filed 11–29–93; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 1106

[DA–94–03]

Milk in the Southwest Plains Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This action invites written comments on a proposal to suspend indefinitely certain portions of a provision of the Southwest Plains Federal milk marketing order (Order 106) beginning December 1993. The proposed action would allow transfers of Class I fluid milk products from a distributing plant to other plants regulated under Order 106 to be counted as part of the distributing plant's route sales for the purpose of determining the plant's pool status under the order. The suspension was requested by Associated Milk Producers, Inc. (AMPI), and Mid-America Dairymen, Inc. (Mid-America). The proponents contend the proposed action is necessary to restore equity among producers supplying handlers regulated under Order 106.

DATES: Comments are due no later than December 7, 1993.

ADDRESSES: Comments (two copies) should be sent to USDA/AMS/Dairy Division, Order Formulation Branch, room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932.

SUPPLEMENTARY INFORMATION: This order of proposed suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) (the Act) and the rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR, part 900).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the opportunity for disorderly marketing conditions and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

We are issuing this rule in conformance with Executive Order 12866. Based on information compiled by the Department, we have determined that this rule: (1) Will have an effect on the economy of less than $100 million; (2) will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (3) will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (4) will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and (5) will not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

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

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

Notice is hereby given that, pursuant to the provisions of the Act, suspension of the following provisions of the order regulating the handling of milk in the Southwest Plains marketing area is being considered for an indefinite period commencing with the month of December 1993:

In § 1106.3, the parenthetical phrase "(except to a plant)".

All persons who want to submit written data, views or arguments about the proposed suspension should send two copies of their views to USDA/AMS/Dairy Division, Order Formulation Branch, room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456 by the 7th day after publication of this notice in the **Federal Register**. The filing period is limited to 7 days because a longer period would not provide the time needed to complete the required procedures before the requested suspension is to be effective.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27 (b)).

Statement of Consideration

The proposed action would suspend certain words from the route disposition definition of the order. The effect of this action would be to include transfers of fluid milk products to other plants regulated under Order 106 in determining if the transferor plant meets the pool qualification requirements specified in § 1106.7(a) of the order.

According to Mid-America and AMPI's request, a Tulsa, Oklahoma, handler receiving milk from non-member producers is also supplied supplemental milk from cooperative associations that pool milk on the Southwest Plains milk order. The proponents argued that as a result of excluding transfers of fluid milk products to other plants regulated under Order 106, the handler has been a partially-regulated plant in recent months and could be again in the future. Mid-America and AMPI explained that, since the handler's Class I utilization is higher than the market's average, the handler has been able to pay its non-member producers a price in excess of the order's blend price. In addition to the inequity resulting from this price disparity, AMPI, during the month of September, was required to depool milk that it had diverted from the Tulsa plant because, otherwise, the plant would have failed to qualify as a pool plant during the month of September. This resulted in additional financial loss to the cooperative.

List of Subjects in 7 CFR Part 1106

Milk marketing orders.

The authority citation for 7 CFR part 1106 continues to read as follows:

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

Dated: November 23, 1993.

Lon Hatamiya,

Administrator.

[FR Doc. 93–29288 Filed 11–29–93; 8:45 am]

BILLING CODE 3410–02–P

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 93–127–1]

Change in Disease Status of South Korea Because of Rinderpest and Foot-and-Mouth Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to declare South Korea free of rinderpest and foot-and-mouth disease. There have been no outbreaks of foot-and-mouth disease in South Korea since 1934, and we have determined that rinderpest has never existed there. We are also proposing to add South Korea to a list of countries that, although declared free of rinderpest and foot-and-mouth disease, are subject to special restrictions on the importation of their meat and other animal products into the United States. This proposed revision would remove the prohibition on the importation into the United States, from South Korea, of live ruminants and fresh, chilled, and frozen meat from ruminants, and would relieve restrictions on the importation, from South Korea, of milk and milk products from ruminants.

South Korea is not declared to be free of hog cholera and swine vesicular disease. Therefore, even if this proposal is adopted, the importation from South Korea of swine and fresh, chilled, and frozen meat from swine would continue to be restricted because of these diseases.

DATES: Consideration will be given only to comments received on or before January 31, 1994.

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. 93–127–1. 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 on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. John Cougill, Staff Veterinarian, Import-Export Products Staff, National Center for Import-Export, Veterinary Services, APHIS, USDA, room 759, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7834.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation into the United States of specified animals and animal products in order to prevent the introduction into the United States of various diseases, including rinderpest, foot-and-mouth disease (FMD), bovine spongiform encephalopathy, African swine fever, hog cholera, and swine vesicular disease. These are dangerous and destructive communicable diseases of ruminants and swine.

Section 94.1(a)(1) of the regulations provides that rinderpest or FMD exists in all countries of the world except those listed in § 94.1(a)(2), which are declared to be free of these diseases. We are proposing to add South Korea to this list.

We will consider declaring a country to be free of rinderpest and FMD if there have been no cases of these diseases reported there for at least the previous 1-year period and no vaccinations for rinderpest or FMD have been administered to swine or ruminants in that country for at least the previous 1-year period. Rinderpest has never existed in South Korea and there have been no outbreaks of FMD in South Korea since 1934.

South Korea has applied to the U.S. Department of Agriculture to be recognized as free of rinderpest and FMD. The Animal and Plant Health Inspection Service (APHIS) has reviewed the documentation submitted by the government of South Korea in support of its request. In addition, an APHIS official recently conducted an on-site evaluation of the animal health program in South Korea in regard to the FMD situation in that country. The evaluation consisted of a review of the capability of South Korea's veterinary services, laboratory and diagnostic procedures, vaccination practices, and the administration of laws and regulations to ensure against the introduction into South Korea of FMD through the importation of animals, meats, and animal products. The APHIS official conducting the on-site evaluation concluded that South Korea is free of FMD. Details concerning the on-site evaluation are available upon written request from the person listed under **FOR FURTHER INFORMATION CONTACT.**

Based on the information discussed above, we believe that South Korea qualifies for listing in § 94.1(a)(2) of the regulations as a country declared free of rinderpest and FMD. This action would remove the prohibition on the importation, from South Korea, of live ruminants and fresh, chilled, and frozen meat from ruminants. Importations of live swine and fresh, chilled, or frozen meat from swine would continue to be restricted under 9 CFR part 94, since South Korea has not been declared free of hog cholera and swine vesicular disease.

Special Restrictions

We also propose to add South Korea to the list in § 94.11(a) of countries free of rinderpest and FMD that are subject to special restrictions on the importation of their meat and other animal products into the United States. The countries listed in § 94.11(a) are subject to these special restrictions because they:

(1) Supplement their national meat supply by importing fresh, chilled, or frozen meat of ruminants or swine from countries that are designated in § 94.1(a) as infected with rinderpest or FMD;

(2) Have a common land border with countries designated as infected with rinderpest or FMD; or

(3) Import ruminants or swine from countries designated as infected with rinderpest or foot-and-mouth disease under conditions less restrictive than would be acceptable for importation into the United States.

The special restrictions placed on meat and meat products of ruminants and swine in § 94.11 generally require that the meat be: (1) Prepared in an inspected establishment that is eligible to have its products imported into the United States under the Federal Meat Inspection Act; and (2) accompanied by an additional certificate, issued by an animal health official of the national government of the country declared free of the disease, assuring that the meat and meat products have not been commingled with or exposed to meat or other products originating in, imported from, or transported through a country infected with rinderpest or FMD, and are otherwise handled in accordance with the requirements of § 94.11.

South Korea has a common land border with North Korea, which is designated in § 94.1(a)(1) as a country in which rinderpest or FMD exists. In addition, South Korea imports live ruminants and swine from countries not recognized as free of FMD under conditions less restrictive than would be acceptable for importation into the United States. Further, South Korea supplements it national meat supply by the importation of fresh, chilled, and frozen meat of ruminants and swine

from countries designated in § 94.1(a)(1) as countries in which rinderpest or FMD exists. As a result, even though we propose to designate South Korea as free of rinderpest and FMD, the meat and other animal products produced in South Korea may be commingled with the fresh, chilled, or frozen meat of animals from a country in which rinderpest and FMD exists, resulting in an undue risk of introducing rinderpest or FMD into the United States.

Therefore, we are proposing that meat and other animal products of ruminants and swine, and the ship stores, airplane meals, and baggage containing these meat or animal products imported into the United States from South Korea be subject to the restrictions specified in § 94.11 of the regulations, in addition to other applicable requirements of title 9, chapter III.

We also propose to add South Korea to the list in § 94.1(d)(1) of countries in which rinderpest or FMD has been known to exist and that were declared free of rinderpest and FMD on or after September 28, 1990. All countries declared free of rinderpest and FMD on or after September 28, 1990, must be added to this list. Adding South Korea to this list would restrict the importation of llamas and alpacas from South Korea into the United States, unless imported through the Harry S Truman Animal Import Center in accordance with 9 CFR 92.435.

Executive Order 12866 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12866. Based on information compiled by the Department, we have determined that this proposed rule:

(1) Would have an effect on the economy of less than $100 million;

(2) would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(3) would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(4) would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and

(5) would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This proposed rule would add South Korea to the list in part 94 of countries declared to be free of rinderpest and FMD. This action would relieve restrictions imposed on the importation of live ruminants and fresh, chilled, and frozen meat of ruminants from South Korea into the United States. This action would not relieve restrictions on the importation of live swine and fresh, chilled, and frozen meat of swine because South Korea is still considered to be affected with hog cholera and swine vesicular disease.

Based on available information, the Department does not anticipate a major increase in exports of fresh, chilled, or frozen meat of ruminants from South Korea into the United States as a result of this proposed rule. In 1992, the United States did not import any live ruminants or swine from South Korea. Additionally, only two metric tons of South Korean meat and meat products were shipped to the United States. This accounted for less than one-tenth of one percent of total 1992 meat imports. South Korea is currently an importer of beef and lamb and does not produce enough ruminant meat to be self-sufficient. Therefore, any effect on domestic prices or supplies would be insignificant. Increases in imports of live ruminants from South Korea are also unlikely because there is no demand in the United States for live ruminants from South Korea and because of high transportation costs.

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 have been approved by the Office of Management and Budget (OMB), and there are no new requirements. The assigned OMB control number is 0579–0015.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 94 would be amended as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), VELOGENIC VISCEROTROPIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 would be revised to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

§ 94.1 [Amended]

2. In § 94.1, paragraph (a)(2) would be amended by adding "South Korea," immediately after "Poland,".

3. In § 94.1, paragraph (d)(1) would be amended by adding the words "South Korea," immediately after "Poland".

§ 94.11 [Amended]

4. In § 94.11, the first sentence in paragraph (a) would be amended by adding "South Korea," immediately after "Republic of Ireland,".

Done in Washington, DC, this 22nd day of November 1993.

Patricia Jensen,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–29231 Filed 11–29–93; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF ENERGY

Office of the Secretary

10 CFR Part 600

RIN 1991–AB03

Financial Assistance Rules; Seismic Safety Standards

AGENCY: Department of Energy.

ACTION: Proposed rule.

SUMMARY: The Department of Energy (DOE) today is proposing to amend the Financial Assistance Rules to bring the Rules into compliance with Executive Order 12699 of January 5, 1990, Seismic Safety of Federal and Federally Assisted

or Regulated New Building Construction.

DATES: Written comments on the proposed rule must be received by February 28, 1994.

ADDRESSES: Comments should be addressed to: Gwendolyn Cowan, Director, Business and Financial Policy Division (HR–521.2), Office of Procurement, Assistance and Program Management, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Edward F. Sharp, Business and Financial Policy Division, (HR–521.2), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8192;

Sophie C. Cook, Office of the Assistant General Counsel, Procurement and Finance (GC–34), U.S. Department of Energy, Washington, DC 20585, (202) 586–1900.

SUPPLEMENTARY INFORMATION:

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IX. Public Comments

I. Introduction

The Rules were previously amended on January 2, 1992 (57 FR 1) to provide for seismic safety standards in compliance with Executive Order 12699, Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction. At that time, some model building codes did not contain adequate seismic safety provisions. Since then, the Interagency Committee on Seismic Safety in Construction (ICSSC), pursuant to Section 4(a) of the Order, has developed its "Recommendation of Design and Construction Practices in Implementation of Executive Order 12699," which has determined that three model building codes contain suitable seismic safety provisions.

II. Changes to 10 CFR Part 600

Section 600.12(c) is revised to identify additional building codes which would meet the seismic safety requirements of the Executive Order.

III. Review Under Executive Order 12612

Executive Order 12612 requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or in the distribution of power and responsibilities among various levels of Government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. Today's proposed rule will revise certain policy and procedural requirements. However, DOE has determined that the proposed revision will not have a substantial direct effect on the institutional interests or traditional functions of States.

IV. Regulatory Review

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, today's action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

V. Review Under the Regulatory Flexibility Act

This proposed rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, 94 Stat. 1164, which requires preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities; i.e., small businesses, small organizations, and small governmental jurisdictions. DOE has concluded that the proposed rule would only affect small entities as they apply for and receive financial assistance, and does not create additional economic impact on small entities as a whole. DOE certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

VI. Review Under the Paperwork Reduction Act

No information collection or recordkeeping requirements are imposed upon the public by this proposed rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, *et seq.*, or OMB implementing regulations at 5 CFR part 1320.

VII. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this proposed rule clearly would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.* (1976)), the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), and DOE guidelines (10 CFR part 1021) and, therefore, does not require an environmental impact statement pursuant to NEPA.

VIII. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency subject to Executive Order 12291 to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. DOE certifies that today's proposed rule meets the requirements of sections 2 (a) and (b) of Executive Order 12778.

IX. Public Comments

Interested persons are invited to participate in this rulemaking by submitting data, views, or arguments with respect to the proposed changes set forth in this notice. Three copies of written comments should be submitted to the address indicated in the **ADDRESSES** section of this notice. All comments received will be available for public inspection in the DOE Reading Room, room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. All written comments received by the date given in the **DATES** section will be fully considered prior to publication of a final rule resulting from this proposal. Any information considered to be

confidential must be so identified and submitted in writing, one copy only. The DOE reserves the right to determine the confidential status of the information and to treat it according to our determination.

The Department has concluded that this proposed rule does not involve a substantial issue of fact or law and that the proposed rule should not have substantial impact on the nation's economy or a large number of individuals or businesses. Therefore, pursuant to Public Law 95–91, the DOE Organization Act, and the Administrative Procedure Act (5 U.S.C. 553), the Department does not plan to hold a public hearing on this proposed rule.

List of Subjects in 10 CFR Part 600

Cooperative agreements/energy; Educational institutions; Energy; Grants/energy; Non-profit organizations.

In consideration of the foregoing, the Department of Energy proposes to amend part 600 of chapter II of title 10 of the Code of Federal Regulations as set forth below.

G.L. Allen,

Acting Deputy Assistant Secretary for Procurement and Assistant Management.

For the reasons set out in the preamble, part 600 of chapter II, title 10 of the Code of Federal Regulations is proposed to be amended as follows:

PART 600—FINANCIAL ASSISTANCE RULES

1. The authority citation for Part 600 continues to read as follows:

Authority: Secs. 644 and 646, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254 and 7256); Pub. L. 97–258, 96 Stat. 1003–1005 (31 U.S.C. 6301–6308), unless otherwise noted.

2. Paragraph 600.12(c) is revised as follows:

§ 600.12 Generally applicable requirements.

* * * * *

(c) Provisions shall be made to design and construct all buildings, in which DOE funds are used, to meet appropriate seismic design and construction standards. Seismic codes and standards meeting or exceeding the provisions of each of the model codes listed in this paragraph are considered to be appropriate for purposes of this part. These codes provide a level of seismic safety that is substantially equivalent to the National Earthquake Hazards Reduction Program (NEHRP) Recommended Provisions for the Development of Seismic Regulations for New Buildings, 1988 Edition (Federal Emergency Management Administration 222 and 223). Revisions of these model codes that are substantially equivalent to or exceed the then current or immediately preceding edition of the NEHRP Recommended Provisions (which are updated triennially) shall be considered to be appropriate standards. The model codes are as follows:

(1) 1991 Uniform Building Code, of the International Council of Building Officials,

(2) 1992 Supplement to the National Building Code, of the Building Officials and Code Administrators International,

(3) 1992 Amendments to the Standard Building Code, of the Southern Building Code Congress International.

[FR Doc. 93–29167 Filed 11–29–93; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Summary Notice No. PR–93–19]

Petition for Rulemaking: Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specific provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. 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 January 31, 1994.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules 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 Ave., 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 (b) and (f) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC on November 23, 1993.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Rulemaking

Docket No. 27427
Petitioner: Ms. Roberta Sue
Regulations Affected: 14 CFR 121.317(g)
Description of Rulechange Sought: To prohibit smoking by flight deck personnel during airplane movement in the air, on the surface, and during takeoff and landing
Petitioner's Reason for the Request: The petitioner feels that the lives of all passengers on all commercial flights are endangered or compromised by flight deck personnel engaged in the drug addiction of tobacco smoking while operating the aircraft; that flight deck personnel are exposed to Environmental Tobacco Smoke; that all passengers are exposed to a fire hazard; that the pilot's drug dependency on nicotine and carbon monoxide inhibits his or her ability to react effectively to emergencies; that tobacco smoke cannot be controlled to acceptable levels by ventilation or air cleaning; and that tobacco smoke contains a complex array of toxic components and is a serious and substantial public health risk.

[FR Doc. 93–29301 Filed 11–29–93; 8:45 am]
BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 93–ASW–46]

Proposed Modification of Class E Airspace: Stillwater, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Stillwater, OK. A Very High Frequency

Omnidirectional Range/Distance Measuring Equipment (VOR/DME) standard instrument approach procedure (SIAP) has been developed at Stillwater Municipal Airport, OK, and controlled airspace extending upward from 700 feet above the ground, is needed for instrument flight rules (IFR) operations at the airport. Airspace reclassification, effective September 16, 1993, has discontinued the use of the term "transition area." Designated airspace extending upward from 700 feet above the ground is now Class E airspace. The intended effect of this proposal is to provide adequate Class E airspace for IFR operators executing the recently established SIAP.

DATES: Comments must be received on or before January 9, 1994.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Southwest Region, Docket No. 93–ASW–46, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530.

The official docket may be examined in the office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Joe Chaney, System Management Branch, Department of Transportation, Federal Aviation Administration, Forth Worth, TX 76193–0530; telephone: 817–624–5531.

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 under the caption "Addresses." Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: "Comments to Airspace Docket No. 93–ASW–46." The postcard will be dated and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the office of the Assistant Chief Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contract with FAA personnel concerned with this rulemaking will be filed in this 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, System Management Branch, Department of Transportation, Fort Worth, TX 76193–0530. 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. 11–1A 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 modify Class E airspace at Stillwater, OK, to provide controlled airspace upward from 700 feet above the ground for aircraft executing the VOR/DME RWY 35 standard instrument approach procedure (SIAP) into the Stillwater Municipal Airport. Airspace reclassification, effective September 16, 1993, has discontinued the use of the term "transition area" for airspace extending upward from 700 feet above the ground and replaced it with the designation "Class E airspace." The intended effect of this proposal is to provide adequate Class E airspace to contain IFR operations at Stillwater Municipal Airport, OK.

The coordinates for this airspace docket are based on docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet above the ground 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 (58 FR 36298; July 6, 993). 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 that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is no 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 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 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

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

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

* * * * *

ASW OK E Stillwater, OK [Modify]

Stillwater Municipal Airport, OK
(lat. 3°09'37"N., long. 97°05'09"W.)
Stillwater VOR/DME
(lat. 36°13'27"N., long. 97°04'53"W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Stillwater Municipal Airport and within 8 miles east and 4 miles west of the 005 radial of the Stillwater VOR/DME extending from the 6.5-mile radius to 16 miles north of the VOR/DME, and within 1.7

miles each side of the 183 radial of the Stillwater VOR/DME extending from the 6.5-mile radius to 12.2 miles south of the Stillwater Airport.

* * * * *

Issued in Fort Worth, TX, on November 10, 1993.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 93–29300 Filed 11–29–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–AGL–19]

Proposed Establishment of Class E Airspace; Appleton, MN

AGENCY: Federal Aviation Administration (FAA), Dot.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace near Appleton, MN, to accommodate a new Nondirectional Beacon (NDB) runway 13 Standard Instrument Approach Procedure (SIAP) to Appleton Municipal Airport, Appleton, MN. Airspace Reclassification, in effect as of September 16, 1993, has discontinued the use of the term "transition area" and replace it with the designation "Class E airspace". Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The area would be depicted on aeronautical charts to provide a reference for pilots operating in the area.

DATES: Comments must be received on or before January 14, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 93–AGL–19, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Rober Frink, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide that factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93–AGL–19." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the 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 Class E airspace near Appleton, MN, to accommodate a new NDB runway 13 SIAP to Appleton Municipal Airport, Appleton, MN.

Controlled airspace extending from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. Aeronautical maps and charts would reflect the defined area which would enable pilots to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Airspace Reclassification, in effect as of September 16, 1993, has discontinued the use of the term "transition area" and replaced it with the designation "Class E airspace". The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (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 "significant regulatory action" under Executive Order 12866; (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 matter that will only affect air traffic procedures and the air navigation, it is certified that this rule, when promulgated, will not have significant economic impact on a substantial number or 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 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read a follows;

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510 E.O. 10844 24 FR 9565 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation

Administration Order 7200.9A, Airspace Designations and Reporting Points dated June 17, 1993, and effective September 16, 1993, is amended as follows:

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

* * * * *

AGL MN E5 Appleton, MN [New]

Appleton Municipal Airport, MN
(lat. 45°13'41" N., long. 96°00'19" W.)

That airspace extending upon from 700 feet above the surface within a 6.4-miles radius of the Appleton Municipal Airport, MN, and within 2.5 miles each side of the 326° bearing from airport extending from the 6.4-mile radius to 7 miles northwest of the airport.

* * * * *

John P. Cuprisin,

Manager Air Traffic Division.

[FR Doc. 93–29294 Filed 11–29–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–ASW–36]

Proposed Establishment of Class E Airspace: Leesville, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace extending upward from 700 feet above ground level (AGL) at Leesville Airport. A Nondirectional Radio Beacon (NDB) standard instrument approach procedure (SIAP) has been developed at Leesville Airport, and controlled airspace extending from 700 feet above ground level (AGL) is needed for aircraft executing the approach. Airspace reclassification, effective September 16, 1993, has discontinued the use of the term "transition area," and airspace extending from 700 feet or more AGL is now Class E airspace. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the SIAP's at Leesville Airport, LA.

DATES: Comments must be received on or before January 10, 1994.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Southwest Region, Docket No. 93–ASW–36, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530.

The official docket may be examined in the office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Forth Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Joe Chaney, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530; telephone: 817–624–5531.

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 proposals. 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 under the caption "ADDRESSES." Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: "Comments to Airspace Docket No. 93–ASW–36." The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the office of the Assistant Chief Counsel, 4400 Blue Mound Road, Forth Worth, TX, 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 Manager, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530. 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 Class E airspace extending upward from 700 feet above ground level located at Leesville Airport in Leesville, LA. A Nondirectional Radio Beacon (NDB) standard instrument approach procedure (SIAP) has been developed for Leesville Airport. Controlled airspace extending from 700 feet above ground level (AGL) is needed for instrument flight rule (IFR) operations at the airport. Airspace reclassification, effective September 16, 1993, has discontinued the use of the term "transition area," and airspace extending upward from 700 feet or more above ground level is now Class E airspace. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the SIAP's at Leesville Airport. The Coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas for airports extending from 700 feet or more above ground level 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 (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 that needs frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (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 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 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

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

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

* * * * *

ASW Louisiana E5 Leesville, LA [New]

Leesville Airport, LA
(latitude 31°10'03" N., longitude 93°20'53" W.)
Leesville NDB (VED).
(latitude 31°06'09" N., longitude 93°20'31" W.)

That airspace extending upward from 700 feet above the surface within a 6.5 mile radius of the Leesville Airport and within 2.5 miles each side of the 000 bearing of the Leesville NDB extending from 6.5 mile radius area to 7.3 miles north of the Leesville Airport excluding that airspace within the Fort Polk, LA, Class D Airspace.

* * * * *

Issued in Fort Worth, TX on November 8, 1993.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 93–29297 Filed 11–29–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–ASW–47]

Proposed Modification of Class E Airspace: Olney, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify the Class E airspace at Olney, TX. A recent amendment to the Nondirectional Radio Beacon (NDB) Runway (RWY) 17 standard instrument approach procedure (SIAP) has necessitated the need to amend the arrival extension at Olney Municipal for instrument flight rules (IFR) operations at the airport. Airspace reclassification, effective September 16, 1993, has discontinued the use of the term "transition area." Designated airspace extending upward from 700 feet above ground level will use the term "Class E airspace" for general controlled airspace. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the SIAP at Olney Municipal Airport, TX.

DATES: Comments must be received on or before January 9, 1994.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Southwest Region, Docket No. 93–ASW–47, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530.

The official docket may be examined in the office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX, between 9 a.m. and 3 p.m, Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Joe Chaney, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530; telephone: 817–624–5531.

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 under the caption "ADDRESSES." Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: "Commenters to Airspace Docket No. 93–ASW–47." The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the office of the Assistant Chief Counsel, 4400 Blue Mound Road, Fort Worth, TX, 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, Systems Management Branch, Department of Transportation, Fort Worth, TX 76193–0530. 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 modify the Class E airspace at Olney, TX. An amendment to the NDB RWY 17 standard instrument approach procedure (SIAP) has necessitated the need to expand the area for IFR operations at Olney Municipal Airport, TX. Airspace reclassification, effective September 16, 1993, has discontinued the use of the term "transition area." Designated airspace extending upward from 700 feet above the ground is now Class E airspace. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the SIAP at Olney, TX.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above ground level 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 (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 that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (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 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 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 11.60.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 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:

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

* * * * *

ASW TX E5 Olney, TX [Modify]

Olney Municipal Airport, TX
(lat. 33°21'04" N., long. 98°49'09" W.)
Olney RBN
(lat. 33°21'04" N., long. 98°48'58" W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Olney Municipal Airport and within 2.5 miles each side of the 347° bearing from the Olney RBN extending from the 6.6-mile radius to 7.6 miles north of the airport.

* * * * *

Issued in Fort Worth, TX, on November 8, 1993.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 93–29298 Filed 11–29–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 92–ASW–30]

Proposed Establishment of Class E Airspace: Russellville, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Russellville, AR. A nondirectional radio beacon (NDB) standard instrument approach procedure (SIAP) has been developed at Russellville Municipal Airport, and controlled airspace upward from 700 feet above the ground, is needed for instrument flight rules (IFR) operations at the airport. Airspace reclassification, effective September 16, 1993, has discontinued the use of the term "transition area." Airspace extending upward from 700 feet above ground level will use the term "Class E airspace" for general controlled airspace. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the NDB A SIAP at Russellville Municipal Airport.

DATES: Comments must be received on or before January 10, 1994.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Southwest Region, Docket No. 92–ASW–30, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530.

The official docket may be examined in the office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, 4400 Blue Mount Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Joe Chaney, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530; telephone: 817–624–5531.

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 under the caption "ADDRESSES." Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: "Comments to Airspace Docket No. 92–ASW–30." The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the office of the Assistant Chief Counsel, 4400 Blue Mound Road, Fort Worth, TX, 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, System Management Branch, Department of Transportation, Fort Worth, TX 76193–0530. 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 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 Class E airspace at Russellville, AR. An NDB A standard instrument approach procedure (SIAP) was developed at Russellville Municipal Airport. Controlled airspace upward

from 700 feet above the surface, is needed for IFR operations at the airport. Airspace reclassification, effective September 16, 1993, has discontinued the use of the term "transition area." Designated airspace extending upward from 700 feet above the ground is now Class E airspace. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the NDB A SIAP at Russellville Municipal Airport.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designated for airspace extending upward from 700 feet or more above ground level 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 (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 that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (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 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 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

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

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

* * * * *

ASW AR E5 Russellville, AR [New]

Russellville Municipal Airport, AR
(lat. 35°15'32" N., long. 93°05'37" W.)
Russellville NDB
(lat. 35°15'25" N., long. 93°05'39" W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Russellville Municipal Airport, and within 2.4 miles each side of the 184° bearing of the Russellville NDB extending from the 6.4-mile radius to 6.6 miles south of the airport, excluding that airspace which overlies the Morrilton, AR Class E area.

* * * * *

Issued in Forth Worth, TX, on November 10, 1993.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 93–29299 Filed 11–29–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 40 and 48

[PS–52–93]

RIN 1545–AP48

Diesel Fuel Excise Tax; Registration Requirements Relating to Gasoline and Diesel Fuel Excise Tax

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the diesel fuel excise tax and registration requirements for the gasoline and diesel fuel excise taxes. The temporary regulations reflect changes to the law made by the Omnibus Budget Reconciliation Act of 1990 and the Omnibus Budget Reconciliation Act of 1993 and affect certain blenders, enterers, refiners, terminal operators, throughputters, and persons that sell, buy, or use diesel fuel for a nontaxable use. The text of the temporary regulations also serves as the text of these proposed regulations.

DATES: Written comments must be received by January 31, 1994. Outlines of oral comments to be presented at the public hearing scheduled for March 22, 1994, must be received by March 1, 1994.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (PS–52–93), room 5228, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered to: CC:DOM:CORP:T:R (PS–52–93), room 5228, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224. The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Frank Boland, (202) 622–3130; concerning the hearing and submissions, Mike Slaughter, (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)). Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224.

The collections of information are in §§ 48.4082–2, 48.4101–3, 48.4101–4, 48.6427–8, and 48.6427–9. This information is required by the IRS to verify compliance with sections 4081 and 6427. It will be used to determine whether an amount of tax, credit, or payment has been computed correctly. The likely respondents are businesses and other for-profit organizations, including small businesses and organizations.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the IRS. Individual respondents may require more or less time, depending on their particular circumstances.

Estimated total annual recordkeeping burden: 200 hours.

Estimated average annual burden per recordkeeper: 1 hour.

Estimated number of recordkeepers: 200

Estimated total annual reporting burden: 40,290 hours.

Estimated average annual burden per respondent: .1 hour.

Estimated number of respondents: 341,900

Estimated annual frequency of responses: On occasion.

Background

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** provide rules relating to the imposition of, and liability for, the diesel fuel tax under section 4081 and the registration requirements relating to both the diesel fuel and gasoline taxes. This document proposes regulations the text of which is the same as the text of those temporary regulations. The preamble to the temporary regulations explains the temporary rules.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted timely (preferably a signed original and eight copies) to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Tuesday, March 22, 1994, at 10 a.m. in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC. Because of access restrictions, visitors will not be admitted beyond the building lobby more than 15 minutes before the hearing starts.

The rules of § 601.601(a)(3) apply to the hearing.

Persons that have submitted written comments by January 31, 1994 and want to present oral comments at the hearing must submit by March 1, 1994, an outline of the topics to be discussed and the time to be devoted to each topic. A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Frank Boland, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Parts 40 and 48

Excise taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 40 and 48 are proposed to be amended as follows:

PART 40—EXCISE TAX PROCEDURAL REGULATIONS

Paragraph 1. The authority citation for part 40 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 40.6011(a)-3 also issued under 26 U.S.C. 6011(a).

Par. 2. Section 40.6011(a)-3 is added to read as follows:

§ 40.6011(a)-3 Monthly and semimonthly returns from certain persons liable for tax on taxable fuel.

[The text of this proposed section is the same as the text of § 40.6011(a)-3T published elsewhere in this issue of the **Federal Register**.]

PART 48—MANUFACTURERS AND RETAILERS EXCISE TAXES

Par. 3. The authority citation for part 48 is amended by adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Sections 48.4082–1 and 48.4082–2 also issued under 26 U.S.C. 4082.

Section 48.4101–3 also issued under 26 U.S.C. 4101(a) and (b).

Section 48.4101–4 also issued under 26 U.S.C. 4101(d).

Sections 48.6427–8 and 48.6427–9 also issued under 26 U.S.C. 6427(n).

Par. 4. Section 48.4041–0 is added to read as follows:

§ 48.4041–0 Applicability of regulations relating to diesel fuel after December 31, 1993.

[The text of this proposed section is the same as the text of § 48.4041–0T published elsewhere in this issue of the **Federal Register**.]

Par. 5. Sections 48.4081–10 through 48.4081–12 are added to read as follows:

§ 48.4081–10 Diesel fuel tax; definitions.

[The text of this proposed section is the same as the text of § 48.4081–10T published elsewhere in this issue of the **Federal Register**.]

§ 48.4081–11 Diesel fuel tax; tax on removal at a terminal rack.

[The text of this proposed section is the same as the text of § 48.4081–11T published elsewhere in this issue of the **Federal Register**.]

§ 48.4081–12 Diesel fuel tax; taxable events other than removal at the terminal rack.

[The text of this proposed section is the same as the text of § 48.4081–12T published elsewhere in this issue of the **Federal Register**.]

Par. 6. Sections 48.4082–1 through 48.4083–1 are added to read as follows:

§ 48.4082–1 Diesel fuel tax; exemption.

[The text of this proposed section is the same as the text of § 48.4082–1T published elsewhere in this issue of the **Federal Register**.]

§ 48.4082–2 Diesel fuel tax; notice required with respect to dyed diesel fuel.

[The text of this proposed section is the same as the text of § 48.4082–2T published elsewhere in this issue of the **Federal Register**.]

§ 48.4082–3 Diesel fuel; dye injection systems and visual inspection devices. [Reserved]

§ 48.4082–4 Diesel fuel; back-up tax.

[The text of this proposed section is the same as the text of § 48.4082–4T published elsewhere in this issue of the **Federal Register**.]

§ 48.4083–1 Administrative authority.

[The text of this proposed section is the same as the text of § 48.4083–1T published elsewhere in this issue of the **Federal Register**.]

Par. 7. Sections 48.4101–3 and 48.4101–4 are added to read as follows:

§ 48.4101–3

Registration.

[The text of this proposed section is the same as the text of § 48.4101–3T published elsewhere in this issue of the **Federal Register**.]

§ 48.4101–4 Information reporting.

[The text of this proposed section is the same as the text of § 48.4101–4T published elsewhere in this issue of the Federal Register.]

Par. 8. Sections 48.6427–8 and 48.6427–9 are added to read as follows:

§ 48.6427–8 Credit or payment with respect to diesel fuel used in a nontaxable use (other than on a farm for farming purposes or by a State or local government).

[The text of this proposed section is the same as the text of § 48.6427–8T published elsewhere in this issue of the Federal Register.]

§ 48.6427–9 Credit or payment with respect to diesel fuel sold for use on a farm for farming purposes or by a State or local government.

[The text of this proposed section is the same as the text of § 48.6427–9T published elsewhere in this issue of the Federal Register.]

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 93–28648 Filed 11–23–93; 2:30 pm]

BILLING CODE 4830–01–U

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1253

Research Room Hours

AGENCY: National Archives and Records Administration.

ACTION: Notice of public meeting.

SUMMARY: The National Archives will hold a public meeting on proposed hours of operation of research rooms in its Washington, DC and College Park facilities. Currently those hours of operation are 8:45 a.m.–10 p.m., Monday–Friday, 8:45 a.m.–5:15 p.m. on Saturday in the National Archives Building and 8 a.m.–4:30 p.m., Monday–Saturday in the Washington National Records Center, Suitland, MD. The National Archives has not yet established research hours of operation for the National Archives at College Park facility. On September 22, 1993 at 58 FR 49251, the National Archives proposed closing its research rooms in the National Archives Building in Washington, DC at 8 p.m., Monday–Friday and at 5 p.m. on Saturday. The hours of operation of the Suitland facility would remain unchanged. The National Archives intends to propose that research hours at the National Archives at College Park facility be the same as the National Archives Building in Washington, DC.

DATES: The meeting will be held on Monday, December 23, 1993 at 2 p.m.

Those who cannot attend the meeting may mail or fax comments. Such comments must be received by 5:15 p.m., December 13, 1993.

ADDRESSES: The meeting will be held in the Theater of the National Archives Building, 5th floor, 7th and Pennsylvania Ave., NW., Washington, DC.

Comments may be mailed or faxed to the Director, Policy and Program Analysis Division (NAA), The National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740–6001; FAX: (301) 713–7277.

FOR FURTHER INFORMATION CONTACT: Mary Ann Hadyka or Nancy Allard at (301) 713–6730.

SUPPLEMENTARY INFORMATION: On Monday, December 13, 1993, at 2 p.m., the National Archives will hold a public meeting on proposed hours of operation of research rooms in its Washington, DC and College Park facilities. Currently those hours of operation are 8:45 a.m.–10 p.m., Monday–Friday, 8:45 a.m.–5:15 p.m. on Saturday in the National Archives Building and 8 a.m.–4:30 p.m., Monday–Saturday in the Washington National Records Center, Suitland, MD. The National Archives has not yet established research hours of operation for the National Archives at College Park facility. The meeting will be held in the Theater of the National Archives Building, 5th floor, 7th and Pennsylvania Ave., NW., Washington, DC.

On September 22, 1993 at 58 FR 49251, the National Archives proposed closing its research rooms in the National Archives Building in Washington, DC at 8 p.m., Monday–Friday and at 5 p.m. on Saturday. The hours of operation of the Suitland facility would remain unchanged. The National Archives intends to propose that research hours at the National Archives at College Park facility be the same as the National Archives Building in Washington, DC. Resources conserved by reducing the hours of operation in the National Archives Building are intended for use in providing evening service in the College Park facility (Archives II) beginning in February 1994. This will expand our services to include evening and Saturday hours for records moving to Archives II and currently served in the Cartographic, Still Pictures, Electronic Records, and Nixon Research Rooms which do not have extended hours, and records currently served in the Suitland Research Room which has extended hours only on Saturdays. The National Archives seeks to change its hours of operation in a way which will limit the impact on as many users as possible and yet provide users at the College Park facility with evening access.

Research rooms which will operate in the National Archives Building in Washington, DC are the Central and Microfilm Research Rooms. Research rooms in the College Park facility include the Textual Research Room, Cartographic Research Room, Still Pictures Research Room, Motion Picture, Sound, and Video Research Room, and the National Archives Library. Researchers using records in National Archives' research rooms may not always be assigned to work in the research room designated for the particular records, e.g., researchers using textual records in Archives II may be assigned a research station in the Still Pictures Research Room. This flexibility will allow the National Archives to offer evening service to users of various records without necessarily keeping all research rooms open.

The National Archives will discuss comments received from the research public and propose alternatives for discussion and comment. Anyone requiring the services of a sign language interpreter must contact Sharon K. Fawcett at (202) 501–5403 or TDD (202) 501–5404 by 5 p.m., December 9, 1993. A final rule will be issued after the public meeting and after consideration of public comment. Until a final rule is issued, the Central Research Room and the Microfilm Research Room will continue to be open until 10 p.m., Monday–Friday.

ADDRESSES: Those who cannot attend the meeting may mail or fax comments to the Director, Policy and Program Analysis Division (NAA), The National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740–6001. FAX: (301) 713–7277. Such comments must be received by 5:15 p.m., December 13, 1993.

FOR FURTHER INFORMATION CONTACT: Mary Ann Hadyka or Nancy Allard at (301) 713–6730.

Dated: November 23, 1993.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 93–29378 Filed 11–29–93; 8:45 am]

BILLING CODE 7515–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 72, 73, 74, 75 and 78

[FRL–4808–4]

Opting Into the Acid Rain Program: Change in Public Comment Period for the Proposed Rule

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Proposed rules; change in public comment period.

SUMMARY: On September 24, 1993, EPA published the proposed rule for SO_2 combustion sources not otherwise affected by title IV to elect to participate in the Acid Rain Program by "opting in". Upon petitions from several groups to extend the comment period. EPA is changing the deadline for public comments and will accept comments on this proposed rule until December 7, 1993.

DATES: Notice is hereby given that comments on the opt-in rule proposed on September 24, 1993 in the **Federal Register** [58 FR 50087–50131] must be submitted in writing and in triplicate to EPA by December 7, 1993.

ADDRESSES: Send comments to Air Docket No. A–93–15, 401 M Street, SW., Washington, DC 20460. Comments received on this proposal will be available for reviewing and copying from 8:30 am to 12 pm and 1:30 pm on 3:30 pm, Monday through Friday, excluding Federal holidays, in room M–1500, Waterside Mall, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Acid Rain Hotline (202) 233–9620 or Adam Klinger (202) 233–9122; mailing address, U.S. EPA, Acid Rain Division (6204J), 401 M Street, SW., Washington, DC 20460.

Dated: November 18, 1993.

Paul M. Stolpman,

Director, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 93–29275 Filed 11–29–93; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 704

[OPPTS–82013H; FRL–3875–9]

RIN 2070–AC19

Comprehensive Assessment Information Rule; Proposed Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to amend the Comprehensive Assessment Information Rule (CAIR) to address low volume manufacturers and processors, "de minimis" concentrations of a CAIR listed substance in a mixture, trade name submissions, and advance substantiation of Confidential Business Information (CBI) claims. The proposed amendments would reduce reporting requirements for the regulated community by: establishing exemptions for small volume manufacturers and processors, and for persons who manufacture or process a mixture containing a CAIR listed substance below a "de minimis" concentration; permanently establishing the provisions for temporary administrative relief from trade name reporting requirements granted by notice in the **Federal Register** of April 10, 1989 (54 FR 14324), and modifying the advance substantiation requirements for certain information claimed as confidential. In addition to the above amendments, EPA is also proposing a defined set of CAIR questions for reporting on substances which are recommended and designated by the Toxic Substances Control Act (TSCA) Interagency Testing Committee (ITC) and added to the section 4(e) Priority Testing List. The Agency is proposing to require automatic reporting (i.e., without notice and comment rulemaking) for this defined set of CAIR questions when used for substances listed by the ITC. Finally, EPA is making some minor changes. Also, in this proposed rule, EPA is providing a revised burden analysis for the CAIR.

DATES: Comments on this proposed rule must be received no later than January 31, 1994.

ADDRESSES: Written comments must bear the docket control number OPTS–82013H. An original and two copies should be sent to: TSCA Public Information Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. NE–G004, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E543, 401 M St., SW., Washington, DC 20460, Telephone Number: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION:

I. Authority

Section 8(a) of TSCA authorizes the Administrator of EPA to promulgate rules which require manufacturers, importers, and processors of chemical substances and mixtures (referred to hereafter as "substances" or "chemical substances") to maintain records and submit information on such substances as the Administrator may reasonably require.

Section 8(a)(2) contains a wide-ranging list of examples of the kinds of information which EPA can require to be reported, provided that "to the extent feasible, the Administrator shall not require any reporting which is unnecessary or duplicative." Thus, section 8 provides EPA broad discretion in determining the information to be reported. Congress authorized EPA to collect information on chemical substances so that the totality of exposure to humans and the environment could be determined and that EPA could share the information collected with other EPA offices, federal agencies, and the public. TSCA sections 2, 8, 10, 14, and 21; H. Rep. 94–1341, 94th Cong., 2d Sess. 6–7 (July 14, 1976); Sen. Rep. 94–698, 94th Cong. 2d Sess. 3–5 (March 16, 1976).

II. Background

The CAIR was promulgated on December 22, 1988 (53 FR 51698), under the authority of TSCA section 8(a). The rule establishes a general framework for detailed reporting on chemical substances by manufacturers, importers, and processors.

To assure that information requested under the CAIR is not unnecessary or duplicative, EPA established criteria for selection of chemical candidates by Federal agencies intending to use information generated by the CAIR, and procedures for assuring that the data request is not duplicative. Generally, a substance selected for the CAIR is one which meets one or more of the following criteria: (1) The agencies know or suspect the substance causes adverse health or environmental effects yet lack current exposure data; (2) the agencies know the substance is a high volume production substance with high exposure potential; (3) the agencies believe there are significant data gaps for the substance; or (4) the agencies place a priority on the need for the requested information to complete assessments of the substance. To avoid duplication, extensive literature and data base searches are undertaken for the substance candidates, and a list of the nominated substances along with the information requests are sent for review to other EPA offices and other Federal agencies participating in the particular CAIR rulemaking at hand to evaluate data availability from these sources.

The Agency received a Petition for Reconsideration on January 24, 1989, from the Synthetic Organic Chemical Manufacturers Association (SOCMA) asking EPA to reconsider certain aspects of the rule which are listed below in this Unit. In addition to SOCMA's petition, a Petition for Judicial Review was filed by the Chemical Manufacturers Association (CMA) and the Society for the Plastics Industry (SPI) in the District of Columbia Court of Appeals (*Chemical Manufacturers Association v. EPA*, Docket No. 89–1153 (D.C. Cir.) (CMA). A Notice of Temporary Administrative Relief was published in the **Federal Register** of April 10, 1989 (54 FR 14324), to address SOCMA's concern that compliance with the provisions under § 704.208 of the CAIR would result in disclosure of confidential business information.

In the **Federal Register** of July 19, 1989 (54 FR 30211), a "Request for Additional Comments" on the CAIR was published in response to the concerns raised by petitioners SOCMA, CMA, and SPI. The "Request" sought public comments on possible revisions to the CAIR. The CMA litigation is currently stayed pending the outcome of EPA's review of these comments.

The areas of concern to the petitioners and on which comments were solicited included:

1. Addition of a small volume exemption for companies that manufacture, import or process a CAIR-listed substance solely in small quantities.
2. Inclusion of a "de minimis" exemption for CAIR-listed substances present in mixtures below set concentration levels.
3. Likelihood of release of confidential business information in the process of complying with trade name reporting.
4. Definition of processing activities — division of processors into subcategories to help clarify which processors are subject to CAIR.
5. Modification of requirements for advance substantiation of CBI claims.

Comments received from the public are discussed in Unit III.

At this time, EPA is requesting comments only on the proposed changes in this proposed rule. The Agency is particularly interested in receiving comments that specifically address the threshold levels that EPA is proposing for the low volume and de minimis exemptions. EPA is not soliciting comments on provisions of existing regulations that would not be changed by the proposed rule. Specifically, and notwithstanding the inclusion of some of the existing language from §§ 704.219(d), (e) and 704.223(a), EPA will only entertain comments to the extent that they address proposed changes in these sections.

III. Proposed Changes and Comments

A. Low Volume Exemption

Two comments were received regarding the low volume exemption from CAIR reporting that asked EPA to: (1) Establish an exemption to the CAIR similar to the Preliminary Assessment Information Rule's (PAIR) low volume exemption for individuals who manufacture, import, or process a listed substance in annual quantities of less than 1,100 pounds/500 kilograms; and (2) establish a standard 10,000 pound exemption.

EPA considered both of the above exemption levels and is proposing in § 704.210 exempting from CAIR reporting those persons who manufacture, import, or process a listed substance in annual quantities of less than 10,000 pounds at a site. Based on the Agency's experience with the information received on the 19 chemical substances presently listed on the CAIR, the 10,000 pound exemption level would significantly reduce the number of persons subject to CAIR's reporting requirements, yet provide adequate information for most risk assessment purposes. The low volume processors, manufacturers, and importers who are not otherwise exempt as a "small manufacturer" as defined at 40 CFR 704.3, or a "small processor" as defined at 40 CFR 704.203, would not have to file CAIR reports while they remain under this 10,000 pound exemption. The exemption would not prevent the Agency from gathering significant information from large volume manufacturers and processors on those chemical substances which EPA determines to be of concern, and for which risk assessment data are needed.

As stated in § 704.210 and in the preamble to the final CAIR, the Agency may modify or eliminate an exemption set out in § 704.210. EPA would judge whether reporting on low volumes is necessary for case-specific circumstances.

This exemption would be consistent with the TSCA Inventory Update Rule (IUR) which requires reporting only by persons who manufacture 10,000 pounds or more at any single site (40 CFR 710.28). In addition, it would provide uniformity with other environmental regulations such as the Emergency Planning and Community Right-to-Know Act (EPCRA) section 313 environmental release reporting rule at 40 CFR part 372 which requires reporting by persons who use 10,000 pounds or more, and in the Section 311 and 312 Emergency and Hazardous Chemicals Inventory Reporting Regulations (40 CFR part 370) because all these rules provide a 10,000 pound exemption.

The period for which the 10,000 pound production total would be calculated would be the time covered by the reporting period specified in subpart D of the CAIR.

B. De Minimis Exemption

EPA received two comments regarding an exemption from CAIR reporting for "de minimis" concentrations of CAIR substances in mixtures. Those comments suggested that EPA: (1) Establish a "de minimis" exemption of 1 percent, which would be reduced to 0.1 percent if the listed substance is a carcinogen; and (2) consider a 2 to 5 percent "de minimis" exemption level.

The Agency believes, after reviewing the initial CAIR data, that a "de minimis" exemption for mixtures is appropriate and therefore proposes in § 704.210(d) to establish a "de minimis" exemption of 1 percent which is reduced to 0.1 percent if the listed substance is identified by EPA in the CAIR list as a carcinogen. If at any point in the manufacturing or processing, a listed substance exceeds the "de minimis" concentration in a mixture, reporting would be required.

The proposed exemption would eliminate the submission of data by processors who use a mixture that contains a very low concentration of the listed substance. EPA believes that the information which would be submitted on these low concentrations would probably not be critical for most assessment purposes. However, as set forth at § 704.210, the Agency may modify or eliminate an exemption. EPA would require reporting by manufacturers and processors of a "de minimis" concentration of a listed substance in those situations where EPA determines it is necessary.

Since many trade name products may contain a listed substance in low concentration, this revision would lessen industry's trade name reporting under § 704.208.

EPA decided on the 1 percent/0.1 percent "de minimis" exemption level rather than an exemption level of 2 to 5 percent because of concerns for increased risks from exposure to listed substances at a higher level of concentration. Also, this "de minimis" exemption is consistent with other environmental regulations (EPCRA

section 313 rule at 40 CFR 372.38(a); and the Occupational Safety and Health Administration's Hazard Communication Standard at 29 CFR 1910.1200), which set "de minimis" levels at 1 percent or 0.1 percent in the case of a carcinogen.

The Agency also received a comment requesting revision of the CAIR to include a "2 weight percent" exemption for substances used as reactants to create polymers. The requested exemption, the commenter stated, would be similar to the 2 percent exemption in the Premanufacture Notice (PMN) rule at 40 CFR 723.250.

EPA disagrees with this comment. The PMN 2 percent exemption is primarily designed to allow companies to make small changes in monomer mixtures without submitting a new PMN for each change in the polymer and thus has no relevance or applicability to the requirements of the CAIR. If EPA adds a monomer or polymer to the list of CAIR substances, the monomer or polymer itself may have been explicitly identified as presenting an actual or potential health and/or environmental hazard or, e.g., the substance could have a high volume/high exposure potential. Additional information on the listed substance is needed in order to gain further understanding of potential exposure and/or develop a risk assessment for the substance.

The Agency's proposed "de minimis" exemption would apply only to mixtures.

C. Trade Name Reporting

The comments submitted regarding the trade name reporting exemption asked that EPA retain the Temporary Administrative Relief granted on April 10, 1989 (54 FR 14324). This relief from trade name reporting requirements was provided in response to CMA/SPI's petition, and SOCMA's petition, both of which claimed that § 704.208 of the CAIR rule would result in disclosure, directly or indirectly, of confidential trade secrets concerning the identities of substances in certain trade name products.

Establishing low volume and "de minimis" exemptions in the CAIR may have the effect of alleviating much of industry's potential trade name reporting, but there may still be a segment of industry not exempted who may have CBI concerns. Although no trade names submitted for the 19 substances listed on the CAIR were claimed CBI, this may not hold true for future substances added to the list. Accordingly, EPA proposes in § 704.208(b) to establish the temporary relief as permanent relief.

Section 704.208(a) requires manufacturers, importers, and processors of certain CAIR listed substances, designated in § 704.225 with an "X/P", who distribute the substances under a trade name, to comply with one of the following three options: (1) Submit to EPA a list of trade names so EPA can publish them in a **Federal Register** notice in order to notify all processors of these trade name products of their CAIR reporting obligations; (2) report on behalf of each processor customer; or (3) notify each processor customer of their CAIR reporting obligations.

EPA included this requirement to ensure that, when EPA deemed it necessary to obtain a more complete data base for carrying out the purposes of TSCA, processors of trade name products would be notified of their CAIR reporting obligations, or their suppliers would report for them.

EPA did not intend that compliance with the CAIR result in inadvertent disclosure of CBI. Because of the possibility of direct or indirect disclosure of CBI concerning the identities of substances in certain trade name products, EPA granted temporary administrative relief to persons who, after considering the options at § 704.208(a)(1), (a)(2), and (a)(3), believed they were unable to comply with the trade name provisions without disclosing CBI. (See 54 FR 14324, April 10, 1989). To take advantage of the relief, manufacturers, importers, and processors were required to notify EPA of the identity of the person distributing the substance, the chemical name and CAS number of the substance, and the trade name(s) under which the substance is distributed. In addition, the person was required to submit to EPA a certified statement explaining that they believed they were unable to report for their customer(s) under § 704.208(a)(2), and that complying with the options identified in § 704.208(a)(1) and (a)(3) would result, directly or indirectly, in the disclosure of CBI concerning the substance. The Agency agreed not to publish the trade names received in such notifications.

EPA proposes at § 704.208(b) that (as stated in the "Notice of Temporary Relief") each person who manufactured, imported, or processed a substance designated "X/P" in § 704.225(a) must comply with § 704.208(a) unless that person believes that they are unable to report for their customer(s) under § 704.208(a)(2), and compliance with the options identified in § 704.208(a)(1) and (a)(3) would result, directly or indirectly, in the disclosure of CBI, concerning the substance. If a person can report for their customer(s), or if complying with one of the other options would not result in the disclosure of CBI, the person must comply with § 704.208(a). Any person who provides or has provided the specific identity of a CAIR substance in a trade name product to its customers through a Material Safety Data Sheet (MSDS) for that product under the Occupational Safety and Health Act Hazard Communication Standard, or through some other mechanism, is not eligible for this relief for that substance and trade name product.

Persons who utilize this relief must notify EPA to ensure that the Agency is aware of their identities. EPA will not publish the trade names received in such notifications. The notification to EPA must include the identity of the person distributing the substance, the chemical name and CAS No. of the substance, the trade name(s) under which the substance is distributed, and the aggregate total quantity (in pounds) of the substance purchased by their customers during the respondent's reporting year. If the aggregate total quantity was substantial, EPA could then decide if the missing information was essential for the risk assessment of a particular chemical and, if so, subsequently pursue the collection of the information by other means.

Persons submitting such notification may assert a claim of confidentiality in accordance with the procedures in 40 CFR part 2, subpart B, and § 704.219, if the notice contains business information that the submitter believes is entitled to confidential treatment under TSCA section 14(a). The Agency will determine the validity of claims submitted in accordance with the procedures set forth in 40 CFR part 2.

Also, for information claimed as confidential, the notification would have to include substantiation of such claims by providing detailed written responses to the questions set forth in proposed § 704.208(b) of this proposal. These CAIR-specific questions would replace the substantiation questions in 40 CFR 2.204(e); otherwise, the procedures for handling CBI claims set out in 40 CFR part 2 are applicable. The notification would be postmarked no later than 1 day after the effective date of the final rule listing the substance, which would give the respondent 45 days from the date of publication of the final rule in the **Federal Register** to prepare and submit the notification.

One other comment received regarding disclosure of CBI concerned the belief that potential respondents

should be allowed to claim a particular trade name as CBI (and thus the link between the trade name and the listed substance), even if they have disclosed the trade name to a customer through a confidential agreement. EPA agrees, and has consistently recognized that disclosure of TSCA CBI to a party subject to a confidentiality agreement concerning such information does not in or of itself constitute public disclosure of the information.

D. Processing

A commenter requested that a consistent definition of process and related terms be added for all TSCA regulations.

Consistency between and within rules is always a consideration in drafting TSCA rules; however, the goal of consistency must not jeopardize the intent of any rule. Different rules under TSCA have different purposes; because of these differences, a uniform definition throughout TSCA may not be appropriate. In this instance, EPA believes that the current definitions of "manufacture for commercial purposes" and "process for commercial purpose" at § 704.3 are appropriate. Accordingly, EPA is not proposing any change in these definitions. However, the definitions for "manufacturing activities" and for "processing activities" in the CAIR at § 704.203, which EPA never intended to be used in determining a person's requirement to report under CAIR, and which have caused confusion for respondents according to commenters, would be removed from the regulatory text of the CAIR. Persons who are evaluating whether they are required to report under the CAIR would refer to the definitions for manufacture for commercial purposes and process for commercial purposes found in 40 CFR 704.3, and to the guidance in the CAIR "Questions and Answers" made available to the public after the initial promulgation of the CAIR.

EPA is currently reviewing the use of process and related terms under all sections of TSCA. A notice soliciting public comment and announcing a public meeting on September 22, 1992, to address EPA's interpretation of "process" under TSCA, published in the **Federal Register** of August 22, 1992 (57 FR 38833). EPA is examining and intends to address specific issues raised by comments in response to the notice and at the public meeting.

Another commenter requested that an exemption be made for all processors. To consider exempting all processors from CAIR reporting would defeat a major purpose of CAIR. EPA's intent is to use the CAIR to gather information from manufacturers, importers, and processors when such information is needed from these groups to accurately assess the risk potential of individual chemicals. Accordingly, an exemption for all processors would not be appropriate.

Another commenter suggested dividing the "universe" of processors into sub-classes, some or all of which would be subject to reporting for a particular rule, based on EPA's needs. EPA considered this possibility, but decided against it because it would necessitate establishing possibly arbitrary sub-classes of processors. The American Electronics Association (AEA) commented in response to the July 19, 1990 **Federal Register** Notice that sub-classes of processors may add to the confusion about who must report. Also, it is difficult for EPA to know before information is received, which subcategories of processors are of greatest interest for assessing exposure.

One commenter suggested that it may be more helpful to revise the CAIR instructions to make them more applicable to various processing operations than to create subcategories of processors. EPA is considering revising the reporting form and instructions to achieve this goal and to facilitate respondents' efforts in answering certain CAIR questions which have proven troublesome both to the respondents and the Agency. The revisions could reduce errors in submitted forms and, in turn, reduce the time spent by EPA in processing the forms.

E. Substantiation of CBI Claims at Time of Submission

EPA has decided to propose modifying the requirements for substantiation of CBI claims at the time of submission of CBI under CAIR by adding exclusions for process and financial information.

Under the current rule at § 704.219(d), submitters are required to substantiate all claims of confidentiality at the time the information is submitted to EPA. Submitters must categorize all claims as pertaining to either submitter identity, substance identity, volume, use, process, or other. A different set of substantiation questions must be answered depending upon which category of claim is being asserted. EPA previously requested comments on possible modification of these substantiation requirements (54 FR 30212, July 19, 1989).

CMA commented that EPA does not have authority to require advance substantiation of CBI claims for information submitted under the CAIR. EPA disagrees. EPA's authority for requiring advance substantiation is TSCA sections 8 and 14. In particular, TSCA section 14(c)(1) allows submitters to claim information as confidential and provides for separate submission of such information. It also provides for the designation of claims "in such a manner as the Administrator may prescribe," contemplating requirements involving more than just an assertion of a claim. EPA must determine the validity of CBI claims if it receives a request for release of the information under the Freedom of Information Act (FOIA), 5 U.S.C. section 552, or if EPA desires to determine whether information in its possession is entitled to confidential treatment, even if no request for release has been received or is anticipated. Substantiation questions request the information which is necessary for the Agency to make a confidentiality determination. Section 14(c)(1) provides EPA authority for establishing the procedures necessary for determinations concerning confidentiality of business information submitted under TSCA.

Here, EPA is requiring substantiation at the time of CBI submission because EPA plans to release to the public as much nonconfidential information collected under CAIR as possible. EPA is committed to providing CAIR information to the public to carry out a congressional policy reflected in TSCA and its legislative history for EPA to share information collected under TSCA with other EPA offices, federal agencies, and the public. By requiring substantiation to be submitted at the time the claim is asserted, EPA will be able to start the process for making confidentiality determinations sooner and thus help ensure that the maximum amount of information is available to States, local governments, and the public at the time they are interested in information reported on CAIR substances. Also, requiring advance substantiation will make submitters focus at the outset on whether they have grounds to claim confidentiality and on the type of substantiation EPA considers in deciding whether to grant a confidentiality claim. Thus, substantiation at the time of submission should result in defensible rather than unwarranted claims.

Another commenter requested that substantiation only be required on a claim-by-claim basis after a FOIA request on a claim has been received by EPA. The Agency's experience has been that, in practice, States, local governments, and the public generally are not looking for individual pieces of

data, but for a broad range of data concerning many chemical substances. They frequently become discouraged from using TSCA information by the large amount of data claimed as confidential, for which they do not have the resources to file numerous FOIA requests. In addition, there is a need for State and local governments and the general public to have access to as much information as possible because CAIR data pertains to substances which may pose a risk to human health or the environment. Therefore, EPA believes that deferring substantiation of CBI claims to a time when the public requests the information is inappropriate, and the Agency will continue to require substantiation of CBI claims at the time CAIR data are submitted.

The majority of commenters, including CMA and SPI, requested limiting the substantiation requirements to types of information not normally entitled to confidential treatment. EPA agrees that businesses should not be required to routinely provide substantiation on claims for process and financial information. EPA believes that for most chemical substances, process and financial information are less critical for use by the public in assessing risk than information such as company identity or use. Moreover, process and financial information are often more sensitive and more routinely protected as confidential by companies than other types of information; consequently, confidence in the validity of such confidentiality claims is greater. Accordingly, EPA is proposing to modify § 704.219(e)(1) to exclude process and financial information from the requirements to substantiate at the time of submission. Of course, submitters must still assert a CBI claim for such information to protect it from disclosure.

EPA anticipates that CBI claimed on responses to the following questions would no longer require routine substantiation: 2.05, 2.06, 2.09, 3.01, 6.01 thru 6.10, 7.01 thru 7.06, 9.02, 9.04 thru 9.06, 9.13, 10.13, 10.15, and 10.16.

In addition, responses to questions 2.11, 3.04, 9.07, and 10.07 thru 10.09 may contain both financial or process information as well as other categories of information (for example, question 2.11 responses on byproducts and impurities may contain both process and volume information). Whether a CBI claim would trigger the substantiation requirement depends upon whether process or financial information, or another category of information, is claimed as confidential. If it appears that a person has mischaracterized a confidentiality claim as either process or financial, EPA would require the person to complete all applicable portions of the CBI substantiation form found in Appendix II of the CAIR reporting form.

Chemical identity, company identity, and production volume for the reporting site would continue to be subject to the substantiation requirement, since these categories of data are an integral part of a State's evaluation of EPA's risk assessment. States and the public generally do not have the resources to perform their own risk assessment and cannot form a reasonable evaluation of EPA's risk assessments if they are unable to obtain the data because of confidentiality claims, without going through a lengthy and resource-intensive process. The latitude and longitude coordinates for the reporting site would also require substantiation since this information is critical to States and EPA regional offices.

Two commenters requested that EPA require a "certification letter" or brief documentation which would attest to the genuineness and veracity of the entire submission in place of the detailed substantiation currently required for each CBI claim. By signing the CAIR form, the submitter is already certifying the completeness and accuracy of the information reported. A separate certification would serve no additional purpose. The Agency believes that brief generic documentation of CBI claims without regard to specific questions assists neither EPA nor submitters in determining the validity of individual confidentiality claims. In the Agency's experience, such documentation often consists of a standard boilerplate rather than the unique facts which determine whether a CBI claim is appropriate. EPA would be unable to make a final confidentiality determination without answers to the more detailed questions referred to above and in § 704.219.

IV. Reporting on Substances Listed by the ITC

Substances identified by the Interagency Testing Committee (ITC) under TSCA section 4(e) for priority testing are added automatically to the PAIR without notice and comment. EPA proposes to add similar automatic reporting requirements under the CAIR for ITC substances; that is, substances recommended or designated by the ITC for priority testing consideration would be added to the CAIR without notice and comment rulemaking. The reporting requirements will consist of a defined minimal set of CAIR questions. Section 704.223 would be amended to require reporting within 60 days. As with the PAIR, EPA would provide for withdrawal of a chemical substance from the rule for good cause and a notice to that effect would be published in the **Federal Register** no later than the effective date of the rule.

An amendment to the PAIR on May 11, 1983 (48 FR 21294), provided for automatic reporting on substances designated for priority consideration by the ITC. Another amendment on August 28, 1985 (50 FR 34805), extended automatic reporting to substances recommended for priority consideration by the ITC. The reasons for promulgation of those two amendments apply to reporting under the CAIR as well as the PAIR. EPA must initiate rulemaking to require testing under section 4 of TSCA within 12 months after the ITC designates a chemical substance, mixture, or category of chemical substances for testing consideration or state in the **Federal Register** its reasons for not doing so. The Agency needs the information submitted in response to the PAIR, or in this instance, the CAIR, quickly for designated substances in order to meet the statutorily mandated 12–month decision point.

Automatic reporting under the PAIR was extended to recommended substances because it is more efficient, both for industry and for EPA, to require reporting on both designated and nondesignated substances in one rule, as explained in 50 FR 34805 (August 28, 1985). In addition, the automatic reporting aids the ITC in carrying out its responsibilities under section 4 of TSCA. The ITC can review data received in 90 days as a result of the reporting and then it is able, when appropriate, to designate or withdraw recommended chemicals or categories from the TSCA Section 4(e) Priority Testing List in a relatively short period of time.

Section 704.225(a)(1) would provide that chemical substances, mixtures, and categories of chemical substances or mixtures recommended or designated for priority consideration by the ITC will be added to the CAIR effective 30 days after publication of an amendment in the **Federal Register**. Recommended substances, mixtures, and categories of chemical substances or mixtures will be added by these expedited procedures only to the extent that the total number of recommended and designated substances, mixtures, and categories does not exceed 50 in any 1 year.

Also, under § 704.225(a)(2), persons who wish to request withdrawal of an ITC substance from the CAIR would submit supporting information for their request within 14 days of the

publication of the amendment in the **Federal Register**.

EPA is considering not requiring trade name reporting under § 704.208 for the ITC recommended or designated substances which are added automatically to the CAIR. Also, for these chemical substances, EPA would not require that the questions in Section 1 pertaining to trade name reporting be answered.

EPA also proposes to designate certain CAIR questions for reporting on substances recommended or designated by the ITC to be added to the Section 4(e) Priority List. This set of CAIR questions would request information similar to that required by the PAIR. PAIR reporting for ITC substances would no longer be necessary.

Section 704.212(b) as proposed would require reporting on the following questions for the ITC substances: 1.01, 1.02 (except those parts which refer to trade name (X/P) reporting), 1.06 thru 1.16, 2.04, 2.12, 2.17, 9.02, 10.02, 10.05 and 10.06. Questions 10.05 and 10.06 would not be asked if the discrete chemical substance has previously been listed for Toxic Release Inventory (TRI) reporting at 40 CFR part 372.

V. Other Proposed Changes

One commenter stated that, since the definition of manufacture under TSCA includes import, it was not clear whether importers should also report when "M" (for manufacturers) was listed in the CAIR matrix. To clarify who must report, EPA proposes to add in § 704.206(b)(2) a statement that importers would only be required to report when the symbol "I" is used in the CAIR matrix.

Also, many persons who were exempt from CAIR reporting on the 19 chemical substances currently listed in the CAIR asked if they still had to notify their customers if the listed substance had an "X/P" designation in the CAIR matrix.

The Agency does not intend that persons exempt from CAIR reporting should have to notify their customers regarding the listed substance. Therefore, the Agency proposes to add in § 704.206(a) a provision that persons who are exempt under § 704.210 need not comply with the requirements of § 704.208.

In addition, EPA proposes to amend § 704.212(b)(1) to add that, in addition to Section 1, question 10.02 on the CAIR form, which asks for latitude and longitude coordinates for facilities reporting, will always be selected. This is being done in accordance with an Agency policy on locational data which establishes the principles for collecting and documenting latitude/longitude coordinates for facilities, sites and monitoring and observation points regulated or tracked under Federal environmental programs within the jurisdiction of EPA. The policy is set forth in Chapter 13 of the EPA "Information Resources Management Policy Manual," July 1991.

As stated in the policy, use of the latitude and longitude coordinates will allow data to be integrated based upon location, thereby promoting the enhanced use of the Agency's extensive data resources for cross-media environmental analyses and management decisions.

EPA's policy on locational data underscores the Agency's commitment to establish the data infrastructure necessary to enable data sharing. Therefore, question 10.02 will always be included in the questions selected and listed in the matrix of the CAIR. EPA is revising question 10.02 and the instructions to read as follows:

10.02 Specify the exact location of your facility (from central point where process unit is located) in terms of latitude and longitude.

Latitude +/- ———— DD ———— MM ———— SS.SSSS

Longitude +/- ———— DDD ———— MM ———— SS.SSSS

Source/method used to determine latitude/longitude coordinates:

———————— EPA permits (e.g. NPDES permits)

———————— County property records

———————— Facility blueprints

———————— Site plans

———————— Remote sensing techniques (e.g., use of the Global Positioning System)

———————— Map interpolation

———————— Cadastral survey

Estimate of accuracy ————————

Instructions:

(1) Enter the Latitude and Longitude coordinates of your facility. Sources of this data include EPA permits (e.g., NPDES permits), county property records, facility blueprints, and site plans. If the coordinates are not available from any of those sources, instructions for determining the latitude and longitude from topographic maps are given in Supplement A of these instructions.

The format for representing this information is:

+/- DD MM SS.SSSS (latitude)

+/- DDD MM SS.SSSS (longitude)

DD represents degrees of latitude; a two-digit decimal number ranging from 00 through 90.

DDD represents degrees of longitude; a three-digit decimal number ranging from 000 to 180.

MM represents minutes of latitude or longitude; a two-digit decimal number ranging from 00 through 60.

SS.SSSS represents seconds of latitude or longitude.

+ specifies latitudes *north* of the equator and longitudes *east* of the prime meridian.

- specifies latitudes *south* of the equator and longitudes *west* of the prime meridian.

(2) Put an X in the form by the method used to determine the latitude/longitude coordinates.

(3) Estimate the accuracy of the coordinates in terms of the most precise units of measurements used; e.g., if the coordinates are given to tenths-of-seconds precision, the accuracy estimate should be expressed in terms of the range of tenths-of-seconds within which the true value should fall, such as "+/- 0.5 seconds."

Secondly, EPA proposes to amend questions 2.12, 2.13, and 2.14 in the CAIR form by providing a more extensive list of product types from which the submitter can select those applicable; adding another column headed "End Products;" and providing an additional list, broken down into categories of end use products, from which submitters can choose. The lists, as shown below, are more detailed, which should make it easier for respondents to find the exact type or category which best describes their product types and end-products. It would also provide more exact information to the Agency. Question 2.12 would read as follows:

2.12 Existing Product Types — List all existing product types which you manufactured, imported, or processed using the listed substance during the reporting year. State the quantity of listed substance you use for each product type as a percentage of the total volume of listed substance used during the reporting year. Also state the quantity of listed substance used captively on site as a percentage of the value listed under column b., and select and list the applicable end products and end-users from the lists below. (Refer to the instructions for further explanation and an example.)

a. Product Types	b. % of Quantity Manufactured, Imported, or Processed	c. % of Quantity Used Captively on Site	d. Type of End-Product	e. Type of End-Users

Use the following codes to designate product types:

1=Abrasive
2=Adhesive
3=Alkyd resin
4=Analytical reagent
5=Antioxidant
6=Anti-redeposition agent/sequestering agent
7=Anti-setting agent
8=Anti-skinning agent
9=Anti-static agent
10=Anti-streaking agent
11=Anti-wear additive
12=Base
13=Binder
14=Bleaching agent
15=Blowing agent
16=Bonding agent/bonder
17=Buffer
18=Builder
19=Carrier
20=Catalyst/crosslinking/curing agent
21=Caustic agent
22=Chelating agent
23=Cleaning agent
24=Coalescing agent
25=Coating
26=Colloidal agent
27=Colorant/color agent
28=Condensation polymerization agent
29=Copolymers
30=Corrosion inhibitor/emulsifying agent
31=Detergent
32=Diluent/thinner
33=Disinfectant/deodorizer
34=Dispensing agent
35=Drier/siccative
36=Drying oil
37=Dye
38=Electrodeposition/plating chemical
39=Emulsifier/emulsifying agent
40=Enzyme
41=Explosive chemical/additive
42=Extreme pressure agent
43=Filler/pigment extender
44=Film-forming ingredient/ reagents
45=Film reducer
46=Flame retardant
47=Flatting agent
48=Fluorescent whitening agent/optical brightener
49=Foamout/defoamant
50=Freeze-thaw additive
51=Friction-reducing anti-wear agent
52=Fuel/additive
53=Fugitive ligand complex
54=Hardener
55=Inorganic accelerator
56=Metal alloy/additive
57=Lubricant
58=Mineral spirits/petroleum distillates
59=Minimum film-forming temperature (MFT) modifier
60=Opacifer
61=Oxidation inhibitor
62=Penetrant
63=Perfume/flavor/fragrance/odor forming ingredient
64=Petroleum basestock/petroleum lubricating oil
65=Photographic/reprographic chemical
66=Pigment
67=Plasticizer
68=Polymer
69=Polymerization promoter
70=Pour-point depressant
71=Prepolymer
72=Preservative
73=Processing aid
74=Propellant
75=Refractive index modifier
76=Rheological modifier
77=Reinforcing agent
78=Rubber accelerator activator
79=Softener
80=Solvent
81=Stabilizing agent/stabilizer
82=Surfactant/surface active agent
83=Synthetic reactant
84=Tackifier
85=Thermoplastic resin
86=Thermosetting resin
87=Thickener/thickening agent
88=Transfer agent
89=UV absorber
90=Viscosity index improver
91=Viscosity modifier
92=Water softener/conditioner
93=Wetting agent

Use the following codes to designate types of end-products:

A. Food and Plant Products, Pharmaceuticals

A1=Fertilizers
A2=Food additives
A3=Food packaging/containers (e.g. milk/juice cartons, soup cans)
A4=Lawn/garden chemicals (pesticides, herbicides, fungicides)
A5=Medicaments

B. Construction Products

B1=Adhesives
B2=Architectural coatings
B3=Brick/clay tile
B4=Building plaster
B5=Carpet/floor felts
B6=Caulks and sealants, non-structural
B7=Cement/concrete
B8=Electrical wiring
B9=Glazing compounds
B10=Glued and laminated structural wood products
B11=Hard surface flooring (e.g. vinyl flooring)
B12=Insulating fiberboard
B13=Insulation, foam
B14=Insulation, non-foam
B15=Plastic wall, ceiling, or counter coverings
B16=Plastic panels, doors, or partitions
B17=Plastic sidings
B18=Plumbing fittings/pipe
B19=Plumbing fixtures
B20=Putty
B21=Roofing materials
B22=Sheathing paper
B23=Thinners for dopes, lacquers, etc.
B24=Wall covering
B25=Water repellants
B26=Wood preservatives
B27=Wood products, (e.g. plywood/fiberboard/waferboard)

C. Household Products

C1=Adhesives
C2=Air freshener/deodorizer
C3=Carpet and rug cushion
C4=Carpet and rug underlayment, other
C5=Carpets and Rugs (including carpet tiles)
C6=Cleaner or disinfectant, hard surface
C7=Containers, food storage/microwave
C8=Drain pipe cleaners
C9=Fabric softener
C10=Fire extinguisher
C11=Floor polish
C12=Foam for furniture cushions
C13=Furniture polish
C14=Laundry bleach
C15=Laundry detergent
C16=Laundry presoak
C17=Laundry starch
C18=Lubricant (nonautomotive)
C19=Machine dishwashing detergent
C20=Metal polish
C21=Non-machine dishwashing detergent
C22=Paint or coating, aerosol
C23=Paint or coating, nonaerosol, nonarchitectural
C24=Paint/varnish remover
C25=Partition and shelving
C26=Refrigerator or freezer
C27=Rug/upholstery cleaner
C28=Rust remover
C29=Shoe polish
C30=Shower curtains
C31=Solvent cleaner for electronic equipment
C32=Spot remover
C33=Textile products, linens
C34=Water/stain repellant for clothes or furniture
C35=Window coverings (e.g. curtains)

D. Household Machinery, Appliances and Electrical Equipment

D1=Air conditioner
D2=Cabinets/housings for electrical/electronic equipment
D3=Heating equipment
D4=Kitchen appliances

D5=Sound/stereo equipment
D6=Television
D7=Vacuum
D8=VCR

E. Personal Hygiene Products

E1=Cosmetics
E2=Dental care products
E3=Hair care products
E4=Body care products (e.g. hand lotion, suntan lotion)
E5=Perfume
E6=Soap
E7=Shaving cream

F. Textile, Apparel, and Footwear Products

F1=Anti-static spray
F2=Clothing and accessories
F3=Footwear
F4=Leather treatment
F5=Textile dyes
F6=Textile water-proofing

G. Automobile Products

G1=Air conditioning refrigerant
G2=Antifreeze
G3=Brake fluid
G4=Detergents/cleaners, exterior
G5=Fuel, gas/diesel
G6=Fuel lubricant/additives
G7=Hydraulic fluids
G8=Interior upholstery/components
G9=Lube oil additives
G10=Lubricating greases
G11=Motor oil
G12=Paint, touch-up
G13=Polish/wax
G14=Radiator flush/cleaner
G15=Undercoating
G16=Upholstery and other interior cleaners and protectants
G17=Windshield washer solvents

H. Miscellaneous Items

H1=Artist's supplies
H2=Chemicals used in the manufacture of paper
H3=Circuit boards
H4=Developer/toner for copiers
H5=Flocculants for wastewater treatment
H6=Inks
H7=Interior/exterior can manufacturing chemicals
H8=Metal cutting fluids
H9=Oil/gas well production chemicals
H10=Photographic chemicals for the developing/printing of film
H11=Soldering materials
H12=Water treatment chemicals for cooling towers/boilers
H13=Wood treatment chemicals

Use the following codes to designate the type of end-users: I = Industrial, CS = Consumer, CM = Commercial, H = Other (specify)

Questions 2.13 and 2.14 would be similarly reworded to accommodate the new table headings and lists.

VI. Economic Analysis

A. Economic Analysis of the Burden of the 1988 CAIR

Comments were received by CMA regarding EPA's June 1988 burden estimates of industry responding to CAIR. After implementation of the first round of CAIR reporting, CMA provided information of the cost to chemical companies responding to the Final CAIR. The compliance costs calculated by CMA were estimated at $ 2.87 million, while EPA estimates totalled $ 1.79 million, a difference of nearly $1.1 million. EPA and CMA's conclusions diverge primarily because of differences in wage and hour estimates and because of differences in the methodological details of extrapolating average report costs up to the total costs for all reports.

The revised methodology takes into account the problems noted in both EPA and CMA analyses of the CAIR reporting burden, and incorporates data on the number of reports actually received, which differs greatly from expected values. The revised estimate of the total CAIR costs to industry is obtained by adding reporting costs, compliance determination costs, recordkeeping costs and submission costs for a total estimate of $7.1 million in 1992 dollars. Total social costs of the rule included industry costs and administrative costs to EPA. Adding industry costs to the government administrative costs brings the estimated total cost of the December 1988 use of CAIR to $8.2 million.

1. *Comparison of EPA and CMA estimates of CAIR burden.* The total cost of CAIR estimated by EPA (1988) included industry reporting costs and government costs for the rule. The EPA estimate of the compliance costs of CAIR to industry totalled $1.79 million (1988), while the CMA estimated the industry compliance costs at $2.87 million (1989). There are a number of reasons for EPA and CMA differences in compliance costs, including the year these estimates were calculated, methodological difference and sources for calculating direct and reporting costs, wage rates and time estimates.

Both analyses divided costs into two categories: direct costs, which reflect time spent answering specific CAIR questions, and general costs, which reflect time required to administer the reporting process, such as CBI substantiation, recordkeeping and form familiarization. EPA and CMA estimated direct and general costs using the current wage rates and the length of time needed to complete the questions. However, EPA and CMA used different wage rates and personnel hour estimates resulting in different direct and general costs.

EPA and CMA wage rates and personnel hour estimates varied due to the use of different information sources. EPA used 1984 Bureau of Labor Statistics (BLS) wage rates and updated them to 1987 to reflect inflation using the CPI-W consumer Price Index. The CMA analyses are based on surveys of CAIR respondents at the time of the CAIR reporting period. Also, EPA and CMA estimates differ because CMA did not aggregate scientific and legal job categories within the managerial categories and, unlike CMA, EPA did not include overhead in their wage rates. In general, EPA and CMA wage rates do not differ greatly. Note, when the 17 percent overhead rate is excluded from the CMA wage rate, EPA and CMA wage rates differ by at most 20 percent. The following table illustrates the EPA and CMA wage rate estimates.

Wage Rate Estimates

EPA[a]		CMA[b]		CMA Excluding Overhead[c]	
Labor Category	Wage Rate	Labor Category	Wage Rate	Labor Category	Wage Rate
Managerial	$43.50	Managerial	$52.65	Managerial	$45.00
Technical	$29.92	Technical	$39.44	Technical	$33.61
Secretarial	$13.96	Secretarial	$19.66	Secretarial	$16.80
		Scientific	$49.09	Scientific	$41.96
		Legal	$78.37	Legal	$66.98

[a] Source: BLS 1984 updated to 1987. Wage rates include fringe benefits.
[b] Source: CMA Survey 1989. Wages include fringe benefits and overhead.
[c] Source: CMA Survey 1989. Wages include fringe benefits.

In general, time estimates for direct costs were based on the knowledge or "informed judgment" of federal

personnel and federal agencies that analyzed the report form. By doing so, EPA developed estimates of the number of hours that each category of personnel would spend on each question.

Informed judgment was used again to estimate general hours. Also, EPA made a distinction between 14 substances for which few questions applied (low burden) and the remaining 5 substances for which more of the report questions applied (high burden) resulting in a weighted average general hours. The following table illustrates the per response hours spent for general hours.

EPA General Hours

	Low	High	Weighted Average
Managerial	18.0	34.0	32.3
Technical	11.5	31.0	28.9
Secretarial	6.0	13.0	12.2

The CMA personnel hours for direct and general hours are based on survey results of 13 CAIR reporting sites. Personnel were instructed to keep diaries of their hours as they worked on the form. The CMA report presents averages of these reporting hours by firm type.

CMA Personnel Hours

	Direct	General
Managerial	9.46	27.2
Technical	54.58	24.82
Secretarial	5.52	5.00
Scientific	8.42	2.46
Legal	1.15	1.92

a. Estimates of the number of reports and sites. Much of EPA's analysis is based on an estimate of the expected number of reports received. EPA estimated that it would receive 242 reports from 230 sites. EPA also estimated how the reports were distributed among firm types and across substances. CMA's analysis is based on surveys of 13 sites. Seven substances covered by these reports accounted for 85 percent of the reports expected by the EPA. The distribution of reports among firm types generally reflects EPA distribution; however, some discrepancies exist, for example, 87 percent of the difference between the EPA and CMA total direct cost estimates is accounted for by the difference in estimated direct costs for toluene diisocyanate (CAS 26471–62–5).

b. Direct costs. EPA direct costs of CAIR are based on the estimated personnel time across job categories for each question, wage rates, and the expected number of reports for each substance and firm type combination. The number of questions answered varied on a substance-by-substance basis. The hourly labor sums were multiplied by wage rates to yield a report cost for each substance. Each report cost is weighted by multiplying the report cost by the expected distribution of reports among firm types reflecting the average report cost. Total direct costs are determined by adding the average report cost for each of the 19 substances. Using this methodology, EPA's total direct cost of reporting equalled $1,232,253.

CMA's direct costs of CAIR are based on a non-random sample of 13 plant responses. The 13 surveyed plants submitted information pertaining to 7 of the 19 different CAIR listed substances. CMA estimated the direct costs by multiplying the average report cost by the number of reports expected. The average report cost was estimated using wage rates and time estimates for each of the 7 substances. Since CMA had data for only 7 of the 19 substances, it had to approximate the costs per report of the remaining 12 substances. This was done by taking the average CMA report costs of the 7 substances weighted by the number of reports EPA expected to receive for each substance. CMA's total direct costs equalled $1,861,518.

c. General costs. In addition to direct costs, reporting firms incur general costs for time spent filing the reports which cannot be related to specific questions such as form familiarization, CBI substantiation, recordkeeping, etc. EPA estimated the number of hours that respondents would spend on general activities based on informed judgment. These time estimates were multiplied by the hourly wage rates to yield the total general cost per report.

A distinction was made between 14 low burden substances for which significantly fewer questions applied, and the 5 high burden substances for which more of the questions applied. General costs for low and high burden substances were estimated to be $1,060 and $2,521, respectively. Total general costs were estimated to be $560,000.

CMA general costs were again based on its survey. Survey respondents kept track of the number of hours attributable to general activities. CMA took the average of these times across reports within each chemical group and multiplied them by the relevant wage rates for the 7 substances. CMA estimated the cost of the remaining 12 from the average costs of the surveyed substances weighted by the number of reports expected by the EPA. CMA did not distinguish substances as high and low burden. Their total general costs were estimated at about $1 million.

d. Total costs. EPA and CMA estimated total costs by adding direct cost and general costs. EPA estimated $ 1.79 million for total costs while CMA estimated a total cost of $2.87 million, a difference of $1.1 million.

2. *Revised Compliance Costs of CAIR.* A combined EPA and CMA methodology was used to determine the revised compliance costs for the CAIR reporting burden. The revised costs are estimated by using CMA's estimates of personnel hours by labor category and overhead rate of 17 percent, and EPA's estimate of wage rates. Individual report costs are then multiplied by the number of reports to get total industry costs. The revised costs include the actual number of reports received and the average number of questions answered, which came to 597 reports and 45.2 questions.

EPA used CMA's survey data on personnel hours because it was acquired directly from survey respondents as they actually reported on CAIR substances. Although this data is not completely unbiased due to the small sample size of 13, this is likely to be a more accurate estimate than the "informed judgement" estimate of EPA.

Hourly wage rate estimates based on updated Bureau of Labor Statistics (BLS) were used as a more reflective measure of industry-wide average wage rates. These estimates are more accurate because wages are specific to individuals and firms and, given the small sample size, CMA wage estimates probably do not represent industry-wide wage rates. The following table illustrates the revised hourly wages and the number of hours per question used to determine the cost per question.

Labor Category	March 1992 Hourly Labor Rate	Hours Per Question	Cost Per Question
Managerial	$60.42	0.81	$48.89
Scientific	$52.39	0.24	12.61
Technical	$43.80	1.76	76.94
Legal	$80.69	0.07	5.48
Secretarial	$21.73	0.23	5.06
Total		3.11	$148.98

a. Individual report costs. Individual report costs were calculated for each substance and facility type using wage rate data from BLS, CMA's estimate of personnel hours, and EPA's estimate of the number of questions per report. Using the above, the average cost per question was estimated. The average cost per question multiplied by the number of questions per report yields the cost of an individual report. Report cost estimates ranged from $2,980 to $13,110.

b. Revised total costs. Given the average total costs per report, the total costs to industry are estimated by multiplying the cost per report by the number of reports submitted. The total report costs are estimated to be $6.45 million for all CAIR reports submitted. The average time per question amounted to 3.1 hours and there were a total of 43,279 questions answered for 597 reports. Multiplying the number of question answered for all reports by the average time per question yields an estimated 134,481 burden hours incurred by industry responding to CAIR.

In addition to report costs of CAIR, EPA incurs compliance determination cost, recordkeeping costs, submission costs, and administrative costs which totalled $1.8 million. Adding these costs to the total report costs yields the revised total costs of CAIR of $8.2 million.

B. Impact of Amendments

Currently, a number of amendments to CAIR are under consideration that would reduce the burden of reporting on industry without resulting in significant loss of information. An overview of the proposed amendments is provided as Attachment 1 to the "Estimated Compliance Costs of the Comprehensive Assessment Information Rule," March 5, 1993, which is part of the Public Record for this proposed rule. While quantitative estimates of the cost savings for most of the amendments are unavailable at this time, the proposed amendments are reviewed relative to how reporting costs would likely be affected. Preliminary cost estimates using reasonable assumptions about the impacts of each amendment indicate the potential cost savings of the amendments to be substantial.

The proposed amendments to CAIR cover a number of subject areas: ITC listed chemicals, small volume exemption, "de minimis" exemption, CBI substantiation, definitions of reporters, clarification of reporting requirements, revised product classification, trade name reporting, and facility location. Preliminary analysis of the change in the burden is that the amendments would potentially save between $5.4 and $6.3 million.

1. Reporting on ITC substances. A proposed amendment would add substances identified for priority testing by the ITC to the CAIR list without notice and comment rulemaking. Substances recommended by the ITC are now automatically added to PAIR. PAIR reporting of ITC substances would be discontinued, effectively replaced by CAIR reporting. Automatic CAIR reporting would be more efficient for both the EPA and the industry for two reasons. First, the Agency needs information quickly for designated substances to meet statutory (12 month) deadlines. Second, the ITC can review the data and then designate or withdraw recommended chemicals from the 4(e) Priority List in a relatively short time. EPA is also considering not requiring trade name reporting for ITC substances.

EPA proposes to collect only limited information similar to what is currently collected for PAIR. The initial reporting burden for the ITC substances would be minimized by requiring only 18 to 20 of the 195 CAIR possible questions. The proposed amendment permits up to 50 substances, mixtures and categories to be added each year. EPA estimates that approximately 100 substances, which would include specific chemical substances and individual members of categories, will be added each year. Although this amendment should increase total industry compliance costs in proportion to the number of new substances, the ITC process should not take each reporting facility as much time as required reporting for the current list of CAIR substances.

The addition of this automatic ITC chemical reporting would inevitably increase total government costs, but most of the administrative costs should not change significantly. The nomination, review and selection process for ITC already occurs; therefore, there are no additional costs. Because the ITC substances would be added to CAIR without notice and comment rulemaking, the additional cost to the government would be less than for adding substances by notice and comment rulemaking. EPA estimates adding the ITC substances to CAIR will require one additional FTE.

Given the above information, a preliminary estimate of the cost of the ITC amendment can be derived. A facility's estimated cost per report is approximately $2,700 to $3,000. The estimated cost is a range because the cost will depend on the number of questions answered (i.e. if the substance is TRI listed, questions duplicated on the CAIR form will not be required to be answered). The range is derived by multiplying the cost per question ($148.98) by the number of questions (18 or 20). The cost to the entire industry for one ITC substance would be

$84,000 to $93,600, which is calculated by multiplying the cost per report by the average number of reports filed (597/19 = 31.4) for each substance. If ITC adds an estimated 100 substances each year (including members of chemical categories), the total cost to industry for all substances added would be $8.4 million to $9.36 million. Finally, factoring in the change in government costs (1 FTE or $61,000), the estimated total societal cost is $8.5 million to $9.4 million. The preliminary estimate of the societal cost is derived from the following equation:

Societal Cost = (Cost/Question) x (Questions/Report) x (Reports/Chemical) x (# Chemicals) + G

Low Estimate = (148.98) x (18) x (31.4) x (100) + $(61,000)

High estimate = (148.98) x (20) x (31.4) x (100) + ($61,000)

Because there is little information available on the ITC substances, the preliminary estimate of the total cost is necessarily based on several assumptions. The individual assumptions used to derive the preliminary cost estimate are based on the assumption that the CAIR reporting for substances added by the ITC will be similar to reporting for the average substance already on the CAIR list. A critical assumption that drives the estimated results is that each ITC question will cost as much to answer as the average first round question. This assumption may overestimate the costs. The list of required questions was selected to minimize the reporting burden, so the average ITC question may take less time than the average question for the substances presently listed on CAIR. Further, most of the required information for the ITC designated substances presently is being submitted under PAIR. The additional cost of submitting the information under CAIR will likely be lower than the cost of reporting the information for the initial CAIR.

It is important to note that while this is an estimate of the societal cost of this proposed rule, there is also a societal savings from discontinuing the PAIR reporting on ITC substances. If the reporting burden and government costs are identical for CAIR and PAIR reporting, the societal costs would be totally offset. Differences in the reporting procedures could result in either a net cost or net savings to industry and government. However, the net change would likely be small because the proposed CAIR questions are selected to be similar to the PAIR reporting. Thus, while automatically adding new ITC substances would result in an increase in the societal cost of the CAIR rule, this proposed amendment is assumed to have zero net change in the total reporting burden to industry and government.

2. *Low volume exemption.* Under this proposed low volume exemption, those firms that manufacture, import, or process a listed substance in annual quantities of less than 10,000 pounds at a site would not have to file CAIR reports. If implemented, this amendment would significantly reduce the reporting burden on industry and lower compliance costs without significantly affecting the information needed by EPA for risk assessments. The EPA would still gather general information and risk assessment data from large volume manufacturers and processors on chemical substances of concern. The Agency reserves the right to modify or eliminate an exemption on a case-specific basis for some chemical substances even in small volumes.

In addition, the volume specification is consistent with the TSCA Inventory Update Rule and the Emergency Planning and Community Right-to-Know Act. When a 10,000 pound exemption was proposed for the Emergency Planning and Community Right-to-Know Act, the EPA estimated the number of facilities and reportable chemicals covered by the exemption. A 10,000 pound exemption level was estimated to exempt 75 percent of the potentially affected facilities (EPA 1987). Industry reporting costs would potentially decrease by 75 percent, a savings of $4.8 million (448 x $10,800). This calculation implicitly assumes, ceteris paribus, the reports avoided are of the same complexity as the average report completed in response to the 1988 iteration of CAIR.

3. *"De minimis" exemption.* Under the final CAIR, manufacturers, importers or processors of mixtures containing CAIR listed substances are subject to the full reporting requirements. Under this proposed amendment, firms would not have to report if the proportion of CAIR listed substance is less than 1 percent of a mixture. If the listed substance is a carcinogen, the limit would be reduced to 0.1 percent. The EPA believes that the information which would be submitted for these low concentrations would probably not be critical for most assessment purposes. The Agency may eliminate or modify the exemption if necessary. Since many trade name products may contain a listed substance in low concentrations, the amendment would lessen the industry's trade name reporting as well.

If implemented, this amendment would also reduce the reporting burden on industry. In the absence of information relating to the proportion of the chemical substance used by the facilities, the number of exempted reports could be 1, 5, 10, or 20. If the amendment exempts only one report, the cost savings to the industry is approximately $10,800. However if the exemption eliminates 5, 10, or 20 reports, the cost savings could be approximately $54,000, $108,000, or $216,000, respectively. As in the previous analysis, the calculation implicitly assumes, ceteris paribus, the reports avoided are of the same complexity as the average report completed in response to the 1988 iteration of CAIR. The estimates are derived from the equation below:

Cost Savings = (Cost/Question) x (Questions/Report) x (Reports/Exempted)

1 Exempted = ($148.98) x (72.5) x (1) = $10,800

5 Exempted = ($148.98) x (72.5) x (5) = $54,000

10 Exempted = ($148.98) x (72.5) x (10) = $108,000

20 Exempted = ($148.98) x (72.5) x (20) = $216,000

4. *CBI substantiation.* Under the current rule, reporters must substantiate CBI claims at the time they submit the information to EPA (i.e. at the time of the CAIR report). This proposed amendment will eliminate the need for up-front substantiation of process and financial information. However, chemical identity, company identity, and production volume information will remain subject to the substantiation requirement, since these categories of data are an integral part of the risk assessment process. EPA anticipates that CBI claimed on responses to 28 questions would no longer require substantiation. This will reduce the reporting burden without reducing public access to the most important information needed for risk analysis. While reporting costs will be reduced for firms which can avoid CBI substantiation, other firms may still incur these substantiation costs if their CBI claims are challenged by EPA.

A sensitivity analysis of potential cost savings from eliminating the need for up-front substantiation of process and financial information can be completed by estimating that 25 percent of the general costs were related to CBI substantiation and half of the reports claimed CBI status. Using the average cost-per-report of $10,800 from the earlier analysis, and multiplying this figure by 25 percent yields an average cost-of substantiation-per-report of $2,700. If half (298.5) of the reports claimed CBI status, the cost savings

from this amendment would be $806,000.[1] This analysis is based on several assumptions due to the lack of specific information on CBI claims and therefore should be interpreted as a very rough estimate.

5. *Definition of reporters.* The definitions for processing activities and manufacturing activities included in the Final CAIR were the source of some confusion regarding reporting requirements. In order to reduce unnecessary reporting, it is proposed that these definitions be removed. Persons evaluating whether they are required to report under CAIR would refer to the definitions of "manufacture for commercial purposes" and "process for commercial purposes."

Eliminating the definition of processing activities and manufacturing activities may result in fewer reports generated if a firm mistakenly reported (or cautiously decided to report rather than risk compliance sanctions). In the absence of information relating to the number of mistakenly generated reports, a sensitivity analysis can be completed by setting the number of extra reports from 1 to 20. The potential cost savings would be the same as in the "De minimis" exemption above, approximately $10,800 to $216,000.

However, because this amendment could potentially increase or decrease the total number of reports filed, the cost impact of this amendment may be positive or negative. For the preliminary estimate of the total impact of all of the amendments, the cost of this amendment is assumed to have a range of ±$216,000.

6. *Clarification of requirements.* These proposed clarifications to the CAIR text will simplify who must report on and who must notify customers about CAIR listed substances. The EPA does not intend that persons exempt from CAIR reporting should have to notify their customers regarding the listed substance. These clarifications will reduce the number of unnecessary reports and notifications, thereby reducing industry compliance costs. The cost savings are similar to those from clarifying the definition of reporters. The number of extra reports could be anywhere from 1 to 20, thus the potential cost savings would be approximately $10,800 to $216,000.

7. *Revised product classification.* These proposed changes to the CAIR questions on product types will provide EPA with more information in a more useful form. This amendment does not change the number of reports generated, nor does it increase the number of questions. The scope of the questions changes, as more specific information is collected. While more information is required, it is easier for companies to classify the information. Thus the reporting burden will not be significantly affected by this amendment.

8. *Trade name reporting.* In the final CAIR, manufacturers, importers, or processors of CAIR listed substances who distribute under a trade name are subject to a customer reporting or notification requirement. Temporary administrative relief from this provision was granted on April 10, 1989, because of the potential for trade secret disclosure. Under this proposed amendment, the temporary relief would be made permanent. If it can be substantiated that compliance would result in disclosure, directly or indirectly, of confidential trade secrets, EPA will not publish trade names submitted under CAIR. Though the temporary administrative relief was in place prior to the first round of reporting on trade name substances, no one took advantage of the temporary relief in that reporting cycle. EPA believes that the permanence of this relief will have little additional effect on the reporting costs.

9. *Location of facility.* This amendment would require firms to report the location (latitude and longitude) of facilities. This will enable EPA to integrate the data based on location for cross-media environmental analysis and management decisions. The amendment will not alter the number of reports generated, but firms will be required to answer a question that is presently optional. The information should be easy to obtain and incremental costs are expected to be minimal.

Summary and Conclusions

The original estimates of CAIR costs by EPA (1988) and CMA (1989) were made with limited information. Although minor methodological differences were identified in Section 2, both estimates extrapolated average report costs to the full total of expected reports. In revising the CAIR burden estimate, it was possible to use the number of reports actually submitted; a number more than twice the original EPA estimate. Also, data on the actual number of hours needed to answer each question were available from a CMA survey of CAIR respondents. It was felt that the time per question as measured by CMA is the best available data on CAIR reporting and that these data are likely representative (e.g., unbiased mean) of all respondents.

Revised estimates of CAIR costs were made with the CMA survey data, updated BLS labor costs, and data from EPA on the actual number of reports submitted. The revised cost of the 1988 iteration of CAIR is estimated at $8.2 million. This figure is greater than both the EPA and CMA estimates made before the first round of CAIR reporting was completed.

The proposed amendments to CAIR will clearly reduce the reporting burden to industry by decreasing the number of reports that must be filed. However, accurate estimates of the cost reduction are not possible without good estimates of the decrease in the number of required reports. A preliminary estimate of the amendments' impact, based on reasonable assumptions about the impact of each amendment, is a savings of $5.4 to $6.3 million, assuming the next iteration of CAIR were a rule of similar scope to the 1988 iteration.

In addition, additional information regarding the thresholds proposed for the low volume and de minimis exemptions was provided to OMB during OMB review, and a copy of that information has been placed in the Public Record.

VII. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPPTS–82013H). The record includes basic information considered by EPA in developing this proposed rule. EPA will supplement the record with additional information as it is received and will identify the complete rulemaking record by the date of promulgation. A public version of the record, without any CBI, is available in the TSCA Nonconfidential Center (NCIC) from 8 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays. NCIC is located in Rm. E–G102, 401 M St., SW., Washington, DC.

VIII. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this proposed rule would not be a "major" rule because it would not have an effect on the economy of $100 million or more, and it would not have a significant effect on competition, costs, or prices. This proposed rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

[1] Estimate derived by dividing the number of reports (597) by 2.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this proposed rule would not have a significant impact on a substantial number of small businesses. Small manufacturers and processors are exempt from CAIR reporting except under certain circumstances set forth in TSCA section 8.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in the existing rule under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and assigned OMB control number 2010–0019. The information collection requirments included in this proposed rule have been submitted to OMB for review and approval as an amendment to OMB control number 2010–0019.

Public reporting burden for this collection of information is estimated to vary from 62 to 272.8 hours per report, with an average of 225.26 hours per report (average of 72.5 questions/report [43,279 questions/597 reports] x 3.1 hours/question), including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, 2131, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information requirements contained in this proposal.

List of Subjects in 40 CFR Part 704

Environmental protection, Chemicals, Confidential business information, Hazardous substances, Imports, Reporting and recordkeeping requirements.

Dated: November 19, 1993.

Carol M. Browner,

Administrator.

Therefore, it is proposed that 40 CFR part 704 be amended as follows:

PART 704—[AMENDED]

1. By amending the authority citation for part 704 to read as follows:

Authority: 15 U.S.C. 2607(a) and 2613.

2. In § 704.203 by deleting the definitions for "Manufacturing activities" and for "Processing activities" and adding definitions for "ITC" and "ITC substance" to read as follows:

704.203 Definitions.

* * * * *

ITC means the Interagency Testing Committee which was established by statute to make recommendations to the EPA Administrator regarding the chemical substances and mixtures which should be given priority consideration for testing.

ITC substance means a chemical substance or mixture recommended or designated by the ITC to be added to the TSCA section 4(e) Testing Priority List.

* * * * *

3. In § 704.206 by adding one sentence at the end of paragraph (a) and revising paragraph (b)(2) to read as follows:

§ 704.206 Persons who must report.

(a) * * * Persons who are exempt from reporting under § 704.210 are also exempt from the trade name reporting requirements of § 704.208.

(b) * * *

(2) "I" means each person who imported the substance for commercial purposes. For the purposes of this subpart, importers will not be required to report unless the symbol "I" is used in the chemical substance matrix in § 704.225.

4. In § 704.208 by redesignating paragraph (b) as paragraph (c) and by adding the new paragraph (b) to read as follows:

§ 704.208 Distribution of substances under a trade name.

* * * * *

(b) A person who believes that they are unable to report for their customer(s) under paragraph (a)(2) of this section and that compliance with both the options identified in paragraph (a)(1) and (a)(3) of this section both would result, directly or indirectly, in the disclosure of confidential business information (CBI) concerning the substance, need not comply with the provisions in paragraph (a) of this section provided the person notifies EPA in writing. The notification to EPA must include the identity of the person distributing the substance, the chemical name and CAS Number of the substance as listed in § 704.225(a), the trade name(s) under which the substance is distributed, and the total aggregate quantity of the substance purchased by the customers for whom they are unable to report during the respondent's reporting year. In addition, the person submitting the notification must provide detailed written responses to the following questions to substantiate their confidentiality claim. The responses should be as specific as possible, with examples as appropriate. Failure to submit responses to any of these substantiation questions along with the notification constitutes waiver of the confidentiality claim. The notification must be postmarked no later than 1 day after the effective date of the final rule listing the substance in subpart D of this part. Finally, the person submitting the confidentiality claim must follow the procedures at § 704.219.

(1) Explain how compliance with § 704.208 (a)(1) and (a)(3) will result in disclosure of CBI and identify which specific information constitutes CBI.

(2) Is your company asserting this confidentiality claim on its own behalf? If the answer is no, please provide the name, address and telephone number of the entity on whose behalf you are asserting the claim.

(3) For what period of time do you assert your claim(s) of confidentiality? If the claim is to extend until a certain event or point in time, please indicate that event or time period. Explain why such information should remain confidential until such point.

(4) Has the information that you are claiming as confidential been submitted to any other governmental agency, or to EPA at any other time? Identify the agency to which the information was submitted and provide the date and circumstances of the submission. Was the submission accompanied by a claim of confidentiality? If yes, attach a copy of the documentation reflecting the confidentiality claim.

(5) Briefly describe any physical or procedural restrictions within your company relating to the use and storage of the information you are claiming as CBI.

(6) If anyone outside your company has access to any of the information claimed as CBI, describe the measures taken to protect the confidentiality of the information. For example, state whether such persons are restricted by confidentiality agreement(s). If there are confidentiality agreements, describe the content of the agreement(s) which protect such information.

(7) Does the information claimed as confidential appear or is it referred to in any of the following:

(i) Advertising or promotional material for the chemical substance or the resulting end product.

(ii) Material safety data sheets or other similar materials (such as technical data sheets) for the substance or resulting

end product (include copies of this information as it appears when accompanying the substance and/or product at the time of transfer or sale).

(iii) Professional or trade publications.

(iv) Any other media or publications available to the public or to your competitors.

(v) If you answered yes to any of the above, indicate where the information appears, include copies, and explain why it should nonetheless be treated as confidential.

(8) Has EPA, another federal or State agency, or court made any confidentiality determination regarding information associated with this substance? If so, provide copies of such determinations.

(9) Describe the substantial harmful effects that would result to your competitive position if the information is made available to the public. In your answer, explain the causal relationship between disclosure and any resulting substantial harmful effects. Consider in your answer such constraints on your competitors' use of this information as capital and marketing cost, specialized technical expertise, or unusual processes and your competitors access to your customers. Address separately each piece of information claimed as CBI.

* * * * *

5. In § 704.210 by redesignating paragraph (c) as paragraph (e) and adding paragraphs (c) and (d) to read as follows:

§ 704.210 Exemptions.

* * * * *

(c) *Low volume.* A person who, during the coverage period designated in subpart D of this part for a specific substance, manufactures, imports, or processes for commercial purposes less than 10,000 lbs. (4,540 kilograms) of the substance listed in subpart D of this part, at a site, is exempt from the reporting and recordkeeping requirements of this subpart for that site.

(d) *De minimis concentration of a listed substance in a mixture.* A person who manufactures, imports, or processes for commercial purposes a mixture which contains a substance listed in subpart D of this part in a concentration which is below 1 percent of the mixture, or 0.1 percent of the mixture in the case of a listed substance which is designated as a carcinogen (a carcinogen is an agent that increases the incidence of cancer or related lesions, increases the number of cancers, or reduces latency) is exempt from the reporting and recordkeeping requirements of the subpart. This exemption applies only to the quantity of the listed substance present in the mixture. If the listed substance is also manufactured, imported, or processed other than as part of a mixture or in a mixture at higher concentrations, the person is required to comply with the reporting and recordkeeping requirements of this subpart, unless the person is otherwise exempt.

* * * * *

6. In § 704.212 by revising paragraph (b)(1) to read as follows:

§ 704.212 Questions selected.

* * * * *

(b) *Specifying the questions.* (1) The questions selected will always include Section 1 and question 10.02 in Section 10 of the CAIR reporting form. In addition, for ITC substances, EPA will require reporting on all or some of the following questions: 1.01, 1.02, (except those parts which refer to trade name (X/P) reporting), 1.06 thru 1.16, 2.04, 2.12, 2.17, 9.02, 10.05, and 10.06.

* * * * *

7. In § 704.217 by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 704.217 How to submit completed CAIR reporting forms.

* * * * *

(b) Completed forms must be submitted by certified mail to: TSCA Document Processing Center (7407), Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, Room L–100, 401 M St., SW., Washington, DC 20460. ATTENTION: CAIR Reporting or, for ITC substances: CAIR Reporting, ITC.

(c) Information under § 704.225(a)(2) showing why an ITC substance, mixture, or category of substances should be removed from subpart D should be sent by certified mail to the above address and labeled: ATTENTION: CAIR ITC, Removal.

8. In § 704.219 by revising paragraphs (c)(1), (d), and (e) and deleting paragraph (f) to read as follows:

§ 704.219 Confidential business information claims.

* * * * *

(c) * * *

(1) Submitters can claim information submitted on a reporting form as confidential by placing in the CBI box, which is adjacent to the question, the letter or letters that indicate the category of the information, as enumerated in paragraph (d) of this section, which is being claimed confidential.

* * * * *

(d) All claims of confidentiality for CAIR information fall into one of the following seven categories: Submitter identity = h, Substance identity = i, Volume manufactured, imported, or processed = j, Use information = k, Process information = l, Other information = m, and Financial information = n. Submitters who assert a CBI claim on the reporting form must mark the letters (h through n) that correspond to the categories of confidentiality for the information in the box adjacent to the question. Confidentiality claims for information on continuation sheets are asserted by placing the appropriate letters in the margin by the information claimed as confidential.

(e)(1) Submitters who assert CBI claims must substantiate each category of claims (except those categorized as process or financial pursuant to paragraph (d) of this section) by completing all applicable portions of the CBI substantiation form found in Appendix II of the CAIR reporting form.

(2) All claims of confidentiality required to be substantiated under this paragraph must be substantiated at the time the submitter asserts the claim (i.e., when the reporting form is submitted). Failure to provide substantiation of a claim at the time the submitter submits the reporting form constitutes waiver of the confidentiality claim, and the information may be disclosed to the public without further notice to the submitter.

9. In § 704.223 by revising paragraph (a) and adding paragraph (c) to read as follows:

§ 704.223 Reporting period.

(a) Reports must be received by EPA no later than 90 days after the effective date of the final rule listing the substance in § 704.225, except as described in paragraphs (b) and (c) of this section.

* * * * *

(c) Reports for chemical substances, mixtures, and categories of chemical substances or mixtures that have been recommended or designated by the ITC under TSCA section 4(e) for priority consideration must be received by EPA no later than 60 days after the effective date of the final rule listing the substance, mixture, or category of substances in § 704.225.

10. In § 704.225 by revising the title, redesignating paragraphs (a) and (b), as paragraphs (b) and (c), respectively and adding a new paragraph (a) to read as follows:

§ 704.225 Chemical substances matrix by CAS registry number.

(a)(1) Chemical substances, mixtures, and categories of chemical substances or

mixtures that have been recommended or designated by the ITC under TSCA section 4(e) for priority consideration will be added to § 704.225(b), effective 30 days after publication of an amendment listing those chemical substances, mixtures, and categories in the **Federal Register**. Chemical substances, mixtures, and categories of substances that have been recommended but not designated by the ITC for EPA response within 12 months, will be added by these expedited procedures only to the extent that the total number of recommended and designated substances, mixtures, and categories do not exceed 50 in any 1 year. Additional recommended substances, mixtures, and categories may be added after proposal, and consideration of ensuing public comment.

(2) Prior to the effective date of an amendment under paragraph (a)(1), the Assistant Administrator for Prevention, Pesticides and Toxic Substances may for good cause withdraw a chemical substance, mixture, or category of substances or mixtures from § 704.225(b). Persons who wish to request withdrawal of a substance, mixture, or category must submit information showing why the substance should be withdrawn from the CAIR to the address at § 704.217(b). Any such information must be received by EPA within 14 days of the date of publication of the amendment in the **Federal Register**.

* * * * *

[FR Doc. 93–29276 Filed 11–29–93; 8:45 am]
BILLING CODE 6560–50–F

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40 CFR Part 749

[OPPTS–61018; FRL–4627–5]

RIN 2070–AC57

Prohibition of Hexavalent Chromium-Based Water Treatment Chemicals in Comfort Cooling Towers; Proposed Amendment to Limit the Scope of the Export Notification Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing an amendment to 40 CFR part 749, subpart D, which prohibits, under section 6 of the Toxic Substances Control Act (TSCA), the use of hexavalent chromium-based water treatment chemicals in comfort cooling towers and the distribution of such chemicals in commerce for use in comfort cooling towers. Today's proposed amendment would modify the regulatory text of 40 CFR 749.68 to clarify that only hexavalent chromium chemicals that can be used for water treatment are the subjects of these regulations, not other hexavalent chromium chemicals. This proposed change would limit the scope of export notifications currently required for hexavalent chromium chemicals under TSCA section 12(b) and § 749.68; no changes to the prohibitions or labeling requirements of the hexavalent chromium rule are intended by this proposed amendment. If amended as proposed today, § 749.68 would not trigger the section 12(b) export notification requirements for exports of hexavalent chromium products such as paints, dyes, pigments, coatings, and other products containing hexavalent chromium that cannot be used to treat water.

DATES: Written comments on this proposed rule must be received on or before December 30, 1993. A public hearing will be held on this proposed rule on January 13, 1994 at EPA Headquarters, Washington, DC only if a written request for such hearing is received by December 23, 1993. Requests to participate in the public hearing must be received by December 23, 1993. If a public hearing is requested, a separate **Federal Register** notice will be published. For further information regarding the public hearing, see Unit V of this preamble.

ADDRESSES: Written comments should be submitted in triplicate and identified by the docket number OPPTS–61018 to: the OPPT Document Receipt Office, (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–G99, 401 M St., SW., Washington, DC 20460. For information regarding the submission of comments containing confidential business information, see Unit VII of this preamble.

Requests to hold a public hearing must be submitted in writing identified with the docket number OPPTS–61018 to the address identified above. Requests to participate in the public hearing also must be submitted in writing identified with the docket number OPPTS–61018 to the address identified above. For further information regarding the public hearing, see Unit V of this preamble.

FOR FURTHER INFORMATION CONTACT: Geraldine Gardner, Office of Enforcement (2245), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, 202–260–8858.

SUPPLEMENTARY INFORMATION: EPA is proposing an amendment to 40 CFR part 749, subpart D, which prohibits the use of hexavalent chromium (Cr^{+6})-based water treatment chemicals in comfort cooling towers (CCTs) and the distribution of such chemicals in commerce for use in CCTs. Today's proposed amendment would modify 40 CFR 749.68 to clarify that only Cr^{+6} chemicals that can be used for water treatment are the subjects of these regulations, not other Cr^{+6} chemicals. This proposed change would limit the scope of TSCA section 12(b) export notifications currently required for Cr^{+6} chemicals.

I. Authority

EPA is proposing this amendment pursuant to TSCA sections 6 (15 U.S.C. 2605) and 12(b) (15 U.S.C. 2611(b)). Section 6 of TSCA authorizes EPA to impose regulatory controls if EPA finds that there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or mixture presents or will present an unreasonable risk of injury to human health or the environment. Under this authority, EPA issued a final rule in the **Federal Register** of January 3, 1990 (55 FR 222), that prohibits the use of Cr^{+6}-based water treatment chemicals in CCTs and the distribution in commerce of Cr^{+6}-based water treatment chemicals for use in CCTs (40 CFR 749, Subpart D). The rule also requires persons who distribute in commerce Cr^{+6}-based water treatment chemicals to label the containers of the chemicals.

Section 12(b) of TSCA requires that any person who exports or intends to export to a foreign country a chemical substance or mixture for which: (1) The submission of data is required under TSCA section 4 (15 U.S.C. 2603) or 5(b) (15 U.S.C. 2604(b)); (2) an order has been issued under section 5; (3) a rule has been proposed or promulgated under section 5 or 6 (15 U.S.C. 2605); or (4) relief has been granted under section 5 or 7 (15 U.S.C. 2606) to notify the Administrator of EPA of such exportation or intent to export. Upon receipt of such notification, section 12(b) of TSCA requires EPA to furnish the government of the importing country with: Notice of the availability of data received pursuant to action under section 4 or 5(b), or notice of such rule, order, action, or relief under section 5, 6, or 7. EPA promulgated a rule setting forth the export notification requirements of TSCA section 12(b) under 40 CFR part 707, Subpart D.

II. Background

Since the Cr^{+6} rule was promulgated under TSCA section 6, the section 12(b) export notification requirements are

triggered. Currently all Cr^{+6} chemicals are subject to section 12(b) because the term "Cr^{+6} chemicals" is presently defined in § 749.68(d)(10) as "any combination of chemical substances containing hexavalent chromium and includes hexavalent chromium-based water treatment chemicals." Thus, for example, the export of paint containing a Cr^{+6} chemical that cannot be used for water treatment would currently trigger the section 12(b) notification requirements.

In the preamble to the final Cr^{+6} rule, EPA stated that pursuant to TSCA section 12(b) and 40 CFR part 707, subpart D, persons who export or intend to export Cr^{+6} chemicals are required to notify EPA of those activities. EPA indicated that export notification would be required for all Cr^{+6} exports "because the substance subject to the rule is Cr^{+6}" and that it did not believe that the requirement should be narrowed, as a practical matter, because of the difficulty in determining the end use of the Cr^{+6} at the time of export. EPA also anticipated that the burden of the notification requirements that would be triggered by the export of Cr^{+6} for uses not regulated by the rule would be minimal.

After promulgation of the final Cr^{+6} rule, the Chrome Coalition filed a Petition for Review with the United States Court of Appeals, District of Columbia Circuit dated April 17, 1990 (*Chrome Coalition v. U.S. Environmental Protection Agency, No. 90-1138*). In the petition, the Chrome Coalition argued that because EPA failed to set forth its interpretation of TSCA section 12(b) in the proposed rule, the public was unable to comment on that interpretation. Additionally, they argued that EPA's interpretation of section 12(b) is too broad in the context of the Cr^{+6} rule, and imposes an unnecessary burden on any business that exports products containing Cr^{+6}, even when the products cannot be used in water treatment. As a part of the settlement reached with the Chrome Coalition on December 15, 1992, EPA agreed to propose a rule that addressed the concerns raised by the Coalition. The Settlement Agreement was filed with the United States Court of Appeals, District of Columbia Circuit on January 7, 1993.

In light of the Chrome Coalition's Petition, EPA reevaluated the need to require export notification for *all* Cr^{+6} chemicals. EPA believes that narrowing the scope of the export notification requirement may more appropriately meet the intent of the coverage of the Cr^{+6} rule, as well as more efficiently implement the requirements of TSCA section 12(b).

III. Summary of this Proposed Rule

EPA is proposing to amend the Cr^{+6} rule solely to limit the scope of the required section 12(b) notifications. This proposed rule would require notification under 40 CFR part 707, subpart D, for the export or intended export of Cr^{+6} chemicals that can be used for water treatment. EPA is proposing to list in § 749.68 certain specific Cr^{+6} chemicals that the Agency believes can be used to treat water. This is not meant to be a complete list, but rather examples. The export of any Cr^{+6} chemicals alone, or in combination with other chemical substances when the mixture can be used to treat water cooling systems, would trigger the TSCA section 12(b) export notification requirements.

Under existing language of the Cr^{+6} rule, TSCA section 12(b) export notification is required for all Cr^{+6} compounds, if they are exported alone, or in combination with other substances, even if the exported product cannot be used to treat water. With today's proposed amendment, EPA intends that exporters of paints, dyes, pigments, coatings, and other substances that contain Cr^{+6} in a form that cannot be used to treat water would not need to report the export to EPA under TSCA section 12(b). To accomplish this, EPA is proposing to amend the subject of the Cr^{+6} rule, certain definitions, and other appropriate provisions, as discussed below.

IV. Discussion of this Proposed Rule

Exports of certain Cr^{+6} chemicals (e.g., in such products as paints, dyes, and pigments) may now be triggering TSCA section 12(b) export notifications in more cases than are necessary to reasonably carry out TSCA section 12(b). EPA believes the current burden associated with exporters providing notification for exports of Cr^{+6} chemicals that cannot be used for water treatment to be substantial, and the benefits to countries receiving these notifications to be minimal. This proposed amendment would modify § 749.68 to clarify that only Cr^{+6} chemicals that can be used to treat water are the subjects of the Cr^{+6} rule. The Agency believes that this proposal would continue to protect human health and the environment against unreasonable risk of injury. The proposed amendment would not change the balance in the original rule, except to lessen the cost of compliance. Thus, this proposed change, EPA believes, would provide to importing countries information more reflective of EPA's concerns and would further Congress's intent that EPA administer TSCA "in a reasonable and prudent manner" (TSCA section 2(c); 15 U.S.C. 2601(c)).

This proposed change is supported by the TSCA section 6 Cr^{+6} rulemaking effort. The supporting documentation used by EPA to promulgate the Cr^{+6} rule focused on data regarding Cr^{+6} emissions from CCTs. A background document, "Background Information Document for Chromium Emissions from Comfort Cooling Towers" (EPA–450/3–87–010a) (OPPTS–61012), described EPA's regulatory alternatives and expected impacts. The information-gathering, analysis, and rulemaking were used solely to support a TSCA section 6 determination regarding Cr^{+6}-based water treatment chemicals and not all possible Cr^{+6} mixtures and products. Therefore, EPA believes that it is appropriate to revise the regulatory language to express more accurately the originally intended scope and coverage of the regulations.

The proposed regulatory language changes would clarify that the chemicals subject to the rule are any Cr^{+6} chemicals that can be used to treat water, either alone or in combination with other chemicals, where the mixture can be used to treat water. As stated above, the intended effect of this change is to reduce the scope of the TSCA section 12(b) export notifications that are triggered by § 749.68.

Currently, the section heading of § 749.68 reads "Hexavalent chromium chemicals in comfort cooling towers." EPA believes that a more appropriate focus and heading for the rule would be "Hexavalent chromium-based water treatment chemicals in cooling systems," and is therefore proposing this change. Also, because the term "hexavalent chromium chemicals" in the current § 749.68(d)(10) would not be used in the rule as revised by this proposal, the definition would be dropped.

As discussed above, the TSCA section 12(b) export notification requirements are triggered by the export of certain chemical substances or mixtures that are the subjects of certain actions under TSCA, including Cr^{+6} because of the Cr^{+6} rule. Currently, § 749.68(a) states:

Chemical substance subject to this section. Hexavalent chromium, usually in the form of sodium dichromate (CAS No. 10588-01-9), is subject to this section.

Under today's proposal, § 749.68(a) would be amended to state:

Chemicals subject to this section. Hexavalent chromium-based water treatment

chemicals that contain hexavalent chromium, usually in the form of sodium dichromate (CAS No. 10588–01–9), are subject to this section. Other examples of hexavalent chromium compounds that can be used to treat water are: chromic acid (CAS No. 7738–94–5), chromium trioxide (CAS No. 1333–83–0), dichromic acid (CAS No.13530–68–2), potassium chromate (CAS No. 7789–00–6), potassium dichromate (CAS No. 7778–50–9), sodium chromate (CAS No. 7775–11–3), zinc chromate (CAS No. 13530–65–9), zinc chromate hydroxide (CAS No. 153936–94–6), zinc dichromate (CAS No. 14018–95–2), and zinc potassium chromate (CAS No. 11103–86–9).

By proposing this amendment in conjunction with the other changes discussed herein, especially those at § 749.68(d)(11) of the regulatory text, EPA intends that only Cr^{+6} compounds which can be used to treat water, either alone or in combination with other chemicals, where the mixture can be used to treat water, would be subject to the rule and thus the section 12(b) export notification requirements. The Agency would like to receive comments on the issue of whether certain Cr^{+6} compounds cannot be used to treat water.

Related to this proposed change, EPA is proposing to amend certain language in § 749.68(b), entitled "Purpose," and § 749.68(c), entitled "Applicability," to reflect the changed focus of the rule from Cr^{+6} to Cr^{+6}-based water treatment chemicals. Refer to the proposed regulatory text of § 749.68(b) and (c) for the revised language.

Additionally, EPA is proposing to add a chemical definition of Cr^{+6} in proposed § 749.68(d)(10) to clarify the revised subject of the rule. The proposed definition of Cr^{+6} would be "the oxidation state of chromium with an oxidation number of +6; a coordination number of 4 and tetrahedral geometry."

Another key change being proposed is a new definition of "hexavalent chromium-based water treatment chemicals." The current definition in § 749.68(d)(11) states that "hexavalent chromium-based water treatment chemicals means any hexavalent chromium, alone or in combination with other water treatment chemicals, *used* to treat water." (emphasis added). The proposed amended definition would state that "hexavalent chromium-based water treatment chemicals means any hexavalent chromium which *can be used* to treat water, either alone or in combination with other chemicals, where the mixture can be used to treat water." (emphasis added). This change is intended to require export notification for the export of chemicals that can be used to treat water, whether or not they are actually used to treat water. EPA believes that exporters will not always know the actual end use of the Cr^{+6} product. However, EPA believes that exporters are likely to know potential end uses or how Cr^{+6} can be used. Additionally, to help exporters identify which Cr^{+6} compounds can be used, either alone, or in combination with other chemicals to treat water, the Agency is listing examples of such compounds. This change is not intended to have any effect on the current labeling requirements or the prohibitions of the Cr^{+6} rule; comment is solicited on whether any of the proposed changes would impact the labeling requirements or prohibitions of the rule.

So that the labeling requirements will not be affected by the changes being proposed today, EPA is proposing a change in the language of § 749.68(g). Currently, the labeling requirement at § 749.68(g) states:

Labeling. (1) Each person who distributes in commerce hexavalent chromium-based water treatment chemicals after February 20, 1990, shall affix a label..."

As the current definition of "hexavalent chromium-based water treatment chemicals" in § 749.68(d)(11) is "any hexavalent chromium, alone or in combination with other water treatment chemicals, *used* to treat water," (emphasis added) labeling is required only for hexavalent chromium-based water treatment chemicals *used* to treat water. As stated above, the new definition of "hexavalent chromium-based water treatment chemicals" in proposed § 749.68(d)(11) would be "any hexavalent chromium which *can be used* to treat water..." (emphasis added). Without changing § 749.68(g), this new definition would have the effect of expanding the labeling requirements to require labeling of any hexavalent chromium, either alone or in combination with other chemicals, that can be used to treat water, where the mixture can be used to treat water. However, as the intent of this proposal is not to change the scope of the labeling requirements, the phrase "for use in cooling systems" is being added to § 749.68(g). This section would read:

Labeling. (1) Each person who distributes in commerce hexavalent chromium-based water treatment chemicals for use in cooling systems after February 20, 1990, shall affix a label...

EPA believes this change, along with the other proposed modifications, would have the effect of maintaining the current labeling requirements.

All of the proposed changes are meant to reduce the scope of TSCA section 12(b) export notifications without affecting the prohibitions and labeling requirements in the current rule. With today's proposed amendment, EPA intends that exporters of paints, dyes, pigments, coatings, and other compounds containing Cr^{+6} that cannot be used to treat water either alone or in combination with other chemicals, would not report the export to EPA under TSCA section 12(b). To accomplish this, EPA is proposing this amendment to the Cr^{+6} rule, certain definitions, and other appropriate provisions at § 749.68. EPA believes that today's proposed rule would reduce the burden on the regulated community in cases where export notification provides little or no benefit to importing countries.

Today's proposed rule is consistent with other Agency efforts to improve the utility of these notices for receiving governments, and to optimize the ability of EPA to process more efficiently export notices it receives annually and respond to requests from foreign governments for additional information on chemicals and export notices. For example, on July 21, 1981, in its notice on "Asbestos Export Notification," EPA clarified the reporting responsibilities of persons exporting asbestos or mixtures containing asbestos by defining which types of asbestos require export notification (46 FR 37608). As another example, on July 27, 1993 in its notice on "Export Notification Requirement; Change to Reporting Requirements; Final Rule" (58 FR 40238), EPA issued a rule that would change the current annual notification requirements for exporters of chemical substances and mixtures subject to TSCA section 4 test rules or consent orders to a one-time (instead of annual) export notification per chemical per country. (See also "Export Notification Requirement; Proposed Change to Reporting Requirements" (54 FR 29524, July 12, 1989)).

EPA believes that such actions, and the action proposed here, will enhance other governments' ability to thoughtfully consider notices received under TSCA section 12(b) and react appropriately to chemicals being imported, by focusing on a more limited number of notifications that reflect actual chemicals that EPA has identified as causing concerns. As EPA stated in the preamble to the final export notification rule, "[t]he intended focus of the notice to foreign governments is the chemical substance or mixture and what EPA has done or found out about it ...." (45 FR 82844, December 16, 1980).

Since the primary purpose of TSCA section 12(b) export notification is to alert and inform other governments of hazards that may be associated with a chemical substance or mixture, it is important that the export notification requirements are implemented in a manner that efficiently conveys EPA's concerns. EPA believes that today's proposed amendments would increase the efficiency of the operation of the section 12(b) requirement as applied to the Cr^{+6} rule, by eliminating the current export notifications associated with the export of Cr^{+6} chemicals that cannot be used to treat water.

V. Public Hearing

A public hearing will be held to receive oral comments on this proposed amendment only if such a hearing is requested in writing and the request is received by EPA at the location listed under the ADDRESSES unit of this preamble by December 23, 1993. Such a request must be received by this date to enable EPA to make appropriate arrangements for the hearing. Attendance at the hearing will be open to anyone though space may be limited. However, only persons who request an opportunity to speak will be allowed to present oral comments. Such a request must be made in writing to the address listed under the ADDRESSES unit of this preamble and must be received no later than December 23, 1993. The request must include a statement of the person's interest in this rulemaking, a brief outline of points to be addressed, an estimate of the time required, and for requests from an organization, a nonbinding list of persons to take part in the presentation. The EPA will make the hearing schedule publicly available and send it to each person who has requested an opportunity to present oral comments (See 40 CFR 750.6).

A verbatim transcript of the hearing and copies of any written statements will be placed in the public file and will be available for inspection and copying at the address in Unit IX of this preamble.

VI. Request for Comment

EPA is requesting comment on the proposals in this notice only to the extent that it would amend or change the existing regulations. EPA is not soliciting comments on provisions of the existing regulations that would not be changed by this proposal. Specifically, and notwithstanding the inclusion of some of the existing language of 40 CFR 749.68 in this proposal, the Agency will only entertain comments to the extent that they address the proposed changes in that section that affect section 12(b) notification (See 40 CFR 750.4).

VII. Confidentiality

Person may assert a claim of confidentiality for any information, including all or portions of written comments, submitted to EPA in connection with this proposed rule or in connection with the rule after it is promulgated. Any person who submits a comment subject to a claim of confidentiality must also submit a nonconfidential version. Any claim of confidentiality must accompany the information so claimed when it is submitted to EPA. Persons must mark information claimed as confidential by circling, bracketing, or underlining it, and marking it with "CONFIDENTIAL" or some other appropriate designation. EPA will disclose information subject to a claim of confidentiality only to the extent permitted by section 14 of TSCA and 40 CFR part 2, subpart B. If a person does not assert a claim of confidentiality for information at the time it is submitted to EPA, EPA may make the information public without further notice to that person.

VIII. Economic Impact

In the support document entitled *Economic Analysis of Proposed Amendments to the TSCA Section 6 Rule for Hexavalent Chromium*, dated May 1993, EPA has evaluated potential changes in costs to the Cr^{+6} rule that would be associated with these proposed amendments. The total savings to industry and EPA associated with the proposed amendment are approximately $5,400 to $16,300 per year. EPA's complete economic analysis is available in the public record for this proposed rule (OPPTS–61018).

IX. Rulemaking Record

EPA has established a record for this rulemaking (docket number OPPTS–61018). The record includes basic information considered by EPA in developing this proposed rule. EPA will supplement the record with all written comments and additional information as it is received. The record now includes the following:

(1) "Prohibitions of Hexavalent Chromium Chemicals in Comfort Cooling Towers; Final Rule", 55 FR 222, January 3, 1990.

(2) Chrome Coalition. re: Petition - *Chrome Coalition v. United States Environmental Protection Agency*, No. 90–1138, April 17, 1990.

(3) Chrome Coalition. re: Settlement Agreement No. 90–1138, December 15, 1992.

(4) "Asbestos Export Notification." 46 FR 37608, July 21, 1981.

(5) "Export Notification Requirements; Proposed Change to Reporting Requirements." 54 FR 29524, July 12, 1989.

(6) "Chemical Imports and Exports; Notification of Export" 45 FR 82844, December 16, 1980.

(7) U.S. EPA OPPTS, EETD. *Economic Analysis of Proposed Amendments to the TSCA Section 6 Rule for Hexavalent Chromium*, May 1993.

(8) "Export Notification Requirement; Change to Reporting Requirements; Final Rule." 58 FR 40238, July 27, 1993.

A public version of this record is available for public inspection and copying at the TSCA Nonconfidential Information Center (NCIC), also known as, TSCA Public Docket Office from 8 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday, excluding legal holidays. TSCA NCIC is located at Rm E–G102, 401 M St., SW., Washington, DC 20460

X. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this proposed rule is not "significant" and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined

that this proposed rule would not have a significant impact on a substantial number of small businesses. This rule would actually decrease the reporting burden for the small businesses that export Cr^{+6} chemicals that cannot be used for water treatment, which are currently subject to the reporting requirements of TSCA section 12(b). This proposed rule would not add any economic burden to small businesses.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in the Cr^{+6} Rule at 40 CFR part 749, Subpart D under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and has assigned OMB control number 2060–0193 to that collection activity. In addition, OMB has also approved the information collection requirements contained in the Export Notification Rule at 40 CFR part 707, Subpart D under the provisions of the Paperwork Reduction Act, and has assigned OMB control number 2070–0030 to that activity.

The changes in this proposed rule are not expected to impact the information collection requirements contained in the Cr^{+6} Rule at 40 CFR part 749, Subpart D, and EPA does not expect to change the burden estimates approved by OMB under OMB control number 2060–0193. However, since the proposed rule amends the applicability of the information collection requirements contained in the Export Notification Rule at 40 CFR part 707, Subpart D, EPA expects to change the burden estimates approved under OMB control number 2070–0030, and will submit an information correction worksheet with the final rule.

The proposed rule would reduce the number of export notices required from the public by approximately 237 submissions per year. Public reporting burden for the collection of information under 40 CFR Part 707, "Chemical Imports and Exports", is estimated to average .5 to 1.5 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Total public reporting burden is expected to decrease as a result of this proposed rule by approximately 119 to 356 hours per year.

Send comments regarding the burden estimate or any other aspect of the collection of information under OMB control number 2070–0030 to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Part 749

Environmental protection, Chemicals, Chromium, Cooling systems, Cooling towers, Export notification, Hazardous substances, Hexavalent chromium-based water treatment chemicals, Imports, Labeling, Recordkeeping and reporting requirements.

Dated: November 18, 1993.

Carol M. Browner,

Administrator.

Therefore, it is proposed that 40 CFR part 749 be amended to read as follows:

PART 749—[AMENDED]

1. The authority citation for part 749, would continue to read as follows:

Authority: 15 U.S.C. 2605 and 2607.

2. In § 749.68, by revising the section heading and paragraphs (a), (b), (c), (d)(10), (d)(11), and (g)(1) to read as follows:

§ 749.68 Hexavalent chromium-based water treatment chemicals in cooling systems.

(a) *Chemicals subject to this section.* Hexavalent chromium–based water treatment chemicals that contain hexavalent chromium, usually in the form of sodium dichromate (CAS No. 10588–01–9), are subject to this section. Other examples of hexavalent chromium compounds that can be used to treat water are: Chromic acid (CAS No. 7738–94–5), chromium trioxide (CAS No. 1333–83–0), dichromic acid (CAS No. 13530–68–2), potassium chromate (CAS No. 7789–00–6), potassium dichromate (CAS No. 7778–50–9), sodium chromate (CAS No. 7775–11–3), zinc chromate (CAS No. 13530–65–9), zinc chromate hydroxide (CAS No. 153936–94–6), zinc dichromate (CAS No. 14018–95–2), and zinc potassium chromate (CAS No. 11103–86–9).

(b) *Purpose.* The purpose of this section is to impose certain requirements on activities involving hexavalent chromium-based water treatment chemicals to prevent unreasonable risks associated with human exposure to air emissions of hexavalent chromium from comfort cooling towers.

(c) *Applicability.* This section is applicable to use of hexavalent chromium-based water treatment chemicals in comfort cooling towers and to distribution in commerce of hexavalent chromium-based water treatment chemicals for use in cooling systems.

(d) * * *

(10) *Hexavalent chromium* means the oxidation state of chromium with an oxidation number of +6; a coordination number of 4 and tetrahedral geometry.

(11) *Hexavalent chromium-based water treatment chemicals* means any chemical containing hexavalent chromium which can be used to treat water, either alone or in combination with other chemicals, where the mixture can be used to treat water.

* * * * *

(g) *Labeling.* (1) Each person who distributes in commerce hexavalent chromium-based water treatment chemicals for use in cooling systems after February 20, 1990, shall affix a label or keep affixed an existing label in accordance with this paragraph, to each container of the chemicals. The label shall consist of the following language:

WARNING: This product contains hexavalent chromium. Inhalation of hexavalent chromium air emissions increases the risk of lung cancer. Federal Law prohibits use of this substance in comfort cooling towers, which are towers that are open water recirculation devices and that are dedicated exclusively to, and are an integral part of, heating, ventilation, and air conditioning or refrigeration systems.

* * * * *

[FR Doc. 93–29277 Filed 11–29–93; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–277, RM–8324]

Radio Broadcasting Services; Warrior, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking filed on behalf of North Jefferson Broadcasting Company, Inc., permittee of Station WLBI(FM), Channel 254A, Warrior, Alabama, seeking the substitution of Channel 254C3 for Channel 254A and modification of its permit accordingly to specify operation on the higher powered channel. Coordinates for this proposal are 33–53–04 and 86–52–01.

Petitioner's modification proposal complies with the provisions of

§ 1.420(g) of the Commission's Rules. Therefore, we will not accept competing expressions of interest in the use of Channel 254C3 at Warrior, or require the petitioner to demonstrate the availability of an additional equivalent class channel.

DATES: Comments must be filed on or before January 10, 1994, and reply comments on or before January 25, 1994.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Richard J. Hayes, Esq., 13809 Black Meadow Road, Spotsylvania, VA 22553.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking, MM Docket No. 93–277, adopted October 29, 1993, and released November 17, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rulemaking is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Victoria M. McCauley,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–29251 Filed 11–29–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–254, DA 93–1425]

[Docket No. 93–254, DA 93–1425]

Radio Broadcast Services, Limitations on Commercial Time on Television Broadcast Stations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule. extension of comment and reply commenter periods.

SUMMARY: This action, in response to a request indicating good cause to extend the reply comment period filed by Silver King Communications, Inc., extends the deadline for filing comments and reply comments in the Notice of Inquiry in the above-cited docket. The Notice solicited comments on whether the public interest would be served by establishing limits on the amount of commercial matter broadcast by television stations. The Commission adopted the Notice on its own motion. The deadline for comments was originally November 29, 1993, and is extended until December 20, 1993. The deadline for reply comments was originally December 14, 1993, and is extended until January 5, 1994.

DATES: Comments are now due by December 20, 1993, and reply comments are now due by January 5, 1994.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Paul R. Gordon, Mass Media Bureau, Video Services Division, (202) 632–6357.

SUPPLEMENTARY INFORMATION:

Order

Adopted: November 22, 1993
Released: November 22, 1993.

Comment Date: December 20, 1993.
Reply Comment Date: January 5, 1994.
By the Chief, Mass Media Bureau.

1. This action extends the deadline for filing reply comments in response to the Notice of Inquiry in MM Docket No. 93–254 8 FCC Rcd 7277 (1993), in which the Commission seeks comment on whether the public interest would be served by establishing limits on the amount of commercial matter broadcast by television stations. The Commission adopted the Notice on its own motion. The deadline for comments was originally November 29, 1993, and the deadline for reply comments was originally December 14, 1993.

2. Silver King Communications, Inc. (Silver King) requests a three-week extension of the comment and reply comment periods, in order to address adequately the issues raised in the Notice. Silver King states that it has commissioned several studies for submission in the records of this proceeding, but that they cannot be completed until the first two weeks of December. Thus, Silver King asserts that the extension of time will permit it to evaluate the results of the studies and incorporate them into its comments.

3. In light of the foregoing, the Bureau finds that good cause exists for an extension. Grant of the request will provide the Commission a more substantial record upon which to base its findings. Therefore, pursuant to 47 CFR 0.283, the deadline for filing comments in this proceeding is extended to December 20, 1993, and the deadline for filing reply comments is extended until January 5, 1994.

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 93–29316 Filed 11–29–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

49 CFR Part 23

[Docket 64j; Notice 93–22]

RIN 2105–AB99

Participation by Disadvantaged Business Enterprises in Airport Concessions

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Extension of Comment Period.

SUMMARY: The Department is extending the comment period on its notice of proposed rulemaking to amend its disadvantaged business enterprise (DBE) regulation with respect to airport concessions. The NPRM proposed changes in the provisions of the Department's DBE rule to allow the counting of new forms of DBE participation toward airport sponsors' overall goals. The extension is in response to a request from the Airports Council International-North America.

DATES: Comments are requested by December 14, 1993. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Comments should be sent, preferably in triplicate, to Docket Clerk, Docket No. 64j, Department of Transportation, 400 7th Street, SW., room 4107, Washington, DC 20590. Comments will be available for inspection at this address from 9 a.m. to

5:30 p.m., Monday through Friday. Commenters who wish the receipt of their comments to be acknowledged should include a stamped, self-addressed postcard with their comments. The Docket Clerk will date-stamp the postcard and mail it back to the commenter.

FOR FURTHER INFORMATION CONTACT: Irene H. Mields, Airport and Environmental Law Division (AGC–601), Office of the Chief Counsel (202–267–3199); or David S. Micklin, Office of Civil Rights (ACR–4) (202–267–3270); Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

SUPPLEMENTARY INFORMATION: On October 6, 1993, the Department of Transportation published a notice of proposed rulemaking (NPRM) to amend its disadvantaged business enterprise (DBE) rule with respect to airport concessions (58 FR 52050). The proposed rule would allow airport sponsors to count new forms of DBE participation toward the overall goals of a DBE concession plan required by existing regulations. These new forms would include purchases from DBEs of goods and services used in the operation of a concession, as well as management contracts and subcontracts with DBEs. The comment period is scheduled to end November 22, 1993.

The Airports Council International-North America (ACI), an organization representing 135 U.S. airports that the proposed regulation would affect, has requested that the comment period be extended through December 14, 1993. The reason for the request was that ACI needs additional time to coordinate the comments it is receiving from its members and to complete analysis of the effects of the rule on its members. The Department believes that the information ACI, as a representative of major airports affected by the rule, intends to provide concerning the effects of the proposal is important to its work toward a final rule. For this reason, the Department will grant the request and extend the comment period through December 14, 1993. As is typically the case with DOT rulemakings, late-filed comments will be considered to the extent practicable.

Issued this 17th day of November, 1993 at Washington, DC.

Stephen H. Kaplan,

General Counsel.

[FR Doc. 93–29258 Filed 11–24–93; 1:35 pm]

BILLING CODE 4910–62–U

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14 CFR Part 382

49 CFR Part 27

[Docket 49113; Notice 93–23]

RIN 2105–AB60 and AB62

Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting From Federal Financial Assistance; Nondiscrimination on the Basis of Handicap in Air Travel

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Extension of Comment Period.

SUMMARY: The Department is extending the comment period on its notice of proposed rulemaking (NPRM) to amend its rules implementing the Air Carrier Access Act of 1986 (ACAA) and section 504 of the Rehabilitation Act of 1973. The NPRM proposed requirements concerning lifts for small commuter aircraft, airport accessibility, and communicable illnesses. The extension is in response to a request from a group representing individuals with disabilities for additional time to review the proposed rule and formulate comments.

DATES: Comments are requested by January 7, 1994. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Comments should be sent, preferably in triplicate, to Docket Clerk, Docket No. 49113, Department of Transportation, 400 7th Street, SW., room 4107, Washington, DC 20590. Comments will be available for inspection at this address from 9 a.m. to 5:30 p.m., Monday through Friday. Commenters who wish the receipt of their comments to be acknowledged should include a stamped, self-addressed postcard with their comments. The Docket Clerk will date-stamp the postcard and mail it back to the commenter.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street, SW., room 10424, Washington, DC 20590. (202) 366–9306 (voice); (202) 755–7687 (TDD).

SUPPLEMENTARY INFORMATION: On September 10, 1993, the Department of Transportation published a notice of proposed rulemaking (NPRM) to amend its rules implementing section 504 of the Rehabilitation Act of 1973 and the Air Carrier Access Act of 1986 (ACAA) (58 FR 47681). The NPRM proposed that airports and commuter airlines would have to work together to ensure the availability of boarding lifts for small commuter aircraft. It also proposed to harmonize requirements in ACAA, section 504, and Americans with Disabilities Act rules affecting the accessibility of airport facilities. It proposed changes to the ACAA regulatory provision concerning communicable illnesses. Finally, it asked for comment on whether the Department should, in the future, propose additional regulatory action concerning the availability of oxygen, the availability of certain seat locations on the request of persons with disabilities, and the transportation of certain kinds of powered wheelchairs.

The Department has received a request from the Paralyzed Veterans of America (PVA) to extend the comment period 30 days. PVA said that the reason for the extension was to complete the assembling of technical and other information and to provide analysis of the information for the Department's docket. Because such information would be useful to the Department, and because PVA is an active representative of the views of persons with disabilities in air transportation accessibility matters, the Department believes that it is appropriate to grant this request. We will extend the comment period through January 7, 1994. As is typically the case with DOT rulemakings, late-filed comments will be considered to the extent practicable.

Issued this 17th day of November 1993 at Washington, DC.

Stephen H. Kaplan,

General Counsel.

[FR Doc. 93–29260 Filed 11–24–93; 12:35 pm]

BILLING CODE 4910–62–U

Notices

Federal Register
Vol. 58, No. 228
Tuesday, November 30, 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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Notice of Public Meetings

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), notice is hereby given of meetings of the Assembly of the Administrative Conference of the United States.

DATES: Thursday, December 9, 1993, 1 p.m.-5 p.m., and Friday, December 10, 1993, 9 a.m.–12 p.m.

ADDRESSES: Amphitheatre of the Office of Thrift Supervision, Second Floor, 1700 G Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Renee Barnow, 202–254–7020.

SUPPLEMENTARY INFORMATION: The Assembly of the Administrative Conference of the United States, which makes recommendations to administrative agencies, to the President, Congress, and the Judicial Conference of the United States regarding the efficiency, adequacy, and fairness of the administrative procedures used by Federal agencies in carrying out their programs, will meet in Plenary Session to consider, not necessarily in the order stated, proposed recommendations on the following subjects:

1. Improving the Environment for Agency Rulemaking;
2. The Use of Audited Self-Regulation as a Regulatory Technique;
3. Procedures for Regulation of Pesticides.

In addition to these items, the Conference's Committee on Governmental Processes will report on its consideration of the right to consult with counsel in agency investigations. Also on the agenda are a presentation by the Conference's Model Rules Working Group and a presentation of an 18-minute video on Government use of alternative dispute resolution, produced jointly by the Administrative Conference and the Federal Mediation and Conciliation Service.

Plenary sessions are open to the public. Further information on the meeting, including copies of proposed recommendations, may be obtained from the Office of the Chairman, 2120 L Street, NW., suite 500, Washington, DC 20037, telephone (202) 254–7020.

Dated: November 23, 1993.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 93–29334 Filed 11–29–93; 8:45 am]

BILLING CODE 6110–01–W

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–020]

Titanium Sponge From Japan; Preliminary Results of Antidumping Duty Administrative Review and Intent To Revoke Order in Part

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review and intent to revoke order in part.

SUMMARY: In response to a timely request for review by the respondent, Showa Denko K.K. (Showa), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on titanium sponge from Japan. The review covers one manufacturer/exporter of this merchandise to the United States and the period November 1, 1991 through October 31, 1992. We preliminarily determine the dumping margin for Showa during this period to be zero. In addition, because we have reason to believe that Showa has three consecutive years of sales at not less than fair value, and it is not likely that Showa will sell the subject merchandise at less than fair value in the future, the Department intends to revoke the antidumping duty order with respect to Showa. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: November 30, 1993.

FOR FURTHER INFORMATION CONTACT: Cameron Cardozo or Maria MacKay, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On November 5, 1992, the Department published in the Federal Register a notice of "Opportunity to Request Administrative Review" (57 FR 52,758) of the antidumping duty order on titanium sponge from Japan for the period November 1, 1991 through October 31, 1992. On November 25, 1992, one manufacturer/exporter, Showa, requested an administrative review for the period November 1, 1991 through October 31, 1992. We initiated the review on December 29, 1992 (57 FR 61,873). A timely request for revocation of the antidumping duty order in part, accompanied by the certification and agreement required by 19 CFR 353.25(b)(1) and (2), was submitted by Showa. The Department is now conducting this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of Review

Imports covered by the review are shipments of unwrought titanium sponge. Titanium sponge is a porous, brittle metal which has a high strength-to-weight ratio and is highly ductile. It is an intermediate product used to produce titanium ingots, slabs, billets, plates, and sheets. During the review period, such merchandise was classified under subheading 8108.10.50.10 of the Harmonized Tariff Schedule (HTS). The HTS number is provided for convenience and customs purposes. The written description remains dispositive.

The review covers one manufacturer/exporter to the United States of the subject merchandise, Showa, for the period November 1, 1991 through October 31, 1992.

United States Price

In calculating United States price, the Department used purchase price, as defined in section 772(b) of the Act. All subject merchandise sold by Showa for export to the U.S. market was sold to an unrelated trading company in Japan prior to its importation into the United States. The terms of sale were packed FOB warehouse and, thus, the Japanese consumption tax was the only

adjustment required to obtain the United States price.

Foreign Market Value

In calculating foreign market value (FMV), the Department used constructed value, as defined in section 773(e) of the Act. Home market prices were compared to the cost of production to determine whether sufficient quantities of such or similar merchandise were sold in the home market at or above the cost of production to provide a basis for comparison. The Department uses constructed value as FMV, pursuant to 19 CFR 353.51(b), when home market sales made at prices below the cost of production constitute more than 90 percent of home market sales of such or similar merchandise. Since more than 90 percent of Showa's home market sales during the review period were below the cost of production and were made over an extended period of time and at prices which would not permit recovery of all costs within a reasonable period in the normal course of trade, all U.S. sales were compared with constructed value.

Constructed value consisted of the sum of the costs of materials, fabrication, general selling and administrative expenses, profit, and export packing. The Department relied on the submitted data, except in the case where it appeared that the costs were not appropriately quantified or valued. We adjusted the submitted general and administrative expenses (G&A) to allocate parent company (Showa) G&A expenses according to the ratio of the parent's equity ownership in Showa Titanium to the parent's total equity. Because the actual profit was less than the statutory minimum of eight percent of the sum of general expenses and cost of manufacture, we added the statutory minimum amount in accordance with section 773(e)(1)(B)(ii) of the Act.

We made circumstance-of-sale adjustments under § 353.56 of the Department's regulations, where applicable, for differences in credit and packing expenses. In addition, we added U.S. indirect selling expenses to the adjusted constructed value capped at home market commissions.

Preliminary Results of the Review

As a result of this review, we preliminarily determine the dumping margin to be:

Manufacturer/exporter	Time period	Margin (percent)
Showa Denko K.K .	11/1/91–10/31/92	Zero (0).

The Department intends to revoke the antidumping duty order with respect to Showa, upon publication of the final determination pursuant to 19 CFR 353.25(a)(2), as it has preliminarily determined that the requirements for revocation in part have been met. Showa has certified, and the Department has determined pursuant to 19 CFR 353.25(a)(2)(i) that, including the present period of review, Showa has not sold subject merchandise at less than foreign market value for a period of three consecutive years, covering the period November 1, 1989 through October 31, 1992. (In addition to this notice, see, final results of administrative reviews at 57 FR 9688, and 58 FR 18202). Further, due to the absence of sales at less than foreign market value for a period of three consecutive years, and the lack of any indication to the contrary, the Department has determined that it is not likely that Showa will sell subject merchandise in the future at less than foreign market value pursuant to 19 CFR 353.25(a)(2)(ii). Finally, pursuant to 19 CFR 353.25(a)(2)(iii), Showa has agreed in writing to immediate reinstatement of the order, as long as any producer or reseller is subject to the order, if the Department concludes that Showa has sold subject merchandise at less than foreign market value. As required by § 353.25(c)(2)(ii) of the Department's regulations, the Department conducted a verification of all factual information submitted by the firm eligible for revocation.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. Upon completion of this administrative review, the Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act:

(1) The cash deposit rate for the reviewed company, in the event the order is not revoked in part, will be that established in the final results of this administrative review;

(2) For previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period;

(3) If the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation, but the manufacturer is such a firm, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise.

The cash deposit rate for all other manufacturers or exporters will be 28.25 percent. 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 less-than-fair-value (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 error 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.

Because this proceeding is governed by an antidumping duty order, the "all others" rate for the purposes of this review will be 28.25 percent, the "all others" rate established in the final notice of LTFV investigation by the Department, as amended (50 FR 32459, August 12, 1985).

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Public Comment

Parties to the proceeding may request disclosure within five days of the date of publication of this notice in the **Federal Register**, and any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first workday thereafter. Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after publication. The Department will publish a notice of final results of this administrative review, including an analysis of issues raised in any written comments.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and §§ 353.22 and 353.25(b) of the Department's regulations.

Dated: November 23, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–29321 Filed 11–29–93; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[Docket No. 930363–3268]

Endangered and Threatened Species and Designation of Critical Habitat: Petition To Designate Critical Habitat for the Northern Right Whale

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

ACTION: Notion of determination.

SUMMARY: On September 14, 1993, NMFS received a petition from GreenWorld requesting that critical habitat for the northern right whale (*Eubalaena glacialis*) be designated by an emergency rule, that it include the Delaware/Chesapeake Bay area (sic), and that it include special protective rules. The petition was received September 14, 1993.

NMFS has denied the petition from GreenWorld Because it does not contain any substantial information indicating that the petitioned actions may be warranted or provide the information required by 50 CFR 424.14(c)(2)(i) and 424.20.

FOR FURTHER INFORMATION CONTACT: Robert C. Ziobro, Protected Species Management Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, Maryland 20910 (301–713–2323).

Dated: November 18, 1993.

Rolland A. Schmitten,

Assistant Administrator for Fisheries.

[FR Doc. 93–29177 Filed 11–29–93; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF DEFENSE

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: Army Employer and Alumni Network (AEAN) Questionnaire
Type of request: New collection
Number of respondents: 6,000
Responses per respondent: 1
Annual responses: 6,000
Average burden per response: 30 minutes
Annual burden hours: 3,000
Needs and uses: The AEAN is an automated database containing 6,000 employers who have voluntarily signed up to accept resumes from separating soldiers, civilians and family members. The questionnaire issued annually, will enable the contractor to modify the AEAN to best meet the needs of the employers and the users.
Affected public: State or local governments; businesses or other for profit; Federal agencies or employees; non-profit institutions; and small businesses or organizations
Frequency: Annually
Respondent's obligation: Voluntary
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: November 24, 1993.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–29289 Filed 11–29–93; 8:45 am]

BILLING CODE 5000–04–M

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 and applicable form: USAF Museum System Volunteer Application; AF Form 3569
Type of request: New collection
Number of respondents: 500
Responses per respondent: 1
Annual responses: 500
Average burden per response: .16 hours
Annual Burden hours: 80
Needs and uses: The United States Air Force Museum, located at Wright-Patterson Air Force Base, Ohio, actively solicits volunteers to assist in all areas of the museum operation through use of AF Form 3569, "USAF Museum System Volunteer Application." The information collected hereby will be used by the Museum's manager of Volunteer Services to screen, select, and place members of the public wishing to volunteer time and service to the museum program.
Affected public: Individuals or households
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, VA 22202–4302

Dated: November 24, 1993.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–29285 Filed 11–29–93; 8:45 am]

BILLING CODE 5000–04–M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board of the Joint Modeling and Simulation Systems Panel will meet on 16–17 Dec. 1993 from 8 a.m. to 5 p.m. at the Pentagon, VA.

The purpose of this meeting is to receive briefings, hold discussions and begin report writing on projects related to joint modeling simulation systems. This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4648.

Patsy J. Conner,

Air Force Federal Register, Liaison Officer.

[FR Doc. 93–29310 Filed 11–29–93; 8:45 am]

BILLING CODE 3910–01–P

Intent To Grant Exclusive Patent License

Pursuant to the provisions of part 404 of title 37, Code of Federal Regulations, which implements Public Law 96–517, the Department of the Air Force announces its intention to grant Semiconductor Laser International Corporation, 2625 Daren Drive, Endicott, NY 13760, a corporation of the State of New York, an exclusive license under United States Patent Application Serial No. 08/113,374 filed 26 August 1993 in the name of Keith R. Evans for "Desorption Mass Spectrometic Control of Substrate Temperature During Molecular Beam Epitaxy", and/or United States Patent Application Serial No. 08/113,375 filed 26 August 1993 in the name of Keith R. Evans for "Desorption Mass Spectrometric Control of Alloy Composition During Molecular Beam Epitaxy."

The license described above will be granted unless an objection thereto, together with a request for an opportunity to be heard, if desired, is received in writing by the addressee set forth below within sixty (60) days from the date of publication of this Notice. Copies of the patent applications may be obtained, on request, from the same addressee.

All communications concerning this Notice should be sent to: Mr. Donald J. Singer, Chief, Patents Division, Air Force Legal Services Agency, AFLSA/JACP, 1501 Wilson Blvd., room 805, Arlington, VA 22209–2403, Telephone No. (703) 696–9050.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93–29286 Filed 11–29–93; 8:45 am]

BILLING CODE 3910–01–W

DEPARTMENT OF EDUCATION

Proposed Information Collection Request

AGENCY: Department of Education.

ACTION: Notice of proposed information collection request.

SUMMARY: The Director, Information Resources Management Service, invites comments on the proposed information collection request as required by the Paperwork Reduction Act of 1980.

DATES: An emergency review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by November 30, 1993.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer: Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection request should be addressed to Cary Green, Department of Education, 7th & D Streets, SW., room 4682, Regional Office Building 3, Washington, DC. 20202–4651.

FOR FURTHER INFORMATION CONTACT: Cary Green (202) 401–3200. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State of Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director, Office of Information Resources Management, publishes this notice with attached proposed information collection requests prior to submission to OMB. For each proposed information collection request, grouped by office, this notice contains the following information: (1) Type of review requested, e.g., new, revision, extension, existing, or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting and/or Recordkeeping burden; and (6) Abstract. Because an emergency review is requested, the additional information to be requested in this collection is included in the section on "Additional Information" in this notice.

Dated: November 26, 1993.

Cary Green,

Director Information Resources Management Service.

Office of Postsecondary Education

Type of Review: Emergency

Title: Focus Groups on the Internal Revenue Service Involvement in Collecting Student Loans and Income Contingent Loan Repayment

Abstract: The conference report to the Omnibus Budget Reconciliation Act of 1993 includes a requirement that the Secretaries of Education and Treasury jointly develop a plan for the involvement of the Internal Revenue Service in the collecting of student loans. ED proposes to satisfy this requirement by holding focus groups around the country. As a result of the discussions held with students, borrowers and financial aid advisors, ED will submit a report to Congress.

Additional Information: The U.S. Department of Education has requested an emergency review and approval from the Office of Management and Budget. The Department's requested approval date is November 30, 1993. The Department has requested this date in order to submit a joint report, with Treasury, to Congress by February, 1994.

Frequency: One time

Affected Public: Individuals or households; Federal agencies or employees

Reporting Burden: Responses: 90; Burden Hours: 180

Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

[FR Doc. 93–29402 Filed 11–29–93; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10359–005 Washington]

Snoqualmie River Hydro; Availability of Environmental Assessment

November 23, 1993.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing (OHL) has reviewed the application for the rerouting of the transmission line for the Youngs Creek Project. Hydro West Group, Inc. (licensee) filed an application to change the design of their transmission line as approved in their license. The line has not yet been constructed. The current approved line would be 6.1 miles long, overhead, and rated at 12.55 kilovolts (Kv). The proposed new line would be 6.1 miles long, underground, and 34.5 Kv. The proposed new line follows a different route.

The staff of OHL's Division of Project Compliance and Administration has prepared an Environmental Assessment (EA) for the proposed action. In the EA, the staff concludes that the licensee's proposals would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Reference and Information Center, room 3308, of the Commission's Offices at 941 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 93–29203 Filed 11–29–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD94–01095T]

State of Kansas; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

November 23, 1993.

Take notice that on November 15, 1993, the State Corporation Commission of the State of Kansas (Kansas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Mississippian Chat Formation, underlying a portion of Barber County, Kansas qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area covers approximately 712 acres described as follows:

Township 34 South, Range 13 West

Sec. 32: E/2;
Sec. 33: W/2.

Township 35 South, Range 13 West

Sec. 4: Lots 1 and 2.

The notice of determination also contains Kansas' findings that the referenced portion of the Mississippian Chat 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. 93–29204 Filed 11–29–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD94–01071T Texas–155]

State of Texas; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

November 23, 1993.

Take notice that on November 12, 1993, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Middle Wilcox Formation, underlying certain portions of DeWitt County, Texas, qualifies as a tight formation under section 107(b) of the National Gas Policy Act of 1978. The designated area is in Railroad Commission District No. 2 and consists of 80 acres in portions of the following surveys:

Jose Bartollo Survey, Abstract 2
John Troy Survey, Abstract 466

Take notice of determination also contains Texas' findings that the referenced portion of the Middle Wilcox 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. 93–29205 Filed 11–29–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–55–000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

November 23, 1993.

Take notice that on November 18, 1993, Algonquin Gas Transmission Company (Algonquin), tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets, with a proposed effective date of December 18, 1993:

First Revised Sheet No. 20 Original Sheet No. 94A

Algonquin states that the purpose of this filing is to provide for the recovery of an additional charge from an upstream supplier through a true-up of the net balance in Algonquin's Account No. 191. Algonquin requests that the Commission grant any waiver of its regulations to the extent necessary in order to permit this application to take effect as requested.

Algonquin states that copies of this tariff filing were mailed to all customers of Algonquin and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 1, 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. 93–29206 Filed 11–29–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–53–000]

Arkla Energy Resources Co.; Waiver of Tariff Provisions

November 23, 1993.

Take notice that on November 18, 1993, Arkla Energy Resources Company (AER) tendered for filing a request for waiver of the imposition of the scheduling charges provided for in section 5.5(e) of the General Terms and Conditions of its FERC Gas Tariff for the months of September and October, 1993.

AER is seeking this waiver as an accommodation to its customers in light of the administrative and operational transition brought on by the implementation of its Order No. 636 restructuring. AER also requests that the Commission waive § 154.22 of the Commission's regulations to permit the requested waiver to become effective on September 1, 1993.

AER states that copies of the filing have been served on all of AER's jurisdictional customers and interested state utility commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 1, 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. 93–29207 Filed 11–29–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ER93–465–000 and ER93–922–000]

Florida Power & Light Company; Filing

November 23, 1993.

Take notice that on November 19, 1993, Florida Power & Light Company (FPL) tendered for filing an application for authorization to withdraw parts of the rate schedules filed in Docket Nos. ER93–465–000 and ER93–922–000, which are now consolidated for purposes of hearing and decision. FPL requests permission to withdraw the portions of the transmission service tariffs and transmission service agreements, which assess charges for "reactive power" produced by FPL's generating units in order to provide transmission services.

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 December 3, 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. 93–29255 Filed 11–29–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TM94–2–11–000 and RP94–54–000]

Koch Gateway Pipeline Co.; Proposed Changes in FERC Gas Tariff

November 23, 1993.

Take notice that on November 18, 1993, Koch Gateway Pipeline Company (KGPC) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets to be effective January 1, 1994:

First Revised Sheet No. 1
First Revised Sheet No. 20
First Revised Sheet No. 21
First Revised Sheet No. 22
First Revised Sheet No. 23
First Revised Sheet No. 24
First Revised Sheet No. 2901
Original Sheet No. 3200
Original Sheet No. 3201

KGPC states that the above referenced tariff sheets reflect KGPC's rejoining GRI and the applicable 1994 Commission approved GRI Reservation and Volumetric surcharges.

KGPC also states that the tariff sheets are being mailed to all of KGPC's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 1, 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. 93–29208 Filed 11–29–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RS92–45–009]

Natural Gas Pipeline Co. of America; Filing of Revised Order No. 636 Compliance Rates

November 23, 1993.

Take notice that on November 19, 1993, Natural Gas Pipeline Company of America (Natural) filed the revised Tariff sheets listed on Exhibit A attached hereto. Natural has requested an effective date of December 1, 1993 for these revised Tariff sheets.

Natural states that the purpose of the filing is to submit updated rates to reflect revised service elections by converting sales customers. All of the Tariff sheets in this filing were also filed on November 19, 1993 in Docket No. RP93–36–006. This rate change is submitted pursuant to Section 2.3 (g) of the General Terms and Conditions of Natural's FERC Gas Tariff, Sixth Revised Volume No. 1, as submitted on October 27, 1993 in the captioned docket in compliance with the "Order on Compliance Filing and Rehearing" issued herein on September 17, 1993, 64 FERC ¶ 61,295.

Natural states that copies of its filing were served on parties to this proceeding, jurisdictional customers and interested state regulatory agencies.

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 December 1, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve the 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. 93–29256 Filed 11–29–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–36–006]

Natural Gas Pipeline Company of America; Filing To Implement Order No. 636 Compliance Rates and for Waivers

November 23, 1993.

Take notice that on November 19, 1993, Natural Gas Pipeline Company of America (Natural) filed in the captioned docket a motion to implement Order No. 636 compliance rates herein and for related waivers. Specifically, Natural has requested that the revised tariff sheets listed on Exhibit A to the filing, be made effective in this docket on December 1, 1993.[1]

Natural states that the purpose of the filing is to implement in this general rate case proceeding the compliance rates filed in Natural's restructuring proceeding in Docket No. RS92–45. Natural states that his motion and request for waivers is consistent with the Commission's "Order on Compliance Filing and Rehearing" issued in Docket No. RS94–45 on September 17, 1993, 64 FERC ¶ 61,295.

Natural states that copies of its filing were served on parties to this proceeding, jurisdictional customers and interested state regulatory agencies.

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 December 1, 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. 93–29209 Filed 11–29–93; 8:45 am]

BILLING CODE 6717–01–M

[1] As explained in the filing, Natural states that the Commission has authorized certain of these tariff sheets to become effective August 1, 1993.

[Docket No. RP94–52–000]

Northwest Alaskan Pipeline Co.; Proposed Changes In FERC Gas Tariff

November 23, 1993.

Take notice that on November 17, 1993, Northwest Alaskan Pipeline Company (Northwest Alaskan), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, Thirty-Third Revised Sheet No. 5, with a proposed effective date of January 1, 1994:

Northwest Alaskan states that it is submitting Thirty-Third Revised Sheet No. 5 reflecting an increase in total demand charges for Canadian gas purchased by Northwest Alaskan from Pan-Alberta Gas Ltd. (Pan-Alberta) and resold to Northwest Alaskan's two U.S. purchasers: Pan-Alberta Gas (U.S.) Inc. (Pan-Alberta (U.S.)) under Rate Schedules X–1, X–2, and X–3, and Pacific Interstate Transmission Company (PIT) under Rate Schedule X–4.

Northwest Alaskan states that it is submitting Thirty-Third Revised Sheet No. 5 pursuant to the provisions of the amended purchase agreements between Northwest Alaskan and, Pan-Alberta (U.S.), and PIT, and pursuant to Rate Schedules X–1, X–2, X–3, and X–4, which provide for Northwest Alaskan to file 45 days prior to the commencement of the next demand charge period (January 1, 1994 through June 30, 1994) the demand charges and demand charge adjustments which Northwest Alaskan will charge during the period.

Northwest Alaskan states that Rate Schedule X–1 reflects the assignment of Northern Natural Gas Company's contract to PAG–US as filed under Docket Nos. CP78–123–032, RP94–25–000 and RP94–25–001 approved by the FERC in its order dated November 3, 1993.

Northwest Alaskan states that a copy of this filing has been served on Northwest Alaskan's customers.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before December 1, 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–29210 Filed 11–29–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–69–002]

Petal Gas Storage Co.; Tariff Filing

November 23, 1993.

Take notice that on November 17, 1993, Petal Gas Storage Company (Petal), a Delaware corporation with an office at 1301 McKinney, Houston, Texas 77010, filed in Docket No. CP93–69–000 its initial FERC Gas Tariff, Original Volume No. 1. Petal received Commission authorization under section 7(c) of the Natural Gas Act and Part 284 of the Commission's Regulations to construct and operate an open access natural gas storage facility on August 4, 1993 (64 FERC ¶ 61,190).

Petal plans to offer interruptible storage service on or after December 17, 1993, with a firm storage service commencing on February 1, 1994. Petal is therefore proposing an effective date of December 18, 1993, for its FERC Gas Tariff.

Petal's FERC Gas Tariff, Original Volume No. 1, filed in this docket reflects the changes made to the pro forma tariff included in Petal's original certificate application to comply with the Commission's Order granting Petal its certificate. In addition to the changes required by the Commission, Petal made certain changes in order to clarify the tariff language or to address operational concerns.

Petal's FERC Gas Tariff offers firm storage service on Tennessee Gas Pipeline (Tennessee) with firm withdrawal and injection capability. However, customers desiring firm storage on Koch Gateway Pipeline (Koch Gateway) will only have firm withdrawal capability on Koch Gateway. Petal has petitioned the Commission for an amendment to its August 4, 1993 certificate in Docket No. CP93–69–001 to limit Petal's firm service on Koch Gateway to firm withdrawals only. Petal's Form of Service Request (Section 19 of the General Terms and Conditions of its FERC Gas Tariff) has been revised to reflect this limited service.

Any person desiring to be heard or to protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the

Commission's Rules and Regulations. All such motions or protests should be filed within seven days of the date of this notice. 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. 93–29211 Filed 11–29–93; 8:45 am]

BILLING CODE 6717–01–M

Office of Arms Control and Nonproliferation

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of proposed "subsequent arrangement", under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Switzerland concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involve approval of the following retransfer: RTD/SD(EU)–70 for the transfer from Belgium to Switzerland of 0.022 grams of uranium-233 and 0.0000107 grams of plutonium-244 for determination of uranium and plutonium by mass spectrometry.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, DC on November 24, 1993.

Edward T. Fei,

Acting Director, Office of Nonproliferation Policy, Office of Arms Control and Nonproliferation.

[FR Doc. 93–29330 Filed 11–29–93; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Research

Energy Research Financial Assistance Program Notice 94–05; Energy Biosciences

AGENCY: Department of Energy (DOE).

ACTION: Notice inviting grant preapplications.

SUMMARY: The Office of Basic Energy Sciences of the Office of Energy Research (ER), U.S. Department of Energy (DOE) announces its interest in receiving preapplications from potential applicants for research funding in the Energy Biosciences program area. The intent in asking for a preapplication is to save the time and effort of applicants in preparing and submitting a formal project application that may be inappropriate for the program. The preliminary screening of research ideas is aimed also at relieving some of the burden of the scientific community in reviewing an excessive number of research applications. The preapplication should consist of a two to three page concept paper about the research being contemplated within a potential formal application to the Energy Biosciences program. The concept paper should focus on the objectives of the planned research, its scientific goals and their significance, an outline of the approaches planned, and any other information that relates to the planned research. No budget information or biographical data need be included; nor is an institutional endorsement necessary. The preapplication gives DOE the opportunity to evaluate the technical suitability of submitting a formal application for support of research ideas. A response indicating the appropriateness of submitting a formal application will be sent from the Division of Energy Biosciences office in time to allow for an adequate preparation period for a formal application.

DATES: For timely consideration, all preapplications should be received by February 17, 1994. However, earlier submissions will be gladly accepted. A response to timely preapplications will be communicated by April 20, 1994. The deadline for receipt of formal applications is June 8, 1994.

ADDRESSES: Preapplications referencing Program Notice 94–05 should be forwarded to: U.S. Department of Energy, Office of Basic Energy Sciences, ER–17, Division of Energy Biosciences, Washington, DC 20585, Attn: Program Notice 94–05. The following address must be used when submitting preapplications by U.S. Postal Service Express, any commercial mail delivery service, or when handcarried by the applicant: U.S. Department of Energy, Division of Energy Biosciences, ER–17, 19901 Germantown Road, Germantown, MD 20874.

FOR FURTHER INFORMATION CONTACT: Ms. Pat Snyder, Division of Energy Biosciences, Office of Basic Energy Sciences, ER–17, Washington, DC 20585 (301) 903–2873.

SUPPLEMENTARY INFORMATION: Before preparing a formal application, potential applicants should submit a brief preapplication in accordance with 10 CFR 600.10 (d)(2), which consists of two to three pages of narrative describing research objectives. These will be reviewed relative to the scope and the research needs of the Energy Biosciences program. The Energy Biosciences program has the mission of generating fundamental biological information about plants and non-medical related microorganisms that can provide support for future energy related biotechnologies. The objective is to pursue basic biochemical, genetic and physiological investigations that may contribute towards providing alternate fuels, petroleum replacement products, energy conservation measures as well as other technologies related to DOE programs. Areas of interest include bioenergetic systems, including photosynthesis; control of plant growth and development, including metabolic, genetic, and hormonal and ambient factor regulation, metabolic diversity, stress physiology and adaptation; genetic transmission and expression; plant-microbial interactions, plant cell wall structure and function; lignocellulose degradative mechanisms; mechanisms of fermentations, genetics of neglected microorganisms, energetics and membrane phenomena; thermophily (molecular basis of high temperature tolerance); microbial interactions; and one-carbon metabolism, which is the basis of biotransformations such as methanogenesis. The objective is to discern and understand basic mechanisms and principles. Funds are expected to be available for new grant awards in FY 1995. The magnitude of these funds available and the number of awards which can be made will depend on the availability of funds. The awards made during FY 1993 ranged from $60,000 to $115,000 per year, mostly for a three-year duration. The principal purpose in using preapplications at this time is to reduce the expenditure of time and effort of all parties. Information about development and submission of applications, eligibility,

limitations, evaluations and selection processes, and other policies and procedures may be found in the Guide and 10 CFR part 605. The Application Guide for the Office of Energy Research Financial Assistance Program for formal submissions and copies of 10 CFR part 605 are available from U.S. Department of Energy, Office of Basic Energy Sciences, ER–17, Division of Energy Biosciences, Washington, DC 20585. Telephone requests may be made by calling (301) 903–2873. Instructions for preparation of an application are included in the application guide. The Catalog of Federal Domestic Assistance number for this program is 81.049.

Issued in Washington, DC, on November 19, 1993.

D. D. Mayhew,

Director, Office of Management, Office of Energy Research.

[FR Doc. 93–29332 Filed 11–29–93; 8:45 am]

BILLING CODE 6450–01–P

Office of Fossil Energy

[Docket Nos. FE C&E 93–26 and 93–27—Certification Notice—126]

Filing Certifications of Compliance: Coal Capability of New Electric Powerplant; Powerplant and Industrial Fuel Use Act

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Orange Cogeneration Limited Partnership (C&E 93–26) and Polk Power Partners, L.P. (C&E 93–27) have submitted coal capability self-certifications pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

ADDRESSES: Copies of self-certification filings are available for public inspection, upon request, in the Office of Fuels Programs, Fossil Energy, room 3F–056, FE–52, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell at (202) 586–9624.

SUPPLEMENTARY INFORMATION: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 et seq.), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a baseload powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) on the day it is filed with the Secretary. The Secretary is required to publish a notice in the **Federal Register** that a certification has been filed. The following owners/operators of proposed new baseload powerplants have filed self-certifications in accordance with section 201(d).

Owner: Orange Cogeneration Limited Partnership (C&E 93–26)
Operator: (The applicant has not yet selected an operator)
Location: Near the city of Bartow, Florida
Plant configuration: Combined cycle, topping cycle cogeneration
Capacity: 103 megawatts
Fuel: Natural gas
Purchasing utilities: Florida Power Corporation and Tampa Electric Company
Expected in-service date: June of 1995

Owner: Polk Power Partners, L.P. (C&E 96–27)
Operator: CSW Energy, Inc.
Location: Near the city of Bartow, Florida
Plant Configuration: Combined cycle, topping cycle cogeneration
Capacity: 118.3 megawatts
Fuel: Natural gas
Purchasing utilities: Florida Power Corporation and Tampa Electric Company
Expected in-service date: October 31, 1994

Issued in Washington, DC., November 22, 1993.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–29331 Filed 11–29–93; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–62135; FRL–4742–5]

Accredited Training Programs Under The Asbestos Hazard Emergency Response Act (AHERA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: National Directory of AHERA Accredited Courses (NDAAC); notice of availability.

SUMMARY: Effective November 30, 1993, the EPA is announcing the availability of a new edition of its National Directory of AHERA Accredited Courses (NDAAC). This publication, updated quarterly, provides information to the public about training providers and courses approved for accreditation purposes pursuant to the Asbestos Hazard Emergency Response Act (AHERA). As a nationwide listing of approved asbestos training programs and courses, the NDAAC has replaced the similar listing which was formerly published quarterly by EPA in the **Federal Register**. The November 30, 1993, directory, which supersedes the version released on August 31, 1993, may be ordered through the NDAAC Clearinghouse along with a variety of related reports.

ADDRESSES: Parties interested in receiving a brochure which describes the national directory and provides ordering information should contact: EPA AHERA - NDAAC, c/o VISTA Computer Services, 3rd Floor, 6430 Rockledge Drive, Bethesda, MD 20817, Telephone: 1–800–462–6706.

FOR FURTHER INFORMATION CONTACT: Susan Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E543B, 401 M St., SW, Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: Pursuant to AHERA, as amended by the Asbestos School Hazard Abatement Reauthorization Act (ASHARA), contractors who prepare management plans for schools, inspect for asbestos in schools or public and commercial buildings, or design or conduct response actions with respect to friable asbestos-containing materials in schools or public and commercial buildings, are required to obtain accreditation by completing prescribed training requirements. EPA therefore maintains a current national listing of AHERA-accredited courses and approved training providers so that this information will be readily available to assist the public in accessing these training programs and obtaining the necessary accreditation. The information is also maintained so that the Agency and approved state accreditation and licensing programs will have a reliable means of identifying and verifying the approval status of training courses and organizations.

Previously, EPA had published this listing in the **Federal Register** on a quarterly basis. The last **Federal Register** listing required by law was

published on August 30, 1991. EPA recognized the need to continue publication of this document even though the legislative mandate had expired. The NDAAC fulfills the public need for this information while at the same time, it reduces EPA cost and improves the service's capabilities.

List of Subjects

Environmental protection.

Dated: November 18, 1993.

Mark A. Greenwood,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 93–29279 Filed 11–29–93; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Licensee Order To Show Cause

The Chief, Audio Service Division, Mass Media Bureau, has before him the following matter:

Licensee	City/state	MM Docket No.
Palmetto Communications Co., Licensee of WDIX (AM).	Yadkinville, NC ..	93–289

(Regarding the silent status of Station WDIX(AM))

Pursuant to section 312(a)(3) and (4) of the Communications Act of 1934, as amended, Palmetto Communications Company has been directed to show cause why the license for Station WDIX(AM) should not be revoked, at a proceeding in which the above matter has been designated for hearing concerning the following issues:

1. To determine whether Palmetto Communications Company has the capability and intent to expeditiously resume broadcast operations of WDIX(AM) consistent with the Commission's Rules.

2. To determine whether Palmetto Communications Company has violated §§ 73.1740 and/or 73.1750 of the Commission's Rules.

3. To determine, in light of the evidence adduced pursuant to the forgoing issues whether Palmetto Communications Company is qualified to be and remain the licensee of Station WDIX(AM).

A copy of the complete Show Cause Order and HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 320), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street NW., Suite 140, Washington, DC 20037 (telephone 202–857–3800).

Federal Communications Commission.

Stuart B. Bedell,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 93–29182 Filed 11–29–93; 8:45 am]

BILLING CODE 6712–01–M

Licensee Order To Show Cause

The Chief, Audio Service Division, Mass Media Bureau, has before him the following matter:

Applicant	City/state	MM docket No.
Quadras, Inc., Licensee of KDEW(AM).	Dewitt, AR ...	93–296

(Regarding the silent status of Station KDEW(AM)

Pursuant to section 312(a)(3) and (4) of the Communications Act of 1934, as amended, Quadras, Inc. has been directed to show cause why the license for Station KDEW(AM) should not be revoked, at a proceeding in which the above matter has been designated for hearing concerning the following issues:

1. To determine whether Quadras, Inc. has the capability and intent to expeditiously resume broadcast operations of KDEW(AM) consistent with the Commission's Rules.

2. To determine whether Quadras, Inc. has violated §§ 73.1740 and/or 73.1750 of the Commission's Rules.

3. To determine, in light of the evidence adduced pursuant to the forgoing issues, whether Quadras, Inc. is qualified to be and remain the licensee of Station KDEW(AM).

A copy of the complete Show Cause Order and HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 320), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street NW., Suite 140, Washington, DC 20037 (telephone 202–857–3800).

Stuart B. Bedell,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 93–29181 Filed 11–29–93; 8:45 am]

BILLING CODE 6712–01–M

Licensee Order To Show Cause

The Chief, Audio Service Division, mass Media Bureau, has before him the following matter:

Licensee	City/State	MM Docket No.
Turner County Broadcasting, Inc., Licensee of WNNQ (AM).	Ashburn, GA .	93–288

(Regarding the silent status of Station WNNQ (AM))

Pursuant to section 312(a) (3) and (4) of the Communications Act of 1934, as amended, Turner County Broadcasting, Inc. has been directed to show cause why the license for Station WNNQ (AM) should not be revoked, at a proceeding in which the above matter has been designated for hearing concerning the following issues:

1. To determine whether Turner County Broadcasting, Inc.has the capability and intent to expeditiously resume broadcast operations of WNNQ (AM) consistent with the Commission's Rules.

2. To determine whether Turner County Broadcasting, Inc. has violated §§ 73.1740 and/or 73.1750 of the Commission's Rules.

3. to determine, in light of the evidence adduced pursuant to the forgoing issues, whether Turner County Broadcasting, Inc. is qualified to be and remain the licensee of Station WNNQ (AM).

A copy of the complete Show Cause Order and HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 320), 1919 M Street N.W., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcript Service, 2100 M Street NW., Suite 140, Washington, DC 20037 (telephone 202–857–3800).

Federal Communications Commission.

Stuart B. Bedell,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 93–29180 Filed 11–29–93; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Asia America Eastbound Rate Agreement et al.

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.: 202–010776-089.
Title: Asia North America Eastbound Rate Agreement.
Parties:

American President Line, Ltd.
Hapag-Lloyd, AG
Kawasaki Kisen Kaisha
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Line, Ltd.
Nippon Yusen Kaisha Line
Orient Overseas Container Line, Inc.
Sea-Land Service, Inc.

Synopsis: The proposed amendment revises Article 7.4 of the Agreement by deleting the 45 day notice period required prior to the effectiveness of a party's membership in the sub-continent section, and makes such membership effective upon adding a party to the membership in the sub-continent section.

Agreement No.: 203–011437.
Title: NSCSA/UASC Agreement.
Parties:

The National Shipping Company of Saudi Arabia United Arab Shipping Company (S.A.G.)

Synopsis: The proposed Agreement authorizes the parties to charter, exchange or make space available to each other, discuss and agree upon terms and conditions pertaining to the interchange, lease, and sublease of containers and other equipment, and rationalize sailings in the trade between United States Atlantic and Gulf Coast ports and points on the one hand, and ports and points in the Middle East, Mediterranean, Indian Sub-Continent, Far East, and Canada on the other hand.

Agreement No.: 224–200811.
Title: Tampa Port Anthority/G & C Stevedoring Company, Inc. Service Agreement.
Parties:

Tampa Port Authority ("Port")
G & C Stevedoring Company, Inc. ("G & C")

Synopsis: The proposed Agreement authorizes the Port to offer G & C an incentive rate for electrical service based on a minimum of 30 refrigerated containers per month.

By Order of the Federal Maritime Commission.

Dated: November 23, 1993.

Joseph C. Polking,
Secretary.

[FR Doc. 93–29202 Filed 11–29–93; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Five Flags Banks, Inc., et al.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 23, 1993.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Five Flags Banks, Inc., Pensacola, Florida; to retain Bank Data, Inc., Pensacola, Florida, and thereby engage in providing data processing and data transmission services pursuant to § 225.25(b)(7) of the Board's Regulation Y. The proposed activity will be conducted throughout the State of Florida.

Board of Governors of the Federal Reserve System, November 23, 1993.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 93–29246 Filed 11–29–93; 8:45 am]
BILLING CODE 6210–01–F

National Penn Bancshares, 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 December 23, 1993.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. National Penn Bancshares, Inc., Boyertown, Pennsylvania; to acquire up to 21.4 percent of the voting shares of First State Bank, Wilmington, Delaware.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Bank South Corporation, Atlanta, Georgia; to merge with The Chattahoochee Bancorp, Inc., Atlanta, Georgia, and thereby indirectly acquire The Chattahoochee Bank, Atlanta, Georgia.

2. Bank South Corporation, Atlanta, Georgia; to merge with Merchant Bank Corporation, Atlanta, Georgia, and thereby indirectly acquire The Merchant Bank of Atlanta, Atlanta, Georgia.

C. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. F & M Bancorporation, Inc., Kaukauna, Wisconsin, and F & M Merger Corporation, Kaukauna, Wisconsin; to merge with Pulaski Bancshares, Inc., Pulaski, Wisconsin, and thereby indirectly acquire Pulaski State Bank, Pulaski, Wisconsin.

2. Rudolph Bancshares, Inc., Rudolph, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Farmers and Merchants Bank, Rudolph, Wisconsin.

D. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Trans Financial Bancorp, Inc., Bowling Green, Kentucky; to acquire 100 percent of the voting shares of Kentucky Community Bancorp, Inc., Maysville, Kentucky, and thereby indirectly aquire Farmers Liberty Bank, Augusta, Kentucky; Peoples First Bank of Morehead, Morehead, Kentucky; and State National Bank of Maysville, Maysville, Kentucky.

E. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Community First Bankshares, Inc., Fargo, North Dakota; to acquire 98.83 percent of the voting shares of Bank of Spooner, Spooner, Wisconsin.

F. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Laramie Bankshares, Laramie, Wyoming; to become a bank holding company by acquiring 100 percent of the voting shares of American National Bank, Laramie, Wyoming.

G. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Southwestern Bancorp, Inc., Sanderson, Texas; to acquire 100 percent of the voting shares of Cross Plains Bankshares, Inc., Cross Plains, Texas, and thereby indirectly acquire Citizens State Bank, Cross Plains, Texas.

Board of Governors of the Federal Reserve System, November 23, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-29247 Filed 11-29-93; 8:45 am]

BILLING CODE 6210-01-F

T R Financial Corp. Employee Stock Ownership Trust, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 20, 1993.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. T R Financial Corp. Employee Stock Ownership Trust, Garden City, New York; to acquire 14.52 percent of the voting shares of T R Financial Corp., Garden City, New York, and thereby indirectly acquire Roosevelt Savings Bank, Garden City, New York.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Jimmy G. Hankins, Marietta, Oklahoma; to acquire an additional 6.0 percent of the voting shares of Bank of Love County, Marietta, Oklahoma, for a total of 28.53 percent.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. John H. and Cecilia C. Keck, Laredo, Texas; to acquire an additional 39.07 percent of the voting shares of Union Texas Bancorporation, Inc., Laredo, Texas, for a total of 54.17 percent, and thereby indirectly acquire Union National Bank of Laredo, Laredo, Texas.

Board of Governors of the Federal Reserve System, November 23, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-29248 Filed 11-29-93; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN 110193 AND 111293

Name of acquiring person name of acquired person, name of acquired entity	PMN No.	Date terminated
Berkshire Hathaway Inc. Dexter Shoe Company, Dexter Shoe Company	94-0010	11/01/93
Mr. Sumner M. Redstone WMS Industries, Inc. WMS Industries, Inc.	94-0046	11/01/93
Physician Corporation of America Family Health Systems, Inc. Family Health Systems, Inc.	94-0054	11/01/93
AB Volvo Procordia Aktiebolag Branded Consumer Products	94-0082	11/01/93
Infinity Broadcasting Corporation Cook Inlet Region, Inc. Radio Stations WPGC AM/FM	94-0117	11/01/93
Infinity Broadcasting Corporation WCC Associates, L.P. Radio Stations WPGC AM/FM	94-0118	11/01/93
Citicorp, Hydro Environmental Service Limited Partnership, Hydro Environmental Services Limited Partnership	94-0127	11/01/93
Dominion Resources, Inc. H. Richard Fruehauf, Jr., HRF Antrim Limited Partnership,	94-0139	11/01/93
Golden Eagle Industries, Inc., National Gypsum Company, National Gypsum Company	94-0070	11/02/93
Gourmet Coffees of America, Inc., Chock Full O'Nuts Corporation, Hillside Coffee of California, Inc.	94-0079	11/02/93
Lafarge Coppee S. A., National Gypsum Company, National Gypsum Company	94-0083	11/02/93
President and Fellows of Harvard College Leo E. Zickler, Oxford Holding Corporation and Oxford Asset	94-0086	11/02/93
General Electric Company, Canadian Pacific Limited, Doubletree Hotels Corporation	94-0106	11/02/93
Industriforvaltnings AB Kinnevik, Millicom Incorporated, Millicom Incorporated	94-0134	11/02/93
Bain Capital Partners IV, L.P., Corporate Software Incorporated, Corporate Software Incorporated	94-0156	11/02/93
Peoples Telephone Company, Inc., Stiftung Hasler Werke, Ascom Communications, Inc.	94-0112	11/04/93
Merck & Co., Inc., Medco Containment Services, Inc., Medco Containment Services, Inc.	93-1492	11/05/93
Blockbuster Entertainment Corporation, Philips Electronics N.V., Super Club Retail Entertainment Corporation	94-0045	11/05/93
Kuhlman Corporation, Code, Hennessy & Simmons Limited Partnership, Coleman Holding, Inc.	94-0073	11/05/93
Hyundai Electronics Industries Co., Ltd., Maxtor Corporation, Maxtor Corporation	94-0113	11/05/93
Hyundai Heavy Industries, Co., Ltd., Maxtor Corporation, Maxtor Corporation	94-0114	11/05/93
Hyundai Corporation (a Korean company) Maxtor Corporation, Maxtor Corporation	94-0115	11/05/93
Hyundai Merchant Marine Co., Ltd., Maxtor Corporation, Maxtor Corporation	94-0116	11/05/93
Medaphis Corporation, CyCare Systems, Inc. CyCare Systems, Inc.	94-0187	11/05/93
BancTec, Inc., Advanced Computer Systems, Inc., Advanced Computer Systems, Inc.	94-0048	11/05/94
VF Corporation, H.H. Cutler Company, H.H. Cutler Company	94-0095	11/08/93
John J. Hamish, Skinner Corporation, Northern Commercial Company and Newco, Inc.	94-0109	11/08/93
Citcorp, Schlumberger Ltd., Dowell Schlumberger Inc., (Dowell Indust. Services Div.)	94-0129	11/08/93
ITT Corporation, Skandia Insurance Company Limited, American Skandia Life Reinsurance Corporation	94-0138	11/08/93
Pennzoil Company, Mobil, Corporation, Mobil Oil Exploration & Producing Southeast Inc.	94-0143	11/08/93
Mobil Corporation, Pennzoil Company, Pennzoil Exploration and Production Company	94-0144	11/08/93
Isaac Perlmutter, Bristol-Myers Squibb Company, Clairol Incorporated	94-0149	11/08/93
Marshall S. Cogan, Perfect Fit Voting Trsut, Perfect Fit Industries, Inc.	94-0151	11/08/93
Ronald O. Perelman, Guthy-Renker Corporation, Guythy-Renker Corporation	94-0152	11/08/93
Victor K. Kiam, II, Bristol-Myers Squibb Company, Clairol Incorporated	94-0153	11/08/93
Forest Oil Corporation, Atlantic Richfield Company, Atlantic Richfield Company	94-0154	11/08/93
Mr. Keith Rupert Murdoch, Combined Broadcasting, Inc., Combined Broadcasting of Philadelphia, Inc.	94-0159	11/08/93
Vintage Petroleum, Inc., Santa Fe Energy Resources, Inc., Santa Fe Energy Operating Partners, L.P.	94-0164	11/08/93
Mr. Michael Futerman, Carmel Trust (a Cayman Islands person), Auto Works Holdings, Inc.	94-0188	11/08/93
KP Oil, Inc., The British Petroleum Company p.l.c., BP Exploration & Oil Inc. & Service Station Holdings Inc	94-0194	11/08/93
Cyprus Minerals Company, Amax Inc., Amax Inc.	93-1274	11/09/93
Cyprus Minerals Company, Amax Gold Inc., Amax Gold Inc.	93-1275	11/09/93
Vintage Petroleum, Inc., The Prudential Insurance Company of America, Vintage/P Acquisition Limited Partnership	94-0171	11/10/93
Coltec Industries Inc., The Morgan Stanley Leveraged Equity Fund II, L.P., Coltec Holdings Inc.	94-0174	11/10/93
David I Margolis, Coltec Industries Inc., Coltec Industries Inc	94-0175	11/10/93
NationsBank Corporation, United Companies Financial Corporation, Foster Mortgage Corporation	94-0176	11/10/93
Morgan Stanley Group Inc., Coltec Industries Inc., Coltec Industries Inc.	94-0178	11/10/93
The B.F. Goodrich Company, Henry Barbanel, Sanncor Industries, Inc.	94-0179	11/10/93
Merisel, Inc., Computerland Corporation, Computerland Corporation	94-0170	11/12/93

FOR FURTHER INFORMATION CONTACT:

Sandra M. Peay

or

Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of The Commission.

Donald S. Clark,

Secretary.

[FR Doc. 93–29280 Filed 11–29–93; 8:45 am]

BILLING CODE 6750–01–M

[File No. 941 0008]

Tele-Communications, Inc., et al.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, two Colorado-based corporations to divest their ownership interests in QVC Network, Inc., and to adhere, until completion of the divestitures, to an interim agreement which prohibits the respondents from exercising any direction of or control over the management or operations of QVC or Paramount Communications, Inc., participating in any change in the composition of the management of QVC or Paramount, or exercising any voting rights or agreements pursuant to Liberty's ownership in QVC.

DATES: Comments must be received on or before January 31, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary,

room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Mary Lou Steptoe or Steven Newborn, FTC/H–374, Washington, DC 20580. (202) 326–2556 or 326–2682.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

In the Matter of Tele-Communications, Inc., a corporation, and Liberty Media Corporation, a corporation.

Agreement Containing Consent Order

The Federal Trade Commission ("the Commission"), having initiated an investigation of the proposed acquisition of Paramount Communications, Inc., a corporation, by QVC Network, Inc., a corporation, and it now appearing that Tele-Communications, Inc., a corporation, and Liberty Media Corporation, a corporation, hereinafter sometimes referred to as proposed respondents, are willing to enter into an agreement containing an Order to divest existing interests in QVC Network, Inc., and to provide for certain other relief,

It is hereby agreed by and between Tele-Communications, Inc., by its duly authorized officer, and Liberty Media Corporation, by its duly authorized officer, and counsel for the Commission that:

1. Proposed respondent Tele-Communications, Inc. (hereafter "TCI"), is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business at 5619 DTC parkway, Englewood, Co 80111. TCI has proposed a business combination with Liberty Media Corporation.

2. Proposed respondent Liberty Media Corporation (hereafter "LMC") is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business at 8101 East Prentice Avenue, suite 500, Englewood, CO 80111. LMC owns twenty-two and three-tenths percent of the voting securities of QVC Network, Inc.

3. TCI and LMC admit all the jurisdictional facts set forth in the draft of complaint, here attached.

4. TCI and LMC each waive:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement; and

d. Any claim under the Equal Access to Justice Act.

5. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify TCI and LMC, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by TCI or LMC that the law has been violated as alleged in the draft of complaint here attached, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to TCI and LMC, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following Order to divest and for other relief, and (2) make information public with respect thereto. When so entered, the Order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other Orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to Order to TCI's counsel and to LMC's counsel, as set forth in this agreement, shall constitute service. TCI and LMC each waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation or interpretation not contained in the Order or the agreement may be used to vary or contradict the terms of the Order.

8. TCI and LMC have read the proposed complaint and Order contemplated hereby. TCI and LMC understand that once the Order has been issued, each will be required to file one or more compliance reports showing that they have fully complied with the Order. TCI and LMC further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I

As used in this Order, the following defintions shall apply:

(A) "TCI" means (1) Tele-Communications, Inc., and its predecessors, successors and assigns, subsidiaries, and divisions, and their respective directors, officers, agents, and representatives; and (2) partnerships, joint ventures, groups and affiliates that Tele-Communications, Inc., controls, directly or indirectly, and their successors and assigns, and their respective directors, officers, agents, and representatives.

(B) "LMC" means (1) Liberty Media Corporation, and its predecessors, successors and assigns, subsidiaries, and divisions, and their respective directors, officers, agents, and representatives; and (2) partnerships, joint ventures, groups and affiliates that Liberty Media Corporation, controls, directly or indirectly, and their successors and assigns, and their respective directors, officers, agents, and representatives.

(C) "Respondents" means Tele-Communications, Inc. and Liberty Media Corporation.

(D) "Paramount" means (1) Paramount Communications, Inc., and its predecessors, successors and assigns, subsidiaries, and divisions, and their respective directors, officers, agents, and representatives; and (2) partnerships, joint ventures, groups and affiliates, including USA Network, that Paramount Communications, Inc., controls, directly or indirectly, and their successors and assigns, and their respective directors, officers, agents, and representatives.

(E) "QVC" means (1) QVC Network, Inc., and its predecessors, successors and assigns, subsidiaries, and divisions, and their respective directors, officers, agents, and representatives; and (2) partnerships, joint ventures, groups and affiliates that QVC Network, Inc., controls directly or indirectly, and their successors and assigns, and their respective directors, officers, agents, and representatives.

(F) The term "Respondents' ownership interests in QVC" means all ownership interests including, but not limited to, Common Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, warrants, and options. Respondents' ownership interests in QVC does not include ownership interests of Respondents' agents or representatives if they do not own these interests in their capacities as agents or representatives of Respondents.

(G) The term "Acquisition" means QVC's proposed acquisition of Paramount.

(H) The term "person" includes any natural person, corporate entity, partnership, association, joint venture, government entity, or trust.

(I) The term "other owners of QVC" means Comcast Corporation, Barry Diller, Arrow Investments, L.P., Cox Enterprises, Inc., or Advance Publications, Inc., their subsidiaries or assigns, but does not mean TCI or LMC.

(J) The term "Commission" means the Federal Trade Commission.

(K) The term "voting agreements" means all agreements between Respondents and the other owners of QVC or any other person, concerning voting of any person's shares of stock or QVC, the appointment of QVC directors, or the operations or management of QVC.

II

It is ordered that: (A) Respondents shall divest, absolutely and in good faith, within eighteen (18) months of the date this Order becomes final, all of Respondents' ownership interests in QVC.

(B) Respondents shall divest all of Respondents' ownership interests in QVC, to a person or persons that receive(s) the prior approval of the Commission and only in a manner that is consistent with the purposes of this Order and that receives the prior approval of the Commission, provided, however, that Respondents' divestiture of some or all of Respondents' ownership interests in QVC to QVC or the others of QVC, shall not require the prior approval of the Federal Trade Commission. The purpose of the divestiture of Respondents' ownership interests in QVC is to remedy the lessening of competition resulting from the Acquisition, as alleged in the Commission's complaint.

(C) Respondents shall terminate or divest to a person or persons that receive(s) the prior approval of the Commission and only in a manner that is consistent with the purposes of this Order as described in Paragraph II.B and that receives the prior approval of the Commission, within eighteen (18) months of the date of this Order becomes final, all of their interests in all voting agreements, provided, however, that Respondents' divestiture of some or all of their interests in the voting agreements to QVC or the other owners of QVC shall not require the prior approval of the Federal Trade Commission.

(D) Until the divestitures and terminations required by Paragraphs II.A, II.B, and II.C are completed, Respondents shall cease and desist from entering into any agreements with QVC or Paramount that grant Respondents any exclusive rights to exhibit recently released theatrical motion pictures after Paramount's current contract with Time Warner Inc., or Home Box Office, Inc., terminates.

(E) Respondents shall comply with all terms of the Interim Agreement, attached to this Order and made a part hereof as Appendix I. Said Interim Agreement shall continue in effect until the divestitures and terminations required by Paragraphs II.A, II.B, and II.C are completed or such other time as is stated in said Interim Agreement.

III

It is further ordered that: (A) If Respondents have not completed the divestitures and terminations required by Paragraphs II.A, II.B, and II.C, within the eighteen (18) month period provided for in Paragraph II, Respondents shall consent to the appointment of a trustee by the Commission to complete the divestitures and terminations. In the event the Commission or the Attorney General brings an action pursuant to section 5(l) of the Federal Trade Commission Act, 15 U.S.C. 45l), or any other statute enforced by the Commission, for any violation of this Order, Respondents shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to section 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondents to comply with this Order.

(B) If a trustee is appointed by the Commission or a court pursuant to Paragraph III.(A) of this Order, Respondents shall consent to the following terms and conditions regarding the trustee's powers, duties, authorities, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission of the identity of any proposed trustee, Respondents shall be deemed to have consented to the selection of the proposed trustee.

2. The trustee shall, subject to the prior approval of the Commission, have the exclusive power and authority to accomplish the divestitures and terminations required by Paragraphs II.A, II.B, and II.C.

3. The trustee shall have twelve (12) months from the date the trust agreement is approved to accomplish the divestitures and terminations. If, however, at the end of the twelve-month period the trustee has submitted a plan of divestiture or terminations or believes that divestiture or termination can be accomplished within a reasonable time, the twelve (12) month period may be extended; *provided,* however, the Commission may only extend the twelve (12) month period two (2) times for up to an additional twelve (12) months each time.

4. The trustee shall have full and complete access to the personnel, books, and records, related to Respondents' interests described in Paragraph II, or any other relevant information, as the trustee may reasonably request. Respondents shall cooperate with any reasonable request of the trustee. Respondents shall take no action to interfere with or impede the trustee's accomplishment of the divestitures and terminations. Any delays in divestitures or terminations caused by Respondents shall extend the time for divestitures and terminations under Paragraph III.B.3 in an amount equal to the delay, as determined by the Commission or the court for a court-appointed trustee.

5. Subject to Respondents' absolute and unconditional obligation to divest and terminate at no minimum price and the purpose of the divestitures and terminations as stated in Paragraph II.B, the trustee shall use his or her best

efforts to negotiate the most favorable price and terms available with each prospective acquirer for the divestitures. The divestitures and terminations shall be made in the manner set out in Paragraph II; *provided,* however, if the trustee receives bona fide offers from more than one acquirer, and if the Commission determines to approve more than one such acquirer, the trustee shall divest to the acquirer selected by Respondents from among those approved by the Commission.

6. The trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have authority to employ, at the cost and expense of Respondents, representatives and assistants as are reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of Respondents and the trustee's power shall be terminated. The trustee's compensation be based at least in significant part on a commission arrangement contingent on the trustee's accomplishing the divestitures and terminations required by Paragraph II.

7. Respondents shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising in any manner out of, or in connection with, the trustee's duties under this Order, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for or defense of any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from misfeasance, negligence, willful or wanton acts, or bad faith by the trustee.

8. Within thirty (30) days after appointment of the trustee, and subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, Respondents shall execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestitures and terminations required by this Order.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph III.A of this Order.

10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional Orders or directions as may be necessary or appropriate to accomplish the divestitures and terminations required by this Order.

11. The trustee shall report in writing to Respondents and to the Commission every sixty (60) days concerning the trustee's efforts to accomplish the divestitures and terminations.

IV

It is further ordered that, Within sixty (60) days after the date this Order becomes final and every sixty (60) days thereafter until Respondents have fully complied with the provisions of Paragraph II of this Order and of the Interim Agreement attached as Appendix I, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, or have complied with those provisions. Respondents shall include in their compliance reports, among other things that are required from time to time, a full description of substantive contacts or negotiations for complying with provisions of Paragraph II of this Order, including the identity of all parties contacted or that have contacted Respondents. Respondents also shall include in their compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations, concerning the required divestitures and terminations and concerning Respondents' compliance with the Interim Agreement.

V

It is further ordered that, For a period beginning on the date this Order becomes final and ending three (3) years after all the divestitures and terminations required by Paragraph II are completed, Respondents shall cease and desist from acquiring, without the period approval of the Federal Trade Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise (A) any equity or other ownership interest in, or the whole or any part of the stock or share capital of QVC, Paramount, or USA Networks, (B) assets or QVC or Paramount, provided, however, Respondents may acquire, without prior approval of the Commission, assets equal in value to less than 10% of the market capitalization value of QVC or Paramount within a 12 month period, and provided, further, that if such assets consist of stock, share capital or other equity interest of any subsidiary, affiliate, partnership or joint venture of QVC or Paramount, QVC or Paramount shall no longer hold any stock, share capital or other equity interest in such entity, or (C) any of the assets of USA Networks, its successors and assigns. For purpose of this Paragraph, "market capitalization value" shall be equal to the number of outstanding shares of QVC or Paramount multiplied by the price of QVC or Paramount stock as of the date such asset acquisition is signed. One year from the date this Order becomes final and annually thereafter until the expiration of the three (3) year period, Respondents shall file with the Federal Trade Commission verified written reports of their compliance with this paragraph.

VI

It is further ordered that, For the purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and on reasonable notice to Respondents, Respondents shall permit any duly authorized representatives of the Commission:

(A) Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Respondents relating to any matters contained in this Order; and

(B) Upon five (5) days notice to Respondents, and without restraint or interference from Respondents, to interview officers or employees of Respondents, who may have counsel present, regarding such matters.

VII

It is further ordered that, Each Respondent shall notify the Commission at least thirty (30) days prior to any proposed change in such respondent such as dissolution, assignment, or sale, resulting in the emergency of a successor corporation, the creation or dissolution of subsidiaries, and any other change that may affect compliance obligations arising out of the Order.

VIII

It is further ordered that, Respondents shall not be obligated to comply with this Order if

(A) QVC terminates or abandons the attempted acquisition of Paramount; or

(B) QVC does not acquire more than ten (10) percent of the common stock of Paramount within twelve (12) months from the date this Order becomes final.

For the purposes of this Order, QVC will be deemed to have terminated or abandoned the attempted acquisition of Paramount upon the withdrawal of any HSR filing with respect thereto.

Appendix I—Interim Agreement

This Interim Agreement is by and between Tele-Communications, Inc. (hereinafter "TCI"), a corporation organized and existing under the laws of the State of Delaware with its principal office and place of business at 5619 DTC Parkway, Englewood, CO 80111, Liberty Media Corporation (hereinafter "LMC"), a corporation organized and existing under the laws of the State of Delaware with its principal office and place of business at 8101 East Prentice Avenue, suite 500, Englewood, CO 80111, and the Federal Trade Commission (the "Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, et seq. (collectively, the "Parties").

Premises

Whereas, QVC Network, Inc., ("QVC") has proposed the acquisition by cash tender offer of 51% of the voting securities of Paramount Communications, Inc. ("Paramount"), (hereinafter the "Acquisition"); and

Whereas, LMC presently owns 22.3% of the voting securities of QVC; and

Whereas, TCI and LMC have proposed the merger of their businesses by the formation of a new corporation, with the new corporation becoming the parent of both TCI and Liberty; and

Whereas, the Commission is now investigating the proposed Acquisition to determine if it would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the Agreement Containing Consent Order ("Consent Agreement"), the Commission will place it on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of § 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached, preserving competition during the period prior to the final acceptance of the Consent Agreement by the Commission (after the 60-day public notice period) and thereafter until the divestitures and terminations required by the Consent Agreement are completed or at other such time as stated in the Consent Agreement, there may be interim competitive harm, and divestiture resulting from any proceeding challenging the legality of the Acquisition might not be possible, or might be less than an effective remedy; and

Whereas, TCI and LMC entering into this Interim Agreement shall in no way be construed as an admission by TCI and LMC that the Acquisition constitutes a violation of any statute; and

Whereas, the purposes of the Interim Agreement are to prohibit TCI and LMC from exercising direction and control of QVC or Paramount and to prevent interim harm to competition; and

Whereas, TCI and LMC understand that no act or transaction contemplated by this Interim Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Interim Agreement.

Now, therefore, the Parties agree, upon the understanding that the Commission has not yet determined whether the Acquisition will be challenged, and in consideration of the Commission's agreement that at the time it accepts the Consent Agreement for public comment it will grant early termination of the Hart-Scott-Rodino waiting period for the Acquisition, as follows:

1. TCI and LMC agree to execute and be bound by the Agreement Containing Consent Order to which this Interim Agreement is attached;

2. TCI and LMC agree that from the date this Interim Agreement is signed until the first of the dates listed in subparagraphs 2.a through 2.d, they will comply with the provisions of this Interim Agreement:

a. Ten business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of § 2.34 of the Commission's Rules;

b. 120 days after publication in the **Federal Register** of the Consent Agreement, unless by that date the Commission has finally accepted such Consent Agreement;

c. The day after the divestitures and terminations required by the Consent Agreement have been satisfied; or

d. The day after the requirements of Paragraph VIII of the Consent Agreement have been satisfied.

3. TCI and LMC shall not (a) exercise direction of or control over, directly or indirectly, the operations or management of QVC or Paramount; (b) exercise any voting rights or agreements, directly or indirectly, pursuant to LMC's ownership in QVC; or (c) participate in any change in the composition of the management of QVC or Paramount; provided, however, TCI and LMC may vote their ownership interests in QVC in favor of QVC's acquisition of Paramount and the transactions providing financing by entities other than TCI and LMC for such acquisition.

4. TCI and LMC further agree that within five (5) days of the date the Agreement Containing Consent Order, to which this Interim Agreement is a part, is placed on the public record (a) the officers, directors, or employees of TCI or LMC who are present members of the Boards of Directors of QVC or Paramount will resign such membership on the Boards of Directors of QVC or Paramount, and (b) that no officer, director, or employee of TCI or LMC will serve on the Boards of Directors of QVC or Paramount.

5. TCI and LMC waive all rights to contest the validity of this Interim Agreement.

6. For the purpose of determining or securing compliance with this Interim Agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to TCI and LMC made to their principal office, TCI and LMC shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of TCI and LMC and in the presence of counsel to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of TCI or LMC relating to compliance with this Interim Agreement;

b. Upon five (5) days notice to TCI or LMC; and without restraint or interference from it, to interview officers or employees of TCI or LMC, who may have counsel present, regarding any such matters.

7. This Interim Agreement shall not be binding until accepted by the Commission.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted for public comment from Tele-Communications, Inc. ("TCI"), and Liberty Media Corporation ("LMC") an agreement containing consent order which requires TCI and LMC, among other things, to divest all of their ownership interests in QVC Network, Inc. ("QVC"). To preserve competition during the period prior to final acceptance of the consent agreement as well as until final divestitures are completed, the consent agreement is accompanied by an interim agreement which prohibits TCI and LMC, among other things, from exercising any direction of or control over the

operations or management of QVC or Paramount, exercising any voting rights or agreements, or participating in any change in the management of QVC or Paramount. The agreement and consent order, along with the interim agreement, are designed to remedy any anticompetitive effect stemming from the proposed acquisition of Paramount by TCI or LMC through QVC.

The consent agreement and interim agreement have been placed on the public record for 60 days for reception of comments from interested persons. Comments received during this period will become part of the public record. After 60 days, the Commission will again review the agreement and comments received, and will decide whether it should withdraw from the agreement or make final the order contained in the agreement.

TCI is by far the largest cable television multiple system operator ("MSO") in the United States. LMC, its programming affiliate, also owns cable television systems and provides satellite-delivered programming services to various distribution media including cable television. Their affiliated cable systems control distribution of cable programming to about 25% of the total cable television subscriber base in the United States. TCI or LMC also hold substantial stock ownership in many popular cable television programming networks, including The Discovery Channel, The Learning Channel, Turner Broadcasting, Request Television, Inc., Black Entertainment Television, The Box, Courtroom TV, Encore, Starz, The Family Channel, Home Shopping Networks, and QVC.

Paramount is a major Hollywood studio and its businesses include the production and the licensing of new theatrically released movies for transmission on cable television channels and a 50% ownership interest in USA Networks.

According to the Commission complaint in this matter, QVC commenced a cash tender offer for 51% of the common stock of Paramount. If the tender offer is successful, QVC intends to commence a second step merger under which each remaining Paramount share would be exchanged for approximately 1.5 QVC common shares. The combined value of both transactions is approximately $10 billion. The Commission has reason to believe that the acquisition, if successful, may have anticompetitive effects and be in violation of section 7 of the Clayton Act and section 5 of the Federal Trade Commission Act.

The draft complaint alleges that the acquisitions of Paramount by QVC may substantially lessen competition and tend to create a monopoly in the market of subscription television program distribution to consumers and/or in cable premium movie channels. Specifically, the complaint alleges that the purpose, capacity, tendency, or effect of the acquisition may be to: (1) Reduce the output and quality of premium movie channels; (2) raise programming fees to cable operators; (3) raise cable television subscriber fees to consumers; (4) enhance coordinated interaction among vertically integrated MSOs; and (5) increase the difficulty of entry into the provision of subscription television programming distribution.

The agreement containing consent order attempts to remedy the Commission's competitive concerns about the proposed acquisition. Under the terms of the consent order, TCI and LMC are required, among other things, to divest all ownership interest in QVC and to divest or terminate all their interest in all existing agreements concerning voting of any shares of stock of QVC. Both the divestiture of ownership interests and the divestiture or termination of voting interests are to be made within 18 months from the date the order becomes final. Furthermore, the divestitures are to be made only to an acquirer or acquirers and in a manner that receive the prior approval of the Commission. Divestiture of some or all of their ownership interests or voting interests to QVC or certain other named owners of QVC will not, however, require the prior approval of the Commission.

In addition, the agreement containing consent order prohibits TCI and LMC for a stated period from entering into any agreements with QVC or Paramount that grant TCI or LMC exclusive exhibition rights to recently released theatrical motion pictures after Paramount's current contract with certain other parties terminates.

The agreement containing consent order also prohibits TCI and LMC from acquiring, directly or indirectly, any equity or ownership interest in QVC, Paramount or USA Networks, without the prior approval of the Commission. The prohibition is effective for a period beginning from the date the order becomes final and ending three (3) years after the required divestitures or termination of interests are completed.

The agreement containing consent order provides that TCI and LMC shall not be obligated to comply with the order if: (1) QVC terminates or abandons the attempted acquisition of Paramount; or (2) QVC does not acquire more than ten (10) percent of the common stock of Paramount within twelve months of the date the order becomes final.

The interim agreement's purpose is to preserve competition during the period prior to the final acceptance of the consent agreement by the Commission (after the 60-day public notice period) and thereafter until the divestitures and terminates required of the consent agreement are completed. Consistent with this purpose, the interim agreement prohibits TCI and LMC from: (1) Exercising any direction of or control, directly or indirectly, over the management or operations of QVC or Paramount; (2) exercising any voting rights or agreements, directly or indirectly, pursuant to LMC's ownership in QVC; or (3) participating in any change in the composition of the management of QVC or Paramount.

In addition, the interim agreement provides that within five (5) days of the date the agreement containing consent order is placed on the public record, any officers, directors, or employees of TCI or LMC who are present members of the Board of Directors of QVC or Paramount, will resign as members of such Boards of Directors. Furthermore, no officer, director, or employee of TCI or LMC will serve on the Board of Directors of either QVC or Paramount.

By accepting the consent order subject to final approval, the Commission anticipates that the competitive problems alleged in the complaint will be resolved. The purpose of this analysis is to invite and facilitate public comment concerning the consent order. IT is not intended to constitute an official interpretation of the agreement an proposed order or in any way to modify their terms.

Donald S. Clark,

Secretary.

Dissenting Statement of Commissioner Mary L. Azcuenaga

On the basis of the limited investigation to date, although there are plausible theories of harm, we lack sufficient information to predict with any confidence that the proposed acquisition is likely to have anticompetitive effects. In addition, the proposed order may inhibit as yet unexplored procompetitive effects, and it imposes substantial costs of divestiture on the respondents. Finally, assuming a violation, the three-year prior approval clause in the proposed order is a significant and unjustified departure from Commission policy.

I dissent.

Dissenting Statement of Commissioner Deborah K. Owen

The willingness of the respondents, Tele-Communications, Inc. (TCI) and Liberty Media Corporation, to sign the consent agreement that the Commission has

provisionally accepted today abbreviated the staff's investigation of the proposed acquisition of Paramount by QVC. To say that this matter has not been fully investigated by the Commission would be generous.

Serious complaints have been voiced about this combination, many similar to those raised in connection with the proposed acquisition of an interest in Showtime by TCI several years ago. In 1990, the Commission, after a lengthy investigation, determined to close that investigation without action.

Perhaps the issues are different here; or perhaps there have been significant changes in the market since 1990 which would affect the antitrust analysis. Regrettably, the fruits of our truncated investigation provide us with little, if any, basis for making such determinations.

In 1990, in an unrelated matter, I noted that "[a]s a practical matter, consent orders make law." Because, as the Supreme Court has noted, parties may be motivated by practical reasons (such as avoiding the burdens and expense of adjudication, and adverse publicity), rather than guilt (which they expressly do not admit in signing a consent agreement), their consent should not justify the Commission's issuance of a complaint and acceptance of an order.

[W]here the Commission's complaint will not be subject to a full adjudication of the facts, the Commission might reasonably wish to base its charges on a higher quantum of evidence when it agrees to issue a consent agreement for public comment, rather than just a complaint * * *. The Commission should require evidence based as much as possible on objective, empirical data, rather than subjective beliefs * * *.[1]

Such evidence, in my judgment, is woefully lacking here.

If the Commission, in its rush to consent, has failed to address all of the competitive issues that may arise from this combination, or if it has failed to adequately remedy the alleged problems, the result would be serious for consumers. It would be equally serious, in my view, if the Commission were to hastily pass judgment, in the absence of adequate evidence, and thereby discourage otherwise procompetitive or competitively neutral conduct by these respondents, or others who look to the Commission's actions for guidance, and unnecessarily sully affected reputations. The only way to avoid either of these undesirable scenarios would be for the Commission to fully investigate within the expedited time frame provided under the Hart-Scott-Rodino Act to accommodate the needs of parties to cash tender offers.

To summarize, in my estimation, there has been inadequate investigation into the possible anticompetiive effects of this acquisition to provide sufficient basis to determine either that there is a reason to believe that the proposed acquisition violates the Federal Trade Commission Act or the Clayton Act, or that the proposed order adequately remedies any such alleged violation. I am therefore compelled to dissent from the consent order provisionally accepted today.

Statement of Commissioner Dennis A. Yao

Today the Commission has provisionally accepted a proposed consent agreement in this matter.

The Commission's review of this transaction, and our previous investigations in this industry, have revealed a number of competitive concerns regarding the relationship of Tele-Communications, Inc. to QVC and its potential impact on QVC's proposed acquisition of Paramount Communications, Inc. This proposed consent completely eliminates those concerns by requiring TCI to divest itself of those interests. Prolonging the investigation is likely to have consequences on the free play of market forces. Because the proposed consent eliminates our competitive concerns, I have voted in favor of accepting this proposed consent for public comment.

[FR Doc. 93–29281 Filed 11–29–93; 8:45 am]

BILLING CODE 6750–01–M

[1] Statement of Commissioner Deborah K. Owen in the Matter of CPC International, Inc., File No. 892–3176 (June 11, 1990) at 1–2, citing *Fedral Trade Comm.* versus *Standard Oil Co. of California*, 449 U.S. 232, 246, n. 14 (1980).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Pub. L. 92–463, the Annual Report for the following Health Resources and Service Administration's Federal Advisory Committees have been filed with the Library of Congress:

Advisory Commission on Childhood Vaccines, HRSA AIDS Advisory Committee

Copies are available to the public for inspection at the Library of Congress Newspaper and Current Periodical Reading Room, Room 1026, Thomas Jefferson Building, Second Street and Independence Avenue, SE., Washington, DC. Copies may be obtained from: Ms. Rosemary Havill, Vaccine Injury Compensation Program, Bureau of Health Professions, Room 702, 6001 Montrose Road, Rockville, Maryland 20852, Telephone (301)443–6593 and G. Stephen Bowen, M.D., Associate Administrator for AIDS, Room 14A–21, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301)443–4588.

Dated: November 23, 1993.

Jackie E. Baum,

Advisory Committee Management Officer, Health Resources and Services Administration.

[FR Doc. 93–29249 Filed 11–29–93; 8:45 am]

BILLING CODE 4160–15–P

[PN 2142]

Rural Health Outreach Grant Program

AGENCY: Health Resources and Services Administration, PHS.

ACTION: Notice of availability of funds.

SUMMARY: The Office of Rural Health Policy, Health Resources and Services Administration (HRSA), announces that applications are being accepted for Rural Health Outreach Demonstration Grants to expand or enhance the availability of essential health services in rural areas. Awards will be made from funds appropriated under Pub. L. 103–112 (HHS Appropriation Act for FY 1994). Grants for these projects are authorized under Section 301 of the Public Health Service Act.

NATIONAL HEALTH OBJECTIVES FOR THE YEAR 2000: 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 for setting priority areas. The Rural Health Outreach program is related to the priority areas for health promotion, health protection and preventive services. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–C) or Healthy People (Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone (202) 783–3238).

FUNDS AVAILABLE: Appropriations for FY 1994 included $24.8 million to support Outreach grants. Of this amount, it is anticipated that $18 million will be available to support new outreach grants. The Office of Rural Health Policy would expect to make approximately 90 new awards for one year budget periods. The budget period for new projects will begin July 1, 1994.

Individual grant awards under this notice will be limited to a total amount of $300,000 (direct and indirect costs) per year. Applications for smaller amounts are encouraged. Applicants may propose project periods for up to three years. It is expected that the average grant award will be approximately $180,000 for the first year. However, applicants are advised that continued funding of grants beyond the one year period covered by this announcement is contingent upon the appropriation of funds for the program and assessment of grantee performance. No project will be supported for more than three years.

DATE: Applications for the program must be received by the close of business on

March 11, 1994. Completed applications must be sent to the Office of Grants Management at the address shown below.

Applications shall be considered as meeting the deadline if they are either (a) received on or before the deadline date; or (2) postmarked on or before the deadline date and received in time for orderly processing. Applicants must obtain a legible dated receipt from a commercial carrier or the U.S. Postal Service in lieu of a postmark. Private metered postmarks will not be acceptable as proof of timely mailing. Late applications will be returned to the sender.

ADDRESS: All application materials should be sent to: Opal McCarthy, Bureau of Primary Health Care, East West Building, 11th Floor, 4350 East West Highway, Rockville, Maryland 20857, (301) 594–4260.

The standard application form and general instructions for completing applications (Form PHS–5161–1, OMB #0937–0189) have been approved by the Office of Management and Budget. Requests for grant application kits and additional information regarding business or fiscal issues should be directed to the Office of Grants Management at the above address.

FOR FURTHER INFORMATION CONTACT: Requests for technical or programmatic information on this announcement should be directed to Eileen Holloran, Office of Rural Health Policy, room 9–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–0835.

SUPPLEMENTARY INFORMATION:

The purpose of the program is to support projects that demonstrate new and innovative models of outreach and health care services delivery in rural areas that lack basic health services. Grants will be awarded either for the direct provision of health services to rural populations, that are not currently receiving them, or to enable access to and utilization of existing services.

Applicants may propose projects to address the needs of a wide range of rural population groups including the poor, the elderly, the disabled, pregnant women, infants, adolescents, rural minority populations, and rural populations with special health care needs. Projects should be responsive to the special cultural and linguistic needs of specific populations.

A central goal of the demonstration program is to develop new and innovative models for more effective integration and coordination of health services in rural areas. It is hoped that some of these models will prove significant in solving rural health problems throughout the country. In order to better integrate the provision of health services in rural areas, participation in the program requires the formation of consortium arrangements among three or more separate and distinct entities to carry out the demonstration projects. A consortium must be composed of three or more health care organizations, or a combination of three or more health care and social service organizations. Individual members of a consortium might include such entities as hospitals, public health agencies, home health providers, mental health centers, substance abuse service providers, rural health clinics, social service agencies, health profession schools, local school districts, emergency service providers, community and migrant health centers, civic organizations, etc. Strong consortium arrangements are required. The roles and responsibilities of each member organization must be clearly defined. Each member must contribute significantly to the goals of the project. Applications where consortium members do not have a major contributing role will not be supported.

Applicants are encouraged to develop projects to address specific areas of need in their communities. Need can be established through a formal needs assessment or by population specific demographic data. Examples of areas of focus include but are not limited to:

1. The creation of new networks of providers to deliver ambulatory health and/or mental health and substance abuse services in Health Professions Shortage Areas and in underserved frontier areas.

2. Projects to integrate rural emergency medical services providers into regional systems of care.

3. Projects that utilize telecommunications techniques to link rural providers and rural health care facilities with larger and more specialized institutions.

4. Projects that develop new networks of primary care providers and public health organizations to address such problems as infant mortality, adolescent health, mental health, etc.

5. Projects that link private and public health providers to enhance the health and safety of farmers, farm families, and migrant and seasonal farm workers through direct services.

6. Projects that address the needs of rural minority populations.

7. Projects which address the special needs of communities affected by floods or other natural disasters.

Eligible Applicants

All public and private entities, both nonprofit and for-profit may participate as members of a consortium arrangement as described above. However, a grant award will be made to only one entity in a consortium. The grant recipient must be a nonprofit or public entity which meets one of the three requirements stated below.

(1) The applicant is located outside of a Metropolitan Statistical Area as defined by the Office of Management and Budget. A list of the cities and counties that are designated as being within a Metropolitan Statistical Area will be included with the application kit.

(2) The applicant is located in a rural census tract of one of the counties listed in appendix I to this announcement. Although each of these counties is a Metropolitan Statistical Area, or part of one, large parts of the counties are rural. Organizations located in these rural areas are eligible for the program. Rural portions of these counties have been identified by census tract since this is the only way we have found to clearly differentiate them from urban areas in the large counties. Appendix I provides a list of these census tracts for each county. Appendix II includes the telephone numbers for regional offices of the Census Bureau. Applicants may call these offices to determine the census tract in which they are located.

(3) The applicant is an organization that is constituted exclusively to provide services to migrant and seasonal farmworkers in rural areas and is supported under section 329 of the Public Health Service Act. These organizations are eligible regardless of the urban or rural location of their administrative headquarters.

Applicants from the 50 United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Territories of the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands (Republic of Palau), the Compact of Free Association Jurisdictions of the Republic of the Marshall Islands, and the Federated States of Micronesia are eligible to apply.

Applications from organizations that do not meet one of the three requirements described above will not be reviewed. Current Rural Health Outreach grantees who are in the last year of their projects may not reapply for funds to support the same project. Any new application must have a different focus from the project that is currently being funded.

Review Consideration

Grant applications will be evaluated on the basis of the following criteria:

(1) The extent to which the applicant has proposed a new and innovative network of providers to bring new services into rural areas or strengthen existing services.

(2) The extent to which the proposed project would be capable of replication in rural areas with similar needs and characteristics and the applicant's plan for disseminating information about the project.

(3) The extent to which the applicant has justified and documented the need(s) for the project and developed measurable goals and objectives for meeting the need(s).

(4) The extent to which the applicant has clearly defined the roles and responsibilities for each member of the consortium and developed a workable plan for managing the consortium's activities.

(5) The reasonableness of the budget proposed for the project.

(6) The level of local commitment and involvement with the project, including the extent of cost participation by the applicant and/or other organizations, and the extent to which the project will contribute to enhancing the local economy.

(7) The feasibility of plans to continue the project after federal grant support is completed.

(8) The strength of the applicant's plan for evaluating the project.

The HRSA hopes to expand the outreach program into geographic areas not currently served by the program. Consequently, HRSA will consider geographic coverage when deciding which approved applications to fund.

Other Information

Grantees will be required to use at least 85 percent of the total amount awarded for outreach and care services as opposed to administrative costs. More than 50 percent of the funds awarded must be spent in rural areas. Grant funds may not be used for purchase, construction or renovation of real property or to support the delivery of inpatient services. This is a demonstration program that will not support projects that are solely or predominantly designed for the purchase of equipment or vehicles.

Applicants are advised that the narrative description of their program and the budget justification may not exceed 40 pages in length. Applications that exceed the 40 page limit for the program narrative and budget justification will not receive consideration. All applications must be typewritten and clearly legible. Margins must be no less than ½" on all sides.

Public Health System Impact Statement

This program is subject to the Public Health System Reporting Requirements. Reporting requirements have been approved by the Office of Management and Budget—#0937–0195. Under these requirements, the community-based nongovernmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprised of proposed health services grant applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based non-governmental applicants are required to submit the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted no later than the Federal application receipt due date:

a. A copy of the face page of the application (SF 424)

b. A summary of the project not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

Executive Order 12372

The Rural Health Outreach Grant Program has been determined to be a program which is subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs by appropriate health planning agencies as implemented by 45 CFR part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. Applicants (other than federally-recognized Indian tribal governments) should contact their State Single Point of Contact (SPOCs), a list of which will be included in application kit, 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 of each affected State. All SPOC recommendations should be submitted to Opal McCarthy, Office of Grants Management, Bureau of Primary Health Care, East West Building, 11th Floor, 4350 East West Highway, Rockville, Maryland 20857, (301) 594–4260. The due date for State process recommendations is 60 days after the application deadline for new and competing awards. The granting agency does not guarantee to "accommodate or explain" for State process recommendations it receives after that date. (see Part 148, Intergovernmental Review of PHS Programs under Executive Order 12372 and 45 CFR part 100 for a description of the review process and requirements.

State Offices of Rural Health: Applicants are asked to contact their State Office of Rural Health for information about other outreach grants in their State and technical assistance in the preparation of applications. The State Office should be contacted before an application is prepared. A list of State Offices of Rural Health will be provided with the application.

(OMB Catalog of Federal Domestic Assistance number is 93.912)

Dated: October 15, 1993.

William A. Robinson,

Acting Administrator.

Appendix I

*Census tract numbers are shown *below* each county name.

State	
County	
Tract Number	
Alabama	
Baldwin	
	0101
	0102
	0106
	0110
	0114
	0115
	0116
Mobile	
	0059
	0062
	0066
	0072.02
Tuscaloosa	
	0107
Arizona	
Maricopa	
	0101
	0405.02
	0507
	0611
	0822.02
	5228
	7233
Pima	
	0044.05

0048
0049

California

Butte

0024
0025
0026
0027
0028
0029
0030
0031
0032
0033
0034
0035
0036

El Dorado

0301.01
0301.02
0302
0303
0304.01
0304.02
0305.01
0305.02
0305.03
0306
0310
0311
0312
0313
0314
0315

Fresno

0040
0063
0064.01
0064.03
0065
0066
0067
0068
0071
0072
0073
0074
0077
0078
0079
0080
0081
0082
0083
0084.01
0084.02

Kern

0033.01
0033.02
0034
0035
0036
0037
0040
0041
0042
0043
0044
0045
0046
0047
0048
0049
0050
0051.01
0052
0053
0054
0055.01
0055.02
0056
0057
0058
0059
0060
0061
0063

Los Angeles

5990
5991
9001
9002
9004
9012.02
9100
9101
9108.02
9109
9110
9200.01
9201
9202
9203.03
9301

Monterey

0109
0112
0113
0114.01
0114.02
0115

Placer

0201.01
0201.02
0202
0203
0204
0216
0217
0219
0220

Riverside

0421
0427.02
0427.03
0429
0430
0431
0432
0444
0452.02
0453
0454
0455
0456.01
0456.02
0457.01
0457.02
0458
0459
0460
0461
0462

San Bernardino

0089.01
0089.02
0090.01
0090.02
0091.01
0091.02
0093
0094
0095
0096.01
0096.02
0096.03
0097.01
0097.03
0097.04
0098
0099
0100.01
0100.02
0102.01
0102.02
0103
0104.01
0104.02
0104.03
0105
0106
0107

San Diego

0189.01
0189.02
0190
0191.01
0208
0209.01
0209.02
0210
0212.01
0212.02
0213

San Joaquin

0040
0044
0045
0052.01
0052.02
0053.02
0053.03
0053.04
0054
0055

Santa Barbara

0018

0019.03

Santa Clara

5117.04
5118
5125.01
5127

Shasta

0126
0127
1504

Sonoma

1506.04
1537.01
1541
1542
1543

Stanislaus

0001
0002.01
0032
0033
0034
0035
0036.05
0037
0038
0039.01
0039.02

Tulare

0002
0003
0004
0005
0006
0007
0026
0028
0040
0043
0044

Ventura

0001
0002
0046
0075.01

Colorado

Adams

0084
0085.13
0087.01

El Paso

0038
0039.01
0046

Larimer

0014
0017.02
0019.02
0020.01
0022

Pueblo

0028.04
0032
0034

Weld

0019.02
0020
0024
0025.01
0025.02

Florida

Collier

0111
0112
0113
0114

Dade

0115

Marion

0002
0004
0005
0027

Osceola

0401.01
0401.02
0402.01
0402.02
0403.01
0403.02
0404
0405.01
0405.02
0405.03
0405.05
0406

Palm Beach

0079.01
0079.02
0080.01
0080.02
0081.01
0081.02
0082.01
0082.02
0082.03
0083.01
0083.02

Polk

0125
0126
0127
0142
0143
0144
0152
0154
0155
0156
0157
0158
0159
0160
0161

Kansas

Butler

0201
0203
0204
0205
0209

Louisiana

Rapides

0106
0135
0136

Terrebonne

0122
0123

Minnesota

St. Louis

0105
0112
0113
0114
0121
0122
0123
0124
0125
0126
0127
0128
0129
0130
0131
0132
0133
0134
0135
0137.01
0137.02
0138
0139
0141
0151
0152
0153
0154
0155

Stearns

0103
0105
0106
0107
0108
0109
0110
0111

Montana

Cascade

0105

Yellowstone

0015
0016

0019

Nevada

Clark

0057
0058
0059

Washoe

0031.04
0032
0033.01
0033.02
0033.04
0034

New Mexico

Dona Ana

0014
0019

Santa Fe

0101
0102
0103.01

New York

Herkimer

0101
0105.02
0107
0108
0109
0110.01
0110.02
0111
0112
0113.01

North Dakota

Burleigh

0114
0115

Grand Forks

0114
0115
0116
0118

Morton

0205

Oklahoma

Osage

0103
0104
0105
0106
0107
0108

Oregon

Clackamas

0235
0236
0239
0240
0241
0243

Jackson

0024
0027

Lane

0001
0005
0007.01
0007.02
0008
0013
0014
0015
0016

Pennsylvania

Lycoming

0101
0102

South Dakota

Pennington

0116
0117

Texas

Bexar

1720
1821
1916

Brazoria

0606
0609
0610
0611
0612
0613
0614
0615
0616
0617
0618
0619
0620.01
0620.02
0621
0622
0623
0624
0625.01
0625.02
0625.03
0626.01
0626.02
0627
0628
0629
0630
0631
0632

Harris

0354
0544
0546

Hildalgo

0223
0224
0225
0226
0227
0228
0230
0231
0243

Washington

Benton

0116
0117
0118
0119
0120

Franklin

0208

King

0327
0328
0330
0331

Snohomish

0532
0536
0537
0538

Spokane

0101
0102
0103.01
0103.02
0133
0138
0143

Whatcom

0110

Yakima

0018
0019
0020
0021
0022
0023
0024
0025
0026

Wisconsin

Douglas

0303

Marathon

0017
0018
0020
0021

0022
0023

Wyoming

Laramie

0016
0017
0018

Appendix II

Bureau of the Census Regional Information Service

Atlanta, GA 404–730–3957
Alabama, Florida, Georgia
Boston, MA 617–565–7078
Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, Upstate New York
Charlotte, NC 704–344–6144
Kentucky, North Carolina, South Carolina, Tennessee, Virginia
Chicago, IL 708–409–4617
Illinois, Indiana, Wisconsin
Dallas, TX 214–767–7105
Louisiana, Mississippi, Texas
Denver, CO 303–969–7750
Arizona, Colorado, Nebraska, New Mexico, North Dakota, South Dakota, Utah, Wyoming
Detroit, MI 313–354–4654
Michigan, Ohio, West Virginia
Kansas City, KS 913–236–3711
Arkansas, Iowa, Kansas, Missouri, New Mexico, Oklahoma
Los Angeles, CA 818–904–6339
California
New York, NY 212–264–4730
Brooklyn, Bronx, Manhattan, Queens, Staten Island, Nassau Co., Orange Co., Suffolk Co., Rockland Co., Westchester Co.
Philadelphia, PA 215–597–8313
Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania
Seattle, WA 206–728–5314
Idaho, Montana, Nevada, Oregon, Washington

[FR Doc. 93–29250 Filed 11–29–93; 8:45 am]
BILLING CODE 4160–15–P–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N–93–3603; FR–3506–N–02]

Statutorily Mandated Designation of Qualified Census Tracts and Difficult Development Areas for Section 42 of the Internal Revenue Code of 1986

AGENCY: Office of the Secretary, HUD.

ACTION: Notice; clarification.

SUMMARY: On April 15, 1993 (58 FR 19704), the Department published in the **Federal Register**, a notice designating Qualified Census Tracts and Difficult Development Areas under section 42 of the Internal Revenue Code of 1986 (the "Code"). This document amends the effective date for that notice by establishing criteria under which areas, designated in a notice published on September 16, 1991 (56 FR 46826) as a qualified census tract or a difficult development area but no longer designated in the notice published on April 15, 1993, will be treated as located in a qualified census tract or difficult development area.

FOR FURTHER INFORMATION CONTACT: Frederick J. Eggers, Deputy Assistant Secretary for Economic Affairs, Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708–3080. A telecommunications device for deaf persons (TDD) is available at (202) 708–9300. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION: On April 15, 1993, the Department of Housing and Urban Development ("HUD") published a notice (58 FR 19704) designating Qualified Census Tracts and Difficult Development Areas under section 42 of the Internal Revenue Code of 1986 (the "Code"). This document amends the April 15, 1993 Notice by establishing criteria under which areas, designated in a notice published on September 16, 1991 (56 FR 46826) as a qualified census tract or a difficult development area but no longer designated in the notice published on April 15, 1993, will be treated as located in a qualified census tract or difficult development area.

I. Except as set forth in paragraph II of this Notice, the effective date of the revised designations of qualified census tracts and difficult development areas for purposes of section 42 of the Code, as published in the April 15, 1993 **Federal Register** remains unchanged, e.g., except as noted below, the effective date is for allocations of credit made on or after April 1, 1993.

II. Buildings or projects located in qualified census tracts and/or difficult development areas designated pursuant to the Notice published in the **Federal Register** on September 16, 1991 (but which areas are no longer so designated under the April 15, 1993 Notice) that receive allocations of credit on or before December 31, 1993, including allocations made prior to the date of this Notice, will be treated as being located in a qualified census tract and/or difficult development area under the April 15, 1993 designation, provided that the housing credit agency certifies to the Secretary of HUD that:

A. On or before April 15, 1993, the agency received an application for an allocation of credit for the building or project; and

B. On or before May 31, 1993, the agency made a determination under section 42(m)(2) of the Code that an eligible basis increase under section 42(d)(5)(C) was necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period. A building described in section 42(h)(4) of the Code (i.e., certain buildings financed with the proceeds of tax-exempt bonds) and located in qualified census tracts and/or difficult development areas designated pursuant to the Notice published in the **Federal Register** on September 16, 1991 (but which areas are no longer so designated under the April 15, 1993 Notice), will be treated as being located in a qualified census tract and/or difficult development area under the April 15, 1993 designation if the governmental unit that issued the bonds certifies to the Secretary of HUD that:

1. The bonds were issued prior to July 1, 1992; and

2. On or before May 31, 1993 it made a determination under section 42(m)(2)(D) that an eligible basis increase under section 42(d)(5)(C) was necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period.

III. Housing credit agencies and governmental units should submit certifications to Frederick J. Eggers, Deputy Assistant Secretary for Economic Affairs, room 8204, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

FUTURE DESIGNATIONS: HUD anticipates that it will next designate qualified census tracts and difficult development areas in September or October of 1994, to be effective January 1, 1995. The next designation of difficult development areas will be the first to fully use the 1990 Census data and new definitions of metropolitan statistical areas issued by the Office of Management and Budget. The next designation of qualified census tracts will involve only those changes resulting from the new definitions of metropolitan statistical areas. The changes in qualified census tract designations are expected to be few.

Dated: November 19, 1993.

Henry G. Cisneros,

Secretary.

[FR Doc. 93–29228 Filed 11–29–93; 8:45 am]

BILLING CODE 4210–32–P

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–93–3557; FR–3412–N–05]

Announcement of Funding Awards for the Urban Revitalization Demonstration

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Urban Revitalization Demonstration. This announcement contains the names and addresses of the award winners and the amount of the awards.

DATED: November 30, 1993.

FOR FURTHER INFORMATION CONTACT: Janice D. Rattley, Director of Construction, Rehabilitation and Maintenance, Department of Housing and Urban Development, 451 Seventh Street SW, room 4138, Washington, DC 20410. Telephone (202) 708–1800 (This is not a toll-free number). Hearing or speech impaired individuals may call HUD's TDD number 1–800–877–TDDY, which is a toll-free number.

SUPPLEMENTARY INFORMATION: The purpose of the competition was to revitalize severely distressed or obsolete public housing developments. The activities in the program included funding of the capital costs of major reconstruction, rehabilitation and other physical improvements, the provision of replacement housing, management improvements, planning and technical assistance, implementation of community services programs and supportive services or the planning of such activities.

The 1993 awards announced in this Notice were selected for funding in a competition announced in a **Federal Register** Notice published on January 5, 1993, at 58 FR 436 (a revised Notice was published on March 29, 1993, at 58 FR 16590).

The Urban Revitalization Demonstration grants, totaling $300 million, will enable 15 housing authorities to begin the process of revitalizing severely distressed or obsolete public housing developments in both planning and implementation categories. Recipients were chosen in a national competition under selection criteria announced in the March 29, 1993 NOFA.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is publishing the names, addresses, and amount of those awards, as set out at the end of this Notice.

Dated: November 23, 1993.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

URBAN REVITALIZATION DEMONSTRATION (URD) FY 1993 IMPLEMENTATION AND PLANNING GRANT APPLICATIONS SELECTED TO PARTICIPATE

PHA Name	Development name	Number of units	Type of grant	Amount requested
Mr. David Gilmore, Executive Director, City of Milwaukee Housing Authority, 120 Sixth Avenue, Seattle, WA 98109.	Holly Park Apts	893	Pln	$500,000
Mr. David Cortiella, Administrator, City of Boston Housing Authority, 52 Chauncy Street, Boston, MA 02111–2302.	Mission Main	486	Imp	$49,992,350
Mrs. Sally Hernandez-Piniero, Chairperson, City of New York Housing Authority, 250 Broadway, New York, NY 10007.	Beach 41st Street	712	Pln	$500,000
Mr. Cornell Scott, Acting Executive Director, City of New Haven Housing Authority, 360 Orange Street, New Haven, CT 06509.	Elm Haven	380	Imp	$45,331,593
Hon. Robert E. Larsen, Magistrate—Special Master, The Kansas City Missouri Housing Authority, 811 Grande Avenue, Kansas City, MO 64106.	Guinotte Manor	418	Imp	$47,579,800
City of San Francisco Housing Authority, 440 Turk Street, San Francisco, CA 94102.	Bernal Dwellings/Yerba Buena Homes.	208 276	Imp	$49,992,377
Mr. Harrison Shannon, Executive Director, City of Charlotte Housing Authority, P.O. Box 36795, Charlotte, NC 28236.	Earle Villiage	409	Imp	$33,877,985
Ms. Claire Freeman, Executive Director, The Cuyahoga Metropolitan Housing Authority, 1441 W. 25th Street, Cleveland, OH 44113–3101.	Outhwaite Homes King Kennedy	364 126	Imp	$50,000,000
Mr. Ricardo Diaz, Executive Director, City of Milwaukee Housing Authority, P.O. Box 324, Milwaukee, WI 53201.	Hillside Terrace	496	Imp	$4,018,700
Mr. Robert Jenkins, Executive Director, Department of Public Assisted Housing, 1133 N. Capital St., NE, Washington, DC 20002.	Ellen Wilson Dwellings	134	Imp	$1,439,941
Mr. Earl Phillips, Executive Director, City of Atlanta Housing Authority, 739 W. Peachtree, NE, Atlanta, GA 30365.	Techwood/Clark Howell	492	Imp	$4,358,040
Ms. Joy Fitzgerald, Executive Director, City of Houston Housing Authority, 4217 San Felipe, Houston, TX 77252–9950.	Allen Parkway Village	500	Imp	$3,296,349

URBAN REVITALIZATION DEMONSTRATION (URD) FY 1993 IMPLEMENTATION AND PLANNING GRANT APPLICATIONS SELECTED TO PARTICIPATE—Continued

PHA Name	Development name	Number of units	Type of grant	Amount requested
Mr. David Washington, Executive Director, City of Pittsburgh Housing Authority, 200 Ross St., 9F1, Pittsburgh, PA 15219–2068.	Allequippae Terrace	483	Imp	$1,535,023
Mr. Joseph Gelletich, Acting Executive Director, City of Los Angeles Housing Authority, P.O. Box 17157, Los Angeles, CA 90017–1295.	Pico Gardens Aliso South Aliso North	352 78 147	Imp	$3,782,260
City of Philadelphia Housing Authority, 2012 Chestnut Street, Philadelphia, PA 19103.	Richard Allen Homes	376	Imp	$3,795,582
Grand total				$300,000,000

[FR Doc. 93–29319 Filed 11–29–93; 8:45 am]
BILLING CODE 4210–33–P

[Docket No. N–93–3667; FR–3571–N–02]

Withdrawal of the FY 1993 NOFA and Notice of Project Guidelines for the HOPE for Elderly Independence Multifamily Project Demonstration in HUD Region I

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of withdrawal of the fiscal year (FY) 1993 Notice of Funding Availability (NOFA) and Notice of Project Guidelines for the HOPE for Elderly Independence Multifamily Project Demonstration.

SUMMARY: This notice announces the Department's withdrawal of the FY 1993 NOFA and Notice of Project Guidelines for the HOPE for Elderly Independence Multifamily Project Demonstration published in the **Federal Register** on September 28, 1993 (58 FR 50768), and for which the application deadline was December 27, 1993. The Department intends to re-publish this NOFA at a later date. The supplementary information section of this notice explains the reasons for the withdrawal.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Director, Operations Branch, Rental Assistance Division, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., room 4220, Washington, DC 20410–8000, telephone number (202) 708–0477. Hearing or speech impaired individuals may call HUD's TDD number (202) 708–0850. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: This notice announces the Department's withdrawal of the FY 1993 NOFA and Notice of Project Guidelines for the HOPE for Elderly Independence Multifamily Project Demonstration published in the **Federal Register** on September 28, 1993 (58 FR 50768), and for which the application deadline was December 27, 1993.

The September 28, 1993 NOFA announced the availability of funding in the HUD Boston Region (HUD Region I) for (1) section 8 project-based certificate (PBC) assistance for one multifamily housing project, and (2) a supportive services grant for the HOPE for Elderly Independence Multifamily Project Demonstration. The HOPE for Elderly Independence Multifamily Project Demonstration is authorized by section 803(h) of the National Affordable Housing Act (42 U.S.C. 8012) (NAHA).

The Department is withdrawing the NOFA because certain members of the U.S. House of Representatives have challenged the Department's interpretation of section 803(h) of NAHA as set forth in the September 28, 1993 NOFA and Notice of Project Guidelines (collectively, "NOFA"). The Department will review and consider the concerns raised by the members, and make any modifications to the NOFA that may be necessary to address these concerns. The Department will make every effort to resolve these issues as quickly as possible, and reissue the HOPE for Elderly Independence Multifamily Project Demonstration NOFA at the earliest possible date.

The Department regrets any inconvenience caused by the withdrawal of this NOFA.

Dated: November 24, 1993.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 93–29320 Filed 11–29–93; 8:45 am]
BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Monitoring Committee; Meeting

AGENCY: Department of the Interior, Fish and Wildlife Service.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Monitoring committee (Committee), a committee of the Aquatic Nuisance Species Task Force. A number of subjects will be discussed during the Committee meeting including: a review of monitoring programs collecting data concerning nonindigenous species and development of a pilot program to acquire data from existing monitoring programs.

DATES: The Monitoring Committee will meet from 9 a.m. to 3 p.m. on Thursday, December 16, 1993.

ADDRESSES: The Monitoring Committee meeting will be held at the U.S. Fish and Wildlife Service Building, room 200A, 4401 N. Fairfax Drive, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Dr. James Weaver, National Fisheries Research Center, 7920 NW. 71st Street, Gainesville, Florida 3206 at (904) 378–8181.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Aquatic Nuisance Species Task Force Monitoring Committee established under the authority of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (Pub. L. 101–646, 104 Stat. 4761, 16 U.S.C. 4701 *et seq.*, November 29, 1990). Minutes of the meetings will be maintained by the Coordinator, Aquatic Nuisance Species Task Force, room 840, 4401 North Fairfax Drive, Arlington, Virginia 22203 and the Monitoring Committee Chairman, National

Fisheries Research Center, 7920 NW. 71st street, Gainesville, Florida 32606 and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: November 23, 1993.

Gary Edwards,

Assistance Director—Fisheries, Co-Chair, Aquatic Nuisance Species Task Force.

[FR Doc. 93–29245 Filed 11–29–93; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Big Thicket National Preserve; Revision of Preserve Boundary at Village Creek

Section 1 of the Act of October 11, 1974 (88 Stat. 1254) provides for the establishment of Big Thicket National Preserve and authorizes the United States to accept title to any lands, or interests in lands, located outside the boundaries of the preserve which any private person, organization, or public or private corporation may offer to donate to the United States, if the Secretary finds that such lands would make a significant contribution to the purposes for which the preserve was created and he may administer such lands as part of the preserve. The Trustees for the Trust Estate of Bruce Reid and wife, Bessie M. Reid, and the Board of the Magnolia Garden Club, Beaumont, Texas, have offered to donate 22.76 acres of land designated as The Winifred Turner Nature Sanctuary for incorporation into the preserve. The property fronts on Village Creek and U.S. Highway 96. The tract contains a very fine mature stand of mixed pine and hardwood timber which is unique to this area due to the fact that it appears that no timber has ever been harvested from the property. From its highest elevation of 50 feet MSL in the southwest corner, the property slopes to elevation 10 feet MSL along the top bank of the creek. The portion of the tract fronting Village Creek is subject to frequent flooding but also affords excellent recreational opportunities for the visiting public. The Trust was established in 1958 in order to "contribute to the preservation, perpetuation, propagation, cultivation and protection of the flora and fauna of East Texas in order to promote human education, learning, appreciation and enjoyment of the beauties, mysteries and processes of nature." It is considered that the recreational opportunities offered by this property, along with the biological resources which have been so carefully preserved on this 22.76 acres, will make a significant contribution to the preserve. The specific lands proposed for addition are described as follows.

All that certain tract or parcel of land lying and situate in the County of Hardin, Texas, being 22.76 acres, more or less, out of the A. Lancaster Survey, A–36, and being more particularly described as follows:

Beginning at the southeast corner of the lands of grantor in the west bank of Village Creek, said corner being northwesterly 1315.00 feet, more or less, from the southeast corner of said Lancaster Survey, said point also being the northeast corner of the lands, now or formerly, of Jerry Lyn McKinney;

Thence with the dividing line between the lands of grantor and the lands of said Jerry Lyn McKinney North 89° 56′ 58″ West 1596.39 feet, more or less, to the southeast right-of-way line of U.S. Hwy. No. 96;

Thence in a northeasterly direction with said southeast right-of-way line being a curve to the right having a radius of 2684.61 feet, a central angle of 11° 50′ 30″ and an arc length of 554.84 feet, more or less, to the P.T. of said curve;

Thence continuing with said southeast right-of-way line as follows: North 20° 49′ 06″ East 198.50 feet, more or less; and North 44° 15′ 30″ East 570.20 feet, more or less; to the north line of the lands of grantor;

Thence with the dividing line between the land of grantor and the lands, now or formerly, Temple-Eastex, Inc. North 89° 26′ 03″ East 290.00 feet, more or less, to the west bank of Village Creek;

Thence with the meanders of the west bank of Village Creek southeasterly 1135.00 feet, more or less, to the Point of Beginning.

Containing 22.76 acres of land, more or less.

Therefore, notice is hereby given that in accordance with the Act of October 11, 1974, the boundary of the Big Thicket National Preserve is revised as described above, and as shown on Hardin County Appraisal District map, Sheet 29. This map is on file and available for inspection in the Office of the National Park Service, Department of the Interior; the Office of the Southwest Region, National Park Service; and the Office of the Superintendent, Big Thicket National Preserve.

Dated: September 28, 1993.

John E. Cook,

Regional Director, Southwest Region.

[FR Doc. 93–29199 Filed 11–29–93; 8:45 am]

BILLING CODE 4310–70–P

Boundary Revision; Carl Sandburg Home National Historic Site

AGENCY: National Park Service, DOI.

ACTION: Notice of Boundary Revision, Carl Sandburg Home National Historic Site.

SUMMARY: Section 7(c) of the Land and Water Conservation Fund Act, as amended by Public Law 95–42, June 10, 1977 (91 Stat. 210), and Public Law 96–203, March 10, 1980 (94 Stat. 81), authorizes minor boundary revisions to areas within the national park system.

Notice is given that the boundary of Carl Sandburg Home National Historic Site has been revised pursuant to the above act, to include the lands depicted on boundary map numbered 445/80,008 dated June 1993, prepared by the Land Resources Division of the Southeast Region of the National Park Service.

This map is on file and available for inspection in the administrative office of the Carl Sandburg Home National Historic Site, 1928 Little River Road, Flat Rock, North Carolina 28731–9766, and in the offices of the National Park Service, Department of the Interior, Washington, DC 20013–7127.

Dated: July 13, 1993.

F. Dominic Dottavio,

Acting Regional Director, Southeast Region, National Park Service.

[FR Doc. 93–29197 Filed 11–29–93; 8:45 am]

BILLING CODE 4310–79–M

Everglades National Park, FL; Boundary Revision

Public Law 101–229 dated December 13, 1989, authorized the modification of the boundaries of the Everglades National Park and to provide for the protection of lands, waters, and natural resources within the park, and for other purposes. Section 102(b) of this Act authorized the Secretary to make minor revisions in the boundaries of the park. Section 7(c)(i) of the Land and Water Conservation Fund Act, as amended by the Act of June 10, 1977 (P.L. 95–42, 91 Stat. 210) and the Act of March 10, 1980 (P.L. 96–203, 94 Stat. 81) further authorizes the Secretary to make minor revisions in the boundaries whenever the Secretary of the Interior determines that it is necessary for the preservation, protection, interpretation, or management of an area.

Notice is given that the boundary of Everglades National Park has been revised pursuant to the above Acts, to encompass lands as depicted on the boundary map entitled "Boundary Map—Everglades National Park" dated August 1992/160–82,000, prepared by

the National Park Service, Land Acquisition Field Office, Naples, Florida. The revision to the boundary encompasses one small parcel along the southeasterly line, adjacent to U.S. Highway 1.

This map is on file and available for inspection in the National Park Service, Land Acquisition Field Office, Naples, Florida and in the Offices of the National Park Service, Department of the Interior, Washington, DC 20013–7127.

Editorial Note: This document was received at the Office of the Federal Register on November 23, 1993.

Date September 18, 1992.

C. W Ogle,

Deputy Regional Director, Southeast Region, National Park Service.

[FR Doc. 93–29198 Filed 11–29–93; 8:45 am]

BILLING CODE 4310–70–M

Concession Contract Negotiations; Indiana Dunes National Lakeshore, IN

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to award a concession permit authorizing continued parking lot services, fee collection, and limited transportation facilities and services for the public at the West Beach area of Indiana Dunes National Lakeshore, Indiana, for a period of four (4) years from January 1, 1994, through December 31, 1997.

EFFECTIVE DATE: January 31, 1994.

ADDRESS: Interested parties should contact the Superintendent, Indian Dunes National Lakeshore, 1100 Mineral Springs, Porter, Indiana 46304, to obtain a copy of the prospectus describing the requirements of the proposed permit.

SUPPLEMENTARY INFORMATION: This permit renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The existing concessioner has performed its obligations to the satisfaction of the Secretary under an existing permit which expired by limitation of time on December 31, 1992, and therefore pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), is entitled to be given preference in the renewal of the permit and in the negotiation of a new proposed permit providing that the existing concessioner submits a responsive offer (a timely offer which meets the terms and conditions of the Prospectus). This means that the permit will be awarded to the party submitting the best offer, provided that if the best offer was not submitted by the existing concessioner, then the existing concessioner will be afforded the opportunity to match the best offer. If the existing concessioner agrees to match the best offer, then the permit will be awarded to the existing concessioner.

If the existing concessioner does not submit a responsive offer, the right of preference in renewal shall be considered to have been waived, and the permit will then be awarded to the party that has submitted the best responsive offer.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be received by the Superintendent not later than the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Dated: October 23, 1993.

William W. Schenk,

Acting Regional Director, Midwest Region.

[FR Doc. 93–29200 Filed 11–29–93; 8:45 am]

BILLING CODE 4310–70–M

Draft Comprehensive Management Plan/Development Concept Plan/ Environmental Impact Statement, City of Rock National Reserve, Cassia County, Idaho

ACTION: Notice of availability of draft environmental impact statement.

SUMMARY: This notice announces the availability of a draft environmental impact statement (EIS) for the Comprehensive Management Plan/ Development Concept Plan for City of Rocks National Reserve. This notice also announces public meetings for the purpose of receiving public comments on the draft EIS.

DATES: Comments on the draft EIS should be received no later than February 1, 1994. The dates of the public meetings regarding the draft EIS are: Tuesday December 14, Wednesday December 15, and Thursday December 16, 1993.

ADDRESSES: Comments on the draft EIS should be submitted to: Regional Director, National Park Service, Pacific Northwest Region, 83 S. King Street, Suite 212, Seattle, WA 98104, (206) 553-5565.

The public meetings will be held at:

Almo School, Almo, Idaho, Tuesday, December 14, 1993, 7 p.m.

Best Western Burley Inn, 800 North Overland Burley, Idaho, Wednesday, December 15, 1993, 7 p.m.

Idaho Department of Parks and Recreation, 7800 Fairview, Avenue, Boise, Idaho, Thursday, December 16, 1993, 7 p.m.

Public reading copies of the draft EIS will be available for review at the following locations:

Office of Public Affairs, National Park Service, Department of the Interior, 18th and C Streets, NW., Washington, DC 20240, (202) 343-6843.

Twin Falls Public Library, Attn: Linda Parkinson/Susan Ash, 434 2nd Street East, Twin Falls, ID 83301, (208) 733-2964.

Burley Public Library, Attn: Mona Kenner, 1300 Miller Ave., Burley, ID 83318, (208) 678-7708.

Boise Public Library, Attn: Government Documents Department, 715 S. Capital Blvd., Boise, ID 83702, (208) 384-4076.

Community Library, Box 2168, Ketchum, ID 83340, (208) 726-3493.

Pocatello Public Library, Attn: Lou Schavers, 812 E. Clark, Pocatello, ID 83201, (208) 232-1263.

Idaho State University Library, Attn: Larry Murdock, P.O. Box 8089, Pocatello, ID 83209-8089, (208) 236-2958.

Weber County Library, Attn: Non-Fiction Dept., 2464 Jefferson Ave., Ogden, UT 84401, (801) 627-6917.

Whitmore, Library, Attn: Joe Davis, Manager, 2197 E. 7000 S., Salt Lake City, UT 84121, (801) 943-4636.

Utah State Library, Attn: Lou Reinwerd, 2150 S. 300 W., Suite 16, Salt Lake City, UT 84115-2579, (801) 466-5888.

A limited number of copies of the draft EIS are available on request from:

Superintendent, City of Rocks National Reserve, National Park Service, 963 Blue Lakes Boulevard, Suite 1, Twin Falls, Idaho 83301, (208) 773–8398.

Manager, City of Rocks National Reserve, Idaho Department of Parks and Recreation, P.O. Box 169, Almo, Idaho 83312.

SUPPLEMENTARY INFORMATION: This Draft Comprehensive Management Plan/ Development Concept Plan/ Environmental Impact Statement presents a proposal and two alternatives for the management, use, and development of City of Rocks National Reserve. The proposal, which constitutes the draft comprehensive management plan for the reserve, calls for the preservation and interpretation of exceptional and important resources—remnants of the California Trail, distinctive rock outcrops, associated habitats, scenic beauty and a historic rural setting reminiscent of the American West—while accommodating the traditional use of livestock grazing and new interest in recreation. Uses would be directed to different zones to

minimize conflicts among potentially incompatible activities. Grazing and recreational use would be managed to avoid unacceptable degradation of resource values, with greatest emphasis on protection of historic fabric, rock surfaces, habitats for species of special concern, and riparian areas and wetlands. Approximately one-third of the 14,000-acre reserve would remain in private ownership, and approximately equal amount of public land would remain under grazing allotments, where traditional ranching activities would perpetuate the historic rural setting existing at the time of the reserve's establishment. Private commercial and residential development would be regulated by county zoning ordinances and might be limited by the acquisition of interests in lands on an opportunity basis necessary to protect reserve resources. Implementation of the proposal would be a partnership among the National Park Service, the Idaho Department of Parks and Recreation, Cassia County, and private landowners.

In addition to the proposal, the alternatives under consideration include the no-action alternative, which would continue to emphasize unrestricted private use and public recreation use, with no added emphasis on preserving the reserve's exceptional cultural and natural values, and an alternative that would emphasize the preservation and interpretation of the California Trail and the rock outcrops to the exclusion of traditional land use and to the detriment of the historic rural setting.

Dated: November 8, 1993.

William C. Walters,

Deputy Regional Director, Pacific Northwest Region, National Park Service.

[FR Doc. 93–29189 Filed 11–29–93; 8:45am]

BILLING CODE 4310–70–M

National Capital Region; Public Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the National Capital Memorial Commission will be held on Friday, December 3, 1993, at 1 p.m., at the National Building Museum, room 312, 5th and F Streets, NW.

The Commission was established by Public Law 99–652, the Commemorative Works Act, for the purpose of preparing and recommending to the Secretary of the Interior, Administrator, General Services Administration, and Members of Congress broad criteria, guidelines, and policies for memorializing persons and events on Federal lands in the National Capital Region (as defined in the National Capital Planning Act of 1952, as amended), through the media of monuments, memorials and statues. It is to examine each memorial proposal for adequacy and appropriateness, make recommendations to the Secretary and Administrator, and to serve as information focal point for those persons seeking to erect memorials on Federal land in the National Capital Region.

The Members of the Commission are as follows:

Director, National Park Service

Chairman, National Capital Planning Commission

The Architect of the Capitol

Chairman, American Battle Monuments Commission

Chairman, Commission of Fine Arts

Mayor of the District of Columbia

Administrator, General Services Administration

Secretary of Defense

The purpose of the meeting will be to review legislative and site proposals. The meeting will be open to the public. Any person may file with the Commission a written statement concerning the matters to be discussed. Persons who wish to file a written statement or testify at the meeting or who want further information concerning the meeting may contact the Commission at 202–619–7097. Minutes of the meeting will be available for public inspection 4 weeks after the meeting at the Office of Land Use Coordination, National Capital Region, 1100 Ohio Drive, SW., room 201, Washington, DC 20242.

Dated: November 21, 1993.

John G. Parson,

Regional Director, National Capital Region.

[FR Doc. 9329201 Filed 11–29–93; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 20, 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 December 15, 1993.

Beth L. Savage,

Acting, Chief of Registration, National Register.

MAINE

Aroostock County

Governor Brann School, US 1 E side, 1.25 mi. S of jct. with Madore Rd., Van Buren vicinity, 93001432

Oxford County

Hall, Enoch, House, Bean Rd. W side, 0.5 mi. SE of jct. with ME 117, Buckfield vicinity, 93001431

MISSISSIPPI

Alcorn County

Midtown Corinth Historic District, Roughly bounded by Cass, Bunch, Washington, Main, Filmore, Linden, Douglas and Cruise Sts., Corinth, 93001433

NEW YORK

Putnam County

Garrison Grist Mill Historic District, Jct. of NY 9D and Upper Station Rd., Garrison Four Corners vicinity, 93001434

NORTH CAROLINA

Transylvania County

Brevard College Stone Fence and Gate (Transylvania County MPS), Jct. of N. Broad St. and French Broad Ave., NW corner, Brevard, 93001436

Godfrey—Barnette House (Transylvania County MPS), 411 S. Broad St., Brevard, 93001437

OHIO

Harrison County

Harrison National Bank, 101 E. Market St., Cadiz, 93001438

Lorain County

Moore, Leonard M., House, 309 5th St., Lorain, 93001439

TENNESSEE

Davidson County

Hillsboro—West End Historic District, Roughly bounded by West End, 31st, Blakemore and 21st Aves. and I–440, Nashville, 93001435

VIRGINIA

Clarke County

River House, US 17/50, 2.5 mi. E of Millwood, Millwood vicinity, 93001440

Fauquier County

Loretta, US 17 E side, 3500 ft. N of Warrenton town limits, Warrenton vicinity, 93001442

Richmond Independent City

Thomas Jefferson High School (Public Schools of Richmond MPS), 4100 W. Grace St., Richmond (Independent City), 93001441

WEST VIRGINIA

Jefferson County

The Hermitage, Cabletown Rd. (Co. Rd. 25) N of jct. with Mt. Hammond Rd., Charles Town vicinity, 93001444

Pocahontas County

GW Jeep Site, Address Restricted, Greenbank vicinity, 93001443

[FR Doc. 93–29190 Filed 11–29–93; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Supplemental Order No. 1 to Directed Service Order No. 1513]

Delaware-Lackawanna Railroad Company Inc.—Directed Service Pocono Northeast Railway, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Extension of Directed Service Order.

SUMMARY: On September 28, 1993, pursuant to 49 U.S.C. 11125(a), the Commission authorized the Delaware-Lackawanna Railroad Company Inc. (DLRR) to operate as a "Directed Rail Carrier" (DRC) under authority of Directed Service Order No. 1513 (DSO1513)—without Federal compensation or subsidy under 49 U.S.C. 11125(b)(5)—over the Pocono Northeast Railway, Inc. (PNER), for a period of 60 days. This unsubsidized and uncompensated directed service order is based on the cessation of operations by PNER, without requisite Commission authority, and the absence of any representation by PNER that the railroad's cash position will allow it to resume operations at this time.

To assure continued service to shippers that are affected by the discontinuance of PNER's operations, the Commission is authorizing DLRR to provide interim uncompensated directed service over PNER's lines in the Scranton/Wilkes-Barre area of northeastern Pennsylvania for an additional period of 180 days. See 49 U.S.C. 11125(a)(1), (3), and (b)(1).

DATES: *Effective Date:* Supplemental Order No. 1 to Directed Service Order No. 1513 shall become effective at 11:59 p.m., EST, November 27, 1993.

Expiration Date: Unless otherwise modified by order of the Commission, Directed Service Order No. 1513, as amended, will expire at 11:59 p.m., EDT, May 23, 1994.

FOR FURTHER INFORMATION CONTACT: Bernard Gaillard (202) 927–5500 or Melvin F. Clemens, Jr. (202) 927–5538; TDD for hearing impaired: (202) 927–5721].

SUPPLEMENTARY INFORMATION: On September 17, 1993, PNER issued Embargo No. 10–93 to be effective immediately and ceased operations over its entire 93 mile system in the Scranton/Wilkes-Barre area of northeastern Pennsylvania. On September 28, 1993, pursuant to 49 U.S.C. 11125(a), the Commission authorized the Delaware-Lackawanna Railroad Company Inc. (DLRR), to operate as DRC—without Federal compensation or subsidy under 49 U.S.C. 11125(b)(5)—over the Pocono Northeast Railway, Inc. (PNER), for a period of 60 days.

Pursuant to 49 U.S.C. 11125(a), the Commission may issue a directed service order for up to 60 days when it finds that a rail carrier "cannot transport traffic offered to it because - (1) its cash position makes its continuing operation impossible; (2) transportation has been discontinued under court order; or (3) it has discontinued transportation without obtaining a required certificate under [49 U.S.C.] 10903 * * *. Any Commission order under these provisions also requires Federal compensation to the DRC for those operations. However, this provision also allows the Commission to authorize a carrier to provide unsubsidized directed service if the directed carrier is willing to accept that responsibility under those terms. Pursuant to 49 U.S.C. 11125(b)(1), the Commission may extend a directed service order for an additional 180 days when it finds that cause exists.

In view of the urgent need for continued rail service over lines of the PNER, and considering PNER's cessation of operations without providing a suitable alternative and its apparent inability to resume rail service at this time, we find that PNER's current situation meets the standards of 49 U.S.C. 11125(a)(1), (3), and (b)(1). DLRR has operated the PNER lines since receiving authority from the Commission to do so for 60 days. Its offer to continue its directed service operations over all PNER lines for an additional period of 180 days under the same terms and conditions is fully supported by the affected shippers and State and local agencies. This decision grants the requests of DLRR and interested parties for continuation of interim directed service authority and authorizes DLRR to provide uncompensated directed service for an additional period of 180 days. The advance public notice contained in the initial 60-day order was sufficient to provide notice and allow comment on the necessity for the order and any extension of that order. In response, 11 shippers, the Pennsylvania Department of Transportation, the Economic Development Council of Northeastern Pennsylvania, The Greater Wilkes-Barre Chamber of Commerce, the Luzerne County Commissioners, Delaware and Hudson Railway Company/CPRail (DH/CPR), and Federal and State legislators have filed statements indicating their full support for DLRR's continued operations as DRC and urging the Commission to extend the order for the full 180-day period allowed by statute.

In a related matter, a newly formed, noncarrier company called Transloaders, Inc. (Transloaders), and F&L Realty have filed a notice of exemption in Finance Docket No. 32407, *Transloaders, Inc.—Lease and Operation Exemption—F&L Realty*. The transaction relates to the lease of approximately 6 miles of PNER lines to Transloaders, which has indicated its intent to operate the lines. In a decision served November 18, 1993, the Chairman of the Commission stayed the effectiveness of the exemption in the Finance Docket No. 32407 proceeding to allow the Commission an opportunity to examine evidence on various issues raised in that proceeding, and to determine the impact of the proposed transaction on the directed service carrier's operations, the availability of service to affected shippers, and the public interest generally. If it turns out that such integrated operations are desirable during the directed service period, the Commission retains jurisdiction to amend or modify the directed service order.

We find:

1. PNER has discontinued service over its lines without authority, and cause exists for the Commission to extend DSO 1513 for an additional period of 180 days.

This action will not significantly affect either the quality of the human environment or energy conservation.

It is ordered:

1. Based upon the Commission's determination that cause exists for extension of this order, DLRR is authorized to enter upon and operate PNER's lines pursuant to this voluntary directed service order under 49 U.S.C. 11125 for an additional period of 180 days.

(a) Operations by DLRR shall continue until no later than the one hundred eightieth day after the effective date of this decision.

(b) Should DLRR desire to terminate its directed service operations before the expiration of this order, DLRR shall provide the Commission and the parties to this proceeding with 30-days advance

notice, in writing, of the date on which it desires to cease operations.

2. The provisions of this decision shall apply to intrastate, interstate, and foreign commerce.

3. The Commission retains jurisdiction to modify, amend, or reconsider this decision at any time.

4. This decision and order shall become effective at 11:59 p.m., EST, November 27, 1993.

5. Unless otherwise modified by the Commission, this order will expire at 11:59 p.m., EDT, May 23, 1994.

6. Notice of this decision shall be given to the general public by publication in the **Federal Register**. This decision will also be served on the Federal Railroad Administration, the Association of American Railroads, the American Short Line Railroad Association, The Railway Labor Executives' Association, Conrail, DH/CPR, PNER and DLRR.

Decided: November 22, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–29328 Filed 11–29–93; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Air Act; United States v. Robert L. Brown

In accordance with Department of Justice Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Robert L. Brown*, Civ No. 1–91–0444, was lodged with the United States District Court for the Eastern District of Tennessee on November 4, 1993. This Consent Decree resolves a judicial enforcement action brought by the United States against the defendant pursuant to sections 112 and 113 of the Clean Air Act, 42 U.S.C. 7412 and 7413. In its complaint, the United States alleged that the defendant failed to comply with the National Emission Standards for Hazardous Air Pollutants ("NESHAP") for asbestos promulgated pursuant to section 112 of the Clean Air Act, 42 U.S.C. 7412, prior to and during the renovation of the Chattanooga Bank Building in Chattanooga, Tennessee. The proposed Consent Decree requires that the defendant pay a civil penalty of $5,000 in settlement of claims alleged in the complaint.

The Department of Justice will receive for a period of 30 days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Robert L. Brown*, D.O.J. Ref. No. 90–5–2–1–1601.

This proposed Consent Decree may be examined at the offices of the United States Attorney, Eastern District of Tennessee, 1110 Market Street, suite 301, Chattanooga, Tennessee 37402; at the office of Regional Counsel, Environmental Protection Agency, Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC (20005), 202–624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC (20005). In requesting a copy, please refer to the referenced case and enclose a check in the amount of $1.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–29337 Filed 11–29–93; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Glass Ceiling Commission; Criteria and Application Process for the National Award for Diversity and Excellence in American Executive Management

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of application.

SUMMARY: The Glass Ceiling Commission is announcing the procedure for applying for the National Award for Diversity and Excellence in American Executive Management. The award is an annual Presidential award to recognize a United States business for excellence in promoting a more diverse skilled work force at the management and decisionmaking levels in business.

DATES: Applications are due by February 28, 1994.

ADDRESSES: Applications should be sent to: The Glass Ceiling Commission, Perkins-Dole Award, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–2233, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Joyce Miller, Executive Director, The Glass Ceiling Commission, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–2233, Washington, DC 20210. Telephone: 202–219–7342.

SUPPLEMENTARY INFORMATION:

Background

The National Award for Diversity and Excellence in American Executive Management was established pursuant to Pub. L. 102–166, The Glass Ceiling Act of 1991. The glass ceiling is defined as those artificial barriers based on attitudinal or organizational bias that prevent qualified minorities and women from advancing in their organizations into management and decisionmaking positions.

Purpose

The National Award for Diversity and Excellence in American Executive Management is an annual Presidential award to recognize a United States business for excellence in promoting a more diverse skilled work force at the management and decisionmaking levels in business.

Business Defined

For the purposes of this award, business includes:

1. Corporation including nonprofit corporations;
2. Partnership;
3. Professional association;
4. Labor organization;
5. Business entity similar to any entity described in 1 through 4;
6. An education referral program, a training program, such as an apprenticeship or management training program or a similar program; and
7. Joint program formed by a combination of any entities described in 1 through 6.

Evaluation Criteria

The business must demonstrate that it has made substantial effort and progress to promote the opportunities and developmental experiences of minorities and women in order to foster advancement to management and decisionmaking positions within the business, including the elimination of artificial barriers to the advancement of minorities and women, and deserves special recognition as a consequence. Demonstration of substantial effort in promoting work force diversity initiatives must include a formal process that is quantifiable and emulatable and must be designed to:

—Eliminate barriers to the advancement of minorities and women;

—Create a work environment where all employees are able to achieve their full potential within the organization;

—Share information on successful diversity management and its benefits.

The policies, programs, achievements of each applicant will be evaluated in the following areas:

Leadership

The CEO and senior executives must demonstrate personal involvement and leadership in developing and maintaining an environment for diversity management excellence. The applicant must describe how the requirements for such excellence are communicated and reinforced for all managers and supervisors and integrated into day-to-day leadership, management and supervision. Key methods of evaluating and improving the effectiveness and accountability of such leadership and involvement should be addressed. The results of effective leadership should also be discussed.

Recruitment, Selection and Retention Practices

The applicant must demonstrate how the practices for filling management and decisionmaking positions take into consideration the diversity of the candidate pool for such positions. The applicant must describe the human resource recruitment practices as related to monitoring search firm referrals, word-of-mouth recruitment, designation of high potential employees and other strategies for recruiting. The selection procedures, including identification and selection of high potential employees must be described. The applicant must also describe successful results of recruitment and selection of a well diversified candidate pool for management and decisionmaking positions. Practices for retaining minorities and women must also be discussed.

Development Practices

The applicant must describe: the mechanisms for selecting employees for developmental experiences; the kinds of developmental experiences provided, e.g., on-site and off-site training, rotational assignments, special projects, etc.; the extent to which the nature of the developmental opportunities reflect the race, ethnicity and sex characteristics of the total management candidate pool; the role of relocations and overseas assignments in advancement and the extent to which diversification of such assignments is assured; and to what extent and how this is monitored.

Successful Initiatives

In addition to the elements above, the applicant must describe how all other factors are combined to create a complete initiative which has resulted in a diverse management work force for both minorities and women. These initiatives may include, for example, family friendly workplace policies, anti-harassment training or prevention, anti-discrimination procedures, pay equity evaluations and adjustments and the like. The applicant must discuss the innovative aspects of the initiative, the key factors of success and what makes this initiative worthy of special recognition.

Other Evaluation Considerations

There must be no indication based on recent or current EEO compliance reviews, complaint investigations or other Federal Enforcement activity of substantial noncompliance by the applicant with any civil rights laws. Considerations shall be given to whether or not businesses that have been cited for specific EEO violations, such as unlawful discrimination, sexual harassment, etc., have been required to take corrective actions during the period for which the business is being considered for this award.

Evaluation Process

Applicants will be ranked based on the criteria outlined above.

An on-site tour to each business ranked in the top ten will be made and interviews with selected officials and other employees will also be conducted.

The Commission shall select the Perkins-Dole awardee from businesses ranked in the top ten. Recognition may also be given for successful efforts in eliminating the glass ceiling for businesses ranked from two to five.

Publicity

A business that receives this award may publicize the receipt of the award and use the award in advertising, if the business agrees to help other United States businesses improve with respect to the promotion of opportunities and developmental experiences of minorities and women to foster the advancement of minorities and women to management and decisionmaking positions.

Application Procedures

Businesses wishing to be considered for the National Award for Diversity and Excellence in American Executive Management shall submit a written application to the Glass Ceiling Commission. The application shall be in the form of a letter and shall include information that demonstrates that the business has made substantial effort and progress to promote the opportunities and developmental experiences of minorities and women to foster advancement of minorities and women into management positions and deserves special recognition as a consequence.

The letter shall specifically address the following areas; (See Evaluation Criteria)

Leadership
Recruitment, Selection and Retention
Developmental Practices
Successful Initiatives

The application should also include statistical information relative to the business' work force profile for middle and upper management race, ethnicity and gender for at least the period covered by the initiative, but no less than five years. This information will be held in strict confidence.

The application package should be no more than 40 pages, including exhibits. Send one original and three copies.

The cover sheet should contain the following information:

1. Name of the organization.
2. Number of establishments.
3. Number of employees in each establishment.
4. Address, telephone and fax number.
5. Name of highest ranking official.
6. Name, address, telephone and fax number of contact person.

The letter and other materials should be sent to: The Glass Ceiling Commission, Perkins–Dole Award, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–2233, Washington, DC 20210.

Applications should be received no later than February 28, 1994.

Signed at Washington, DC, this 19th day of November, 1993.

Robert Reich,

Secretary of Labor.

[FR Doc. 93–29237 Filed 11–29–93; 8:45 am]

BILLING CODE 4510–23–M

NATIONAL COMMISSION ON MANUFACTURED HOUSING

Meeting

AGENCY: National Commission on Manufactured Housing.

ACTION: Notice of meeting.

SUMMARY: In announces with the Federal Advisory Committee Act, Pub. L. 101–625, as amended, the National Commission on Manufactured Housing announces a forthcoming meeting of the Commission.

DATES:
December 9, 1993, 8:30 a.m.–5 p.m. Full Commission Meeting.
December 10, 1993, 8:30 a.m.–3 p.m. Full Commission Meeting.

ADDRESSES: Holiday Inn Old Town, 480 King Street, Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: Carmelita Pratt, Administrative Officer, The National Commission on Manufactured Housing, 301 N. Fairfax Street, suite 110, Alexandria, VA 22314 (703) 603–0440.

Type of Meeting: Open.

Carmelita R. Pratt,

Administrative Officer.

[FR Doc. 93–29242 Filed 11–29–93; 8:45 am]

BILLING CODE 6820–EA–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Media Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Film/Video Documentary Prescreening Section) to the National Council on the Arts will meet on December 14–16, 1993, from 9 a.m. to 6:30 p.m. on December 14 and 15, 1993 and from 9 a.m. to 5:30 p.m. on December 16, 1993 in room 716 of the Nancy Hawks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of application evaluation, under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in conference to the Agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, these sessions will be closed to the public pursuant to subsections (c)(4), (6)(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: November 24, 1993.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 93–29309 Filed 11–29–93; 8:45 am]

BILLING CODE 7537–01–M

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Opera-Musical Theater Advisory Panel (Overview Section) to the National Council on the Arts will be held on December 13, 1993 from 9 a.m. to 6:30 p.m. in Room M–14 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. Topics of discussion will include introductions, State of the Field Overview, and policy.

Any interested person may observe meetings, or portions thereof, which are open to the public, and may be permitted to participate in the discussions at the discretion of the meeting chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: November 24, 1993.

Yvonne M. Sabine,

Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93–29311 Filed 11–29–93; 8:45 am]

BILLING CODE 7537–01–M

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Opera-Musical Theater Advisory Panel (Professional Artist Development and Services to the Field Section) to the National Council on the Arts will be held on December 14–15, 1993 from 9 a.m. to 7:30 p.m. on December 14, 1993, and from 9 a.m. to 5 p.m. on December 15, 1993. This meeting will be held in Room M–14, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 6:30 p.m. to 7:30 p.m. on December 14, 1993 for a policy discussion.

The remaining portions of this meeting from 9 a.m. to 6:30 p.m. on December 14, 1993, and 9 a.m. to 5 p.m. on December 15, 1993 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: November 24, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93–29312 Filed 11–29–93; 8:45 am]

BILLING CODE 7537–01–M

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Office of Public Partnership Advisory Panel (Basic State Grants Section) to the National Council on the Arts will be held on December 13–14, 1993 from 9 a.m. to 5:30 p.m., on December 13, 1993 and from 9 a.m. to 4:30 p.m. on December 14, 1993, in rooms 714 and 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. Topics of discussion will include introductory remarks, application review, and policy discussion.

Any interested person may observe meetings, or portions thereof, which are open to the public, and may be permitted to participate in the discussions at the discretion of the meeting chairman and with the

approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: November 24, 1993.

Yvonne M. Sabine,

Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93–29313 Filed 11–29–93; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Computer and Information Science and Engineering; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Date and Time: December 15, 1993: 8:30 a.m. to 5 p.m. December 16, 1993: 8:30 a.m. to 2:30 p.m.

Place: Room 330, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Odessa Dyson, Administrative Officer, Office of the Assistant Director, Directorate for Computer and Information Science and Engineering, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1900.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To advise NSF on the impact of its policies, programs and activities on the CISE community; to provide advice to the Assistant/CISE on issues related to long range planning.

Agenda: (1) Discussion of Future of Supercomputing Report

(2) National Information Infrastructure and Manufacturing Initiatives

(3) Program Assessment and Evaluation.

Dated: November 23, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–29213 Filed 11–29–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Networking and Communications Research and Infrastructure (NCRI); Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Networking and Communications Research (1207)

Date and Time: December 13–15, 1993; 8:30 a.m. to 5 p.m.

Place: Room 1175, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Aubrey Bush, NCRI, National Science Foundation, Room 416, Washington, DC 20550 (202 357–9717).

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review & evaluate proposals submitted for the Networking and Communications Program.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals.

These matters are exempt under 5 U.S.C. 552 b. (c) (4) and (6) of the Government in the Sunshine Act.

Dated: November 23, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–29214 Filed 11–29–93; 8:45am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste Working Group on the Unsaturated Zone at the Proposed Yucca Mountain Site; Meeting

The ACNW Working Group on the unsaturated zone at the Yucca Mountain site will hold a meeting on Tuesday, December 14, 1993 in the Monte Carlo room at the St. Tropez All Suite Hotel, 455 East Harmon Avenue, Las Vegas, Nevada.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, December 14, 1993—8:30 a.m. Until the Conclusion of Business

The Working Group will examine the current understanding of processes controlling matrix and fracture flow in the unsaturated zone at the proposed Yucca Mountain site, and status of data collection and modeling activities.

Oral statements may be presented by members of the public with the concurrence of the ACNW Working Group Chairman; written statements will be accepted and made available to the Working Group. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Working Group, its consultants, and staff. Persons desiring to make oral statements should notify the ACNW staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the ACNW Working Group, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The ACNW Working Group will then hear presentations by and hold discussions with representatives of the NRC staff and national laboratories, the DOE, DOE consultants, and other interested parties, as appropriate.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACNW staff member, Ms. Lynn Deering (telephone 301/492–4737) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual five days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: November 22, 1993.

Howard J. Larson,

Acting Chief, Nuclear Waste Branch.

[FR Doc. 93–29303 Filed 11–29–93; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee on Advanced Boiling Water Reactors; Meeting

The ACRS Subcommittee on Advanced Boiling Water Reactors will hold a meeting on December 15, 1993, in room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, December 15, 1993—8:30 a.m. Until the Conclusion of Business

The Subcommittee will continue its review of the NRC staff's Final Safety Evaluation Report for the General Electric Nuclear Energy (GE) Advanced Boiling Water Reactor (ABWR) design and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff and other interested persons regarding this review. Representatives of GE and its consultants will participate, as appropriate.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by contacting the cognizant ACRS staff engineer, Dr. Medhat El-Zeftawy (telephone 301/492–9901) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual five days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: November 22, 1993

Sam Duraiswamy,

Chief Nuclear Reactors Branch.

[FR Doc. 93–29304 Filed 11–29–93; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Materials and Metallurgy; Meeting

The ACRS Subcommittee on Materials and Metallurgy will hold a meeting on December 16, 1993, in room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, December 16, 1993–8:30 a.m. Until the Conclusion of Business

The Subcommittee will discuss the steam generator operating experience and related rulemaking activities. The purpose of this meeting is the gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, NUMARC, their consultants and other intersted persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Elpidio G. Igne (telephone 301/492–8192) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual five days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: November 22, 1993.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 93–29305 Filed 11–29–93; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on December 9–11, 1993, in room P–110, 7920 Norfolk Avenue, Bethesda, Maryland. Notice of this meeting was published in the **Federal Register** on September 23, 1993.

Thursday, December 9, 1993

8:30 a.m.–8:45 a.m.: Opening Remarks by ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting and comment briefly regarding items of current interest. During this session, the Committee will discuss priorities for preparation of ACRS reports.

8:45 a.m.–11:30 a.m.: Proposed Supplement to Generic Letter 86–10 on Fire Endurance Testing and Related Matters (Open)—The Committee will review and comment on the proposed supplement to Generic Letter 86–10 on Fire Endurance Testing, and the technical differences between NUMARC and the NRC staff on the NUMARC test program related to the thermo-lag fire barrier. Representatives of the NRC staff and industry will participate.

11:30 a.m.–12 noon: Report on the Extended Station Blackout Event at Narora Atomic Power Station, India (Open/Closed)—The Committee will hear a briefing by and hold discussions with representatives of the NRC staff on the lessons learned from the severe turbine building fire that resulted in an extended station blackout on March 31, 1993, at the Narora Atomic Power Station, India.

A portion of this session may be closed pursuant to 5 U.S.C. 552b(c)(4), as implemented by 10 CFR 2.790(d)(2), to discuss information provided in confidence by a foreign source.

1 p.m.–3:45 p.m.: ABWR Certified Design Material/ITAAC Process (Open)—The Committee will review and comment on the Certified Design Material for the ABWR in the areas of piping design, human factors, and radiation protection. Also, it will discuss the process of Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC). Representatives of the

NRC staff and General Electric Nuclear Energy (GE) will participate.

4 p.m.–5:30 p.m.: ABWR and SBWR Water-Level Instrumentation (Open)—The Committee will review and comment on the NRC staff's recommendation that diversity of reactor pressure vessel water-level measurement be required for the ABWR and SBWR designs. Representatives of the NRC staff and industry will participate.

5:30 p.m.–6 p.m.: Report of the ACRS Subcommittee on Advanced Boiling Water Reactors (Open)—The Committee will discuss the status of the activities of the ACRS Subcommittee on Advanced Boiling Water Reactors.

6 p.m.–6:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports regarding items considered during this meeting.

Friday, December 10, 1993

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting.

8:35 a.m.–10:30 a.m.: Status of Individual Plant Examination (IPE) Program (Open)—The Committee will hear a briefing by and hold discussions with representatives of the NRC staff on the status of the IPE program, the insights gained from these studies, and the use of the IPE/IPEEE programs to resolve generic issues.

10:45 a.m.–11:45 p.m.: EPRI Passive LWR Requirements Document (Open)—The Committee will discuss the proposed ACRS report on the EPRI Passive LWR Requirements Document. Representatives of the NRC staff will participate, as appropriate.

1:30 p.m.–2:30 p.m.: Safeguards and Security Requirements (Open/Closed)—The Committee will hear a briefing by the Director of the Office of Nuclear Material Safety and Safeguards (NMSS) on the activities of NMSS in the safeguards and security area.

A portion of this session may be closed pursuant to 5 U.S.C. 552b(c)(3) to discuss safeguards and security information, which is specifically exempted from disclosure by section 147 of the Atomic Energy Act of 1954.

2:30 p.m.–3:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports regarding items considered during this meeting.

3:45 p.m.–4:30 p.m.: Future ACRS Activities (Open)—The Committee will discuss topics proposed for consideration during future ACRS meetings.

4:30 p.m.–5:30 p.m.: Election of Officers (Open/Closed)—The Committee will discuss qualifications of nominees for Chairman and Vice-Chairman and will elect Chairman and Vice-Chairman to the ACRS, and Member-at-Large to the Planning and Procedures Subcommittee for calendar year 1994.

A portion of this session may be closed pursuant to 5 U.S.C. 552b(c)(6) to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

5:30 p.m.–5:45 p.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss responses from the NRC Executive Director for Operations to recent ACRS comments and recommendations.

5:45 p.m.–6:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports regarding items considered during this meeting.

Saturday, November 6, 1993

8:30 a.m.–12 noon: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports regarding items considered during this meeting.

12 noon–12:45 p.m.: Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business and internal organizational and personnel matters relating to ACRS staff members.

A portion of this session may be closed to public attendance to discuss matters that relate solely to internal personnel rules and practices of this advisory committee and to discuss matters the release of which would represent a clearly unwarranted invasion of personal privacy.

12:45 p.m.–1:30 p.m.: ACRS Subcommittee Activities (Open)—The Committee will hear reports and hold discussions regarding the status of ACRS subcommittee activities.

1:30 p.m.–2 p.m.: Miscellaneous (Open)—The Committee will discuss miscellaneous matters related to the conduct of Committee activities and complete discussion of topics that were not completed during previous meetings as time and availability of information permit.

Procedures for the conduct of the participation in ACRS meetings were published in the **Federal Register** on September 30, 1993 (58 FR 51118). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during the open portions of the meeting, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS Executive Director, Dr, John T. Larkins, as for in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the ACRS Executive Director prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the chairman as necessary to facilitate the conduct of the meeting, persons, planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) that it is necessary to close portions of this meeting noted above to discuss information that involves the internal personnel rules and practices of this advisory Committee per 5 U.S.C. 552b(c)(2), to discuss safeguards and security information exempted from disclosure by a statute that establishes particular criteria for withholding or refers to particular types of matters to be withheld per 5 U.S.C. 552b(c)(3), to discuss information provided in confidence by a foreign source per 5 U.S.C. 552b(c)(4), and to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(6).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman,'s ruling on requests for the opportunity to present oral statements and time allotted therefore can be obtained by contacting the ACRS Executive Director, Dr. John T. Larkins (telephone 301–492–4516), between 7:30 a.m. and 4:15 p.m. EST.

Dated: November 23, 1993.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 93–29306 Filed 11–29–93; 8:45 am]

BILLING CODE 7590-01-M

Boston Edison Co., Pilgrim Nuclear Power Station; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation (NRC), has issued a Decision concerning a request filed pursuant to 10 CFR 2.206 by Jane Fleming. The petitioner requested that the Commission reconsider its July 30, 1991, approval of a task force recommendation that the NRC not reconsider its reasonable finding regarding emergency preparedness at Pilgrim Nuclear Power Station. The petitioner also requested that the Commission set the "120 day clock." Although she did not cite 10 CFR 50.54(s)(2)(ii), the NRC is interpreting this request to mean, in accordance with this regulation, that the NRC should find that the state of emergency preparedness at Pilgrim does not provide reasonable assurance that adequate protective measures can be taken in the event of a radiological emergency and, if the deficiencies are not corrected within 4 months of that finding, the Commission should determine whether the reactor shall be shut down until such deficiencies are remedied or whether other enforcement action is appropriate. Ms. Fleming alleged, as basis for this request, that emergency planning for Pilgrim Station is in violation of 10 CFR 50.47 and is not in accordance with NUREG–0654, "Criteria for Preparation and Evaluation of Emergency Response Plan." She gave the following 10 reasons for her belief that the finding of reasonable assurance should be reversed: (1) Reception center to the north is not adequate, (2) transportation is not adequate, (3) monitoring of school children is not adequate, (4) monitoring of handicapped is not adequate, (5) decontamination of handicapped is non-existent, (6) planning for evacuation of Saquish-Gurent and Clark's Island is not adequate, (7) interfacing is not adequate, (8) public information is not adequate, (9) direct torus vent interfacing with emergency planning issues is not resolved, and (10) congregate care facilities are not under agreement. She further asserted, among other matters, that the task force did not properly achieve the goals set out in its charter, that the task force was disbanded before any final recommendation was made, that the task force ignored established NRC policy, that the Commission overlooked areas of concern, and that the Commission's approval could not properly have been based on the findings provided by the task force.

On November 7, 1991, Ms. Fleming telephoned David Trimble of Commissioner Curtiss' staff to raise a new concern about the egress route from Saquish-Gurnet. In addition, Ms. Fleming telefaxed to Mr. Trimble a copy of her comments on the State's preparations for the graded exercise at Pilgrim scheduled for December 12, 1991.

Ms. Fleming expressed to Mr. Trimble a belief that her comments on the planned graded exercise were relevant to the issues raised in her petition. I have treated the information supplied by Ms. Fleming to Mr. Trimble as a supplement to Ms. Fleming's petition and have considered this material in preparing my response to the petition.

On November 15, 1991, Ms. Fleming forwarded to William M. Hill, Jr., of the Commission's Office of the Secretary a copy of a memorandum from Grant C. Peterson, Associate Director for State and Local Programs, FEMA, to Russell F. Miller, Inspector General of FEMA concerning Ms. Fleming's allegation to FEMA regarding the Pilgrim Offsite Emergency Preparedness task force. In a cover note to Mr. Hill, Ms. Fleming expressed her belief that the information she was providing supported the position she had taken in her petition. I have treated the material provided by Ms. Fleming on November 15, 1991, as the second supplement to her petition and have considered this information in preparing my response to the petition.

In an unsigned Draft Letter, dated May 1, 1992, Ms. Fleming provided two additional items of information which she characterized as an update to her petition. I addressed those two items in a letter to Ms. Fleming, which forwarded my Decision, dated November 19, 1993.

I have determined that the petition should be denied. The reasons for this Decision are explained in the "Director's Decision Under 10 CFR 2.206," (DD–93–17), which is available for public inspection in the Commission's Public Document Room, in the Gelman Building, Lower Level,, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room for the Pilgrim facility located at the Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

[Docket Nos. 50–245, 50–336 (License Nos. DRR–21, Northeast Utilities, DPR–65)]

Millstone Nuclear Power Station; Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that by Petition dated August 22, 1993, Clarence O. Reynolds (Petitioner) has requested that the Executive Director for Operations take immediate escalated enforcement action with regard to Millstone Nuclear Power Station Unit 1. Specifically, Mr. Reynolds requests that multiple Severity Level II and III violations be issued against Millstone Unit 1 Maintenance Department Management, that suspensions of Maintenance Department Management be instituted pending a complete investigation, and that the Executive Director for Operations' (EDO's) office insist that he be immediately reinstated as maintenance mechanic pending this investigation. As grounds for this request, Mr. Reynolds asserts that he was suspended from his position at Millstone following his filing of nuclear concerns with Millstone management and the NRC, that there have been other complaints of retaliation which have recently occurred in his department, and that a recent NRC Inspector General's report indicated that there have been a significant number of complaints by employees being discriminated against at Millstone after bringing forth nuclear concerns.

On September 21, 1993 the NRC denied the position of the request that asked that the EDO's office insist on immediate reinstatement of Mr. Reynolds' to his position as a maintenance mechanic pending an investigation and requested additional information to provide the basis to act on the Petitioner's other requests. On October 19, 1993 the Petitioner responded with this additional information.

The request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The request has been referred to the Director of Enforcement for action. As provided by § 2.206, appropriate action will be taken on this request within a reasonable time.

A copy of the Petition is available for inspection at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC 20555.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 23d day of November 1993.

Joseph R. Gray,

Deputy Director, Office of Enforcement.

[FR Doc. 93–29307 Filed 11–29–93; 8:45 am]

BILLING CODE 7590–01–M

PENSION BENEFIT GUARANTY CORPORATION

Location of Agency

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of agency relocation.

SUMMARY: The Pension Benefit Guaranty Corporation ("PBGC") will be moving to a new location in Washington DC, during the months of December 1993 and January 1994. This notice informs the public of the PBGC's new address and telephone numbers.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel (Code 22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006–1860, 200–778–8850 (202–778–1958 for TTY and TDD); 202–326–4024 (as of December 20, 1993) (202–326–4179 for TTY and TDD (as of January 24, 1994)). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: This notice informs the public that the Pension Benefit Guaranty Corporation ("PBGC") is relocating and provides the PBGC's new address and telephone numbers. The PBGC also is amending its regulations, elsewhere in today's **Federal Register**, to reflect the agency's relocation.

New Address

During the months of December 1993 and January 1994, the PBGC, which currently is located at 2020 K Street, NW., Washington, DC 20006–1860, will be moving its offices. The PBGC's new address is: Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026. This change is limited to the PBGC's offices; post office box numbers and other addresses (e.g., the Georgia addresses used for filing premium forms and payments) are not affected.

The PBGC will begin accepting mail and delivery at the new 1200 K Street address on December 6, 1993. By the time the move has been completed in late January 1994, the United States Postal Service will not be delivering mail to the old 2020 K Street address, and the PBGC will not be accepting hand delivery at that address.

New Telephone Numbers

As of today, the PBGC anticipates that the following new telephone numbers will be in service on the dates indicated—

(1) PBGC general number: 202–326–4000 as of December 20, 1993 (202–778–8800 before that date) (202–326–4179 for TTY and TDD as of January 24, 1994 (202–778–1958 before that date));

(2) Case Operations and Compliance Department: 202–326–4000 as of December 20, 1993 (202–778–8800 before that date);

(3) Premium Operations Division: 202–326–4061 as of January 10, 1994 (202–778–8825 before that date);

(4) Participant Services Division: 202–326–4100 as of January 24, 1994 (202–778–8853 before that date);

(5) Corporate Finance and Negotiations Department: 202–326–4070 as of December 6, 1993 (202–778–8895 before that date);

(6) Disclosure officer: 202–326–4040 as of December 6, 1993 (202–778–8839 before that date);

(7) Office of the General Counsel: 202–326–4020 (for general inquiries) and 202–326–4024 (for regulatory matters as of December 20, 1993 (202–778–8820 and 202–778–8850, respectively, before that date).

Issued in Washington, DC this 23rd day of November, 1993.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 93–29268 Filed 11–29–93; 8:45 am]

BILLING CODE 7708–01–M

POSTAL RATE COMMISSION

Commission Visit

November 24, 1993.

Notice is hereby given that on December 8 through December 9, 1993, members of the Commission and certain advisory staff personnel will visit the mailing operations and/or manufacturing facilities/printing plants of the following firms:

December 8—Florida Gift Fruit Shippers, Orlando, FL

December 9—Deluxe Check Printers, Inc., and American Express, Plantation, FL

A report of the visits will be on file in the Commission's Docket Room. For further information contact Charles L. Clapp, Secretary of the Commission at 202–789–6840.

Cyril J. Pittack,

Acting Secretary.

[FR Doc. 93–29333 Filed 11–29–93; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–33235; File No. SR–Amex–93–31]

November 22, 1993.

Self-Regulatory Organizations; Filing of Proposed Rule Change by the American Stock Exchange, Inc. ("Amex") Relating to Specialist Contact With Listed Companies and Member Organizations

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 October 22, 1993, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to adopt new Rule 194, which would require: (1) Quarterly contact by a representative of each specialist unit with the issuer of each of the unit's specialty stocks, and (2) semiannual contact with the ten member organizations of the Exchange that are significant customers of the specialist unit and any other member organizations that request such contact. New Rule 194 also would require specialist units to report periodically to the Exchange a record of these contacts. In addition, the Exchange is proposing to amend Rule 590(h) to give the Minor Floor Violation disciplinary Committee the authority to impose fines for violations of Rule 194.[1]

The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change

[1] On November 4, 1993, the Amex requested approval, under Rule 19d–1(c)(2), 17 CFR 240.19d–1(c)(2), to amend its Rule 19d–1 minor rule violation enforcement and reporting plan to include proposed Rule 194. *See* letter from Geraldine M. Brindisi, Corporate Secretary, Amex, to Louis A. Randazzo, Attorney, Commission, dated November 3, 1993.

and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Although many specialist units currently maintain regular contact with their listed companies and with their member firm customers, there is no Exchange rule requiring such contact. Regular contact is important in that it fosters greater understanding on the part of the specialist, member firm and listed company communities as to their respective needs and functions.

Accordingly, the Exchange is proposing to adopt new Rule 194, which requires: (1) Quarterly contact by a representative of each specialist unit with the issuer of each of the unit's specialty stocks; and (2) semiannual contact with the ten member organizations of the Exchange that are significant customers of the specialist unit and any other member organizations that request such contact. Specialists would be required to report to the Exchange, on a regular basis, all contacts with their listed companies and member organizations on new Form 194.

Under the new rule, a representative of each specialist unit would be required each quarter to contact each company (Corporate Secretary or higher) or a member of the company's investor relations staff. Every reasonable effort must be made to have at least one of such quarterly contacts during each calendar year be an in-person visit, while the other contacts may be by telephone. An in-person contact would include the following: A meeting at the company's corporate headquarters, attendance at an Exchange-sponsored function for listed companies or another meeting.

A representative of each specialist unit would also be required to contact semiannually representatives of the ten member organizations of the Exchange that are the most significant customers of the specialist unit and any other member organizations that request such contact. The Exchange will advise each specialist unit as to which member organizations are its ten most significant customers. The individual contacted must be a senior officer of the member organization in question, who does not spend a substantial portion of his or her time on the floor of the Exchange and who has general responsibility for directing order flow to the floor of the Exchange in stocks registered with the specialist unit. The contact may be by telephone, but specialists will be encouraged to extend an invitation for an in-person meeting annually to a representative of each member organization contacted.

Specialists will be required to report, on new Form 194, their required contacts with their listed companies at the end of each calendar quarter and with member organizations semiannually.[2] The Exchange is also proposing that rule 590(h) be amended to provide the Minor Floor Violations Disciplinary Committee with the authority to impose a fine for violation of Rule 194.

The proposed rule can be expected to enhance the specialist's communication function, and lead to greater understanding and cooperation among the various communities with the Exchange. In particular, these contacts will foster increased knowledge of the specialist function, the operation of the Exchange market, and the markets that are maintained in various stocks, and will provide listed companies and member organizations with a forum in which to raise any service or operational concerns which they may have.

It should also be noted that the new rule is similar to New York Stock Exchange rule 106, which was adopted in 1989 in response to similar concerns.

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that it promotes just and equitable principles of trade and fosters cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, by encouraging and mandating increased communication among specialists, issuers and member firms.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

[2] Amex Form 194 will be used by specialist units to report the contacts required under Rule 194.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve 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 Room. Copies of the filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-93–31 and should be submitted by December 23, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–29216 Filed 11–29–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34-3326; File No. SR-NASD-93-36]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Extension of Public Comment Period for Proposed Rule Change

On June 21, 1993, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1). The proposed rule change would amend section 41 of the Code of Arbitration Procedure to permit parties in arbitration proceedings involving at least $250,000 to make prehearing settlement offers before an arbitration hearing is set to begin. The proposed rule change would require parties who reject such settlement offers to pay the offering party's reasonable costs and attorneys fees if the award granted in the arbitration was not more favorable to the rejecting party than the settlement offer. The proposed rule change would expire after two years.

Notice of the proposed rule change was provided by the issuance of a Commission release (Securities Exchange Act Release No. 33081, October 20, 1993), and by publication in the **Federal Register** (58 FR 57881, October 27, 1993).

The Commission has received several requests for an extension of the time period for public comment on the proposed rule change.[1] The Commission hereby extends the period for public comment on the proposed rule change until December 23, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-29217 Filed 11-29-93; 8:45 am]

BILLING CODE 8010-01-M

[1] By letter dated November 19, 1993, the NASD has consented to an extension of the comment period. *See* letter form Suzanne E. Rothwell, Associate General Counsel, NASD to Selwyn J. Notelovitz, Branch Chief, Commission, dated November 19, 1993.

[2] 17 CFR 200.30-3(a)(12); 17 CFR 200.30-3(a)(31).

[Release No. 34-33233; International Series Release No. 614; File No. 600-20]

Self-Regulatory Organizations; International Securities Clearing Corporation; Order Approving Extension of Temporary Registration as a Clearing Agency

November 22, 1993.

Pursuant to section 19(a) of the Securities Exchange Act of 1934 ("Act"),[1] on August 23, 1993, the International Securities Clearing Corporation ("ISCC") filed with the Securities and Exchange Commission ("Commission"), an amendment to its Form CA-1 requesting that the Commission extend ISCC's temporary registration as a clearing agency until November 30, 1995.[2] Notice of ISCC's amended application and request for extension of temporary registration appeared in the **Federal Register** on September 15, 1993.[3] No comments were received. This order approves ISCC's amendment by extending ISCC's registration as a clearing agency until November 30, 1995.

On May 12, 1989, the Commission granted the application of ISCC for registration as a clearing agency, pursuant to Sections 17A and 19(a) of the Act,[4] and Rule 17Ab2-1(c)[5] thereunder, for a period of 18 months.[6] At that time, the Commission granted ISCC an exemption from compliance with section 17A(b)(3)(C) of the Act.[7] The Commission subsequently extended ISCC's temporary registration as a clearing agency and temporary exemption from section 17A(b)(3)(C) of the Act until November 30, 1993.[8]

As discussed in the order first granting ISCC's temporary registration as a clearing agency, one of the primary reasons for ISCC's registration was to enable it to provide for the safe and efficient clearance and settlement of international securities transactions by providing links to centralized, efficient processing systems in the United States and at foreign financial institutions. Although ISCC has continued to make progress in this area in the past 24 months,[9] ISCC's capacity and linkage agreements with foreign financial institutions have not yet been adequately challenged. In addition, ISCC does not yet have a significant enough participant base to permit its active participants to participate in the nomination and election of ISCC directors without giving these participants an undue influence in the voting and nomination process.[10]

ISCC has functioned effectively as a registered clearing agency for the past 54 months, and since 1986 has functioned in this capacity under the terms of several no-action letters issued by the Commission's Division of Market Regulation.[11]

Accordingly, in light of the past performance of ISCC, as well as the need for ISCC to provide continuity of services to its participants and members, the Commission believes that "good cause" exists, pursuant to Section 19(a) of the Act, for extending ISCC's registration for an additional 24 months.[12]

It Is Therefore Ordered that ISCC's registration as a clearing agency be, and hereby is, approved until November 30, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-29215 Filed 11-29-93; 8:45 am]

BILLING CODE 8010-01-M

[1] 15 U.S.C. 78s(a) (1988).

[2] Letter from Karen Saperstein, General Counsel, ISCC, to Christine Sibille, Attorney, Division of Market Regulation, Commission (August 17, 1993) ("Registration Letter").

[3] Securities Exchange Act Release No. 32858 (September 9, 1993), 58 FR 48398.

[4] 15 U.S.C. 78q-1, 78s(a) (1988).

[5] 17 CFR 240.17Ab2-1(c).

[6] Securities Exchange Act Release No. 26812 (May 12, 1989), 54 FR 21691.

[7] 15 U.S.C. 78q-1(b)(3)(C) (1988). Section 17A(b)(3)(C) of the Act requires that ISCC's rules assure fair representation of its shareholders (or members) and participants in the selection of its directors and administration of its affairs.

[8] Securities Exchange Act Release Nos. 28606 (November 16, 1990), 55 FR 47976; and 30005 (November 27, 1991), 56 FR 63747.

[9] For example, ISCC recently established a data transmission link with Euroclear Systems. Securities Exchange Act Release No. 32564 (June 30, 1993), 58 FR 36722.

[10] Registration Letter, note 2, *supra*. Only twenty of the thirty-two ISCC members curently use ISCC services.

[11] See Securities Exchange Act Release No. 26812, note 4, *supra*, at 21692.

[12] On or before the end of 24 months, the Commission expects to consider whether to grant ISCC permanent registration as a clearing agency.

[13] 17 CFR 200.30-3(a)(50) (1992).

[Release No. 34-33234; File No. SR-OCC-89-13]

Self-Regulatory Organizations; The Options Clearing Corporation; Withdrawal of a Proposed Rule Change Relating to Netting of Cash Settlement Obligations

November 22, 1993.

On October 27, 1989, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") pursuant

to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] a proposed rule change regarding procedures for netting cash settlement obligations. Notice of the proposal was published in the **Federal Register** on November 21, 1989.[2] On November 4, 1993, OCC withdrew the proposal.[3]

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–29218 Filed 11–29–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19889; 812–8400]

Dean Witter Select Equity Trust, Selected Opportunities Series

November 22, 1993.

AGENCY: Securities and Exchange Commission (the "SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: Dean Witter Select Equity Trust, Selected Opportunities Series.

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from the provisions of section 12(d)(3).

SUMMARY OF APPLICATION: Applicant seeks a conditional order on behalf of its series (the "Series") to permit each Series to invest up to ten percent of its total assets in securities of issuers that derived more than fifteen percent of their gross revenues in their most recent fiscal year from securities related activities.

FILING DATE: The application was filed on May 12, 1993 and amended on November 19, 1993.

HEARING OR NOTIFICATION OF HEARING: Interested persons may request a hearing on the application 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 December 17, 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 notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, c/o Dean Witter Reynolds Inc., Two World Trade Center, New York, New York 10048, Attn: Michael D. Browne.

FOR FURTHER INFORMATION CONTACT: Felicia H. Kung, Senior Attorney, at (202) 504–2803, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations:

1. Each Series will be a series of Dean Witter Equity Trust, Selected Opportunities Series, a unit investment trust registered under the Act. Dean Witter Reynolds Inc. ("Dean Witter") is applicant's depositor (the "Sponsor").

2. Each Series' investment objective is to provide total return through a combination of potential capital appreciation and current dividend income. Each Series will invest approximately ten percent, but in no event more than 10.5 percent,[1] of the value of its total assets in each of the ten common stocks unaffiliated with the Sponsor[2] in the Dow Jones Industrial Average ("DJIA") with the highest dividend yields as of its initial date of deposit, and hold those stocks for approximately one year.

3. The DJIA comprises 30 widely-held common stocks listed on the New York Stock Exchange which are chosen by the editors of The Wall Street Journal. The DJIA is the property of Dow Jones & Company, Inc., which is not affiliated with the Sponsor or any Series, and does not participate in any way in the creation of any Series or the selection of its stocks.

4. The securities deposited in each Series will be chosen solely according to the formula described above, and will not necessarily reflect the research opinions or buy or sell recommendations of the Sponsor. The Sponsor will have no discretion as to which securities are purchased. Securities deposited in a Series may include securities of issuers that derived more than fifteen percent of their gross revenues in their most recent fiscal year from securities related activities.

5. During the 90-day period following the initial date of deposit, the Sponsor may deposit additional securities while maintaining to the extent practicable the original proportionate relationship among the number of shares of each stock in the portfolio. Deposits made after this 90-day period must replicate exactly (subject to certain limited exceptions) the proportionate relationship among the face amounts of the securities comprising the portfolio at the end of the initial 90-day period, whether or not a stock continues to be among the ten highest dividend yielding stocks.

6. A Series' portfolio will not be actively managed. Sales of portfolio securities will be made in connection with redemptions of units issued by a Series and at termination of the Series. The Sponsor has no discretion as to when securities will be sold except that it is authorized to sell securities in extremely limited circumstances, namely, upon failure of the issuer of a security in a Series to declare or pay anticipated cash dividends, institution of certain materially adverse legal proceedings, default under certain documents materially and adversely affecting future declaration or payment of dividends, or the occurrence of other market or credit factors that in the opinion of the Sponsor would make the retention of such securities in a Series detrimental to the interests of the unitholders. The adverse financial condition of an issuer will not necessarily require the sale of its securities from a Series' portfolio.

Applicant's Legal Analysis

1. Section 12(d)(3), with limited exceptions, prohibits an investment company from acquiring any security issued by any person who is a broker, dealer, underwriter, or investment adviser. Rule 12d3–1(b) exempts the purchase of securities of an issuer that derived more than fifteen percent of its gross revenues in its most recent fiscal year from securities related activities,

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 27444 (November 15, 1989), 54 FR 48175.

[3] Letter from James C. Yong, Vice President and Deputy General Counsel, OCC, to Jerry W. Carpenter, Branch Chief, Division of Market Regulation, Commission (October 28, 1993).

[1] Dean Witter will attempt to purchase securities so that each of the ten common stocks in a Series' portfolio represents ten percent of the value of a Series' total assets on the initial date of deposit. Dean Witter may purchase the securities in odd lots in order to achieve this goal. However, it is more efficient if securities are purchased in 100 share lots and 50 share lots. As a result, a Series may purchase securities of a securities related issuer which represent over ten percent, but in no event more than 10.5 percent, of a Series' assets on the initial date of deposit to the extent necessary to enable Dean Witter to meet its purchase requirements and to obtain the best price for the securities.

[2] Sears, Roebuck & Company ("Sears"), a company whose common stock is included in the DJIA, is currently excluded from the portfolios of any Series because Sears is an affiliate of the Sponsor, as defined by the Act. In the future, if Sears ceases to be an affiliate of the Sponsor, the portfolio of a Series may include Sears.

provided that, among other things, immediately after such acquisition, the acquiring company has invested not more than five percent of the value of its total assets in securities of the issuer. Notwithstanding the above, rule 12d3–1 prohibits any registered investment company from acquiring any security issued by that company's investment adviser, promoter, or principal underwriter or any affiliated person of such investment adviser, promoter, or principal underwriter that is a securities related business, with certain limited exceptions.

2. Applicant seeks an exemption from the provisions of section 12(d)(3) to permit any Series to invest up to approximately ten percent, but in no event more than 10.5 percent, of the value of its total assets in securities of an issuer that derives more than fifteen percent of its gross revenues from securities related activities. Applicant and each Series will comply with all of the provisions of rule 12d3–1, except for the five percent limitation on the amount of assets that may be invested in securities of issuers that derived more than fifteen percent of their gross revenues from securities related activities in their most recent fiscal year.

3. Applicant asserts that section 12(d)(3) was intended to prevent investment companies from exposing their assets to the entrepreneurial risks of securities related businesses, to prevent potential conflicts of interest, and to eliminate certain reciprocal practices between investment companies and securities related businesses.

4. One potential conflict discussed by applicant could occur if an investment company purchases securities or other interests in a broker-dealer to reward that broker-dealer for selling fund shares, rather than solely on investment merit. Applicant argues that this concern does not arise in connection with its application because neither the applicant nor the Sponsor has discretion in choosing the securities or percentage amount purchased. The security must first be included in the DJIA, which is unaffiliated with the Sponsor and applicant, and must also qualify as one of the ten highest dividend yielding securities as calculated by the objective formula described above.

5. Applicant also states that the effect of a Series' purchase on the stock of parents of broker-dealers would be *de minimis*. Applicant asserts that the common stocks of securities related issuers represented in the DJIA are widely held, have active markets, and that potential purchases by any Series would represent an insignificant amount of the outstanding common stock and the trading volume of any of these issues. According to applicant, it is highly unlikely that purchases of these securities by a Series would have any significant impact on the market value of any such securities.

6. Another potential conflict of interest discussed by applicant could occur if an investment company directed brokerage to a broker-dealer in which the company has invested to enhance the broker-dealer's profitability or to assist it during financial difficulty, even though that broker-dealer may not offer the best price and execution. To preclude this type of conflict, applicant and each Series agree, as a condition of this application, that no company held in the portfolio of a Series nor any affiliate thereof will act as a broker for any Series in the purchase or sale of any security for its portfolio.

7. Applicant states that the requested relief is 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.

Condition

Applicant agrees that the requested exemptive order may be conditioned upon no company held in the portfolio of a Series, nor any affiliate thereof, acting as broker for any Series in the purchase or sale of any security for the Series' portfolio.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–29219 Filed 11–29–93; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 19890; 811–5508]

MFS Lifetime Intermediate Fund; Application

November 22, 1993.

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

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 ("Act")

APPLICANT: MFS Lifetime Intermediate Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATES: The application was filed on November 12, 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 December 20, 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, 500 Boylston Street, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Staff Attorney, at (202) 272–7027, or C. David Messman, Branch Chief, at (202) 272–3018 (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. Applicant is a non-diversified open-end management investment company organized as a Massachusetts business trust. On March 18, 1988, applicant filed a notification of registration pursuant to section 8(a) of the Act and a registration statement pursuant to the Securities Act of 1933. The registration statement became effective on July 20, 1988, and applicant commenced its initial public offering on or about the effective date.

2. On June 3, 1993, applicant and MFS Series Trust II entered into an agreement for the purchase of the applicant's assets. The Agreement provided that applicant would transfer all of its assets and liabilities to the MFS Intermediate Income Fund (the "Acquiring Fund"), a portfolio of MFS Series Trust II, in exchange for Class B shares of beneficial interest of the Acquiring Fund.

3. On April 14, 1993, applicant's board of trustees approved the reorganization. In accordance with rule 17a–8 of the Act, applicant's trustees determined that the sale of applicant's assets to the Acquiring Fund was in the best interests of applicant's shareholders, and that the interests of

the existing shareholders would not be diluted as a result.[1]

4. Proxy materials dated June 11, 1993 were distributed to applicant's shareholders of record as of June 1, 1993. Definitive proxy materials soliciting shareholder approval of the reorganization were filed with the SEC on June 14, 1993. The reorganization was approved, in accordance with Massachusetts law, by applicant's shareholders at a meeting held on July 30, 1993.

5. On September 7, 1993, the reorganization was consummated. Applicant transferred all its assets and liabilities to the Acquiring Fund. In exchange for $499,884,985 of net assets transferred to the Acquiring Fund, applicant received 55,069,919.480 Class B shares at a net asset value per share of $9.08. The exchanges were made at net asset value determined as of the opening of business on September 7, 1993. The shares received in exchange for applicant's assets were distributed to applicant's shareholders pro rata in accordance with their respective interests in applicant.

6. The Acquiring Fund assumed all expenses in connection with the reorganization. These expenses included legal, accounting, printing, transfer agency, proxy solicitor and other expenses totalling approximately $46,558.

7. As of the date of the amended application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–29220 Filed 11–29–93; 8:45 am]

BILLING CODE 8010–01–M

[1] Applicant and the Acquiring Fund may be deemed to be affiliated persons of each other by reason of having a common investment adviser. Although purchases and sales between affiliated persons generally are prohibited by section 17(a) of the Act, rule 17a–8 provides an exemption for certain purchases and sales among investment companies that are affiliated persons of each other solely by reason of having a common investment adviser, common directors, and/or common officers.

[Investment Company Act Rel. No. 19891; 811–3016]

MFS Municipal Bond Trust; Application

November 22, 1993.

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

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: MFS Municipal Bond Trust.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on November 12, 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 December 20, 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, 500 Boylston Street, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Staff Attorney, at (202) 272–7027, or C. David Messman, Branch Chief, at (202) 272–3018 (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. Applicant is a diversified open-end management investment company organized as a Massachusetts business trust. On March 21, 1980, applicant filed a notification of registration pursuant to section 8(a) of the Act and a registration statement pursuant to the Securities Act of 1933. The registration statement became effective on April 4, 1980, and applicant commenced its initial public offering on or about the effective date.

2. On June 9, 1993, applicant and MFS Fixed Income Trust entered into an agreement for the purchase of the applicant's assets. The Agreement provided that applicant would transfer all of its assets and liabilities to the MFS Municipal Limited Maturity Fund (the "Acquiring Fund"), a portfolio of MFS Fixed Income Trust, in exchange for Class A shares of beneficial interest on the Acquiring Fund.

3. On April 21, 1993, applicant's board of trustees approved the reorganization. In accordance with rule 17a–8 of the Act, applicant's trustees determined that the sale of applicant's assets to the Acquiring Fund was in the best interests of applicant's shareholders, and that the interests of the existing shareholders would not be diluted as a result.[1]

4. Proxy materials dated June 9, 1993 were distributed to applicant's shareholders of record as of June 7, 1993. Definitive proxy materials soliciting shareholder approval of the reorganization were filed with the SEC on June 17, 1993. The reorganization was approved, in accordance with Massachusetts law, by applicant's shareholders at a meeting held on August 5, 1993.

5. On September 7, 1993, the reorganization was consummated. Applicant transferred all its assets and liabilities to the Acquiring Fund. In exchange for $88,470,898.73 of net assets transferred to the Acquiring Fund, applicant received $11,426,898.73 Class A shares at a net asset value per share of $7.74. The exchanges were made at net asset value determined as of the opening of business on September 7, 1993. The shares received in exchange for applicant's assets were distributed to applicant's shareholders pro rata in accordance with their respective interests in applicant.

6. The Acquiring Fund assumed all expenses in connection with the reorganization. These expenses included legal, accounting, printing, transfer agency, proxy solicitor and other expenses totaling approximately $18,759.

7. As of the date of the amended application, applicant had no shareholders, assets, or liabilities.

[1] Applicant and the Acquiring Fund may be deemed to be affiliated persons of each other by reason of having a common investment adviser. Although purchases and sales between affiliated persons generally are prohibited by section 17(a) of the Act, rule 17a–8 provides an exemption for certain purchases and sales among investment companies that are affiliated persons of each other solely by reason of having a common investment adviser, common directors, and/or common officers.

Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–29221 Filed 11–29–93; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 19892; 811–2202]

MFS Research Fund; Application

November 22, 1993.

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

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: MFS Research Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on November 12, 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 December 20, 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, 500 Boylston Street, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Staff Attorney, at (202) 272–7027, or C. David Messman, Branch Chief, at (202) 272–3018 (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. Applicant is a diversified open-end management investment company organized as a Massachusetts business trust. On June 25, 1971, applicant filed a notification of registration pursuant to section 8(a) of the Act and its original registration statement pursuant to section 8(b) of the Act. Applicant filed a registration statement on Form S–5 pursuant to the Securities Act of 1933. The registration statement became effective on or about December 13, 1971, and applicant commenced its initial public offering on or about the effective date.

2. On April 21, 1993, applicant and MFS Series Trust V entered into an agreement for the purchase of the applicant's assets. The Agreement provided that applicant would transfer all of its assets and liabilities to the MFS Research Fund (the "Acquiring Fund"), a portfolio of MFS Series Trust V, in exchange for Class A shares of beneficial interest of the Acquiring Fund.

3. On April 21, 1993, applicant's board of trustees approved the reorganization. In accordance with rule 17a–8 of the Act, applicant's trustees determined that the sale of applicant's assets to the Acquiring Fund was in the best interests of applicant's shareholders, and that the interests of the existing shareholders would not be diluted as a result.[1]

4. Proxy materials dated June 9, 1993 were distributed to applicant's shareholders of record as of June 7, 1993. Definitive proxy materials soliciting shareholder approval of the reorganization were filed with the SEC on June 18, 1993. The reorganization was approved, in accordance with Massachusetts law, by applicant's shareholders at a meeting held on August 5, 1993.

5. On September 7, 1993, the reorganization was consummated. Applicant transferred all its assets and liabilities to the Acquiring Fund. In exchange for $287,320,364.80 net assets transferred to the Acquiring Fund, applicant received 20,347,155.662 Class A shares at a net asset value per share of $14.12. The exchanges were made at net asset value determined as of the opening of business on September 7, 1993. The shares received in exchange for applicant's assets were distributed to applicant's shareholders pro rata in accordance with their respective interests in applicant.

6. The Acquiring Fund assumed all expenses in connection with the reorganization. These expenses included legal, accounting, printing, transfer agency, proxy solicitor and other expenses totalling approximately $34,733.

7. As of the date of the amended application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–29222 Filed 11–29–93; 8:45 am]

BILLING CODE 8010–01–M

[1] Applicant and the Acquiring Fund may be deemed to be affiliated persons of each other by reason of having a common investment adviser. Although purchases and sales between affiliated persons generally are prohibited by section 17(a) of the Act, rule 17a–8 provides an exemption for certain purchases and sales among investment companies that are affiliated persons of each other solely by reason of having a common investment adviser, common directors, and/or common officers.

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2691]

Florida; Declaration of Disaster Loan Area

Alachua County and the contiguous counties of Bradford, Clay, Columbia, Gilcrest, Levy, Marion, Putnam, and Union in the State of Florida constitute a disaster area as a result of damages caused by heavy rain, high winds, and tornadoes which occurred October 30–31, 1993. Applications for loans for physical damage may be filed until the close of business on January 18, 1994 and for economic injury until the close of business on August 16, 1994 at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308, or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	7.250
Homeowners without credit available elsewhere	3.625
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000

	Percent
Others (Including Non-profit Organizations) With Credit Available Elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 269112 and for economic injury the number is 811300.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: November 16, 1993.

Erskine B. Bowles,

Administrator.

[FR Doc. 93–29271 Filed 11–29–93; 8:45 am]

BILLING CODE 8025–01–M

Senior Executive Service Performance Review Board List of Members

AGENCY: Small Business Administration.

ACTION: Listing of personnel serving as members of this agency's senior executive service performance review boards.

SUMMARY: Section 4314(c)(4) of title 5, U.S.C. requires Federal agencies to publish notification of the appointment of individuals who serve as members of that Agency's Performance Review Boards (PRB). The following is a listing of those individuals currently serving as members of this Agency's PRB:

1. Bill Combs, Special Assistant to the Administrator
2. John R. Cox, Acting Assistant Administrator for Financial Assistance
3. Samuel A. Gentile, Deputy to the ADA for Business Development
4. James O. Gordon, District Director, Washington District Office
5. George H. Robinson, Director, Equal Employment Opportunity and Compliance
6. Carolyn J. Smith, Director of Personnel
7. John T. Spotila, General Counsel
8. Mark Stephens, Associate General Counsel for SBIC Litigation/ Liquidation
9. Kris Swedin, Assistant Administrator for Congressional and Legislative Affairs
10. Janice E. Wolfe, Acting Associate Deputy Administrator for Finance, Investment and Procurement

Dated: November 22, 1993.

Erskine B. Bowles,

Administrator.

[FR Doc. 93–29274 Filed 11–29–93; 8:45 am]

BILLING CODE 8025–01–M

Byrd Business Investments, L.P.; Issuance of a Small Business Investment Company License

[License No. 04/04–0259]

On May 18, 1993, a notice was published in the **Federal Register** (58 FR 29020) stating that an application has been filed by Byrd Business Investments, L.P., 2000 Glen Echo Road, Suite 100, Nashville, Tennessee 37215, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1993)) for a license to operate as a small business investment company.

Interested parties were given until close of business June 17, 1993 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 04/04–0259 to Byrd Business Investments, L.P., to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 22, 1993.

Charles R. Hertzberg,

Associate Administrator for Investment.

[FR Doc. 93–29272 Filed 11–29–93; 8:45 am]

BILLING CODE 8025–01–M

[License No. 02/02–5388]

Transportation Capital Corp.; Filing of an Application for Transfer of Ownership and Control

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1993)) by Transportation Capital Corporation, 315 Park Avenue South, New York, New York 10010, for transfer of ownership and control of its license under the Small Business Investment Act of 1958, as amended, (the Act) (15 U.S.C. *et. seq.*). Transportation Capital Corporation was licensed June 23, 1980.

TCC Purchase Company owns 1.3 percent of Transportation Capital Corporation. TCC Purchase Company is wholly-owned by LCN Investments, Inc. LCN Investments, Inc. has acquired 97.4 percent of the issued and outstanding capital stock of Transportation Capital Corporation and will make it wholly-owned by LCN Investments, Inc. Through LCN Investments, Inc. and TCC Purchase Company, Leucadia National Corporation will be the beneficial owner of 98.7 percent of the voting shares of Transportation Capital Corporation.

The proposed officers, directors and shareholders are:

Name	Title	Percentage of ownership
Paul J. Borden, 315 Park Ave. So., New York, NY 10010.	Chairman, President and Director..	0
Jonathan Hirsch, 315 Park Ave. So., New York, NY 10010.	Secretary, Treasurer Vice President & Director.	0
Lawrence D. Glaubinger, 315 Park Ave. So., New York, NY 10010.	Director	0
Adrienne Bernstein, 315 Park Ave. So., New York, NY 10010.	Director	0
Murray Syrok, 315 Park Ave. So., New York, NY 10010.	Director	0
David S. Weber, 315 Park Ave. So., New York, NY 10010.	Director	0
Mark Hornstein, 315 Park Ave. So., New York, NY 10010.	Vice President	0
TCC Purchase Company, 315 Park Ave. So., New York, NY 10010.	Shareholder	1.3
LCN Investments, Inc., 315 Park Ave. So., New York, NY 10010.	Shareholder	97.4

The applicant will begin operations with a capitalization of $6,561,380.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street, SW, Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in New York, New York.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies).

Dated: November 22, 1993.

Charles R. Hertzberg,

Associate Administrator for Investment.

[FR Doc. 93–29273 Filed 11–29–93; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Receipt of Noise Compatibility Program and Request for Review; Roanoke Regional Airport

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed noise compatibility program that was submitted for the Roanoke Regional Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193 (hereinafter referred to as "the Act") and 14 CFR Part 150 by the Roanoke Regional Airport Commission. This program was submitted subsequent to a determination by FAA that associated noise exposure maps submitted under 14 CFR part 150 at the Roanoke Regional Airport were in compliance with applicable requirements effective June 1, 1992. The proposed noise compatibility program will be approved or disapproved on or before May 3, 1994.

EFFECTIVE DATE: The effective date of the start of FAA's review of the noise compatibility program is November 15, 1993. The public comment period ends December 30, 1993.

FOR FURTHER INFORMATION CONTACT: Frank Squeglia, Fitzgerald Federal Building, JFK International Airport, Jamaica, New York 11430, (718) 553–0902. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed noise compatibility program for the Roanoke Regional Airport, which will be approved or disapproved on or before May 3, 1994. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations FAR Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the noise compatibility program for Roanoke Regional Airport, effective on November 15, 1993. It was requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(d) of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of Noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before May 3, 1994.

The FAA's detailed evaluation will be conducted under the provision of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden in interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land use and preventing the introduction of additional noncompatibility land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW, Room 617, Washington, DC 20591

Federal Aviation Administration, Eastern Region—AEA–610, Fitzgerald Federal Building, JFK International Airport, Jamaica, New York 11430

Roanoke Regional Airport Commission, Woodrum Field, 5202 Aviation Drive, NW., Roanoke, VA 24012

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Jamaica, New York, November 15, 1993.

Louis P. DeRose,

Manager, Airports Division.

[FR Doc. 93–29302 Filed 11–29–93; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–93–51]

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 chapter 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 December 20, 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 November 23, 1993.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 27501.
Petitioner: Cessna Aircraft Company.
Sections of the FAR Affected: 14 CFR 25.562.
Description of Relief Sought/ Disposition:

To permit the petitioner relief from the dynamic test standards in § 25.562, as incorporated by Amendment 25–64 effective June 16, 1988, for a cockpit forward observer's seat on the Model 750, Citation X (ten) airplane. The seat will be used exclusively by the FAA for en route inspections.

Dispositions of Petitions

Docket No.: 26006.
Petitioner: Beech Aircraft Corporation.
Sections of the FAR Affected: 14 CFR 47.69(b).
Description of Relief Sought/ Disposition:

To permit the petitioner to continue to conduct flights outside the United States.

Temporary grant, October 25, 1993, Exemption No. 5125B

Docket No.: 27155.
Petitioner: Saab Aircraft AB.
Sections of the FAR Affected: 14 CFR 25.562(b)(2) and (c)(5).
Description of Relief Sought/ Disposition:

To extend Exemption No. 5623 to allow implementation of Head Injury Criterion and floor distortion requirements be delayed until June, 1994, due to a lack of a production solution by the flight deck-seat and interior furnishings suppliers.

Partial grant, November 1, 1993, Exemption No. 5623A

Docket No.: 27301.
Petitioner: Skydive City, Inc.
Sections of the FAR Affected: 14 CFR 105.43(a).
Description of Relief Sought:

To allow foreign non-student skydivers to participate in events at its facilities without having to comply with the parachute equipment and packing requirements of this section.

Grant, November 16, 1993, Exemption No. 5791

Docket No.: 27384.
Petitioner: The Boeing Company.
Sections of the FAR Affected: 14 CFR 25.1435(b)(1).
Description of Relief Sought:

To amend Exemption No. 5758 to allow the petitioner to conduct hydraulic system testing at 3400 psig in lieu of 3600 psig, since the system relief valve cracking pressure setting is 3499 psig.

Grant, October 29, 1993, Exemption No. 5758A

Docket No.: 27450.
Petitioner: Emery Worldwide Airlines.
Sections of the FAR Affected: 14 CFR 121.358.
Description of Relief Sought/ Disposition:

To permit an extension to the December 30, 1993 date for the installation of either an approved airborne windshear warning and flight guidance system, an approved airborne detection and avoidance system, or an approved combination of the systems in the petitioner's aircraft.

Denial, November 12, 1993, Exemption No. 5789

Docket No.: 27499.
Petitioner: Dornier Luftfahrt GmbH.
Sections of the FAR Affected: 14 CFR 25.161(d).
Description of Relief Sought:

To allow the petitioner exemption from the engine out lateral/directional trim requirements of § 25.161(d).

Grant, November 5, 1993, Exemption No. 5785

[FR Doc. 93–29262 Filed 11–29–93; 8:45 am]
BILLING CODE 4910–13–M

Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly notice of PFC approvals and disapprovals. In October 1993, there were 11 applications approved.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IV of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: Columbus Airport Commission, Columbus, Georgia.
Application Number: 93–01–C–00–CSG.
Application Type: Impose and Use PFC Revenue.
PFC Level: $3.00.
Total Approved Net PFC Revenue: $534,633.
Earliest Permissible Charge Effective Date: December 1, 1993.
Estimated Charge Expiration Date: June 1, 1995.
Class of Air Carriers Not Required To Collect PFC's:
None.
Brief Description of Projects Approved To Use PFC Revenue:
Airfield signage,
Lighting rehabilitation runway 5/23 and taxiways B, C, D, E, and F,
Standby airfield generator,
Easements/approach clearing runways 12 and 23,
Taxiway F extension,
Rehabilitate runway 12/30,
Taxiway C reconstruction (design only),
Demolition of old terminal building,
Master plan update,
Acquisition of a 4-wheel drive vehicle.
Decision Date: October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Cathy Nelmes, Atlanta Airports District Office, (404 994–5306.

Public Agency: Metropolitan Knoxville Airport Authority, Knoxville, Tennessee.
Application Number: 93–01–C–00–TYS.
Application Type: Impose and Use PFC Revenue.
PFC Level: $3.00.
Total Approved Net PFC Revenue: $5,681,615.
Earliest Permissible Charge Effective Date: January 1, 1994.
Estimated Charge Expiration Date: January 1, 1997.
Class of Air Carriers Not Required To Collect PFC's:
On-demand air taxi/commercial operators.
Determination: Approved. Based on information submitted by the public agency, the FAA has determined that the proposed class accounts for less than 1 percent of the total enplanements at McGhee Tyson Airport.
Brief Description of Projects Approved for Collection and Use:
Master plan/Part 150 study updates,
Noise compatibility program,
Terminal improvements—wheelchair lift,
Taxiway and airfield project—reconstruct taxiway B–2,

Taxiway and airfield project—replace runway 5L/23R lighting,
Taxiway and airfield project—air carrier apron reseal joints,
Taxiway and airfield project—paved shoulder for taxiway B,
Runway 5R/23L improvements—pavement overlay—update runway lighting—lower Tennessee Valley Authority towers,
Airfield safety and security.

Brief Description of Projects Approved To Impose Only:

Property acquisition—phase I,
Terminal renovations—restrooms,
Terminal renovations—roadway retaining wall,
Taxiway A strengthening—light and pave shoulders,
Maintenance building improvements (snow removal equipment building),
Airfield equipment—snow removal equipment.

Brief Description of Projects Approved-in-Part for Collection and Use:

Terminal access roads.

Determination: The roadway immediately around the fuel farm area, the roadway through the rental car parking areas to the terminal physical plant area on the north side of the terminal, and the roadway from the crash fire rescue access through employee parking areas to the terminal physical plant area are not eligible. These service roads serve ineligible areas and, as such, are specifically ineligible.

Decision Date: October 6, 1993.

FOR FURTHER INFORMATION CONTACT: Jerry O. Bowers, Memphis Airports District Office, (901) 544–3495.

Public Agency: Monterey Peninsula Airport District, Monterey, California.

Application Number: 93–01–C–00–MRY.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.000.

Total Approved Net PFC Revenue: $3,960,855.

Earliest Permissible Charge Effective Date: January 1, 1994.

Estimated Charge Expiration Date: June 1, 2000.

Class of Air Carriers Not Required To Collect PFC's: Unscheduled/intermittent Part 135 air taxis.

Determination: Approved. Based on information submitted by the public agency, the FAA has determined that the proposed class accounts for less than 1 percent of the total enplanements at Monterey Peninasula Airport.

Brief Description of Projects Approved for Collection and Use:

Security access control system/flexible response,
Storm drain rehabilitation,
Taxiway/apron pavement rehabilitation,
Environmental assessment/westside access connection to Garden Road alignment study,
Airport signage system.

Brief Description of Projects Approved To Impose Only:

Residential soundproofing phases 2–5,
Terminal renovation/improvement,
Environmental impact review/environmental impact statement—"new northside" ground access road,
"New northside" ground access road,
"Old northside" road relocation,
Terminal road improvements (phase I),
Westside access connection to Garden Road.

Decision Date: October 8, 1993.

FOR FURTHER INFORMATION CONTACT: Joseph R. Rodriguez, San Francisco Airports District Office, (415) 876–2805.

Public Agency: Metropolitan Washington Airports Authority, Alexandria, Virginia.

Application Number: 93–01–C–00–IAD.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $199,752,390.

Earliest Estimated Charge Effective Date: January 1, 1994.

Estimated Charge Expiration Date: November 1, 2003.

Class of Air Carriers Not Required To Collect PFC's: Part 135 on-demand air taxis, both fixed wing and rotary.

Determination: Approved. Based on information submitted by the public agency, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Washington Dulles International Airport.

Brief Description of Projects Approved for Collection and Use:

New mid-field facilities, including aprons/taxiways and electrical service,
Mid-field apron, service building, and fuel line (bravo ramp),
Replace airfield lighting circuits,
Airfield signage,
Perimeter fencing,
North service road upgrades,
Reconstruct Dulles Access Highway and bridges,
Mobile lounge road and apron area,
Access road, third lane phase I,
Holding apron, runway 1R,
Holding apron, runway 19R,
Touchdown zone lighting, runway 1L
Extend taxiway E–2 to E–7,
Interim financing costs.

Decison Date: October 18, 1993.

FOR FURTHER INFORMATION CONTACT: Robert Mendez, Washington Airports District Office, (703) 285–2570.

Public Agency: Tulsa Airports Improvement Trust, Tulsa, Oklahoma.

Application Number: 93–02–U–00–TUL.

Application Type: Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $9,717,000.

Earliest Permissible Charge Effective Date: June 1, 1992.

Estimated Charge Expiration Date: August 1, 1995.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Projects Approved for Use:

Emergency communications equipment,
Aircraft rescue and firefighting (ARFF) vehicle replacement,
Taxiway Alpha holding apron and taxiway Delta reconstruction,
Taxiway X-ray extension,
Construct ARFF facility,
Taxiway Juliet extension,
Taxiway Whiskey reconstruction.

Decision Date: October 18, 1993.

FOR FURTHER INFORMATION CONTACT: Ben Guttery, Southwest Region Airports Division, (817) 624-5979.

Public Agency: Charlottesville-Albemarle Airport Authority, Charlottesville, Virginia.

Application Number: 93–02–U–00–ChO.

Application Type: Use PFC Revenue.

PFC Level: $2.00.

Total Approved Net PFC Revenue: $255,559.

Earliest Permissible Charge Effective Date: September 1, 1992.

Actual Estimated Charge Expiration Date: October 1, 1993.

Class of Air Carriers Not Required to Collect PFC's:

No change from previously approved application of June 11, 1992.

Brief Description of Projects Approved for Use:

Snow equipment storage building,
Snow vehicle/plow.

Decision Date: October 20, 1993.

FOR FURTHER INFORMATION CONTACT: Robert Mendez, Washington Airports District Office, (703) 285-2570.

Public Agency: Meridian Airport Authority, Meridian, Mississippi.

Application Number: 93-02-C-00-MEI.

PFC Level: $3.00

Total Approved PFC Revenue: $155,223.

Estimated Charge Effective Date: June 1, 1994.

Estimated Charge Expiration Date: August 1, 1996.

Class of Air Carriers Not Required to Collect PFC'S: None.

Brief Description of Projects Approved for Collection and Use:

Repave runway 4/22,
Repave north 1,500 feet of taxiway B,
Repave terminal building aircraft parking apron,
Terminal building phase 2A,
Runway/taxiway guidance signs,
Passenger access lift.

Brief Description of Project Withdrawn: Security vehicle.

Determination: The Meridian Airport Authority requested by telephone on September 30, 1993, that this project be withdrawn from the PFC application.

Decision Date: October 19, 1993.

FOR FURTHER INFORMATION CONTACT: Elton E. Jay, Jackson Airports District Office, (601) 965-4628.

Public Agency: Port of Seattle, Seattle, Washington.

Application Number: 93-02-C-00-SEA.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3,00.

Total Approved Net PFC Revenue: $47,500,500.

Earliest Permissible Charge Effective Date: January 1, 1994.

Estimated Charge Expiration Date: January 1, 1996.

Class of Air Carriers Not Required to Collect PFC'S: None.

Brief Description of Projects Approved for Collection 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,
Residential sound insulation, phase 8,
Passenger terminal apron replacement,
Airport comprehensive development plan and third runway environmental impact statement,
Aircraft rescue and firefighting vehicle,
Des Moines Creek relocation design,
Vacuum style runway sweeper,
Additional satellite transit station elevators.

Decision Date: October 25, 1993.

FOR FURTHER INFORMATION CONTACT: Renee Hall, Seattle Airports District Office, (206) 227-2662.

Public Agency: Columbus Municipal Airport Authority, Columbus, Ohio.

Application Number: 93-03-U-00-CMH.

Application Type: Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $23,611,963.

Earliest Permissible Charge Expiration Date: October 1, 1992.

Estimated Charge Expiration Date: September 1, 1996.

Class of Air Carriers Not Required to Collect PFC'S:

Previously approved in the July 14, 1992, and July 19, 1993 approvals.

Brief Description of Projects Approved for Use at Port Columbus International Airport:

Plans and specifications—school soundproofing,
Automated identification system (phase III),
Security vehicles,
Boundary survey,
School soundproofing (phase II),
Noise monitoring,
Residential soundproofing,
Escalator construction,
Crack seal and seal coat terminal apron,
Electronic monitoring of airfield lighting and vault work (engineering),
Snow removal equipment—three heavy trucks with snow plows,
Snow removal equipment—medium weight truck with plow,
Snow removal equipment—three spreaders,
North concourse expansion (engineering).

Brief Description of Projects Approved for Use at Bolton Field:

Bolton Field snow removal equipment/material storage building,
Bolton Field overlay Alpha ramp,
Snow removal truck.

Decision Date: October 27, 1993.

FOR FURTHER INFORMATION CONTACT: Dean Nitz, Detroit Airports District Office, (313) 487-7301.

Public Agency: City of Portland, Portland, Maine.

Application number: 93-01-C-00-PWM.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00

Total Approved Net PFC Revenue: $12,233,751.

Earliest Permissible Charge Effective Date: February 1, 1994.

Estimated Charge Expiration Date: May 1, 2001.

Class of Air Carriers Not Required To Collect PFC'S:

Air Taxi/commercial operators.

Determination: Approved. Based on information submitted by the public agency, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Portland International Jetport.

Brief Description of Projects Approved for Collection and Use:

Expand snow removal building,
Install guidance signs,
Update Jetport master plan,
Reconstruct west end ramp,
Replace baggage carousels,
Gate 4 expansion,
Terminal expansion,
Acquire wheelchair lift,
Pay PFC-enhanced bond financing costs.

Brief Descriptio of Projects Approved To Impose Only:

Extend terminal ramp,
Install residential soundproofing.

Decision Date: October 29, 1993.

FOR FURTHER INFORMATION CONTACT: Priscilla Soldan, New England Region Airports Division, (617) 238-7614.

Public Agency: Airport Authority of Washoe County, Reno, Nevada.

Application Number: 93-01-C-00-RNO.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $34,263,607.

Earliest Permissible Charge Effective Date: January 1, 1994.

Estimated Charge Expiration Date: May 1, 1999.

Class of Air Carriers Not Reqiored To Collect PFC'S:

Air taxi/commercial operators filing FAA Form 1800-31.

Determination: Approved. Based on information submitted by the public agency, the FAA has determined that the proposed class accounts for less than 1 percent of Reno Cannon International Airport's total annual enplanements.

Brief Description of Projects Approved for Collection and Use:

Letter of Intent, entitlement make-up,
Runway 16L/34R widening and extension,
Construct taxiways A, F, J, K, M, N, and P,
Extend taxiway B,
Construct high speed taxiways H and L,
Construct taxiway C,
Reconstruct runway 16R/34L,
Acquire land—BHR warehouse 4.53 acres—airport development,
Acquire land—air center 23.30 acres—airport development,
Acquire land—runway 16L/34R runway protection zone (RPZ)—29.76 acres—approach,
Acquire land—runway 34L RPZ—4.80 acres—approach,
Acquire land—11.55 acres—airport development,
Environmental assessment for runway 16L/34R,
Relocate FAA airport surveillance radar (FAA reimbursable agreement),
Relocate perimeter road,
Airfield drainage,
Reconstruct apron.

Airport Authority of Washoe County (AAWC) share of Federal grants,
A. Taxiway A reconstruction and taxiway B construction,
B. Taxiway N construction,
C. Security system, phases I & II,
D. Reconstruction of taxiways A, C, D, and E (Reno Stead airport),
Baggage claim expansion,
Air carrier access terminal compliance improvements,
Residential soundproofing pilot program,
Runways improvement program airfield drainage,
Terminal area ramp reconstruction,
Taxiway O reconstruction,
Concourse gate maximization.

Brief Description of Projects Approved for Impose Only:

Snow removal equipment,
Taxiway B south extension,
Perimeter road extension.

Brief Description of Project Disapproved To Impose Only:

Perimeter road extension (Reno Stead airport).

Determination: The FAA has determined that the public agency has not provided justification that this project meets objectives of § 158.15(a) as required under § 158.25(b)(7). The purposes cited by the public agency for this project were to serve the existing National Guard facility and to open a portion of the airfield to further commercial development. Although a short portion of this road would remove vehicular traffic from a small, remote portion of the apron, the AAWC has not provided evidence showing sufficient traffic to warrant a potential safety concern. Therefore, this project is disapproved for the imposition of a PFC.

Decision Date: October 29, 1993.

FOR FURTHER INFORMATION CONTACT: Joseph R. Rodriquez, San Francisco Airports District Office, (415) 876–2805.

Issued in Washington, DC on November 19, 1993.

Donna Taylor,

Acting Manager, Airports Financial Assistance Division.

Cumulative List of PFC Applications Previously Approved

State application number, airport, city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date [1]
Alabama:					
92–01–I–00–HSV, Huntsville Int'l-Carl T. Jones Field, Huntsville	03/06/1992	$3	$19,002,366	06/01/1992	11/01/2008
93–02–U–00–HSV, Huntsville Int'l-Carl T. Jones Field, Huntsville	06/03/1993	3	19,002,366	09/01/1993	11/01/2008
92–01–C–00–MSL, Muscle Shoals Regional, Muscle Shoals	02/18/1992	3	104,100	06/01/1992	02/01/1995
Arizona:					
92–01–C–00–FLG, Flagstaff Pulliam, Flagstaff	09/29/1992	3	2,463,581	12/01/1992	01/01/2015
93–01–C–00–YUM, Yuma MCAS/Yuma International, Yuma	09/09/1993	3	1,678,064	12/01/1993	06/01/2003
California:					
92–01–C–00–ACV, Arcata, Arcata	11/24/1992	3	188,500	02/01/1993	05/01/1994
93–01–C–00–CIC, Chico Municipal, Chico	09/29/1993	3	137,043	01/01/1994	06/01/1977
92–01–C–00–IYK, Inyokern, Inyokern	12/10/1992	3	127,500	03/01/1993	09/01/1995
93–01–C–00–LAX, Los Angeles International, Los Angeles	03/26/1993	3	360,000,000	07/01/1993	07/01/1998
92–01–C–00–OAK, Metropolitan Oakland International, Oakland	06/26/1992	3	12,343,000	09/01/1992	05/01/1994
93–01–I–00–ONT, Ontario International, Ontario	03/26/1993	3	49,000,000	07/01/1993	07/01/1998
92–01–C–00–PSP, Palm Springs Regional, Palm Springs	06/25/1992	3	81,888,919	10/01/1992	11/01/2032
92–01–C–00–SMF, Sacramento Metropolitan, Sacramento	01/26/1993	3	24,045,000	04/01/1993	03/01/1996
92–01–C–00–SJC, San Jose International San Jose	06/11/1992	3	29,228,826	09/01/1992	08/01/1995
92–02–U–00–SJC, San Jose International, San Jose	02/22/1993	3	29,228,826	05/01/1993	08/01/1995
93–03–C–00–SJC, San Jose International, San Jose	06/16/1993	3	16,245,000	08/01/1995	05/01/1997
92–01–C–00–SBP, San Luis Obispo County-McChesney FIE, San Luis Obispo	11/24/1992	3	502,437	02/01/1993	02/01/1995
92–01–C–00–STS, Sonoma County, Santa Rosa	02/19/1993	3	110,500	05/01/1993	04/01/1995
91–01–I–00–TVL, Lake Tahoe, South Lake Tahoe	05/01/1992	3	928.747	08/01/1992	03/01/1997
Colorado:					
92–01–C–00–COS, Colorado Springs Municipal, Colorado Springs	12/22/1992	3	5,622,000	03/01/1993	02/01/1996
92–01–00–DVX, Denver International (New), Denver	04/28/1992	3	2,330,734,321	07/01/1992	01/01/2026
93–01–C–00–EGE, Eagle County Regional, Eagle	06/15/1993	3	572,609	09/01/1993	04/01/1998
93–01–C–00–FNL, Fort Collins-Loveland, Fort Collins	07/14/1993	3	207,857	10/01/1993	06/01/1996
92–01–C–00–GJT, Walker Field, Grand Junction	01/15/1993	3	1,812,000	04/01/1993	03/01/1998
93–01–C–00–GUC, Gunnison County, Gunnison	08/27/1993	3	702,133	11/01/1993	03/01/1998
93–01–C–00–HDN, Yampa Valley, Hayden	08/23/1993	3	532,881	11/01/1993	04/01/1997
93–01–C–00–MTJ, Montrose County, Montrose	07/29/1993	3	1,461,745	11/01/1993	02/01/2009
93–01–C–00–PUB, Pueblo Memorial, Pueblo	08/16/1993	3	1,200,745	11/01/1993	08/01/2010
92–01–C–00–SBS, Steamboat Sprints/BOB, Adams Field, Steamboat Springs	01/15/1993	3	1,887,337	04/01/1993	04/01/2012
92–01–C–00–TEX, Telluride Regional, Telluride	11/23/1992	3	200,000	03/01/1993	11/01/1997
Connecticut:					
93–01–C–00–HVN, Tweed-New Haven, New Haven	09/10/1993	3	2,490,450	12/01/1993	06/01/1999

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State application number, airport, city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date [1]
93-02-I-00-BDL, Bradley International, Windsor Locks	07/09/1993	3	12,030,000	10/01/1993	09/01/1995
Florida:					
93-01-C-00-DAB, Daytona Beach Regional, Daytona Beach	04/20/1993	3	7,967,835	07/01/1993	11/01/1999
92-01-C-00-RSW, Southwest Florida International, Fort Myers	08/31/1992	3	252,548,262	11/01/1992	06/01/2014
93-02-U-00-RSW, Southwest Florida International, Fort Myers	05/10/1993	3	252,548,262	11/01/1992	06/01/2014
92-01-C-00-EYW, Key West International, Key West	12/17/1992	3	945,937	03/01/1993	12/01/1995
92-01-C-00-MTH, Marathon, Marathon	12/17/1992	3	153,556	03/01/1993	06/01/1995
92-01-C-00-MCO, Orlando International, Orlando	11/27/1992	3	167,574,527	02/01/1993	02/01/1998
93-02-C-00-MCO, Orlando International, Orlando	09/24/1993	3	12,957,000	12/01/1993	02/01/1998
92-01-C-00-PNS, Pensacola Regional, Pensacola	11/23/1992	3	4,715,000	02/01/1993	04/01/1996
92-01-I-00-SRQ, Sarasota-Bradenton International, Sarasota	06/29/1992	3	38,715,000	09/01/1992	09/01/2005
92-01-I-00-TLH, Tallahassee Regional, Tallahassee	11/13/1992	3	8,617,154	02/01/1993	12/01/1998
93-01-C-00-TPA, Tampa International, Tampa	07/15/1993	3	87,102,000	10/01/1993	09/01/1999
Georgia:					
91-01-C-00-SAV, Savannah International, Savannah	01/23/1992	3	39,501,502	07/01/1992	03/01/2004
92-01-I-00-VLD, Valdosta Regional, Valdosta	12/23/1992	3	260,526	03/01/1993	10/01/1997
Idaho:					
93-01-C-00-SUN, Friedman Memorial, Hailey	06/29/1993	3	188,000	09/01/1993	09/01/1997
92-01-C-00-IDA, Idaho Falls Municipal, Idaho Falls	10/30/1992	3	1,500,000	01/01/1993	01/01/1998
92-01-C-00-TWF, Twin Falls-Sun Valley Regional, Twin Falls	08/12/1992	3	270,000	11/01/1992	05/01/1998
Illinois:					
93-01-C-00-MDW, Chicago Midway, Chicago	06/28/1993	3	79,920,958	09/01/1993	08/01/2001
93-01-C-00-ORD, Chicago O'Hare International, Chicago	06/28/1993	3	500,418,285	09/01/1993	10/01/1999
92-01-I-00-RFD, Greater Rockford, Rockford	07/24/1992	3	1,177,348	10/01/1992	10/01/1996
93-02-U-00-RFD, Greater Rockford, Rockford	09/02/1993	3	1,168,937	12/01/1993	10/01/1996
92-01-I-00-SPI, Capital, Springfield	03/27/1992	3	562,104	06/01/1992	02/01/1994
93-02-U-00-SPI, Capital, Springfield	04/28/1993	3	562,104	06/01/1992	02/01/1994
Indiana:					
92-01-C-00-FWA, Fort Wayne International, Fort Wayne	04/05/1993	3	26,563,457	07/01/1993	03/01/2015
93-01-C-00-IND, Indianapolis, International, Indianapolis	06/28/1993	3	117,344,750	09/01/1993	07/01/2005
Iowa:					
92-01-I-00-DBQ, Dubuque Regional, Dubuque	10/06/1992	3	108,500	01/01/1993	05/01/1994
93-01-C-00-SUX, Sioux Gateway, Sioux City	03/12/1993	3	204,465	06/01/1993	06/01/1994
Kentucky: 93-01-C-00-LEX, Blue Grass, Lexington	08/31/1993	3	12,378,791	11/01/1993	05/01/2003
Louisiana:					
92-01-I-00-BTR, Baton Rouge Metropolitan, Ryan Field, Baton Rouge	09/28/1992	3	9,823,159	12/01/1992	12/01/1998
93-02-U-00-BTR, Baton Rouge Metropolitan, Ryan Field, Baton Rouge	04/23/1993	3	9,823,159	12/01/1992	12/01/1998
93-01-C-00-MSY, New Orleans International/ Moisant Fl, New Orleans	03/19/1993	3	77,800,372	06/01/1993	04/01/2000
Maryland:					
92-01-I-00-BWI, Baltimore-Washington International, Baltimore	07/27/1992	3	141,866,000	10/01/1992	09/01/2002
Massachusetts:					
93-01-C-00-BOS, General Edward L. Logan International, Boston	08/24/1993	3	598,800,000	11/01/1993	10/01/2011
92-01-C-00-ORH, Worcester Municipal, Worcester	07/28/1992	3	2,301,382	10/01/1992	10/01/1997
Michigan:					
92-01-C-00-DTW, Detroit Metropolitan-Wayne County, Detroit	09/21/1992	3	640,707,000	12/01/1992	06/01/2009
92-01-I-00-ESC, Delta County, Excanaba	11/17/1992	3	158,325	02/01/1993	08/01/1996
93-01-C-00-FNT, Bishop International, Flint	06/11/1993	3	32,296,450	09/01/1993	09/01/2030
92-01-I-00-GRR, Kent County International, Grand Rapids	09/09/1992	3	12,450,000	12/01/1992	05/01/1998
92-01-C-00-CMX, Houghton County Memorial, Hancock	04/29/1993	3	162,986	07/01/1993	01/01/1996
93-01-C-00-IWD, Gogebic County, Ironwood	05/11/1993	3	74,690	08/01/1993	10/01/1998

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State application number, airport, city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date [1]
93–01–C–00–LAN, Capital City, Lansing	07/23/1993	3	7,355,483	10/01/1993	03/01/2002
92–01–I–00–MQT, Marquette County, Marquette	10/01/1992	3	459,700	12/01/1992	04/01/1996
92–01–C–00–PLN, Pellston Regional—Emmet County, Pellston	12/22/1992	3	440,875	03/01/1993	06/01/1995
Minnesota:					
93–01–C–00–BRD, Brainerd-Crow Wing County Regional, Brainerd	05/25/1993	3	43,000	08/01/1993	12/31/1995
92–01–C–00–MSP, Minneapolis-St, Paul International, Minneapolis	03/31/1992	3	66,355,682	06/01/1992	08/01/1994
Mississippi:					
91–01–C–00–GTR, Golden Triangle Regional, Columbus	05/08/1992	3	1,693,211	08/01/1992	09/01/2006
92–01–C–00–GPT, Gulfport-Biloxi Regional, Gulfport-Biloxi	04/03/1992	3	384,028	07/01/1992	12/01/1993
92–01–C–00–PIB, Hattiesburg-Laurel Regional, Hattiesburg-Laurel	04/15/1992	3	119,153	07/01/1992	01/01/1998
93–01–C–00–JAN, Jackson International, Jackson	02/10/1993	3	1,918,855	05/01/1993	04/01/1995
92–01–C–00–MEI, Key Field, Meridian	08/21/1992	3	122,500	11/01/1992	06/01/1994
Missouri:					
93–01–C–00–SGF, Springfield Regional, Springfield	08/30/1993	3	1,937,090	11/01/1993	10/01/1996
92–01–C–00–STL, Lambert-St. Louis International, St. Louis	09/30/1992	3	84,607,850	12/01/1992	03/01/1996
Montana:					
93–01–C–00–BZN, Gallatin Field, Bozeman	05/17/1993	3	4,198,000	08/01/1993	06/01/2005
92–01–C–00–GTF, Great Falls International, Great Falls	08/28/1992	3	3,010,900	11/01/1992	07/01/2002
93–02–U–00–GTF, Great Falls International, Great Falls	05/25/1993	3	3,010,900	11/01/1992	07/01/2002
92–01–C–00–HLN, Helena Regional, Helena	01/15/1993	3	1,056,190	04/01/1993	12/01/1999
93–01–C–00–FCA, Glacier Park International, Kalispell	09/29/1993	3	1,211,000	12/01/1993	11/01/1999
92–01–C–00–MSO, Missoula International, Missoula	06/12/1992	3	1,900,000	09/01/1992	08/01/1997
Nevada:					
91–01–C–00–LAS, McCarran International, Las Vegas	02/24/1992	3	944,028,500	06/01/1992	02/01/2014
93–02–C–00–LAS, McCarran International, Las Vegas	06/07/1993	3	36,500,000	06/01/1992	09/01/2014
New Hampshire: 92–01–C–00–MHI, Manchester, Manchester	10/13/1992	3	5,461,000	01/01/1993	03/01/1997
New Jersey: 92–01–C–00–EWR, Newark International, Newark	07/23/1992	3	84,600,000	10/01/1992	08/01/1995
New York:					
93–01–C–00–BGM, Binghamton Regional/Edwin A. Link Field, Binghamton	08/18/1993	3	1,872,264	11/01/1993	11/01/1997
92–01–I–00–BUF, Greater Buffalo International, Buffalo	05/29/1992	3	189,873,00	08/01/1992	03/01/2026
92–01–I–00–ITH, Tompkins County, Ithaca	09/28/1992	3	1,900,000	01/01/1993	01/01/1999
92–01–C–00–JHW, Chautauqua County/Jamestown, Jamestown	03/19/1993	3	434,822	06/01/1993	06/01/1996
92–01–C–00–JFK, John F. Kennedy International, New York	07/23/1992	3	109,930,000	10/01/1992	08/01/1995
92–01–C–00–LGA, LaGuardia, New York	07/23/1992	3	87,420,000	10/01/1992	08/01/1995
93–01–C–00–PBL, Clinton County, Plattsburgh	04/30/1993	3	227,830	07/01/1993	01/01/1998
92–01–C–00–HPN, Westchester County, White Plains	11/09/1992	3	27,883,000	02/01/1993	06/01/2022
North Dakota: 92–01–C–00–GFK, Grand Forks International, Grand Forks	11/16/1992	3	1,016,509	02/01/1993	02/01/1997
Ohio:					
92–01–C–00–CAK, Arkon-Canton Regional, Akron	06/30/1992	3	3,594,000	09/01/1992	08/01/1996
92–01–C–00–CLE, Cleveland-Hopkins International, Cleveland	09/01/1992	3	34,000,000	11/01/1992	11/01/1995
92–01–I–00–CMH, Port Columbus International, Columbus	07/14/1992	3	7,341,707	10/01/1992	03/01/1994
93–02–I–00–CMH, Port Columbus International, Columbus	07/19/1993	3	16,270,256	02/01/1994	09/01/1996
93–01–C–00–TOL, Toledo Express, Toledo	06/29/1993	3	2,750,896	09/01/1993	09/01/1996
Oklahoma:					
92–01–C–00–LAW, Lawton Municipal, Lawton	05/08/1992	2	334,078	08/01/1992	01/01/1996
92–01–I–00–TUL, Tulsa International, Tulsa	05/11/1992	3	9,717,000	08/01/1992	08/01/1995

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State application number, airport, city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date [1]
Oregon:					
93–01–C–00–EUG, Mahlon Sweet Field, Eugene	08/31/1993	3	3,729,699	11/01/1993	11/01/1998
93–01–C–00–MFR, Medford-Jackson County, Medford	04/21/1993	3	1,066,142	07/01/1993	11/01/1995
92–01–C–00–PDX, Portland International, Portland	04/08/1992	3	17,961,850	07/01/1992	07/01/1994
93–01–C–00–RDM, Roberts Field, Redmond	07/02/1993	3	1,191,552	10/01/1993	03/01/2000
92–01–I–00–ABE, Allentown-Bethlehem-Easton, Allentown	08/28/1992	3	3,778,111	11/01/1992	04/01/1995
92–01–C–00–A00, Altoona-Blair County, Altoona	02/03/1993	3	198,000	05/01/1993	02/01/1996
92–01–C–00–ERI, Erie International, Erie	07/21/1992	3	1,997,885	10/01/1992	06/01/1997
93–01–C–00–JST, Johnstown-Cambria County, Johnstown	08/31/1993	3	307,500	11/01/1993	02/01/1998
92–91–I–00–PHL, Philadelphia International, Philadelphia	06/29/1992	3	76,169,000	09/01/1992	07/01/1995
93–02–U–00–PHL, Philadelphia Interantional, Philadelphia	05/14/1993	3	76,169,000	08/01/1993	07/01/1995
92–01–C–00–UNV, University Park, State College	08/28/1992	3	1,495,974	11/01/1992	07/01/1977
93–01–C–00–AVP, Wilkes-Barre/Scranton International, Wilkes-Barre/Scranton	09/24/1993	3	2,369,566	12/01/1993	06/01/1997
South Carolina: 93–01–C–00–CAE, Columbia Metropolitan, Columbia	08/23/1993	3	32,969,942	11/01/1993	09/01/2008
Tennessee:					
92–01–I–00–MEM, Memphis International, Memphis	05/28/1992	3	26,000,000	08/01/1992	12/01/1994
92–01–C–00–BNA, Nashville International, Nashville	10/09/1992	3	143,358,000	01/01/1993	02/01/2004
Texas:					
93–02–C–00–AUS, Robert Mueller Municipal, Austin	06/04/1993	2	6,189,300	11/01/1993	06/01/1995
92–01–C–00–ILE, Killeen Municipal, Killeen	10/20/1992	3	243,339	01/10/1993	11/01/1994
93–01–I–00–LRD, Laredo International, Laredo	07/23/1993	3	11,983,000	10/01/1993	09/01/2013
93–01–C–00–LBB, Lubbock International, Lubbock	07/09/1993	3	10,699,749	10/01/1993	02/01/2000
92–01–I–00–MAF, Midland International, Midland	10/16/1992	3	35,529,521	01/01/1993	01/01/2013
93–01–00–SJT, Mathis Field, San Angelo	02/24/1993	3	873,716	05/01/1993	11/01/1998
Virginia:					
92–01–I–00–CHO, Charlottesville-Albemarle, Charlottesville	06/11/1992	2	255,559	09/01/1992	11/01/1993
92–02–U–00–CHO, Charlottesville-Albemarle, Charlottesville	12/21/1992	2	255,559	09/01/1992	11/01/1993
93–01–C–00–DCA, Washington National, Washington, DC	08/16/1993	3	166,739,071	11/01/1993	11/01/2000
Washington:					
93–01–C–00–BLI, Bellingham International, Bellingham	04/29/93	3	366,000	07/01/1993	07/01/1994
93–01–C–00–PSC, Tri Cities, Pasco	08/03/1993	3	1,230,731	11/01/1993	11/01/1996
93–01–C–00–CLM, William R. Fairchild International, Port Angeles	05/24/1993	3	52,000	08/01/1993	08/01/1994
92–01–C–00–SEA, Seattle-Tacoma International, Seattle	08/13/1992	3	28,847,488	11/01/1992	01/01/1994
93–01–C–00–GEG, Spokane International, Spokane	03/23/1993	3	15,272,000	06/01/1993	12/01/1999
93–01–I–00–ALW, Walla Walla Regional, Walla Walla	08/03/1993	3	1,187,280	11/01/1993	11/01/2014
93–01–C–00–EAT, Rangborn Field, Wenatchee	05/26/1993	3	280,500	08/01/1993	10/01/1995
92–01–C–00–YKM, Yakima Air Terminal, Yakima	11/10/1992	3	416,256	02/01/1993	04/01/1995
West Virginia:					
93–01–C–00–CRW, Yeager, Charleston	05/28/1993	3	3,256,126	08/01/1993	04/01/1998
92–01–C–00–MGW, Morgantown Muni-Walter L. Bill Hart, Morgantown	09/03/1992	3	55,500	12/01/1992	01/01/1994
Wisconsin:					
92–01–C–00–GRB, Austin Straubel International, Green Bay	12/28/1992	3	8,140,000	03/01/1993	03/01/2003
93–01–C–00–MSN, Dane County Regional-Truax Field, Madison	06/22/1993	3	6,746,000	09/01/1993	03/01/1998
93–01–C–00–CWA, Central Wisconsin, Mosinee	08/10/1993	3	7,725,600	11/01/1993	11/01/2012
93–01–C–00–RHI, Rhinelander-Oneida County, Rhinelander	08/04/1993	3	167,201	11/01/1993	04/01/1996
Wyoming:					
93–01–C–00–CPR, Natrona County International, Casper	06/14/1993	3	506,144	09/01/1993	10/01/1996
93–01–C–00–CYS, Cheyene, Cheyenne	07/30/1993	3	742,261	11/01/1993	08/01/2000
93–01–I–00–GCC, Gillette-Campbell County, Gillette	06/28/1993	3	331,540	09/01/1993	09/01/1999
93–01–C–00–JAC, Jackson Hole, Jackson	05/25/1993	3	1,081,183	08/01/1993	02/01/1996

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State application number, airport, city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date [1]
Guam:					
92-01-C-00-NGM, Agana Nas, Agana	11/10/1992	3	5,632,000	02/01/1993	06/01/1994
Puerto Rico:					
92-01-C-00-BQN, Rafael Hernandez, Aguadilla	12/29/1992	3	1,053,000	03/01/1993	01/01/1999
92-01-C-00-PSE, Mercedita, Ponce	12/29/1992	3	866,000	03/01/1993	01/01/1999
92-01-C-00-SJU, Luis Mundz Marin International, San Juan	12/29/1992	3	49,768,000	03/01/1993	02/01/1997
Virgin Islands:					
92-01-I-00-STT, Cyril E. King, Charotte Amalie	12/08/1992	3	3,871,005	03/01/1993	02/01/1995
92-01-I-00-STX, Alexander Hamilton, Christiansted St. Croix	12/08/1992	3	2,280,465	03/01/1993	05/01/1995

[1] The estimated charge expiration date is subject to change due to the rate of collection and actual allowable project costs.

[FR Doc. 93-28971 Filed 11-29-93; 8:45 am]
BILLING CODE 4910-13-M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 228
Tuesday, November 30, 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).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, December 6, 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. Proposed 1994 Federal Reserve Board employee salary structure adjustments and merit program.
2. Proposed Federal Reserve System supplements to the Office of Government Ethics' Standards of Ethical Conduct.
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
4. 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: November 26, 1993

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–29464 Filed 11–26–93; 3:26 pm]

BILLING CODE 6210–01–P

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of November 29, December 6, 13, and 20, 1993.

PLACE: Commissioners' conference room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of November 29

Monday, November 29

2:00 p.m.
Briefing by the Executive Branch (Closed—Ex. 1)

Friday, December 3

10:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of December 6—Tentative

Tuesday, December 7

10:00 a.m.
Periodic Briefing on EEO Program (Public Meeting)
(Contact: Vandy Miller, 301–492–4665)

Thursday, December 9

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)
2:00 p.m.
Briefing by Northeast Utilities (Public Meeting)
(Contact: Jose Calvo, 301–504–1404)

Friday, December 10

10:00 a.m.
Briefing by IG on Fee Audit (Public Meeting)
(Contact: Thomas Barchi, 301–492–7301)

Week of December 13—Tentative

Tuesday, December 14

10:00 a.m.
Briefing on Results of Operator Licensing Program Recentralization Study (Public Meeting)
(Contact: Robert Gallo, 301–504–1031)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of December 20—Tentative

Monday, December 20

10:00 a.m.
Briefing on Options for Agreement State Compatibility Policy (Public Meeting)
(Contact: Cardelia Maupin, 301–504–2312)
2:30 p.m.
Briefing by DOE on HLW Program (Public Meeting)
(Contact: Linda Desell, 202–586–1462)

Tuesday, December 21

10:00 a.m.
Periodic Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting)
(Contact: John Larkins, 301–492–4516)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)
3:00 p.m.
Briefing on Results of Fee Study (Public Meeting)
(Contact: James Holloway, 301–492–4301)

Wednesday, December 22

10:00 a.m.
Briefing on Results of License Extension Workshop and Proposed Changes to License Renewal Rule (Public Meeting)
(Contact: Scott Newberry, 301–504–1183)

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.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 504–1292. Contact person for more information: William Hill (301) 504–1661.

Dated: November 24, 1993.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 93–29409 Filed 11–26–93; 2:24 pm]

BILLING CODE 7590–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Tuesday, December 7, 1993.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

5997A—Railroad Accident Report: Collision Between Northern Indiana Commuter Transportation District Eastbound Train 7 and Westbound Train 12, at Gary, Indiana, January 18, 1993.
6109A—Aviation Accident Report: Runway Departure Following Landing, American Airlines Flight 102; McDonnell Douglas DC–10–30, Dallas/Fort Worth International Airport, Texas, April 14, 1993.

NEWS MEDIA CONTACT: Telephone (202) 382–0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

November 26, 1993.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 93–29414 Filed 11–26–93; 2:25 am]

BILLING CODE 7533–01–M

Corrections

Federal Register
Vol. 58, No. 228
Tuesday, November 30, 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 JUSTICE

Notice of Lodging of a Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

Correction

In notice document 93-27904 appearing on page 60212 in the issue of Monday, November 15, 1993, in the first column, in the first paragraph, in the fifth line from the bottom, "$65,000.00" should read "$650,000.00".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93-AWP-9]

Establishment of VOR Federal Airway V-597; CA

Correction

In rule document 93-25213 beginning on page 53122 in the issue of Thursday, October 14, 1993, make the following correction:

§ 71.1 [Corrected]

On page 53123, in the first column, in § 71.1, under **V-597 [New]**, in the second line, "100°" should read "110°".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93-AEA-1]

Proposed Establishment of Jet Route J-132 and Alteration of Jet Route J-223; NY

Correction

In proposed rule document 93-26303 beginning on page 57571 in the issue of Tuesday, October 26, 1993, make the following correction:

On page 57572, in the first column, in the second full paragraph, in the seventh line, "hearing" should read "heading".

BILLING CODE 1505-01-D

federal register

Tuesday
November 30, 1993

Part II

Environmental Protection Agency

40 CFR Parts 6, 51, and 93

Determining Conformity of General Federal Actions to State or Federal Implementation Plans; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 6, 51, and 93

[FRL–4805–1]

Determining Conformity of General Federal Actions to State or Federal Implementation Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Clean Air Act (Act) requires EPA to promulgate rules to ensure that Federal actions conform to the appropriate State implementation plan (SIP). Conformity to a SIP is defined in the Act as amended in 1990 as meaning conformity to a SIP's purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards (NAAQS) and achieving expeditious attainment of such standards. The Federal agency responsible for the action is required to determine if its actions conform to the applicable SIP.

This final rule establishes the criteria and procedures governing the determination of conformity for all Federal actions, except Federal highway and transit actions ("transportation conformity"). Transportation conformity requirements are established in a separate rulemaking action.

EFFECTIVE DATES: The final rules for 40 CFR parts 51 and 93 are effective January 31, 1994. The final rule for 40 CFR part 6 will be effective January 31, 1994 unless notice is received by December 30, 1993, that someone wishes to submit adverse or critical comments. If the effective date is delayed for the 40 CFR part 6 rule due to the need to provide for public comment, timely notice will be published in the **Federal Register**. The information collection requirements contained in 40 CFR part 51, subpart W, and 40 CFR part 93, subpart B, have not been approved by the Office of Management and Budget (OMB) and are not effective until OMB has approved them. A document will be published in the **Federal Register** announcing the effective date.

FOR FURTHER INFORMATION CONTACT: Doug Grano: U.S. EPA, Office of Air Quality Planning and Standards (MD–15), Research Triangle Park, NC 27711, (919) 541–3292.

SUPPLEMENTARY INFORMATION:

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I. Summary of the Final Rule

The purpose of this rule is to implement section 176(c) of the Act, as amended (42 U.S.C. 7401 *et seq.*), which requires that all Federal actions conform to an applicable implementation plan developed pursuant to section 110 and part D of the Act. Section 176(c) of the Act requires EPA to promulgate criteria and procedures for demonstrating and assuring conformity of Federal actions to a SIP. States are required through this rule to submit to EPA revisions to their implementation plans establishing conformity criteria and procedures consistent with this rule within 12 months of today's date.

For the purpose of summarizing the general conformity rule, it can be viewed as containing three major parts: applicability, procedure, and analysis. These are briefly described in the next three paragraphs.

The general conformity rule covers direct and indirect emissions of criteria pollutants or their precursors that are caused by a Federal action, are reasonably foreseeable, and can practicably be controlled by the Federal agency through its continuing program responsibility. The rule generally applies to Federal actions except:

(1) Those covered by the transportation conformity rule;

(2) Actions with associated emissions below specified de minimis levels; and

(3) Certain other actions which are exempt or presumed to conform.

The rule also establishes procedural requirements. Federal agencies must make their conformity determinations available for public review. Notice of draft and final conformity determinations must be provided directly to air quality regulatory agencies and to the public by publication in a local newspaper.

The conformity determination examines the impacts of the direct and indirect emissions from the Federal action. The rule provides several options to satisfy air quality criteria and requires the Federal action to also meet any applicable SIP requirements and emission milestones. Each Federal agency must determine that any actions covered by the rule conform to the applicable SIP before the action is taken.

The EPA continues to believe that the statute is ambiguous and that it provides EPA discretionary authority to apply these general conformity procedures to both attainment and nonattainment areas.

However, EPA cannot now apply these rules in attainment areas because it did not propose to do so. The EPA must first complete notice and comment rulemaking on the application of the appropriate criteria and procedures for conformity determinations in attainment areas. Therefore, the criteria and procedures established in this rule apply only in areas that are nonattainment or maintenance with respect to any of the criteria pollutants under the Act:[1] carbon monoxide (CO),

[1] Criteria pollutants are those pollutants for which EPA has established a NAAQS under section 109 of the Act.

lead (Pb), nitrogen dioxide, ozone, particulate matter (PM–10), and sulfur dioxide (SO_2).

This rule does not apply to Federal procurement actions. The March 15, 1993 proposal was silent on the application of conformity requirements specifically to procurement actions, however, a number of comments were received on procurements. Although the comments generally indicated that procurements should be exempt from the final conformity rule, EPA is inclined to believe that Congress intended for certain procurement actions to be covered by the general conformity provisions. It is impossible at this time to resolve the competing concerns regarding which procurement actions should be covered and which should be exempt since the existing record is inadequate. Therefore, the EPA will propose to cover certain procurements in a future rulemaking, but will take comment on other interpretations.

The EPA will also propose exemptions for certain procurement actions which it believes would fit the de minimis criteria or result in emissions which are not reasonably foreseeable. The EPA believes the majority of procurement actions would be de minimis or not reasonably foreseeable. Given the complexity of Federal procurement and the government's desire to streamline procurement activities, the EPA will seek comment on its proposed exemptions and the process for applying conformity to procurement activities.

II. Background

The general conformity rule was proposed on March 15, 1993 (58 FR 13836). Additional background information can be found in the proposal notice.

Conformity is defined in section 176(c) of the Act as conformity to the SIP's purpose of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of such standards, and that such activities will not:

(1) Cause or contribute to any new violation of any standard in any area,

(2) Increase the frequency or severity of any existing violation of any standard in any area, or

(3) Delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

The Act as amended in 1990 ties conformity to attainment and maintenance of the NAAQS. Thus, a Federal action must not adversely affect the timely attainment and maintenance of the NAAQS or emission reduction progress plans leading to attainment. The Act as amended in 1990 includes a new emphasis of reconciling the emissions from Federal actions with the SIP, rather than simply providing for the implementation of SIP measures. This integration of Federal actions and air quality planning is intended to protect the integrity of the SIP by helping to ensure that SIP growth projections are not exceeded, emissions reduction progress targets are achieved, and air quality attainment and maintenance efforts are not undermined.

The rule amends part 51 of title 40 of the Code of Federal Regulations by adding a new subpart W. Part 51 is entitled: "Requirements for preparation, adoption, and submittal of implementation plans." Amendment to part 51 is necessary to require States to revise their implementation plans to include conformity requirements. Once the State plans are revised, the Federal agencies would be subject to those requirements.

In addition, the rule adds a new subpart B to part 93 of title 40 of the Code of Federal Regulations. This is necessary to make the conformity requirements apply to Federal agencies as soon as the rule is effective and in the interim period before the States revise their implementation plans. The part 93 requirements are identical to the part 51 requirements with one exception: they do not require a State to revise its implementation plan. To avoid duplication, the preamble language cites only the part 51 sections, however, the relevant part 51 discussion also applies to the equivalent part 93 rules.

As noted in the proposal (58 FR 13837), EPA promulgated conformity rules in 1979 and 1985 to implement the conformity provisions for EPA actions at 40 CFR 6.303. Today's final rule applies the conformity provisions of the Act as amended in 1990 to all Federal activities, including EPA activities. Thus, the conformity requirements of 40 CFR 6.303 are superseded by these rules. Accordingly, paragraphs (a) through (f) of 40 CFR 6.303 are replaced with a new paragraph (a) which refers to the conformity rules promulgated today and a new paragraph (b) which retains the requirements of (old) paragraph (g), which addresses other requirements of section 316(b) of the Act. The EPA is taking this action without specifically having proposed to make these changes to 40 CFR 6.303 in the March 15, 1993 proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. This action will be effective January 31, 1994 unless, by December 30, 1993 notice is received that adverse or critical comments will be submitted regarding the changes to 40 CFR 6.303. If final action on the changes to 40 CFR 6.303 is delayed pending public comment, the requirements of the new part 51 and 93 rules will still supersede the requirements of 40 CFR 6.303.

III. Discussion of Major Issues and Response to Comments

For additional background information on the major issues, the reader should refer to 58 FR 13837–13847, March 15, 1993. Unless otherwise noted, the discussions in Sections III and IV below only address issues where public comments were received. For portions of the proposed rule where comments were not received, the final rule is consistent with the proposed rule for the reasons set forth in the proposal notice. Further discussion of such issues is not addressed in this preamble. Portions of the proposed rule were also changed so that the final rule more clearly states the intended meaning. Sections III and IV address issues in the same order as they were addressed in the proposal which is also consistent with the regulatory portion of this rulemaking notice.

A. Effective Dates

1. Proposal

The effective date of this rule was proposed to be 30 days after the final rulemaking notice is published. At that time, however, some projects that are dependent on Federal actions will have already commenced or completed planning activities, perhaps including their environmental assessment. Such projects would then be faced with the uncertainty of new conformity requirements that could not have been anticipated prior to the final rules being published. This uncertainty could threaten the viability of projects for which considerable time and funds already have been or are about to be invested.

The preamble to the proposal specifically invited comments on transition (or grandfathering) provisions for on-going projects that are dependent on Federal actions (58 FR 13837). Two options were proposed which would allow grandfathering based on activities that will have either already commenced or completed their environmental assessment by the time the final rulemaking notice is published.

2. Comment

The EPA received comments on this issue which recommended a variety of

approaches. The comments included the following recommendations, among others:

(1) Exempt Federal actions where the environmental analysis has been "commenced" prior to the effective date of the final rules.

(2) Base the exemption on the "completion" of the environmental analysis prior to the effective date of the final rules. One commenter suggested the following definition of "complete:" Projects where there has been sufficient environmental analysis for the agency to determine that the project is in conformity with the purposes of the SIP pursuant to the agency's affirmative obligation under Act section 176(c), or where a written determination of conformity under section 176(c) of the Act has been made.

(3) The rule should apply retroactively to November 15, 1991, the deadline set by Congress for promulgation of the rules by EPA.

(4) The final conformity rule should take effect only after a State revises its SIP to meet the new Act conformity requirements and the revision is approved by EPA.

(5) Exempt only projects that have received funding prior to the effective date of the conformity rules.

(6) Exempt projects that have completed an environmental analysis which included public participation.

(7) Phase-in review by focusing first on environmental impact statements (EIS's) and then later extend to other actions or exempt projects completed prior to 1 year after the rules are final.

3. Response

This final rule does not require a new conformity determination for Federal actions where the Federal agency completed its conformity determination by March 15, 1994 or National Environmental Policy Act (NEPA) analysis prior to the effective date of this rule. If a conformity determination has been "completed" it means the responsible Federal agency made a final determination that a specific action conforms, pursuant to section 176(c) of the Act. In such cases, the Federal actions must have conformity determinations pursuant to section 176(c) of the Act, but they would not be subject to the specific rules published today. Alternatively, if the Federal agency had completed its environmental analysis for a Federal action under the NEPA prior to the effective date of this rule, as evidenced by an EIS, environmental assessment (EA), or finding of no significant impact (FONSI), then such an action is also not subject to the specific rules published today, although it would have been subject to applicable conformity requirements at the time the environmental analysis was completed.

In determining whether to apply rules immediately, EPA generally considers the following factors:

(1) Whether the new rule represents an abrupt departure from well established practice or merely attempts to fill a void in an unsettled area of law.

(2) The extent to which the party against whom the new rule is applied relied on the former rule.

(3) The degree of burden which immediate application of a rule imposes on a party, and

(4) The statutory interest in applying a new rule despite the reliance of a party on the old standard.

The EPA considered all options contained in the comments and determined that the grandfathering provision in the final rule is appropriate for the reasons described below.

(1) The general conformity rule represents an abrupt departure from the previous conformity requirements EPA published in 40 CFR 6.303, which applied only to EPA actions (and which are being replaced by this rulemaking). Although staff working drafts of the new rule existed as early as November 1991, the final rule is considerably changed from all of the early drafts, which also had very limited circulation.

(2) Considering the general absence of conformity determinations by Federal agencies prior to the 1990 amendments to the Act, most parties appear to have relied on the NEPA requirements or on 40 CFR 6.303 to mean that specific general conformity requirements did not apply for Federal agencies other than EPA.

(3) Prior to this final rulemaking, many Federal actions will have already completed their environmental analysis pursuant to NEPA. Such projects would then be faced with the uncertainty of the new conformity requirements that were not anticipated prior to the final rules being published. This uncertainty could threaten the viability of projects for which considerable time and funds already have been or are about to be invested.

(4) The statutory interest in applying the new requirements during this interim period is preserved where the Federal action specifically considered the conformity requirements of the Act and completed such an analysis or fulfilled the NEPA requirements, since such actions would provide for an environmental analysis focusing on air quality as envisioned by Congress even though the analysis might not meet all the details contained in the new rules.

After determining that some form of grandfathering is appropriate, EPA selected a hybrid of the commencement and completion dates of a conformity determination or where a NEPA analysis has been completed. That is, the final rule grandfathers actions where: (1) The NEPA analysis is completed by the effective date of this rule, or (2) the environmental analysis was commenced prior to the effective date of this rule, sufficient environmental analysis is completed, and the conformity determination is completed by March 15, 1994 (1 year after the date of the proposed rulemaking). This approach is supported by the following reasons:

(1) The completion date can be well defined, as described above.

(2) The commencement date and phase-in approaches are valid concepts but, by themselves, are subject to too much uncertainty. These concepts have less well defined dates than the completion date. In many cases, the conformity analysis could have been recently started and the new rules could be incorporated into the analysis without hardship. The commencement date is likely to exceed the 5-year timeframe for conformity reanalysis in many cases. The EPA believes that it is reasonable to expect that a conformity determination could be developed in parallel with the ongoing environmental analysis and/or rely on any previous environmental analyses to the degree they are complete; in this manner the conformity determination should not require extensive, new analyses nor prolong the environmental review process in most cases.

(3) The date after EPA approval of the State conformity rules is an unjustifiably lengthy delay and is not consistent with the statutory intent to have the Federal rules in place and the States later follow with their own conformity rules.

(4) The funding date may be difficult to define since it could be based on a variety of steps within an overall grant process or based in some way on the actual expenditure of funds.

(5) Grandfathering based on previous public participation and/or the commencement of an environmental analysis would not assure that the analysis was completed and also would require EPA to define what level of previous public participation would be considered adequate—an issue not addressed in the proposal.

As described in § 51.857(a), a conformity determination automatically lapses 5 years from the date of the initial determination unless the Federal action has been completed or a continuous program has been commenced to

implement that Federal action within a reasonable time. This 5-year provision also applies with respect to conformity determinations grandfathered as described above.

The information collection requirements in 40 CFR parts 51 and 93 have not yet been approved by the OMB and are not effective until OMB approves them.

B. SIP Revisions—State Authority

1. Proposal

As described in the March 15, 1993 preamble, EPA proposed that States may adopt criteria and procedures more stringent than the requirements in the EPA rules (58 FR 13838).

2. Comment

Several commenters supported EPA's view. These commenters stated that Federal agencies are to be afforded no special privileges and that the Act in no way prevents the imposition of more stringent control measures in instances where public health and welfare may be at risk.

Other commenters, however, stated that Federal agencies should not be held to a higher standard by State regulations than adjacent or nearby private or State activities. These comments suggest that this provision may be inconsistent with section 118 of the Act. Section 118 of the Act states that Federal agencies are to comply with State air pollution requirements "in the same manner and to the same extent as any nongovernmental entity." Since the general conformity requirement is not imposed on any non-Federal entity, these agencies argue that there is not a waiver of sovereign immunity which would allow State regulation of Federal activities in either sections 118 or 176 of the Act; therefore, these agencies argue, the Act does not permit States to set more stringent conformity requirements than those set by EPA. Some commented that multiple State rules would cause confusion to Federal agencies trying to meet the conformity requirements.

One comment stated that only areas designated "extreme" should be allowed to require more stringent State or regional general conformity rules in its SIP.

3. Response

In considering the comments received on this issue, EPA has taken the provisions of sections 116, 118 and 176(c) of the Act into account. The new language added to section 176(c) by the 1990 amendments to the Act makes it clear that the purpose of section 176(c) is to make emissions from Federal actions consistent with the Act's air quality planning goals. The conformity requirement is different from most other requirements of the Act because it is imposed solely on Federal agencies, and is not required of nongovernmental entities. Therefore it is appropriate for EPA to establish the criteria and procedures for the conformity of Federal actions as specified by section 176(c)(4)(A) of the Act. It is also required that States adopt a SIP revision that includes these criteria and procedures, as indicated by section 176(c)(4)(C) of the Act. Furthermore, EPA interprets the requirements imposed by section 116 of the Act to mean that the criteria and procedures set by State conformity rules may not be any less stringent than those established by this rulemaking.

The EPA interprets the section 118 requirement that Federal agencies comply with air pollution requirements "in the same manner and to the same extent as any nongovernmental entity" to mean only that Federal agencies must comply with any air pollution rule established under the Act to no less an extent than nongovernmental entities. The general conformity rule and State rules adopted pursuant to it are rules established under the Act with which, under section 118, Federal agencies must comply. Consequently, EPA does not agree that there is no waiver of sovereign immunity at all in section 176(c). The EPA concludes that section 176(c)(4)(c) requires State conformity SIP's that would regulate Federal activities.

However, the language of the relevant sections does leave unclear the extent to which the waiver of sovereign immunity may limit the manner in which a State's section 116 authority is applied to Federal agencies. After careful consideration of the legal and policy arguments presented to EPA after the March 15, 1993 notice of proposed rulemaking (NPR), EPA has concluded that State conformity rules which do not apply to non-Federal entities and which apply more stringent requirements than the EPA general conformity rule to federally-assisted facilities would be inconsistent with the waiver of sovereign immunity provided by section 118 of the Act. Applying such rules exclusively to federally-assisted facilities, which could be the case with any more stringent conformity requirements since conformity requirements do not apply statutorily to nongovernment entities, would have an unjustifiably discriminatory effect. Under current case law, a reviewing court would construe waivers of sovereign immunity, like that in section 118, narrowly. See *Department of Energy* v. *Ohio*, 112 S.CT. 1627, 1633 (1992); *McMahon* v. *United States*, 342 U.S. 25, 26, 72 S.CT. 17, 18 (1951). The EPA believes that such purely discriminatory more-stringent State programs would be prohibited under such case law.

The EPA recognizes that States have historically developed their own conformity requirements despite the absence of any Federal rules. Further, States have frequently adopted requirements that differ from State to State, both with respect to conformity and general air quality management, in order to address different air quality needs and regulatory authorities. There are several statements excerpted below from the congressional Record which support the conclusion that States may adopt conformity rules that are more stringent than the rules promulgated by EPA.

> Such [Federal] regulations will provide guidance to the states for the adoption of conformity requirements in each SIP and will govern the conformity decisions of federal agencies and metropolitan planning organizations (MPOs) required to make conformity determinations. Federal agencies will also have to comply with applicable provisions of the SIP if stronger than the underlying basic federal regulations. Cong. Rec., S16958 (October 27, 1990) (Statement of Senator Chafee).
>
> States are also free under section 116 to continue to apply any more stringent project review criteria in effect under state or local law. The criteria in section 176(c)(3) are merely the additional federal criteria that must be met to qualify for federal approval or funding of transportation projects, programs, and plans prior to the date when a revised implementation plan takes effect under these amendments. Cong. Rec., S16973 (October 27, 1990) (Statement of Senator Baucus).
>
> Such regulations will provide guidance to the states for the adoption of conformity requirements in each SIP and will govern the conformity decisions of federal agencies and MPOs required to make conformity decisions. Federal agencies will also have to comply with applicable provisions of the SIP if stronger than the underlying basic federal regulations." Cong. Rec., S16973 (October 27, 1990) (Statement of Senator Baucus).

Consequently, the EPA believes that if a State wishes to apply more stringent conformity rules for the purpose of attaining air quality, it may do so, but only if the same conformity requirements are imposed on non-Federal as well as Federal actions. States adopting more stringent conformity rules may not cause a more significant or unusual obstacle to Federal agencies than non-Federal agencies for the same type of action.

Therefore, if a State decides to adopt more stringent conformity criteria and procedures, these requirements must be imposed on all similar actions whether the sponsoring agency is a Federal or non-Federal entity; non-Federal entities include State and local agencies and private sponsors. Sections 51.851 and 51.853 have been revised accordingly in the final rule.

If a State elects to impose more stringent conformity requirements, they must not be so narrowly construed as to apply in practical effect only to Federal actions. For example, if a State decides that actions of employers with more than 500 employees require conformity determinations, and the Federal government is the only employer of this size in a particular jurisdiction, then this rule would be viewed as discriminatory and would not be permitted. Consequently, more stringent State conformity rules must not only be written to apply similarly to all Federal and non-Federal entities, but they must be able to be implemented so that they apply in a nondiscriminatory way in practice.

Moreover, when EPA approves State conformity rules, the Agency should determine that more stringent State conformity requirements are directly related to the attainment of air quality in the State.

C. Indirect Emissions—Inclusive/ Exclusive Definition

1. Proposal

The proposal indicated that the Act expressly prohibits Federal actions that would "support in any way" activity which does not conform to a SIP. Given this language, EPA concluded that indirect emissions must be included in any conformity determination, under either subpart T or W. The EPA proposed two different definitions of indirect emissions—"inclusive" and "exclusive"—and invited comment on both versions. The inclusive and exclusive definitions are identical except the phrase "and which the Federal agency has and will continue to maintain some authority to control" appears only in the exclusive definition. As described in the preamble to the proposal (58 FR 13840), the exclusive version of indirect emissions excluded emissions that may be attributable to a Federal action but that the Federal agency has no authority to control. The inclusive version (58 FR 13839) includes all emissions attributable to the Federal action, whether or not they are under the control of the Federal agency. The terms "caused by" and "reasonably foreseeable" are common to both definitions and are discussed elsewhere in this notice.

2. Comment

The EPA received substantial and diverse comments from air regulatory agencies, the building industry, various Federal agencies, environmental groups, and individuals. The "inclusive" definition of indirect emissions is supported primarily by the air regulatory agencies and environmental groups. The "inclusive" version, however, is viewed as unnecessarily broad by many of the other groups. Many individuals and building industry representatives objected to the inclusion of indirect emissions in either approach.

Commenters supporting the inclusive definition pointed out that this approach provides the greatest opportunity for States to prevent Federal actions that could violate the NAAQS. They indicated that to prevent actions that could cause new or worsen existing air quality violations, it is necessary to consider not only the Federal action, but all reasonably foreseeable emissions caused by the Federal action, whether or not they are under the Federal agency's control.

Commenters supporting the exclusive version of indirect emissions argued that it is unreasonable to include emissions that may be attributable to a Federal action, but that the Federal agency has no authority to control. As stated in the March 15, 1993 preamble, many of the Federal agencies reiterated that this approach might require the Federal agency to impose conditions on the project (e.g., mitigation) to demonstrate conformity that would be meaningless since there would be no effective Federal enforcement mechanism.

A third group of commenters stated that there should be no consideration of indirect sources in the general conformity rule. They cited section 110 of the Act as limiting Federal authority to conduct indirect source review to major federally-funded and federally-sponsored actions. These comments are addressed in section III.E of this notice.

3. Response

a. General—indirect emissions. As described in the proposal, the Act expressly prohibits Federal actions that would "support in any way" activity which does not conform to a SIP. Because this language is very broad, EPA believes indirect emissions must be included in any conformity determination, under either subpart T (transportation conformity) or W (general conformity). As described below, congressional guidance is much clearer for transportation conformity than for general conformity. In fact, there is virtually no information in the Congressional Record specifically directed at general conformity. Therefore, in interpreting the statutory intent for the general conformity rule, EPA believes it is helpful to consider the guidance provided by Congress on transportation conformity in section 176(c) of the Act.

Congress clearly intended the transportation conformity rule to cover the indirect emissions from vehicles that would travel to and on highways constructed with Federal support. Thus, the conformity review does not focus on emissions associated with only the construction of the highway project, but includes emissions from vehicles that later travel to and on that highway. The general conformity rule originates from the same statutory language and so must meet the same congressional intent.

As described above, the transportation treatment provisions of the Act clearly require consideration of indirect emissions. Therefore, EPA concludes that the general conformity rule must also cover indirect emissions.

On March 15, 1993, EPA proposed that as a legal matter, the statute could be interpreted to support either the inclusive or exclusive definition and both definitions were offered for public comment. As a result of the public comments and consultation with other Federal agencies, the final rule incorporates the exclusive definition of indirect emissions. The exclusive definition is selected because it meets the requirements of section 176(c) of the Act, and it:

(1) Is consistent with the manner indirect emissions are covered in the transportation conformity rule,

(2) Can be reasonably implemented, and

(3) Best fits within the overall framework of the Act.

As commenters noted, the inclusive definition would require the review of more Federal actions, as described in this rule, than the exclusive definition and, thus, could identify more cases where an air quality violation is possibly associated with a Federal action. The inclusive definition, however, is not selected for the following reasons:

(1) Mitigation measures required under this approach may not be enforced,

(2) It is not consistent with the manner in which indirect emissions are covered in the transportation rule,

(3) It would impose an unreasonable burden due to the large number of affected Federal actions, and

(4) It establishes an overly broad role for the Federal government in attaining the NAAQS.

b. Inclusive definition—enforcement. The EPA sees no value to the environment in promulgating a rule that is unenforceable. The EPA agrees with the point made by some commenters that it is unreasonable to expect Federal agencies to control indirect emissions over which they have no continuing authority to control. As stated in the March 15, 1993 preamble, this approach might result in a Federal agency imposing conditions on the project (e.g., mitigation) to demonstrate conformity that would be meaningless since there would be no effective Federal enforcement mechanism.

For example, the inclusive approach could require a Federal agency to impose restrictions on the title to land that is being sold or developed. In such cases these deed restrictions might remain forever with the land. Enforcement of these types of restrictions is very difficult and is not likely to be an effective approach. Further, it is not reasonable to attach a restriction to a deed forever, since the land use might change over time and, certainly, the environment will change over time—both of which may remove or alter the need for the deed restriction, which would nonetheless remain in place since there is no mechanism to remove it. In this example, EPA believes that it is impractical to use deed restrictions to control emissions and that the Federal agency would not maintain control since there is no continuing program responsibility for that Federal agency to control future emissions associated with that land.

c. Inclusive definition—transportation. In the inclusive approach, the Federal agency is made responsible for emissions that are reasonably foreseeable. This would include emissions from on-site or off-site facilities. Assume, for example, that the Federal Aviation Administration (FAA) approves an airport expansion project which would require a general conformity determination. The airport expansion also includes a highway interchange construction project needing a project level transportation conformity approval. Additionally, it is known that a cargo handling facility will be constructed near that interchange due to the airport expansion. The project level transportation conformity review would cover emissions from vehicle activity to and on the highway interchange, but would not cover indirect emissions possibly associated with the airport or cargo facility. Thus, the project level transportation conformity review covers direct and certain indirect emissions associated with the highway interchange action itself.

The general conformity inclusive approach could rely on the transportation conformity review with respect to vehicle activity to and on the highway interchange. In addition, the general conformity inclusive approach would specifically consider direct and indirect emissions at the airport itself and at the cargo facility. In contrast, the exclusive approach, similar to the project level transportation conformity approach, covers direct and certain indirect emissions associated with the airport expansion action itself, but does not specifically consider additional indirect emissions (i.e., the cargo facility). Thus, the exclusive approach appears to be more consistent with the transportation conformity approach.

d. Inclusive definition—unreasonable burden. The inclusive definition could be interpreted to include virtually all Federal activities, since all Federal activities could be argued to give rise to, at least in some remote way, an action that ultimately emits pollution. This broadest interpretation of the statute could impose an unreasonable burden on the Federal agencies and private entities that would have been affected by that definition. For example, since the Federal government issues licenses for any export activities, an inclusive definition approach could go so far as to require the manufacture of the export material and the transportation of the same material to be subject to a conformity review. Such an approach, however, is very burdensome due to the large number of export activities, the fact that the licensing process is not a factor in any SIP, and that the vast majority of these manufacturing and transportation activities may have little to no impact on air quality. Thus, the inclusive approach goes far beyond the set of Federal activities reasonably related to the SIP.

The many Federal agencies subject to the inclusive approach would have been required to document air quality impacts from tens of thousands of public and private business activities each year, even where the associated Federal action is extremely minor. For example, the Army Corps of Engineers (COE) estimates that 65,000 of their regulatory actions would have required a conformity review in 1992 under the inclusive definition. The COE permits are often limited to a small portion of a much larger project and, thus, may not be the best mechanism to review the larger project: e.g., one river crossing for a 500 mile gas pipeline or a half-acre wetland fill for a twenty acre shopping mall.

The Federal agencies might also have been required to expend substantial resources in an attempt to enforce mitigation measures for actions that are outside their jurisdiction. Some delay to these public and private activities would have been expected as the conformity requirements were carried out. In some cases these Federal actions would not take place at all as a result of conformity consideration. In addition, the threat of litigation over this expansive list of actions would have been significant. That is, projects could have been delayed through litigation simply due to arguments over application of the conformity rule to the project, even where the air quality impacts were very minor.

Through public comments and by communication with other Federal agencies, the EPA received a large number of examples of Federal activities, a few of which are listed below, that are not normally considered in SIP's, but could not clearly be said to have absolutely no ties to actions that result in emissions of pollutants.

(1) COE permit actions.

(2) The sale of Federal land.

(3) National Pollutant Discharge Elimination System (NPDES) permit issuance.

(4) Transmission of electrical power.

(5) Export license actions.

(6) Bank failures.

(7) Mortgage insurance.

Based on the public comments and consultation with the other Federal agencies, EPA believes that Congress did not intend the general conformity rule to affect innumerable Federal actions, impose analytical requirements on activities that are very minor in terms of Federal involvement and air quality impacts, and result in the significant expense and delay that is likely in an inclusive definition. Thus, adopting the inclusive definition approach could have imposed an unreasonable burden on these public and private activities.

The Federal agencies would, in many cases, be unable to reduce emissions from sources that they cannot practicably control. This would result in the Federal action having to be prohibited because a positive conformity determination could not be made. The EPA believes that the Act does not intend to unreasonably restrict Federal actions so that they are generally prohibited in areas with air quality problems. Instead, the Federal agencies are required to control emissions in a reasonable manner and

States must develop general air quality plans to achieve the NAAQS.

As commenters noted, the inclusive definition would require the review of more Federal actions, as described in this rule, than the exclusive definition and, thus, could identify more cases where an air quality violation is possibly associated with a Federal action. Even with an approach that relied heavily on air quality modeling, however, there would still not be an absolute assurance that a new violation would not occur since there is considerable uncertainty associated with air quality modeling itself, due to uncertainties in emissions and meteorological data which drive the models. In fact, neither the inclusive nor exclusive definition approach would absolutely assure that all possible violations would be prevented since neither proposed approach requires air quality modeling for all Federal actions.

e. Inclusive definition—Federal role. Section 176(c) of the Act covers Federal actions that support in any way actions which could cause new or worsen existing air quality violations, delay attainment, or otherwise not conform with the applicable SIP and the purpose of the SIP. Clearly, Congress intended Federal agencies to do their part in achieving clean air. It is unlikely, however, that Congress intended Federal agencies to be responsible for emissions that are not practicably under their control and regarding which the Federal agency has no continuing program responsibility. The EPA does not believe that it is reasonable to conclude that a Federal agency "supports" an activity by third persons over whom the agency has no practicable control—or "supports" emissions over which the agency has no practicable control—based on the mere fact that, if one inspects the "causal" chain of events, the activity or emissions can be described as being a "reasonably foreseeable" result of the agency's actions.

In fact, achievement of the clean air goals is not primarily the responsibility of the Federal government. Instead, Congress assigned that responsibility to the State and local agencies in section 101(a)(3) of the Act: "air pollution prevention (that is, the reduction or elimination, through any measures, of the amount of pollutants produced or created at the source) and air pollution control at its source is the primary responsibility of States and local governments." Similar to NEPA, section 176(c) of the Act requires Federal agencies to consider the environmental consequences of their actions. Neither statutory requirement, however, requires the Federal agencies to unilaterally solve local air quality problems. Instead, the conformity rule should be viewed in a manner that fits within a broader view including NEPA activities by the Federal agencies and State and local air quality planning and regulatory actions. Together, these activities provide the framework to attain and maintain the NAAQS.

It is possible that a Federal action could be taken which, together with other reasonably foreseeable emissions caused by the Federal action, could cause or contribute to a violation of an air quality standard or otherwise not conform with the applicable SIP. The exclusive definition is adequate to cover Federal actions and meet the goals of section 176(c) where the resultant emissions are practicably under the control of the Federal agency, and are subject to a continuing agency programmatic responsibility. Where the Federal control over the resultant emissions is relatively minor, the problem is likely caused by multiple pollution sources and a solution may be impossible unless it is directed at all the contributing sources. This role is given to the State and local agencies by Congress and should not be interpreted as the Federal agencies' role under section 176(c).

In a case where, through a NEPA analysis, a violation is projected to occur at a proposed private housing development that receives a NPDES permit or private shopping mall that receives a COE permit, the projected violation is the result of the new projected emissions from the independent private actions not subject to Federal permit or approval and the background concentrations, due to existing local and areawide emission sources. The appropriate solution to the problem is for the Federal agency to ensure conformity of Federal actions to the SIP by minimizing new emissions from the Federal activities in a reasonable manner and for the State and local agencies to control the local and areawide emissions under the SIP to the extent needed to attain the NAAQS. The Federal agencies' responsibility should be to assure that only those emissions that the Federal agency can practicably control, and that are subject to the agency's continuing program responsibility, will be reasonably controlled, not to attempt to limit other sources' emissions, which would infringe on the air quality and land use planning roles of the State or local agency.

f. Exclusive definition—reasonable implementation. In the exclusive version, indirect emissions include only emissions over which the Federal agency can practicably control, and has continuing program responsibility to control. Unlike the inclusive definition, the exclusive definition does not require Federal agencies to adopt and enforce mitigation measures that the agency cannot practicably control and that the agency has no continuing program responsibility to control. As described below, the exclusive definition does not cover innumerable Federal actions, does not require an agency to leverage their authority, and does not generally prohibit Federal actions in areas with air quality problems.

Consistent with the above discussion, and in order to clarify the scope of the term "indirect emissions," that term is revised in the final rule. Specifically, the meaning of the phrase in the proposed definition regarding emissions "which the Federal agency has and will continue to maintain some authority to control," is clarified in the final rule. In the final rule, the definition of "indirect emissions" is limited to emissions "the Federal agency can practicably control and will maintain control over due to a continuing program responsibility of the Federal agency." The meaning of the words "practicably control" is discussed elsewhere in this notice and through examples contained in the notice. The meaning of "continuing program responsibility" is described in the examples below.

Assume, for example, the Army Corps of Engineers (COE) issues a permit authorizing dredging by a nonfederal entity. In one case, the COE might require the permittee to transport and dispose of the dredged material at a specific location. In another case, the COE might allow the permittee to dispose of the dredged material at a suitable upland disposal site. In the first case, the COE has a continuing program responsibility for air emissions associated with the dredging and disposal activities. In the second case, the COE's program responsibility is limited to emissions associated with the permitted dredging and does not include the disposal activity. However, if the COE were to impose conditions on the operation and management of the dredged material disposal site or regarding subsequent development activities on that site, mandating the use of practices which would result in air pollutant emissions, then these added emissions would be a continuing program responsibility of the COE.

In another case, assume the Forest Service permits a ski resort and imposes conditions regarding the construction and operation of the resort. Also assume that housing development will occur

nearby but on privately-owned land. In this case, emissions from the construction and operation of the resort are a continuing program responsibility of the Forest Service and emissions from the housing activities are not. Again, if the Forest Service had authority to impose conditions on activities at the housing development and chose to exercise that authority to impose conditions that would result in air pollutant emissions, air emissions from those conditions imposed would be within the Forest Service's continuing program responsibility.

With respect to the issue of indirect emissions, the proposal pointed to the language in section 176(c)(1) of the Act which prohibits a Federal agency from providing "support in any way * * * [for] any activity which does not conform to an implementation plan." "Conformity to an implementation plan" is defined to mean that an activity "will not—cause or contribute to any new violation * * *; increase the frequency or severity of any existing violation * * *; or delay timely attainment of any standard. * * *"

Given the "support in any way" language, EPA has, in this rule, interpreted section 176(c) of the Act as requiring Federal agencies, in making their conformity determinations, to consider both the direct and indirect emissions resulting from their own actions or from actions that they support. However, nothing in those words serves to clarify a precise congressional intent regarding the scope of coverage of indirect emissions [a term which is not expressly referred to in section 176(c)(1) of the Act]. In other words, the words "support in any way" do not, in themselves, dictate a congressional preference between the inclusive or exclusive definition of indirect emissions proposed by EPA. The exclusive definition, which this final conformity rule adopts, requires that Federal agencies take into account only those indirect emissions that the Federal action would support, that the Federal agency can practicably control, and are under the continuing program responsibility of the agency. The EPA believes this interpretation is the most reasonable because it assures that Congress' primary intent under section 176(c) of the Act is met, namely, that Federal agencies advance the purpose of the SIP by controlling emissions from those actions which they support, over which they can practicably exercise control, and for which they retain continuing program responsibility.

The Clean Air Act does not define "support" for the purposes of section 176(c) of the Act.[2] If read in the broadest conceivable manner, the "support in any way" prohibition might be interpreted to include virtually all Federal activities, since all Federal activities could be argued to support, at least in some remote way, an action that ultimately emits pollution. The EPA does not believe that Congress intended the "support in any way" prohibition to be interpreted in a manner that would lead to such egregious or absurd applications of section 176(c) of the Act. Where the language of a statute is ambiguous, as is the case here, an agency has the discretion to adopt an interpretation that is reasonable.[3]

One possible approach in determining how far the "support in any way prohibition" extends is to examine the word "support" itself. Section 176(c)(1) of the Act, by its terms, prohibits Federal agencies from "support[ing]" an activity which itself "does not conform to an implementation plan."[4] Thus, the support prohibition cannot be triggered unless and until a Federal agency's actions constitute support of a particular activity. In the absence of a statutory definition for a word, courts typically turn to the word's everyday meaning. The dictionary defines "support" to mean (among other things):

- "to uphold by aid, countenance, or adherence: actively promote the interests or cause of";
- "to uphold or defend as valid, right, just, or authoritative";
- "to provide means, force, or strength that is secondary to: back up";
- "to pay the costs of";
- "to supply with the means of maintenance * * * or to earn or furnish funds for maintaining"; and
- "to provide a basis for the existence or subsistence: serve as the source of material or immaterial supply * * *" Webster's Third New International Dictionary. As the above list makes evident, the everyday meaning of "support" could range from activity that is merely facilitation or encouragement to activity wherein the actor assumes an ongoing responsibility and provides continuing assistance in order for the subsequent endeavor to be realized. Applying the dictionary definition of "support" in the context of the conformity rule, it is apparent that Federal actions that might be said to "support" subsequent projects similarly could range from mere facilitation to continuing responsibility. The EPA does not believe that Congress intended the term "support in any way" to encompass each and every one of these separate definitions, including those where the relationship between the Federal agency's action and the subsequent activity is attenuated. Thus, EPA believes it is reasonable to select a definition of "support" that focuses on the extent to which the Federal agency has continuing program responsibilities, and whether it can practicably control emissions from its own and other party activities. The exclusive definition requires Federal agencies to consider only those direct and indirect emissions over which, under their legal authorities, they can exercise and maintain practicable control and over which they have continuing program responsibilities. As noted previously, this approach is consistent with the purposes of section 176(c) of the Act. That section places certain prohibitions and responsibilities on Federal agencies. The EPA does not believe that Congress intended to extend the prohibitions and responsibilities to cases where, although licensing or approving action is a required initial step for a subsequent activity that causes emissions, the agency has no control over that subsequent activity, either because there is no continuing program responsibility or ability to practicably control. For that reason, EPA believes it is not reasonable to conclude that the Federal agency "supports" that later activity, within the meaning of section 176(c) of the Act.

As implemented by this rule, section 176(c) of the Act requires that a Federal agency ensure conformity with an approved state SIP for those air emissions that would be brought about by agency action, and that the agency can practicably control, and that are subject to a continuing program responsibility of that agency. A Federal agency has no responsibility to attempt to limit emissions that do not meet those tests, or that are outside the Federal agency's legal control. Moreover, neither section 176(c) of the Act nor this regulation requires that a Federal agency attempt to "leverage" its legal authority to influence or control nonfederal activities that it cannot practicably control, or that are not subject to a continuing program responsibility, or that lie outside the agency's legal authority.

For example, neither section 176(c) of the Act nor this regulation requires a Federal agency to withhold a Federal grant of financial assistance to a grant applicant that otherwise satisfies legal

[2] The general definitions section for part D of title I, section 171 (42 U.S.C. 7501), also does not define "support."

[3] *Chevron, U.S.A., Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842–3 (1984).

[4] Of course, section 176(c)(1) also prohibits Federal agencies from engaging in, providing financial assistance for, licensing or permitting, or approving, such activities.

requirements in order to obtain assurances from the applicant with respect to that applicant's activities that the agency cannot practicably control, or that are beyond the agency's continuing program responsibilities, or that fall outside the Federal agency's jurisdiction.

As described in the proposal, development that is related to the Federal action only in a manner that provides daily services such as restaurants, schools, and banks and which are located off Federal property, may be considered incidental rather than indirect emissions. Such activities and emissions are expected to be small relative to other emissions from the Federal action and are difficult or impossible to precisely locate and quantify. Thus, an accurate air quality and/or emissions analysis is not possible. Therefore, emissions from the daily services activities should be considered incidental and would not be included as indirect emissions in the conformity analysis even under the inclusive definition. Under the exclusive definition, incidental emissions are generally not covered for the additional reason that they are generally not under the Federal agency's control and continuing program responsibility.

g. Exclusive definition—Federal role. The exclusive definition isolates certain types of Federal actions where the role and responsibility of the Federal agency itself is major. For example, in Federal construction projects such as buildings or laboratories, the Federal agency has substantial and continuing authority and responsibility to manage that activity. Thus, the Federal contract manager should also be responsible for assuring that the construction activities conform to the applicable SIP.

By focusing on such major Federal actions, this approach would not require a conformity analysis for certain Federal actions that are necessary for, but incidental to, subsequent development by private parties. For example, the exclusive definition does not generally require that a COE fill permit needed for a relatively small part, portion, or phase of a twenty acre development on private land would somehow require the COE to evaluate all emissions from the construction, operation, and use of that larger development.

The exclusive definition, in effect, includes an examination of the duties, continuing program responsibilities, and controls that a Federal agency can practicably implement. When the Federal agency owns or operates a facility, Federal responsibility for the direct and indirect emissions from that facility is clear. However, farther down the spectrum of "assistance," where less and less Federal control and program responsibility may be found, a point is reached where the Federal agency should not have the same degree of responsibility for assuring the conformity of subsequent privately generated emissions, especially the indirect emissions from that action.

By controlling the direct and indirect emissions under the practicable control and continuing program responsibility of the Federal agency, the conformity rule assures that Federal agencies take appropriate and reasonable actions to support the purpose of the SIP, to meet all specific SIP requirements, and to assure that the SIP is not undermined by Federal actions. The exclusive definition assures that Federal actions will meet the intent of section 176(c) and that States will retain the primary responsibility to attain and maintain the air quality standards.

In support of the "exclusive" version, many Federal agencies have stated that it is unreasonable to withhold a conformity determination where it is impracticable for the Federal agency to remedy the situation. In such cases, they argue that the State and/or local jurisdictions should regulate the activities outside the Federal agency's jurisdiction. On the other hand, some commenters have argued that reliance on State or local action to control these off-site activities could be viewed as requiring the State to amend the applicable SIP to conform to the Federal action, rather than a rule that requires the Federal action to conform to the applicable SIP with respect to all subsequent emissions. For the reasons described above, EPA concludes that it would be unreasonable to interpret section 176(c) of the Act as requiring Federal agencies to take responsibility for emissions that they cannot practicably control and for which they have no continuing program responsibility.

The conclusion that the exclusive definition best fits with the balance that Congress established in the Act between Federal and State/local responsibility is supported by the Supreme Court's analysis in its 1989 decision in *Robertson* v. *Methow Valley Citizens Council*, 490 U.S. 332 (1989). In that case, the Court addressed the question," (w)hether the Forest Service may issue a special use permit for a recreational use of national forest land in the absence of a fully developed plan to mitigate environmental harm." Id. at 336. In that case, the imposition of such a mitigation plan was within the jurisdiction of State and local agencies, not the Forest Service. The Court held that the Forest Service's authority to issue the permit was not contingent upon the State and local agencies taking action. As the Court explained, "(i)n this case, the off-site effects on air quality and on the mule deer herd cannot be mitigated unless non-Federal government agencies take appropriate action. Since it is those state and local governmental bodies that have jurisdiction over the area in which the adverse effects need be addressed and since they have the authority to mitigate them, it would be incongruous to conclude that the Forest Service has no power to act until the local agencies have reached a final conclusion on what mitigation measures they consider necessary." Id. at 352–53 (footnote omitted). For the same reasons, EPA has concluded that it would be "incongruous" to read section 176(c) of the Act as rendering the ability of Federal agencies to perform their congressionally-assigned missions contingent upon State and local agencies imposing mitigation measures over activities that they and not the Federal agencies, can practicably control, and have a continuing program responsibility to control. Since the inclusive definition would, in many cases, require Federal agencies to withhold action unless and until a State/local agency imposes mitigation measures over activities that are outside the Federal agencies' control, the inclusive definition would upset the balance between Federal and State/local responsibilities for achieving clean air, and would unjustifiably frustrate Federal agencies from performing their congressionally-assigned statutory responsibilities.

The person's activities that fall outside the Federal agency's continuing program responsibility to control are subject to control by State and local agencies. In sum, expanding the Federal agencies' responsibilities to extend to emissions that are outside their continuing program responsibility to control (which the inclusive definition would have done) would upset the balance between Federal and State/local roles that Congress established in the Act and would infringe on the air quality roles of the State or local agency.

h. Exclusive definition—examples.

Example 1:

Assume that the FAA is considering approval of an airport expansion in a serious ozone nonattainment area and that adjacent development of an industrial park is known to depend on the FAA approval. Assume: (1) The airport expansion would result in an increase in emissions of 50 tons/year of

volatile organic compounds (VOC) due to vehicle and airport related emissions, and (2) assume that the adjacent industrial park would emit 200 tons/year of VOC.

Under the exclusive definition, the FAA must show that the 50 tons/year of VOC from the airport related activities conforms to the SIP. The FAA, however, is not responsible for the 200 tons/year of VOC from the industrial park. The conformity rule provides several ways to show that the 50 tons/year of VOC conforms to the SIP:

(1) The airport expansion is specifically included in the applicable SIP's attainment demonstration,

(2) The 50 tons are offset by reductions obtained elsewhere by the FAA,

(3) The 50 tons are determined to be consistent with the SIP emission budget by the State air quality agency,

(4) The State commits to revise the SIP to accommodate the 50 tons,

(5) The airport expansion is included in the conforming transportation plan, or

(6) In some cases, it is demonstrated that there is no increase in emissions in a build/no build scenario. (Note that project-specific modeling for ozone is not generally considered an option since, as a technical matter, ozone models are not sufficiently precise to show such impacts unless the project is a large portion of the total area inventory.)

Example 2: In another case, the same airport expansion might be in a CO or PM–10 nonattainment area where a local scale modeling analysis is determined to be needed by the State agency primarily responsible for the SIP. In such cases, the modeling analysis must consider emissions due to the airport activity and emissions due to any existing sources, including background concentrations. Emissions from the future industrial park would not, however, be required as part of the modeling analysis since such emissions are not covered by the conformity rule.

Example 3: A Federal action to lease land to a private developer does not in itself have any immediate direct or indirect air pollution emissions. The lease does, however, allow future activities by the private developer on the leased Federal land that could result in indirect air pollution emissions. This can be seen clearly in cases where the leasing action is accompanied by a description of future activities that the developer plans to undertake on the leased Federal land which would result in emissions and where the lease contains emission limits imposed on the use of the leased Federal land. Where the Federal agency has the authority to impose lease conditions controlling future activities on the leased Federal land, these emissions must be analyzed in the conformity determination.

Example 4: Where a COE permit is needed to fill a wetland so that a shopping center can be built on the fill, generally speaking, the COE could not practicably maintain control over and would not have a continuing program responsibility to control indirect emissions from subsequent construction, operation, or use of that shopping center. Therefore, only those emissions from the equipment and motor vehicles used in the filling operation, support equipment, and emissions from movement of the fill material itself would be included in the analysis. If such emissions are below the de minimis levels described below for applicability purposes (section 51.853), no conformity determination (section 51.858) would be required for the issuance of the dredge and fill permit.

i. Exclusive definition—types of Federal actions covered. The following types of Federal actions, among others, are likely to be subject to conformity review under the exclusive definition. Some of these actions are likely to be above the de minimis levels, controllable currently by the Federal agency, and the Federal agency will maintain an ability to control the emissions in the future through oversight activities.

(1) Prescribed burning activities by Federal agencies or on Federal lands: The burning is conducted by the Federal agency itself or is approved by the Federal agency, consistent with a Federal land management plan, and the Federal land manager maintains an oversight role in either case.

(2) Private actions taking place on Federal land under an approval, permit, or leasing agreement, such as mineral extraction, timber harvesting, or ski resort construction: A lease agreement, for example, may be subject to mitigation conditions as needed to show conformity and the Federal land manager will maintain an oversight role, including the enforcement of lease agreements. The conditions needed to show conformity would also be enforceable by the State and EPA through the SIP (as described elsewhere in this notice).

(3) Direct emissions from COE permit actions: The COE will evaluate the direct emissions from the activity involving the discharge of dredged or fill material. If these direct emissions were to exceed the de minimis level, the COE has legal authority to impose permit conditions to control those emissions.

(4) Wastewater treatment plant construction or expansion actions: Construction projects funded by EPA may be conditioned so that the new treatment capacity conforms to growth assumptions in the SIP. The EPA maintains a continuing control authority since future expansion would need a new approval action. Emissions from this activity can be quantified and located only on a regional scale; they cannot be located in a precise manner and subject to a microscale analysis. Such emissions are nevertheless considered reasonably foreseeable, if only on a regional scale. The SIP planning generally takes into account the growth limiting effects of wastewater treatment capacity and, thus, changes to the capacity must be shown to conform to the SIP. This is an area where Congress clearly desires a conformity review, as evidenced by section 316 of the Act.

(5) Federal construction projects such as buildings, laboratories, and reservoirs on Federal land: Contracts to complete construction projects funded by GSA or other Federal agencies may be conditioned so that the new construction meets mitigation measures as needed to show conformity. The Federal contract manager would maintain an oversight role to assure that all the contract agreements are met.

(6) Project level minerals management leasing activities: The lease agreement may be structured as described in item b above.

(7) New airports or airport expansion actions: Grants to fund projects or approval by the FAA to build projects may be conditioned so that the new projects meet mitigation measures as needed to show conformity. Under FAA's funding statute, grants for new airports, new runways, and major runway extensions must include such conditions. The grant conditions are enforceable through the grant agreements. Failure of the airport owner/operator to comply with grant conditions may result in suspension or termination of Federal assistance.

(8) Actions taking place on Federal lands or in Federal facilities: The Federal agency has and will maintain the ability to control emissions in many other activities, such as activities in National Parks, on military bases, and in Federal office buildings.

j. Exclusive definition—types of Federal actions not covered. The following types of Federal actions, among others, are not covered by the conformity rule under the exclusive definition approach.

(1) Activities associated with property disposal at military closure and realignment bases through sale or other transfer of title. This includes transactions where there is an enforceable contract for the sale or other transfer of title that requires delivery of the deed promptly after the requirements of Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 U.S.C. 9620(h)(3)) have been met whether or not the property is occupied before closing of title under the contract or a related instrument. In this case, the military does not retain continuing authority to control emissions other than those associated with the CERCLA cleanup.

(2) Leasing agreements associated with military base closure and realignment, where transfer of title is required to be conveyed upon satisfaction of the CERCLA requirements, and where the military service leases the property without retaining continuing authority to control the property except as necessary to assure satisfaction of CERCLA requirements.

(3) Certain indirect emissions related to a COE permit for the discharge of dredged or fill material. The indirect emissions from development activities related to COE permit actions are not covered where such emissions are not subject to the continuing program responsibility of the COE, or cannot be practicably controlled by the COE.

(4) NPDES permit actions: Many of these actions are taken under State rules and, as such, are not Federal actions. The issuance of the Federal permit has no direct emissions, but may have considerable indirect emissions from future development of permitted facilities. However, where EPA issues a NPDES permit, for example, to an industrial or housing development, the EPA does not maintain an authority to control emissions from the development and, thus, the indirect emissions from the development are not subject to the conformity rule.

D. Indirect Emissions—Definition of "Caused By"

1. Proposal

During the course of discussing the inclusive approach, the proposal offered examples of what emissions would be considered "caused by" a Federal action. The proposal stated that inclusive indirect emissions that would be considered "caused by" the Federal action are those emissions from sources which are dependent upon the Federal action and would only be constructed and/or operated because of that Federal action. Such emissions would include emissions from any on-site or off-site support facility which would not be constructed or increase its emissions except as a result of the Federal action. The proposal stated that indirect emissions include emissions from mobile sources that are attracted to a facility, building, structure, or installation; for example, indirect emissions resulting from roads, parking facilities, retail, commercial and industrial facilities, airports, maritime ports, sports centers, and office buildings.

Where mobile sources contribute indirect emissions, the proposal noted that the Federal agency should attribute only those emissions that are caused by the Federal action. For example, not all the emissions from trips to and from a workplace or retail site are likely to be fully "caused" by the site itself. The road to and from the site, the origin and ultimate destination points of the trip, and other factors can be used to determine the portion of indirect emissions caused by the Federal action.

2. Comment

One commenter requested clarification that EPA's intention is to use a "but for" test concerning indirect emissions caused by a Federal action.

3. Response

The EPA agrees with this comment, as discussed in the proposal and includes a definition of "caused by" in the final rule to address this concern. Since the term "caused by" is used in both the definitions of "direct emissions" and "indirect emissions," the definition in the final rule also applies to both.

As a result of EPA adopting the exclusive approach, a Federal agency will need to address the "caused by" issue only with respect to those activities which the Federal agency controls. Therefore, many of the activities that would have been covered under the inclusive definition only by reason of the "caused by" requirement will not be covered under the exclusive definition due to lack of Federal agency control. This would be true generally for the examples in the "proposal" discussion immediately above, which were offered in the context of the inclusive definition.

E. Indirect Emissions—Sections 110(a)(5)(A) and 131 of the Act

1. Proposal

Section 110(a)(5)(A) of the Act prohibits the Administrator from requiring a State to adopt a general indirect source review program. Section 131 of the Act indicates that land use control authority resides with the cities and counties. As noted in the proposal, this language could be interpreted to restrict EPA's authority to regulate indirect emissions as part of the conformity rule. However, for certain federally assisted indirect sources, section 110(a)(5)(B) of the Act expressly allows the Administrator to promulgate, implement, and enforce indirect source review programs under section 110(c) of the Act. The EPA believes that this language in section 110 of the Act is consistent with the broad mandate in section 176(c) of the Act to prohibit Federal agencies from taking actions which "support in any way" any activity which does not conform to an applicable SIP.

2. Comment

Several commenters disagreed with EPA's interpretation and argued that sections 110 and 131 prohibit EPA from promulgating a rule, such as the March 15, 1993 proposal, that covers indirect emissions. These commenters point to the legislative history of the 1977 amendments to the Act, which added section 110(a)(5) and an earlier version of section 176(c), as evidence that Congress has explicitly prohibited EPA from seeking to regulate private development or land use by Federal review of indirect sources. By rejecting efforts by EPA in the mid-1970's to restrict parking spaces and require preconstruction review of parking structures associated with indirect sources through regulation, and by adopting the explicit prohibition in section 110(a)(5), they argue, Congress clearly intended that Federal agencies not involve themselves in controlling indirect sources or interfering in local land use decisions. In addition, they find it significant that Congress did not revise or delete section 110(a)(5) even when it added arguably stricter language to section 176(c) in 1990. Moreover, to the extent that section 110(a)(5)(B) does permit Federal review of certain indirect sources, these commenters contend that such review is restricted to "major" federally-assisted indirect sources and federally-owned or operated indirect sources only.

3. Response

For the reasons described in the preamble to the proposal and as discussed above regarding the inclusive/exclusive issue and further below, EPA disagrees with these comments. The EPA has noted that section 110(a)(5)(B) expressly allows the Administrator to promulgate, implement, and enforce

indirect source review programs under section 110(c) for certain federally assisted indirect sources. However, the EPA also believes that section 176(c) provides independent authority for EPA to require SIP revisions concerning conformity requirements that include provisions addressing indirect emissions resulting from Federal actions. Such provisions are necessary to prevent Federal actions, as required by section 176(c)(1)(B), from causing or contributing to NAAQS violations.

The EPA believes that the comments do not fully reflect the legislative history of the 1977 amendments to the Act regarding the congressional concerns that prompted adoption of section 110(a)(5)(A). The congressional Conference Committee report does indeed discuss attempts by EPA to promulgate measures controlling parking supply, but, unlike the commenters' statements, points out that these efforts came only after the EPA Administrator had determined that all the SIP's submitted to meet the 1970 Act requirements had failed to ensure maintenance of the NAAQS, especially those for motor vehicle-related pollutants. Congress objected to EPA's proposed parking restrictions, not simply because they were intended to control indirect sources, but primarily because Congress believed it was a misdirected attempt to reduce motor vehicle traffic that only succeeded in shifting the air pollution control emphasis away from the major source of the problem, namely the cars themselves.

> [The EPA's] efforts based on indirect control of the use of automobiles through restrictions on parking lots, shopping centers and other indirect sources, rather than full and prompt controls for new autos, trucks, buses, and motorcycles are inherently inequitable. It transfers from the motor vehicle manufacturers to the public and to indirect source owners and operators the burden of protecting public health from dangerous vehicle emissions. H.R. Rep. No. 1975, 94th Cong., 2d Sess. 221 (1976).

So, while it is true that Congress sought to reverse these specific indirect source measures and, thereby, reallocate the regulatory burdens, it also acknowledged that even after new car emissions requirements were adopted, additional control measures would be needed by many nonattainment areas if the NAAQS were to be attained and maintained, and such measures could include regulation of indirect sources, such as "new facilities which attract heavy automobile traffic." *Id.* at 222. Consequently, although Congress restricted the Administrator's authority to require States to adopt an indirect source review program, it purposely did not remove that authority completely. Again, as stated in the Conference report: "The Committee believes that its proposal meets the specifications * * * of an acceptable and workable program. It tightly restricts the Administrator's authority with respect to indirect sources by assuring that necessary review programs for non-federally assisted indirect sources will be designed and implemented by local and State governments." *Id.* at 227. And, as the report notes elsewhere: "Of course, the prohibitions on the Administrator's implementation and enforcement of a review program* * *are not applicable with respect to federally-owned or federally-assisted indirect sources." *Id.* at 224. Nothing in section 176(c), which is only concerned with federally-assisted actions, is inconsistent with this expression of Congress' intent with respect to section 110(a)(5). Moreover, the fact that the section 110(a)(5) prohibition and the requirement that Federal actions conform to the SIP under section 176(c) were both added when the Act was amended in 1977 does nothing to further the commenters' argument since it supports EPA's position as well. Given the thorough and detailed consideration Congress expended when it limited EPA's authority to review indirect sources, it would have been easy for Congress to add language in section 176(c) stating, for example, that the section 110(a)(5) restriction on indirect source review applied there also. Not only has Congress not limited this provision, but on the two separate occasions it has addressed section 176(c) of the Act it has consistently stated the scope of the provision's coverage requires a determination of conformity for "any activity" that a Federal agency "supports in any way." Indeed, EPA's view is consistent with the exception to the prohibition in section 110(a)(5) for federally-assisted, operated, or owned indirect sources, since section 176(c) of the Act applies only to actions supported or undertaken by Federal agencies. The EPA, therefore, concludes that the prohibition in section 110(a)(5) of the Act does not limit EPA's independent authority under section 176(c) of the Act.

The EPA also does not agree with the comment that the authority provided EPA under section 110(a)(5)(B) to control certain indirect sources is limited only to major indirect sources, such as the ones enumerated therein. The discussion in the legislative history strongly suggests that the use of the word "major" was not intended to denote a limitation on the type of indirect sources EPA may review. Rather, the term as used merely describes certain large-scale, hence "major," projects of the type which, like the ones listed, normally qualify for Federal funding assistance. For example, the Conference Committee report states: "An exception to this [section 110(a)(5)] prohibition is made for major Federally funded public works projects such as highways and airports. . ." S. Rep. No. 16, Vol. 3, 95th Cong., 2d Sess. 506 (1978). But other statements in the report show that EPA's review is not limited to such projects only: "The Administrator is prohibited from promulgating regulations relating to indirect source reviews except with respect to Federally assisted highways, airports *or other indirect sources assisted, owned or operated by the Federal government.*" *Id.* at 4382 (Vol. 5)(emphasis added).

Moreover, the conformity rules regulate emissions, not local land use or zoning requirements. These rules do not infringe on the authority of local governments to control land use; rather, they restrain the ability of Federal agencies to support projects that cause certain air quality problems. Nothing in these rules inhibits the ability of local governments to set their own requirements with respect to such projects. Thus the conformity rules are not inconsistent with section 131 of the Act.

F. Indirect Emissions—Reasonably Foreseeable Emissions

1. Proposal

As described in the preamble to the March 15, 1993 proposal, the indirect emissions that are "reasonably foreseeable" must be identified at the time the conformity determination is required, though this would include emissions that would occur later in time and/or at a place other than the action itself. The proposal stated that an agency is not required to speculate or guess at potential future indirect emissions which are conceivable but not identifiable. In addition, the proposal indicated that descriptions of emissions contained in documents such as employment and financial forecasts and NEPA documents should be considered reasonably foreseeable emissions.

As described in the proposal, certain types of Federal actions occur on the programmatic level rather than on a project level, and the specific air quality and emissions impacts associated with individual projects under such programs may not be known. In instances where a Federal action is on

a programmatic level and it is impossible to accurately locate and quantify emissions and, therefore, impossible to accurately complete the air quality and emissions analysis specified in § 51.858, such emissions should not be considered reasonably foreseeable.

The proposal also stated that, for purposes of defining "indirect emissions," development that is related to the Federal action only in a manner that provides daily services such as restaurants and banks and which are located off Federal property, may be considered incidental rather than indirect emissions under certain circumstances. In such cases, specific emissions from the daily services activities should be considered not reasonably foreseeable and not included as indirect emissions in the conformity analysis.

2. Comment

The EPA received comments requesting clarification of the phrase "reasonably foreseeable emissions." Several commenters requested EPA to incorporate a definition of this term in the rule. One commenter stated that EPA's definition of reasonably foreseeable emissions would require private developers to account for, assess, and if necessary, mitigate the impacts of completely unrelated projects developed by other private parties. The commenter also objected to certain environmental analyses that rely on worst-case assumptions and exaggerate the impacts due to possible, but unlikely, future growth scenarios and where it is impossible to assess local air quality impacts.

3. Response

a. *Documentation.* In order to clarify the term, EPA has: (1) Added a definition of "reasonably foreseeable emissions" in the regulatory portion of the rule; (2) added the discussion below; and (3) listed certain Federal actions that are not considered reasonably foreseeable in § 51.853(c)(3) and, therefore, exempt from conformity requirements. The definition is similar to the discussion in the proposal, however, there are some differences as described below:

Reasonably Foreseeable Emissions are projected future indirect emissions that are identified at the time the conformity determination is made; the location of such emissions is known and the emissions are quantifiable, as described and documented by the Federal agency based on its own information and after reviewing any information presented to the Federal agency.

Unlike the proposal, the final definition does not require a Federal agency to use all emissions scenarios contained in financial documents or environmental analyses. That approach could not in many cases be implemented since the various documents contain quite different scenarios and a single document sometimes contains multiple emissions scenarios. In addition, some scenarios could be based on speculation. The definition does not require the use of worst-case assumptions, unlikely growth scenarios, or analyses where it is impossible to assess local air quality impacts. Further, under an exclusive definition, the conformity review may be covering a smaller set of indirect emissions than, for example, the emissions scenarios contained in an environmental impact statement.

The final rule requires the Federal agency to review all of its own information and all information presented to the Federal agency. Selection and documentation of the relevant emissions scenarios for conformity review is the responsibility of the Federal agency and should be based on reasonable expectations of future activity resulting from the Federal action.

b. Actions not reasonably foreseeable. In order to provide further clarification, EPA listed some Federal actions that are not considered reasonably foreseeable in § 51.853(c)(3) and are, therefore, exempt from conformity requirements. This list is intended to provide examples and is not intended to be a complete listing of such activities. Additionally, actions for which emissions cannot be accurately quantified, such as the implementation of trade laws and export trade promotional activities, are not considered reasonably foreseeable. As discussed below, these actions include program scale leasing actions and electric power marketing activities that involve the acquisition, sale, and transmission of electric energy.

(1) Program Level Leasing Actions

In actions such as outer continental shelf lease sales, it will often be difficult or impossible to locate and quantify emissions early in the Federal agency review process. Thus, the emissions may not be reasonably foreseeable. Further, a conformity review is unnecessary at that time since the Federal agency must take future actions related to the lease sale which are subject to conformity review. That is, the exploration and development actions at the project level would be subject to conformity review prior to any action that would actually result in emissions. In such cases, the EPA believes that a conformity review is not required prior to the project level analysis.

On the other hand, where a conformity review, such as a lease sale, can be and is made on the program level rather than the project level, subsequent project level actions which implement the conforming program do not require new conformity reviews. This approach is consistent with language in the preamble to the proposal. For clarification, EPA added this concept in the final rule: § 51.853(c)(4) exempts actions that merely implement a decision to conduct or carry out a policy, plan, program, or project where the policy, plan, program, or project conforms.

(2) Electric Power Marketing

Federal activities in the marketing of electric power are exempt from conformity review for several reasons. In many cases, the resulting emissions from the use of the electric power cannot be precisely located or quantified and, thus, are not reasonably foreseeable. The marketing agreements would also be exempt since customers of the Federal agency could obtain electric power from other public (non-Federal) or private electric utilities even if it were not provided by the Federal agency. Thus, emissions from these customers are not "caused by" the Federal action because they would occur in the absence of the Federal action. Further, SIP's assume electric power will be available in future growth projections. Thus, the delivery of electric power would not be inconsistent with the SIP.

c. Unrelated projects. The definitions of "reasonably foreseeable emissions," "indirect emissions (exclusive)," and "caused by" make it clear that "completely unrelated projects," as stated by a commenter, are not subject to the applicability analysis. However, where an air quality modeling analysis is the basis of a conformity determination, the modeling analysis should account for emissions due to existing sources together with covered emissions from the Federal action, consistent with EPA modeling guidance.

G. Indirect Emissions—Definition of Federal Activity

1. Proposal

Although EPA included a definition of "Federal action" in the proposal, that definition merely repeated language from section 176(c) of the Act and did not clarify the meaning of the statutory language. The preamble to the proposal,

however, made it clear that EPA intended the concept to include future development activities associated with a Federal action, under either definition of indirect emissions. Under the exclusive definition, EPA proposed that consideration of such emissions would be limited to those future development activities which the Federal agency could control and would continue to maintain some authority to control.

2. Comment

The building industry commented that under *Atlantic Terminal Urban Renewal Area Coalition* v. *New York City Department of Environmental Protection*, 705 F. Supp. 988 (S.D.N.Y. 1989), the definition of Federal activity should be limited to the immediate Federal action, in that case a Department of Commerce (DOC) grant for demolition, and should not include any subsequent activities even where they are facilitated by the Federal action, in that case a subsequent housing development built on the site of the demolition. Several commenters also requested that EPA clarify which activities are covered under the conformity rule.

3. Response

The EPA does not agree that Federal actions should always be interpreted so narrowly. The EPA acknowledges that the court in *Atlantic Terminal* indicated in dicta that, in that case, the Federal activity under consideration should be limited to the demolition activity. However, that assessment was made in the context of a factual situation in which the subsequent development activity was being funded by a Department of Housing and Urban Development (HUD) block grant. The court based its decision on the unreasonable burden and duplicative efforts that would be placed on the Federal government should both DOC and HUD be required to analyze the same subsequent development. The court did not address the situation where only one Federal agency had jurisdiction over a project, and was not presented with the statutory language nor legislative history concerning transportation activities under the 1990 amendments to section 176(c) nor EPA's interpretation of Federal actions and indirect emissions (described below).

If it were the case that through an agency's approval of a demolition grant an agency were able to practicably control construction of the housing development, and had continuing program responsibility over such development, then EPA believes that the agency would have "supported" the housing development by making the grant. For these reasons, EPA believes that a court specifically addressing the issue of the definition of Federal activity under such circumstances would not reach the same decision as in *Atlantic Terminal*.

In order to clarify which activities are covered under the general conformity rule, the final rule incorporates changes in the definitions of "Indirect emissions" (discussed in section III.C.) and "Federal action" (discussed below and in section IV.D.). The definition of "Federal action" is revised by adding the following sentence to the end of the definition in the proposal: Where the Federal action is a permit, license, or other approval for some aspect of a nonfederal undertaking, the relevant activity is the part, portion, or phase of the nonfederal undertaking that requires the Federal permit, license, or approval. The following examples illustrate the meaning of the revised definition.

Assume, for example, that the COE issues a permit and that permitted fill activity represents one phase of a larger nonfederal undertaking; i.e., the construction of an office building by a nonfederal entity. Under the conformity rule, the COE would be responsible for addressing all emissions from that one phase of the overall office development undertaking that the COE permits; i.e., the fill activity at the wetland site. However, the COE is not responsible for evaluating all emissions from later phases of the overall office development (the construction, operation, and use of the office building itself), because later phases generally are not within the COE's continuing program responsibility and generally cannot be practicably controlled by the COE.

In another case, assume the Forest Service permits a ski resort and imposes conditions on the construction and operation of the ski resort. Also assume that housing development will occur nearby but on privately-owned land. In this case, the conformity review might cover emissions due to construction and operation of the ski resort since they are activities permitted by the Forest Service. Emissions from the housing activities, however, would not generally be covered since the Forest Service does not generally take actions covering the portion of the overall development that is on privately-owned land and not subject to a Forest Service permit, license, or approve action.

H. Applicability—Attainment Areas

1. Proposal

As discussed in the preamble, EPA proposed to interpret the statute such that the conformity rules apply only to nonattainment areas and those attainment areas subject to the maintenance plans required by section 175A of the Act (58 FR 13841).

2. Comment

The EPA received many comments which agreed with the proposal and many other comments stating that the statute should be read such that conformity requirements would apply in all or portions of attainment and unclassified areas as well. Similar comments were received arguing that conformity should not apply in attainment areas.

One commenter noted that development in attainment areas on the fringe of nonattainment areas is likely to increase the size of the nonattainment areas, increasing the impact on public health and welfare and necessitating more costly pollution control measures to retrofit sources. The commenter also stated that development in rural attainment areas, even many miles away from urban nonattainment areas, may delay timely attainment of the NAAQS or emission milestones in nonattainment areas. Another commenter cited an example of a conformity analysis in an attainment area which showed a Federal action would cause a new violation of the NAAQS unless mitigation measures were implemented and/or planning provisions were revised.

3. Response

In the proposal, EPA indicated that the statute was ambiguous with respect to whether conformity applied only in nonattainment areas, or in attainment areas as well. As noted above, EPA received significant public comment arguing that the statute should be read to apply conformity also in attainment areas, based on the wording of Act section 176(c)(1) and the policy merits of such applicability. Similar comments were received arguing that conformity did not apply in attainment areas.

The EPA continues to believe that the statute is ambiguous, and that it provides EPA discretionary authority to apply these general conformity procedures to both attainment and nonattainment areas. The EPA plans to carry out a separate rulemaking proposing to apply general conformity procedures to certain attainment areas. The EPA sees strong policy reasons not to apply conformity in all attainment areas, given the significant burden associated with making conformity determinations relative to the risk of NAAQS violations in clean areas. Thus, EPA believes that it would be

reasonable to propose applying conformity in attainment areas for which air quality is close to nonattainment levels, for example at 85 percent of nonattainment levels (see discussion below).

The EPA intends to take comment on the basic proposal to apply conformity in attainment areas. The EPA will also seek comment on the specific application of conformity in certain categories of attainment areas.

Therefore, EPA intends to issue in the near future a supplemental notice of proposed rulemaking dealing with conformity requirements in attainment areas.[5] The requirements of this final rule will apply only in nonattainment and maintenance areas, as proposed.

While EPA will solicit comments on other options, the supplemental notice of proposed rulemaking on general conformity will propose to require conformity determinations only in the portion of attainment areas which have exceeded 85 percent of the NAAQS. These areas will be identified by using the most recently available, quality-assured air quality data covering the period appropriate for making designations of air quality status in 40 CFR part 81. Federal activities in attainment areas below 85 percent of the NAAQS and areas where representative monitoring data are not available would be exempt from the obligation to conduct a general conformity analysis based on the de minimis impact on air quality that would result for general conformity activities in such areas. Because the merit of exempting certain areas from conformity requirements will vary depending on the activities being regulated, the transportation conformity rule may propose different exemptions for applicability of conformity requirements in attainment areas than those for general conformity.

I. Applicability—De Minimis Emission Levels

1. Proposal

The proposed de minimis emission levels to be used for determining applicability of conformity requirements were pollutant specific and varied according to the severity of the nonattainment area. They ranged from 0.6 tons/year (for lead) to 100 tons/year (for carbon monoxide) (§ 51.853). These levels generally were derived from the "significance levels" established for preconstruction review of modifications to existing major stationary sources. The significance levels were taken from the Act itself, where provided, or from EPA's regulations for SIP's (40 CFR part 51) where the Act did not provide them. For ozone (VOC) and nitrogen oxides (NO_x), a sliding scale was proposed, ranging from 10 tons/year (for extreme ozone nonattainment areas) to 40 tons/year (for marginal and moderate ozone nonattainment areas).[6]

Most Federal actions result in little or no direct or indirect air emissions. The EPA intends such actions to be exempted under the de minimis levels specified in the rule and, thus, no further analysis by the Federal agency is required to demonstrate that such actions conform. Additionally, paragraph (d) of § 51.853 allows a Federal agency to establish categories of actions which would be presumed to conform due to minimal air quality impact. These provisions are intended to assure that these rules are not overly burdensome and Federal agencies would not spend undue time assessing actions that have little or no impact on air quality. Such actions include, for example, personnel actions, continuing activities with no substantial, adverse change from previous conditions that are associated with an on-going program or operation (including certain permit renewal actions), and routine monitoring.

2. Comments

Several commenters supported the concept of de minimis levels as a means of focusing conformity requirements on those Federal actions with the potential to have significant air quality impacts. Many agreed with the de minimis levels proposed in the NPR. Some commenters thought the levels should be lower so that more actions would be considered, while others wanted the de minimis levels to be raised to lessen the administrative burden on Federal agencies and avoid conformity requirements for smaller projects. A few commenters indicated that too many of their activities would be subject to a conformity review based on the de minimis cutoffs proposed in the NPR if they were used with the inclusive definition of indirect emissions.

One commenter stated that the proposed de minimis levels are arbitrary and capricious. Another commenter stated that there should be only one de minimis level rather than the pollutant- and classification-specific levels proposed.

Several comments objected to the provision that would automatically lower the de minimis levels to that of the stationary source level established by the local air quality agency. The commenters pointed out that certain air agencies have a zero threshold level, which would not be appropriate for conformity.

The EPA also received comments stating that the applicability determinations for conformity would be overly burdensome because they could be interpreted to apply to even the smallest of Federal actions. That is, the proposed rule could be interpreted to call for virtually all Federal actions, even purely administrative ones, to make a positive conformity determination before the agency is allowed to proceed with the action.

Several commenters requested EPA to specifically list types of Federal actions that would be de minimis and, thus, exempt from the conformity review requirements.

3. Response

Given the need to choose a threshold based on air quality criteria and one that avoids coverage of less significant projects, and in response to certain comments, the de minimis levels for conformity analyses in the final rule are based on the Act's major stationary source definitions—not the significance levels as proposed—for the various pollutants. Use of the de minimis levels assures that the conformity rule covers only major Federal actions. Under the major source definition, for example, the levels for ozone would range from 10 tons/year (VOC or NO_x) for an extreme ozone nonattainment area to 100 tons/year for marginal and moderate areas, not from 10 tons/year to 40 tons/year as proposed. In areas that are close to attainment, smaller projects, such as those that result in strip shopping centers, would not be subject to review. In areas with more severe air quality problems, such smaller projects would be subject to review. Larger projects, such as an airport expansion or the redevelopment of a military base, would require a conformity review under all of these de minimis levels.

[5] For PM–10, the areas which would be addressed in the supplemental notice are designated "unclassifiable." The amendments to the 1990 Act designated areas meeting certain qualifications as nonattainment for PM–10 by operation of law, while all other areas were designated unclassifiable. In the future, as appropriate, the Act provides for additional unclassifiable areas to be redesignated to attainment. This rule refers to areas redesignated to attainment as "maintenance areas."

[6] The actual significance level for VOC and NO_x established by the Act as amended in 1990 for an extreme ozone nonattainment area is zero (i.e., any increase in emissions from a modification of a major source triggers new source review). The 10 tons/year proposed for a conformity review threshold was chosen because EPA determined that a de minimis level is needed, a zero threshold does not provide a de minimis level, and sources with emissions above 10 tons/year are defined as "major stationary sources" under title I, part D, subpart 2 of the Act.

The de minimis level for lead is 25 tons/year in the final rule. The definition of major stationary source for lead is 100 tons/year. Relatively small increases in lead emissions, however (compared to other criteria pollutants) may threaten the lead standard; also, the level proposed for lead (0.6 tons/year) was proportionately much smaller than 100 tons/year. Therefore, a 100 ton/year level appears unprotective of the conformity requirement. The 25 ton/year value is based on the source size in 40 CFR part 51 that triggers an attainment demonstration requiring dispersion modeling.

The de minimis levels proposed were generally those used to define when modifications to existing stationary sources require preconstruction review. It was pointed out to EPA in comments on the proposal that these thresholds would result in the need to perform a conformity analysis and determination for projects that constituted a "modification" to an existing source but not a "major" source in some cases. The EPA agrees that conformity applies more appropriately to "major" sources and after careful consideration has decided to revise its original proposal in the final rule to use the emissions levels that define a major source, except as described above for lead. The definition of a major source under the amended Act is explained in more detail in the April 16, 1992 Federal Register in the EPA's General Preamble to Title I (57 FR 13498). Section 51.853(b)(3) of the rule has also been revised to remove the provision that would automatically lower the de minimis levels to that established for stationary sources by the local air quality agency. In keeping with its conclusion that only major sources should be subject to conformity review, EPA agrees that a zero emissions threshold, as established by some local agencies, should not be required by this rule.

Further, the EPA believes that Federal actions which are de minimis should not be required by this rule to make an applicability analysis. A different interpretation could result in an extremely wasteful process which generates vast numbers of useless conformity statements. Paragraphs (c)(1) and (2) of § 51.853 are added to the final rule to provide that de minimis actions are exempt from the requirements of this rule. Therefore, it is not necessary for a Federal agency to document emissions levels for a de minimis action. Actions that a Federal agency recognizes as clearly de minimis, such as actions that do not cause an increase in emissions, do not require a positive conformity determination. Instead, such actions are exempt from the rule as provided in § 51.853(c)(1).

In order to illustrate and clarify that the de minimis levels exempt certain types of Federal actions, several de minimis exemptions are listed in § 51.853(c)(2). There are too many Federal actions that are de minimis to completely list in either the rule or this preamble. In addition to the list in the rule, the EPA believes that the following actions are illustrative of de minimis actions:

(1) Routine monitoring and/or sampling of air, water, soils, effluent, etc.

(2) Air traffic control activities and adopting approach, departure and enroute procedures for air operations.

(3) Acquisition of properties through foreclosure and similar means.

(4) Assistance or subsidy for social services such as health care, day care, or nutrition services, as well as payments under public assistance.

(5) Deposit or account insurance for customers of financial institutions and flood insurance.

(6) Routine installation and operation of aviation and maritime navigation aids.

(7) Participating in "air shows" and "fly-overs" by military aircraft.

(8) Educational and informational programs and activities.

(9) Advisory and consultative activities, such as legal counseling and representation.

(10) Construction of hiking trails.

(11) Regeneration of an area to native tree species

(12) Timber stand and/or habitat improvement activities which do not include the use of herbicides, prescribed fire or do not require more than one mile of low standard road construction.

As noted above, the provisions in § 51.853(c) (or in § 51.853(d)–(e)) are not rebuttable presumptions and not subject to documentation since they are exemptions to the rule. The EPA believes that the nature of the exemptions listed in the rule, taken in context of the definitions of a Federal action and indirect emissions, which are limited to those actions over which the Federal agency has a continuing program responsibility and can practicably control, renders these actions truly de minimis and therefore exempt from conformity requirements.

The exemptions listed in § 51.853(d) are for actions that may be above the de minimis levels listed in § 51.853(b). The rationale for the exemptions listed in § 51.853(d)(1) for new source review (NSR) and prevention of significant deterioration (PSD) and § 51.853(d)(2) for emergencies is explained below. The activities listed in § 51.853(d) (3) and (4) are related to air quality and necessary environmental regulations and, therefore, EPA believes they should be exempt. The exemption for certain CERCLA activities is discussed in the following section.

In contrast, the provisions of § 51.853(f) are presumptions of conformity that must be supported by documentation as provided in § 51.853, paragraphs (g) and (h) (which establish criteria and procedures for Federal agencies to develop additional categories of actions which would then be presumed to conform), and that they may be rebutted as provided in § 51.853(j).

J. Applicability—Exemptions and Presumptions of Conformity

1. Proposal

In addition to Federal actions with de minimis emission levels that do not require conformity determinations, EPA identified several types of Federal actions where EPA believed that conformity of such activities or a portion of such activities can be presumed. The NPR provided several cases where conformity is presumed (§ 51.853 (c) and (d)), including the following:

(1) Actions subject to preconstruction NSR or PSD programs under the Act;

(2) Wastewater treatment works projects funded by the State Revolving Fund (SRF) under the Clean Water Act;

(3) Superfund activities under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA);

(4) Federal land transfers; and

(5) National emergencies.

The proposal indicated that Federal actions identified under § 51.853, paragraph (c), are presumed to conform because the required air quality analyses that would be conducted under a conformity review must be completed to comply with other statutory requirements. That is, air quality analyses are required in the NSR programs under the Act and the applicable or relevant and appropriate standards process under the CERCLA. The EPA believes these analyses are adequate for purposes of conformity.

2. Comment

A number of commenters supported these provisions in the proposal, while others objected to them. Some commenters felt that the following actions should be subject to conformity review or that the proposed presumptions of conformity were too vague and need greater clarification:

CERCLA actions, sewage treatment works projects funded under the Clean Water Act, and the Federal sale of land. Other commenters supported these presumptions and suggested many others, including procurement actions and projects with one-time only emissions. Some commenters also argued that EPA should establish exemptions for certain actions and presumptions for other actions.

Some commenters recommended that, if a wastewater agency's proposed facilities, or other water management activities, are consistent with the applicable SIP population projections, then the indirect emissions attributable to the proposed facilities should be considered to conform. In such cases the indirect emissions would already be accounted for in the SIP through a growth management element (population forecasts) adopted in the SIP.

3. Response

a. General. As discussed in the previous section, EPA determined that certain actions should be exempt from the rule and other actions should be presumed to conform, with the presumption being rebuttable. Paragraphs (c)–(f) of § 51.853 have been reorganized to indicate which Federal actions are exempt and which are presumed to conform.

b. Sources subject to NSR or PSD. Actions subject to review under the NSR or PSD programs are exempt under the final rule. As explained in the NPR, such actions undergo procedures and criteria, including air quality analyses, equivalent to those required by the conformity rule. Thus, additional review under conformity is not necessary.

c. Water management activities. A separate exemption or presumption of conformity for direct emissions from water management activities is not needed where the emissions exceed the de minimis levels as they would be subject to NSR or PSD and such emissions are exempt as described immediately above. Indirect emissions—and direct emissions that are less than the de minimis levels for NSR or PSD—from water management activities are not covered under NSR or PSD and, therefore, are not exempt.

The final rule is, however, revised to deal with the uncertainty of indirect emissions that may result from water management activities. Generally, it will be unclear what type of growth will result from expanded water management activities. It will, thus, be very difficult to assess the air quality and emissions impact of specific water management activities. Nevertheless, such activities could have a substantial effect on the SIP and it can be determined if the emissions from such actions are consistent with the SIP by comparing the growth scenarios supporting the water management actions with the growth scenario in the applicable SIP. Therefore, the final rule includes a provision in § 51.858((a)(5)(v) which allows a positive conformity determination where the growth projections for the water management actions are consistent with and do not clearly exceed those used in the applicable SIP. Where the growth anticipated from a wastewater project is consistent with that accounted for in the applicable SIP, EPA believes that further analysis of the impacts of the indirect emissions of the wastewater project is unnecessary since all such emissions are already addressed by the SIP.

The EPA agrees that the conformity rule provisions for wastewater treatment plants under the SRF should also extend to other water management activities such as drinking water treatment plants and water conveyances (e.g., pipelines and pumps), and the final rule reflects this concern. The term "regional water and/or wastewater projects" is defined and used (§ 51.858(a)(5)(v)) in the final rule to address the above concerns.

d. Superfund projects under CERCLA. Under the exclusive definition of indirect emissions, superfund projects are unlikely to be covered since the Federal agency will not maintain authority over reuse activities on that land. The presumption of conformity, thus, no longer is relevant for such actions and is not contained in the final rule.

The final rule is revised to incorporate the changes described below:

The CERCLA and related regulations require on-site remedial actions to meet, or obtain waivers from, applicable or relevant and appropriate requirements. Since these requirements include NSR and PSD, and since Clean Air Act requirements have never been waived, the direct emissions from on-site remedial actions would not violate the NAAQS because they are subject to NSR and PSD review. Therefore, these actions are exempt.

The CERCLA and related regulations require off-site remedial actions to obtain Federal, State and local permits. Since this includes NSR and PSD, the direct emissions from off-site remedial actions would also not violate the NAAQS as described above. Therefore, these actions are exempt.

Direct emissions from removal actions are exempted from other environmental requirements by section 121(d)(2) of CERCLA, and therefore we are exempting them from conformity review. The EPA's long-standing interpretation of the Superfund statute has been that actions not specifically listed in section 121(d)(2) of CERCLA do not have to comply with any other Federal environmental laws. Removal actions are exempt generally, although by regulation EPA has required them to comply with the substantive requirements of such laws to the extent practicable. CERCLA allows EPA to make the judgment that implementing a CERCLA response may outweigh the need to comply strictly with other environmental requirements. To be consistent with this interpretation, EPA is exempting such CERCLA removal actions from the conformity requirements in those situations where EPA determines that compliance is not practicable based on the urgency or limited scope of the removal.

e. Federal land transfers. (1) Proposal. The proposal stated that the sale of land from a Federal agency was presumed to conform, § 51.853(d)(4). The EPA argued that land sales do not "support" subsequent emissions activity since they do not specifically approve, authorize or permit that activity. Furthermore, it was pointed out that imposing conditions on land sales could restrict the ability of State and local agencies to determine the land use for future activities which may follow in subsequent years.

(2) *Comments.* Many commenters objected to the presumption of conformity for Federal land transfers. Several groups indicated that Federal agencies must consider reasonably foreseeable use on the property to be transferred to ensure that known emissions will not endanger air quality. It was pointed out that most Federal agency land sales are accompanied by NEPA review and it is, therefore, appropriate to require conformity review for these actions. Specifically, it was said that EPA cannot argue that land sales do not cause subsequent emissions activities as a general matter, since it has already been illustrated by the proposed sale of Pease Air Force Base for commercial airport and development use that specific reuse activities can be identified and facilitated by a Federal land transfer.

On the other hand, support for the presumption of conformity for Federal land transfers was provided by several commenters. The main arguments were put forth by the Department of Defense (DOD), specifically as it related to military base closures and long-term leases. It was indicated that military departments do not "approve" reuse of the property. The sale of property

removes the action from the province of "Federal action" and the Federal agency has no continuing authority to control the private entities' future activities. The DOD stated that, "Although [they] will analyze the impacts from reasonably foreseeable reuse proposals, the zoning of the property that allows the specific proposed reuse is determined by the local zoning authority." Furthermore, they said:

> The purpose of the conformity requirement is to assure Federal agencies consult with state and local air quality districts to assure these regulatory authorities know about the expected impacts of Federal decisionmaking and can include expected emissions in their SIP emission budget. In a closure and reuse scenario, the future development plans of the community reuse group are known, approved, and supported by the local air regulators, subject of course to the reuse group meeting local air regulations for permits, mitigation, and so forth. When a community, working with local air regulators, has decided it desires to implement an economic recovery plan with associated air emissions and will adjust its emission budget to allow for such a plan, the rationale for locking DoD into conformity limitations is absent. Reuse is most appropriately a local decision, rather than a Federal decision, with local authorities evaluating the type of growth they want or need and adjusting their SIP allocations for new growth accordingly.

(3) *Response.* Under the exclusive definition of indirect emissions, Federal land transfers are unlikely to be covered since the Federal agency will not maintain authority over reuse activities on that land. Consequently, Federal land transfers are included in the regulatory list of actions that will not exceed the de minimis levels and thus are exempt from the final conformity rules.

f. Emergencies and transportation actions. (1) Proposal. Section 51.853, paragraph (d), proposed types of actions that would be presumed to conform (unless the Federal agency determines otherwise based on its own information or after reviewing any information presented to the Federal agency). Section 51.853, paragraph (d)(1), listed "temporary Federal actions in response to national emergencies." The proposal noted that this provision would cover Federal activities which require extremely quick action on the part of the Federal agencies involved. Where the timing of such Federal activities makes it impossible to meet the requirements of this rule, EPA indicated that it would be appropriate to presume conformity. Several examples are listed in the preamble to the proposal (58 FR 13843).

(2) *Comment.* One commenter stated that transportation projects should be exempt. Other commenters recommended that a broader set of emergencies should be covered and that an exemption is appropriate for such actions, including responses to natural disasters such as hurricanes and earthquakes.

(3) *Response.* As proposed, certain transportation projects are exempt from this rule as specified in § 51.853(a). Those actions are subject to the transportation conformity rule.

The EPA agrees that immediate responses to natural disasters such as hurricanes, earthquakes and similar events such as responses to terrorist acts, civil unrest, or military mobilizations should be exempt. The exemption is needed where a Federal agency cannot practicably complete a conformity analysis prior to taking actions in response to an emergency. Accordingly, a definition of "emergency" is contained in the final rule and the exemption is contained in § 51.853(d)(2). Additional examples of emergencies that are exempt from this rule are: emergencies under CERCLA, immediate responses to the release or discharge of oil or hazardous material in accordance with approved Spill Prevention and Response Plans or Spill Contingency Plans which are consistent with the requirements of the National Contingency Plan, and response to life- and property-threatening emergencies.

The rule is clarified to state that this provision includes continuing actions which are, in effect, commenced immediately after the emergency is determined and are not limited to "national" emergencies. This does not, however, include long-term Federal actions taken in response to such events unless, as required in § 51.853(e), the Federal agency makes a periodic determination that the emergency conditions still exist. In such cases it would be impractical for the Federal emergency actions to be delayed so that a conformity determination could be made. For purposes of this rule, immediate responses are actions commenced on the order of hours or days after the emergency is determined and long-term responses occur on the order of months or years thereafter.

g. Procurement requests. (1) Proposal. The preamble to the proposed rules discussed the need for emissions associated with the Federal action to be "reasonably foreseeable" at the time the conformity determination is required (58 FR 13839) and stated that an agency is not required to speculate or guess at indirect emissions which are conceivable but not actually identifiable. The preamble also indicated (58 FR 13840) that where it is impossible to accurately locate and quantify emissions and therefore impossible to accurately complete the air quality analysis, such emissions should not be considered "reasonably foreseeable." Further, the preamble stated that on-going programs or operations, such as certain permit renewal actions, that do not increase emissions over previous levels fall below the de minimis levels in the rule (58 FR 13842); that is, only emissions increases are counted toward the de minimis levels.

(2) Comment. Several commenters recommended that procurement actions by a Federal agency should not be covered by the conformity rules and that the annual cost of conformity analyses for the total of all such actions could be greater than $100 million. The commenters argued that most procurement actions should be viewed as a separate category of Federal activity for purposes of an environmental analysis. Procurement actions would merely implement the decision to conduct or carryout a policy, plan, program or project. The environmental analysis and thus the conformity determination would be made on the decision to go forward with the program or project, not on the follow-on procurement action.

(3) Response. The March 15, 1993 proposal was silent on the application of conformity requirements to procurement actions. Many comments were received on procurements and generally indicated that procurements should be exempt from the final conformity rule. However, the EPA believes that certain procurement actions may constitute Federal actions under the general conformity provisions. It is impossible at this time to resolve competing concerns regarding which procurement actions should be covered and which should be exempt since the existing record is inadequate. Therefore, the EPA will propose to cover certain procurements in a future rulemaking.

As noted, EPA intends to issue an NPR regarding attainment areas. The EPA intends to include in this proposal request for comment on exemptions for certain procurement actions which it believes would fit the de minimis criteria or result in emissions which are not reasonably foreseeable. The EPA believes the vast majority of procurement actions would be de minimis or not reasonably foreseeable. Given the complexity of Federal procurement and the government's desire to streamline procurement activities as discussed in the National

Performance Review[7], the EPA will seek comment on exemptions and the process for applying conformity to procurement activities.

h. Fugitive emissions. (1) Proposal. The total of direct and indirect emissions must be included in the conformity analyses.

(2) Comment. Some commenters alleged that fugitive emissions can neither be reasonably quantified nor efficiently controlled, and therefore believed that projects that generate fugitive emissions should be exempt. They noted that fugitive emissions generally are not considered under the Act under the NSR program.

(3) Response. Since fugitive emissions can cause violations of the NAAQS and since there are many techniques available to control such emissions, fugitive emissions are not exempt from the general conformity rules. The conformity rules consider the "total" emissions from a Federal action. Total consistency with the NSR program is not possible, in any event, since that program also excludes mobile source emissions from consideration, whereas the general conformity rule requires that they be considered.

i. Modeling. (1) Proposal. The rule proposed to exempt actions covered by new source review (paragraph (c)(1) of § 51.853).

(2) Comment. A commenter recommended that the rule exempt actions where the Federal agency performs an air quality analysis, for example, under State environmental statutory provisions.

(3) Response. The NSR exemption is based on an air quality analysis and the prohibition of emissions or actions that would cause or contribute to a NAAQS violation. An air quality analysis is not adequate by itself to justify an exemption from the conformity rules since it does not ensure that actions would be prohibited, as necessary to prevent a NAAQS violation.

j. Miscellaneous. (1) Proposal. The proposal specifically identifies very few activities that are presumed to conform, but establishes de minimis levels in § 51.853(b)(1). Federal agencies are also allowed to establish by rulemaking specific categories of actions which would be presumed to conform.

(2) Comment. Various comments were received which suggested adding exemptions to the rule, including:

(1) Non-hub or general aviation airports.

(2) Emergency generators.

(3) Prescribed burns that follow a State-approved smoke management plan.

(4) Actions consistent with an agency's pollution prevention plan.

(5) All Federal actions for which agencies have established categorical exclusions under NEPA.

(6) Projects that request section 7 consultation for threatened and endangered species from the U.S. Fish and Wildlife Service.

(7) Act Title V permits.

(8) Federal actions where the agency does not make a determination within a 30-day time period.

(3) Response. The EPA agrees with the intent of the commenters to avoid unnecessary conformity analyses, especially where the air quality impact is likely to be very small. The final rule lists several examples of de minimis actions. However, rather than attempting to list individually all of the potential de minimis actions, EPA has established the tons/year de minimis levels.

In addition, the final rule allows Federal agencies to establish their own presumptions of conformity through separate rulemaking actions, as proposed in § 51.853. This separate procedure is necessary since exemptions under NEPA or other statutes may not be appropriate as exemptions from the Act. That is, section 176(c) does not specifically exempt any activities and, thus, a separate analysis is needed to show that any activity to be presumed to conform has no air quality impacts. The final rule includes a provision in § 51.853, paragraph (g)(2), which allows a Federal agency to document that certain types of future actions would be de minimis; where similar actions have occurred in recent years, that experience should be the basis for the needed documentation.

A 30-day timeframe is unlikely to be adequate to complete a conformity analysis in many cases. The EPA expects the conformity analysis to be coupled with the NEPA analysis and, thus, not result in undue delays. Therefore, EPA is not providing any exemption for actions not completed within 30 days.

k. Case-by-case reevaluation. (1) Proposal. Federal agencies are allowed to establish by rulemaking specific categories of actions which would be presumed to conform. However, on a case-by-case basis, an action that is presumed to conform would be subject to a conformity determination where it is shown to the Federal agency that the particular action did not, in fact, conform [§ 51.853(h)].

(2) Comment. One commenter suggested that the rule should provide a mechanism for addressing cases where data generated from other sources, such as NEPA, indicates that the proposed Federal activity could result in a violation of the NAAQS; in such cases conformity cannot be presumed and further analysis should be required.

(3) Response. The EPA agrees that a category of Federal activity may be properly presumed to conform, but exceptions might be discovered where individual projects within the category should be subject to a conformity analysis. Section 51.853, paragraph (j), in the final rule, therefore, allows the presumption to be rebutted.

e. Research activities. (1) Proposal. The proposal identified research activities, where no environmental detriment is incurred, as actions that would be presumed to conform [§ 51.853(d)(2)].

(2) Comment. One commenter indicated that an environmental agency would be best suited to determine where an action would have no environmental detriment.

(3) Response. The EPA agrees and has revised the provision so that the final rule leaves the determination of environmental detriment to the State agency primarily responsible for the applicable SIP. The EPA also believes that this change provides adequate assurance that there will be no adverse air quality impact and, thus, the provision is an exemption under the final rule.

K. Applicability—Calculation

1. Proposal

In some cases, a Federal action may include several direct and indirect emission sources, only some of which are covered under § 51.853, paragraph (c). The preamble to the proposal indicated that the applicability calculation should include emissions that are presumed to conform (58 FR 13843), although the determination analysis should not.

2. Comment

A commenter objected to the preamble language, indicating that any emissions that are presumed to conform should not be part of the applicability calculation.

3. Response

The EPA agrees that the approach suggested by the commenter is the more logical approach. It is inappropriate to include for applicability purposes emissions as to which no conformity determination is required. Therefore,

[7] "Creating a government that works better and costs less," National Performance Review, 1993.

the final rule provides that emissions that are exempt or presumed to conform are not part of the definition of "total of direct and indirect emissions" and, thus are not required to be part of the applicability or determination analyses.

The final rule requires the inclusion of the total direct and indirect emissions in the applicability (§ 51.853) and conformity (§ 51.858) determinations, except the portion of emissions which are exempt or presumed to conform under § 51.853. For example, assume that a Federal action includes construction of a new industrial boiler (whose emissions are subject to preconstruction review and, thus, exempt) and a separate office building, and assume further that direct emissions from the boiler exceed the de minimis levels in § 51.853, but the direct and indirect emissions from the office building alone are less than the de minimis levels. In that case, the action, as a whole, would not exceed the de minimis levels and, therefore, would not need a conformity determination.

L. Reporting Requirements

1. Proposal

The proposed rule contains requirements for a Federal agency to notify EPA and the State and local air quality agencies of draft and final conformity determinations.

2. Comment

The EPA received comments suggesting that additional, early notification should be required, including notification of the Metropolitan Planning Organization (MPO) and affected Federal Land Manager (FLM).

3. Response

The proposal required notification of the State and local air agencies since their expertise should be sought when interpretation of the SIP is needed. The final rule also requires notification of the MPO and affected FLM's. The MPO needs to be involved and consulted where planning assumptions are at issue. Although the conformity determination is a Federal responsibility, the State and local agencies must, in some cases, provide important information. For example, the Federal agency would need to consult with the State and/or local agency to determine the status of an area's emissions budget or population projections. Therefore, the final rule includes these requirements.

In addition, Class I areas can be seriously affected by air emissions. It is therefore important that FLM's be able to be part of the decision-making process for Federal actions that have the potential to impact land under their jurisdiction. Consequently, § 51.855 was amended to require a Federal agency taking a Federal action that requires a conformity determination and that is within 100 km of a Class I area to consult with the affected FLM when the Federal action is proposed and to notify the FLM within 30 days of the draft conformity determination and again within 30 days of the final conformity determination. This 30-day timeframe is also consistent with the timeframe in the public participation requirements of the rule, as described in the following discussion.

M. Public Participation

1. Proposal

Under the proposed rule, Federal agencies making conformity determinations would be required to provide 45 days for written public comment prior to taking any formal action on a draft determination (§ 51.856). This period may be concurrent with any other public involvement, such as occurs in the NEPA process or as otherwise required by the Administrative Procedure Act (APA), where applicable.

In procedures that might extend beyond the usual NEPA process, conformity to a SIP must specifically involve the appropriate EPA Regional Office(s), State and local air quality agencies. The Federal agency must make available for review to all interested parties the draft determination and supporting materials which describe the analytical methods and conclusions relied upon in making the determination. The agency should provide, upon request, a description of significant assumptions, the source of data and assumptions not generated by the sponsoring agency, and a reconciliation of the estimates of population, employment, travel, and congestion with those currently in use in the air quality planning process.

2. Comment

The EPA received a wide range of comments on public participation. Many supported the EPA proposal. Some commenters thought that general conformity determinations should require rulemaking actions and notification in the **Federal Register**. Others felt that no public participation is necessary. It was also suggested that each Federal agency should define its own public participation requirements. One commenter wanted the general conformity rule to follow the public participation requirements outlined in the new transportation statute. Some commenters wanted to expand the requirements for public announcement of Federal agency determinations and a longer public comment period, while others wanted these requirements further restricted. It was pointed out that the 45-day comment period was inconsistent with the statutory requirements for shorter public comment periods of a number of Federal agencies.

Certain commenters asked EPA to clarify where the prominent advertisement is to be made. Another comment suggested that the advertisement should be in a "daily newspaper of general circulation."

Comments were also received suggesting that the State and local air agencies should have a concurrence role in the conformity analysis.

Several comments recommended that the NEPA requirements for public participation should be met at the same time as the conformity requirements in order to streamline the process and reduce any time and resource burdens.

3. Response

The final rule is revised somewhat to clarify the requirements of § 51.856 and to adjust the public comment period. A Federal agency is not required to maintain mailing lists and make information automatically available to those requesting to be on the list. Such a requirement could be unduly burdensome and unnecessary since those on the list would not necessarily review all the material automatically supplied. Thus, the rule requires only that the Federal agency respond to an information request which is related to a specific action. If information is requested of the Federal agency, it should be provided in a timely manner. The rule does not prohibit a Federal agency from voluntarily maintaining and responding to a mailing list.

In addition, the final rule is changed from the proposal to specify that information must be made available only in the case of a conformity determination under § 51.858. As described in the discussion on de minimis levels elsewhere in this preamble, no documentation is required by this rule for de minimis determinations under § 51.853 in order to avoid unreasonable administrative burdens on the Federal agencies. This approach is also consistent with the requirements in § 51.855 in the proposed and final rules which apply the reporting requirements only to conformity determinations under

§ 51.858, not to applicability analyses under § 51.853.

The procedures in the final rule provide 30-day opportunities for public participation at two points in the decision-making process: Where a draft conformity determination is being made and where a final conformity determination was made. These procedures allow the public the opportunity to examine information used in the applicability calculations and draft conformity determination, to question the draft determination, to review others' comments, and, after the final determination, to use legal means, if necessary, to influence the project. The change in the comment period from 45 to 30 days was made to comply with other specific statutory requirements for public comment that other Federal agencies must comply with. This change is consistent with the comment period provided for by NEPA (40 CFR 1507.3(d)).

The EPA believes this approach provides the most effective balance between the Act's (section 127) and APA's requirements for public notification and participation and the need to avoid procedures that are unnecessarily costly, time-consuming and burdensome to the Federal agencies affected. The EPA is authorized to establish public participation requirements under sections 176(c)(4)(B) and 301(a)(1) of the Act, and 30 days notice is a reasonable requirement. Since the Act does not require conformity determinations to be formal rulemaking actions, formal rulemaking is not required by this rule unless separately required under the APA.

The EPA does not agree that the State and local air agencies should have a concurrence role in the conformity analysis. Section 176(c) of the Act does not give EPA the authority to require such concurrence.

The EPA agrees that Federal agencies should consider meeting the conformity public participation requirements at the same time as the NEPA requirements. The final rule allows the concurrent process. However, in some cases, a Federal agency may have valid reasons to use different procedures; thus, the rule does not require a concurrent process. Further, in many cases, a NEPA analysis may not include a public participation process; therefore, the flexibility is clearly needed.

The EPA agrees that the prominent advertisement should be made in a local daily newspaper of general circulation. The rule includes this clarification (§ 51.856).

N. Emissions Budget

1. Proposal

Paragraph (a)(5)(i) provides that a Federal action conforms with the air quality criteria where emissions from the action, together with all other emissions in the attainment or nonattainment area, would not exceed the emissions budget contained in the applicable SIP. The SIP's are intended to accommodate growth, and where a project is demonstrated to conform to the approved air plan, the associated growth in emissions is appropriate. In order to determine the status of the emissions budget at any time, an accounting system is needed to track the many factors included in the total emissions over an area or subarea. The tracking needs to be consistent with the State's reasonable further progress (RFP) tracking and needs to account for source compliance with SIP limits, changes in emissions due to growth and other operational changes from minor and major new stationary sources, and emissions due to other economic growth. Paragraph (a)(5)(i) of § 51.858 allows a Federal agency to rely on a certification that the Federal action is consistent with the emissions budget. The certification may only be made by the State agency primarily responsible for developing and implementing the applicable SIP. That State agency could determine that emissions from a Federal action would not exceed the emissions budget specified in the applicable SIP.

2. Comment

A commenter suggested that EPA clarify which State agency is responsible for the applicable SIP and determines consistency with the SIP emission budget. One comment suggested that the Federal agency request a determination from the MPO and local air agency regarding the effect on the emission budget. Another commenter stated that under § 51.858, the State agency responsible for the applicable SIP must determine, in each case, whether emissions associated with the Federal action are within the emissions budget specified in the air plan. The commenter was concerned that this creates an unmanageable system whereby State agencies not otherwise involved with the project or the conformity assessment itself will be required to become familiar with the action at a late stage in the process, causing delays and confusion. One commenter suggested that EPA should assist States in making this determination.

3. Response

For the purpose of this rule, the State, regional or local agency, or combination of agencies, that is responsible for developing the attainment demonstration and tracking RFP is the entity that can certify consistency of Federal actions with the SIP emissions budget, unless some other agency/agencies is/are designated by the Governor of the State. Other agencies, including EPA, may not have sufficient information to make this determination. In addition, to assure that the State determination is well founded and that the public has an opportunity to review that determination, § 51.858(a)(5)(i)(A) requires the State to document its determination.

The conformity rules do not require the State to determine in each case whether emissions associated with a Federal action are within the emissions budget. This is an option that may be used by the Federal and the State agencies. The State agency is, however, required to be notified of any conformity determinations and, thus, could be expected to be familiar with the action.

The EPA also clarified the definition of emission budgets in the final rule. The EPA will issue further guidance regarding emission budgets in the near future. An emissions budget does not exist in all nonattainment areas. In many cases, however, the SIP attainment and maintenance demonstrations and/or RFP plans will be revised or established in the near future, consistent with the amended Act requirements. In these SIP provisions, emissions budgets will be established and may be used to determine conformity, as provided in the final rule.

O. Mitigation Measures

1. Proposal

If an action does not initially conform with the applicable SIP, then a plan for mitigation or for finding emissions offsets could be pursued. Emissions offsets are appropriate where an action (with or without mitigation measures) still results in emissions that do not otherwise conform to an applicable SIP. Mitigation measures, in contrast, reduce the potential impact of an action so that the action would result in fewer emissions. Assuming implementation of the mitigation measures, the conformity analysis (i.e., consistency with the emissions budget, air quality modeling, emission milestones, etc.) would consider a smaller amount of emissions associated with the action.

Any measures that are assumed to mitigate air quality impacts must be identified and the process for implementation and enforcement of such measures must be described. Under the proposal, it was indicated that if the Federal agency, other governmental agency, or private sponsor of the project failed to implement the mitigation measures committed to and found necessary in the conformity determination, then the conformity determination automatically became invalid and resulted in the revocation of all permits, approvals, and licenses originally supported by that conformity determination. This revocation would result in the need for a new conformity determination.

Mitigation measures should generally be included by the Federal agency in enforceable documents such as permit conditions. Mitigation measures may need to be revised due to unforeseen circumstances that may arise as the action and/or related activity is completed. Where the revised mitigation measures are subject to public review and it is demonstrated that the revised measures continue to support the conformity determination, such revision would be acceptable.

The proposal indicated that States may choose to make mitigation measures committed to by a project sponsor as part of a conformity determination automatically enforceable through the SIP. One possible mechanism for incorporating mitigation measures into the SIP is for States to include a generic provision in their conformity SIP's adopting in advance and incorporating by reference the mitigation measures identified as necessary for making a conformity determination.

2. Comments

One commenter stated that the automatic revocation of the conformity determination is not an enforceable mechanism and injects too much uncertainty into the overall program.

Another commenter recommended that minor changes in mitigation measures which do not increase emissions should not need public comment.

Several comments suggested that SIP's should be required to include a generic enforcement provision, similar to other permit programs. Such a provision could make enforceable any conditions made pursuant to the SIP conformity rule and needed to show an action conforms.

A comment raised the concern that direct enforcement against non-Federal parties could violate the prohibition against indirect source review programs in section 110(a)(5).

One commenter stated that local air agencies could provide the Federal agency with suggested mitigation measures to offset the project related emissions.

Another commenter suggested that a community, working with local air agencies, could decide to adjust its emission budget to allow for a specific Federal action.

3. Response

The EPA agrees that automatic revocation is not an appropriate or enforceable mechanism. Therefore, the proposed § 51.860(c) does not appear in the final rule. Second, EPA agrees that a generic enforcement provision in the SIP is needed for mitigation agreements. Therefore, the final rule includes the requirements in § 51.860 (b)–(f) which indicate that States must adopt a generic enforcement provision which will make any agreements, including mitigation measures, necessary for a conformity determination both State and federally enforceable. Section 51.860(a) is also revised to indicate that a funding commitment is not needed in all cases.

The final rule includes the provision in § 51.860(b) of the proposal which requires any licenses, permits or approvals of the action to be conditioned on the governmental or private entity meeting the mitigation measures necessary for the conformity determination. This provision is renumbered in the final rule as § 51.860(d).

In addition to requiring in § 51.860(b) and (d) that written commitments and conditions to mitigation measures be obtained from project sponsors prior to making a positive conformity determination, § 51.860(c) and (f) of the final rule require that project sponsors comply with such commitments and conditions once made. Consistent with these provisions, § 51.858(d) provides that the analysis, which results in a conformity determination or identifies mitigation necessary for a conformity determination, must be completed before the conformity determination is made. Pursuant to these final rules issued under Title I of the Act, EPA can enforce mitigation commitments and conditions directly against project sponsors under section 113 of the Act, which authorizes EPA to enforce the provisions of rules promulgated under the Act.

As provided in § 51.860(g), once a State revises its SIP to adopt the Federal general conformity rule and EPA approves that revision, then any agreements or commitments, including mitigation measures, necessary for a conformity determination will be both State and federally enforceable. In addition, after EPA approves that SIP revision, citizens can enforce against responsible parties for violations of SIP requirements under section 304 of the Act.[8]

The concern was raised to EPA that direct enforcement against non-Federal parties could violate the prohibition against indirect source review programs in section 110(a)(5). However, EPA concludes that this prohibition is not relevant to the requirement that project sponsors comply with mitigation commitments. The EPA is not promulgating a generally applicable requirement for review of all indirect sources. Rather, EPA is enabling Federal agencies to make positive conformity determinations under section 176(c) based on voluntary commitments by project sponsors to complete mitigation measures. Project sponsors are not obligated to make such commitments. Where they volunteer to do so to facilitate Federal conformity determinations, EPA is requiring them to live up to such commitments. Without such a requirement, EPA could not allow positive conformity determinations based on mitigation measures prior to actual construction of mitigation measures.

The EPA does not agree certain changes in mitigation measures should avoid the public participation requirements. The determination that a change is a "minor" change or the calculation that there is no emissions increase may be subject to considerable judgment. As such there is a need for public participation. Section 51.860(e) reflects this provision.

As mentioned previously and as provided in § 51.858(a)(5)(i) of the final rule, EPA agrees that the State and local air agencies can play an important role in the conformity process. These agencies can provide the Federal agency with suggested mitigation measures to offset the project related emissions. The Federal agencies can take such a list and work with the local planning and regulatory agencies to effect necessary emissions reductions.

[8] Currently, the sponsors of any projects which are subject to Federal programs identified in the SIP, e.g., NSR permits and PSD requirements, are subject to State and Federal enforcement actions if applicable procedures and permit conditions are not followed. Project sponsors of Federal actions requiring a conformity determination will be subject to similar enforcement actions if they fail to implement mitigation measures prescribed by the approved SIP revision. Enforceability through the SIP will apply to all parties who agree to mitigate direct and indirect emissions associated with a Federal action for a conformity determination.

In addition, EPA agrees that a Federal action should proceed where the State and/or local air agencies decide to revise the SIP to accommodate the action. As provided in § 51.858(a)(5)(i) of the final rule, EPA agrees that a mechanism is needed to allow the action to proceed under certain circumstances. This approach is consistent with the congressional desire to assure that State plans are not undermined by Federal actions; thus, where the State voluntarily commits to revise its SIP so that a Federal action conforms, that action would not undermine the State's decision-making ability and should be allowed to conform. The State may make a commitment to regulate or mitigate emissions from sources not under the Federal agency's control (i.e., commit to revise its SIP) to allow a Federal action to proceed that otherwise would not conform. The commitment must be made by the Governor or Governor's designee for submitting SIP revisions and must provide for revision of the SIP so that emissions from the Federal action would conform to the SIP emission budget in a time period consistent with the time that emissions from a Federal action would occur.

This provision could apply, where the total of direct and indirect emissions from the action are determined by the State agency responsible for the applicable SIP to result in a level of emissions which, together with all other emissions in the nonattainment (or maintenance) area, would exceed an emissions budget specified in the applicable SIP. In such cases, the State Governor or the Governor's designee for submitting SIP actions would make a written commitment to EPA which would have to include the following:

(1) A specific schedule for adoption and submittal of a revision to the SIP which would achieve the needed emissions reductions prior to the time emissions from the Federal action would occur;

(2) Identification of specific measures for incorporation into the SIP which would result in a level of emissions which, together with all other emissions in the nonattainment or maintenance area, would not exceed any emissions budget specified in the applicable SIP;

(3) A demonstration that all existing applicable SIP requirements are being implemented in the area and for the pollutants affected by the Federal action, and that local authority to implement additional requirements has been fully pursued;

(4) Assurances that the responsible Federal agencies have required all reasonable mitigation measures associated with their action; and

(5) Written documentation including all air quality analyses supporting the conformity determination.

In order to assure that the commitment to revise the SIP is enforceable, the final rule also provides that where a Federal agency made a conformity determination based on a State commitment under paragraph (a)(5)(i)(B) of § 51.858, such a State commitment is automatically deemed a call for a SIP revision by EPA under section 110(k)(5) of the Act based on the inadequacy of the applicable SIP in light of the positive conformity finding. Should EPA find that the State failed to satisfy the commitment, sanctions under section 179 of the Act would apply for failure to respond to the SIP call. The EPA here determines that where the State commitment is automatically deemed a SIP call, the State must respond to that SIP call within 18 months from the time the State commitment is made, or by such earlier time, if any, that the State commits to revise the SIP.

P. EPA and State Review Role

1. Proposal

The proposal indicated that the Federal agency must give EPA, State and local air agencies, and relevant Federal agencies a 45-day notice about the proposed Federal action and draft conformity determination, and notify these same agencies within 45 days of its final conformity determination (§ 51.855). The State agency is responsible for determining if the total direct and indirect emissions from the action are within the emissions budget specified in the applicable SIP (§ 51.858).

2. Comments

The EPA received several different comments on the respective roles and responsibilities for local, State, and Federal air agencies. Some commenters felt that EPA should be responsible for approving or disapproving all conformity determinations. Others felt this authority should rest with the State, while some wanted the MPO to have a veto on conformity determinations. A number of commenters wanted a lead agency designated (similar to that in the NEPA process) that would coordinate the conformity decision-making process or have authority to make a conformity determination in cases where multiple Federal agencies were involved in a Federal action.

3. Response

The consultation procedures outlined in the proposal requiring consultation with EPA, State and local air agencies, and relevant Federal agencies are contained in the final rule (§ 51.855 and § 51.858). The 45-day notification period was changed to 30 days to be consistent with the public participation requirements. Section 176(c) states that each Federal agency is responsible for making its own conformity determination. The EPA cannot remove that authority from the Federal agency and assign it elsewhere, as suggested by some commenters.

The State air agency does have an active role in the conformity determination, however, since the State indicates whether the action falls within the SIP emissions budget. Furthermore, if the emissions from the Federal activity exceed the emissions budget and cannot be offset by other activities under the Federal agency's control, then the State agencies have the option of mitigating emissions from sources not under Federal control. In this case, without the State agencies' agreement to revise the SIP to include such mitigation measures, the project would not conform. Consequently, EPA believes the consultation procedures described in the conformity rule will ensure accountability of the Federal action to the State and EPA, while giving the ultimate authority and responsibility to the Federal Agency as intended by section 176(c).

IV. Discussion of Other Issues and Response to Comments

A. 40 CFR Part 93

1. Proposal

The part 93 provisions apply as soon as the final rule becomes effective. The part 51 provisions direct States to revise their SIPs to incorporate the conformity requirements within 12 months after promulgation of this rule (§ 51.851(a)).

2. Comment

One commenter recommended that the rule provide specific guidance concerning conformity determinations in the absence of an approved SIP.

3. Response

As described in the proposal, the part 93 provisions apply until EPA approves the conformity SIP revision submitted by the State (§ 51.851(b)). An applicable SIP is currently in place for all areas and should be used for conformity purposes.

B. SIP Revision—Deadline

1. Proposal

Although the statute specifies that EPA should require States to submit their conformity SIP revisions by November 15, 1992, the congressional intent was also that EPA would have promulgated final conformity rules by November 15, 1991. In light of the delay in EPA promulgation of these rules, it is now clearly impossible for States to submit conformity SIP's by November 15, 1992. Therefore, EPA requires States to revise their SIP's within 1 year after the date of publication of the conformity rule. This approach is consistent with the congressional intent to provide States with a 1-year timeframe to complete their rulemaking once EPA had established the Federal criteria and procedures for conformity determinations.

2. Comment

Several commenters supported the 1-year timeframe as being consistent with congressional intent. One commenter suggested 18 months. Another commenter recommended that the SIP revision be required as soon as possible and that those revisions should be due not later than March 15, 1994. The EPA also received comments requesting clarification as to which agency is to submit the SIP revision.

3. Response

The final rule incorporates a 1-year timeframe since that represents an expeditious schedule for the State agencies and since this timeframe is consistent with congressional intent, considering the actual date of final Federal rulemaking. The SIP revision must be submitted by the Governor or Governor's designee responsible for submitting SIP revisions. Responsibility for implementing the conformity rule itself should fall to the primary agency responsible for implementing the SIP, usually the State air quality agency.

If a State does not revise its SIP within the 12 months following **Federal Register** publication of the final general conformity rule, then EPA will make a finding of failure to submit the revision, which would start the sanctions clock. Since, in this case, the State would not have a revised SIP and also would not have adopted the general conformity regulation, any conformity determinations made prior to State adoption and EPA approval of the SIP revision would be subject to the Federal rule and Federal enforceability procedures.

In addition, the rule is clarified with respect to application in areas newly designated as nonattainment. In such cases, the requirement for the State SIP revision by 12 months after publication of the general conformity rule could be unreasonable. Therefore, the rule provides that a State must revise its SIP to include the general conformity provisions within 12 months of an area's redesignation to nonattainment. The EPA general conformity rule would apply in any interim period.

C. SIP Revision—General Conformity

1. Proposal

As described in the proposal, EPA believes that section 176(c)(4)(A) and (C) of the Act clearly require EPA to promulgate criteria and procedures for determining conformity for both general and transportation activities (58 FR 13838) and to require States to submit SIP revisions including conformity criteria and procedures for both types of activities.

2. Comment

Certain commenters disagreed with EPA's interpretation of section 176(c)(4) of the Act, arguing that SIP revisions should be required only for transportation activities. However, no new information was provided by the commenters.

3. Response

For the reasons described in full in the proposal, EPA continues to believe that a SIP revision is required for general conformity by section 176(c)(4)(C) of the Act.

D. Federal Actions—Miscellaneous

1. Proposal

The description of a "Federal action" is set out in the preamble (58 FR 13838) and in the regulatory portion (definitions) of the proposal notice.

2. Comment

One commenter requested EPA to clarify that a renewal of an existing permit or approval does not give rise to a new conformity requirement, assuming the renewal does not materially alter the type or amount of emissions associated with the originally permitted activity.

Some commenters requested that the NPDES actions should all be required to undergo a conformity analysis and others supported the proposal which calls for a conformity analysis where it is an EPA-issued NPDES permit, but not where it is a State-issued permit under a delegated NPDES program.

One commenter stated that Federal actions should include certain actions taken by State or regional non-Federal agencies.

3. Response

As described in section III.G., the definition of "Federal action" in the final rule is changed from the description in the proposal notice (58 FR 13838) in order to clarify its meaning. The following responses cover additional concerns regarding this term.

While section 176(c)(2) of the Act may be interpreted to impose certain obligations on non-Federal actions under the transportation conformity provisions, the same interpretation does not apply for general conformity (such as State-issued NPDES permits) since the relevant statutory language is different.

Section 176(c)(1) does not impose any obligations on non-Federal parties other than MPO's. Thus, EPA cannot require non-Federal actions to make conformity determinations under the general conformity rule. Where a State is taking an independent action without Federal support, even under an EPA approved program such as a State NPDES program, there is no Federal action subject to these rules. On the other hand, where a Federal agency delegates its responsibility to take certain actions to a State or local agency, as in the case of certain block grants under Housing and Urban Development programs or Federal NPDES programs, the action remains a Federal action and the State must make a conformity determination on the Federal agency's behalf.

The EPA agrees that permit renewal actions or any action that does not increase emissions, would be exempt from the conformity rule and is so stipulated in § 51.853(c)(2)(ii).

E. Applicable Implementation Plan

1. Proposal

"Applicable implementation plan" is defined as the most recent EPA-approved or promulgated SIP (58 FR 13849).

2. Comment

The EPA received comments suggesting that the conformity determinations should be based on the most recent SIP revisions submitted by the State, even if EPA has not approved them, until such revisions are superseded by a more recent State submittal or by a Federal implementation plan (FIP); basing conformity determinations on outdated and inadequate SIP's is "very unproductive." Other comments suggested that actions in regions that do not have an approved SIP should be exempt from conformity.

Certain commenters noted that Congress included explicit interim conformity requirements for transportation plans, programs and projects, but provided no comparable language for other Federal actions. These commenters suggested that, absent a newly-revised SIP, it is not possible for a Federal agency to assess conformity or whether the project will delay timely attainment of any standard or other milestones.

3. Response

The language of section 176(c) refers to conformity "to an implementation plan approved or promulgated under section 110." The plain language of the statute does not allow the flexibility suggested by the commenter.

The applicable SIP is updated by the State as necessary to meet the Act requirements. In addition, EPA takes action to approve, disapprove, or promulgate revisions to the SIP. While portions of an applicable SIP might be disapproved in certain areas of the country, the approved portion that remains constitutes the applicable SIP; i.e., an applicable SIP exists in all regions upon which to determine conformity. Section 110(n) of the amended Act preserves the applicability of previously approved SIP's. Prior to the newly-revised SIP, there might not be any SIP milestones to consider, simplifying the conformity determination.

Unlike the transportation conformity rule which primarily relies on the SIP emissions budget, the general conformity rule provides several means to determine conformity, some of which do not require a newly-revised SIP (i.e., post-1990) and accompanying attainment demonstration, milestones and emissions budget. As described in § 51.858 of the proposal, general conformity can be demonstrated by air quality modeling, obtaining emissions offsets, or determining that the action does not increase emissions with respect to the baseline emissions. Thus, the obligation to determine that Federal actions will not cause or contribute to NAAQS violations under section 176(c)(1)(B) applies even where recent SIP revisions have not been submitted or approved.

F. Increase the Frequency or Severity

1. Proposal

"Increase the frequency or severity" means to cause a location or region to exceed a standard more often or to cause a violation at a greater concentration. "A greater concentration" could be taken to mean any value numerically greater than previously existed. In the case of monitored ozone data, measurements are made in parts per million to only two significant figures. In the case of modeled data, if results are reported to three significant figures, then a difference in the third significant figure is considered to be a difference for purposes of conformity determinations.

2. Comment

A commenter stated that, given the limitations of current air quality models, it seems unrealistic to deal with such a level of significance in considering "increases in the frequency or severity" of existing air quality violations. Another commenter stated that it will be virtually impossible to meet this requirement.

3. Response

The distinction between significant figures in measured and modeled numbers is made in order to be consistent with current EPA guidance for interpretation of measured and modeled air quality data. Since emissions in nonattainment areas are generally decreasing, the ambient concentrations should also be decreasing. Thus, it would not be impossible to show an action does not increase the frequency or severity of existing air quality violations.

G. Maintenance Area

1. Proposal

Maintenance area means an area with a maintenance plan approved under section 175A of the Act (§ 51.852).

2. Comment

The EPA received comments asking for clarification of the definition, specifically wanting to know if this definition includes all maintenance areas as designated under both the 1977 and 1990 amendments to the Act.

3. Response

The definition includes only those areas that were redesignated from nonattainment to attainment (i.e., maintenance areas) after the 1990 amendments to the Act.

H. Offsets

1. Proposal

The proposal refers to emission offsets in § 51.858.

2. Comment

One commenter requested EPA to clarify that offsets must go beyond those reductions necessary for attainment of the NAAQS.

3. Response

Emission offsets are an integral part of the air program, especially within the NSR program. The final conformity rule includes a definition of offsets which is consistent with EPA guidance regarding the use and restrictions for offsets. This definition is intended to assure that offsets within the air programs are calculated and credited consistently and that the term is used the same in the conformity rules as in the EPA NSR program. All offsets must, therefore, be quantifiable, consistent with the applicable SIP attainment and RFP demonstrations, surplus to reductions required by, and credited to, other applicable SIP provisions, enforceable at both the State and Federal levels, and permanent within the timeframe specified by the program.

I. Definitions—Miscellaneous

1. Proposal

Certain terms described below were not defined in the proposal.

2. Comment

The EPA received general comments requesting the rule to be clear.

3. Response

The EPA added or removed definitions of the following terms in the rule in order to clarify the requirements:

(1) "Administrator" was deleted since the term is not used in the rule.

(2) In the definition of "Applicable SIP," the sentence in the proposal referring to maintenance plans does not appear in the final rule because it does not change the meaning of the definition and "maintenance plan" is defined elsewhere in the rule.

(3) The definition of "Milestone" is clarified with respect to PM–10 by referencing section 189(c)(1) of the Act.

(4) The definition of "Metropolitan Planning Organization" is revised to be consistent with the definition in the transportation conformity rule.

(5) "Nonattainment Area" is clarified to refer to areas designated as nonattainment under section 107.

J. Conformity Determination

1. Proposal

In some cases, multiple Federal agencies may need to make a conformity determination for a related project. A Federal agency may either conduct its own conformity air quality analysis or adopt the analysis of another agency, for example, the lead NEPA agency. A Federal agency must always make its own conformity determination. Allowing each Federal agency with responsibility for making a conformity

determination to develop its own analysis or adopt that of another Federal agency, gives flexibility to the Federal agency and fulfills the agency's responsibility for making a conformity determination. A Federal agency retains the ability to conduct its own air analysis or use that of another Federal agency and make its own conformity decision. If an agency, due to one of its analyses, determines that the project does not conform, then it may not make a positive conformity determination. If there are differing conformity determinations for a Federal action by several Federal agencies involved, the respective agencies would have to reconcile their differences before the entire project could proceed.

If another Federal agency disagrees with a Federal agency's conformity determination, but does not itself have jurisdiction for the Federal action, then the Federal agency should provide written comments to the Federal agency with jurisdiction. The Federal agency with jurisdiction is required to consider the comments of other interested agencies under the proposed rules.

2. Comments

A number of commenters supported the procedures outlined in the proposal. One commenter suggested that the general conformity rule use the same interagency coordination procedures as those in the new transportation statute. Some commenters felt that a lead agency, similar to that used in NEPA, should have responsibility for the conformity determination; one commenter suggested the lead agency should be the one with continuing authority over the project.

3. Response

The final rule requires that each Federal agency be responsible for making its own conformity determination as described in § 51.854. The rationale for this is explained in the response to comments on the EPA and State review roles. Because section 176(c) indicates that each Federal agency is responsible for making its own conformity determination, EPA cannot remove that authority from the Federal agency and assign it elsewhere. Although the general conformity rule does not specifically identify a lead agency, coordination of conformity determinations will be necessary because all Federal agencies with jurisdiction over the project will have to make a positive conformity finding for the project to proceed. Therefore, differences among Federal agencies will have to be resolved through consultation among those agencies. The EPA is not mandating formalized consultation and dispute resolution procedures, but rather leaves this to the discretion of the Federal agencies involved to allow for greater flexibility.

K. Air Quality Related Values (AQRV's)

1. Proposal

The proposal did not specifically address AQRV's.

2. Comment

One commenter stated that conformity should be applied broadly, so that Federal actions will not adversely affect the AQRV's of protected Federal lands.

3. Response

To the degree that a SIP includes requirements related to AQRV's, a Federal action would need to conform to those SIP provisions. The EPA believes that section 176(c) of the Act is intended to protect the NAAQS and the SIP. Section 176(c)(1)(A) and (B) define conformity, and do not include reference to any parameters beyond SIP requirements and NAAQS. Thus, the conformity rule does not require the conformity analysis to cover values other than the NAAQS, unless they are specifically contained in the SIP. For example, if a SIP contains PSD requirements, a Federal action must conform to those requirements to the extent they apply; in general, actions subject to PSD would not need a conformity analysis since the stationary source emissions would be exempt under § 51.853(c)(1) or § 51.853(b)(1) and any vehicle emissions associated with the action would not usually be subject to the PSD requirements.

L. Frequency of Conformity Determinations

1. Proposal

A conformity determination expires if the action is not taken in a reasonable time period (58 FR 13844). The EPA believes that conformity determinations should not be valid indefinitely, since the environment surrounding the proposed action will change over time.

The EPA proposed that the conformity status of a general Federal action automatically lapses 5 years from the date of the initial determination if the Federal action has not been completed or if a continuous program has not been commenced to implement that Federal action in a reasonable time. "Commenced" as used here has the same general meaning as used in the PSD program (40 CFR 51.166).

2. Comment

The EPA received comments both supporting and criticizing the 5-year period and other comments suggesting a 3-year period to be consistent with the transportation rule. One commenter suggested that a "continuous program" of on-site construction includes design and engineering work.

3. Response

The 5-year timeframe for conformity determinations, as described in the NPR, is contained in the final rule. The 3-year timeframe for the transportation conformity rule is specified in section 176(c)(4)(B)(ii) of the Act. However, there is no similar specification in section 176(c) for the frequency of general conformity determinations. After extensive consultation with the Federal agencies and review of the comments, EPA has decided to keep the 5-year renewal timeframe for general conformity decisions because it is consistent with the renewal frequency of NEPA decisions rather than the 3-year timeframe required for transportation conformity. Consistency with NEPA is important in order to allow Federal agencies to incorporate the new conformity procedures within their existing NEPA procedures. Most general conformity actions also need NEPA analyses, but would not need transportation conformity decisions.

The EPA agrees that a continuous program of on-site construction may include design and engineering work. Where on-site construction has been commenced and meaningful design and engineering work is continuing, this represents the kind of commitment to an action which should not be jeopardized by expiration of a previous conformity determination.

The rule is clarified in § 51.857(a) to refer to the "date a final conformity determination is reported under § 51.855." This replaces the phrase the "date of the initial conformity determination" since it is clearer. The rule is also clarified in § 51.857(b) to replace the vague phrase "the scope of the project" with "the scope of the final conformity determination reported under § 51.855." The final rule also contains a provision in § 51.857(c) which clarifies that actions which are taken subsequent to a conformity determination must be consistent with the basis of that determination.

M. Tiering

1. Proposal

The EPA proposed that Federal agencies could use the concept of tiering and analyze actions in a staged manner

(§ 51.858, paragraph (d)]. Tiering would not be acceptable for purposes of determining applicability (§ 51.853), however, since that approach might have undermined the rule if agencies chose to narrowly define their actions as separate activities for purposes of determining applicability.

2. Comments

A few commenters supported the use of tiering for conformity decisions and pointed out that it gives the Federal agency needed flexibility in planning. Many other commenters were opposed to conditioning long-term conformity decisions. Some opposed tiering because conditional findings create uncertainty, making it difficult for developers and lenders to justify investment in long-term projects. Others were against it because they felt it could result in a misleading conclusion that a meaningful analytical judgment has been made and that it would invite conflict between investment-backed expectations and the protection of public health.

3. Response

The EPA agrees with the commenters who stated that tiering would create too much uncertainty in the conformity determination process. Furthermore, it was thought that tiering could cause the segmentation of projects for conformity analyses, which might provide an inaccurate estimate of overall emissions. The segmentation of projects for conformity analyses when emissions are reasonably foreseeable is not permitted by this rule. Thus, the tiering provision is not included in the final rule. A full conformity determination on all aspects of an activity must be completed before any portion of the activity is commenced.

N. Applicability—Regionally Significant Actions

1. Proposal

The EPA proposed the concept of "regionally significant actions," to capture those actions that fall below the de minimis emission levels, but have the potential to impact the air quality of a region. When the emissions impact from a Federal action does not exceed the tons per year cutoff for a Federal action otherwise requiring a conformity determination, but the total direct and indirect emissions from the Federal action represent 10 percent or more of a nonattainment area's total emissions for that pollutant, the action is defined by the proposed regulations as a regionally significant action and must go through a full conformity analysis (§ 51.853(g)).

2. Comment

Many commenters supported the concept of regionally significant actions and believed that conformity determinations should be required for them. However, there was diverse opinion on the most appropriate level to define a regionally significant action; some commenters felt 10 percent of a nonattainment area's emissions for a pollutant to be too high, while others felt it was too low. However, no commenters provided specific documentation to support a different number. There were also some commenters who felt the entire concept of regional significance to be inappropriate and that the de minimis cut-offs should suffice for conformity applicability requirements.

3. Response

EPA is maintaining the requirement of conformity determinations for regionally significant actions in the final rule as defined in § 51.853 of the NPR. The rationale is explained in the preamble to the NPR (58 FR 13842). The EPA specifically invited comments and documentation on whether 10 percent was an appropriate significance level or whether some other percentage should be set. In view of the fact that documentation for more appropriate significance levels was not provided by the commenters, the 10 percent level of significance is used. In addition, the rule is clarified to indicate that the requirements of §§ 51.850 and 51.855 through 51.860 apply to regionally significant actions.

O. Applicability—NAAQS Precursors

1. Proposal

The PM–10 precursor pollutants should be included in the conformity analyses where the applicable SIP's control strategy requires reductions in such precursor pollutants. For ozone, emissions of NOx and VOC must be considered for purposes of both applicability and analysis. However, where an area received an exemption from NOx requirements under section 182(f) of the Act or the control strategy in the approved maintenance plan does not include NOx control measures, only VOC emissions need to be considered (58 FR 13847).

2. Comment

Commenters indicated that analysis of PM–10 precursors should be required to satisfy the provision of section 176(c)(1)(B)(i) that Federal activities must not contribute to any new violation of any standard in any area. Another commenter indicated that the rule should consider the regional impact of NOx emissions compared to VOC emissions.

3. Response

Section 189(e) of the Act provides that applicable control requirements under PM–10 nonattainment area SIP's in effect for major stationary sources of PM–10 are also applicable to major stationary sources of PM–10 precursors, except where EPA determines that the sources of PM–10 precursors do not contribute significantly to PM–10 levels which exceed the PM–10 NAAQS in the area. Consistent with this evidence of congressional intent, the final conformity rule requires the inclusion of PM–10 precursors in conformity analyses where they are a significant contributor to the PM–10 levels in the PM–10 nonattainment area SIP. The significant contribution may be from major stationary sources as well as other types of sources.

In contrast, the Act specifically requires reductions in emissions of both NOx and VOC to meet the ozone standard. Only where there is a demonstration consistent with the requirements of section 182(f) and EPA approves the demonstration are the NOx reductions not required. Thus, the conformity rule provides for the consideration of the regional impact of NOx emissions in ozone nonattainment and maintenance areas, as described in the proposal.

The final rule includes a definition of the phrase "precursors of a criteria pollutant." This definition incorporates the concerns described above. A definition of "total of direct and indirect emissions" is added to the final rule, as discussed elsewhere in this preamble, and includes the phrase "emissions of precursors of criteria pollutants" in order to incorporate this concept into the final rule.

P. Attainment Demonstration

1. Proposal

Paragraph (a)(1) of § 51.858 provides that a Federal action conforms if emissions from the action are "specifically identified and accounted for" in the applicable SIP's attainment or maintenance demonstration.

2. Comment

A commenter suggested that a Federal action should be determined to conform where the total emissions from the Federal action are "consistent with" the projected levels of emissions inventory forecasts in the applicable SIP attainment demonstration.

3. Response

The EPA believes that the language proposed in § 51.858(a)(1) is appropriate. Specificity is needed in order to avoid letting this provision become a significant loophole, open to varying interpretations. On the other hand, the emissions budget provision in § 51.858(a)(5)(i) provides a mechanism similar to that suggested by the commenter.

Q. Transportation Conformity

1. Proposal

Section 51.858(a)(5)(ii) provides that a Federal action that is specifically included in a conforming transportation plan, would be determined to conform.

2. Comment

One commenter stated that the MPO should be involved in determining when a project is specifically included in a transportation plan.

3. Response

The final rule is clarified to indicate that the MPO must determine that an action is "specifically included" in a conforming plan since the MPO is likely to be better qualified to make that interpretation than the Federal agency making the conformity determination. The rule is also clarified to state that a conforming plan refers to a transportation plan and transportation improvement program which have been found to conform under 40 CFR part 51 or part 93.

R. Baseline Emissions

1. Proposal

Where EPA has not approved a revision to the relevant SIP attainment or maintenance demonstration since 1990, a Federal action may be determined to conform if emissions from the action do not increase emissions with respect to the baseline emissions (paragraph (d) of § 51.858).

2. Comment

A commenter suggested that the rule or preamble should clarify that Federal agencies may use the latest emissions inventory available from State and local agencies in gauging the baseline. Further, conformity determinations based on such inventories should remain valid, and not be re-analyzed when a new inventory is complete.

Another commenter stated that it is not appropriate for areas which were designated nonattainment before the 1990 amendments to the Act to use a year before 1990 as the baseline. Such areas are required to submit 1990 emission inventories. For areas designated nonattainment after the 1990 amendments to the Act, the approach to establishing baselines in the proposal may be appropriate.

One commenter pointed out that using 1990 as a baseline is inappropriate in many cases since many Federal actions related to the military took place at the time of Desert Storm. As an alternative they suggest the rule allow use of a baseline established from the highest estimated emissions over a 3-year period from 1989–91. Regarding military base closure actions, one commenter stated that the baseline emissions should be the preclosure announcement baseline operating conditions. This approach does not alter the emissions budget that would have existed if a base continued to operate. Such emissions were contained in the existing and future emissions inventory numbers being used by the South Coast Air Quality Management District in its 1989 air quality plan. This should be the emissions budget used to make the conformity determination for that District.

The EPA also received a comment stating that if 1990 emissions inventory levels are used as a baseline, it is important that some type of "credit" be given to a Federal agency that is required to make a conformity determination with respect to an airport related improvement or modification project at an airport that has already implemented significant emission reduction measures prior to 1990. This credit could be made by increasing the de minimis amount for certain airport actions.

Several commenters requested clarification on how to calculate the baseline emissions. One commenter recommended that the comparison should be between the "action" versus "no action" and not between the "action" and "1990 base."

3. Response

The baseline calculation is discussed in the proposal (58 FR 13846) and specifies calendar year 1990 or an alternate time period, consistent with the time period used to designate or classify the area in 40 CFR part 81. Use of the "latest emission inventory" should, in many cases, coincide with use of the 1990 inventory since the 1990 amendments to the Act required all ozone nonattainment areas to develop a 1990 inventory. For PM–10, the Act also required an emissions inventory. But, for the initial PM–10 areas designated nonattainment as of enactment, the inventories are generally for 1 of the calendar years in the mid- to late-1980's.

The approach in the final rule uses 1990, which is the baseline year specified in the Act from which to measure progress toward attainment, the PM–10 emissions inventory years (not specifically included in the proposed rule), or the designation/classification time period, which is representative of emission levels that must be reduced in order to provide for attainment. Use of more recent emissions inventories may not be appropriate since such inventories might not be representative of the full extent of the emissions associated with the air quality problem.

The EPA sees no basis for the rule to select certain activities for "credit" due to previously implemented emission reduction measures, whether at airports or military bases. Such decisions reside with the State when the control strategy and emissions budget are developed. Since the final rule allows use of the years other than 1990 where appropriate, it could, in effect, provide some of the "credit" the commenter is suggesting in some cases.

As described in the proposal, baseline emissions are defined as the total of direct and indirect emissions that are estimated to have occurred during calendar year 1990 or an alternate period based on the classification or designation as promulgated in 40 CFR part 81. The proposed rule intended to provide for a positive conformity determination if the future use of the area resulted in equal or less emissions. However, the proposal did not take into account that any motor vehicle emission activities occurring in the baseline year would, in fact, emit less in the future year scenario (at the same, historic activity levels) due only to improved emissions controls in newer vehicles. Thus, the proposed rule was skewed in a manner that unjustifiably could appear to allow future actions to conform. Therefore, § 51.858(a)(5)(iv)(B) of the final rule is revised to focus on the baseline activity levels rather than the baseline emissions and the emission calculations must use emission factors appropriate to the future years analyzed. In other words, the rule specifies a "build/no build" test, not a "build/1990" test.

S. Annual Reductions

1. Proposal

Paragraph (c) of § 51.858 of the proposal states that a Federal action may not be determined to conform unless emissions from the action are consistent with all relevant requirements and milestones contained in the applicable SIP, such as elements identified as part of the RFP schedules.

2. Comment

The EPA received comments suggesting that the rules should require Federal activities to be consistent with the RFP requirements of the Act and with expeditious attainment of the NAAQS. Thus, the general conformity rules should be amended to require Federal agencies to demonstrate that their activities are achieving annual reductions in emissions and are consistent with State efforts to achieve attainment as expeditiously as practicable.

A commenter noted that the proposed rule would allow Federal agencies to satisfy the conformity provision by merely offsetting predicted emission increases from a project on a 1:1 basis. The commenter suggested that the rule should be modified to specify that a Federal action only conforms if the action is contributing to the required annual reductions in emissions and is consistent with State efforts to achieve attainment as expeditiously as practicable.

Another commenter noted that emissions budgets set in the SIP are supposed to accommodate growth.

3. Response

The EPA believes that, for the general conformity, the provisions in paragraph (c) of § 51.858 meet the section 176(c) Act requirements for RFP and other milestones and that additional language concerning attainment as expeditiously as practicable would not substantively alter these requirements. A State has considerable discretion to select a strategy to meet the RFP requirements. Neither the Act RFP requirements nor the Act general conformity requirements specify that each individual Federal action contribute proportionately to emission reductions. Instead, the Act generally allows a State to choose a strategy that might achieve greater reductions at certain sources and lesser or no reductions at other sources, and which may provide for growth in certain areas. The transportation conformity rule, in contrast to the general conformity rule, reflects specific provisions of section 176(c) of the Act regarding specified required emission reductions from transportation activities. Consequently, so long as general Federal actions meet the requirements of the general conformity rule, EPA believes that such activities would be consistent with the SIP, RFP, and attainment demonstrations and that every general Federal action is not required by the Act to result in an emissions decrease.

T. Summary of Criteria for Determining Conformity

1. Proposal

The proposal contained a narrative description of the § 51.858 requirements for making conformity determinations.

2. Comment

Some commenters requested EPA to include in the final rule preamble a table summarizing the requirements in § 51.858.

3. Response

The following table summarizes these requirements; it should not be read to substitute for the regulatory language itself. If there is a conflict between the table and other portions of this final rulemaking notice, the table should not be relied upon.

Section 51.858(a)	Areawide only		Local and possibly areawide		Local only
	O_3	NO_2	PM–10	CO	Pb/SO_2
(1) Specified in attainment or maintenance demostration	X	X	X	X	X
(2) Offsets within same nonattainment/maintenance area	X	X	X	X	X
(3) Areawide and local modeling	.....	.....	X	X	
(4)(i) Local modeling only if local problem	.....	.....	X	X	
(4)(ii) Areawide modeling only *or* meet (5)	.....	.....	X	X	
(5)(i) Emissions budget	X	X	(*)	(*)	
(5)(ii) Transportation plan	X	X	(*)	(*)	
(5)(iii) Offsets	X	X	(*)	(*)	
(5)(iv) Baseline/No increase	X	X	(*)	(*)	
(5)(V) Water project	X	X			

X=Option to show conformity.
*=Option if areawide problem.

U. Planning Assumptions

1. Proposal

Paragraph (a) of § 51.859 requires the conformity analyses to be based on the latest planning assumptions approved by the MPO.

2. Comment

A commenter recommended that conformity determinations should be based on the latest planning assumptions used in establishing the SIP's RFP emissions target(s) and emissions budget(s). States should be required to evaluate and update the SIP's planning assumptions used for demonstrating RFP and attainment. Discrepancies between the planning assumptions and estimates used to demonstrate RFP and attainment and those used for project-level conformity determinations could distort estimates of growth in emissions in the nonattainment area.

3. Response

As noted in the preamble to the proposal (58 FR 13846), EPA acknowledges that the conformity determination may be more difficult where the assumptions in the SIP differ from the recent MPO assumptions. For actions such as wastewater treatment plants, planning assumptions are indeed critical. However, for many other Federal actions, the planning assumptions are not as critical a factor in determining conformity.

In addition, the plain language of the statute does not allow the approach suggested by the commenter. Section 176(c) of the Act states: "The determination of conformity shall be based on the most recent estimates of emissions, and such estimates shall be determined from the most recent population, employment, travel and congestion estimates as determined by the metropolitan planning organization or other agency authorized to make such estimates." Thus, EPA must require use of the most recent planning assumptions.

In the event any revisions to these planning assumptions are necessary, § 51.859(a)(2) in the proposal indicated that such revisions must be approved in writing by the MPO or other agency authorized to make such estimates for the urban area. This section has been revised in the final rule to indicate that written approval is not required, as long

as the MPO or appropriate agency has authorized the change, so as not to delay the conformity analysis.

V. Forecast Emission Years

1. Proposal

Paragraph 51.859(d) in the proposal identified the emission scenarios to be considered. Total direct and indirect emission estimates were proposed to be projected, consistent with key dates with respect to the amended Act, the project itself, and the applicable SIP. Thus, the analysis was proposed to contain:

(1) The Act mandated attainment year or, if applicable, the farthest year for which emissions are projected in the maintenance plan;

(2) The year during which the total direct and indirect emissions from the action are expected to be the greatest on an annual basis; and

(3) Any year for which the applicable SIP specifies an annual emissions budget.

2. Comment

One commenter indicated that the emission scenarios requirement should be omitted and lead agencies be allowed to determine the scenarios on a project-specific basis. Another commenter stated that the analysis should include a maintenance period. The EPA also received a comment that all Federal actions must be analyzed for their impact in the 20(+)-year timeframe.

3. Response

The scenarios proposed by EPA are also reflected in the final rule because they are the minimum possible scenarios which still meet the statutory requirements that relate conformity to attainment, maintenance, SIP milestones, and RFP. The above emission estimates are necessary in order to assure that the Federal action would not "delay timely attainment of any standard or any required interim emission reductions or other milestones in any area" (section 176(c)(1)(B)(iii) of the Act). This provision links emissions from the action to the emission reduction targets required by the Act to demonstrate RFP prior to the attainment date. Emission estimates are also needed to provide for determinations of conformity with respect to maintenance plans as required by section 176(c)(4)(B)(iii) of the Act. For an action to conform to the applicable SIP, it must conform at all of the above times.

The inclusion of a maintenance period is not reasonable since many SIP's may not have identified a maintenance period. The rigidity of a 20(+)-year timeframe is also unnecessary. Rather, the emission scenarios should be keyed to the relevant years for RFP, attainment and maintenance planning specified in the SIP. In some, but not all, cases a 20(+)-year timeframe will, in fact, be necessary under the final rule to meet one of the specified emission scenarios.

W. Total of Direct and Indirect Emissions

1. Proposal

The preamble states that "net" emissions from the various direct and indirect sources should be used in the applicability and conformity analyses (58 FR 13847). However, the rule uses the phrase, "total direct and indirect emissions."

2. Comment

A commenter suggested that EPA should expressly state in the final rule that "net" emissions from the particular Federal action under review should be evaluated in determining both applicability and conformity.

Another comment stated that the conformity analysis should include the direct and indirect impacts of the Federal activity along with all other reasonably foreseeable projects (Federal and non-Federal) in the area.

3. Response

The final rule is revised to clarify that the total direct and indirect emissions may be a "net" emissions calculation. For example, where an agency has several offices in one metropolitan area and is considering consolidation into one large centralized office, vehicular activity may actually decrease, depending on the location of the new office building, availability of mass transit, and other factors. In such cases, the Federal agency should consult with the MPO in determining the "net" emissions from such an action. Consultation with the MPO is also important to help assure that indirect emissions, once attributed to a source, will not be double-counted by attributing the same emissions to nearby projects that are subsequently reviewed.

The conformity requirements for applicability and analysis generally do not include reasonably foreseeable projects other than those caused by the Federal action. Thus, the calculation of emissions for de minimis or offset purposes includes only the (net) direct and indirect emissions caused by the Federal action in question. However, where an air quality modeling analysis is part of the conformity determination, the EPA guideline on air quality models (reference in § 51.859) requires the modeling to include emissions from existing sources as well as the potential new emissions due to the Federal action in order to accurately determine the effect of the action on the NAAQS and whether the action might cause or contribute to a new violation or worsen an existing violation.

In addition, the definition is revised to clarify that emissions of criteria pollutants and emissions of precursors of criteria pollutants (as defined in the final rule) are included within the meaning of "total of direct and indirect emissions." Further, the final definition makes it clear that the portion of emissions which are exempt or presumed to conform under § 51.853 are not included in the "total of direct and indirect emissions."

X. New or Revised Emissions Models

1. Proposal

The proposed rules require use of the most current version of the motor vehicle emissions model specified by EPA and available for use in the preparation or revision of SIP's (58 FR 13852).

2. Comment

One commenter suggested that the final rules should provide that conformity determinations be made with the same mobile source emissions model as was used in the development of the SIP until such time as EPA approves a SIP revision, based on a new model.

Another commenter noted that the latest planning assumptions may not be consistent with assumptions contained in the SIP. In such cases, the commenter suggests that the final rule should allow the affected agencies to determine which prevails. The commenter also suggested that the general conformity rule should provide a transition period similar to that in the transportation conformity rule, where EPA updates the motor vehicle emissions model.

3. Response

The statute requires the determination of conformity to be based on the most recent estimates of emissions, and such estimates shall be determined from the most recent population, employment, travel, and congestion estimates as determined by the MPO or other agency authorized to make such estimates. As noted in the proposal (58 FR 13846–13847) EPA recognizes this issue and urges that these estimates should be consistent with those in the applicable SIP, to the extent possible. However, based on the clear statutory language,

the most recent estimates must be used, rather than the estimates that may have been used in (older) SIP revisions. In cases where the emissions estimate in the applicable SIP is outdated and the Federal agency chooses not to rely on it in the conformity analysis, the final conformity rules allow a Federal agency to demonstrate conformity through analyses that focus on emission offsets and/or air quality modeling.

Section 51.859(b) of the final rule includes provisions to provide flexibility for cases where use of otherwise required emission models or emission factors is inappropriate and the approval of the EPA Regional Administrator is obtained. In addition, the final rule provides a reasonable grace period where the EPA motor vehicle emissions model has been updated, so that ongoing analysis efforts are not unduly disrupted. The grace period is consistent with the provisions in the transportation conformity rule as suggested by the comment.

Specifically, the rule establishes a 3-month grace period during which the motor vehicle emissions model previously specified by EPA as the most current version may be used. In addition, conformity analyses for which the analysis was begun during the grace period or no more than 3 years before the notice of availability of the latest emission model may continue to use the previous version of the model specified by EPA.

Y. Air Quality Modeling—General

1. Proposal

Where the conformity analysis relies on air quality modeling, that modeling must use EPA-approved models, unless otherwise approved by the EPA Regional Administrator [paragraph (c) of § 51.859]. The analysis must include any year for which the applicable SIP specifies an annual emissions budget (paragraph (d)(3) of § 51.859).

2. Comment

One commenter pointed out several problems in the rules: the rule would require the use of models that are inappropriate for complex terrain; before any models can be used, they must be EPA-approved; and conformity determinations should also include an analysis of the milestone years that are used in the SIP to demonstrate attainment.

3. Response

As proposed, the final rules generally require use of EPA-approved models, including complex terrain models in some cases. However, where such models are unavailable for a particular application, alternate air quality analyses can be conducted upon approval of the EPA Regional Administrator. The EPA believes it is essential to standardize air quality model applications since models could otherwise be invented or existing models manipulated to show virtually any results desired.

However, § 51.858(a)(3) in the final rule does not apply to ozone or nitrogen dioxide modeling efforts. The EPA believes that, as a technical matter, application of existing air quality dispersion models to assess project level emission changes for these regional scale pollutants is generally not appropriate. That is, photochemical grid models are generally not sufficient to assess incremental changes to areawide ozone concentrations from emissions changes at a single or group of small sources. Emission changes should amount to some significant fraction of base emissions before photochemical grid modeling results can be interpreted with sufficient confidence that the results are not lost in the noise of the model and the input data.

In addition, § 51.858(a) (3) and (4) are revised to clarify that, in some cases, either local or areawide modeling or the provisions of § 51.858(a)(5) for CO and/or PM–10 would satisfy the § 51.858(a) requirements. As specified in § 51.858(a)(4), the State agency primarily responsible for the applicable SIP would identify the cases/areas for which both local and areawide modeling is not needed to demonstrate conformity since that agency has the expertise to make such a determination.

The analysis required in paragraph (d)(3) of § 51.859 is for the same years as the milestone years noted by the commenter. This requirement applies where the applicable SIP specifically includes emissions budgets for the milestone and/or attainment years.

Z. Air Quality Modeling—PM–10

1. Proposal

The proposal called for modeling of localized PM–10 impacts in some cases (§ 51.858).

2. Comment

This analysis is not currently in use in California and is unfamiliar to technical air quality consultants and the California Air Resources Board.

3. Response

The EPA's air quality modeling guideline contains models intended specifically to analyze the local and regional impacts of PM–10, including point, area, and volume sources. In addition, EPA will be making guidance available on how to use an existing guideline model (CALINE3) and other EPA guidance to analyze the local air quality impacts of PM–10 roadway emissions.

AA. Activity on Federally-Managed Land

1. Proposal

The preamble to the general conformity proposal indicates that prescribed burning activities by FLM could be one activity affected by the rule.

2. Comment

Comments submitted by Federal land managers include general comments that are addressed elsewhere in this preamble. Some of the comments are more specific to their land management activities and are addressed here.

Regarding de minimis levels, one commenter stated that the proposed rule mixes up emissions and impacts; the rule should focus on the "effect" on the nonattainment area rather than emissions. The commenter stated that the approach has implications for prescribed burning. Prescribed burning is a temporary source that may occur at a time of year when the air quality standards are not being violated. In addition, the focus on emissions is also a problem when the smoke is blown away from the nonattainment area.

3. Response 1

Regarding de minimis levels, the emissions-based threshold does not provide as direct an indicator of a project's air quality impact as an ambient concentration-based threshold. It was selected for the final rule, however, because it does provide a rough indicator of a project's impact. In addition, it was selected because it is not feasible to expect Federal agencies, at the conformity applicability stage, to perform the air quality dispersion modeling analysis necessary to determine whether a project is above an air quality concentration. Such an analysis would be time consuming and potentially result in the Federal agency having to expend significant resources analyzing the air quality impact of an action that could be determined, upon completion of analysis, to have a "de minimis" air quality impact. Moreover, for some actions requiring an air quality modeling analysis up-front is a potential waste of resources when the Federal agency may ultimately select an option for adequately showing conformity that does not involve air quality modeling.

Regarding the timing of prescribed burns, if a burn occurs during a time of year when a nonattainment area does not experience violations of the NAAQS and the applicable SIP's attainment demonstration specifically reflects that finding, then such a burn may be determined to conform pursuant to § 51.858(a)(1).

Regarding the direction of smoke emissions, for the reasons noted above EPA has selected an emissions-based threshold for conformity applicability purposes. Such an approach does not account for emissions direction or dispersion. Depending on the nature and scope of the activity and conformity option selected pursuant to section 51.858, the conformity analysis may or may not explicitly address these factors. Section 51.855 was amended, however, to require the consultation and notification of FLM's by other Federal agencies when a Federal action requiring a conformity determination is within 100 km of a Class I area.

4. Comment

Two commenters noted that the rule could affect many of their agencies' activities. One commenter stated the rule becomes less focused as it attempts to address the different types of Federal actions. The commenter stated the rule is unclear about how the Federal agency should make a conformity determination for prescribed fire, among other activities, to take into account the complex issues involved. The commenter stated that the rule should encourage pollution prevention by exempting actions consistent with an agency's pollution prevention plan. Another comment indicated that most of its agency's management plans, which are programmatic, include emissions that are not reasonably foreseeable.

5. Response

The final rule applies to nonattainment and maintenance areas and requires conformity determinations for Federal actions where the total of direct and indirect emissions exceed de minimis levels as described in § 51.853(b). Section 51.858 provides several options for showing conformity for Federal activity generally, including FLM activity. The conformity showing includes an air quality test where the Federal agency must demonstrate that the action does not cause or contribute to any new NAAQS violation or increase the frequency or severity of any existing violation. The Federal agency can either make this showing explicitly through air quality modeling or by selecting a surrogate option such as consistency with an emissions budget. The conformity showing also includes an emissions test where the Federal agency must show that the action is consistent with all SIP requirements and milestones.

In general, EPA recognizes the complex problems posed by the goals and missions of the air quality and land management agencies and EPA intends to work with the FLM's and States to find solutions. One such area of concern is ecosystem management and forest health and the challenges posed to air quality and visibility by the need for more prescribed burning expressed by the FLM.

Regarding reasonably foreseeable emissions, the rule does not require Federal agencies to include emissions in conformity applicability determinations or analyses which are not reasonably foreseeable. Reasonably foreseeable emissions (as defined in § 51.852) are projected future indirect emissions that are identified at the time the conformity determination is made and for which the location and quantity is known.

Regarding pollution prevention plans, while the final rule does exempt certain actions or presume them to conform, it does not specifically exempt actions consistent with a Federal agency's pollution prevention plan. Paragraph (c)(2) of § 51.853 of the final rule exempts actions whose total direct and indirect emissions are below the de minimis rates and other actions which would result in no emissions increase or an emissions increase that is clearly de minimis. Certain actions listed in paragraph (c)(3) of § 51.853 where the emissions are not reasonably foreseeable are also exempt. In addition, paragraphs (d) and (e) of § 51.853 of the final rule identify other actions which are exempt from conformity, such as Federal actions in response to emergencies. Therefore, since this rule does not exempt them or presume them to conform, actions consistent with an agency's pollution prevention plan that increase emissions beyond the de minimis levels are subject to conformity. However, §§ 51.853(g) and 51.853(h) of the rule provide Federal agencies with the requirements and procedures to establish activities that are presumed to conform which could conceivably include actions consistent with a pollution plan provided the rule's appropriate requirements are met. Further, to address those situations where prescribed burns are part of a conforming smoke management plan, § 51.853(c)(4)(ii) was added to exempt such actions.

6. Comment

One comment concerned the air pollution emissions information EPA maintains in a document entitled "Compilation of Air Pollutant Emission Factors (AP–42)." The commenter indicated the document does not correctly represent emissions from prescribed burning. The commenter also stated that the rule should not require the development of demographic and other data from urban nonattainment areas when they are not relevant, nor should the rule dictate such data in suburban or rural areas in the agency's planning process. In addition, the commenter stated that the rule would require the use of inappropriate air quality models. Another commenter stated that models for use in analyzing prescribed burning emissions in mountainous terrain have not yet been developed.

7. Response

Regarding emission factors, the final rule allows for alternative emissions data to be used where it is more accurate than that provided in EPA's AP–42 document. Regarding demographic data, the final rule requires that all planning assumptions must be derived from data most recently approved by the MPO where available. Such data are available for urban areas; the rule does not require its use in suburban and rural areas if it is unavailable.

Regarding modeling, if EPA guideline modeling techniques are not appropriate in a conformity determination, then the rule provides for the use of alternative models provided written approval is obtained from the EPA Regional Administrator. If no model is available for a particular application, then modeling may not be an option available for that conformity determination.

BB. Federalism Assessment

1. Proposal

The preamble to the proposal states that there are no federalism effects associated with this rule (58 FR 13848).

2. Comment

One commenter stated that a federalism assessment should be conducted under Executive Order 12612.

3. Response

A federalism assessment has not been conducted under Executive Order 12612. However, federalism effects are considered throughout this rule (e.g., discussions regarding State, Federal

agency, and EPA roles in General Conformity).

V. Economic Impact

The estimates presently available are preliminary and do not reflect substantive and recent revisions to the final rule. These estimates represent specific information solicited from the Federal agencies presumed to be affected by the rule. The EPA is interested in comments from the affected agencies on the economic impacts presented in this section. A revised analysis will be prepared and submitted to OMB in the form of a revised Information Collection Request (ICR) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

The preliminary estimates presented here are based on data provided by the following sources: Department of Interior (DOI), Department of Agriculture (USDA), Department of Energy (DOE), Department of Defense (DOD), Department of Housing and Urban Development (HUD) and the General Services Administration (GSA). It is estimated by the Federal agencies that between 10,000 and 50,000 Federal actions may need to be reviewed annually for applicability of the conformity rule. About 15% of these actions will require a conformity determination. The estimated cost of one conformity determination ranges from $1,700 for a straightforward determination to $133,000 for a base closure conformity determination. In total, the anticipated cost of the general conformity rule from the raw data submitted by the agencies ranges from $63 million per year to $111 million per year. These annual cost estimates reflect a U.S. Army Corps of Engineer's (COE) estimated annual cost ranging from $53 million to $102 million.

There are several factors that will lead to a change in these estimates, substantially lowering and narrowing the ranges. These factors are:

(1) Some of the estimates were based on the inclusive definition co-proposed by the rule in March 1993, and the definitions of indirect emissions and Federal action, but are not representative of the final rule.

(2) New "de minimis" cutoffs and various added exemptions are present in the final rule and differ from the proposed rule.

(3) There is need to completely account for overlap of Federal projects which have air environmental consequences and are subject to the National Environmental Policy Act (NEPA) as well as the NSR, operating permit, SIP and FIP, NSP and hazardous emission standards and other requirements of the Act.

Most of the cost of determining conformity falls to Federal agencies and/or private sponsors of projects needing Federal action. The Federal agencies and/or private sponsors will need to fund the analysis of the actions for air quality impact. In addition, State and local agencies may choose to participate in development and/or review of the analysis. The incremental cost estimates include recordkeeping, reporting, performing air quality and mitigation analysis, and considering public comments where appropriate.

As stated above, these estimates are preliminary. Revisions will be addressed in a forthcoming revised document that will specifically assess the costs and recordkeeping and reporting burden of the rule, as stipulated under Section VI(C) Paperwork reduction Act below.

VI. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action". As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 and applicable EPA guidelines revised in 1992 require Federal agencies to identify potentially adverse impacts of Federal regulations upon small entities. Small entities include small businesses, organizations, and governmental jurisdictions. The EPA has determined that this regulation does not apply to any small entities. This regulation directly affects only Federal agencies. Consequently, a Regulatory Flexibility Analysis (RFA) is not required. As required under section 605 of the Regulatory Flexibility Act, 5 U.S.C. *et seq.*, I certify that this regulation does not have a significant impact on a substantial number of small entities and thereby does not require a Regulatory Flexibility Analysis (RFA).

C. Paperwork Reduction Act

The Paperwork Reduction Act (PRA) requires that an agency prepare an Information Collection Request (ICR) to obtain OMB clearance for any activity that will involve collecting information from ten or more non-Federal respondents. These information requirements include reporting, monitoring, and/or recordkeeping. The ICR for this rule includes the cost to the States of developing and implementing the General Conformity rule as well as the cost of the collection burden for private sponsors of activities that require Federal support or approval.

The information collection requirements in 40 CFR parts 51 and 93 have not been approved by OMB and are not effective until OMB approves them. These information collection requirements will be submitted as part of a revised ICR to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* These requirements will not be effective until OMB approves them and a technical amendment to that effect is published in the **Federal Register**.

D. Federalism Implications

A federalism assessment has not been conducted under Executive Order 12612. However, federalism effects are considered throughout this rule (e.g., discussions regarding State, Federal agency, and EPA roles in General Conformity).

List of Subjects

40 CFR Part 6

Environmental impact statements, Foreign relations, Grant programs—environmental protection, Waste treatment and disposal.

40 CFR Parts 51 and 93

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead,

Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Dated: November 15, 1993.

Carol M. Browner,

Administrator.

The Code of Federal Regulations, title 40, chapter I, is amended as follows:

PART 6—[AMENDED]

1. The authority citation for part 6 is revised to read as follows:

Authority: 42 U.S.C. 4321 *et seq.*, 7401–7671q; 40 CFR part 1500.

2. Section 6.303 is amended by removing and reserving paragraphs (c) through (g) and revising paragraphs (a) and (b) to read as follows:

§ 6.303 Air quality.

(a) The Clean Air Act, as amended in 1990, 42 U.S.C. 7476(c), requires Federal actions to conform to any State implementation plan approved or promulgated under section 110 of the Act. For EPA actions, the applicable conformity requirements specified in 40 CFR part 51, subpart W, 40 CFR part 93, subpart B, and the applicable State implementation plan must be met.

(b) In addition, with regard to wastewater treatment works subject to review under Subpart E of this part, the responsible official shall consider the air pollution control requirements specified in section 316(b) of the Clean Air Act, 42 U.S.C. 7616, and Agency implementation procedures.

(c)–(g) [Reserved]

PART 51—[AMENDED]

1. The authority citation for part 51 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Part 51 is amended by adding a new subpart W to read as follows:

Subpart W—Determining Conformity of General Federal Actions to State or Federal Implementation Plans

Sec.

51.850 Prohibition.
51.851 State implementation plan (SIP) revision.
51.852 Definitions.
51.853 Applicability.
51.854 Conformity analysis.
51.855 Reporting requirements.
51.856 Public participation.
51.857 Frequency of conformity determinations.
51.858 Criteria for determining conformity of general Federal actions.
51.859 Procedures for conformity determinations of general Federal actions.
51.860 Mitigation of air quality impacts.

Subpart W—Determining Conformity of General Federal Actions to State or Federal Implementation Plans

§ 51.850 Prohibition.

(a) No department, agency or instrumentality of the Federal Government shall engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which does not conform to an applicable implementation plan.

(b) A Federal agency must make a determination that a Federal action conforms to the applicable implementation plan in accordance with the requirements of this subpart before the action is taken.

(c) Paragraph (b) of this section does not include Federal actions where either:

(1) A National Environmental Policy Act (NEPA) analysis was completed as evidenced by a final environmental assessment (EA), environmental impact statement (EIS), or finding of no significant impact (FONSI) that was prepared prior to January 31, 1994;

(2) (i) Prior to January 31, 1994, an EA was commenced or a contract was awarded to develop the specific environmental analysis;

(ii) Sufficient environmental analysis is completed by March 15, 1994 so that the Federal agency may determine that the Federal action is in conformity with the specific requirements and the purposes of the applicable SIP pursuant to the agency's affirmative obligation under section 176(c) of the Clean Air Act (Act); and

(iii) A written determination of conformity under section 176(c) of the Act has been made by the Federal agency responsible for the Federal action by March 15, 1994.

(d) Notwithstanding any provision of this subpart, a determination that an action is in conformance with the applicable implementation plan does not exempt the action from any other requirements of the applicable implementation plan, the NEPA, or the Act.

§ 51.851 State implementation plan (SIP) revision.

(a) Each State must submit to the Environmental Protection Agency (EPA) a revision to its applicable implementation plan which contains criteria and procedures for assessing the conformity of Federal actions to the applicable implementation plan, consistent with this subpart. The State must submit the conformity provisions within 12 months after November 30, 1993 or within 12 months of an area's designation to nonattainment, whichever date is later.

(b) The Federal conformity rules under this subpart and 40 CFR part 93, in addition to any existing applicable State requirements, establish the conformity criteria and procedures necessary to meet the Act requirements until such time as the required conformity SIP revision is approved by EPA. A State's conformity provisions must contain criteria and procedures that are no less stringent than the requirements described in this subpart. A State may establish more stringent conformity criteria and procedures only if they apply equally to non-Federal as well as Federal entities. Following EPA approval of the State conformity provisions (or a portion thereof) in a revision to the applicable SIP, the approved (or approved portion of the) State criteria and procedures would govern conformity determinations and the Federal conformity regulations contained in 40 CFR part 93 would apply only for the portion, if any, of the State's conformity provisions that is not approved by EPA. In addition, any previously applicable SIP requirements relating to conformity remain enforceable until the State revises its SIP to specifically remove them from the SIP and that revision is approved by EPA.

§ 51.852 Definitions.

Terms used but not defined in this part shall have the meaning given them by the Act and EPA's regulations, (40 CFR chapter I), in that order of priority.

Affected Federal land manager means the Federal agency or the Federal official charged with direct responsibility for management of an area designated as Class I under the Act (42 U.S.C. 7472) that is located within 100 km of the proposed Federal action.

Applicable implementation plan or applicable SIP means the portion (or portions) of the SIP or most recent revision thereof, which has been approved under section 110 of the Act, or promulgated under section 110(c) of the Act (Federal implementation plan), or promulgated or approved pursuant to regulations promulgated under section 301(d) of the Act and which implements the relevant requirements of the Act.

Areawide air quality modeling analysis means an assessment on a scale that includes the entire nonattainment or maintenance area which uses an air quality dispersion model to determine the effects of emissions on air quality.

Cause or contribute to a new violation means a Federal action that:

(1) Causes a new violation of a national ambient air quality standard

(NAAQS) at a location in a nonattainment or maintenance area which would otherwise not be in violation of the standard during the future period in question if the Federal action were not taken; or

(2) Contributes, in conjunction with other reasonably foreseeable actions, to a new violation of a NAAQS at a location in a nonattainment or maintenance area in a manner that would increase the frequency or severity of the new violation.

Caused by, as used in the terms "direct emissions" and "indirect emissions," means emissions that would not otherwise occur in the absence of the Federal action.

Criteria pollutant or standard means any pollutant for which there is established a NAAQS at 40 CFR part 50.

Direct emissions means those emissions of a criteria pollutant or its precursors that are caused or initiated by the Federal action and occur at the same time and place as the action.

Emergency means a situation where extremely quick action on the part of the Federal agencies involved is needed and where the timing of such Federal activities makes it impractical to meet the requirements of this subpart, such as natural disasters like hurricanes or earthquakes, civil disturbances such as terrorist acts, and military mobilizations.

Emissions budgets are those portions of the applicable SIP's projected emissions inventories that describe the levels of emissions (mobile, stationary, area, etc.) that provide for meeting reasonable further progress milestones, attainment, and/or maintenance for any criteria pollutant or its precursors.

Emissions offsets, for purposes of § 51.858, are emissions reductions which are quantifiable, consistent with the applicable SIP attainment and reasonable further progress demonstrations, surplus to reductions required by, and credited to, other applicable SIP provisions, enforceable at both the State and Federal levels, and permanent within the timeframe specified by the program.

Emissions that a Federal agency has a continuing program responsibility for means emissions that are specifically caused by an agency carrying out its authorities, and does not include emissions that occur due to subsequent activities, unless such activities are required by the Federal agency. Where an agency, in performing its normal program responsibilities, takes actions itself or imposes conditions that result in air pollutant emissions by a non-Federal entity taking subsequent actions, such emissions are covered by the meaning of a continuing program responsibility.

EPA means the Environmental Protection Agency.

Federal action means any activity engaged in by a department, agency, or instrumentality of the Federal government, or any activity that a department, agency or instrumentality of the Federal government supports in any way, provides financial assistance for, licenses, permits, or approves, other than activities related to transportation plans, programs, and projects developed, funded, or approved under title 23 U.S.C. or the Federal Transit Act (49 U.S.C. 1601 *et seq.*). Where the Federal action is a permit, license, or other approval for some aspect of a non-Federal undertaking, the relevant activity is the part, portion, or phase or the non-Federal undertaking that requires the Federal permit, license, or approval.

Federal agency means, for purposes of this subpart, a Federal department, agency, or instrumentality of the Federal government.

Increase the frequency or severity of any existing violation of any standard in any area means to cause a nonattainment area to exceed a standard more often or to cause a violation at a greater concentration than previously existed and/or would otherwise exist during the future period in question, if the project were not implemented.

Indirect emissions means those emissions of a criteria pollutant or its precursors that:

(1) Are caused by the Federal action, but may occur later in time and/or may be farther removed in distance from the action itself but are still reasonably foreseeable; and

(2) The Federal agency can practicably control and will maintain control over due to a continuing program responsibility of the Federal agency.

Local air quality modeling analysis means an assessment of localized impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested roadway intersections and highways or transit terminals, which uses an air quality dispersion model to determine the effects of emissions on air quality.

Maintenance area means an area with a maintenance plan approved under section 175A of the Act.

Maintenance plan means a revision to the applicable SIP, meeting the requirements of section 175A of the Act.

Metropolitan Planning Organization (MPO) is that organization designated as being responsible, together with the State, for conducting the continuing, cooperative, and comprehensive planning process under 23 U.S.C. 134 and 49 U.S.C. 1607.

Milestone has the meaning given in sections 182(g)(1) and 189(c)(1) of the Act.

National ambient air quality standards (NAAQS) are those standards established pursuant to section 109 of the Act and include standards for carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO_2), ozone, particulate matter (PM–10), and sulfur dioxide (SO_2).

NEPA is the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*).

Nonattainment Area (NAA) means an area designated as nonattainment under section 107 of the Act and described in 40 CFR part 81.

Precursors of a criteria pollutant are:

(1) For ozone, nitrogen oxides (NO_x), unless an area is exempted from NO_x requirements under section 182(f) of the Act, and volatile organic compounds (VOC); and

(2) For PM–10, those pollutants described in the PM–10 nonattainment area applicable SIP as significant contributors to the PM–10 levels.

Reasonably foreseeable emissions are projected future indirect emissions that are identified at the time the conformity determination is made; the location of such emissions is known and the emissions are quantifiable, as described and documented by the Federal agency based on its own information and after reviewing any information presented to the Federal agency.

Regional water and/or wastewater projects include construction, operation, and maintenance of water or wastewater conveyances, water or wastewater treatment facilities, and water storage reservoirs which affect a large portion of a nonattainment or maintenance area.

Regionally significant action means a Federal action for which the direct and indirect emissions of any pollutant represent 10 percent or more of a nonattainment or maintenance area's emissions inventory for that pollutant.

Total of direct and indirect emissions means the sum of direct and indirect emissions increases and decreases caused by the Federal action; i.e., the "net" emissions considering all direct and indirect emissions. The portion of emissions which are exempt or presumed to conform under § 51.853, (c), (d), (e), or (f) are not included in the "total of direct and indirect emissions." The "total of direct and indirect emissions" includes emissions of criteria pollutants and emissions of precursors of criteria pollutants.

§ 51.853 Applicability.

(a) Conformity determinations for Federal actions related to transportation plans, programs, and projects developed, funded, or approved under title 23 U.S.C. or the Federal Transit Act (49 U.S.C. 1601 *et seq.*) must meet the procedures and criteria of 40 CFR part 51, subpart T, in lieu of the procedures set forth in this subpart.

(b) For Federal actions not covered by paragraph (a) of this section, a conformity determination is required for each pollutant where the total of direct and indirect emissions in a nonattainment or maintenance area caused by a Federal action would equal or exceed any of the rates in paragraphs (b)(1) or (2) of this section.

(1) For purposes of paragraph (b) of this section, the following rates apply in nonattainment areas (NAAs):

	Tons/ year
Ozone (VOC's or NO_x):	
Serious NAA's	50
Severe NAA's	25
Extreme NAA's	10
Other ozone NAA's outside an ozone transport region	100
Marginal and moderate NAA's inside an ozone transport region:	
VOC	50
NO_x	100
Carbon monoxide: All NAA's	100
SO_2 or NO_2: All NAA's	100
PM–10:	
Moderate NAA's	100
Serious NAA's	70
Pb: All NAA's	25

(2) For purposes of paragraph (b) of this section, the following rates apply in maintenance areas:

	Tons/ year
Ozone (NO_x), SO_2 or NO_2: All maintenance areas	100
Ozone (VOC's):	
Maintenance areas inside an ozone transport region	50
Maintenance areas outside an ozone transport region	100
Carbon monoxide: All maintenance areas	100
PM–10: All maintenance areas	100
Pb: All maintenance areas	25

(c) The requirements of this subpart shall not apply to:

(1) Actions where the total of direct and indirect emissions are below the emissions levels specified in paragraph (b) of this section.

(2) The following actions which would result in no emissions increase or an increase in emissions that is clearly de minimis:

(i) Judicial and legislative proceedings.

(ii) Continuing and recurring activities such as permit renewals where activities conducted will be similar in scope and operation to activities currently being conducted.

(iii) Rulemaking and policy development and issuance.

(iv) Routine maintenance and repair activities, including repair and maintenance of administrative sites, roads, trails, and facilities.

(v) Civil and criminal enforcement activities, such as investigations, audits, inspections, examinations, prosecutions, and the training of law enforcement personnel.

(vi) Administrative actions such as personnel actions, organizational changes, debt management or collection, cash management, internal agency audits, program budget proposals, and matters relating to the administration and collection of taxes, duties and fees.

(vii) The routine, recurring transportation of materiel and personnel.

(viii) Routine movement of mobile assets, such as ships and aircraft, in home port reassignments and stations (when no new support facilities or personnel are required) to perform as operational groups and/or for repair or overhaul.

(ix) Maintenance dredging and debris disposal where no new depths are required, applicable permits are secured, and disposal will be at an approved disposal site.

(x) Actions, such as the following, with respect to existing structures, properties, facilities and lands where future activities conducted will be similar in scope and operation to activities currently being conducted at the existing structures, properties, facilities, and lands; for example, relocation of personnel, disposition of federally-owned existing structures, properties, facilities, and lands, rent subsidies, operation and maintenance cost subsidies, the exercise of receivership or conservatorship authority, assistance in purchasing structures, and the production of coins and currency.

(xi) The granting of leases, licenses such as for exports and trade, permits, and easements where activities conducted will be similar in scope and operation to activities currently being conducted.

(xii) Planning, studies, and provision of technical assistance.

(xiii) Routine operation of facilities, mobile assets and equipment.

(xiv) Transfers of ownership, interests, and titles in land, facilities, and real and personal properties, regardless of the form or method of the transfer.

(xv) The designation of empowerment zones, enterprise communities, or viticultural areas.

(xvi) Actions by any of the Federal banking agencies or the Federal Reserve Banks, including actions regarding charters, applications, notices, licenses, the supervision or examination of depository institutions or depository institution holding companies, access to the discount window, or the provision of financial services to banking organizations or to any department, agency or instrumentality of the United States.

(xvii) Actions by the Board of Governors of the Federal Reserve System or any Federal Reserve Bank to effect monetary or exchange rate policy.

(xviii) Actions that implement a foreign affairs function of the United States.

(xix) Actions (or portions thereof) associated with transfers of land, facilities, title, and real properties through an enforceable contract or lease agreement where the delivery of the deed is required to occur promptly after a specific, reasonable condition is met, such as promptly after the land is certified as meeting the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and where the Federal agency does not retain continuing authority to control emissions associated with the lands, facilities, title, or real properties.

(xx) Transfers of real property, including land, facilities, and related personal property from a Federal entity to another Federal entity and assignments of real property, including land, facilities, and related personal property from a Federal entity to another Federal entity for subsequent deeding to eligible applicants.

(xxi) Actions by the Department of the Treasury to effect fiscal policy and to exercise the borrowing authority of the United States.

(3) The following actions where the emissions are not reasonably foreseeable:

(i) Initial Outer Continental Shelf lease sales which are made on a broad scale and are followed by exploration and development plans on a project level.

(ii) Electric power marketing activities that involve the acquisition, sale and transmission of electric energy.

(4) Actions which implement a decision to conduct or carry out a conforming program such as prescribed burning actions which are consistent

with a conforming land management plan.

(d) Notwithstanding the other requirements of this subpart, a conformity determination is not required for the following Federal actions (or portion thereof):

(1) The portion of an action that includes major new or modified stationary sources that require a permit under the new source review (NSR) program (section 173 of the Act) or the prevention of significant deterioration (PSD) program (title I, part C of the Act).

(2) Actions in response to emergencies or natural disasters such as hurricanes, earthquakes, etc., which are commenced on the order of hours or days after the emergency or disaster and, if applicable, which meet the requirements of paragraph (e) of this section.

(3) Research, investigations, studies, demonstrations, or training (other than those exempted under paragraph (c)(2) of this section), where no environmental detriment is incurred and/or, the particular action furthers air quality research, as determined by the State agency primarily responsible for the applicable SIP.

(4) Alteration and additions of existing structures as specifically required by new or existing applicable environmental legislation or environmental regulations (e.g., hush houses for aircraft engines and scrubbers for air emissions).

(5) Direct emissions from remedial and removal actions carried out under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and associated regulations to the extent such emissions either comply with the substantive requirements of the PSD/NSR permitting program or are exempted from other environmental regulation under the provisions of CERCLA and applicable regulations issued under CERCLA.

(e) Federal actions which are part of a continuing response to an emergency or disaster under paragraph (d)(2) of this section and which are to be taken more than 6 months after the commencement of the response to the emergency or disaster under paragraph (d)(2) of this section are exempt from the requirements of this subpart only if:

(1) The Federal agency taking the actions makes a written determination that, for a specified period not to exceed an additional 6 months, it is impractical to prepare the conformity analyses which would otherwise be required and the actions cannot be delayed due to overriding concerns for public health and welfare, national security interests and foreign policy commitments; or

(2) For actions which are to be taken after those actions covered by paragraph (e)(1) of this section, the Federal agency makes a new determination as provided in paragraph (e)(1) of this section.

(f) Notwithstanding other requirements of this subpart, actions specified by individual Federal agencies that have met the criteria set forth in either paragraph (g)(1) or (g)(2) of this section and the procedures set forth in paragraph (h) of this section are presumed to conform, except as provided in paragraph (j) of this section.

(g) The Federal agency must meet the criteria for establishing activities that are presumed to conform by fulfilling the requirements set forth in either paragraph (g)(1) or (g)(2) of this section:

(1) The Federal agency must clearly demonstrate using methods consistent with this subpart that the total of direct and indirect emissions from the type of activities which would be presumed to conform would not:

(i) Cause or contribute to any new violation of any standard in any area;

(ii) Interfere with provisions in the applicable SIP for maintenance of any standard;

(iii) Increase the frequency or severity of any existing violation of any standard in any area; or

(iv) Delay timely attainment of any standard or any required interim emission reductions or other milestones in any area including, where applicable, emission levels specified in the applicable SIP for purposes of:

(A) A demonstration of reasonable further progress;

(B) A demonstration of attainment; or

(C) A maintenance plan; or

(2) The Federal agency must provide documentation that the total of direct and indirect emissions from such future actions would be below the emission rates for a conformity determination that are established in paragraph (b) of this section, based, for example, on similar actions taken over recent years.

(h) In addition to meeting the criteria for establishing exemptions set forth in paragraphs (g)(1) or (g)(2) of this section, the following procedures must also be complied with to presume that activities will conform:

(1) The Federal agency must identify through publication in the **Federal Register** its list of proposed activities that are presumed to conform and the basis for the presumptions;

(2) The Federal agency must notify the appropriate EPA Regional Office(s), State and local air quality agencies and, where applicable, the agency designated under section 174 of the Act and the MPO and provide at least 30 days for the public to comment on the list of proposed activities presumed to conform;

(3) The Federal agency must document its response to all the comments received and make the comments, response, and final list of activities available to the public upon request; and

(4) The Federal agency must publish the final list of such activities in the **Federal Register**.

(i) Notwithstanding the other requirements of this subpart, when the total of direct and indirect emissions of any pollutant from a Federal action does not equal or exceed the rates specified in paragraph (b) of this section, but represents 10 percent or more of a nonattainment or maintenance area's total emissions of that pollutant, the action is defined as a regionally significant action and the requirements of § 51.850 and §§ 51.855 through 51.860 shall apply for the Federal action.

(j) Where an action otherwise presumed to conform under paragraph (f) of this section is a regionally significant action or does not in fact meet one of the criteria in paragraph (g)(1) of this section, that action shall not be presumed to conform and the requirements of § 51.850 and §§ 51.855 through 51.860 shall apply for the Federal action.

(k) The provisions of this subpart shall apply in all nonattainment and maintenance areas.

§ 51.854 Conformity analysis.

Any Federal department, agency, or instrumentality of the Federal government taking an action subject to this subpart must make its own conformity determination consistent with the requirements of this subpart. In making its conformity determination, a Federal agency must consider comments from any interested parties. Where multiple Federal agencies have jurisdiction for various aspects of a project, a Federal agency may choose to adopt the analysis of another Federal agency or develop its own analysis in order to make its conformity determination.

§ 51.855 Reporting requirements.

(a) A Federal agency making a conformity determination under § 51.858 must provide to the appropriate EPA Regional Office(s), State and local air quality agencies and, where applicable, affected Federal land managers, the agency designated under section 174 of the Act and the MPO a 30 day notice which describes the

proposed action and the Federal agency's draft conformity determination on the action.

(b) A Federal agency must notify the appropriate EPA Regional Office(s), State and local air quality agencies and, where applicable, affected Federal land managers, the agency designated under section 174 of the Clean Air Act and the MPO within 30 days after making a final conformity determination under § 51.858.

§ 51.856 Public participation.

(a) Upon request by any person regarding a specific Federal action, a Federal agency must make available for review its draft conformity determination under § 51.858 with supporting materials which describe the analytical methods and conclusions relied upon in making the applicability analysis and draft conformity determination.

(b) A Federal agency must make public its draft conformity determination under § 51.858 by placing a notice by prominent advertisement in a daily newspaper of general circulation in the area affected by the action and by providing 30 days for written public comment prior to taking any formal action on the draft determination. This comment period may be concurrent with any other public involvement, such as occurs in the NEPA process.

(c) A Federal agency must document its response to all the comments received on its draft conformity determination under § 51.858 and make the comments and responses available, upon request by any person regarding a specific Federal action, within 30 days of the final conformity determination.

(d) A Federal agency must make public its final conformity determination under § 51.858 for a Federal action by placing a notice by prominent advertisement in a daily newspaper of general circulation in the area affected by the action within 30 days of the final conformity determination.

§ 51.857 Frequency of conformity determinations.

(a) The conformity status of a Federal action automatically lapses 5 years from the date a final conformity determination is reported under § 51.855, unless the Federal action has been completed or a continuous program has been commenced to implement that Federal action within a reasonable time.

(b) Ongoing Federal activities at a given site showing continuous progress are not new actions and do not require periodic redeterminations so long as such activities are within the scope of the final conformity determination reported under § 51.855.

(c) If, after the conformity determination is made, the Federal action is changed so that there is an increase in the total of direct and indirect emissions above the levels in § 51.853(b), a new conformity determination is required.

§ 51.858 Criteria for determining conformity of general Federal actions.

(a) An action required under § 51.853 to have a conformity determination for a specific pollutant, will be determined to conform to the applicable SIP if, for each pollutant that exceeds the rates in § 51.853(b), or otherwise requires a conformity determination due to the total of direct and indirect emissions from the action, the action meets the requirements of paragraph (c) of this section, and meets any of the following requirements:

(1) For any criteria pollutant, the total of direct and indirect emissions from the action are specifically identified and accounted for in the applicable SIP's attainment or maintenance demonstration;

(2) For ozone or nitrogen dioxide, the total of direct and indirect emissions from the action are fully offset within the same nonattainment or maintenance area through a revision to the applicable SIP or a similarly enforceable measure that effects emission reductions so that there is no net increase in emissions of that pollutant;

(3) For any criteria pollutant, except ozone and nitrogen dioxide, the total of direct and indirect emissions from the action meet the requirements:

(i) Specified in paragraph (b) of this section, based on areawide air quality modeling analysis and local air quality modeling analysis; or

(ii) Meet the requirements of paragraph (a)(5) of this section and, for local air quality modeling analysis, the requirement of paragraph (b) of this section;

(4) For CO or PM–10—

(i) Where the State agency primarily responsible for the applicable SIP determines that an areawide air quality modeling analysis is not needed, the total of direct and indirect emissions from the action meet the requirements specified in paragraph (b) of this section, based on local air quality modeling analysis; or

(ii) Where the State agency primarily responsible for the applicable SIP determines that an areawide air quality modeling analysis is appropriate and that a local air quality modeling analysis is not needed, the total of direct and indirect emissions from the action meet the requirements specified in paragraph (b) of this section, based on areawide modeling, or meet the requirements of paragraph (a)(5) of this section; or

(5) For ozone or nitrogen dioxide, and for purposes of paragraphs (a)(3)(ii) and (a)(4)(ii) of this section, each portion of the action or the action as a whole meets any of the following requirements:

(i) Where EPA has approved a revision to an area's attainment or maintenance demonstration after 1990 and the State makes a determination as provided in paragraph (a)(5)(i)(A) of this section or where the State makes a commitment as provided in paragraph (a)(5)(i)(B) of this section:

(A) The total of direct and indirect emissions from the action (or portion thereof) is determined and documented by the State agency primarily responsible for the applicable SIP to result in a level of emissions which, together with all other emissions in the nonattainment (or maintenance) area, would not exceed the emissions budgets specified in the applicable SIP;

(B) The total of direct and indirect emissions from the action (or portion thereof) is determined by the State agency responsible for the applicable SIP to result in a level of emissions which, together with all other emissions in the nonattainment (or maintenance) area, would exceed an emissions budget specified in the applicable SIP and the State Governor or the Governor's designee for SIP actions makes a written commitment to EPA which includes the following:

(*1*) A specific schedule for adoption and submittal of a revision to the SIP which would achieve the needed emission reductions prior to the time emissions from the Federal action would occur;

(*2*) Identification of specific measures for incorporation into the SIP which would result in a level of emissions which, together with all other emissions in the nonattainment or maintenance area, would not exceed any emissions budget specified in the applicable SIP;

(*3*) A demonstration that all existing applicable SIP requirements are being implemented in the area for the pollutants affected by the Federal action, and that local authority to implement additional requirements has been fully pursued;

(*4*) A determination that the responsible Federal agencies have required all reasonable mitigation measures associated with their action; and

(*5*) Written documentation including all air quality analyses supporting the conformity determination;

(C) Where a Federal agency made a conformity determination based on a State commitment under paragraph (a)(5)(i)(B) of this section, such a State commitment is automatically deemed a call for a SIP revision by EPA under section 110(k)(5) of the Act, effective on the date of the Federal conformity determination and requiring response within 18 months or any shorter time within which the State commits to revise the applicable SIP;

(ii) The action (or portion thereof), as determined by the MPO, is specifically included in a current transportation plan and transportation improvement program which have been found to conform to the applicable SIP under 40 CFR part 51, subpart T, or 40 CFR part 93, subpart A;

(iii) The action (or portion thereof) fully offsets its emissions within the same nonattainment or maintenance area through a revision to the applicable SIP or an equally enforceable measure that effects emission reductions equal to or greater than the total of direct and indirect emissions from the action so that there is no net increase in emissions of that pollutant;

(iv) Where EPA has not approved a revision to the relevant SIP attainment or maintenance demonstration since 1990, the total of direct and indirect emissions from the action for the future years (described in § 51.859(d)) do not increase emissions with respect to the baseline emissions:

(A) The baseline emissions reflect the historical activity levels that occurred in the geographic area affected by the proposed Federal action during:

(*1*) Calendar year 1990;

(*2*) The calendar year that is the basis for the classification (or, where the classification is based on multiple years, the most representative year), if a classification is promulgated in 40 CFR part 81; or

(*3*) The year of the baseline inventory in the PM–10 applicable SIP;

(B) The baseline emissions are the total of direct and indirect emissions calculated for the future years (described in § 51.859(d)) using the historic activity levels (described in paragraph (a)(5)(iv)(A) of this section) and appropriate emission factors for the future years; or

(v) Where the action involves regional water and/or wastewater projects, such projects are sized to meet only the needs of population projections that are in the applicable SIP.

(b) The areawide and/or local air quality modeling analyses must:

(1) Meet the requirements in § 51.859; and

(2) Show that the action does not:

(i) Cause or contribute to any new violation of any standard in any area; or

(ii) Increase the frequency or severity of any existing violation of any standard in any area.

(c) Notwithstanding any other requirements of this section, an action subject to this subpart may not be determined to conform to the applicable SIP unless the total of direct and indirect emissions from the action is in compliance or consistent with all relevant requirements and milestones contained in the applicable SIP, such as elements identified as part of the reasonable further progress schedules, assumptions specified in the attainment or maintenance demonstration, prohibitions, numerical emission limits, and work practice requirements.

(d) Any analyses required under this section must be completed, and any mitigation requirements necessary for a finding of conformity must be identified before the determination of conformity is made.

§ 51.859 Procedures for conformity determinations of general Federal actions.

(a) The analyses required under this subpart must be based on the latest planning assumptions.

(1) All planning assumptions must be derived from the estimates of population, employment, travel, and congestion most recently approved by the MPO, or other agency authorized to make such estimates, where available.

(2) Any revisions to these estimates used as part of the conformity determination, including projected shifts in geographic location or level of population, employment, travel, and congestion, must be approved by the MPO or other agency authorized to make such estimates for the urban area.

(b) The analyses required under this subpart must be based on the latest and most accurate emission estimation techniques available as described below, unless such techniques are inappropriate. If such techniques are inappropriate and written approval of the EPA Regional Administrator is obtained for any modification or substitution, they may be modified or another technique substituted on a case-by-case basis or, where appropriate, on a generic basis for a specific Federal agency program.

(1) For motor vehicle emissions, the most current version of the motor vehicle emissions model specified by EPA and available for use in the preparation or revision of SIPs in that State must be used for the conformity analysis as specified in paragraphs (b)(1)(i) and (ii) of this section:

(i) The EPA must publish in the **Federal Register** a notice of availability of any new motor vehicle emissions model; and

(ii) A grace period of three months shall apply during which the motor vehicle emissions model previously specified by EPA as the most current version may be used. Conformity analyses for which the analysis was begun during the grace period or no more than 3 years before the **Federal Register** notice of availability of the latest emission model may continue to use the previous version of the model specified by EPA.

(2) For non-motor vehicle sources, including stationary and area source emissions, the latest emission factors specified by EPA in the "Compilation of Air Pollutant Emission Factors (AP–42)"[1] must be used for the conformity analysis unless more accurate emission data are available, such as actual stack test data from stationary sources which are part of the conformity analysis.

(c) The air quality modeling analyses required under this subpart must be based on the applicable air quality models, data bases, and other requirements specified in the most recent version of the "Guideline on Air Quality Models (Revised)" (1986), including supplements (EPA publication no. 450/2–78–027R)[2], unless:

(1) The guideline techniques are inappropriate, in which case the model may be modified or another model substituted on a case-by-case basis or, where appropriate, on a generic basis for a specific Federal agency program; and

(2) Written approval of the EPA Regional Administrator is obtained for any modification or substitution.

(d) The analyses required under this subpart, except § 51.858(a)(1), must be based on the total of direct and indirect emissions from the action and must reflect emission scenarios that are expected to occur under each of the following cases:

(1) The Act mandated attainment year or, if applicable, the farthest year for which emissions are projected in the maintenance plan;

(2) The year during which the total of direct and indirect emissions from the action is expected to be the greatest on an annual basis; and

(3) any year for which the applicable SIP specifies an emissions budget.

[1] Copies may be obtained from the Technical Support Division of OAQPS, EPA, MD–14, Research Triangle Park, NC 27711.

[2] See footnote 1 at § 51.859(b)(2).

§ 51.860 Mitigation of air quality impacts.

(a) Any measures that are intended to mitigate air quality impacts must be identified and the process for implementation and enforcement of such measures must be described, including an implementation schedule containing explicit timelines for implementation.

(b) Prior to determining that a Federal action is in conformity, the Federal agency making the conformity determination must obtain written commitments from the appropriate persons or agencies to implement any mitigation measures which are identified as conditions for making conformity determinations.

(c) Persons or agencies voluntarily committing to mitigation measures to facilitate positive conformity determinations must comply with the obligations of such commitments.

(d) In instances where the Federal agency is licensing, permitting or otherwise approving the action of another governmental or private entity, approval by the Federal agency must be conditioned on the other entity meeting the mitigation measures set forth in the conformity determination.

(e) When necessary because of changed circumstances, mitigation measures may be modified so long as the new mitigation measures continue to support the conformity determination. Any proposed change in the mitigation measures is subject to the reporting requirements of § 51.856 and the public participation requirements of § 51.857.

(f) The implementation plan revision required in § 51.851 shall provide that written commitments to mitigation measures must be obtained prior to a positive conformity determination and that such commitments must be fulfilled.

(g) After a State revises its SIP to adopt its general conformity rules and EPA approves that SIP revision, any agreements, including mitigation measures, necessary for a conformity determination will be both State and federally enforceable. Enforceability through the applicable SIP will apply to all persons who agree to mitigate direct and indirect emissions associated with a Federal action for a conformity determination.

PART 93—DETERMINING CONFORMITY OF FEDERAL ACTIONS TO STATE OR FEDERAL IMPLEMENTATION PLANS

1. The authority citation for part 93 continues to read as follows:

Authority: 42 U.S.C. 7401–7671p.

2. Part 93 is amended by adding a new subpart B to read as follows:

Subpart B—Determining Conformity of General Federal Actions to State or Federal Implementation Plans

Sec.

93.150 Prohibition.
93.151 State implementation plan (SIP) revision.
93.152 Definitions.
93.153 Applicability.
93.154 Conformity analysis.
93.155 Reporting requirements.
93.156 Public participation.
93.157 Frequency of conformity determinations.
93.158 Criteria for determining conformity of general Federal actions.
93.159 Procedures for conformity determinations of general Federal actions.
93.160 Mitigation of air quality impacts.

Subpart B—Determining Conformity of General Federal Actions to State or Federal Implementation Plans

§ 93.150 Prohibition.

(a) No department, agency or instrumentality of the Federal Government shall engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which does not conform to an applicable implementation plan.

(b) A Federal agency must make a determination that a Federal action conforms to the applicable implementation plan in accordance with the requirements of this subpart before the action is taken.

(c) Paragraph (b) of this section does not include Federal actions where:

(1) A National Environmental Policy Act (NEPA) analysis was completed as evidenced by a final environmental assessment (EA), environmental impact statement (EIS), or finding of no significant impact (FONSI) that was prepared prior to January 31, 1994; or

(2)(i) Prior to December 30, 1993, an environmental analysis was commenced or a contract was awarded to develop the specific environmental analysis;

(ii) Sufficient environmental analysis is completed by March 15, 1994 so that the Federal agency may determine that the Federal action is in conformity with the specific requirements and the purposes of the applicable SIP pursuant to the agency's affirmative obligation under section 176(c) of the Clean Air Act (Act); and

(iii) A written determination of conformity under section 176(c) of the Act has been made by the Federal agency responsible for the Federal action by March 15, 1994.

(d) Notwithstanding any provision of this subpart, a determination that an action is in conformance with the applicable implementation plan does not exempt the action from any other requirements of the applicable implementation plan, the National Environmental Policy Act (NEPA), or the Clean Air Act (Act).

§ 93.151 State implementation plan (SIP) revision.

The Federal conformity rules under this subpart, in addition to any existing applicable State requirements, establish the conformity criteria and procedures necessary to meet the Act requirements until such time as the required conformity SIP revision is approved by EPA. A State's conformity provisions must contain criteria and procedures that are no less stringent than the requirements described in this subpart. A State may establish more stringent conformity criteria and procedures only if they apply equally to nonfederal as well as Federal entities. Following EPA approval of the State conformity provisions (or a portion thereof) in a revision to the applicable SIP, the approved (or approved portion of the) State criteria and procedures would govern conformity determinations and the Federal conformity regulations contained in this part would apply only for the portion, if any, of the State's conformity provisions that is not approved by EPA. In addition, any previously applicable SIP requirements relating to conformity remain enforceable until the State revises its SIP to specifically remove them from the SIP and that revision is approved by EPA.

§ 93.152 Definitions.

Terms used but not defined in this part shall have the meaning given them by the Act and EPA's regulations (40 CFR chapter I), in that order of priority.

Affected Federal land manager means the Federal agency or the Federal official charged with direct responsibility for management of an area designated as Class I under the Act (42 U.S.C. 7472) that is located within 100 km of the proposed Federal action.

Applicable implementation plan or applicable SIP means the portion (or portions) of the SIP or most recent revision thereof, which has been approved under section 110 of the Act, or promulgated under section 110(c) of the Act (Federal implementation plan), or promulgated or approved pursuant to regulations promulgated under section 301(d) of the Act and which implements the relevant requirements of the Act.

Areawide air quality modeling analysis means an assessment on a scale that includes the entire nonattainment

or maintenance area which uses an air quality dispersion model to determine the effects of emissions on air quality.

Cause or contribute to a new violation means a Federal action that:

(1) Causes a new violation of a national ambient air quality standard (NAAQS) at a location in a nonattainment or maintenance area which would otherwise not be in violation of the standard during the future period in question if the Federal action were not taken; or

(2) Contributes, in conjunction with other reasonably foreseeable actions, to a new violation of a NAAQS at a location in a nonattainment or maintenance area in a manner that would increase the frequency or severity of the new violation.

Caused by, as used in the terms "direct emissions" and "indirect emissions," means emissions that would not otherwise occur in the absence of the Federal action.

Criteria pollutant or standard means any pollutant for which there is established a NAAQS at 40 CFR part 50.

Direct emissions means those emissions of a criteria pollutant or its precursors that are caused or initiated by the Federal action and occur at the same time and place as the action.

Emergency means a situation where extremely quick action on the part of the Federal agencies involved is needed and where the timing of such Federal activities makes it impractical to meet the requirements of this subpart, such as natural disasters like hurricanes or earthquakes, civil disturbances such as terrorist acts and military mobilizations.

Emissions budgets are those portions of the applicable SIP's projected emission inventories that describe the levels of emissions (mobile, stationary, area, etc.) that provide for meeting reasonable further progress milestones, attainment, and/or maintenance for any criteria pollutant or its precursors.

Emissions offsets, for purposes of § 93.158, are emissions reductions which are quantifiable, consistent with the applicable SIP attainment and reasonable further progress demonstrations, surplus to reductions required by, and credited to, other applicable SIP provisions, enforceable at both the State and Federal levels, and permanent within the timeframe specified by the program.

Emissions that a Federal agency has a continuing program responsibility for means emissions that are specifically caused by an agency carrying out its authorities, and does not include emissions that occur due to subsequent activities, unless such activities are required by the Federal agency. When an agency, in performing its normal program responsibilities, takes actions itself or imposes conditions that result in air pollutant emissions by a non-Federal entity taking subsequent actions, such emissions are covered by the meaning of a continuing program responsibility.

EPA means the Environmental Protection Agency.

Federal action means any activity engaged in by a department, agency, or instrumentality of the Federal government, or any activity that a department, agency or instrumentality of the Federal government supports in any way, provides financial assistance for, licenses, permits, or approves, other than activities related to transportation plans, programs, and projects developed, funded, or approved under title 23 U.S.C. or the Federal Transit Act (49 U.S.C. 1601 *et seq.*). Where the Federal action is a permit, license, or other approval for some aspect of a non-Federal undertaking, the relevant activity is the part, portion, or phase of the non-Federal undertaking that requires the Federal permit, license, or approval.

Federal agency means, for purposes of this subpart, a Federal department, agency, or instrumentality of the Federal government.

Increase the frequency or severity of any existing violation of any standard in any area means to cause a nonattainment area to exceed a standard more often or to cause a violation at a greater concentration than previously existed and/or would otherwise exist during the future period in question, if the project were not implemented.

Indirect emissions means those emissions of a criteria pollutant or its precursors that:

(1) Are caused by the Federal action, but may occur later in time and/or may be further removed in distance from the action itself but are still reasonably foreseeable; and

(2) The Federal agency can practicably control and will maintain control over due to a continuing program responsibility of the Federal agency.

Local air quality modeling analysis means an assessment of localized impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested roadway intersections and highways or transit terminals, which uses an air quality dispersion model to determine the effects of emissions on air quality.

Maintenance area means an area with a maintenance plan approved under section 175A of the Act.

Maintenance plan means a revision to the applicable SIP, meeting the requirements of section 175A of the Act.

Metropolitan Planning Organization (MPO) is that organization designated as being responsible, together with the State, for conducting the continuing, cooperative, and comprehensive planning process under 23 U.S.C. 134 and 49 U.S.C. 1607.

Milestone has the meaning given in sections 182(g)(1) and 189(c)(1) of the Act.

National ambient air quality standards (NAAQS) are those standards established pursuant to section 109 of the Act and include standards for carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO_2), ozone, particulate matter (PM–10), and sulfur dioxide (SO_2).

NEPA is the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*).

Nonattainment area means an area designated as nonattainment under section 107 of the Act and described in 40 CFR part 81.

Precursors of a criteria pollutant are:

(1) For ozone, nitrogen oxides (NOx), unless an area is exempted from NOx requirements under section 182(f) of the Act, and volatile organic compounds (VOC); and

(2) For PM–10, those pollutants described in the PM–10 nonattainment area applicable SIP as significant contributors to the PM–10 levels.

Reasonably foreseeable emissions are projected future indirect emissions that are identified at the time the conformity determination is made; the location of such emissions is known and the emissions are quantifiable, as described and documented by the Federal agency based on its own information and after reviewing any information presented to the Federal agency.

Regional water and/or wastewater projects include construction, operation, and maintenance of water or wastewater conveyances, water or wastewater treatment facilities, and water storage reservoirs which affect a large portion of a nonattainment or maintenance area.

Regionally significant action means a Federal action for which the direct and indirect emissions of any pollutant represent 10 percent or more of a nonattainment or maintenance area's emission inventory for that pollutant.

Total of direct and indirect emissions means the sum of direct and indirect emissions increases and decreases caused by the Federal action; i.e., the "net" emissions considering all direct and indirect emissions. The portion of emissions which are exempt or presumed to conform under § 93.153 (c),

(d), (e), or (f) are not included in the "total of direct and indirect emissions." The "total of direct and indirect emissions" includes emissions of criteria pollutants and emissions of precursors of criteria pollutants.

§ 93.153 Applicability.

(a) Conformity determinations for Federal actions related to transportation plans, programs, and projects developed, funded, or approved under title 23 U.S.C. or the Federal Transit Act (49 U.S.C. 1601 *et seq.*) must meet the procedures and criteria of 40 CFR part 51, subpart T, in lieu of the procedures set forth in this subpart.

(b) For Federal actions not covered by paragraph (a) of this section, a conformity determination is required for each pollutant where the total of direct and indirect emissions in a nonattainment or maintenance area caused by a Federal action would equal or exceed any of the rates in paragraphs (b)(1) or (2) of this section.

(1) For purposes of paragraph (b) of this section, the following rates apply in nonattainment areas (NAA's):

	Tons/ year
Ozone (VOC's or NO_x):	
Serious NAA's	50
Severe NAA's	25
Extreme NAA's	10
Other ozone NAA's outside an ozone transport region	100
Marginal and moderate NAA's inside an ozone transport region:.	
VOC	50
NO_x	100
Carbon monoxide:	
All NAA's	100
SO_2 or NO_2:	
All NAA's	100
PM–10:	
Moderate NAA's	100
Serious NAA's	70
Pb:	
All NAA's	25

(2) For purposes of paragraph (b) of this section, the following rates apply in maintenance areas:

	Tons/ year
Ozone (NO_x), SO_2 or NO_2:	
All Maintenance Areas	100
Ozone (VOC's):	
Maintenance areas inside an ozone transport region	50
Maintenance areas outside an ozone transport region	100
Carbon monoxide:	
All Maintenance Areas	100
PM–10:	
All Maintenance Areas	100
Pb:	
All Maintenance Areas	25

(c) The requirements of this subpart shall not apply to the following Federal actions:

(1) Actions where the total of direct and indirect emissions are below the emissions levels specified in paragraph (b) of this section.

(2) Actions which would result in no emissions increase or an increase in emissions that is clearly de minimis:

(i) Judicial and legislative proceedings.

(ii) Continuing and recurring activities such as permit renewals where activities conducted will be similar in scope and operation to activities currently being conducted.

(iii) Rulemaking and policy development and issuance.

(iv) Routine maintenance and repair activities, including repair and maintenance of administrative sites, roads, trails, and facilities.

(v) Civil and criminal enforcement activities, such as investigations, audits, inspections, examinations, prosecutions, and the training of law enforcement personnel.

(vi) Administrative actions such as personnel actions, organizational changes, debt management or collection, cash management, internal agency audits, program budget proposals, and matters relating to the administration and collection of taxes, duties and fees.

(vii) The routine, recurring transportation of materiel and personnel.

(viii) Routine movement of mobile assets, such as ships and aircraft, in home port reassignments and stations (when no new support facilities or personnel are required) to perform as operational groups and/or for repair or overhaul.

(ix) Maintenance dredging and debris disposal where no new depths are required, applicable permits are secured, and disposal will be at an approved disposal site.

(x) Actions, such as the following, with respect to existing structures, properties, facilities and lands where future activities conducted will be similar in scope and operation to activities currently being conducted at the existing structures, properties, facilities, and lands; for example, relocation of personnel, disposition of federally-owned existing structures, properties, facilities, and lands, rent subsidies, operation and maintenance cost subsidies, the exercise of receivership or conservatorship authority, assistance in purchasing structures, and the production of coins and currency.

(xi) The granting of leases, licenses such as for exports and trade, permits, and easements where activities conducted will be similar in scope and operation to activities currently being conducted.

(xii) Planning, studies, and provision of technical assistance.

(xiii) Routine operation of facilities, mobile assets and equipment.

(xiv) Transfers of ownership, interests, and titles in land, facilities, and real and personal properties, regardless of the form or method of the transfer.

(xv) The designation of empowerment zones, enterprise communities, or viticultural areas.

(xvi) Actions by any of the Federal banking agencies or the Federal Reserve Banks, including actions regarding charters, applications, notices, licenses, the supervision or examination of depository institutions or depository institution holding companies, access to the discount window, or the provision of financial services to banking organizations or to any department, agency or instrumentality of the United States.

(xvii) Actions by the Board of Governors of the Federal Reserve System or any Federal Reserve Bank necessary to effect monetary or exchange rate policy.

(xviii) Actions that implement a foreign affairs function of the United States.

(xix) Actions (or portions thereof) associated with transfers of land, facilities, title, and real properties through an enforceable contract or lease agreement where the delivery of the deed is required to occur promptly after a specific, reasonable condition is met, such as promptly after the land is certified as meeting the requirements of CERCLA, and where the Federal agency does not retain continuing authority to control emissions associated with the lands, facilities, title, or real properties.

(xx) Transfers of real property, including land, facilities, and related personal property from a Federal entity to another Federal entity and assignments of real property, including land, facilities, and related personal property from a Federal entity to another Federal entity for subsequent deeding to eligible applicants.

(xxi) Actions by the Department of the Treasury to effect fiscal policy and to exercise the borrowing authority of the United States.

(3) Actions where the emissions are not reasonably foreseeable, such as the following:

(i) Initial Outer Continental Shelf lease sales which are made on a broad scale and are followed by exploration

and development plans on a project level.

(ii) Electric power marketing activities that involve the acquisition, sale and transmission of electric energy.

(4) Actions which implement a decision to conduct or carry out a conforming program such as prescribed burning actions which are consistent with a conforming land management plan.

(d) Notwithstanding the other requirements of this subpart, a conformity determination is not required for the following Federal actions (or portion thereof):

(1) The portion of an action that includes major new or modified stationary sources that require a permit under the new source review (NSR) program (section 173 of the Act) or the prevention of significant deterioration program (title I, part C of the Act).

(2) Actions in response to emergencies or natural disasters such as hurricanes, earthquakes, etc., which are commenced on the order of hours or days after the emergency or disaster and, if applicable, which meet the requirements of paragraph (e) of this section.

(3) Research, investigations, studies, demonstrations, or training (other than those exempted under paragraph (c)(2) of this section), where no environmental detriment is incurred and/or, the particular action furthers air quality research, as determined by the State agency primarily responsible for the applicable SIP;

(4) Alteration and additions of existing structures as specifically required by new or existing applicable environmental legislation or environmental regulations (e.g., hush houses for aircraft engines and scrubbers for air emissions).

(5) Direct emissions from remedial and removal actions carried out under the Comprehensive Environmental Response, Compensation and Liability Act and associated regulations to the extent such emissions either comply with the substantive requirements of the PSD/NSR permitting program or are exempted from other environmental regulation under the provisions of CERCLA and applicable regulations issued under CERCLA.

(e) Federal actions which are part of a continuing response to an emergency or disaster under paragraph (d)(2) of this section and which are to be taken more than 6 months after the commencement of the response to the emergency or disaster under paragraph (d)(2) of this section are exempt from the requirements of this subpart only if:

(1) The Federal agency taking the actions makes a written determination that, for a specified period not to exceed an additional 6 months, it is impractical to prepare the conformity analyses which would otherwise be required and the actions cannot be delayed due to overriding concerns for public health and welfare, national security interests and foreign policy commitments; or

(2) For actions which are to be taken after those actions covered by paragraph (e)(1) of this section, the Federal agency makes a new determination as provided in paragraph (e)(1) of this section.

(f) Notwithstanding other requirements of this subpart, actions specified by individual Federal agencies that have met the criteria set forth in either paragraph (g)(1) or (g)(2) of this section and the procedures set forth in paragraph (h) of this section are presumed to conform, except as provided in paragraph (j) of this section.

(g) The Federal agency must meet the criteria for establishing activities that are presumed to conform by fulfilling the requirements set forth in either paragraph (g)(1) or (g)(2) of this section:

(1) The Federal agency must clearly demonstrate using methods consistent with this subpart that the total of direct and indirect emissions from the type of activities which would be presumed to conform would not:

(i) Cause or contribute to any new violation of any standard in any area;

(ii) Interfere with provisions in the applicable SIP for maintenance of any standard;

(iii) Increase the frequency or severity of any existing violation of any standard in any area; or

(iv) Delay timely attainment of any standard or any required interim emission reductions or other milestones in any area including, where applicable, emission levels specified in the applicable SIP for purposes of:

(A) A demonstration of reasonable further progress;

(B) A demonstration of attainment; or

(C) A maintenance plan; or

(2) The Federal agency must provide documentation that the total of direct and indirect emissions from such future actions would be below the emission rates for a conformity determination that are established in paragraph (b) of this section, based, for example, on similar actions taken over recent years.

(h) In addition to meeting the criteria for establishing exemptions set forth in paragraphs (g)(1) or (g)(2) of this section, the following procedures must also be complied with to presume that activities will conform:

(1) The Federal agency must identify through publication in the Federal Register its list of proposed activities that are presumed to conform and the basis for the presumptions;

(2) The Federal agency must notify the appropriate EPA Regional Office(s), State and local air quality agencies and, where applicable, the agency designated under section 174 of the Act and the MPO and provide at least 30 days for the public to comment on the list of proposed activities presumed to conform;

(3) The Federal agency must document its response to all the comments received and make the comments, response, and final list of activities available to the public upon request; and

(4) The Federal agency must publish the final list of such activities in the Federal Register.

(i) Notwithstanding the other requirements of this subpart, when the total of direct and indirect emissions of any pollutant from a Federal action does not equal or exceed the rates specified in paragraph (b) of this section, but represents 10 percent or more of a nonattainment or maintenance area's total emissions of that pollutant, the action is defined as a regionally significant action and the requirements of § 93.150 and §§ 93.155 through 93.160 shall apply for the Federal action.

(j) Where an action otherwise presumed to conform under paragraph (f) of this section is a regionally significant action or does not in fact meet one of the criteria in paragraph (g)(1) of this section, that action shall not be presumed to conform and the requirements of § 93.150 and §§ 93.155 through 93.160 shall apply for the Federal action.

(k) The provisions of this subpart shall apply in all nonattainment and maintenance areas.

§ 93.154 Conformity analysis.

Any Federal department, agency, or instrumentality of the Federal government taking an action subject to this subpart must make its own conformity determination consistent with the requirements of this subpart. In making its conformity determination, a Federal agency must consider comments from any interested parties. Where multiple Federal agencies have jurisdiction for various aspects of a project, a Federal agency may choose to adopt the analysis of another Federal agency or develop its own analysis in order to make its conformity determination.

§ 93.155 Reporting requirements.

(a) A Federal agency making a conformity determination under § 93.158 must provide to the appropriate EPA Regional Office(s), State and local air quality agencies and, where applicable, affected Federal land managers, the agency designated under section 174 of the Act and the MPO a 30 day notice which describes the proposed action and the Federal agency's draft conformity determination on the action.

(b) A Federal agency must notify the appropriate EPA Regional Office(s), State and local air quality agencies and, where applicable, affected Federal land managers, the agency designated under section 174 of the Clean Air Act and the MPO within 30 days after making a final conformity determination under § 93.158.

§ 93.156 Public participation.

(a) Upon request by any person regarding a specific Federal action, a Federal agency must make available for review its draft conformity determination under § 93.158 with supporting materials which describe the analytical methods and conclusions relied upon in making the applicability analysis and draft conformity determination.

(b) A Federal agency must make public its draft conformity determination under § 93.158 by placing a notice by prominent advertisement in a daily newspaper of general circulation in the area affected by the action and by providing 30 days for written public comment prior to taking any formal action on the draft determination. This comment period may be concurrent with any other public involvement, such as occurs in the NEPA process.

(c) A Federal agency must document its response to all the comments received on its draft conformity determination under § 93.158 and make the comments and responses available, upon request by any person regarding a specific Federal action, within 30 days of the final conformity determination.

(d) A Federal agency must make public its final conformity determination under § 93.158 for a Federal action by placing a notice by prominent advertisement in a daily newspaper of general circulation in the area affected by the action within 30 days of the final conformity determination.

§ 93.157 Frequency of conformity determinations.

(a) The conformity status of a Federal action automatically lapses 5 years from the date a final conformity determination is reported under § 93.155, unless the Federal action has been completed or a continuous program has been commenced to implement that Federal action within a reasonable time.

(b) Ongoing Federal activities at a given site showing continuous progress are not new actions and do not require periodic redeterminations so long as such activities are within the scope of the final conformity determination reported under § 93.155.

(c) If, after the conformity determination is made, the Federal action is changed so that there is an increase in the total of direct and indirect emissions, above the levels in § 93.153(b), a new conformity determination is required.

§ 93.158 Criteria for determining conformity of general Federal actions.

(a) An action required under § 93.153 to have a conformity determination for a specific pollutant, will be determined to conform to the applicable SIP if, for each pollutant that exceeds the rates in § 93.153(b), or otherwise requires a conformity determination due to the total of direct and indirect emissions from the action, the action meets the requirements of paragraph (c) of this section, and meets any of the following requirements:

(1) For any criteria pollutant, the total of direct and indirect emissions from the action are specifically identified and accounted for in the applicable SIP's attainment or maintenance demonstration;

(2) For ozone or nitrogen dioxide, the total of direct and indirect emissions from the action are fully offset within the same nonattainment or maintenance area through a revision to the applicable SIP or a similarly enforceable measure that effects emission reductions so that there is no net increase in emissions of that pollutant;

(3) For any criteria pollutant, except ozone and nitrogen dioxide, the total of direct and indirect emissions from the action meet the requirements:

(i) Specified in paragraph (b) of this section, based on areawide air quality modeling analysis and local air quality modeling analysis; or

(ii) Meet the requirements of paragraph (a)(5) of this section and, for local air quality modeling analysis, the requirement of paragraph (b) of this section;

(4) For CO or PM–10—

(i) Where the State agency primarily responsible for the applicable SIP determines that an areawide air quality modeling analysis is not needed, the total of direct and indirect emissions from the action meet the requirements specified in paragraph (b) of this section, based on local air quality modeling analysis; or

(ii) Where the State agency primarily responsible for the applicable SIP determines that an areawide air quality modeling analysis is appropriate and that a local air quality modeling analysis is not needed, the total of direct and indirect emissions from the action meet the requirements specified in paragraph (b) of this section, based on areawide modeling, or meet the requirements of paragraph (a)(5) of this section; or

(5) For ozone or nitrogen dioxide, and for purposes of paragraphs (a)(3)(11) and (a)(4)(ii) of this section, each portion of the action or the action as a whole meets any of the following requirements:

(i) Where EPA has approved a revision to an area's attainment or maintenance demonstration after 1990 and the State makes a determination as provided in paragraph (a)(5)(i)(A) of this section or where the State makes a commitment as provided in paragraph (a)(5)(i)(B) of this section:

(A) The total of direct and indirect emissions from the action (or portion thereof) is determined and documented by the State agency primarily responsible for the applicable SIP to result in a level of emissions which, together with all other emissions in the nonattainment (or maintenance) area, would not exceed the emissions budgets specified in the applicable SIP;

(B) The total of direct and indirect emissions from the action (or portion thereof) is determined by the State agency responsible for the applicable SIP to result in a level of emissions which, together with all other emissions in the nonattainment (or maintenance) area, would exceed an emissions budget specified in the applicable SIP and the State Governor or the Governor's designee for SIP actions makes a written commitment to EPA which includes the following:

(1) A specific schedule for adoption and submittal of a revision to the SIP which would achieve the needed emission reductions prior to the time emissions from the Federal action would occur;

(2) Identification of specific measures for incorporation into the SIP which would result in a level of emissions which, together with all other emissions in the nonattainment or maintenance area, would not exceed any emissions budget specified in the applicable SIP;

(3) A demonstration that all existing applicable SIP requirements are being implemented in the area for the pollutants affected by the Federal action, and that local authority to

implement additional requirements has been fully pursued;

(4) A determination that the responsible Federal agencies have required all reasonable mitigation measures associated with their action; and

(5) Written documentation including all air quality analyses supporting the conformity determination;

(C) Where a Federal agency made a conformity determination based on a State commitment under paragraph (a)(5)(i)(B) of this section, such a State commitment is automatically deemed a call for a SIP revision by EPA under section 110(k)(5) of the Act, effective on the date of the Federal conformity determination and requiring response within 18 months or any shorter time within which the State commits to revise the applicable SIP;

(ii) The action (or portion thereof), as determined by the MPO, is specifically included in a current transportation plan and transportation improvement program which have been found to conform to the applicable SIP under 40 CFR part 51, subpart T, or 40 CFR part 93, subpart A;

(iii) The action (or portion thereof) fully offsets its emissions within the same nonattainment or maintenance area through a revision to the applicable SIP or an equally enforceable measure that effects emission reductions equal to or greater than the total of direct and indirect emissions from the action so that there is no net increase in emissions of that pollutant;

(iv) Where EPA has not approved a revision to the relevant SIP attainment or maintenance demonstration since 1990, the total of direct and indirect emissions from the action for the future years (described in § 93.159(d) do not increase emissions with respect to the baseline emissions:

(A) The baseline emissions reflect the historical activity levels that occurred in the geographic area affected by the proposed Federal action during:

(1) Calendar year 1990;

(2) The calendar year that is the basis for the classification (or, where the classification is based on multiple years, the most representative year), if a classification is promulgated in 40 CFR part 81; or

(3) The year of the baseline inventory in the PM–10 applicable SIP;

(B) The baseline emissions are the total of direct and indirect emissions calculated for the future years (described in § 93.159(d)) using the historic activity levels (described in paragraph (a)(5)(iv)(A) of this section) and appropriate emission factors for the future years; or

(v) Where the action involves regional water and/or wastewater projects, such projects are sized to meet only the needs of population projections that are in the applicable SIP.

(b) The areawide and/or local air quality modeling analyses must:

(1) Meet the requirements in § 93.159; and

(2) Show that the action does not:

(i) Cause or contribute to any new violation of any standard in any area; or

(ii) Increase the frequency or severity of any existing violation of any standard in any area.

(c) Notwithstanding any other requirements of this section, an action subject to this subpart may not be determined to conform to the applicable SIP unless the total of direct and indirect emissions from the action is in compliance or consistent with all relevant requirements and milestones contained in the applicable SIP, such as elements identified as part of the reasonable further progress schedules, assumptions specified in the attainment or maintenance demonstration, prohibitions, numerical emission limits, and work practice requirements.

(d) Any analyses required under this section must be completed, and any mitigation requirements necessary for a finding of conformity must be identified before the determination of conformity is made.

§ 93.159 Procedures for conformity determinations of general Federal actions.

(a) The analyses required under this subpart must be based on the latest planning assumptions.

(1) All planning assumptions must be derived from the estimates of population, employment, travel, and congestion most recently approved by the MPO, or other agency authorized to make such estimates, where available.

(2) Any revisions to these estimates used as part of the conformity determination, including projected shifts in geographic location or level of population, employment, travel, and congestion, must be approved by the MPO or other agency authorized to make such estimates for the urban area.

(b) The analyses required under this subpart must be based on the latest and most accurate emission estimation techniques available as described below, unless such techniques are inappropriate. If such techniques are inappropriate and written approval of the EPA Regional Administrator is obtained for any modification or substitution, they may be modified or another technique substituted on a case-by-case basis or, where appropriate, on a generic basis for a specific Federal agency program.

(1) For motor vehicle emissions, the most current version of the motor vehicle emissions model specified by EPA and available for use in the preparation or revision of SIPs in that State must be used for the conformity analysis as specified in paragraphs (b)(1)(i) and (ii) of this section:

(i) The EPA must publish in the **Federal Register** a notice of availability of any new motor vehicle emissions model; and

(ii) A grace period of 3 months shall apply during which the motor vehicle emissions model previously specified by EPA as the most current version may be used. Conformity analyses for which the analysis was begun during the grace period or no more than 3 years before the **Federal Register** notice of availability of the latest emission model may continue to use the previous version of the model specified by EPA.

(2) For non-motor vehicle sources, including stationary and area source emissions, the latest emission factors specified by EPA in the "Compilation of Air Pollutant Emission Factors (AP–42)" [1] must be used for the conformity analysis unless more accurate emission data are available, such as actual stack test data from stationary sources which are part of the conformity analysis.

(c) The air quality modeling analyses required under this subpart must be based on the applicable air quality models, data bases, and other requirements specified in the most recent version of the "Guideline on Air Quality Models (Revised)" (1986), including supplements (EPA publication no. 450/2–78–027R) [2], unless:

(1) The guideline techniques are inappropriate, in which case the model may be modified or another model substituted on a case-by-case basis or, where appropriate, on a generic basis for a specific Federal agency program; and

(2) Written approval of the EPA Regional Administrator is obtained for any modification or substitution.

(d) The analyses required under this subpart, except § 93.158(a)(1), must be based on the total of direct and indirect emissions from the action and must reflect emission scenarios that are expected to occur under each of the following cases:

(1) The Act mandated attainment year or, if applicable, the farthest year for which emissions are projected in the maintenance plan;

[1] Copies may be obtained from the Technical Support Division of OAQPS, EPA, MD–14, Research Triangle Park, NC 27711.

[2] See footnote 1 at § 93.159(b)(2).

(2) The year during which the total of direct and indirect emissions from the action is expected to be the greatest on an annual basis; and

(3) Any year for which the applicable SIP specifies an emissions budget.

§ 93.160 Mitigation of air quality impacts.

(a) Any measures that are intended to mitigate air quality impacts must be identified and the process for implementation and enforcement of such measures must be described, including an implementation schedule containing explicit timelines for implementation.

(b) Prior to determining that a Federal action is in conformity, the Federal agency making the conformity determination must obtain written commitments from the appropriate persons or agencies to implement any mitigation measures which are identified as conditions for making conformity determinations.

(c) Persons or agencies voluntarily committing to mitigation measures to facilitate positive conformity determinations must comply with the obligations of such commitments.

(d) In instances where the Federal agency is licensing, permitting or otherwise approving the action of another governmental or private entity, approval by the Federal agency must be conditioned on the other entity meeting the mitigation measures set forth in the conformity determination.

(e) When necessary because of changed circumstances, mitigation measures may be modified so long as the new mitigation measures continue to support the conformity determination. Any proposed change in the mitigation measures is subject to the reporting requirements of § 93.156 and the public participation requirements of § 93.157.

(f) The implementation plan revision required in § 93.151 shall provide that written commitments to mitigation measures must be obtained prior to a positive conformity determination and that such commitments must be fulfilled.

(g) After a State revises its SIP to adopt its general conformity rules and EPA approves that SIP revision, any agreements, including mitigation measures, necessary for a conformity determination will be both State and federally enforceable. Enforceability through the applicable SIP will apply to all persons who agree to mitigate direct and indirect emissions associated with a Federal action for a conformity determination.

[FR Doc. 93–28818 Filed 11–29–93; 8:45 am]
BILLING CODE 6560–50–P

federal register

Tuesday
November 30, 1993

Part III

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Grand Traverse Band of Ottawa and Chippewa Indians and State of Michigan et al.; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming, Bureau of Indian Affairs, Interior

ACTION: Notice of approved Tribal-State Compacts.

SUMMARY: Pursuant to 25 U.S.C. § 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gaming on Indian reservations. The Assistant Secretary–Indian Affairs, Department of the Interior, through her delegated authority, has approved Tribal-State Compacts between the following tribes and states: The Grand Traverse Band of Ottawa and Chippewa Indians and the State of Michigan, executed on 8/20/93; the Hannahville Indian Community and the State of Michigan, executed on 8/20/93; the Bay Mills Indian Community and the State of Michigan, executed on 8/20/93; the Keweenaw Bay Indian Community and the State of Michigan, executed on 8/20/93; the Saginaw Chippewa Indian Tribe of Michigan and the State of Michigan, executed on 8/20/93; the Sault Ste. Marie Tribe of Chippewa Indians and the State of Michigan, executed on 8/20/93; and the Lac Vieux Desert Band of Lake Superior Chippewa Indians and the State of Michigan, executed on 8/20/93.

DATES: This action is effective November 30, 1993.

FOR FURTHER INFORMATION CONTACT: Hilda Manuel, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: November 19, 1993.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 93–29179 Filed 11–29–93; 8:45 am]

BILLING CODE 4310–02–P

federal register

Tuesday
November 30, 1993

Part IV

Office of Management and Budget

Budget Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Budget Rescissions and Deferrals

To The Congress of the United States:

In accordance with the Congressional Budget and Impoundment Control Act of 1974, I herewith report four new and two revised deferrals of budget authority, totaling $7.8 billion.

These deferrals affect International Security Assistance programs as well as programs of the Agency for International Development, the Department of State, and the General Services Administration. The details of these deferrals are contained in the attached report.

William J. Clinton

The White House,

November 19, 1993.

BILLING CODE 3110-01-M

CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

DEFERRAL NO.	ITEM	BUDGET AUTHORITY
	Funds Appropriated to the President:	
	International Security Assistance:	
D94-1A	Economic support fund	1,558,737
D94-9	Foreign military financing grants	3,137,279
D94-10	Foreign military financing program account	46,530
	Agency for International Development:	
D94-11	International disaster assistance	118,059
	Department of State:	
	Bureau for Refugee Programs:	
D94-8A	United States emergency refugee and migration assistance fund	76,361
	General Services Administration:	
	Public Buildings Service:	
D94-12	Federal buildings fund	2,835,860
	Total, deferrals	7,772,826

Deferral No. D94-1A

Supplemental Report
Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D94-1, which was transmitted to Congress on October 13, 1993.

This revision increases by $1,164,562,000 the previous deferral of $394,175,203 in the Economic support fund, resulting in a total deferral of $1,558,737,203. The increase results from funds made available by the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1994.

Deferral No. 94-1A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Funds Appropriated to the President	**New budget authority.....** * 1,164,562,000 (P.L. 103-87)
BUREAU: International Security Assistance	**Other budgetary resources.....** 740,470,519
Appropriations title and symbol: Economic support fund 1/ 113/41037 114/51037* 11X1037	**Total budgetary resources.....** * 1,905,032,519
	Amount to be deferred: Part of year..... * 1,558,737,203 2/ Entire year..... ———
OMB identification code: 11-1037-0-1-152	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act [ ] Other ———
Grant program: [X] Yes [ ] No	
Type of account or fund: [ ] Annual [X] Multi-year: * September 30, 1994 September 30, 1995 (expiration date) [X] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other ———

Coverage:

Appropriation	Account Symbol	OMB Identification Code	Deferred Amount Reported
Economic support fund.....	11X1037	11-1037-0-1-152	56,083,203
Economic support fund.....	113/41037	11-1037-0-1-152	338,092,000
Economic support fund.....	114/51037	11-1037-0-1-152	* 1,164,562,000
			* 1,558,737,203

JUSTIFICATION: This account provides economic and counternarcotics assistance to selected countries in support of U.S. efforts to promote stability and U.S. security interests in strategic regions of the world. This account also includes contributions to the International Fund for Ireland. This action defers funds pending review and approval of specific loans and grants to eligible countries. This interagency review process will ensure that each approved transaction is consistent with the foreign and financial policies of the United States and will not exceed the limits of available funds. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

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* Revised from previous report.

1/ This account was the subject of a similar deferral in FY 1993 (D93-1A).

2/ This deferred amount has been reduced to $1,495,380,494 due to subsequent releases.

Deferral No. 94-9

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Funds Appropriated to the President	New budget authority..... $ 3,149,279,000 (P.L. 103-87)
BUREAU: International Security Assistance	Other budgetary resources.....
Appropriations title and symbol: Foreign military financing grants (FMF) 1/ 1141082	Total budgetary resources..... 3,149,279,000
	Amount to be deferred: Part of year..... $ 3,137,279,000 2/ Entire year.....
OMB identification code: 11-1082-0-1-152	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act [ ] Other
Grant program: [X] Yes [ ] No	
Type of account or fund: [X] Annual [ ] Multi-year: (expiration date) [ ] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other

JUSTIFICATION: The President is authorized by the Arms Export Control Act to sell or finance by grant, credit, or loan guarantees, articles and defense services to friendly countries to facilitate the common defense. Further, the President is authorized by the International Narcotics Control Act of 1989 to provide military and law enforcement assistance to counter illegal narcotics. Under Section 2 of the Arms Export Act, the Secretary of State, under the direction of the President, is responsible for sales made under the Act, including determining whether there shall be a sale to a country and the amount thereof. Executive Order No. 11958 further requires the Secretary of State to obtain the prior concurrence of the Secretaries of Defense and Treasury, respectively, regarding standards and criteria for credit transactions that are based upon national security and financial policies. These funds have been deferred pending the approval of the Departments of State, Defense, and Treasury for the specific sales to eligible countries. Consultation among these Departments will ensure that each approved program is consistent with the foreign, national security, and financial policies of the United States and will not exceed the limits of available funds. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1993 (D93-8).
2/ This deferred amount has been reduced to $1,337,279,000 due to subsequent releases.

Deferral No. 94-10

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Funds Appropriated to the President	**New budget authority.....** $ 46,530,000 (P.L. 103-87)
BUREAU: International Security Assistance	**Other budgetary resources.....** $ _____
Appropriations title and symbol: Foreign military financing program 1141085	**Total budgetary resources.....** $ 46,530,000
	Amount to be deferred: **Part of year.....** $ 46,530,000 **Entire year.....** _____
OMB identification code: 11-1085-0-1-152	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act [ ] Other _____
Grant program: [ ] Yes [X] No	
Type of account or fund: [X] Annual [ ] Multi-year: _____ (expiration date) [ ] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other

JUSTIFICATION: The President is authorized by the Arms Export Control Act to sell or finance by credit, loan guarantees, or grants, articles and defense services to friendly countries to facilitate the common defense. Under Section 2 of the Act, the Secretary of State, under the direction of the President, is responsible for sales made under this Act. Executive Order 11958 further requires the Secretary of State to obtain prior concurrence of the Secretaries of Defense and Treasury, respectively, regarding consistency of transactions with national security and financial policies.

As required by the Federal Credit Reform Act of 1990, this account records the subsidy costs associated with the direct loans obligated and loan guarantees for foreign military financing committed in FY 1992 and beyond. The foreign military financing credit program provides loans that finance sales of defense articles, defense services, and design and construction services to foreign countries and international organizations. The subsidy amounts are estimated on a present value basis.

This action defers funds pending review of specific loans to eligible countries by the Departments of State, Treasury, and Defense. The review process will ensure that in each proposed program the proposed recipients are qualified and that the limits of available funds are not exceeded. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1993 (D93-9).

Deferral No. 94-11

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Funds Appropriated to the President	**New budget authority.....** $ 145,985,000 (P.L. 103-87)
BUREAU: Agency for International Development	**Other budgetary resources.....** $ 16,074,217
Appropriations title and symbol: International disaster assistance, Executive 1/ 11X1035	**Total budgetary resources.....** $ 162,059,217
	Amount to be deferred: **Part of year.....** $ 118,059,217 **Entire year.....** _____
OMB identification code: 11-1035-0-1-151	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act [ ] Other _____
Grant program: [X] Yes [ ] No	
Type of account or fund: [ ] Annual [ ] Multi-year: _____ (expiration date) [X] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other _____

JUSTIFICATION: The International disaster assistance account allows the President to respond to humanitarian disaster relief efforts throughout the world. Funds are deferred pending the development of country-specific plans to ensure that aid is provided in an efficient manner to those most in need. This deferral action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1993 (D93-10).

Deferral No. D94-8A

Supplemental Report
Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D94-8, which was transmitted to Congress on October 13, 1993.

This revision to a deferral of the Department of State's Emergency refugee and migration assistance fund increases the amount previously reported as deferred from $27,100,000 to $76,361,000. This increase of $49,261,000 reflects the funds made available by the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1994.

Deferral No. 94-8A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of State	New budget authority..... * $ 49,261,000 (P.L. 103-87)
BUREAU: Bureau for Refugee Programs	Other budgetary resources..... $ 27,100,000
Appropriations title and symbol: United States emergency refugee and migration assistance fund 1/ 11X0040	Total budgetary resources..... * $ 76,361,000
	Amount to be deferred: Part of year..... * $ 76,361,000
	Entire year..... $ _____
OMB identification code: 11-0040-0-1-151	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act
Grant program: [ ] Yes [X] No	[ ] Other _____
Type of account or fund: [ ] Annual	**Type of budget authority:** [X] Appropriation
[ ] Multi-year: _____ (expiration date)	[ ] Contract authority
[X] No-Year	[ ] Other _____

JUSTIFICATION: Section 501(a) of the Foreign Relations Authorization Act of 1976 (Public Law 94-141) and Section 414(b) (1) of the Refugee Act of 1980 (Public Law 96-212) amended Section 2(c) of the Migration and Refugee Assistance Act of 1962 (22 U.S.C. 2601) by authorizing a fund to enable the President to provide emergency assistance for unexpected urgent refugee and migration needs.

Executive Order No. 11922 of June 16, 1976, allocated all funds appropriated to the President for the Emergency Fund to the Secretary of State but reserved for the President the determination of assistance to be furnished and the designation of refugees to be assisted by the fund.

These funds have been deferred pending Presidential decisions required by Executive Order No. 11922. Funds will be released as the President determines assistance to be furnished and designates refugees to be assisted by the fund. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

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* Revised from previous report

1/ This account was the subject of a similar deferral in FY 1993 (D93-7A).

Deferral No. 94-12

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: General Services Administration	New budget authority..... $ _____
BUREAU: Public Service Buildings	Other budgetary resources..... $ 8,910,855,156
Appropriations title and symbol: Federal buildings fund 47X4582	Total budgetary resources..... $ 8,910,855,156
	Amount to be deferred: Part of year..... $ 2,835,860,000
	Entire year..... $ _____
OMB identification code: 47-4542-0-4-804	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act
Grant program: [ ] Yes [X] No	[ ] Other _____
Type of account or fund: [ ] Annual [ ] Multi-year: _____ (expiration date) [X] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other _____

JUSTIFICATION: This account provides funds for the General Service Administration's (GSA's) real property management and related activities, including the capital program. In response to the National Performance Review's recommendation for a "time out and review" of the Federal Government's building program, the Administrator of GSA directed the agency to review all new construction, building modernizations, and major leases.

This agency action defers funds until a review has been completed on all major new construction projects and large-scale modernization projects not awarded for construction. This review will have minimal impact on the timely delivery of space to GSA's client agencies. The review process will ensure that decisions are based on solutions that are in the best economic interest of the American taxpayers. Each project is deferred until GSA has completed the review on that project. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

[FR Doc. 93-29192 Filed 11-30-93; 8:45 am]
BILLING CODE 3110-01-C

federal register

Tuesday
November 30, 1993

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Parts 71 and 93
Valparaiso, FL, Terminal Area; Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 71 and 93

[Docket No. 26968; Amendment No. 71–22, 93–69]

Valparaiso, FL, Terminal Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; temporary amendment.

SUMMARY: The Offshore Airspace Reconfiguration Final Rule published in the **Federal Register** on March 2, 1993, amended the Federal Aviation Regulations (FAR), in part, by replacing the Valparaiso, Florida, Terminal Area and Special Air Traffic Rules in part 93 of the FAR's with the Eglin, Florida Class D airspace areas. The Offshore Final Rule also included the revocation of the Eglin Air Force Base (AFB), Florida Class D airspace area and the Eglin Air Force Auxiliary No. 3 Duke Field, Florida Class D airspace area; the modification of the Hurlburt Field, Florida Class D airspace area and Crestview, Florida Class E airspace area; and the establishment of the Eglin, Florida Class D North-South Corridor. This effort temporarily amends the effective date of these certain actions from December 9, 1993, to December 8, 1994, to allow the FAA time to conduct a mirco-review of operations conducted within these airspace areas, to determine the amount and extent of controlled airspace necessary to contain certain air traffic control operations. The FAA has discovered that due to the high volume of military flight activity regularly occurring within the North-South and East-West corridors, the Special Air Traffic Rules in part 93, subpart F currently provides sufficient airspace and protection required for the safe operation of both military and civil aircraft within the Eglin Air Force Base Complex.

EFFECTIVE DATES: This amendment is effective December 9, 1993, and expires on December 8, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph C. White, Air Traffic Rules Branch ATP–230, Airspace Rules and Aeronautical Information Division, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

The Offshore Airspace Reconfiguration Final Rule published in the **Federal Register** on March 2, 1993, (58 FR 12128), removed and reserved subpart F of part 93 of the FAR, "Valparaiso, Florida, Terminal Area," as well as the companion procedures for corridor operations. This action, scheduled for implementation on December 9, 1993, also revised the airspace descriptions in FAA Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993) for the Eglin AFB, Florida, Class D airspace area by: (1) Raising Class D airspace in the Eglin Terminal Complex up to but not including 18,000 feet (ft) mean sea level (MSL); and (2) removing the requirements for aircraft operating in accordance with visual flight rules (VFR) to obtain clearances to enter the North-South Corridor.

Additionally, the Offshore Final Rule included the revocation of the Eglin AFB, Florida Class D airspace area and the Eglin Air Force Auxiliary No. 3 Duke Field, Florida Class D airspace area; the modification of the Hurlburt Field, Florida Class D airspace area and the Crestview, Florida Class E airspace area; and the establishment of the Eglin, Florida Class D North-South Corridor.

Discussion

Upon implementation of the Eglin, Florida Class D airspace areas, civil aircraft would be required to: (1) Establish two-way radio communications (not a clearance) with the Eglin Radar Control Facility (ERCF) prior to entering the Eglin, Florida Class D airspace areas; and (2) thereafter maintain those communications while in the Eglin, Florida Class D airspace areas. These communication requirements allow for the provision of Class D service by the ERCF, if workload or traffic conditions permit. However, if controller workload or traffic conditions prevent immediate provision of Class D services, the ERCF controllers would be required to inform the pilot to remain outside the Class D airspace areas until conditions permit the services to be provided.

Consequently, with the raising of the ceiling of the Class D airspace in the Eglin Terminal Complex, as well as the new requirement establishing positive air traffic control in the East-West Corridor, it is believed a dramatic increase in air traffic and the ERCF controller workload will result. This addition in controller workload would manifest itself through increased air traffic control delays imposed on civilian and military aircraft both in the air and on the ground.

Accordingly, a micro-review of operations conducted within these airspace areas, to determine the amount and extent of controlled airspace necessary to contain certain air traffic control operations, is required.

The Rule

This amendment to parts 71 and 93 of the FAR temporarily delays the effective date from December 9, 1993, to December 8, 1994, as it pertains to: (1) The recision of the Valparaiso, Florida, Terminal Area and Special Air Traffic Rules in part 93 of the FAR; and (2) implementation of the Eglin, Florida, Class D airspace areas and the subsequent revocation of the Eglin AFB, Florida Class D airspace area and the Eglin Air Force Auxiliary No. 3 Duke Field, Florida Class D airspace area; the modification of the Hurlburt Field, Florida Class D airspace area and the Crestview, Florida Class E airspace area; and the establishment of the Eglin, Florida Class D North-South Corridor issued as part of the Offshore Airspace Reconfiguration Final Rule.

Because the public needs to be made immediately aware of the delay of these actions, notice and public procedure under 5 U.S.C. 553(b) are impracticable.

The FAA has determined that this action: (1) Is not a "significant regulatory action" under Executive Order 12866; (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 expected impact is minimal. Therefore, I find that good cause exists, pursuant to 5 U.S.C. 553(d), for making this amendment effective in less than 30 days in order to promote the safe and efficient handling of air traffic in the area.

List of Subjects

14 CFR Part 71

Airspace, Incorporation of reference, Navigation (air).

14 CFR Part 93

Air Traffic Control, Airports, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR parts 71 and 93 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510: E.O. 10854, 24 FR 9565, 3 CFR, 1959—

1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended].

2. The incorporation by reference in 14 CFR 71.1, of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended by delaying the effective date from December 9, 1993, to December 8, 1994, for the revoking, revising, and or establishment of the following:

Paragraph 5000—Subpart D—Class D Airspace

* * * * *

ASO FL D Eglin AF Aux No. 3 Duke Field, FL

* * * * *

ASO FL D Eglin AFB, FL

* * * * *

ASO FL D Eglin Hurlburt Field, FL

* * * * *

ASO FL D Eglin, FL North-South Corridor

* * * * *

Paragraph 6002—Subpart E—Class E airspace areas designated as a surface area for an airport.

* * * * *

ASO FL E2 Crestview, FL

* * * * *

PART 93—SPECIAL AIR TRAFFIC RULES AND AIRPORT TRAFFIC PATTERNS

3. The authority citation for part 93 continues to read as follows:

Authority: 49 U.S.C. app. 1302, 1303, 1348, 1354(a), 1421(a), 1424, 2451 et seq. 49 U.S.C. 106(g).

Subpart F—§§ 93.81, 93.83

4. Part 93 is amended by delaying the effective date for the removal and reserving of subpart F (§§ 93.81 and 93.83) from December 9, 1993, to December 8, 1994.

Issued in Washington, DC on November 23, 1993.

Willis C. Nelson,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 93–29291 Filed 11–29–93; 8:45 am]

BILLING CODE 4910–13–M

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

H.R. 3225/P.L. 103–149

South African Democratic Transition Support Act of 1993 (Nov. 23, 1993; 107 Stat. 1503; 7 pages)

S.J. Res. 19/P.L. 103–150

To acknowledge the 100th anniversary of the January 17, 1893 overthrow of the Kingdom of Hawaii, and to offer an apology to Native Hawaiians on behalf of the United States for the overthrow of the Kingdom of Hawaii. (Nov. 23, 1993; 107 Stat. 1510; 5 pages)

H.R. 2677/P.L. 103–151

To authorize the Board of Regents of the Smithsonian Institution to plan, design, and construct the West Court of the National Museum of Natural History building. (Nov. 24, 1993; 107 Stat. 1515; 1 page)

H.R. 3167/P.L. 103–152

Unemployment Compensation Amendments of 1993 (Nov. 24, 1993; 107 Stat. 1516; 5 pages)

H.J. Res. 79/P.L. 103–153

To authorize the President to issue a proclamation designating the week beginning on November 21, 1993, and November 20, 1994, as "National Family Week". (Nov. 24, 1993; 107 Stat. 1521; 1 page)

H.J. Res. 159/P.L. 103–154

To designate the month of November in 1993 and 1994 as "National Hospice Month". (Nov. 24, 1993; 107 Stat. 1522; 1 page)

S. 654/P.L. 103–155

To amend the Indian Environmental General Assistance Program Act of 1992 to extend the authorization of appropriations. (Nov. 24, 1993; 107 Stat. 1523; 2 pages)

S. 1490/P.L. 103–156

United States Grain Standards Act Amendments of 1993 (Nov. 24, 1993; 107 Stat. 1525; 7 pages)

S.J. Res. 55/P.L. 103–157

To designate the periods commencing on November 28, 1993, and ending on December 4, 1993, and commencing on November 27, 1994, and ending on December 3, 1994, as "National Home Care Week". (Nov. 24, 1993; 107 Stat. 1532; 1 page)

S.J. Res. 129/P.L. 103–158

To authorize the placement of a memorial cairn in Arlington National Cemetery, Arlington, Virginia, to honor the 270 victims of the terrorist bombing of Pan Am Flight 103. (Nov. 24, 1993; 107 Stat. 1533; 3 pages)

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