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Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers and **Federal Register** finding aids is available on 202–275–1538 or 275–0920.

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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.

ADMINISTRATIVE COMMITTEE OF THE FEDERAL REGISTER

1 CFR Part 11

Price Changes to Federal Register Publications

AGENCY: Administrative Committee of the Federal Register (ACFR).

ACTION: Final rule with request for comments.

SUMMARY: The Administrative Committee of the Federal Register (ACFR) announces increases in the prices of Federal Register publications. The price changes apply to annual subscription rates for the daily **Federal Register**, the Code of Federal Regulations (CFR), the Weekly Compilation of Presidential Documents, the Federal Register Index and LSA (List of CFR Sections Affected), as well as to the single issue price of the daily **Federal Register**. These price changes are necessary to more accurately reflect the Government's cost of production and distribution of these publications.

DATES: The changes to 1 CFR 11.2 (**Federal Register**), 1 CFR 11.4 (The United States Government Manual), 1 CFR 11.6 (Weekly Compilation of Presidential Documents), 1 CFR 11.7 (Federal Register Index), and 1 CFR 11.8 (LSA) are effective on January 10, 1994. The changes to 1 CFR 11.3 (CFR) are effective January 1, 1994. Comments will be accepted until January 1, 1994.

ADDRESSES: By U.S. Mail: Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408. By private delivery services: Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC 20002. By telefax: 202–523–6866. By electronic mail on FREND (Federal Register Electronic News Delivery service): 202–275–1538 or 202–275–0920.

FOR FURTHER INFORMATION CONTACT:
Michael White at 202–523–4534.

SUPPLEMENTARY INFORMATION: The Administrative Committee of the Federal Register, which establishes prices for Federal Register publications, has recently determined that price adjustments to certain subscriptions and single issues are necessary to operate on a sound fiscal basis.

On September 1, 1992, the Administrative Committee published a final rule announcing the results of a review of its pricing policies, 57 FR 40024 (September 1, 1992). The Administrative Committee ascertained that price changes were necessary to move toward full recovery of increased costs attributable to printing and labor expenses at the Government Printing Office plant and prior postal rate increases. Because prices had not been raised for several years, and to minimize the effect that large price increases might have on Federal Register customers, the Administrative Committee announced in the September 1, 1992 final rule that it intended to adjust prices gradually over a period of several years, reviewing cost figures annually to determine the rate of increase. The Committee also solicited comments from the public on the pricing structure of Federal Register publications. No comments were received.

After reviewing the Government Printing Office's most current analysis of its production and distribution costs, the Administrative Committee has determined that it is necessary to make further incremental increases in the prices of the paper editions of Federal Register publications. The microfiche editions of the **Federal Register** and the CFR are subject to a competitive bidding process that determines the prices charged. Those price changes are also included in this final rule. The Administrative Committee welcomes comments on Federal Register publications and prices.

The following rates are effective as of January 10, 1994. The annual subscription rates for the **Federal Register** paper edition will be $444, or $490 for a combined Federal Register, Federal Register Index and LSA (List of CFR Sections Affected) subscription.

The annual subscription price of the microfiche edition of the **Federal Register** including the Federal Register Index and LSA will be $403. The price for single copies of the paper edition of the daily **Federal Register** will be $6. The annual subscription price for the Federal Register Index will be $22. The annual subscription price for the LSA will be $24. Individual copies of the Federal Register Index and the LSA are no longer available. The annual subscription rates for the Weekly Compilation of Presidential Documents will be $65 by non-priority mail, or $103 by first-class mail.

As of January 1, 1994, the annual subscription rates for the Code of Federal Regulations will be $829 for the paper edition and $244 for the microfiche edition.

In this rule, the Administrative Committee has also revised 1 CFR 11.2, 11.3, and 11.4 to remove sales of magnetic tape editions of the **Federal Register**, CFR and The United States Government Manual from the regulations. The Committee believes that responsibility for distribution of this material belongs with the Superintendent of Documents under the authority of 44 U.S.C. chapter 17. Pursuant to the Government Printing Office Electronic Information Access Enhancement Act of 1993, the Administrative Committee is developing a prototype for an official online edition of the **Federal Register** scheduled for general dissemination in the spring of 1994. Further steps are underway to convert the CFR data base into an accessible electronic format. The Administrative Committee has already authorized an electronic pilot project for The United States Government Manual, which is currently available to the public over GPO's Federal Bulletin Board.

The Administrative Committee has not published a notice of proposed rulemaking on the revised price schedule, as permitted by 5 U.S.C. 553(b)(B) when there is good cause not to publish a proposed rule and obtain comments from interested persons. The Administrative Committee has determined that publication of a proposed rule is unnecessary. The Administrative Committee has authority under 44 U.S.C. 1506 to set the prices to be charged for Federal Register subscriptions and individual copies. To the extent possible, the Administrative Committee sets prices to recover only the actual cost of producing and

distributing Federal Register publications. The revised prices are based on an in-depth cost study conducted for the Administrative Committee by the Government Printing Office. Because only actual costs were considered in setting the revised price schedule based on an in-depth cost study, the Administrative Committee has determined that there is good cause for promulgating this final rule without a prior notice of proposed rulemaking.

This regulatory action has been reviewed by the Office of Management and Budget, Office of Information and Regulatory Affairs, under Executive Order 12866. The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply to rate increases necessary to recover the costs to the Government of printing and distributing these publications.

List of Subjects in 1 CFR Part 11

Federal Register publications, Government publications, Organization and functions (Government agencies), Subscription rates.

For the reasons discussed in the preamble, the Administrative Committee of the Federal Register amends part 11 of chapter I of title 1 of the Code of Federal Regulations as set forth below:

PART 11—SUBSCRIPTIONS

1. The authority citation for part 11 continues to read as follows:

Authority: 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709, 3 CFR, 1954–1958 Comp., p. 189.

2. Section 11.2 is revised to read as follows:

§ 11.2 Federal Register.

Daily issues are furnished by mail to subscribers for $444 per year in paper form. A combined subscription consisting of the daily issues, the monthly Federal Register Index, and the LSA (List of CFR Sections Affected) is furnished by mail to subscribers for $490 per year in paper form or $403 per year in microfiche form. Six month subscriptions to all editions are also available at one-half the annual rate. Limited quantities of current or recent issues may be obtained for $6 per copy in paper form or $1.50 per copy in microfiche form.

3. Section 11.3 is revised to read as follows:

§ 11.3 Code of Federal Regulations.

A complete set is furnished by mail to subscribers for $829 per year for the bound, paper edition; $244 per year for the microfiche edition. Individual volumes of the bound, paper edition of the Code are sold at prices determined by the Superintendent of Documents under the general direction of the Administrative Committee. The price of an individual volume in microfiche form is $2.00 per copy.

§ 11.4 [Amended]

4. Section 11.4 is amended by removing the last sentence.

5. Section 11.6 is revised to read as follows:

§ 11.6 Weekly Compilation of Presidential Documents.

Copies in paper form are furnished to subscribers for $65 per year by non-priority mail or $103 per year by first-class mail. The price of an individual copy in paper form is $2..

6. Section 11.7 is revised to read as follows:

§ 11.7 Federal Register Index.

The annual subscription price for the monthly Federal Register Index, purchased separately, in paper form, is $22.

7. Section 11.8 is revised to read as follows:

§ 11.8 LSA (List of CFR Sections Affected).

The annual subscription price for the monthly LSA (List of CFR Sections Affected), purchased separately, in paper form, is $24.

Trudy Huskamp Peterson,
Chairman.
Michael F. DiMario,
Member.
Rosemary Hart,
Member.
Janet Reno,
Attorney General.
Trudy Huskamp Peterson,
Acting Archivist of the United States.

[FR Doc. 93–30174 Filed 12–9–93; 8:45 am]
BILLING CODE 1505–2–M

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

General Administrative Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby amends subpart A in its General Administrative Regulations. Subpart A defines provisions for a Late Planting Agreement Option and sets out crop insurance regulations applicable to the Option. However, some crop insurance regulations set out in this subpart have been reformed as endorsements under 7 CFR 401 with their own late planting agreement option at 7 CFR 401.107.

EFFECTIVE DATE: December 10, 1993.

FOR FURTHER INFORMATION CONTACT: Mari L. Dunleavy, Regulatory Specialist, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250. Telephone: 202–254–8314.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Executive Order 12291 and Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is October 1, 1998.

Kathleen Connelly, Acting Manager, FCIC has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The Acting Manager certifies that this action will not increase the Federal paperwork burden for individuals, small businesses, and other persons, nor will it have a significant economic effect on a substantial number of small entities. This action imposes no additional burden to the insured farmer. Further, this action requires of the reinsured company or sales and service contractor what is considered normal in the ordinary conduct of business. This rule does not require any action on the part of any individual or entity in compliance with the program provisions. This action is determined to be exempt from the provisions of the Regulatory Flexibility Act and no Regulatory Flexibility Analysis was prepared.

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

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

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

The Acting Manager, FCIC, has certified to the Office of Management and Budget (OMB) that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

This rule has been reviewed in accordance with Executive Order 12778. The provisions of this proposed rule are not retroactive and will preempt state and local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal provisions located at 7 CFR part 400, subpart J must be exhausted before judicial action may be brought for judicial review of actions taken under the subpart and for the imposition of civil penalties under the Program Fraud Civil Remedies Act.

This amendment does not contain information collection that require clearance by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35, the Paperwork Reduction Act.

The Office of General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies and procedures contained in this rule will not have substantial direct effects on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

This amendment is being promulgated to update FCIC's regulations, and make corrections to attributions contained in the subpart. Because this action has no effect on the public or the insureds that the Federal crop insurance program serves good cause is found to make this rule final upon publication. This rule is not substantive, notice and public procedure on this rule is determined to be impracticable and unnecessary.

List of Subjects in 7 CFR Part 400, Subpart A

Crop insurance, Crops.

Final Rule

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

1. The authority citation for part 400 continues to read as follows:

Authority: 7 U.S.C. 1506 and 1516.

Subpart A—Late Planting Agreement Option; Regulations for the 1987 and Succeeding Crop Years

2. Section 400.4 is revised to read as follows:

§ 400.4 Applicability to crops insured.

The provisions of this subpart shall be applicable to the provisions of FCIC policies issued under the following regulations for insuring crops:

7 CFR part 416	Pea
7 CFR part 422	Potatoes
7 CFR part 425	Peanuts
7 CFR part 430	Sugar Beets
7 CFR part 433	Dry Beans
7 CFR part 435	Tobacco (Quota Plan)
7 CFR part 437	Sweet Corn (Canning and Freezing)

Done in Washington, DC, on September 21, 1993.

Bob Nash,

Under Secretary, Small Community and Rural Development.

[FR Doc. 93–30006 Filed 12–9–93; 8:45 am]

BILLING CODE 3410–06–M

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7 CFR Part 401

General Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby amends the Late Planting Option and the Prevented Planting Endorsement regulations. Certain crop endorsements which had late and prevented planting coverage offered as an option now have late and prevented planting coverage incorporated into those crop endorsements. To eliminate confusion to the purchaser, those crop endorsements which have late and prevented planting coverage incorporated into crop endorsements are hereby removed from the applicable sections of the regulations.

EFFECTIVE DATE: December 10, 1993.

FOR FURTHER INFORMATION CONTACT: Mari L. Dunleavy, Regulatory Specialist, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250. Telephone: 202–254–8314.

SUPPLEMENTARY INFORMATION: The sunset review date established for this regulation is April 1, 1992. Within two years, FCIC will remove §§ 401.107 and 401.108 which are covered by this rule. Therefore, a review is unnecessary under Departmental Regulation 1512–1 and Executive Order 12291.

Kathleen Connelly, Acting Manager, FCIC, has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The Acting Manager certifies that this action will decrease the federal paperwork burden for individuals, small businesses, and other persons because late and prevented planting options, which require added paper work, will be eliminated. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act and no Regulatory Flexibility Analysis was prepared.

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

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

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

The Acting Manager, FCIC, has certified to the Office of Management and Budget (OMB) that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

This rule has been reviewed in accordance with Executive Order 12778. The provisions of this proposed rule are not retroactive and will preempt state and local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal provisions located at 7 CFR part 400, subpart J and 7 CFR part 1, §§ 1.12 and 1.13 must be exhausted before judicial action may be brought for actions taken under proceedings for the imposition of civil penalties or under the Program Fraud Civil Remedies sections of these regulations.

This amendment does not contain information collections that require clearance by the Office of Management and Budget under the provisions of 44

U.S.C. chapter 35, the Paperwork Reduction Act.

The Office of General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies and procedures contained in this rule will not have substantial direct effects on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

As this amendment is being promulgated only to update FCIC's regulations, and has no effect on the public or the insureds that the Federal crop insurance program serves, good cause is found to make this rule final upon publication. Because this rule is not substantive, notice and public procedure on this rule is determined to be impracticable and unnecessary.

List of Subjects in 7 CFR Part 401

Crop insurance, Grains.

Final Rule

For reasons set forth in the preamble, 7 CFR Ch. IV is amended as follows:

PART 401—GENERAL CROP INSURANCE REGULATIONS

1. The authority citation for part 401 continues to read as follows:

Authority: 7 U.S.C. 1506 and 1516.

2. Section 401.107 is amended by revising paragraph (e) to read as follows:

§ 401.107 Late planting agreement option.

* * * * *

(e) *Applicability to crops insured.* The provisions of this section will be applicable to the provisions for insuring crops for the 1994 crop year only, under the following endorsements:

401.101 Wheat Endorsement.
401.103 Barley Endorsement.
401.105 Oat Endorsement.

The provisions of this section for insuring crops for the 1994 and subsequent crop years will be applicable only under the following endorsements:

401.106 Rye Endorsement.
401.114 Canning and Processing Tomato Endorsement.
401.116 Flaxseed Endorsement.
401.118 Canning and Processing Bean Endorsement.
401.123 Safflower Seed Endorsement.
401.124 Sunflower Seed Endorsement.
401.126 Onion Endorsement.

The Late Planning Agreement Option will be available in all counties in which the Corporation offers insurance on these crops unless limited by the actuarial table, crop endorsement, or crop endorsement option.

* * * * *

3. Section 401.108(b) is amended by revising paragraph g. of provision 11 of the "Prevented Planting Endorsement" to read as follows:

§ 401.108 Prevented planted endorsement.

* * * * *

(b) * * *

Prevented Planting Endorsement

* * * * *

11. Meaning of Terms * * *

(g) *Qualifying Crop* means barley, oats, or wheat.

* * * * *

Done in Washington, DC on September 22, 1993.

Bob Nash,

Under Secretary, Small Community and Rural Development, Chairman of the Board, FCIC.

[FR Doc. 93–30007 Filed 12–9–93; 8:45 am]

BILLING CODE 3410–08–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–ANE–09; Amendment 39–8739; AD 93–23–05]

Airworthiness Directives; General Electric Aircraft Engines Model(s) CT7–5A2 and –7A Turboprop Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to General Electric (GE) Aircraft Engines Model(s) CT7–5A2 and –7A turboprop engines that requires inspection and replacement, if necessary, of certain gas generator turbine (GGT) rotor assembly parts, and Stage 3 and Stage 4 power turbine (PT) disks that may have been shotpeened during overhaul. This amendment is prompted by reports of inadvertent shotpeening of GGT rotor assembly parts and Stage 3 and 4 PT disks during overhaul. The actions specified by this AD are intended to prevent fatigue cracks that can lead to an uncontained engine failure.

DATES: Effective January 10, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 10, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from General Electric Aircraft Engines, 1000 Western Avenue, Lynn, MA 01910. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, Attn: Rules Docket No. 92–ANE–09, 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: Barbara G. Caufield, Aerospace Engineer, Engine Certification Branch, ANE–141, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, MA 01803–5299; telephone no. (617) 238–7146; fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to GE Aircraft Engines Model(s) CT7–5A2 and –7A turboprop engines was published in the **Federal Register** on November 30, 1992 (57 FR 56529). That action proposed to require inspection and replacement, if necessary, of certain gas generator turbine (GGT) rotor assembly parts, and Stage 3 and Stage 4 power turbine (PT) disks that may have been shotpeened during overhaul.

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

One commenter supports the rule as proposed.

One commenter observes that the economic analysis in the proposed AD states that there are 30 engines of the affected design in the worldwide fleet, when, in fact, there are only 23 engines. The FAA concurs. The wording of the economic analysis for the final rule has been changed accordingly. The FAA's estimate of the total cost of compliance with the AD, however, remains the same because there are currently no engines installed on aircraft of U.S. registry.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 23 engines of the affected design in the worldwide fleet. The manufacturer has advised the FAA that there are currently no engines installed on aircraft of U.S. registry. However, if an engine were to become installed on an aircraft of U.S. registry, it would take approximately 12 work hours per engine to remove and replace the GGT rotor assembly parts and Stage 3 and Stage 4 PT disks. GE has advised the FAA that H & S Aviation will

inspect for shotpeening and provide new or serviceable parts and disks, if necessary, at no charge to the operator. The average labor rate is $55 per work hour. At this time the total cost impact of the AD is estimated to be zero; however, if an engine were to become installed on an aircraft of U.S. registry, the estimated cost for removal and replacement is approximately $660 per engine.

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

For the reasons discussed above, I certify that this action (1) is not a "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) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

93–23–05. General Electric Aircraft Engines: Amendment 39–8739. Docket No. 92–ANE–09.

Applicability: General Electric (GE) Aircraft Engines Model(s) CT7–5A2 and –7A turboprop engines, incorporating gas generator turbine (GGT) rotor assembly parts and power turbine (PT) disks, as listed by serial number in GE CT7 Turboprop Service Bulletin (SB) A72–228, Revision 2, and GE CT7 Turboprop SB A72–229, Revision 2, both dated February 7, 1991, installed on, but not limited to, Saab 340A and Casa CN235–10 aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracks that can lead to an uncontained engine failure, accomplish the following:

(a) Inspect GGT rotor Stage 1 forward cooling plates, Stage 1 aft cooling plates, Stage 1 disks, Stage 2 forward cooling plates, Stage 2 aft cooling plates, and Stage 2 disks, in accordance with GE CT7 Turboprop SB A72–228, Revision 2, dated February 7, 1991, before exceeding the "max total cycles prior to inspect" limits listed in Tables 1 and 2 of the SB, but not later than December 31, 1995.

(1) If evidence of shotpeening is found on any of these parts, prior to further flight, replace the affected parts with serviceable parts.

(2) If no evidence of shotpeening is found, prior to further flight, mark the parts with the SB number, in accordance with GE CT7 Turboprop SB A72–228, Revision 2, dated February 7, 1991, and return to service without reducing low cycle fatigue limits.

(b) Inspect Stage 3 and Stage 4 PT disks, in accordance with GE CT7 Turboprop SB A72–229, Revision 2, dated February 7, 1991, prior to exceeding the "max total cycles prior to inspect" limits listed in Table 1 of the SB, but not later than December 31, 1995.

(1) If evidence of shotpeening is found, prior to further flight, replace the affected disks with serviceable disks.

(2) If no evidence of shotpeening is found, prior to further flight, mark the disks with the SB number, in accordance with GE CT7 Turboprop SB A72–229, Revision 2, dated February 7, 1991, and return to service without reducing low cycle fatigue limits.

(c) The inspections, markings, and repairs shall be done in accordance with the following service bulletins:

Document No.	Page No.	Issue	Date
GE CT7 Turboprop SB A72–228	1–4 & 6	Revision	Feb. 7, 1991.
	5 & 7–12	Original	Jan. 30, 1990.
Total pages: 12			
GE CT7 Turboprop SB A72–229	1–3	Revision 2	Feb. 7, 1991.
	4–7	Original	Jan. 30, 1990.
Total pages: 7			

This incorporation by reference was approved by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from General Electric Aircraft Engines, 1000 Western Avenue, Lynn, MA 01910. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, Attn: Rules Docket No. 92–ANE–09, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

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

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

(f) This amendment becomes effective on January 10, 1994.

Issued in Burlington, Massachusetts, on November 17, 1993.

Mark C. Fulmer,

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

[FR Doc. 93–28953 Filed 12–9–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–NM–26–AD; Amendment 39–8760; AD 93–24–11]

Airworthiness Directives; Airbus Industrie Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A320 series airplanes, that requires modification of the belly fairing structure. This amendment is prompted by results of fatigue testing, which revealed that rivet heads were sheared off and fatigue cracks were present in the angles at the angle attachment between the keelbeam and the belly fairing support frames. The actions specified by this AD are intended to prevent reduced structural integrity of the belly fairing structure.

DATES: Effective January 10, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 10, 1994.

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

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Airbus Industrie Model A320 series airplanes was published in the **Federal Register** on August 19, 1993 (58 FR 44149). That action proposed to require modification of the belly fairing structure.

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

All of the commenters support the proposed rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 20 airplanes of U.S. registry will be affected by this AD, that it will take approximately 288 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $1,045 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $337,700, or $16,885 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

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

For the reasons discussed above, I certify that this action (1) is not a "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) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

93–24–11 Airbus Industrie: Amendment 39–8760. Docket 93–NM–26–AD.

Applicability: Model A320 series airplanes; MSN 003 through 092 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the belly fairing structure, accomplish the following:

(a) Prior to the accumulation of 12,000 total landings after the effective date of this AD, or within 300 days after the effective date of this AD, whichever occurs later, modify the belly fairing structure in accordance with Airbus Industrie Service Bulletin A320–53–1014, dated June 25, 1992, or Revision 1, dated May 26, 1993.

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

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

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

(d) The modification shall be done in accordance with Airbus Industrie Service Bulletin A320–53–1014, dated June 25, 1992, or Airbus Industrie Service Bulletin A320–53–1014, Revision 1, dated May 26, 1993. Revision 1 of Airbus Industrie Service Bulletin A320–53–1014 contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1–7, 7A, 8, 10, 12, 15–18, 21–25.	1	May 26, 1993.
9, 11, 13/14, 19/20, 26.	Original	June 25, 1992.

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

(e) This amendment becomes effective on January 10, 1994.

Issued in Renton, Washington, on December 6, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–30196 Filed 12–9–93; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 92–NM–199–AD; Amendment 39–8761; AD 93–24–12]

Airworthiness Directives; Lockheed Model L–1011–385 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Lockheed Model L–1011–385 series airplanes, that requires inspections of the cargo door components for cracks and corrosion; and modification, rework, or replacement of discrepant parts. This amendment is prompted by the data gathered during the investigation of a cargo door on a transport category airplane that opened while the airplane was in flight, resulting in an explosive decompression of the airplane. The actions specified by this AD are intended to prevent a cargo door from opening during flight, which could result in rapid decompression of the airplane.

DATES: Effective on January 10, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of January 10, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Lockheed Western Export Company (LWEC), Dept. 693, Zone 0755, 86 South Cobb Drive, Marietta, Georgia 30063. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office (ACO), 1669 Phoenix Parkway, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas Peters, Aerospace Engineer, Atlanta Aircraft Certification Office (ACO), Flight Test Branch, ACE–160A, FAA, Small Airplane Directorate, 1669 Phoenix Parkway, Atlanta, Georgia 30349; telephone (404) 991–3915; fax (404) 991–3606.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Lockheed Model L–1011–385 series airplanes was published in the **Federal Register** on March 16, 1993 (58 FR 14181). That action proposed to require an inspection to detect excessive thickness of the shims installed under the hinges of the C–1A cargo door. It would also require an inspection to detect cracks and corrosion of the lower sill latch fittings and the serrated plates of the C–1A cargo door, and to determine the heat treatment condition of the serrated plates. Discrepant parts would be required to be modified, reworked, or replaced.

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

One commenter supports the proposed rule.

The Air Transport Association (ATA) of America, on behalf of two of its members, requests removal of the proposed requirement for a one-time visual inspection to detect excessive thickness of the shims installed under the hinges of the C–1A cargo door. This same inspection has already been included in AD 91–05–05, Amendment 39–6878 (56 FR 6556, February 19, 1991). Therefore, the ATA maintains that a duplicate inspection of this area does not need to be included in the proposed rule. The FAA does not concur totally. While the FAA concurs that identical inspection requirements generally should not appear in two separate AD's, it now considers that the compliance time required by AD 91–05–05 for the subject inspection is too lengthy. Instead, the FAA has determined that the shorter compliance time for accomplishment of this inspection, as specified in this new AD action, will ensure that excessive thickness of the shims installed under the hinges of the C–1A cargo door will be detected and corrected in a timely manner. The final rule has been revised to specify that compliance with the visual inspection requirement of paragraph (a) of this AD satisfies the similar inspection requirement of AD 91–05–05 for this same area.

One commenter suggests that operators may become confused if the recommendations of Lockheed Service Bulletins 093–52–155, Revision 1, dated October 23, 1989, and 093–53–252, Revision 2, dated April 25, 1989, appear together in one AD, since the two service bulletins are unrelated. From this comment, the FAA infers that the commenter requests that each service bulletin be addressed in a separate rulemaking action. The FAA does not concur. Since each inspection is addressed in a separate paragraph in the proposal, they are treated as separate requirements. Both service bulletins address service problems in the C–1A cargo door, even though they address different problems in different areas of the cargo door.

The same commenter requests that the wording of proposed paragraph (b)(2) (renumbered as paragraph (c)(2) in this final rule) be revised from "replace the latch fitting with a serviceable part" to "refurbish the latch fitting per Drawing 1646587 or replace with a serviceable part". The FAA does not concur that rewording is necessary. The FAA infers that the commenter believes that clarification is necessary to specify that replacement with "refurbished parts" must be performed in accordance with Drawing 1646587, rather than Lockheed Service Bulletin 093–53–252, Revision 2, dated April 25, 1989. The FAA has determined that, as it is presently worded, the "Note" in paragraph (c) of the rule correctly states that the referenced service bulletin refers to Drawing 1646587 for additional procedural information.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 106 Lockheed Model L–1011–385 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 32 airplanes of U.S. registry will be affected by this AD, that it would take approximately 1.5 work hours per airplane to accomplish the actions on airplanes listed in Lockheed Service Bulletin 093–52–155, and approximately 7 work hours to accomplish the actions on airplanes listed in Lockheed Service Bulletin 093–53–252. The average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $27,280, or $853 per airplane.

The total cost figure indicated above represents a situation in which no operator has yet accomplished the requirements of this AD. However, the FAA has been advised that 17 U.S.-registered airplanes have already been inspected in accordance with the requirements of paragraph (a) of this AD. Therefore, the future economic cost

impact of this rule on U.S. operators is now only $25,878.

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

For the reasons discussed above, I certify that this action: (1) Is not a "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) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

93-24-12 Lockheed: Amendment 39-8761. Docket 92-NM-199-AD.

Applicability: Model L-1011-385-1, -385-1-14, -385-1-15, and -385-3 series airplanes; as listed in Lockheed Service Bulletin 093-52-155, Revision 1, dated October 23, 1989, and Lockheed Service Bulletin 093-53-252, Revision 2, dated April 25, 1989; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the cargo door latching mechanism, which could lead to the cargo door opening during flight and resulting in rapid decompression of the airplane, accomplish the following:

(a) For airplanes listed in Lockheed Service Bulletin 093-52-155, Revision 1, dated October 23, 1989: Prior to the accumulation of 8,000 total landings, or within 1,800 landings after the effective date of this AD, whichever occurs later, perform a one-time visual inspection to detect excessive thickness of the shims installed under the hinges of the C-1A cargo door in accordance with Lockheed Service Bulletin 093-52-155, Revision 1, dated October 23, 1989. Accomplishment of this inspection is considered to constitute compliance with the similar inspection requirements of AD 91-05-05, Amendment 39-6878, for this same area.

(1) If any shim is found that exceeds 0.125 inch for single leg hinges, or 0.140 inch for double leg hinges, prior to further flight, install a structural doubler on the hinge and a new shim, in accordance with the procedures described in the service bulletin.

(2) If any shim is found that equals or is less than 0.125 inch for single leg hinges, or 0.140 inch for double leg hinges, no further action is required for that shim.

(b) For airplanes listed in Lockheed Service Bulletin 093-53-252, Revision 2, dated April 25, 1989: Prior to the accumulation of 8,000 total landings or within 1,800 landings after the effective date of this AD, whichever occurs later, inspect the lower sill latch fittings and serrated plates of the C-1A cargo door for cracks and corrosion, in accordance with Lockheed Service Bulletin 093-53-252, Revision 2, dated April 25, 1989. Additionally, perform a hardness test to determine the condition of the heat treatment of the serrated plates.

Note 1: Lockheed Service Bulletin 093-53-252, Revision 2, dated April 25, 1989, refers to Lockheed Service Modification/Kit Drawing 1646587, Revision C, dated August 14, 1987, for additional information concerning the inspection procedures, corrosion limit specifications, crack limit specifications, and modifications relative to the requirements of this paragraph.

(1) If any cracked latch fitting is found, prior to further flight, replace the latch fitting with a serviceable part.

(2) If any corroded latch fitting is found, prior to further flight, replace the latch fitting with a serviceable part. However, if the latch fitting is of a condition suitable for refurbishment, as referred to in the service bulletin, it may be refurbished and reused.

(3) If any cracked serrated plate is found, prior to further flight, replace it with a serviceable part. However, if the cracked serrated plate is determined to be suitable for reuse, as referred to in the service bulletin, it may be reinstalled for an additional 1,000 landings only, at which time it then must be replaced.

(4) If no crack or corrosion is found in any serrated plate, prior to further flight, apply cadmium plating to the plate in accordance with the service bulletin.

(5) If any serrated plate is found with improper heat treatment, prior to further flight, reprocess the plate or replace the plate with a serviceable part in accordance with the service bulletin.

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

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

(e) The inspection and installation shall be done in accordance with Lockheed Service Bulletin 093-52-155, Revision 1, dated October 23, 1989. The inspection, hardness test, replacement, refurbishment, reinstallation, application of cadmium plating, and reprocessing shall be done in accordance with Lockheed Service Bulletin 093-53-252, Revision 2, dated April 25, 1989, which contains the following list of effective pages:

Page number	Revision level shown on page	Date shown on page
1, 4-5	2	April 25, 1989.
2-3	Original	March 15, 1988.

The incorporation by reference of these documents 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 Lockheed Western Export Company (LWEC), Dept. 693, Zone 0755, 86 South Cobb Drive, Marietta, Georgia 30063. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office (ACO), 1669 Phoenix Parkway, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on January 10, 1994.

Issued in Renton, Washington, on December 6, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-30197 Filed 12-9-93; 8:45 am]

BILLING CODE 4910-13-P

14 CFR Part 71

[Airspace Docket No. 93–AWP–16]

Establishment of Class E Airspace; Oxnard, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Oxnard, California. The Class E extension that was established using the Camarillo Very High Frequency Omnidirectional Range/ Distance Measuring Equipment (VOR/ DME) 246° radial was in error. The correct description should be the Camarillo VOR 264° radial. This rule provides adequate Class E airspace for instrument flight rules (IFR) operations.

EFFECTIVE DATE: 0901 u.t.c., March 3, 1994.

FOR FURTHER INFORMATION CONTACT: Charles Register, System Management Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 297–0433.

SUPPLEMENTARY INFORMATION:

History

On September 23, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Oxnard, California (58 FR 49450). This action corrects an error incurred during the Reclassification of Airspace, effective September 16, 1993. The Class E4 airspace was inadvertently described using the 246° radial and is now being corrected to the 264° radial. This change will provide correct and adequate airspace for the instrument procedures west of Oxnard Airport, California.

Interested parties were invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they desired. No comments were received. This amendment is the same as that proposed in the notice. Class E airspace designations for airspace designated as an extension to Class D surface areas are published in Paragraph 6004 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations modifies Class E airspace at Oxnard, California. The proposal is to correct an error incurred during the Reclassification of Airspace, effective September 16, 1993.

The Class E4 airspace was inadvertently described using the 246° radial and is now being corrected to the 264° radial. This change will provide correct and adequate airspace for the instrument procedures west of Oxnard Airport, California.

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 routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 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 6004—Subpart E—Class E Airspace Areas Designated as an Extension to a Class D Surface Area

* * * * *

AWP CA E4 Oxnard, CA [Revised]

Oxnard Airport, CA

(lat. 34°12'03" N, long. 119°12'26"W)

Camarillo VOR/DME

(lat. 34°12'45"N, long. 119°05'39"W)

That airspace extending upward from the surface within 1.8 miles either side of the Camarillo VOR 264° radial, extending from the 4.3 mile radius of the Oxnard Airport to 13 miles west of the Camarillo VOR/DME. This Class E airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Los Angeles, California, on November 18, 1993.

C. Roger Wall,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 93–30261 Filed 12–9–93; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 93–AWP–5]

Establishment of Class D Airspace; Gila Bend, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class D airspace at Gila Bend Air Force (AF) Auxiliary (AUX) Field, Gila Bend, Arizona. The U.S. Air Force operates a control tower at Gila Bend AF AUX Field. Airspace Reclassification, which became effective September 16, 1993, discontinued the use of the term "airport traffic area (ATA)" and eliminated those ATA's not already designated to become Class D airspace. As a result, the requirement for two-way radio communication with the control tower at Gila Bend AF AUX Field lapsed. This rule provides adequate Class D airspace for instrument flight rules (IFR) operations and establishes two-way radio communications at Gila Bend AF AUX Field.

EFFECTIVE DATE: 0901 U.T.C., January 10, 1994.

FOR FURTHER INFORMATION CONTACT: Gene Enstad, Airspace Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261; telephone (310) 297–0010.

SUPPLEMENTARY INFORMATION:

History

On August 6, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR 71) to establish Class D airspace at Gila Bend AF AUX

airport, Gila Bend, AZ, to provide sufficient airspace for instrument flight rules (IFR) operations and establish a two-way radio communications requirement.

Interested parties were invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they desired. No comments were received. This amendment is the same as that proposed in the notice. Class D airspace designations are published in Paragraph 5000 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 D airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes Class D airspace at Gila Bend AF AUX airport, Gila Bend, AZ, to provide controlled airspace from the surface up to and including 3,900 feet MSL and establishes a two-way communications requirement.

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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 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 5000—Subpart D—Class D Airspace

* * * * *

AWP AZ D Gila Bend [New]

Gila Bend AF AUX Airport, Gila Bend, AZ
(lat. 32°53'06"N, long. 112°43'14"W)

That airspace extending upward from the surface up to and including 3,900 feet MSL within a 4.2-mile radius of Gila Bend AF AUX Airport, excluding that airspace within Restricted Area R–2305. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Los Angeles, California, on November 15, 1993.

Richard R. Lien,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 93–30259 Filed 12–9–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–AWP–17]

Establishment of Class D Airspace; Barking Sands, Kauai, HI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class D airspace at Barking Sands Pacific Missile Range Facility (PMRF), Kekaha, Kauai, Hawaii. The U.S. Navy operates a control tower at Barking Sands PMRF, Kekaha, Kauai, Hawaii. Airspace Reclassification, which became effective September 16, 1993, discontinued the use of the term "airport traffic area" (ATA) and eliminated those ATA's not already designated to become Class D airspace. As a result, the requirement for two-way radio communication with the control tower at Barking Sands PMRF Airport lapsed. This rule provides adequate Class D airspace for instrument flight rules (IFR) operations and establishes two-way radio communications at Barking Sands PMRF Airport.

EFFECTIVE DATE: 0901 U.T.C., January 10, 1994.

FOR FURTHER INFORMATION CONTACT: Gene Enstad, Airspace Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261; telephone (310) 297–0010.

SUPPLEMENTARY INFORMATION:

History

On September 23, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class D airspace at Barking Sands PMRF, Kekaha, Kauai, Hawaii to provide sufficient airspace for instrument flight rules (IFR) operations and establish a two-way radio communications requirement.

Interested parties were invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they desired. No comments were received. This amendment is the same as that proposed in the notice. Class D airspace designations are published in Paragraph 5000 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 D airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes Class D airspace at Barking Sands PMRF, Kekaha, Kauai, Hawaii, to provide controlled airspace from the surface up to and including 2,500 feet MSL and establishes a two-way communications requirement.

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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 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 5000—Subpart D—Class D Airspace

* * * * *

AWP HI D Barking Sands PMRF [New]

Barking Sands Pacific Missile Range Facility Airport, Kekaha, Kauai, HI
(lat. 22°01'18"N, long. 159°47'12"W)

That airspace extending upward from the surface up to and including 2,500 feet MSL within a 5.1-mile radius of Barking Sands PMRF Airport, excluding that airspace east of a line 1.8 miles east of and parallel to the Barking Sands PMRF Airport north-south runway. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Los Angeles, California, on November 15, 1993.

Richard R. Lien,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 93–30260 Filed 12–9–93; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 228

Tire Advertising and Labeling Guides

AGENCY: Federal Trade Commission.

ACTION: Final amendment of tire advertising and labeling Guide 9.

SUMMARY: The Federal Commission announces that it has amended § 228.9 (Guide 9) of the Tire Advertising and Labeling Guides, 16 CFR part 228 (Tire Guides). The amendment deletes the third sentence of that section, which requires sellers to designate retreaded tires as "retreads" or "retreaded," and adds the sentence: "Any terms disclosing that tires are not new also shall not misrepresent the performance, the type of manufacture, or any other attribute of such tires. See § 228.18." With the amendments, sellers have fewer restrictions on how to advertise their tires, so long as the advertisements clearly and conspicuously disclose that the retreaded tires are not new. The amended Guide 9 emphasizes that any terms used must be nondeceptive and refers to § 228.18 (Guide 18), which contains a general prohibition against the use of misrepresentations by the seller.

EFFECTIVE DATE: December 10, 1993.

FOR FURTHER INFORMATION CONTACT: Robert Easton, Special Assistant—Enforcement, Federal Trade Commission, Washington, DC 20580, (202) 326–3029.

SUPPLEMENTARY INFORMATION: The American Retreaders' Association, Inc. (ARA) and the Tread Rubber Manufacturers Group (TRMG) jointly petitioned the Commission on August 18, 1988, to revise Guide 9 of the Tire Guides.[1] Specifically, the petition sought revision of Guide 9 to permit use of the term "remanufactured" when describing retreaded tires. ARA and TRMG contend that the change is necessary "to more accurately reflect the positive changes which have taken place in this industry." The petitioners further contend that the term "retreaded" is too narrow a term to describe one of many manufacturing processes used in the industry. Under the petitioners' proposal, the term "remanufactured" could be used generically to describe various technological advances in the industry such as bead-to-bead retreading.

The National Tire Dealers & Retreaders Association, Inc. (NTDRA) advised the Commission that it believes the term "remanufactured" may be confusing and possibly misleading to consumers. It therefore opposed modification of Guide 9. NTDRA also stated that no change should be made without a public proceeding. It also stated that if Guide 9 were to be reviewed publicly, all parts of the Tire Guides should be reviewed.

The Commission considered the petitioners' request and the letter NTDRA submitted, and solicited comment[2] on a proposed amendment to Guide 9.

Specifically, the Commission sought comment on whether the last sentence of Guide 9 should be deleted. The request for comment was published in the **Federal Register** on September 12, 1990 (55 FR 37488), and the Commission received comments from eight interested parties. Based upon the petition, the pre-comment period information in its possession and the public comments it received, the Commission has determined to amend Guide 9 by deleting the last sentence. Further, the Commission amends Guide 9 by adding the following sentence:

> Any terms disclosing that tires are not new also shall not misrepresent the performance, the type of manufacture, or any other attribute of such tires. See § 228.18.

The intent of Guide 9 is to prevent sellers from misleading consumers into believing that the seller is offering new tires when, in fact, the tires are used, but the effect of the Guide has been to limit industry to use of only two terms to describe non-new tires. The Commission believes it is preferable to avoid imposing such limitations because they may have the effect of inhibiting innovation by limiting the ability of manufacturers to distinguish their products in the marketplace in a nondeceptive manner. The Commission concludes from the record that the current limitations should not be retained and the Guides should be amended to allow tire manufacturers the flexibility to describe not-new tires in a nondeceptive manner.

There is no disagreement in the comments with the view that terms other than retread and retreaded can convey the concept that tires are not new or are previously used. Indeed, one of the comments opposing the amendment states that terms other than retread and retreaded can "nondeceptively" satisfy the intent of Guide 9 (Comment from Trax Retread Tires, p.1). Another opposing comment agrees that the terms "remanufactured" and "recycled" do not describe new tires (Comment from Rubber Manufacturers Association (RMA), p.1). Further, a third comment notes that the word "remanufactured" in a term frequently used in the automotive parts industry and "by definition implies that the product is 'not new.'" (Comment from Lakin General Corporation, p.2).

[1] Guide 9 states: "Advertisements of used or retreaded products should clearly and conspicuously disclose that same are not new products. Unexplained terms, such as 'New Tread,' 'NuTread' and Snow Tread' as descriptive of such tires do not constitute adequate disclosure that tires so described are not new. All such tires should be clearly designated as 'retreads' or 'retreaded.'"

[2] Because guides are merely interpretive statements, the Commission is not required to give the public an opportunity to participate in proceedings to amend them. Nevertheless, the Commission's policy generally is to obtain public comment on the promulgation of an industry guide.

In addition, as stated in the comment from the Rubber Manufacturers Association, regardless of what terms are used to describe retreaded tires or what process is used in the retreading, each retreaded tire must meet the Department of Transportation (DOT) standards for safety (49 CFR 571.117) (Comment from RMA, p.1). The DOT regulations also require that each retreaded tire must be marked on the tire sidewall with the mark "DOT R" to differentiate it from a new tire (49 CFR 574.5). As RMA states, retreaded tires "* * * are therefore readily identifiable to consumers, regardless of whether they are marketed as 'retreaded,' 'remanufactured' or under some other designation." (Comment from RMA, p.1).

Thus, there is no disagreement in the comments that alternative terms put consumers on notice that tires are not new. This is consistent with the intent of Guide 9, and the nondeceptive use of other terms serves this goal.

An alternative to amending Guide 9 by deleting the last sentence would be for the Commission to amend Guide 9 by expanding the list of "mandatory" terminology in the last sentence to include, for example, not only "remanufactured," but also such terms as "recapped" or "remolded." Nevertheless, the record does not establish that use of these terms only, or that any restricted list of terms, is necessary to inform consumers adequately of the nature of their purchase or to avoid deception. Deletion of the last sentence of Guide 9 is preferable because it will allow sellers the flexibility to use any nondeceptive terms that "clearly and conspicuously disclose that (their tires) are not new products."

The Commission remains concerned that tire manufacturers not resort to misleading terminology. Tire manufacturers, like any other marketers not subject to specific regulations imposing standardized terms, remain subject to the general prohibitions of the FTC Act against deceptive representations. Moreover, there is a specific prohibition in Guide 18 of the Tire Guides against deceptive claims. The Commission, to emphasize this obligation, amend Guide 9 to state that any new terms "shall not misrepresent the performance, the type of manufacture, or any other attribute of such tires. See § 228.18." [3]

[3] The new third sentence does not impose any new obligations on the industry, since § 228.18 of the Guide already prohibits misleading claims.

List of Subjects in 16 CFR Part 228

Advertising, Motor vehicles, Tires, Trade practices.

For the reasons set forth in the preamble, 16 CFR Part 228 is amended as follows:

PART 228—[AMENDED]

1. The authority citation for part 228 continues to read as follows:

Authority: Secs. 5, 6, 38 Stat. 719, as amended, 721; 15 U.S.C. 45, 46.

§ 228.9 [Amended]

2. Section 228.9 is amended by removing the sentence: "All such tires should be clearly designated as 'retreads' or 'retreaded'" and by adding the sentence: "Any terms disclosing that tires are not new also shall not misrepresent the performance, the type of manufacture, or any other attribute of such tires. See § 228.18."

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 93–29404 Filed 12–9–93; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

RIN 0960–AD30

Federal Old-Age, Survivors and Disability Insurance; Suspension of Dependent's Benefits When a Worker is in an Extended Period of Eligibility

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: We are amending our regulations which explain when a Social Security disability beneficiary can and cannot be paid monthly benefits during the extended period of eligibility which follows the completion of a trial work period. The amendments to the regulations reflect section 5118 of the Omnibus Budget Reconciliation Act of 1990 (OBRA 1990) and provide that no monthly Social Security benefits will be paid to the dependents of a disabled worker for any month for which no monthly Social Security disability insurance benefits will be paid to the disabled worker during the extended period of eligibility.

EFFECTIVE DATE: December 10, 1993.

FOR FURTHER INFORMATION CONTACT: Lawrence V. Dudar, Legal Assistant, Office of Regulations, Social Security Administration, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (410) 965–1759.

SUPPLEMENTARY INFORMATION: Under section 223(a)(1) of the Social Security Act (the Act), an individual receiving disability insurance benefits who completes a trial work period and continues to have a disabling impairment is provided an extended period of eligibility. This extended period of eligibility is referred to in our regulations as the reentitlement period. See §§ 404.316(d), 404.401a and 404.1592a. During this period, the individual will be paid benefits in accordance with sections 223(a)(1) and 223(e) of the Act for all months in which he or she does not engage in substantial gainful activity. Section 223(e) of the Act provides, however, that no monthly benefits shall be payable to any disability beneficiary, including a worker receiving disability insurance benefits, for any month, after the third month, in which he or she engages in substantial gainful activity during this period.

Prior to the enactment of OBRA 1990 (Pub. L. 101–508, enacted November 5, 1990), section 223(e) of the Act was silent regarding the payment of benefits to the dependents of a disabled worker during his or her extended period of eligibility. OBRA 1990 included an amendment, section 5118, to clarify this provision. In its report on OBRA 1990, the Conference Committee explained that this amendment would codify our existing practice which, for purposes of the extended period of eligibility, linked a dependent's entitlement to a benefit payment for any month to the disabled worker's entitlement to payment for that month. The Committee stated that under this practice, a "dependent's benefits are suspended during this period if the disabled worker's benefits are suspended." Conference Committee Report, OBRA 1990, H.R. Rep. No. 964, 101st Cong., 2d Sess. 944 (1990).

Section 5118 of OBRA 1990 codifies this practice. It amends section 223(e) of the Act to provide that when payment of a worker's disability insurance benefits is suspended under that section for any month during the extended period of eligibility, monthly benefits to any other persons based on the worker's earnings record will not be paid for that month.

These final rules amend our regulations to reflect this amendment to section 223(e) of the Act made by section 5118 of OBRA 1990. The final rules add a sentence to §§ 404.401a and

404.1592a(a) to provide that if any other person is receiving monthly benefits on the earnings record of an individual receiving disability insurance benefits, that person will not be paid benefits for any month for which the disabled individual cannot be paid benefits during the reentitlement period. We also are revising the heading of § 404.401a to conform to the change to the text of that section.

Regulatory Procedures

Justification for Final Rules

The Department, even when not required by statute, as a matter of policy, generally follows the Administrative Procedure Act (APA) notice of proposed rulemaking and public comment procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its notice and public comment procedures when an agency finds that there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for waiver of notice of proposed rulemaking and public comment procedures in these regulations because the regulations simply reflect a statutory change that is self-executing. The amendments to the regulations to reflect this change are not discretionary and do not involve the setting of any policy. Therefore, we have determined that opportunity for prior public comment is unnecessary. Consequently, these amendments are being issued as final rules.

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because these regulations will not result in any significant costs or otherwise meet the criteria for a major rule. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

These final regulations impose no additional reporting or recordkeeping requirements subject to Office of Management and Budget clearance.

Regulatory Flexibility Act

The Secretary certifies that these final regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program Nos. 93.802 Social Security Disability Insurance; No. 93.803 Social Security-Retirement Insurance)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

Dated: July 23, 1993.

Lawrence H. Thompson,

Principal Deputy Commissioner of Social Security.

Approved: September 30, 1993.

Donna E. Shalala,

Secretary of Health and Human Services.

For the reasons set out in the preamble, subparts E and P of part 404 of chapter III, title 20 of the Code of Federal Regulations are amended as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

1. The authority citation for subpart E of part 404 continues to read as follows:

Authority: Secs. 202, 203, 204 (a) and (e), 205 (a) and (c), 222(b), 223(e), 224, 227, and 1102 of the Social Security Act; 42 U.S.C. 402, 403, 404 (a) and (e), 405 (a) and (c), 422(b), 423(e), 424, 427, and 1302.

2. Section 404.401a is amended by revising the section heading and by adding a new sentence immediately after the second sentence of that section to read as follows:

§ 404.401a When we do not pay benefits because of a disability beneficiary's work activity.

* * * If anyone else is receiving monthly benefits based on your earnings record, that individual will not be paid benefits for any month for which you cannot be paid benefits during the reentitlement period.* * *

3. The authority citation for subpart P of part 404 is revised to read as follows:

Authority: Secs. 202, 205 (a), (b), and (d) through (h), 216(i), 221 (a) and (i), 222(c), 223, 225, and 1102 of the Social Security Act; 42 U.S.C. 402, 405 (a), (b), and (d) through (h), 416(i), 421 (a) and (i), 422(c), 423, 425, and 1302; sec. 505(a) of Public Law 96–265, 94 Stat. 473, secs. 2(d)(2), 5, 6, and 15 of Public Law 98–460, 98 Stat. 1797, 1801, 1802, and 1808.

4. Section 404.1592a is amended by adding immediately after the third sentence of paragraph (a), which begins "(See §§ 404.316 * * *)," a new sentence to read as follows:

§ 404.1592a The reentitlement period.

(a) *General.* * * * If anyone else is receiving monthly benefits based on your earnings record, that individual will not be paid benefits for any month for which you cannot be paid benefits during the reentitlement period. * * *

[FR Doc. 93–30153 Filed 12–9–93; 8:45 am]

BILLING CODE 4190–29–P

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20 CFR Parts 404 and 416

RIN 0960–AC87

Federal Old-Age, Survivors, and Disability Insurance and Supplemental Security Income for the Aged, Blind, and Disabled; Representation of Claimants for Benefits Under Title II and/or Title XVI

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: This final rule amends our existing regulations on the representation of parties to implement the provisions of section 10307(b) of the Omnibus Budget Reconciliation Act of 1989 (OBRA). Section 10307(b) amended the Social Security Act (Act) to require that notices of adverse determinations made by the Social Security Administration (SSA) on or after January 1, 1991, under the Social Security program of title II and the supplemental security income (SSI) program of title XVI, notify claimants of the options for obtaining attorney representation in presenting their cases before us and of the availability, to qualifying claimants, of legal services organizations that provide legal services free of charge.

EFFECTIVE DATE: These final regulations are effective December 10, 1993.

FOR FURTHER INFORMATION CONTACT: Philip Berge, Legal Assistant, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1769.

SUPPLEMENTARY INFORMATION: By notice of proposed rulemaking (NPRM) published October 28, 1991 (56 FR 55475), we proposed to implement section 10307(b) by adding new § 404.1706 to subpart R of part 404 and new § 416.1506 to subpart O of Part 416. We have carefully analyzed the comments received in response to the NPRM and have modified the final rule based on our consideration of those comments.

The regulations currently in effect do not require SSA to notify claimants of the options for obtaining attorney representation in presenting their cases

or of the availability, to qualifying claimants, of legal services organizations that provide legal services free of charge. However, it has long been our practice to inform claimants and beneficiaries of their right to be represented, if they choose, by an attorney or nonattorney at each step of the administrative review process, and to provide more detailed information, including lists of attorney referral and legal services organizations and of community organizations that might provide nonattorney representation, to claimants and beneficiaries who inquire about representation or request a hearing before an administrative law judge (ALJ).

We provide such notice and additional information in furtherance of the provisions of sections 206 and 1631(d) of the Act permitting the representation of claimants by attorneys and nonattorneys, and in accordance with our longstanding practice of neither encouraging nor discouraging claimant representation. In addition, as a result of the amendment of section 206 and 1631(d) by OBRA section 10307(b), we have revised our notices of adverse determinations and decisions subject to the administrative review process to inform claimants and beneficiaries of the options for obtaining attorneys and of the availability, to qualifying claimants, of legal services organizations that provide legal services free of charge.

We proposed the following heading for new §§ 404.1706 and 416.1506: "Notification of options for obtaining attorney representation." The proposed regulations stated—

> Whether or not you have advised us that you are represented by an attorney, if we make a determination or decision that is subject to the administrative review process provided under subpart (J/N) of these regulations and it does not grant all of the benefits or other relief you requested or it adversely affects any (entitlement to/eligibility for) benefits that we have established or may establish for you, we will include with the notice of that determination or decision information about your options for obtaining an attorney to represent you in dealing with us. We will also tell you that a legal services organization may provide you with legal representation free of charge if you satisfy the qualifying requirements applicable to that organization.

Final Regulations

After considering the comments on the NPRM, we are publishing final regulations that differ from those proposed in one respect. We have revised the introductory clause of the first sentence of §§ 404.1706 and 416.1506 to state: "If you are not represented by an attorney and we make a determination or decision that is subject to the administrative review process provided under subpart (J/N) of these regulations and it does not grant all of the benefits or other relief you requested or it adversely affects any (entitlement to/eligibility for) benefits that we have established or may establish for you, * * *." This change removes the requirement from the proposed regulations that the OBRA information be included with the notices of adverse determinations and decisions described in the regulations when the claimant or beneficiary is already represented by an attorney. We have made this change because we believe that the purpose of section 10307(b) of OBRA can be construed so as not to require that we give notification of the options for obtaining attorney representation to a claimant who has already appointed an attorney to represent him or her. We also agree with the commenters, as discussed below under the heading Public Comments and Responses, that sending such notification to a claimant who is already represented might lead to confusion in the attorney-client relationship.

Public Comments and Responses

We received comments from three private attorneys, two law firms, a private attorney commenting on behalf of a disability law project, and a national association of representatives. In addition, a State agency disability determination service (DDS) reported that it had no significant problem with the proposed new regulations and that it was including the language provided by SSA with its personalized disability notices.

In analyzing the comments in terms of the issues raised and the changes recommended, we have identified two principal comments and several secondary issues and recommendations, as discussed below. The DDS raised no issues and did not recommend any changes; therefore, we are not treating it as a commenter for the purpose of the following discussion.

Comment: Do not require inclusion of the OBRA information with notices of adverse determinations and decisions sent to individuals who have already appointed attorney representatives.

Each of the seven commenters favored not requiring provision of the OBRA information when the claimant or beneficiary is already represented by an attorney. One commenter also favored not providing that information when the claimant or beneficiary is represented by a nonattorney, and another thought individuals represented by nonattorneys should not receive the same information as unrepresented individuals. These latter two commenters favored having the final regulations expressly prohibit SSA from providing the OBRA information to represented claimants.

The commenters agreed that including the OBRA information with notices sent to claimants or beneficiaries who have appointed attorney representatives would cause confusion. Some of the specific problems anticipated were that some notice recipients would think their attorneys had abandoned their claims and that others would think the Agency was suggesting they should seek different counsel.

Two commenters thought that providing the OBRA information in these circumstances could interfere with established attorney-client relationships, and another concluded that it represented an action by SSA to compound the difficulties of private practitioners.

Also, the commenters generally thought that including the OBRA information with all the notices described in the proposed rules was unnecessary. Most expressed concerns that doing so would generate claimant inquiries and that responding to those inquiries would involve unnecessary work for both the Agency and claimant counsel. Several commenters stressed the importance of not placing additional, unnecessary burdens on SSA's field offices.

Response: Section 10307(b) requires us to provide information on the options for obtaining attorney representation to "each claimant" receiving an adverse determination and applies to "adverse determinations made on or after January 1, 1991."

Therefore, in the NPRM we proposed including that information with all adverse determinations and decisions subject to the administrative review process to ensure compliance with the statute.

A strict reading of the statutory language could result in our sending notices to claimants, who we know are represented by attorneys in proceedings before us, that advise them that they can appoint an attorney to represent them in proceedings before us. Such a result would not seem consistent with the purpose of section 10307(b). These claimants have already exercised their options to appoint lawyers to represent them. Rather, it seems reasonable to construe the statutory language as not requiring that such claimants be notified that they can appoint counsel, particularly when such an interpretation

would void the possibility of confusing claimants already represented by attorneys and seeming possibly to interfere in the relationship already established between such claimants and their attorneys. It would also seem to follow that if such claimants should not be notified of an option to seek an attorney because they already have an attorney, that they need not be advised of the availability of free legal services, particularly in those instances where they are already represented by organizations providing free legal services.

After assessing the comments received, we have modified the final regulations as discussed above—i.e., not to require inclusion of the OBRA information with notices of adverse determinations or decisions if the claimant or beneficiary is represented by an attorney. As indicated above, we believe that OBRA section 10307(b) is primarily directed at ensuring the availability of information on the options for obtaining attorney representation to individuals who do not have attorneys. Continuing to advise individuals who are represented by an attorney of their options concerning attorney representation after they obtain such representation could cause confusion and would not seem to further the purpose of section 10307(b). Doing so could also generate time consuming work, for the Agency and claimant counsel.

Very few claimants appoint an attorney representative until after they have received at least one notice of an adverse determination. Therefore, almost all claimants who receive a notice under this final rule will receive the information on options for obtaining attorney representation at least once. Only those claimants who have already obtained attorney representatives before the first adverse determinations on their claims will not be sent at least one OBRA notice on attorney representation.

Because we believe § 10307(b) should not be construed to require notification of the options for obtaining attorney representation except where the claimant already has an attorney, the final regulations require provision of this information when the claimant is unrepresented or is represented by a nonattorney. However, as we noted in the preamble of the NPRM, these statutory amendments and these regulations do not limit our ability to provide additional information on representation, including information on the right to represent oneself or to be represented by a nonattorney. Moreover, given the lack of a specific limitation in the statutory amendments, we have not adopted the suggestion of the two commenters to state in the final rule when we might not provide representational information.

Comment: The regulation should prescribe criteria concerning the representation referral lists SSA provides and expressly obligate SSA to provide complete information on the options for obtaining attorneys.

Stating that the proposed rule seemed to envision providing the names of attorney referral services, legal services organizations and community organizations which provide representation, and that these are not-for-profit sources, one commenter recommended expanding the regulations to state explicitly that only not-for-profit organizations may be included. Another commenter stated that the lists of representation referral sources provided by different SSA offices are not always complete and that, to the extent the lists are incomplete, the Agency may be seen to be directing claimants to certain sources to the disadvantage of others. This commenter thought the statute imposes an affirmative obligation on the Agency to ensure that the information it provides on the options for obtaining an attorney is complete and that the final regulations should express this obligation.

Response: We did not plan to provide in the OBRA notices the names of specific legal services organizations, attorney referral services, or community organizations that may provide representation. Rather, the notices will advise claimants of the options for obtaining attorneys to represent them and of the availability to qualifying claimants of legal services organizations which provide legal services free of charge.

One of a claimant's options for obtaining attorney representation is, we believe, to use the services of organizations that can assist them in obtaining counsel or, if they qualify, free legal services. Therefore, as the preamble to the NPRM noted, the OBRA notice will advise claimants of this option and further advise them that local Social Security offices have additional information about specific organizations in their local area. Though not required by statute, we believe that providing lists of specific organizations at the local level will make it easier for those claimants who wish to pursue this option.

Under the existing procedures, as the NPRM pointed out, we provide representation referral lists to claimants who inquire about representation or request an ALJ hearing. If a claimant has not reached the ALJ level, we make the provision of such a list contingent on an inquiry by the claimant; at the ALJ hearing level we take the initiative of providing representation referral lists in acknowledging receipt of requests for hearing filed by individuals who have not appointed representatives.

We provide referral lists at the ALJ level to facilitate the orderly operation of the hearing process by promoting prompt decisions about representation by individuals who generally decide to appoint representatives during the later stages of the administrative review process. (We instituted that procedure in 1979 after representation rates at the hearing step had risen substantially). We do not take the initiative of providing lists before the hearing step because individuals at the initial and reconsideration steps of the process do not usually choose to be represented.

While the procedures differ, each conforms to our longstanding practice of neither encouraging nor discouraging claimant representation. We provide representation referral lists to claimants who inquire about representation to assist individuals who have already indicated an interest in representation. We provide such lists at the hearing level on our initiative to promote the orderly operation of the hearing process.

We do not believe representation referral lists themselves must be provided as part of the notice of the options for obtaining attorney representation. Therefore, we have not modified the regulations to so provide in these final regulations.

While our reason for not changing the regulations in this respect is that we believe representation referral lists are not required under section 10307(b), there are also practical reasons for not including such lists with our notices. Representation referral lists need to provide locale-specific information. Inclusion of lists providing such information with notices of adverse determinations or decisions would involve operational problems in that we generate many of these notices centrally on large computerized systems. Providing such lists with notices of adverse determinations and decisions would also involve ongoing administrative costs.

We believe it would be inappropriate to prescribe criteria for representation referral lists in regulations implementing the statutory notice requirement established in section 10307(b). We plan to continue providing representation referral lists to claimants who inquire about representation or who request an ALJ hearing because we have been able to provide such lists

with little controversy to the benefit of many individuals. However, we do not believe that defining these lists in regulations at this time would be helpful.

With the changes as noted above, the regulations as proposed are adopted.

Regulatory Procedures

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because it will result in negligible administrative costs and savings. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because these rules will affect only individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

These regulations impose no new reporting or recordkeeping requirements requiring Office of Management and Budget clearance.

(Catalog of Federal Domestic Assistance Program Nos. 93.773 and 93.774, Medicare; 93.802–93.805 Social Security; and 93.807 Supplemental Security Income.)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements.

20 CFR Part 416

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

Dated: July 23, 1993.

Lawrence H. Thompson,

Principal Deputy Commissioner of Social Security.

Approved: September 30, 1993.

Donna E. Shalala,

Secretary of Health and Human Services.

For the reasons set out in the preamble, subpart R of part 404 and subpart O of part 416 of 20 CFR chapter III are amended as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

1. The authority citation for subpart R of part 404 continues to read as follows:

Authority: Secs. 205(a), 206, and 1102 of the Social Security Act; 42 U.S.C. 405(a), 406, and 1302.

2. New § 404.1706 is added to read as follows:

§ 404.1706 Notification of options for obtaining attorney representation.

If you are not represented by an attorney and we make a determination or decision that is subject to the administrative review process provided under subpart J of this part and it does not grant all of the benefits or other relief you requested or it adversely affects any entitlement to benefits that we have established or may establish for you, we will include with the notice of that determination or decision information about your options for obtaining an attorney to represent you in dealing with us. We will also tell you that a legal services organization may provide you with legal representation free of charge if you satisfy the qualifying requirements applicable to that organization.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

1. The authority citation for subpart O of part 416 continues to read as follows:

Authority: Secs. 1102 and 1631(d) of the Social Security Act; 42 U.S.C. 1302 and 1383(d).

2. New § 416.1506 is added to read as follows:

§ 416.1506 Notification of options for obtaining attorney representation.

If you are not represented by an attorney and we make a determination or decision that is subject to the administrative review process provided under subpart N of this part and it does not grant all of the benefits or other relief you requested or it adversely affects any eligibility to benefits that we have established or may establish for you, we will include with the notice of that determination or decision information about your options for obtaining an attorney to represent you in dealing with us. We will also tell you that a legal services organization may provide you with legal representation free of charge if you satisfy the qualifying requirements applicable to that organization.

[FR Doc. 93–30152 Filed 12–9–93; 8:45 am]

BILLING CODE 4190–29–P

20 CFR Part 404

RIN 0960–AC68

Federal Old-Age, Survivors, and Disability Insurance; Suspension of Benefits Where Individual is Deported; Exemption From Social Security Because of Religious Beliefs

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: These final rules are being issued to reflect provisions of the Technical and Miscellaneous Revenue Act of 1988, the Omnibus Budget Reconciliation Act of 1989, and the Immigration Act of 1990. These provisions concern: The suspension of Social Security benefits if an individual is deported under certain provisions of the Immigration and Nationality Act, an exemption from Social Security for employees and employers who are both members of certain religious faiths opposed to acceptance of insurance benefits including those provided by Social Security, and an exemption from Social Security for certain employees of churches and church-controlled organizations.

EFFECTIVE DATE: These final rules are effective December 10, 1993.

FOR FURTHER INFORMATION CONTACT: Lawrence V. Dudar, Legal Assistant, Office of Regulations, Social Security Administration, 3–B–1 Operations Buildings, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1759.

SUPPLEMENTARY INFORMATION: These final rules make several technical changes in our rules. First, they reflect the provision of the Technical and Miscellaneous Revenue Act of 1988 (TAMRA), Public Law 100–647, that provided for the nonpayment of Social Security benefits if an individual is ordered deported from the United States because of certain past activities performed under the direction of or in association with the Nazi government of Germany or one of its allies. Second, they reflect the provisions of the Immigration Act of 1990, Public Law 101–649, that amended section 241 of the Immigration and Nationality Act concerning the grounds for deportation and made conforming changes in section 202(n) of the Social Security Act. Section 202(n) concerns the nonpayment of Social Security benefits if an individual is deported under certain provisions of section 241(a) of the Immigration and Nationality Act.

The final rules also reflect the provision of TAMRA that provided an exemption from Social Security for an

employee and his or her employer if both belong to a religious faith and are adherents to established tenets and teachings of that faith opposed to acceptance of insurance benefits including those provided by the Social Security program. Additionally, the final rules reflect the provisions of the Omnibus Budget Reconciliation Act of 1989 (OBRA), Public Law 101–239, that provided an exemption from Social Security for (1) an employee of a partnership if both the employee and the members of the partnership (each of the partners) belong to a religious faith and are adherents to the established tenets and teachings of that faith opposed to acceptance of insurance benefits including those provided by the Social Security program and (2) persons who have religious convictions in opposition to the acceptance of insurance benefits including those provided by Social Security and who are employees of churches or church-controlled organizations, but who are treated as self-employed individuals because the employing church or organization has exercised its option to be exempt from paying the employer portion of the Social Security tax.

On May 28, 1991, we published a notice of proposed rulemaking at 56 FR 24043 reflecting the provisions of TAMRA and OBRA that are discussed briefly above and in more detail below. We received no comments on the proposed rules, which we are now publishing as final rules. The proposed rules, however, did not reflect the provisions of the Immigration Act of 1990 which amended section 241 of the Immigration and Nationality Act with respect to the grounds for deportation and section 202(n) of the Social Security Act. Section 202(n) was amended to conform to the changes made with respect to the grounds for deportation set out in section 241 of the Immigration and Nationality Act. In these final rules we are further amending § 404.464 of our regulations to reflect these statutory amendments.

Nonpayment of Benefits Where Individual Is Deported

Section 202(n) of the Social Security Act provides that no monthly benefits shall be paid to a beneficiary entitled to old-age or disability insurance benefits on his or her wages or self-employment income who is ordered deported from the United States under certain provisions of the Immigration and Nationality Act. It also provides that if such a beneficiary is ordered deported under one of those provisions, no lump sum death benefit shall be paid on the basis of his or her earnings record and other benefits that may be payable on his or her earnings record may not be paid to a non-United States citizen outside the United States.

Section 8004 of TAMRA amended section 202(n) of the Social Security Act by adding a reference to paragraph 19 of section 241(a) of the Immigration and Nationality Act and thereby adding Nazi war criminals to the list of individuals to whom benefits are not payable due to their deportation. Section 602 of the Immigration Act of 1990 revised the grounds for deportation set forth in section 241(a) of the Immigration and Nationality Act. The new law replaced the 19 grounds for deportation previously listed in the Immigration and Nationality Act with five classes of deportable aliens, with a number of grounds for deportation listed within those five classes. The legislative history of section 602 states that one of the purposes of this "comprehensive" revision was "to make the law more rational and easy to understand." See H.R. Conf. Rep. No. 101–955, 101st Cong., 2nd Sess. 128 (1990).

Section 603(b) of the Immigration Act of 1990 made a conforming amendment to section 202(n) of the Social Security Act to provide for the nonpayment of benefits to individuals deported under the provisions of section 241(a) (other than under paragraph (1)(C) or (1)(E)) of the Immigration and Nationality Act. Paragraph (1)(C) provides for the deportation of aliens who violate certain conditions of entry and of aliens admitted as nonimmigrants who fail to maintain that status. Paragraph (1)(E) provides for the deportation of aliens who assist other aliens entering or attempting to enter the United States illegally. As amended by the Immigration Act of 1990, section 202(n) of the Social Security Act continues to provide for the nonpayment of benefits to individuals deported because of acts of persecution committed under the direction of or in association with the Nazi government of Germany or its allies. The Immigration Act of 1990, which became law on November 29, 1990, provides that the amendments it made which are discussed above shall not apply to deportation proceedings for which notice had been provided to the alien prior to March 1, 1991. We are amending § 404.464 of our regulations to reflect these statutory changes.

Exemption From Social Security for Employees and Employers Who Are Both Members of Certain Religious Faiths

Section 8007 of TAMRA added a new section 3127 to the Internal Revenue Code (the Code) and a conforming amendment to section 202(v) of the Social Security Act. Under this statutory change, an employee and his or her employer may file applications with the Internal Revenue Service (IRS) for exemption from their respective shares of the Federal Insurance Contributions Act taxes on the employee's wages based upon their religious convictions in opposition to acceptance of insurance benefits including those provided by Social Security. In order for the exemption to be granted, both the employee and his or her employer must have applications filed and approved and both must submit waivers of their right to receive benefits under title II and part A of title XVIII of the Social Security Act. Under section 202(v) of the Social Security Act, no benefits or other payments are payable under title II and part A of title XVIII to the individual who files such a waiver and receives such an exemption. In addition, no benefits or other payments are payable under title II and part A of title XVIII on the basis of the exempted individual's wages and self-employment income to any other person after the filing of the waiver.

Prior to the enactment of TAMRA, the availability of a Social Security tax exemption on religious grounds was limited under sections 202(v) and 211(c)(6) of the Social Security Act and section 1402(g) of the Code to individuals who were self-employed. Sections 404.1075 and 404.305 of the regulations implement the exemption from the Social Security self-employment tax and the corresponding waiver of benefits. The TAMRA enactment extends to an employee and his or her employer the right to request a Social Security tax exemption if they both have religious convictions in opposition to participation in insurance programs including Social Security. Additionally, it provides that no exemption will be granted if the employee would be receiving benefits but for suspension of his or her benefits under section 203 or section 222(b) of the Social Security Act. This rule already applied to the exemption for self-employed persons, but was not reflected in the regulations. We are therefore revising § 404.1075 to reflect this rule for the self-employed and to describe the circumstances under which the tax exemption will cease to be effective and the effect of such a termination on the corresponding waiver of benefits. We are also amending § 404.305(a), which discusses the effect of the waiver of benefits, to revise a reference to the regulatory section describing the tax exemption on

religious grounds for self-employed persons to reflect that that section currently appears in § 404.1075, and to clarify that, in order for a waiver of benefits to be applicable, it is necessary for the applicant to be granted a tax exemption in addition to filing the waiver.

Section 10204(b) of OBRA amended section 3127 of the Code to provide that the tax exemption is available when an employee of a partnership and each partner in that partnership have religious convictions in opposition to participation in insurance programs including Social Security and file applications for exemption which include waivers of their right to receive benefits under title II and part A of title XVIII of the Social Security Act.

To reflect these new statutory provisions concerning the employee and employer, we are adding a cross-reference to § 404.305(a) of subpart D and adding a new section to subpart K, § 404.1039, which is modeled after § 404.1075, to state that, in order for the tax exemption to be granted, both an employee and his or her employer (or, if the employer is a partnership, each of its partners) must—

1. Belong to a recognized religious sect or a division thereof; and

2. Adhere to the tenets or teachings of that sect or division of the sect and for that reason conscientiously oppose the acceptance of insurance benefits from any public or private insurance including Social Security that—

a. Makes payment in the event of death, disability, old-age, or retirement; or

b. Makes payment for the cost of, or provides services for, medical care (including the benefits of any insurance system established by the Social Security Act); and

3. File applications with IRS for exemption from Social Security taxation (which includes a waiver of the right to receive benefits under title II and part A of title XVIII of the Social Security Act) that IRS approves pursuant to section 3127 of the Code.

In order for an application to be approved, we must find that the sect or division of the sect has established tenets or teachings which cause the applicant to be conscientiously opposed to receiving the types of insurance benefits described above, that the sect or division of the sect has continuously been in existence since December 31, 1950, and that its members make provision for dependent members that is reasonable in view of their general level of living.

An application for exemption will be approved by the IRS only if no benefits became payable (or, but for section 203 or section 222(b) of the Social Security Act, would have become payable) to the applicant at or before the time the application was filed. Once IRS approves the tax exemption authorized under section 3127 of the Code, the exemption continues until the exemption requirements are no longer met. If the exemption ceases to be in effect, the waiver of the right to receive Social Security and Medicare benefits will also no longer apply. However, earnings for years before the waiver ceases to apply cannot be used for Social Security benefit purposes.

The exemption provided under these statutory amendments applies to wages paid after December 31, 1988.

Exemption From Social Security of Workers in Churches and Church-Controlled Organizations

Section 10204(a) of OBRA amended section 1402(g) of the Code. Under this statutory change, employees of churches and church-controlled organizations who are treated as self-employed individuals because the employing church or church-controlled organization has been approved for exemption from payment of the Federal Insurance Contributions Act tax on religious grounds are exempt from payment of the Self-Employment Contributions Act tax effective for tax years beginning January 1, 1990, if the worker has an approved application for exemption as described in § 404.1075.

Prior to the enactment of OBRA, these church employees, who are treated as self-employed individuals, were subject to payment of the Self-Employment Contributions Act tax. We are therefore revising § 404.1068 to reflect this statutory change.

Regulatory Procedures

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 since these regulations will not result in any significant costs or otherwise meet the criteria for a major rule. Therefore, a regulatory impact analysis is not required. The statutory amendments reflected in these final regulations will cause a reduction in estimated Social Security tax revenues of $14 million each for FY 1993, FY 1994, and FY 1995.

Paperwork Reduction Act

Sections 404.1039 and 404.1075 of these final regulations reflect an information collection requirement. That requirement is contained in section 3127 of the Code and is applicable only to the IRS. The IRS has received OMB approval to collect the required information by using form IRS–4029 (Application for Exemption from Social Security and Medicare Taxes and Waiver of Benefits, OMB No. 1545–0064).

Regulatory Flexibility Act

The Secretary certifies that these final regulations will not have a significant economic impact on a substantial number of small entities because they only apply to individuals and certain partnerships. Consequently, these regulations will have a minimal overall economic impact and a regulatory flexibility analysis, as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Programs: No. 93.802 Social Security—Disability Insurance; No. 93.803 Social Security—Retirement Insurance; No. 93.805 Social Security—Survivors Insurance.)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

Dated: June 17, 1993.

Louis D. Enoff,

Principal Deputy Commissioner of Social Security.

Approved: September 30, 1993.

Donna E. Shalala,

Secretary of Health and Human Services.

For the reasons set forth in the preamble, part 404 of chapter III, title 20 of the Code of Federal Regulations is amended as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

1. The authority citation for subpart D of part 404 continues to read as follows:

Authority: Secs. 202, 203 (a) and (b), 205(a), 216, 223, 228 (a)-(e), and 1102 of the Social Security Act; 42 U.S.C. 402, 403 (a) and (b), 405(a), 416, 423, 428 (a)-(e), and 1302.

2. Section 404.305 is amended by revising paragraph (a) to read as follows:

§ 404.305 When you may not be entitled to benefits.

* * * * *

(a) *Waiver of benefits.* If you have waived benefits and been granted a tax exemption on religious grounds as described in §§ 404.1039 and 404.1075, no one may become entitled to any benefits or payments on your earnings record and you may not be entitled to

benefits on anyone else's earnings record; and

* * * * *

3. The authority citation for subpart E of part 404 continues to read as follows:

Authority: Secs. 202, 203, 204 (a) and (e), 205 (a) and (c), 222(b), 223(e), 224, 227, and 1102 of the Social Security Act; 42 U.S.C. 402, 403, 404 (a) and (e), 405 (a) and (c), 422(b), 423(e), 424, 427, and 1302.

4. Section 404.464 is amended by revising paragraphs (a) and (c) to read as follows:

§ 404.464 Nonpayment of benefits where individual is deported; prohibition against payment of lump sum based on deported individual's earnings records.

(a) *Old-age or disability insurance benefits.* When an individual is deported under the provisions of section 241(a) of the Immigration and Nationality Act (other than under paragraph (1)(C) or (1)(E) thereof), no old-age or disability insurance benefit is payable to the individual for any month occurring after the month in which the Secretary is notified by the Attorney General of the United States that the individual has been deported and before the month in which the individual is thereafter lawfully admitted to the United States for permanent residence. An individual is considered lawfully admitted for permanent residence as of the month he enters the United States with permission to reside here permanently.

* * * * *

(c) *Lump sum death payment.* No lump-sum death payment is payable on the basis of the earnings of an individual deported under section 241(a) of the Immigration and Nationality Act (other than paragraph (1)(C) or (1)(E) thereof) if the individual dies in or after the month in which the Secretary receives notice that he has been deported and before the month in which the individual is thereafter lawfully admitted to the United States for permanent residence.

5. The authority citation for subpart K of part 404 is revised to read as follows:

Authority: Secs. 202(v), 205(a), 209, 210, 211, 229(a), 230, 231, and 1102 of the Social Security Act; 42 U.S.C. 402(v), 405(a), 409, 410, 411, 429(a), 430, 431, and 1302.

6. A new undesignated centerheading and § 404.1039 are added to read as follows:

Exemption From Social Security By Reason of Religious Belief

§ 404.1039 Employers (including partnerships) and employees who are both members of certain religious groups opposed to insurance.

(a) You and your employer (or, if the employer is a partnership, each of its partners) may file applications with the Internal Revenue Service for exemption from your respective shares of the Federal Insurance Contributions Act taxes on your wages paid by that employer if you and your employer (or, if the employer is a partnership, each of its partners)—

(1) Are members of a recognized religious sect or division of the sect; and

(2) Adhere to the tenets or teachings of the sect or division of the sect and for that reason are conscientiously opposed to receiving benefits from any private or public insurance that—

(i) Makes payment in the event of death, disability, old-age, or retirement; or

(ii) Makes payment for the cost of, or provides services for, medical care including the benefits of any insurance system established by the Act.

(b) Both your application and your employer's application (or, if your employer is a partnership, each partner's application) must be filed with and approved by the Internal Revenue Service pursuant to section 3127 of the Internal Revenue Code. An application must contain or be accompanied by the applicant's waiver of all benefits and payments under title II and part A of title XVIII of the Act. See § 404.305 for the effect of the filing of the waiver and the granting of the exemption.

(c) Regardless of whether the applicant meets all these conditions, the application will not be approved unless we find that—

(1) The sect or division of the sect has established tenets or teachings which cause the applicant to be conscientiously opposed to the types of insurance benefits described in paragraph (a)(2) of this section; and

(2) For a substantial period of time it has been the practice for members of the sect or division of the sect to make provision for their dependent members that is reasonable in view of their general level of living; and

(3) The sect or division of the sect has been in existence continuously since December 31, 1950.

(d) An application for exemption will be approved by the Internal Revenue Service only if no benefit or payment under title II or part A of title XVIII of the Act became payable (or, but for section 203 or section 222(b) of the Act, would have become payable) to the applicant at or before the time of the filing of the application for exemption.

(e) The tax exemption ceases to be effective with respect to wages paid beginning with the calendar quarter in which either the employer (or if the employer is a partnership, any of its partners) or the employee involved does not meet the requirements of paragraph (a) of this section or the religious sect or division of the sect is found by us to no longer meet the requirements of paragraph (c) of this section. If the tax exemption ceases to be effective, the waiver of the right to receive Social Security and Medicare Part A benefits will also no longer be effective. Benefits may be payable based upon the wages of the individual, whose exempt status was terminated, for and after the calendar year following the calendar year in which the event occurred upon which the cessation of the exemption is based. Benefits may be payable based upon the self-employment income of the individual whose exempt status was terminated for and after the taxable year in which the event occurred upon which the cessation of the exemption is based.

7. Section 404.1068 is amended by revising paragraph (f) to read as follows:

§ 404.1068 Employees who are considered self-employed.

* * * * *

(f) *Employees of a church or church-controlled organization that has elected to exclude employees from coverage as employment.* If you perform services that are excluded from employment as described in § 404.1026, you are engaged in a trade or business. Special rules apply to your earnings from those services which are known as church employee income. If you are paid $100 or more in a taxable year by an employer who has elected to have its employees excluded, those earnings are self-employment income (see § 404.1096(c)(1)). In figuring your church employee income you may not reduce that income by any deductions attributable to your work. Your church employee income and deductions may not be taken into account in determining the amount of other net earnings from self-employment. Effective for taxable years beginning on or after January 1, 1990, your church employee income is exempt from self-employment tax under the conditions set forth for members of certain religious groups (see § 404.1075).

8. Section 404.1075 is amended by revising paragraphs (b) and (d) and by adding paragraph (e) to read as follows:

§ 404.1075 Members of certain religious groups opposed to insurance.

* * * * *

(b) Your application must be filed under the rules described in 26 CFR 1.1402(h). An application must contain or be accompanied by the applicant's waiver of all benefits and payments under title II and part A of title XVIII of the Act. See § 404.305 for the effect of the filing of the waiver and the granting of the exemption.

* * * * *

(d) Your application for exemption will be approved by the Internal Revenue Service only if no benefit or other payment under title II or part A of title XVIII of the Act became payable or, but for section 203 or section 222(b) of the Act, would have become payable, to you or on your behalf at or before the time of the filing of your application for exemption.

(e) The tax exemption ceases to be effective for any taxable year ending after the time you do not meet the requirements of paragraph (a) of this section or after the time we find the religious sect or division of the sect of which you are a member no longer meets the requirements of paragraph (c) of this section. If your tax exemption ceases to be effective, your waiver of the right to receive Social Security and Medicare part A benefits will also no longer be effective. Benefits may be payable based upon your wages for and after the calendar year following the calendar year in which the event occurred upon which the cessation of the exemption is based. Benefits may be payable based upon your self-employment income for and after the taxable year in which the event occurred upon which the cessation of the exemption is based.

[FR Doc. 93–30150 Filed 12–9–93; 8:45 am]

BILLING CODE 4190–29–P

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20 CFR Part 404

[Regulations No. 4]

RIN 0960–AD31

Federal Old-Age, Survivors and Disability Insurance; Continued Entitlement to Benefits of Deemed Spouse and Legal Spouse; Treatment of Divorce in Invalid Marriage; Treatment of Multiple Entitlements Under the Family Maximum

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: We are revising several rules to reflect statutory enactments that permit the simultaneous entitlement of a spouse based on a "deemed" valid marriage and a spouse based on a valid or a "putative" marriage and provide that when a putative spouse and/or a deemed spouse is/are entitled simultaneously with a spouse based on a valid marriage, the spouse based on the valid marriage is paid outside the family maximum. We are further revising our rules to reflect section 203(a)(3)(C) of the Social Security Act which provides that an individual entitled to divorced spouses' benefits is also paid outside the family maximum.

EFFECTIVE DATE: These rules are effective December 10, 1993.

FOR FURTHER INFORMATION CONTACT: Lawrence V. Dudar, Legal Assistant, Office of Regulations, Social Security Administration, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (410) 965–1759.

SUPPLEMENTARY INFORMATION: Section 5119 of the Omnibus Budget Reconciliation Act of 1990 (OBRA 1990), Public Law (Pub. L.) 101–508, contains several amendments to section 216(h)(1) of the Social Security Act (the Act) which permit the simultaneous entitlement to benefits under title II of the Act of a spouse, widow(er), divorced spouse, surviving divorced spouse, mother/father or surviving divorced mother/father based on a deemed valid marriage (i.e., a ceremonial marriage entered into in good faith that is invalid because of the existence of a legal impediment) and a spouse, widow(er) divorced spouse, surviving divorced spouse, mother/father, or surviving divorced mother/father based on a valid marriage or a putative marriage (i.e., an invalid marriage that is recognized under State law for inheritance purposes).

Prior to the enactment of section 5119 of OBRA 1990, a deemed spouse could receive benefits only if no legal or putative spouse was receiving benefits on the worker's earnings record.

A secondary result of the OBRA 1990 legislation was to limit the effect of acquiescence rulings in *Rosenberg* v. *Richardson* as reaffirmed by *Capitano* v. *Secretary of HHS*, AR 86–2R(2), and *Woodson* v. *Schweiker*, AR 86–18R(5) and AR 86–19R(11), to benefits payable prior to January 1991. These rulings permit the entitlement or continued entitlement of a deemed spouse where the full benefit is not payable to the legal spouse and allow a deemed spouse to become entitled despite the prior entitlement of the legal spouse. The OBRA 1990 amendments are more generous to beneficiaries than the *Rosenberg*, *Capitano*, and *Woodson* decisions were.

To reflect the amendments made to section 216(h)(1) of the Act by section 5119 of OBRA 1990, we are amending our regulations as follows:

We are amending § 404.331 with regards to entitlement to wife's or husband's benefits as a divorced spouse to reflect that a deemed valid marriage meets the 10-year duration of marriage requirement for divorced and surviving divorced spouses.

We are amending § 404.332, which sets out our rules as to when wife's and husband's benefits begin and end, to remove the provision which required the termination of the entitlement of a spouse or divorced spouse based on a deemed valid marriage if a spouse or divorced spouse based on a valid marriage or a putative marriage became entitled to benefits on the same worker's record.

We are amending § 404.336, which discusses entitlement to widow's or widower's benefits as a surviving divorced spouse, to reflect that payments under this section may be based on a deemed valid marriage.

We are amending § 404.337, which sets out our rules as to when widow's and widower's benefits begin and end, to remove the provision which required the termination of the entitlement of a widow or widower based upon a deemed valid marriage when a person becomes entitled to benefits on the same worker's record based upon a valid marriage or a putative marriage under State law as explained in § 404.345.

We are amending § 404.340, which describes entitlement to mother's or father's benefits as a surviving divorced spouse, to reflect that payments under this section may be based on a deemed valid marriage.

We are amending § 404.341, which sets out our rules as to when mother's and father's benefits begin and end, to remove the provision which required the termination of mother's or father's benefits based upon a deemed valid marriage when another person becomes entitled to mother's or father's benefits on the same worker's record based upon a valid marriage or a putative marriage under State law as explained in § 404.345.

We are amending § 404.346 regarding the relationship of certain individuals based upon a deemed valid marriage to remove the provision which precluded the entitlement of a wife, husband, widow, or widower based upon a deemed valid marriage when another person was entitled on the same worker's record as a wife, husband, widow, widower based upon a valid

marriage or a putative marriage under State law as explained in § 404.345. We are further amending § 404.346 to indicate that once a marriage has been deemed to be a valid marriage, it shall continue to be deemed valid if the insured and the person entitled to benefits as a spouse are no longer living together when the insured dies.

Section 5119 of OBRA 1990 also amended section 203(a) of the Act. We are amending the family maximum provision set out in § 404.403 to reflect this amendment to indicate that a spouse, widow(er) or mother/father based upon a deemed valid marriage and/or a marriage recognized under State law for inheritance rights will be paid within the family maximum payable, whereas the spouse, widow(er) or mother/father based on a valid marriage will be paid outside the family maximum when a spouse of a deemed valid marriage or a putative marriage is entitled simultaneously with a spouse based on a valid marriage on the same worker's record.

We are further amending § 404.403 to reflect our current practice under section 203(a)(3)(C) of the Act, which provides that an individual entitled to divorced spouses' benefits under section 202 (b) or (c) of the Act or surviving divorced spouses' benefits under section 202 (e) or (f) of the Act is also paid outside of the family maximum.

Section 5119 of OBRA 1990 is effective with respect to benefits for months after December 1990. In addition, unless the spouse of a deemed valid marriage was entitled on the same earnings record to a benefit under sections 202 (b), (c), (e), or (f) of the Act for December 1990, he or she must file an application after December 31, 1990, to obtain the benefit of section 5119 of OBRA 1990.

Regulatory Procedures

The Department, even when not required by statute, as a matter of policy generally follows the Administrative Procedure Act (APA) notice of proposed rulemaking and public comment procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its notice and public comment procedures when an agency finds that there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for waiver of notice of proposed rulemaking and public comment procedures in these regulations because we are only reflecting statutory changes which are not discretionary and do not involve the setting of any policy. Therefore, we have determined that opportunity for prior public comment is unnecessary. Consequently, these amendments are being issued as a final rule.

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because these regulations will not result in any significant costs or otherwise meet the criteria for a major rule. We estimate the program costs to be $5 million in FY 1992, $11 million in FY 1993, $15 million in FY 1994 and $16 million in FY 1995 with negligible associated administrative costs. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

These final regulations impose no additional reporting and recordkeeping requirements subject to Office of Management and Budget clearance.

Regulatory Flexibility Act

The Secretary certifies that these final regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not needed.

(Catalog of Federal Domestic Assistance Programs: No. 93.802 Social Security Disability Insurance; No. 93.803 Social Security Retirement Insurance)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

Dated: July 26, 1993.

Lawrence H. Thompson,

Principal Deputy Commissioner of Social Security.

Approved: September 30, 1993.

Donna E. Shalala,

Secretary of Health and Human Services.

Part 404 of chapter III, title 20 of the Code of Federal Regulations is amended as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart D—Old-Age, Disability, Dependents' and Survivors' Insurance Benefits; Period of Disability

1. The authority citation for subpart D of part 404 continues to read as follows:

Authority: Secs. 202, 203 (a) and (b), 205(a), 216, 223, 228(a)–(e), and 1102 of the Social Security Act; 42 U.S.C. 402, 403 (a) and (b), 405(a), 416, 423, 428(a)–(e), and 1302.

2. Section 404.331 is amended by revising paragraph (a)(1) to read as follows:

§ 404.331 Who is entitled to wife's or husband's benefits as a divorced spouse.

* * * * *

(a) * * *

(1) You were validly married to the insured under State law as described in § 404.345 or you were deemed to be validly married as described in § 404.346; and

* * * * *

3. Section 404.332 is amended by revising paragraph (b)(6) to read as follows:

§ 404.332 When wife's and husband's benefits begin and end.

* * * * *

(b) * * *

(6) If your benefits are based upon a deemed valid marriage and you have not divorced the insured, you marry someone other than the insured.

* * * * *

4. Section 404.336 is amended by revising paragraph (a)(1) to read as follows:

§ 404.336 Who is entitled to widow's or widower's benefits as a surviving divorced spouse.

* * * * *

(a) * * *

(1) You were validly married to the insured under State law as described in § 404.345 or are deemed to be validly married as described in § 404.346; and

* * * * *

5. Section 404.337 is amended by removing paragraph (b)(3) and redesignating former paragraph (b)(4) as paragraph (b)(3).

6. Section 404.340 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 404.340 Who is entitled to mother's or father's benefits as a surviving divorced spouse.

* * * * *

(a) You were validly married to the insured under State law as described in § 404.345 or you were deemed to be validly married as described in § 404.346 but the marriage ended in a final divorce and—

* * * * *

7. Section 404.341 is amended by removing paragraph (b)(4), redesignating paragraph (b)(5) as new paragraph (b)(4) and removing in paragraph (c) the

reference "(4) or (5)" and adding in its place "or (4)".

8. Section 404.346 is amended by revising paragraph (b) to read as follows:

§ 404.346 Your relationship as wife, husband, widow, or widower based upon a deemed valid marriage.

* * * * *

(b) *Entitlement based upon a deemed valid marriage.* To be entitled to benefits as a wife, husband, widow or widower as the result of a deemed valid marriage, you and the insured must have been living in the same household (see § 404.347) at the time the insured died or, if the insured is living, at the time you apply for benefits. However, a marriage that had been deemed valid, shall continue to be deemed valid if the insured individual and the person entitled to benefits as the wife or husband of the insured individual are no longer living in the same household at the time of death of the insured individual.

Subpart E—Deductions; Reductions; and Nonpayments of Benefits

9. The authority citation for Subpart E of Part 404 continues to read as follows:

Authority: Secs. 202, 203, 204(a) and (e), 205(a) and (c), 222(b), 223(e), 224, 227, and 1102 of the Social Security Act; 42 U.S.C. 402, 403, 404(a) and (e), 405(a) and (c), 422(b), 423(e), 424, 427, and 1302.

10. Section 404.403 is amended by adding new paragraphs (a)(3) and (4) to read as follows:

§ 404.403 Reduction where total monthly benefits exceed maximum family benefits payable.

(a) * * *

(3) The benefits of an individual entitled as a divorced spouse or surviving divorced spouse will not be reduced pursuant to this section. The benefits of all other individuals entitled on the same record will be determined under this section as if no such divorced spouse or surviving divorced spouse were entitled to benefits.

(4) In any case where more than one individual is entitled to benefits as the spouse or surviving spouse of a worker for the same month, and at least one of those individuals is entitled based on a marriage not valid under State law (see §§ 404.345 and 404.346), the benefits of the individual whose entitlement is based on a valid marriage under State law will not be reduced pursuant to this section. The benefits of all other individuals entitled on the same record (unless excluded by paragraph (a)(3) of this section) will be determined under this section as if such validly married individual were not entitled to benefits.

* * * * *

[FR Doc. 93–30154 Filed 12–9–93; 8:45 am]
BILLING CODE 4190–29–P

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20 CFR Part 416

RIN 0960–AC77

Supplemental Security Income for the Aged, Blind, and Disabled; Redeterminations of Supplemental Security Income Eligibility

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: These final regulations amend the policy on how we establish the beginning of the supplemental security income (SSI) redetermination period when reviewing a recipient's eligibility to ensure that he or she continues to be eligible and receives the correct SSI benefit amount. This new policy eliminates gaps that occur in the redetermination process under current regulations. The effects of these final regulations are administrative simplification and increased payment accuracy.

EFFECTIVE DATE: December 10, 1993.

FOR FURTHER INFORMATION CONTACT: Duane Heaton, Legal Assistant, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–8470.

SUPPLEMENTARY INFORMATION:

Background

Section 1611(c)(1) of the Social Security Act (the Act) provides that eligibility for and the amount of SSI benefits shall be redetermined at such time or times as may be provided by the Secretary of Health and Human Services (the Secretary). Regulations at § 416.204(c) state the period for which a redetermination applies by explaining which months the first and subsequent redetermination periods include.

These regulations currently provide that the first redetermination period includes: (1) The month in which we make the redetermination, (2) all the months after the month of first eligibility, and (3) future months until the second redetermination.

The current regulations further provide that subsequent redetermination periods include: (1) The month in which we make the redetermination, (2) all the months after the last time we made a redetermination, and (3) future months until the next redetermination.

These current regulations do not provide for the consideration of all factors of eligibility for the entire relevant period because the review period does not begin with the first day of the month of the last determination of eligibility.

The redetermination period, therefore, omits a month or part of a month. Factors which could affect continued eligibility or payment amounts potentially go undetected. For example: The last redetermination review period was initiated on September 4, 1989. The next redetermination period of review includes all months after the month we last initiated a redetermination; i.e., it begins October 1, 1989. As a result, the period September 5 through September 30, 1989, is never reviewed to see if the individual was eligible for that period or if he or she was receiving the correct SSI benefit amount.

Final Regulations

We are amending the regulations at § 416.204(c)(1)(ii) to include in the first redetermination period all months beginning with the first day of: the most recent month of eligibility/re-eligibility; or application; or deferred/updated development (applicable when nonmedical issues in a disability case are not fully developed until a disability allowance is made).

In addition, we are amending § 416.204(c)(2)(ii) to include in subsequent redetermination periods all months beginning with the first day of the month the last redetermination was initiated.

Comments

These regulations were published as a Notice of Proposed Rulemaking on November 20, 1992 (57 FR 54732). A 60-day comment period was provided. We received one public comment which was from an organization. This public comment supported the regulations and did not raise any issues. We are, therefore, adopting the regulations as proposed.

Regulatory Procedures

Executive Order No. 12291

The Secretary has determined that this is not a major rule under Executive Order 12291. The program savings and the administrative costs will be insignificant and are estimated at less than $1 million a year. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

These regulations impose no additional reporting and recordkeeping requirements subject to Office of Management and Budget clearance.

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

List of Subjects in 20 CFR Part 416

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

Dated: August 19, 1993.

Lawrence H. Thompson,

Principal Deputy Commissioner of Social Security.

Approved: October 4, 1993.

Donna E. Shalala,

Secretary of Health and Human Services.

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

PART 416—[AMENDED]

1. The authority citation for part 416, subpart B continues to read as follows:

Authority: Secs. 1102, 1110(b), 1602, 1611, 1614, 1615(c), 1619(a), 1631, and 1634 of the Social Security Act; 42 U.S.C. 1302, 1310(b), 1381a, 1382, 1382c, 1382d(c), 1382h(a), 1383, and 1383c; secs. 211 and 212 of Pub. L. 93–66, 87 Stat. 154 and 155; sec. 502(a) of Pub. L. 94–241, 90 Stat. 268; and sec. 2 of Pub. L. 99–643, 100 Stat. 3574.

2. In § 416.204, paragraphs (c)(1)(ii) and (c)(2)(ii) are revised to read as follows:

§ 416.204 Redeterminations of SSI eligibility.

* * * * *

(c) * * *

(1) * * *

(ii) All months beginning with the first day of the latest of the following:

(A) The month of first eligibility or re-eligibility; or

(B) The month of application; or

(C) The month of deferred or updated development; and

* * * * *

(2) * * *

(ii) All months beginning with the first day of the month the last redetermination was initiated; and

* * * * *

[FR Doc. 93–30151 Filed 12–9–93; 8:45 am]

BILLING CODE 4190–29–P

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20 CFR Part 416

RIN 0960–AD60

Supplemental Security Income Maximum Payment Limit ($30) When Medicaid Is Not Paying Toward the Cost of Institutional Care Because the Individual Transferred a Resource

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: These final regulations reflect amendments to the Social Security Act (the Act) made by section 303(c)(2) of the Medicare Catastrophic Coverage Act of 1988. The Act, as amended by that section, provides, for supplemental security income (SSI) purposes, that the reduced SSI payment rate of $360 a year ($720 for a couple) which is applied to residents of certain medical care facilities which are receiving Medicaid payments for the cost of care of those residents, must also be applied to residents for whom Medicaid payments are denied because they transferred a resource for less than fair market value.

EFFECTIVE DATE: These rules are effective on December 10, 1993.

FOR FURTHER INFORMATION CONTACT: Lawrence V. Dudar, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–759.

SUPPLEMENTARY INFORMATION:

Background

Public Law 100–360, the "Medicare Catastrophic Coverage Act of 1988," was enacted on July 1, 1988. Section 303(c)(2) of this law amended section 1611(e)(1)(B) of the Act and provides that the reduced SSI payment rate of $360 a year ($720 for a couple) which is applied to residents of certain medical care facilities which are receiving Medicaid payments for the cost of care of those residents, must also be applied to residents for whom Medicaid payments are denied because they transferred a resource for less than fair market value. In these final regulations, we are reflecting this statutory change.

Prior to enactment of Public Law 100–360, the SSI payment amount was reduced to $360 a year for individuals and to $720 a year for couples in medical care facilities only when more than 50 percent of the cost of their care was paid under a State plan approved under title XIX of the Act (Medicaid). Under Medicaid rules, if an individual applying for or receiving nursing facility services or their equivalent disposes of resources for less than fair market value, with some exceptions, Medicaid will not cover the cost of such services for a period of time. See section 1917(c) of the Act. Since the general Medicaid rule required the denial or suspension of this assistance when such a disposal of resources occurred and the reduced SSI payment amounts were used only if Medicaid contributed to the cost of the institutional medical care, an SSI claimant in a private medical care facility who disposed of resources for less than fair market value and became ineligible for Medicaid prior to the enactment of Public Law 100–360 could have been eligible for an unreduced SSI payment amount. On the other hand, under section 1611(e)(1)(A) of the Act, an SSI claimant in a public medical care facility who became ineligible for Medicaid on this basis, would have become ineligible for SSI altogether. Section 1611(e)(1)(B) of the Act, as amended by section 303(c)(2) of Public Law 100–360, addressed the anomaly presented by the private institution situation and the elimination of SSI in the public institution situation by providing that the same reduced benefit rate must be applied when Medicaid payments are not being made because of the provisions of section 1917(c) of the Act which preclude Medicaid contributions for the costs of certain types of care when the individual transferred a resource for less than fair market value.

We are amending § 416.414 of the regulations to reflect the changes made by Public Law 100–360 to section 1611(e)(1)(B) of the Act. Specifically, § 416.414 is being amended to provide that the reduced benefit rate will apply to individuals who are in medical care facilities and for whom Medicaid is not paying more than 50 percent of the cost of care because of application of the provisions of section 1917(c) of the Act.

Regulatory Procedures

Justification for Final Rules

The Department, even when not required by statute, as a matter of policy, generally follows the Administrative Procedure Act (APA) notice of proposed rulemaking and public comment procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides

exceptions to its notice and comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that under 5 U.S.C. 553(b)(B), good cause exists for waiver of proposed rulemaking and public comment procedures because such rulemaking is unnecessary. These rules merely reflect, without exercise of discretion, the provisions of sections 1611(e)(1)(B) of the Act as amended by section 303(c)(2) of Public Law 100–360, which are effective with respect to any periods of Medicaid ineligibility based on transfers of assets occurring on or after July 1, 1988.

Executive Order No. 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because there are no program costs or administrative savings associated with these regulations and the threshold criteria for a major rule are not otherwise met. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

These final regulations impose no additional reporting and recordkeeping requirements necessitating clearance by the Office of Management and Budget.

Regulatory Flexibility Act

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

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

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental security income.

Dated: July 23, 1993.

Lawrence H. Thompson,

Principal Deputy Commissioner of Social Security.

Approved: September 22, 1993.

Donna E. Shalala,

Secretary of Health and Human Services.

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

PART 416—[AMENDED]

1. The authority citation for subpart D of part 416 continues to read as follows:

Authority: Secs. 1102, 1611(a), (b), (c), and (e), 1612, 1617, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1382 (a), (b), (c), and (e), 1382a, 1382f, and 1383.

2. Section 416.414 is amended by revising the introductory text of paragraph (a) and paragraph (a)(2) to read as follows:

§ 416.414 Amount of benefits; eligible individual or eligible couple in a medical care facility.

(a) *General rule.* There is a reduced SSI benefit rate for persons who are in medical care facilities where more than 50 percent of the cost of their care is paid under a State plan approved under title XIX of the Social Security Act (Medicaid). This reduced SSI benefit rate also applies to persons who are in medical care facilities where more than 50 percent of the cost of care would have been paid under an approved Medicaid State plan but for the application of section 1917(c) of the Act due to a transfer of assets for less than fair market value. Persons to whom this benefit rate applies are—

* * * * *

(2) Those who reside for part of a month in a public institution and for the rest of the month are in a public or private medical care facility where Medicaid pays or would have paid (but for the application of section 1917(c) of the Act) more than 50 percent of the cost of their care.

* * * * *

[FR Doc. 93–30155 Filed 12–9–93; 8:45 am]

BILLING CODE 4190–29–P

Food and Drug Administration

21 CFR Part 178

[Docket No. 91F–0480]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 1,1-difluoroethane as a blowing agent in the production of polystyrene articles intended to contact food. This action is in response to a petition filed by E.I. duPont de Nemours and Co., Inc.

DATES: Effective December 10, 1993; written objections and requests for a hearing by January 10, 1994.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Daniel N. Harrison, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9500.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of January 3, 1992 (57 FR 291), FDA announced that a food additive petition (FAP 2B4303) had been filed by E.I. duPont de Nemours and Co., Inc., Wilmington, DE 19898. The petition proposed that § 178.3010 *Adjuvant substances used in the manufacture of foamed plastics* (21 CFR 178.3010) be amended to provide for the safe use of 1,1-difluoroethane as a blowing agent in the production of polystyrene articles intended to contact food.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe, and that 21 CFR 178.3010 should be amended as set forth below.

This action will permit manufacturers of foamed polystyrene articles for contact with all food types to substitute 1,1-difluoroethane for the currently used hydrochlorofluorocarbon-22 (HCFC–22), which, because of its ozone depletion properties, is scheduled to be phased out of all noninsulating foam applications by January 1, 1994. During its review of the petition, FDA consulted with the U.S. Environmental Protection Agency (EPA) to determine whether FDA approval of this petition would be consistent with EPA's efforts to control hydrochlorofluorocarbons (HCFC's). On September 25, 1992, EPA advised FDA that approval of 1,1-difluoroethane as an alternative blowing agent in food service foam packaging is consistent with the Clean Air Act Amendments of 1990 under section 610, Non-Essential Products Containing Chlorofluorocarbons, which mandated that HCFC's are to be phased out of all noninsulating foam applications by January 1, 1994.

EPA further advised FDA that EPA is conducting risk assessments of HCFC alternatives under section 612 of the Clean Air Act Amendments of 1990, the Significant New Alternatives Policy (SNAP). The SNAP program has evaluated 1,1-difluoroethane and found it to be an environmentally appropriate

substitute for HCFC–22 in noninsulating foam blowing. EPA further advised that 1,1-difluoroethane creates no occupational exposure concerns, is not an ozone depleter nor a significant global warming substance, and is an effective substitute in this application.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before January 10, 1994, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 178.3010 is amended in the table by alphabetically adding a new entry under the headings "List of substances" and "Limitations" to read as follows:

§ 178.3010 Adjuvant substances used in the manufacture of foamed plastics.

* * * * *

List of substances	Limitations
* * * * *	
1,1-Difluoroethane (CAS Reg. No. 75–37–6).	For use as a blowing agent in polystyrene.
* * * * *	

Dated: December 3, 1993.

L. Robert Lake,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93–30190 Filed 12–9–93; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 625

[FHWA Docket No. 93–14]

RIN 2125–AD23

Design Standards for Highways; Interim Selected Metric Values for Geometric Design

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Interim final rule; request for comments.

SUMMARY: The FHWA is adopting, as its interim policy for the geometric design of projects on the National Highway System (NHS), a 1993 American Association of State Highway and Transportation Officials' (AASHTO) publication entitled "Interim Selected Metric Values for Geometric Design, An Addendum to A Policy on Geometric Design of Highways and Streets, 1990." The FHWA requests comments on this action.

The FHWA's Metric Conversion Policy, published in the **Federal Register** on June 11, 1992, provides that newly authorized Federal-aid construction contracts must be only in metric units by September 30, 1996. Because of the long lead times required for highway construction projects, planning for 1996 projects is already underway. It is the intent of this rulemaking to assure the States and other FHWA partners that the metric conversions used to formulate their plans will match the FHWA's conversions.

DATES: This regulation is effective January 10, 1994. Comments must be received on or before March 10, 1994. The incorporation by reference of a certain publication listed in the regulation is approved by the Director of the Federal Register as of January 10, 1994.

ADDRESSES: Submit written, signed comments to FHWA Docket No. 93–14, Federal Highway Administration, room 4232, HCC–10, 400 Seventh Street SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard. The current design standards and interim metric values are on file at the Office of the Federal Register in Washington, DC, and are available for inspection and copying from the FHWA Washington Headquarters and all FHWA Division and Regional Offices as prescribed in 49 CFR part 7, appendix D. Copies of the current AASHTO publications are also available for purchase from the American Association of State Highway and Transportation Officials, suite 225, 444 North Capitol Street NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Mr. Seppo I. Sillan, Geometric and Roadside Design Branch, Federal-Aid and Design Division, Office of Engineering (202) 366–0312, or Mr. Wilbert Baccus, Office of the Chief Counsel (202) 366–0780, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION: The standards, policies, and standard specifications that have been approved

by the FHWA for application on all Federal-aid highway projects are incorporated by reference in 23 CFR part 625.

The American Association of State Highway and Transportation Officials (AASHTO) is an organization which represents the 52 State highway and transportation agencies (including the District of Columbia and Puerto Rico). Its members consist of the duly constituted heads and other chief officials of those 52 agencies. The Secretary of the United States Department of Transportation (DOT) is an ex officio member, and DOT officials participate in various AASHTO activities as non-voting representatives. Among other functions, the AASHTO develops and issues standards, specifications, policies, guides, and related materials for use by the States for highway projects. Many of the standards, policies, and standard specifications approved by the FHWA and incorporated in 23 CFR part 625 were developed and issued by the AASHTO. Revisions made to such documents by the AASHTO are independently reviewed and adopted by the FHWA before they are applied to projects on the NHS.

The FHWA initiated a phased five year plan to convert its activities and business operations to the metric system of weights and measures as required by the Metric Conversion Act of 1975 (Pub. L. 94–168, 89 Stat. 1007) as amended by the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418, 102 Stat. 1107, 1451) (Metric Act). Section 3 of this Act set a deadline date of September 30, 1992, for each Federal government agency to begin using the International System of Units (SI) in procurements, grants, and other business-related activities, except to the extent that such use is impractical or would likely cause significant inefficiencies or loss of markets to United States firms.

In order to comply with the Metric Act, the FHWA developed a list of required deadlines for converting to the metric system which was published on June 11, 1992, at 57 FR 24843. This notice established that all newly authorized Federal-aid contracts must use only metric units by September 30, 1996. In order to comply with the above deadline, and because it often takes several years between the time when designs are initiated and when projects are authorized, States must begin in the near future to design projects using the metric system. Accordingly, the AASHTO developed and published "Interim Selected Metric Values for Geometric Design," listing the conversion values for nationwide uniformity. Through this rulemaking the FHWA is proposing to adopt the metric conversion geometric values established by the AASHTO in the publication entitled "Interim Selected Metric Values for Geometric Design." Included are metric values for use in design speed, running speed, lane width, shoulder width, vertical clearance, certain clear zones, curb heights, definition of high speed/low speed highways, criteria for establishing stopping and passing sight distance, the way horizontal curvature is calculated, and in the definition of long bridges.

Review Procedure

Based on an analysis of public comments received, the FHWA will reexamine its determination that the AASHTO publication adopted by this rule is acceptable as the basis for the design of highways on the NHS.

Rulemaking Analysis and Notices

The Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.*, allows agencies engaged in rulemaking to dispense with prior notice and opportunity for comment when the agency for good cause finds that such procedures are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(3)(B). For the reasons set forth below, the FHWA has determined that prior notice to the public on this action is unnecessary and contrary to the public interest.

The FHWA has determined that prior notice to the public is unnecessary because the AASHTO interim metric values document being adopted in this rulemaking mirrors, to the extent possible, the English measurements contained in the AASHTO publication, "A Policy on Geometric Design of Highways and Streets, 1990" (PGDHS), adopted by the FHWA in a final rule published on April 29, 1993 (58 FR 25939). If the exact equivalents of the design standards had been used, the metric measurements would have had to be carried out to as many as six decimal places. Otherwise, the design standards themselves would have had to be significantly raised or lowered in order to accommodate "round" metric measurements. Instead, in drafting its metric document, the AASHTO "rounded off" the English measurements contained in the PGDHS in order to allow easier conversions to metric measurements.

We expect these particular metric values to be used on an interim basis only. It is anticipated that the AASHTO's revised PGDHS, with geometric design values converted to the metric system, will be published in 1994 or 1995. If adopted by the FHWA, this future AASHTO publication would constitute the FHWA's policy on the geometric design for federally-assisted construction projects.

The FHWA has also determined that publication of a notice of proposed rulemaking would be contrary to the public interest. As noted earlier, the FHWA has initiated a phased five year plan to convert its activities and business operations to the metric system of weights and measures as required by the Metric Act. Section 3 of this Act set a deadline date of September 30, 1992, for each Federal government agency to begin using the International System of Units (SI) in procurements, grants, and other business-related activities, except to the extent that such use is impractical or would likely cause significant inefficiencies or loss of markets to United States firms. The FHWA's Metric Conversion Policy, intended to meet this requirement, was published in the Federal Register on June 11, 1992 (57 FR 24843). The policy provides that newly authorized Federal Lands Highway and Federal-aid construction contracts must be in metric units only by September 30, 1996. Because of the long lead times required for highway construction projects, planning for 1996 projects is already underway. To this end, the States and other FHWA partners need to know now that the metric conversions used to formulate their plans will match the FHWA's conversions.

Moreover, prior notice and opportunity for comment are not required under the Department of Transportation's Regulatory Policies and Procedures because it is not anticipated that such action will result in the receipt of useful information. The FHWA has determined that the AASHTO interim metric values come as close as possible to retaining the English measurements already adopted by the FHWA pursuant to notice and comment rulemaking, and express adoption of these metric values now provides necessary certainty and continuity for States and other FHWA partners, including highway construction contractors.

Nevertheless, public comment is solicited on this action. Comments received will be carefully considered in evaluating whether any change to this action is needed.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a "significant regulatory

action" within the meaning of Executive Order 12866 or "significant" within the meaning of Department of Transportation Regulatory Policies and Procedures. As stated previously, the FHWA has determined that the interim metric values selected by the AASHTO document are functionally equivalent to English system measurements previously adopted by notice and comment rulemaking. It is anticipated that the economic impact of the rulemaking will be minimal; therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities. Based on the evaluation, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities. As stated above, the FHWA made this determination based on the fact that the interim metric values selected are functionally equivalent to the English system values they replace.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 625

Design standards, Grant programs—transportation, Highways and roads, Incorporation by reference, Reporting and recordkeeping requirements.

In consideration of the foregoing, the FHWA amends chapter I of title 23, Code of Federal Regulations, part 625 as set forth below.

Issued on: November 22, 1993.

Rodney E. Slater,

Federal Highway Administrator.

The FHWA amends 23 CFR part 625 as follows:

PART 625—DESIGN STANDARDS FOR HIGHWAYS

1. The authority citation for part 625 continues to read as follows:

Authority: 23 U.S.C. 109, 315, and 402; 49 CFR 1.48(b).

§ 625.4 [Amended]

2. In § 625.4, paragraph (a) is amended by redesignating paragraphs (a)(3) through (a)(11) as paragraphs (a)(4) through (a)(12), respectively, and by adding a new paragraph (a)(3) to read as follows:

§ 625.4 Standards, policies, and standard specifications.

* * * * *

(a) * * *

(3) Interim Selected Metric Values for Geometric Design, AASHTO, 1993. [3]

* * * * *

[FR Doc. 93–29261 Filed 12–9–93; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8499]

RIN 1545–AG63

Differential Earnings Rate and Recomputed Differential Earnings Rate of a Mutual Life Insurance Company

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the differential earnings rate and the recomputed differential earnings rate, which are used in determining the deduction for policyholder dividends of a mutual life insurance company. The final regulations provide that these rates cannot be negative. The applicable law was enacted as part of the Tax Reform Act of 1984. The final regulations provide guidance to mutual life insurance companies.

DATES: These regulations are effective on December 10, 1993.

For dates of applicability, see § 1.809–9(c) of these regulations.

FOR FURTHER INFORMATION CONTACT: Katherine Ann Hossofsky, (202) 622–3477 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) to provide guidance relating to the differential earnings rate and the recomputed differential earnings rate under section 809 of the Internal Revenue Code (Code). The final regulations reflect the addition of section 809 to the Code by section 211(a) of the Tax Reform Act of 1984 (Pub. L. 98–369, 98 Stat. 733).

Proposed regulations under section 809 (FI–159–84) were published in the **Federal Register** on August 19, 1992 (57 FR 37495). Written comments were received from the public, and a public hearing was held on December 7, 1992.

After consideration of all of the comments, the regulations proposed by FI–159–84 are adopted without substantive change by this Treasury decision.

Statutory Formula for Reducing Policyholder Dividends

Section 809(a) of the Code provides that, in the case of any mutual life insurance company, the amount of the deduction allowable under section 808 for policyholder dividends is reduced (but not below zero) by the differential earnings amount. The differential earnings amount is the portion of policyholder dividends deemed to be a distribution of a mutual company's profits to policyholders in their capacity as owners of the company. See H.R. Rep. No. 432 (Part 2), 98th Cong., 2d Sess., 1422 (1984). In effect, otherwise deductible policyholder dividends equal in amount to the differential earnings amount are not deductible. Any excess of the differential earnings

amount over the policyholder dividends deduction allowable under section 808 is taken into account as an adjustment to reserves under subsections (a) and (b) of section 807.

A mutual life insurance company's differential earnings amount for any taxable year is an amount equal to the product of the company's average equity base for the year multiplied by the differential earnings rate for the year.

The differential earnings rate is the excess of: (a) The imputed earnings rate for the taxable year over (b) the average mutual earnings rate for the second calendar year preceding the calendar year in which the taxable year begins. The imputed earnings rate for any taxable year is an amount which bears the same ratio to 16.5 percent as the current stock earnings rate for the taxable year bears to the base period stock earnings rate.

To correct for the difference between the average mutual earnings rate for the calendar year in which the taxable year begins and the average mutual earnings rate for the second preceding calendar year, section 809(f) provides a mechanism under which the differential earnings amount for the taxable year is recomputed in the following taxable year. This amount is known as the recomputed differential earnings amount. The recomputed differential earnings amount for any taxable year is calculated in the same manner as the differential earnings amount for the taxable year, except that the average mutual earnings rate for the calendar year in which the taxable year begins is substituted for the average mutual earnings rate for the second calendar year preceding the calendar year in which the taxable year begins. The revised rate is known as the recomputed differential earnings rate. If the recomputed differential earnings amount for any taxable year exceeds the differential earnings amount for the taxable year, the excess is included in life insurance gross income for the succeeding taxable year. Conversely, if the differential earnings amount exceeds the recomputed differential earnings amount, the excess is allowed as a life insurance deduction for the succeeding taxable year.

Explanation of Provision

The IRS publishes both the tentative and final differential earnings rate and recomputed differential earnings rate. These rates are used by mutual life insurance companies in calculating their federal income tax liability. Announcement 88–47, 1988–12 I.R.B. 56, stated that the tentative recomputed differential earnings rate for 1986 was –1.700. However, both the differential earnings rate and the recomputed differential earnings rate are determined based on "the excess of" the imputed earnings rate over the average mutual earnings rate. Whenever the average mutual earnings rate is greater than the imputed earnings rate, there is no "excess of" the imputed rate over the average mutual earnings rate. By referring to the excess of the imputed earnings rate over the average mutual earnings rate, the statutory formula does not permit the differential earnings rate to be negative. Accordingly, the Internal Revenue Service subsequently issued Notice 88–106, 1988–2 C.B. 444, which stated that regulations under section 809 would provide that the differential earnings rate may not be a negative rate. See also Rev. Rul. 88–80, 1988–2 C.B. 129; Rev. Rul. 89–106, 1989–2 C.B. 108; Rev. Rul. 91–52, 1991–2 C.B. 331; and Rev. Rul. 92–78, 1992–2 C.B. 143.

Congress added section 809 to limit the deductibility of dividends paid by mutual life insurance companies to their policyholders in recognition of the fact that these dividends are, to some extent, distributions of the companies' earnings to the policyholders as owners. Section 809(a) states that the deduction allowed under section 808 "shall be reduced (but not below zero) by the differential earnings amount." The use of the term reduce reflects Congress's intention that the purpose of section 809 is to limit an otherwise deductible amount, not to create a new deduction. A negative differential earnings rate or a negative recomputed differential earnings rate would allow mutual life insurance companies to deduct an amount in excess of dividends paid to policyholders. This would be contrary to the intent of section 809.

The proposed regulations provided that neither the differential earnings rate under section 809(c) nor the recomputed differential earnings rate that is used in computing the recomputed differential earnings amount under section 809(f)(3) may be less than zero.

Two comments were received concerning the proposed regulations.

The first commentator states that the adoption of the proposed regulations in final form is necessary to preserve the integrity of section 809. The comment contends that section 809 is simply the mechanism to determine the amount of the reduction to a mutual life insurance company's policyholder dividend deductions to reflect distributions to policyholders in their role as owners of the company. The differential earnings rate is based on Congress' belief that "the average pre-tax return on equity of mutual companies falls below that for a comparable group of stock companies" and that "this difference is attributable to distribution by mutual companies of earnings to their owners." See H.R. Rep. 432 (Part 2), 98th Cong., 2nd Sess. 1422 (1984). Thus, the commentator concludes that the only difference in stock and mutual earnings rates that Congress intended to utilize is the positive difference by which the stock companies' (or imputed) earnings rate exceeds the mutual companies' earnings rate.

The first commentator further states that section 809(f)(2) does not support recognition of a negative recomputed differential earnings rate to permit a deduction for policyholder dividends in excess of the dividends actually paid or accrued during the taxable year to which the recomputed rate relates. Rather, the deduction provided by section 809(f)(2) merely compensates the taxpayer for what more current data indicate to have been an excessive disallowance in an earlier year.

Finally, the first commentator states that section 809 should not be interpreted merely to limit over an extended period of time mutual life insurance companies' deductions for policyholder dividends. The comment points out that sections 808(c) and 809 expressly require computation of a deduction limit separately for each taxable year.

The second commentator states that there is no need for any regulations to be issued regarding negative differential earnings rates and that the proposed regulations represent an erroneous interpretation of section 809. Specifically, the comment points out that the Internal Revenue Service on five occasions has expressed its view that neither the differential rate nor the recomputed differential earnings rate may be negative. See Notice 88–106, Rev. Rul. 88–80, Rev. Rul. 89–106, Rev. Rul. 91–52, Rev. Rul. 92–78. In addition, the comment contends that adoption of the proposed regulations would result in inappropriate and excessive taxation of mutual life insurance companies.

In American Mutual Life Insurance Company v. *United States*, Civil No. 4–92–70347 (S.D. Iowa, November 2, 1993), the court held that the taxpayer could deduct an amount equal to the excess of the differential earnings amount for the 1986 taxable year over the negative recomputed differential earnings amount for 1986. In its opinion, the court stated that the parties agreed that the statutory formula produced a 1986 recomputed differential earnings rate of –1.695. The court also noted that in its briefs in the

case, and at oral argument, the government had conceded that the statutory formula produced a negative 1986 recomputed differential earnings rate. Thus, the issue of whether the statutory formula can produce a negative rate was not before the court.

The final regulations clarify that the statute provides that the differential earnings rate and the recomputed differential earnings rate cannot be negative.

Effective Date

Notice 88–106 set forth guidance that would be contained in forthcoming regulations. The notice stated that regulations would be issued that would provide that neither the differential earnings rate nor the recomputed differential earnings rate may be negative. Rev. Rul. 88–80 stated that the final recomputed differential earnings rate for 1986 was zero even though the calculated rate was negative, and indicated that when the regulations were issued they may be effective prior to the date of issuance. As the final regulations involve the application of the guidance provided in Rev. Rul. 88–80, concerning the 1987 taxable year, the final regulations provide an effective date of taxable years beginning after December 31, 1986.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. It has also 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, the notice of proposed rulemaking for these regulations was 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 final regulations is Katherine Ann Hossofsky of the Office of the Assistant Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.809–9 is added to read as follows:

§ 1.809–9 Computation of the differential earnings rate and the recomputed differential earnings rate.

(a) *In general.* Neither the differential earnings rate under section 809(c) nor the recomputed differential earnings rate that is used in computing the recomputed differential earnings amount under section 809(f)(3) may be less than zero.

(b) *Definitions*—(1) *Recomputed differential earnings amount.* The recomputed differential earnings amount, with respect to any taxable year, is the amount equal to the product of—

(i) The life insurance company's average equity base for the taxable year; multiplied by

(ii) The recomputed differential earnings rate for that taxable year.

(2) *Recomputed differential earnings rate.* The recomputed differential earnings rate for any taxable year equals the excess of—

(i) The imputed earnings rate for the taxable year; over

(ii) The average mutual earning rate for the calendar year in which the taxable year begins.

(c) *Effective date.* The regulations are effective for all taxable years beginning after December 31, 1986.

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

Approved: November 8, 1993.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 93–30279 Filed 12–7–93; 4:03 pm]

BILLING CODE 4830–01–U

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 207, 208, 210, 216, 218, 219, 220, 228, 229, and 243

RIN 1010–AB89

Administrative Amendments of Regulations Governing Royalty Oil Surety Requirement, Information Collection Requirements, and Addresses

AGENCY: Minerals Management Service, Interior.

ACTION: Final rule.

SUMMARY: The Minerals Management Service (MMS) is making administrative amendments to its Royalty Management Program (RMP) regulations governing:

- Royalty oil surety requirement;
- Information collection requirements; and
- References to addresses for mailing or delivering requests, forms, and/or payments to MMS.

These amendments will clarify and improve the accuracy of MMS' regulations.

EFFECTIVE DATE: December 10, 1993.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Procedures Staff, Minerals Management Service, Royalty Management Program, Mail Stop 3901, P.O. Box 25165, Denver, Colorado 80225–0165, telephone (303) 231–3432.

SUPPLEMENTARY INFORMATION: The principal author of this final rulemaking is Marvin D. Shaver of the Rules and Procedures Staff, MMS, RMP.

I. Amendment of Royalty Oil Surety Requirement

The MMS is making amendments to its regulations at 30 CFR Part 208 "Sale of Federal Royalty Oil" to establish a wider range of surety instruments that will be accepted by MMS from eligible purchasers of Federal royalty oil. Paragraph § 208.11(d) requires that sureties be either surety bonds or irrevocable letters of credit from financial institutions acceptable to MMS. Under the amended rule, MMS will accept "MMS-specified surety instruments," which include:

- An MMS-specified bond,
- An MMS-specified irrevocable letter of credit, or
- A financial institution book-entry certificate of deposit.

The amendments to part 208 provide requirements with respect to the MMS-specified surety instruments. The amendments also replace the word "surety" from where it appears

§§ 208.7(h), 208.11, 208.12 (c) and (d), and 208.13(b) with the words "surety instrument" to provide consistency with the term used in other MMS regulations.

The amendments are consistent with MMS' acceptance under 30 CFR part 243 of a wider range of surety instruments to secure unpaid amounts owed the Government pending administrative appeals of decisions or orders issued by MMS. The MMS-specified surety instruments for appeal purposes were codified in 30 CFR 243.2(b) by a Notice of Final Rulemaking published in the **Federal Register** on September 30, 1992 (57 FR 44991). The title of that Notice was "Revision of Regulation Governing Suspension of Decisions and Orders Pending Appeal."

The MMS is also amending §§ 208.3, 208.12, 208.13, 210.10, and 243.4 to remove references to Form MMS–4071 "Semiannual Report of Royalty-In-Kind Oil Entitlements" because the information provided on that report is now obtained by MMS from a different source. Section 208.2 is amended to change a cross-reference to another regulation.

II. Amendment of Information Collection Requirements

This rulemaking amends MMS regulations at 30 CFR parts 210 and 216 governing information collection requirements:

- To revise the estimated time to complete seven existing reporting forms;
- To correct the title of one existing reporting form;
- To remove references to four existing reporting forms that are no longer required; and
- To add one new reporting form.

These amendments are discussed below.

(a) *Revise estimated time to complete reporting forms.*

The MMS published a Notice of Final Rulemaking in the **Federal Register** on September 14, 1992 (57 FR 41862), which codified statements on estimated public reporting burden for the collection of information. Those statements included estimates of the time that it would take payors or operators on Federal or Indian leases to prepare and complete required reporting forms. As a result of more recent studies, MMS determined that the estimated time to complete seven of the forms should be revised. This final rule amends the estimated times codified at § 210.10(c) to complete the seven forms, which are MMS–2014, MMS–3160, MMS–4054, MMS–4055, MMS–4058, MMS–4059, and MMS–4110.

(b) *Correct title of reporting form.*

On November 5, 1992, MMS published a Notice of Final Rulemaking in the **Federal Register** (57 FR 52719), which amended its regulations to remove references to Form MMS–4014. (Report of Sales and Royalty Remittance—Solid Minerals). This amendment resulted from MMS' revision of its Form MMS—2014 (Report of Sales and Royalty Remittance-Oil and Gas) to provide for the reporting of sales and royalty information on all types of mineral leases including solid mineral leases. As stated in the Notice, the revised Form MMS–2014 was retitled "Report of Sales and Royalty Remittance." The reference to "Oil and Gas" was removed from the title.

The November 5, 1992, Notice revised the title of the Form MMS–2014 referenced in various sections of MMS' regulations. However, MMS inadvertently failed to correct the title of Form MMS–2014 in the table contained in § 210.10 "Information collection" and to remove a reference to Form MMS–4014 in § 243.4(6) of its regulations. This rulemaking amends the table in § 210.10 to reflect the new title of Form MMS–2014 and § 243.4(6) to remove a reference to Form MMS–4014.

(c) *Removal of four reporting forms.*

The MMS is amending §§ 210.10 (a) and (c), and removing §§ 216.52, 216.57, and 216.61, to remove references to four reporting forms for information collection that are no longer required for the following reasons:

- Forms "MMS–4052—Well Information Form" and "MMS–4061—API Well Number Change Report" because well reference data is now submitted to MMS on magnetic tape.
- Form "MMS–4057—Fractionation Plant Operations Report" and "MMS–4071—Semiannual Report of Royalty-In Kind Oil Entitlements" because the information provided on these reports is now obtained by MMS from different sources.

(d) *Addition of one reporting form.*

The MMS is also amending § 210.10 to add a new reporting form for information collection. This form, titled "Stripper Royalty Rate Reduction Notification" (Form MMS–4377), must be submitted by operators of stripper oil properties who have been granted a reduced royalty rate by the Bureau of Land Management under 43 CFR 3103.4–1 for each 12-month qualifying period. This form has been approved by the Office of Management and Budget and assigned Clearance Number 1010–0090.

III. Amendment of MMS Addresses

The September 14, 1992, rulemaking referenced in paragraph (a) above (57 FR 41862) also included amendments to references in MMS' regulations for addresses to be used for mailing or delivering requests, forms, and/or payments to MMS. Subsequent to the September Notice, MMS reorganized. This rulemaking removes references to MMS organizations and Mail Stops that no longer exist under the new organizational structure. The addresses changed by this rule amendment are contained in §§ 207.1, 210.10, 210.53, 210.204, 210.355, 216.15, 216.16, 216.40, 216.50, 218.51, 219.102, 220.003, 228.10, and 229.123.

Procedural Matters

Administrative Procedure Act

The changes included in this rulemaking are administrative only and are not substantive changes. Accordingly, pursuant to 5 U.S.C. 553(b), it has been determined that it is unnecessary to issue proposed regulations before the issuance of this final rule. For the same reason, it has been determined that in accordance with 5 U.S.C. 553(d), there is good cause to make this regulation effective upon publication in the **Federal Register**.

Executive Order 12866

This document has been reviewed under Executive Order 12866.

The Regulatory Flexibility Act

Because the changes are administrative only with no additional requirements or burden placed on small business entities, the Department of the Interior (Department) has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Executive Order 12778

The Department has certified to the Office of Management and Budget that these final regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of E.O. 12778.

Paperwork Reduction Act of 1980

The information collection requirements contained in this rule have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned Clearance Numbers 1010–0022, 0033, 0040, 0042, 0061, 0063, 0064, 0074, 0075, 0076, 0087, 0088, and 0090.

National Environmental Policy Act of 1969

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and

a detailed statement pursuant to paragraph (2)(C) of section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

List of Subjects

30 CFR Parts 207 and 210

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 208

Continental shelf, Government contracts, Mineral royalties, Petroleum, Public lands—mineral resources, Reporting and recordkeeping requirements, Small businesses, Surety bonds.

30 CFR Parts 216, 228 and 229

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Penalties, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 218

Coal, Continental shelf, Electronic funds transfers, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Penalties, Petroleum, Public lands-mineral resources, Reporting and recording requirements.

30 CFR Part 219

Coal, Continental shelf, Electronic funds transfers, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands-mineral resources, Reporting and recording requirements.

30 CFR Part 220

Coal, Continental shelf, Geothermal energy, Government contracts, Mineral royalties, Natural gas, Petroleum, Public lands-mineral resources, Reporting and recording requirements.

30 CFR Part 243

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands-mineral resources.

Dated: October 27, 1993.

Bob Armstrong,

Assistant Secretary—Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR parts 207, 208, 210, 216, 218, 219, 220, 228, 229, and 243 are amended as follows:

PART 207—SALES AGREEMENTS OR CONTRACTS GOVERNING THE DISPOSAL OF LEASE PRODUCTS

1. The authority citation for part 207 is revised to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et seq.*; 30 U.S.C. 1701 *et seq.*; 31 U.S.C. 3716 *et seq.*; 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; and 43 U.S.C. 1801 *et seq.*

§ 207.1 [Amended]

2. Section 207.1 "Required recordkeeping" is amended by removing the Mail Stop (MS) "MS 2300" from where it appears in the address in paragraph (b).

PART 208—SALE OF FEDERAL ROYALTY OIL

1. The authority citation for part 208 is revised to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1701 *et seq.*; 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.; 43 U.S.C. 1331 et seq.* and 43 U.S.C. 1801 *et seq.*

2. Section 208.2 "Definitions" is amended by removing the reference to "13 CFR 121.3–9(a)(1)" in paragraph (2) of the definition of "Eligible refiner" and adding "13 CFR part 121" in its place.

3. Section 208.3 "Information Collection" is revised to read as follows:

§ 208.3 Information collection.

The information collection requirements contained in this part have been approved by OMB under 44 U.S.C. 3501 *et seq.* The form, filing date, and approved OMB clearance number are identified in 30 CFR 210.10.

4. Paragraph (a) of § 208.6 is revised to read as follows:

§ 208.6 General application procedures.

(a) To apply for the purchase of royalty oil, an applicant must file a Form MMS–4070 with MMS in accordance with instructions provided in the "Notice of Availability of Royalty Oil" and in accordance with any instructions issued by MMS for completion of Form MMS–4070. The applicant will be required to submit a letter of intent from a qualified financial institution stating that it would be granted surety coverage for the royalty oil for which it is applying, or other such proof of surety coverage, as deemed acceptable by MMS. The letter of intent must be submitted with a completed Form MMS–4070.

* * * * *

5. Paragraph (h) of § 208.7 "Determination of eligibility" is amended to add the word "instrument" after the word "surety" in the last sentence.

6. Section 208.11 is revised to read as follows:

§ 208.11 Surety requirements.

(a) The eligible purchaser, prior to execution of the contract, shall furnish an "MMS-specified surety instrument," in an amount equal to the estimated value of royalty oil that could be taken by the purchaser in a 99-day period, plus related administrative charges. The MMS may require the purchaser to increase the amount of the surety instrument when necessary to protect the Government's interest or may allow the purchaser to decrease the amount of the surety instrument where necessary to further the purposes of the Royalty-in-Kind Program.

(b) If a letter of credit is furnished as the surety instrument, it must be effective for a 9-month period beginning the first day the royalty oil contract is effective, with a clause providing for automatic renewal monthly for a new 9-month period. The purchaser or its surety company may elect not to renew the letter of credit at any monthly anniversary date, but must notify MMS of its intent not to renew at least 30 days prior to the anniversary date. The MMS may grant the purchaser 45 days to obtain a new surety instrument. If no replacement surety instrument is provided, MMS will terminate the contract effective at least 6 months prior to the expiration date of the letter of credit. Notwithstanding the above provisions, the letter of credit also may contain a clause providing for automatic termination 6 months after the royalty oil contract terminates. If a certificate of deposit is furnished as the surety instrument, it must be effective for the life of the contract plus 6 months after the royalty oil contract terminates.

(c) For the purposes of this section, an "MMS-specified surety instrument" means either: an MMS-specified surety bond, an MMS-specified irrevocable letter of credit, or a financial institution book-entry certificate of deposit.

(d) The "MMS-specified surety instrument" shall be in a form specified by MMS instructions or approved by MMS. A bond must be issued by a qualified surety company that has been approved by the Department of the Treasury. An irrevocable letter of credit or a certificate of deposit must be from a financial institution acceptable to MMS. The MMS will use a bank rating service to determine whether a financial institution has an acceptable rating to

provide a surety instrument deemed adequate to indemnify the Government from loss or damage.

(e) All surety instruments must be in a form acceptable to MMS and must include such other specific requirements as MMS may require adequately to protect the Government's interests.

7. Paragraph (a) of § 208.12 is amended by removing the reference to "§ 208.13(b)" in the last sentence and adding "208.13" in its place.

8. Paragraphs (c) and (d) of § 208.12 are revised to read as follows:

§ 208.12 Payment of requirements.

* * * * *

(c) If payment for royalty oil is not received by the due date specified in the contract, a notice of nonreceipt will be sent to the purchaser by certified mail. If payment is not received by MMS within 15 days from the date of such notice, MMS may cancel the contract and collect under the MMS-specified surety instrument. See § 208.11.

(d) If the purchaser disagrees with the amount of payment due, it must pay the amount due as computed by MMS, unless the purchaser appeals the amount and posts an MMS-specified surety instrument pursuant to the provisions of 30 CFR part 243. The MMS may, at its discretion, waive the appeal surety requirements if it determines that the contract surety instrument is sufficient protection for an amount under appeal.

9. Section 208.13 is revised to read as follows:

§ 208.13 Reporting requirements.

If MMS underbills a purchaser under a royalty oil contract because of a payor's underreporting or failure to report on Form MMS–2014 pursuant to 30 CFR 210.52, the payor will be liable for payment of such underbilled amounts plus interest if they are unrecoverable from the purchaser or the surety instrument related to the contract.

PART 210—FORMS AND REPORTS

1. The authority citation for part 210 is revised to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et seq.*; 30 U.S.C. 1701 *et seq.*; 31 U.S.C. 3716 *et seq.*; 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; and 43 U.S.C. 1801 *et seq.*

§§ 210.10, 210.53, 210.204, and 210.355 [Amended]

2. In the list below, for each section and paragraph indicated in the left column, remove the words and/or Mail Stop (MS) indicated in the right column from wherever they appear in that section and paragraph.

Section	Remove words/MS
210.10(b)(3) ..	"Production Accounting Division,"
210.10(b)(4) ..	"Royalty Valuation and Standards Division,"
210.10(b)(4) ..	"MS 3500,"
210.10(b)(5) ..	"Royalty Compliance Division,"
210.10(b)(5) ..	"MS 3600,"
210.10(b)(6) ..	"Revenue and Document Processing,"
210.10(d)	"MS 2300,"
210.53(a)	"Fiscal Accounting Division,"
210.53(a)	"MS 3200,"
210.53(a)	"Production Accounting Division,"
210.53(b)	"Lessee Contact Branch with respect to royalty reporting, or the MMS Reporter Contract Branch with respect to production reporting,"
210.204(a)	"Fiscal Accounting Division,"
210.204(a)	"MS 3200,"
210.204(a)	"Production Accounting Division,"
210.204(b)	"Lessee Contact Branch with respect to royalty reporting, or the MMS Reporter Contact Branch with respect to production reporting,"
210.355(a)	"Fiscal Accounting Division,"
210.355(b)	"Lessee Contact Branch."

3. In the list below, for each paragraph of § 210.10 "Information collection" indicated in the left column, remove the time in minutes or hours indicated in the middle column from wherever it appears in that paragraph, and add the time in minutes or hours indicated in the right column.

§ 210.10	Remove	Add
(c)(1)	9 minutes ...	7 minutes.
(c)(2)	30 minutes .	15 minutes.
(c)(8)	1 hour	30 minutes.
(c)(9)	30 minutes .	15 minutes.
(c)(12)	1 hour	15 minutes.
(c)(13)	1½ hours ...	1.25 hours.
(c)(19)	1 hour	2 hours.
(c)(19)	3 hours	5 hours.

4. Section 210.10 is amended by revising the title of Form MMS–2014 contained in the table in paragraph (a). Remove the title "MMS–2014—Report of Sales and Royalty Remittance—Oil and Gas" at the beginning of the table and replace with the title "MMS–2014—Report of Sales and Royalty Remittance."

5. The table in paragraph (a) of § 210.10 is amended by removing all references to form numbers MMS–4052, MMS–4057, MMS–4061, and MMS–4071 from where they appear in the table and add a new form number, name, filing date and OMB number in numerical sequence at the end of the table to read as follows:

§ 210.10 Information collection.

(a) * * *

Form No., name and filing date	OMB No.
* * * * *	
MMS–4377—Stripper Royalty Rate Reduction Notification—Due for each 12-month qualifying period that a reduced royalty rate is granted by the Bureau of Land Management	1010–0090
* * * * *	

6. Paragraph (b)(1) of § 210.10 is revised to read as follows:

§ 210.10 Information collection.

(a) * * *

(b)(1) Requests for Forms MMS–2014 or MMS–4070 should be addressed to the Minerals Management Service, Royalty Management Program, P.O. Box 5760, Denver, Colorado 80217–5760. The completed Form MMS–2014 should be mailed to the Minerals Management Service, Royalty Management Program, P.O. Box 5810, Denver, Colorado 80217–5810. The address to which a completed Form MMS–4070 should be mailed will be identified in a **Federal Register** Notice of Availability of Royalty Oil. (See 30 CFR 208.5.)

* * * * *

7. Section 210.10 is amended by removing paragraphs (c)(6), (c)(11), (c)(15), and (c)(17) and redesignating paragraphs (c)(7) through (10) as paragraphs (c)(6) through (9) redesignating paragraphs (c)(12) through (14) as (c)(10) through (12), redesignating paragraph (c)(16) as (c)(13), and redesignating paragraphs (c)(18) through (23) as (c)(14) through (19) respectively. Also, a new paragraph (c)(20) is added to read as follows:

§ 210.10 Information collection.

* * * * *

(c)(20) *MMS–4377*—This form must be submitted by operators of stripper oil properties to notify MMS of reduced royalty rates granted by the Bureau of Land Management under 43 CFR 3103.4–1 for each 12-month qualifying period. Reporting burden is estimated to require an average of 30 minutes per form to supply the operator name, lease and agreement numbers, calculated and current royalty rate, and the period covered. Comments submitted relative to this information collection should reference Paperwork Reduction Project 1010–0090.

* * * * *

PART 216—PRODUCTION ACCOUNTING

1. The authority citation for part 216 is revised to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*, 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et seq.*; 30 U.S.C. 1701 *et seq.*; 31 U.S.C. 3716 *et seq.*; 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; and 43 U.S.C. 1801 *et seq.*

§§ 216.15, 216.16, 216.40, 216.50, 216.52, 216.53, 216.54, 216.55, 216.56, 216.57, 216.58, and 216.61 [Amended]

2. In the list below, for each section and paragraph indicated in the left column, remove the words indicated in the right column from wherever they appear in that section and paragraph:

Section	Remove words
216.15(a) ..	"Production Accounting Division,"
216.15(b) ..	"Reporter Contact Branch,"
216.16(a) ..	"Production Accounting Division,"
216.16(b) ..	"Room A–212, Revenue and Document Processing,"
216.40(c) ..	"Fractionation Plant Operations Report (Form MMS–4057),"
216.50(a) ..	"To the Chief, Production Accounting Division, Royalty Management Program, MMS."

3. Sections 216.52, 216.57, and 216.61, under Subpart B—Oil and Gas, General, are removed, and §§ 216.53, 216.54, 216.55, 216.56, and 216.58 are redesignated as §§ 216.52 through 216.56, respectively.

4. A new § 216.57 is added under Subpart B—Oil and Gas, General, to read as follows:

§ 216.57 Stripper royalty rate reduction notification.

In accordance with its regulations at 43 CFR 3103.4–1, titled "Waiver, suspension, or reduction of rental, royalty, or minimum royalty," the Bureau of Land Management (BLM) may grant reduced royalty rates to operators of low producing oil leases to encourage continued production. Operators who have been granted a reduced royalty rate(s) by BLM must submit a Stripper Royalty Rate Reduction Notification (Form MMS–4377) to MMS for each 12-month qualifying period that a reduced royalty rate(s) is granted.

5. Paragraphs (c)(1) and (c)(2) of § 216.50 are amended to change the reference in those paragraphs from "§ 216.54" to "§ 216.53."

PART 218—COLLECTION OF ROYALTIES, RENTALS, BONUSES AND OTHER MONIES DUE THE FEDERAL GOVERNMENT

1. The authority citation for part 218 is revised to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et seq.*; 30 U.S.C. 1701 *et seq.*; 31 U.S.C. 3716; 31 U.S.C. 3720A; 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; and 43 U.S.C. 1801 *et seq.*

§ 218.51 [Amended]

2. Section 218.51 "Method of payment" is amended by removing the words "Room A–212, Revenue and Document Processing," from where they appear in the address in paragraph (f)(2).

PART 219—DISTRIBUTION AND DISBURSEMENT OF ROYALTIES, RENTALS, AND BONUSES

1. The authority citation for part 219 continues to read as follows:

Authority: Section 104, Pub. L. 97–451, 96 Stat. 2451 (30 U.S.C. 1714).

§ 219.102 [Amended]

2. Section 219.102 "Method of payment" is amended by removing the words "Fiscal Accounting Division," and "MS 3200," from where they appear in that section.

PART 220—ACCOUNTING PROCEDURES FOR DETERMINING NET PROFIT SHARE PAYMENT FOR OUTER CONTINENTAL SHELF OIL AND GAS LEASES

1. The authority citation for part 220 continues to read as follows:

Authority: Sec. 205, Pub. L. 95–372, 92 Stat. 643 (43 U.S.C. 1337).

§ 220.003 [Amended]

2. Section 220.003 "Information collection" is amended by removing the Mail Stop (MS) "MS 2300," from where it appears in the address in paragraph (b).

PART 228—COOPERATIVE ACTIVITIES WITH STATES AND INDIAN TRIBES

1. The authority citation for part 228 continues to read as follows:

Authority: Section 202, Pub. L. 97–451, 96 Stat. 2457 (30 U.S.C. 1732).

§ 228.10 [Amended]

2. Section 228.10 "Information collection," is amended by removing the Mail Stop (MS) "MS 2300," from where it appears in the address in paragraph (b).

PART 229—DELEGATION TO STATES

1. The authority citation for part 229 is revised to read as follows:

Authority: Section 205, Pub. L. 97–451, 96 Stat. 2459 (30 U.S.C. 1735).

§ 229.123 [Amended]

2. Section 229.123 "Standards for audit activities" is amended by removing the words "the Royalty Compliance Division (RCD) of the" from the second sentence of paragraph (b)(2).

3. Paragraphs (b)(2) and (b)(3)(vii) of § 229.123 are amended by removing the abbreviation "RCD" from where it appears in those paragraphs. Add the abbreviation "MMS" in place of the abbreviation "RCD" that was removed.

PART 243—APPEALS—ROYALTY MANAGEMENT PROGRAM

1. The authority citation for part 243 continues to read as follows:

Authority: R.S. 463, 25 U.S.C. 2; R.S. 465, 25 U.S.C. 9; sec. 32, 41 Stat. 450, 30 U.S.C. 189; sec. 5, 44 Stat. 1058, 30 U.S.C. 285; sec. 10, 61 Stat. 915, 20 U.S.C. 359; secs. 5, 6, 67 Stat. 464, 465, 43 U.S.C. 1334, 1335; sec. 24, 84 Stat. 1573, 30 U.S.C. 1023, 30 U.S.C. 1701 *et seq.*

§ 243.4 [Amended]

2. Paragraph (b)(2) of § 243.4, "Service of official correspondence," is removed, and paragraphs (b)(3) through (b)(9) are redesignated as new paragraphs (b)(2) through (b)(8), respectively.

3. In newly designated paragraph (b)(8) the reference to "paragraphs (b)(1) through (8)" is revised to read "paragraphs (b)(1) through (7)".

4. Newly designated paragraph (b)(5) is amended to read as follows:

§ 243.4 Serving of official correspondence.

* * * * *

(b)(5) The addressee of record for serving official correspondence relating to reporting on the "Report of Sales and Royalty Remittance" (Form MMS–2014) is the most recent position title, department name and address, or individual name and address specified, in writing, by the payor. The payor is responsible for notifying the Royalty Management Program, in writing, of any addressee changes.

* * * * *

[FR Doc. 93–30109 Filed 12–9–93; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 590

UNITA (Angola) Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Foreign Assets Control of the U.S. Treasury Department is issuing the UNITA (Angola) Sanctions Regulations to implement the President's declaration of a national emergency and imposition of sanctions against the National Union for the Total Independence of Angola ("UNITA").

EFFECTIVE DATE: December 10, 1993.

FOR FURTHER INFORMATION CONTACT: John T. Roth, Chief of Policy Planning and Program Management (tel: 202/622–2500), 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

On September 26, 1993, the President issued Executive Order 12865, declaring a national emergency with respect to Angola, and invoking the authority, *inter alia*, of the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) and the United Nations Participation Act of 1945 (22 U.S.C. 287c). Consistent with United Nations Security Council Resolution 864, dated September 15, 1993, the order prohibits the sale or supply by United States persons or from the United States, or using U.S. registered vessels or aircraft, of arms and related materiel of all types, including weapons and ammunition, military vehicles, equipment and spare parts, and petroleum and petroleum products to the territory of Angola other than through designated points of entry. It also prohibits such sale or supply to UNITA. U.S. persons are prohibited from activities which promote or are calculated to promote such sales or supplies, or from attempted violations, or from evasion or avoidance or transactions that have the purpose of evasion or avoidance, of the stated prohibitions. The order authorizes the Secretary of the Treasury, in consultation with the Secretary of State, to take such actions, including the promulgation of rules and regulations, as may be necessary to carry out the purposes of the order.

In implementation of this order, the Treasury Department is issuing the UNITA (Angola) Sanctions Regulations (the "Regulations").

The Regulations prohibit the sale or supply by United States persons or from the United States, or using U.S. registered vessels or aircraft, of arms and related materiel of all types, including weapons and ammunition, military vehicles, equipment and spare parts, and petroleum and petroleum products to UNITA or to the territory of Angola other than through designated points. U.S. persons are also prohibited from activities which promote or are calculated to promote such sales or supplies to UNITA or Angola, or from any transaction by any United States person that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in the executive order. Also prohibited are transactions by U.S. persons, or involving the use of U.S.-registered vessels or aircraft, relating to transportation to Angola or UNITA of goods the exportation of which is prohibited.

Transactions otherwise prohibited under this part may be authorized by a general license contained in subpart E or by a specific license issued pursuant to the procedures described in § 590.801 of subpart H.

Since the Regulations involve a foreign affairs function, Executive Order 12866 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.

The Regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act. For this reason, the collections of information contained in the Regulations are being submitted to the Office of Management and Budget ("OMB") under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Comments concerning the collection of information and the accuracy of estimated average annual burden, and suggestions for reducing this burden should be directed to OMB, Paperwork Reduction Project [1505–****], Washington, DC 20503, with copies to the Office of Foreign Assets Control, U.S. Treasury Department, 1500 Pennsylvania Ave., NW—Annex, Washington, DC 20220. Any such comments should be submitted not later than February 8, 1994. Notice of OMB action on these requests will be published in the Federal Register.

The collections of information in the Regulations are contained in subpart F, and §§ 590.703 and 590.801. This information is required by the Office of Foreign Assets Control for licensing, compliance, civil penalty and enforcement purposes. This information will be used to determine the eligibility of applicants for the benefits provided through specific licenses, to determine whether persons subject to the Regulations are in compliance with applicable requirements, and to determine whether and to what extent civil penalty or other enforcement action is appropriate. The likely respondents and recordkeepers are business organizations.

Estimated total annual reporting and/or recordkeeping burden: 100 hours.

The estimated annual burden per respondent/recordkeeper varies from 30 minutes to 2 hours, depending on individual circumstances, with an estimated average of 1 hour.

Estimated number of respondents and/or recordkeepers: 50.

Estimated annual frequency of responses: 1 - 3.

List of Subjects in 31 CFR Part 590

Administrative practice and procedure, Angola, Exports, Foreign trade, National Union for the Total Independence of Angola, Penalties, Reporting and recordkeeping requirements, Shipping, UNITA, Vessels.

For the reasons set forth in the preamble, 31 CFR part 590 is added to read as follows:

PART 590—UNITA (ANGOLA) SANCTIONS REGULATIONS

Subpart A—Relation of this Part to Other Laws and Regulations

Sec.

590.101 Relation of this part to other laws and regulations.

Subpart B—Prohibitions

590.201 Prohibited sale or supply of arms, arms materiel, petroleum or petroleum products to UNITA or Angola.

590.202 Prohibited transportation-related transactions involving Angola or UNITA.

590.203 Evasions; attempts.

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590.702 Prepenalty notice.
590.703 Presentation responding to prepenalty notice.
590.704 Penalty notice.
590.705 Referral to United States Department of Justice.

Subpart H—Procedures

590.801 Licensing.
590.802 Decisions.
590.803 Amendment, modification, or revocation.
590.804 Rulemaking.
590.805 Delegation by the Secretary of the Treasury.
590.806 Rules governing availability of information.

Subpart I—Paperwork Reduction Act

590.901 [Reserved].

Appendix A to part 590—Arms and Related Materiel.

Authority: 50 U.S.C. 1701–1706; 50 U.S.C. 1601–1651; 22 U.S.C. 287c; 3 U.S.C. 301; E.O. 12865, 58 FR 51005 (September 29, 1993).

Subpart A—Relation of This Part to Other Laws and Regulations

§ 590.101 Relation of this part to other laws and regulations.

(a) This part is separate from, and independent of, the other parts of this chapter. Differing foreign policy and national security contexts may result in differing interpretations of similar language among the parts of this chapter. No license or authorization contained in or issued pursuant to those other parts authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to any other provision of law or regulation authorizes any transaction prohibited by this part.

(b) No license or authorization contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations.

Subpart B—Prohibitions

§ 590.201 Prohibited sale or supply of arms, arms materiel, petroleum or petroleum products to UNITA or Angola.

Except as otherwise authorized pursuant to this part, the sale or supply by United States persons or from the United States, or any activity by United States persons or in the United States which promotes or is calculated to promote the sale or supply, of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment and spare parts, and petroleum and petroleum products, are prohibited, regardless of origin, to:

(a) UNITA; or

(b) the territory of Angola, other than through points of entry designated by the Secretary of the Treasury in the following schedule:

(1) Airports:
(i) Luanda
(ii) Katumbela, Benguela Province
(2) Ports:
(i) Luanda
(ii) Lobito, Benguela Province
(iii) Namibe, Namibe Province
(3) Entry Points:
(i) Malongo, Cabinda
(ii) [Reserved].

§ 590.202 Prohibited transportation-related transactions involving Angola or UNITA.

Except as otherwise authorized, any transaction by a U.S. person, or involving the use of U.S. registered vessels or aircraft, relating to transportation to Angola or UNITA of goods the exportation of which is prohibited in § 590.201 is prohibited.

§ 590.203 Evasions; attempts.

Any transaction for the purpose of, or which has the effect of, evading or avoiding, or which facilitates the evasion or avoidance of, any of the prohibitions set forth in this subpart, is hereby prohibited. Any attempt to violate the prohibitions set forth in this part is hereby prohibited.

Subpart C—General Definitions

§ 590.301 Effective date.

The term "effective date" refers to the effective date of the applicable prohibitions and directives contained in subpart B as follows:

(a) With respect to §§ 590.201, 590.202, and 590.203, 4:35 p.m. EDT, September 26, 1993.

(b) [Reserved].

§ 590.302 License.

Except as otherwise specified, the term "license" means any license or authorization contained in or issued pursuant to this part.

§ 590.303 General license.

The term "general license" means any license or authorization the terms of which are set forth in this subpart E.

§ 590.304 Specific license.

The term "specific license" means any license or authorization not set forth in subpart E but issued pursuant to this part in response to an application.

§ 590.305 Person.

The term "person" means an individual or entity.

§ 590.306 Entity.

The term "entity" includes a corporation, partnership, association, or other organization.

§ 590.307 National Union for the Total Independence of Angola, or UNITA.

The term "National Union for the Total Independence of Angola" or "UNITA" includes:

(a) Any entity, political subdivision, agency, or instrumentality of UNITA, including without limitation:

(1) the União Nacional para a Independencia Total de Angola (UNITA), known in English as the "National Union for the Total Independence of Angola;"

(2) the Forcas Armadas para a Liberacão de Angola (FALA), known in English as the "Armed Forces for the Liberation of Angola;" and

(3) the Free Angola Information Services, Inc.

(b) Any person or entity substantially owned or controlled by the foregoing;

(c) Any person to the extent that such person is, or has been, or to the extent that there is reasonable cause to believe that such person is, or has been, since the effective date, acting or purporting to act directly or indirectly on behalf of any of the foregoing; and

(d) Any other person or entity determined by the Director of the Office of Foreign Assets Control to be included within this section.

§ 590.308 United States.

The term "United States" means the United States, its territories and possessions, and all areas under the jurisdiction or authority thereof.

§ 590.309 United States person; U.S. person.

The term "United States person" or "U.S. person" means any United States citizen; permanent resident alien; juridical person organized under the laws of the United States or any jurisdiction within the United States, including foreign branches; or any person in the United States, and vessels and aircraft of U.S. registration.

§ 590.310 UNSC Resolution 864.

The term "UNSC Resolution 864" means United Nations Security Council Resolution No. 864, adopted September 15, 1993, prohibiting certain transactions with respect to Angola.

§ 590.311 Petroleum and petroleum products.

The term "petroleum and petroleum products" means items listed in 15 CFR part 777, supplements 2 and 3, of the Export Administration Regulations.

§ 590.312 Arms and related materiel.

The term "arms and related materiel" means items listed in appendix A to this part, all items listed on the Commerce Control List ending with the number "18", 15 CFR 799.1, supplement 1, and any item controlled under the International Traffic in Arms Regulations, 22 CFR parts 120 through 130.

Subpart D—Interpretations

§ 590.401 Reference to amended sections.

Except as otherwise specified, reference to any section of this part or to any regulation, ruling, order, instruction, direction, or license issued pursuant to this part shall be deemed to refer to the same as currently amended.

§ 590.402 Effect of amendment.

Any amendment, modification, or revocation of any section of this part or of any order, regulation, ruling, instruction, or license issued by or under the direction of the Director of the Office of Foreign Assets Control shall not, unless otherwise specifically provided, be deemed to affect any act done or omitted from being done, or any civil or criminal suit or proceeding commenced or pending prior to such amendment, modification, or revocation. All penalties, forfeitures, and liabilities under any such order, regulation, ruling, instruction, or license shall continue and may be enforced as if such amendment, modification, or revocation had not been made.

§ 590.403 Payments in connection with certain authorized transactions.

Except as otherwise specified, payments are authorized in connection with transactions authorized in or pursuant to subpart E.

§ 590.404 Transshipments through the United States prohibited.

The prohibitions in § 590.201 apply to the importation into the United States for transshipment or transit of goods, the sale or supply of which to Angola or UNITA is prohibited by § 590.201.

§ 590.405 Exports to third countries; transshipments.

Exportation of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment and spare parts, and petroleum and petroleum products from the United States to third countries is prohibited if the exporter knows, or has reason to know, that the goods are intended for reexportation or transshipment to Angola (except to a point of entry designated by the Secretary in § 590.201) or to UNITA, including passage through, or storage in, intermediate destinations.

§ 590.406 Agency jurisdiction; licensing requirements.

(a) Nothing in this part shall be construed to supersede the requirements established under the Arms Export Control Act (22 U.S.C. 2751 *et seq.*) and the Export Administration Act (50 U.S.C. App. 2401 *et seq.*) to obtain licenses for the exportation from the United States or from a third country of any goods, data, or services subject to the export jurisdiction of the Department of State or the Department of Commerce.

(b) Exports to Angola through points of entry designated by the Secretary in the schedule in § 590.201 and not consigned to or destined for UNITA do not require a license from the Office of Foreign Assets Control, but may require licensing by the Department of State or Department of Commerce in accordance with the requirements of the Arms Export Control Act (22 U.S.C. 2751 *et seq.*) and the Export Administration Act (50 U.S.C. App. 2401 *et seq.*)

§ 590.407 Transactions incidental to a licensed transaction.

(a) Any transaction ordinarily incident to a transaction authorized by the Office of Foreign Assets Control and necessary to give effect thereto is also authorized, except to the extent subject to the export jurisdiction of the Department of State or Department of Commerce.

(b) *Example:* A license issued by the Office of Foreign Assets Control authorizing an exportation of arms to Angola also authorizes all activities by other parties required to complete the sale, including transactions by the buyer, brokers, transfer agents, banks, etc.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

§ 590.501 Effect of license or authorization.

(a) No license or other authorization contained in this part, or otherwise issued by or under the direction of the Director of the Office of Foreign Assets Control, shall be deemed to authorize or validate any transaction effected prior to the issuance of the license, unless specifically provided in such license or authorization.

(b) No regulation, ruling, instruction, or license authorizes any transaction prohibited under this part unless the regulation, ruling, instruction, or license is issued by the Office of Foreign Assets Control and specifically refers to this part. No regulation, ruling, instruction, or license referring to this part shall be deemed to authorize any transaction prohibited by any provision of this chapter unless the regulation, ruling, instruction or license specifically refers to such provision.

(c) Any regulation, ruling, instruction, or license authorizing any transaction otherwise prohibited under this part has the effect of removing a prohibition or prohibitions contained in subpart B from the transaction, but only to the extent specifically stated by its terms. Unless the regulation, ruling, instruction, or license otherwise specifies, such an authorization does not create any right, duty, obligation, claim, or interest in, or with respect to, any property which would not otherwise exist under ordinary principles of law.

§ 590.502 Exclusion from licenses and authorizations.

The Director of the Office of Foreign Assets Control reserves the right to exclude any person, property, or transaction from the operation of any license, or from the privileges therein conferred, or to restrict the applicability thereof with respect to particular persons, property, transactions, or classes thereof. Such action shall be binding upon all persons receiving actual or constructive notice of such exclusion or restriction.

Subpart F—Reports

§ 590.601 Required records.

Except as otherwise provided, every person engaging in any transaction subject to the provisions of this part shall keep a full and accurate record of each transaction engaged in, regardless of whether such transaction is effected pursuant to license or otherwise, and such record shall be available for examination for at least 5 years after the date of such transaction.

§ 590.602 Reports to be furnished on demand.

Every person is required to furnish under oath, in the form of reports or otherwise, from time to time and at any time as may be required, complete information relative to any transaction, regardless of whether such transaction is effected pursuant to license or otherwise, subject to the provisions of this part. Such reports may be required to include the production of any books of account, contracts, letters or other papers, connected with any such transaction or property, in the custody or control of the person required to make such reports. Reports with respect to transactions may be required either before or after such transactions are completed. The Director of the Office of Foreign Assets Control may, through any person or agency, conduct investigations, hold hearings, administer oaths, examine witnesses, receive evidence, take depositions, and require by subpoena the attendance and testimony of witnesses and the production of all books, papers, and documents relating to any matter under investigation, regardless of whether any report has been required or filed in connection therewith.

Subpart G—Penalties

§ 590.701 Penalties.

(a) Attention is directed to section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705), which provides that a civil penalty of not to exceed $10,000 may be imposed on any person who violates any license, order, or regulation issued under the International Emergency Economic Powers Act, and whoever willfully violates any license, order, or regulation issued under the International Emergency Economic Powers Act, shall, upon conviction, be fined not more than $50,000, or, if a natural person, may be imprisoned for not more than 10 years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both. Section 206 of the International Emergency Economic Powers Act is applicable to violations of any provision of this part and to violations of the provisions of any license, ruling, regulation, order, direction, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the International Emergency Economic Powers Act. The penalties provided in the International Emergency Economic Powers Act are subject to increase pursuant to 18 U.S.C. 3571 and Public Law 101–410, 101 Stat. 890 (28 U.S.C. 2461 note).

(b) Attention is directed to section 5 of the United Nations Participation Act (22 U.S.C. 287c(b)), which provides that any person who willfully violates or evades or attempts to violate or evade any order, rule, or regulation issued by the President pursuant to the authority granted in that section shall, upon conviction, be fined not more than $10,000 or, if a natural person, be imprisoned for not more than 10 years, or both; and the officer, director or agent of any corporation who knowingly participates in such violation or evasion shall be punished by a similar fine, imprisonment or both, and any property, funds, securities, papers, or other articles or documents, or any vessel, together with tackle, apparel, furniture, and equipment, or vehicle, or aircraft, concerned in such violation shall be forfeited to the United States. The penalties provided in the United Nations Participation Act are subject to increase pursuant to 18 U.S.C. 3571.

(c) Attention is directed to 18 U.S.C. 1001, which provides that whoever, in any matter within the jurisdiction of any department or agency of the United States, knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statement or representation or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than 5 years, or both.

(d) Violations of this part may also be subject to relevant provisions of the Customs laws and other applicable laws.

§ 590.702 Prepenalty notice.

(a) *When required.* If the Director of the Office of Foreign Assets Control has reasonable cause to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any license, ruling, regulation, order, direction or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the International Emergency Economic Powers Act, and the Director determines that further proceedings are warranted, he shall issue to the person concerned a notice of his intent to impose a monetary penalty. The prepenalty notice shall be issued whether or not another agency has taken any action with respect to this matter.

(b) *Contents*—(1) *Facts of violation.* The prepenalty notice shall describe the violation, specify the laws and regulations allegedly violated, and state the amount of the proposed monetary penalty.

(2) *Right to make presentations.* The prepenalty notice also shall inform the person of his right to make a written presentation within 30 days of mailing of the notice as to why a monetary penalty should not be imposed, or, if imposed, why it should be in a lesser amount than proposed.

§ 590.703 Presentation responding to prepenalty notice.

(a) *Time within which to respond.* The named person shall have 30 days from the date of mailing of the prepenalty notice to make a written presentation to the Director of the Office of Foreign Assets Control.

(b) *Form and contents of written presentation.* The written presentation need not be in any particular form, but shall contain information sufficient to indicate that it is in response to the prepenalty notice. It should contain responses to the allegations in the prepenalty notice and set forth the reasons why the person believes the penalty should not be imposed or, if imposed, why it should be in a lesser amount than proposed.

§ 590.704 Penalty notice.

(a) *No violation.* If, after considering any presentations made in response to the prepenalty notice and any relevant facts, the Director of the Office of Foreign Assets Control determines that there was no violation by the person named in the prepenalty notice, he promptly shall notify the person in writing of that determination and that no monetary penalty will be imposed.

(b) *Violation.* If, after considering any presentations made in response to the prepenalty notice, the Director determines that there was a violation by the person named in the prepenalty notice, he promptly shall issue a written notice of the imposition of the monetary penalty to that person.

§ 590.705 Referral to United States Department of Justice.

In the event that the person named does not pay the penalty imposed pursuant to this subpart or make payment arrangements acceptable to the Director of the Office of Foreign Assets Control within 30 days of the mailing of the written notice of the imposition of the penalty, the matter shall be referred for administrative collection measures by the Department of the Treasury or to the United States Department of Justice for appropriate action to recover the penalty in a civil suit in a Federal district court.

Subpart H—Procedures

§ 590.801 Licensing.

(a) *General licenses.* General licenses may be issued authorizing under appropriate terms and conditions certain types of transactions which are subject to the prohibitions contained in subpart B of this part. It is the policy of the Office of Foreign Assets Control not to grant applications for specific licenses authorizing transactions to which the provisions of an outstanding general license are applicable. Persons availing themselves of certain general licenses may be required to file reports and statements in accordance with the instructions specified in those licenses.

(b) *Specific licenses*—(1) *General course of procedure.* Transactions subject to the prohibitions contained in subpart B of this part which are not authorized by general license may be effected only under specific licenses.

(2) *Applications for specific licenses.* Applications for specific licenses to engage in any transactions prohibited by or pursuant to this part may be filed by letter with the Office of Foreign Assets Control. Any person having an interest in a transaction or proposed transaction may file an application for a license authorizing such transaction, but the applicant for a specific license is required to make full disclosure of all parties in interest to the transaction so that a decision on the application may be made with full knowledge of all relevant facts and so that the identity and location of the persons who know about the transaction may be easily ascertained in the event of inquiry.

(3) *Information to be supplied.* The applicant must supply all information specified by relevant instructions and/or forms, and must fully disclose the names of all the parties who are concerned with or interested in the proposed transaction. If the application is filed by an agent, the agent must disclose the name of his principal(s). Such documents as may be relevant shall be attached to each application as a part of such application except that documents previously filed with the Office of Foreign Assets Control may, where appropriate, be incorporated by reference. Applicants may be required to furnish such further information as is deemed necessary to a proper determination by the Office of Foreign Assets Control. Any applicant or other party in interest desiring to present additional information or discuss or argue the application may do so at any time before or after decision. Arrangements for oral presentation should be made with the Office of Foreign Assets Control.

(4) *Effect of denial.* The denial of a license does not preclude the reopening of an application or the filing of a further application. The applicant or any other party in interest may at any time request explanation of the reasons for a denial by correspondence or personal interview.

(5) *Reports under specific licenses.* As a condition for the issuance of any license, the licensee may be required to file reports with respect to the transaction covered by the license, in such form and at such times and places as may be prescribed in the license or otherwise.

(6) *Issuance of license.* Licenses will be issued by the Office of Foreign Assets Control acting on behalf of the Secretary of the Treasury or licenses may be issued by the Secretary of the Treasury acting directly or through any specifically designated person, agency, or instrumentality.

(7) *Address.* License applications, reports, and inquiries should be addressed to the appropriate division or individual within the Office of Foreign Assets Control, or to the Director, Office of Foreign Assets Control, U.S. Treasury Department, 1500 Pennsylvania Ave., NW—Annex, Washington, DC 20220.

§ 590.802 Decisions.

The Office of Foreign Assets Control will advise each applicant of the decision respecting filed applications. The decision of the Office of Foreign Assets Control acting on behalf of the Secretary of the Treasury with respect to an application shall constitute final agency action.

§ 590.803 Amendment, modification, or revocation.

The provisions of this part and any rulings, licenses, whether general or specific, authorizations, instructions, orders, or forms issued hereunder may be amended, modified, or revoked at any time.

§ 590.804 Rulemaking.

(a) All rules and other public documents are issued by the Secretary of the Treasury upon recommendation of the Director of the Office of Foreign Assets Control. In general, rulemaking by the Office of Foreign Assets Control involves foreign affairs functions of the United States, and for that reason is exempt from the requirements under the Administrative Procedure Act (5 U.S.C. 553) for notice of proposed rulemaking, opportunity for public comment, and delay in effective date. Wherever possible, however, it is the practice of the Office of Foreign Assets Control to receive written submissions or hold informal consultations with interested parties before the issuance of any rule or other public document.

(b) Any interested person may petition the Director of the Office of Foreign Assets Control in writing for the issuance, amendment, or repeal of any rule.

§ 590.805 Delegation by the Secretary of the Treasury.

Any action which the Secretary of the Treasury is authorized to take pursuant to Executive Order 12865 or any further Executive orders relating to the national emergency declared in Executive Order 12865 may be taken by the Director, Office of Foreign Assets Control.

§ 590.806 Rules governing availability of information.

(a) The records of the Office of Foreign Assets Control which are required by 5 U.S.C. 552 to be made available to the public shall be made available in accordance with the definitions, procedures, payment of fees, and other provisions of the regulations on the Disclosure of Records of the Office of the Secretary and of other bureaus and offices of the Treasury Department issued pursuant to 5 U.S.C. 552 and published at 31 CFR part 1.

(b) Any form issued for use in connection with the UNITA (Angola) Transactions Regulations may be obtained in person or by writing to the Office of Foreign Assets Control, U.S. Treasury Department, 1500 Pennsylvania Ave., NW—Annex, Washington, DC 20220, or by calling 202/622–2480.

Subpart I—Paperwork Reduction Act

§ 590.901 [Reserved].

Appendix A to Part 590—Arms and Related Materiel

(1) Spindle assemblies, consisting of spindles and bearings as a minimal assembly,

except those assemblies with axial and radial axis motion measured along the spindle axis in one revolution of the spindle equal to or greater (coarser) than the following: (a) 0.0008 mm TIR (peak-to-peak) for lathes and turning machines; or (b) D x 2 x 10(–5) mm TIR (peak-to-peak) where D is the spindle diameter in millimeters for milling machines, boring mills, jig grinders, and machining centers (ECCNs 2B01 and 2B41);

(2) Equipment for the production of military explosives and solid propellants, as follows:

(a) Complete installations; and

(b) Specialized components (for example, dehydration presses; extrusion presses for the extrusion of small arms, cannon and rocket propellants; cutting machines for the sizing of extruded propellants; sweetie barrels (tumblers) 6 feet and over in diameter and having over 500 pounds product capacity; and continuous mixers for solid propellants) (ECCN 1B18);

(3) Specialized machinery, equipment, gear, and specially designed parts and accessories therefor, specially designed for the examination, manufacture, testing, and checking of the arms, appliances, machines, and implements of war (ECCN 2B18), ammunition hand-loading equipment for both cartridges and shotgun shells, and equipment specially designed for manufacturing shotgun shells (ECCN 2B85).

(4) Construction equipment built to military specifications, specially signed for airborne transport (ECCN No. 8A18);

(5) Vehicles specially designed for military purposes, as follows:

(a) Specially designed military vehicles, excluding vehicles listed in supplement 2 to 15 CFR part 770 (ECCN 9A18);

(b) Pneumatic tire casings (*excluding tractor and farm implement types*), of a kind specially constructed to be bulletproof or to run when deflated (ECCN 9A18);

(c) Engines for the propulsion of the vehicles enumerated above, specially designed or essentially modified for military use (ECCN 9A18); and

(d) Specially designed components and parts to the foregoing (ECCN 9A18);

(6) Pressure refuellers, pressure refuelling equipment, and equipment specially designed to facilitate operations in confined areas and ground equipment, not elsewhere specified, developed specially for aircraft and helicopters, and specially designed parts and accessories, n.e.s. (ECCN 9A18);

(7) Specifically designed components and parts for ammunition, *except cartridge cases, powder bags, bullets, jackets, cores, shells, projectiles, boosters, fuses and components, primers, and other detonating devices and ammunition belting and linking machines* (ECCN 0A18);

(8) Nonmilitary shotguns, barrel length 18 inches or over; and nonmilitary arms, discharge type (for example, stun-guns, shock batons, etc.), *except arms designed solely for signal, flare, or saluting use; and parts, n.e.s.* (ECCN 0A84);

(9) Shotgun shells, and parts (ECCN 0A86);

(10) Military parachutes (ECCN 9A18);

(11) Submarine and torpedo nets (ECCN 8A18);

(12) Bayonets and muzzle-loading (black powder) firearms (ECCN 0A18).

Dated: November 23, 1993

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: November 29, 1993

John P. Simpson

Deputy Assistant Secretary (Regulatory, Tariff & Trade Enforcement).

[FR Doc. 93–30159 Filed 12–7–93; 9:38 am]

BILLING CODE 4810–25–F

FEDERAL MARITIME COMMISSION

46 CFR Part 585

[Docket No. 93–20]

Regulations to Adjust or Meet Conditions Unfavorable to Shipping in the Foreign Trade of the United States

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission issues a final rule amending 46 CFR part 585, "Regulations To Adjust or Meet Conditions Unfavorable to Shipping in the Foreign Trade of the United States." The rule updates the Commission's existing regulations and reflects amendments to section 19 of the Merchant Marine Act, 1920, which clarified certain Commission authorities, granted the Commission certain information-gathering powers, and extended the range of sanctions available to the Commission in proceedings under that statute.

EFFECTIVE DATE: January 10, 1994.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573, (202) 523–5740.

SUPPLEMENTARY INFORMATION: Section 19 of the Merchant Marine Act, 1920, 46 U.S.C. app. 876 ("Section 19"), authorizes the Federal Maritime Commission ("Commission" or "FMC") to take regulatory action to correct unfavorable shipping conditions in U.S. foreign oceanborne commerce. Specifically, paragraph (1)(b) of Section 19 directs the Commission * * *

> * * * [t]o make rules and regulations affecting shipping in the foreign trade not in conflict with law in order to adjust or meet general or special conditions unfavorable to shipping in the foreign trade, whether in any particular trade or upon any particular route or in commerce generally, including intermodal movements, terminal operations, cargo solicitation, forwarding and agency services, non-vessel-operating common carrier operations and other activities and services integral to transportation systems, and which arise out of or result from foreign laws, rules, or regulations or from competitive methods or practices employed by owners, operators, agents or masters of vessels of a foreign country.

Id. app. 876(1)(b). Section 19 was most recently amended by section 103 of Public Law No. 101–595, 104 Stat. 2979 ("Section 19 Amendments"), to clarify and expand the powers of the Commission to address unfavorable shipping conditions, particularly those which affect intermodal, shoreside and other ocean transportation activities, and to add certain information-gathering and discovery tools. 46 U.S.C. app. 876(5)–(12).

The Commission's regulations governing Section 19 proceedings are set forth at 46 CFR Part 585—Regulations To Adjust or Meet Conditions Unfavorable to Shipping in the Foreign Trade of the United States. The Commission published a notice of proposed rulemaking ("NPR") to update its rules essentially to reflect the Section 19 Amendments on October 7, 1993, 58 FR 52248. The proposed rule substantially incorporated the existing Part 585, with some editorial and conforming changes, added a number of new sections in order to implement new statutory authorities, and restructured the rules for a more logical presentation.

The proposed rule restructures part 585 into six subparts in order to accommodate the new sections of the rules and to make for a more orderly and logical presentation of the rules' provisions. General provisions that apply to the entire part 585 appear in subpart A. Subpart B implements information-gathering authorities. subpart C enumerates those conditions that will be found to be unfavorable to shipping. Subpart D contains provisions governing the filing of section 19 petitions. Subpart E sets forth the provisions that govern proceedings initiated by the Commission under section 19. Subpart F describes the corrective actions that may be taken as well as penalties that may be imposed. The NPR included a section-by-section discussion identifying the particular changes in the existing rules as well as the new provisions of part 585. Interested persons were invited to submit comments on the NPR.

Discussion

Only one comment was received in response to the NPR. Sea-Land Service, Inc. ("Sea-Land"), suggests a few minor editorial and clarifying changes, and urges the Commission to otherwise adopt the rule. The changes suggested in the Sea-Land comments have merit, and have therefore been incorporated in the final rule. These are discussed individually below.

Sea-Land points out that while the proposed rule at § 585.201(a) obviously meant to reflect language added by the section 19 Amendments at section 19(6)(a) of the Act, 46 U.S.C. 876(6)(a), the rule refers to "any * * * licensee," rather than to "any * * * lessee," as stated in the statute. Sea-Land also properly notes that § 585.601(h) of the proposed rule should refer to "subpart C" rather than "subpart B" as the subpart which describes conditions which will be found unfavorable. Finally, we accept Sea-Land's suggestion that the plural reference to "carriers'" in § 585.301 be changed to the singular, in order to clarify that a finding of conditions unfavorable to shipping may be based on restrictions affecting one carrier.[1]

The Chairman of the Federal Maritime Commission has determined that the Paperwork Reduction Act (44 U.S.C. 3504) does not apply because this regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 46 CFR Part 585

Administrative practice and procedure, Maritime carriers.

Therefore, Pursuant to section 4 of the Administrative Procedure Act (5 U.S.C. 553), section 10002 of the Foreign Shipping Practices Act of 1988 (46 U.S.C. app. 10002), and section 19 of the Merchant Marine Act, 1920 (46 U.S.C. app. 876), the Federal Maritime Commission hereby revises part 585 of title 46, Code of Federal Regulations, to read as follows:

PART 585—REGULATIONS TO ADJUST OR MEET CONDITIONS UNFAVORABLE TO SHIPPING IN THE FOREIGN TRADE OF THE UNITED STATES

Subpart A—General Provisions

Sec.

585.101 Purpose.
585.102 Scope.
585.103 Definitions.
585.104 Confidentiality.
585.105 Consultation.

[1] Proposed section 585.301 provides, *inter alia:*

For the purposes of this part, conditions created by foreign governmental action or competitive methods of owners, operators, agents or masters of foreign vessels are found unfavorable to shipping in the foreign trade of the United States, if such conditions:

* * * * *

(d) Restrict or burden carriers' intermodal movements or shore-based maritime activities, including terminal operations and cargo solicitation; forwarding and agency services; non-vessel-operating common carrier operations; or other activities and services integral to transportation;

Subpart B—Production of Information

585.201 Information orders.
585.202 Type of information.
585.203 Failure to provide information.

Subpart C—Conditions Unfavorable To Shipping

585.301 Findings.

Subpart D—Petitions For Relief

585.401 Who may file.
585.402 Filing of petitions.
585.403 Contents of petitions.
585.404 Amendment or dismissal of petitions.

Subpart E—Proceeding

585.501 Participation of interested persons.
585.502 Discovery.
585.503 Subpoenas.
585.504 Witness fees.
585.505 Failure to supply information.
585.506 Enforcement of orders.
585.507 Postponement, discontinuance or suspension of action.
585.508 Publication, content and effective date of regulation.

Subpart F—Corrective Actions

585.601 Actions to correct unfavorable conditions.
585.602 Penalty.

Authority: 5 U.S.C. 553; sec. 19(1)(b), (5), (6), (7), (8), (9), (10), (11) and (12) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b), (5), (6), (7), (8), (9), (10), (11) and (12); Reorganization Plan No. 7 of 1961, 75 Stat. 840; and sec. 10002 of the Foreign Shipping Practices Act of 1988, 46 U.S.C. app. 1710a.

Subpart A—General Provisions

§ 585.101 Purpose.

It is the purpose of the regulations of this part to declare certain conditions resulting from governmental actions by foreign nations or from the competitive methods or practices of owners, operators, agents, or masters of vessels of a foreign country unfavorable to shipping in the foreign trade of the United States and to establish procedures by which persons who are or can reasonably expect to be adversely affected by such conditions may petition the Federal Maritime Commission for the issuance of regulations under the authority of section 19 of the Merchant Marine Act of 1920. It is the further purpose of the regulations of this part to afford notice of the general circumstances under which the authority granted to the Commission under section 19 may be invoked and the nature of the regulatory actions contemplated.

§ 585.102 Scope.

Regulatory actions may be taken when the Commission finds, on its own motion or upon petition, that a foreign government has promulgated and enforced or intends to enforce laws, decrees, regulations or the like, or has engaged in or intends to engage in practices which presently have or prospectively could create conditions unfavorable to shipping in the foreign trade of the United States, or when owners, operators, agents or masters of foreign vessels engage in or intend to engage in, competitive methods or practices which have created or could create such conditions.

§ 585.103 Definitions.

When used in this part:

(a) *Act* means the Merchant Marine Act, 1920, as amended by Public Law No. 101–595.

(b) *Person* means individuals, corporations, partnerships and associations existing under or authorized by the laws of the United States or of a foreign country, and includes any common carrier, tramp operator, bulk operator, shipper, shippers' association, importer, exporter, consignee, ocean freight forwarder, marine terminal operator, or any component of the Government of the United States.

(c) *Voyage* means an inbound or outbound movement between a foreign country and the United States by a vessel engaged in the United States oceanborne trade. Each inbound or outbound movement constitutes a separate voyage.

§ 585.104 Confidentiality.

Notwithstanding any other law, the Commission may refuse to disclose to the public a response or other information provided under the terms of this part.

§ 585.105 Consultation.

(a) *Consultation with other agencies.* The Commission may consult with, seek the cooperation of, or make recommendations to other appropriate agencies prior to taking any action under this part.

(b) Request for resolution through diplomatic channels. Upon the filing of a petition, or on its own motion when there are indications that conditions unfavorable to shipping in the foreign trade of the United States may exist, the Commission may notify the Secretary of State that such conditions apparently exist, and may request that the Secretary seek resolution of the matter through diplomatic channels. If request is made, the Commission will give every assistance in such efforts, and the Commission may request the Secretary to report the results of such efforts at a specified time.

Subpart B—Production of Information

§ 585.201 Information orders.

In furtherance of the purposes of this part—

(a) The Commission may, by order, require any person (including any common carrier, tramp operator, bulk operator, shipper, shippers' association, ocean freight forwarder, or marine terminal operator, or any officer, receiver, trustee, lessee, agent, or employee thereof, to file with the Commission a report, answers to questions, documentary material, or other information which the Commission considers necessary or appropriate;

(b) The Commission may require a report or answers to questions to be made under oath;

(c) The Commission may prescribe the form and the time for response to a report or answers to questions.

§ 585.202 Type of information.

In order to aid in the determination of whether conditions unfavorable to shipping in the foreign trade of the United States exist, or in order to aid in the formulation of appropriate regulations subsequent to a finding that conditions unfavorable to shipping in the foreign trade of the United States exist, the Commission may, when it deems necessary or appropriate, and without further proceedings, order any:

(a) Owner, operator, or charterer in the affected trade to furnish any or all of the following information:

(1) Statistics for a representative period showing passengers or cargo carried to and from the United States in the affected trade on vessels owned, operated or chartered by it, by type, source, value, and direction;

(2) Information for a representative period on the activities of vessels owned, operated, or chartered, which shall include sailings to and from United States ports, costs incurred, taxes or other charges paid to authorities, and subsidies or other payments received from foreign authorities;

(3) Information for a specified future period on the prospective activities of vessels which it owns, operates or charters or plans to own, operate or charter, to and from United States ports, which shall include projected sailings, anticipated costs, taxes or other charges to be paid to authorities, and expected subsidies or other payments to be received from foreign authorities; and

(4) Such other information that the Commission considers relevant to discovering or determining the existence of general or special conditions unfavorable to shipping in the foreign trade of the United States.

(b) Shipper, shippers' association, ocean freight forwarder, or non-vessel-operating common carrier in the affected trade to furnish any or all of the following information:

(1) Information for a representative period showing shipments made, type of cargo, commodity, carrier and vessel on which shipment was made, including furnishing copies of bills of lading and other shipping documents;

(2) Information relating to the application for, grant of, or securing of waivers or other exemption from requirements imposed by foreign governments that cargo move on national-flag, conference, or non-conference vessels;

(3) Amount of brokerage, freight forwarder compensation or other charges collected or paid in connection with shipments in the affected trade; and

(4) such other information that the Commission considers relevant to discovering or determining the existence of general or special conditions unfavorable to shipping in the foreign trade of the United States.

(c) Any marine terminal operator to furnish any or all of the following information:

(1) Marine terminal facilities agreements, whether or not on file with the Commission, into which it has entered with any ocean carrier in the affected trade;

(2) Information for a representative period showing the difference between the rates agreed to for use of its facilities by any ocean carrier serving the affected trade pursuant to an agreement authorizing preferential treatment or lease terms and those rates which would otherwise have applied to such services or leases.

§ 585.203 Failure to provide information.

(a) A person who fails to file a report, answer, documentary material, or other information required under this subpart shall be liable to the United States Government for a civil penalty of not more than $5,000 for each day that the information is not provided.

(b) The Commission may, when there is a failure to produce any information ordered produced under § 585.201, make appropriate findings of fact and inferences, including the inference that conditions unfavorable to shipping in the foreign trade of the United States do exist.

Subpart C—Conditions Unfavorable to Shipping

§ 585.301 Findings.

For the purposes of this part, conditions created by foreign governmental action or competitive methods of owners, operators, agents or masters of foreign vessels are found unfavorable to shipping in the foreign trade of the United States, if such conditions:

(a) Impose upon vessels in the foreign trade of the United States fees, charges, requirements, or restrictions different from those imposed on other vessels competing in the trade, or preclude vessels in the foreign trade of the United States from competing in the trade on the same basis as any other vessel;

(b) Reserve substantial cargoes to the national flag or other vessels and fail to provide, on reasonable terms, for effective and equal access to such cargo by vessels in the foreign trade of the United States;

(c) Are discriminatory or unfair as between carriers, shippers, exporters, importers, or ports or between exporters from the United States and their foreign competitors and which cannot be justified under generally accepted international agreements or practices and which operate to the detriment of the foreign commerce or the public interest of the United States;

(d) Restrict or burden a carrier's intermodal movements or shore-based maritime activities, including terminal operations and cargo solicitation; forwarding and agency services; non-vessel-operating common carrier operations; or other activities and services integral to transportation systems; or

(e) Are otherwise unfavorable to shipping in the foreign trade of the United States.

Subpart D—Petitions for Section 19 Relief

§ 585.401 Who may file.

Any person who has been harmed by, or who can reasonably expect harm from, existing or impending conditions unfavorable to shipping in the foreign trade of the United States, may file a petition for relief under the provisions of this part.

§ 585.402 Filing of petitions.

All requests for relief from conditions unfavorable to shipping in the foreign trade shall be by written petition. An original and fifteen copies of a petition for relief under the provisions of this part shall be filed with the Secretary, Federal Maritime Commission, Washington, DC 20573.

§ 585.403 Contents of petitions.

Petitions for relief from conditions unfavorable to shipping in the foreign trade of the United States shall set forth the following:

(a) A concise description and citation of the foreign law, rule, regulation, practice or competitive method complained of;

(b) A certified copy of any law, rule, regulation or other document involved and, if not in English, a certified English translation thereof;

(c) Any other evidence of the existence of such practice or competitive method;

(d) A clear description, in detail, of the harm already caused or which may reasonably be expected to be caused petitioner, including:

(1) Statistics for the representative period showing the type and amount of revenue loss or operating cost increase suffered or projected, such as a present or prospective cargo loss if harm is alleged on that basis. Such statistics shall include figures which permit comparison or computation of the proportional effect of the harm alleged. For example, when the harm alleged is loss of cargo, supporting evidence shall include the total cargo carried or projected in the trade for the period;

(2) Statistics or other evidence for the representative period showing increased costs, inferior services or other harm to cargo or other non-vessel interest if injury is claimed on that basis; and

(3) A statement as to why the period is representative.

(e) A recommended regulation, the promulgation of which will, in the view of the petitioner, adjust or meet the alleged conditions unfavorable to shipping in the foreign trade of the United States.

§ 585.404 Amendment or dismissal of petitions.

Upon the failure of a petitioner to comply with the provisions of this part, the petitioner will be notified by the Secretary and afforded reasonable opportunity to amend its petition. Failure to timely amend the petition may result in its dismissal. For good cause shown additional time for amendment may be granted.

Subpart E—Proceedings

§ 585.501 Participation of interested persons.

In the event that participation of interested persons is deemed necessary by the Commission, notice will be published in the **Federal Register** and interested persons will then be allowed to participate in this proceeding by the submission of written data, views or arguments, with or without opportunity to present same orally.

§ 585.502 Discovery.

The Commission may authorize a party to a proceeding to use depositions, written interrogatories, and discovery procedures that, to the extent practicable, are in conformity with the rules applicable in civil proceedings in the district courts of the United States.

§ 585.503 Subpoenas.

In proceedings under this part, the Commission may by subpoena compel the attendance of witnesses and the production of books, papers, documents, and other evidence.

§ 585.504 Witness fees.

In proceedings under this subpart, witnesses are, unless otherwise prohibited by law, entitled to the same fees and mileage as in the courts of the United States, subject to funds being provided by appropriations Acts.

§ 585.505 Failure to supply information.

For failure to supply information ordered to be produced or compelled by subpoena in proceedings under this part, the Commission may—

(a) After notice and an opportunity for hearing, suspend tariffs of a common carrier or that common carrier's right to use the tariffs of conferences of which it is a member; or

(b) Assess a civil penalty of not more than $5,000 for each day that the information is not provided.

§ 585.506 Enforcement of orders.

In proceedings under this part, when a person violates an order of the Commission or fails to comply with a subpoena, the Commission may seek enforcement by a United States district court having jurisdiction over the parties.

§ 585.507 Postponement, discontinuance, or suspension of action.

The Commission may, on its own motion or upon petition, postpone, discontinue, or suspend any and all actions taken by it under the provisions of this part. The Commission shall postpone, discontinue or suspend any or all such actions if the President informs the Commission that postponement, discontinuance or suspension is required for reasons of foreign policy or national security.

§ 585.508 Publication, content and effective date of regulation.

The Commission shall incorporate in any regulations adopted under the rules of this part a concise statement of their basis and purpose. Regulations shall be published in the **Federal Register.** Except where conditions warrant and for good cause, regulations promulgated under the rules of this part shall not become effective until at least 30 days after the date of publication.

Subpart F—Corrective Actions

§ 585.601 Actions to correct unfavorable conditions.

Upon submission of a petition filed under the rules of this part, or upon its own motion, the Commission may find that conditions unfavorable to shipping in the foreign trade of the United States do exist, and may, without further proceedings, issue regulations which may:

(a) Impose equalizing fees or charges;

(b) Limit sailings to and from United States ports or the amount or type of cargo carried;

(c) Suspend, in whole or in part, tariffs filed with the Commission for carriage to or from United States ports, including a common carrier's right to use tariffs of conferences in United States trades of which it is a member for any period the Commission specifies;

(d) Suspend, in whole or in part, an ocean common carrier's right to operate under an agreement, including any agreement authorizing preferential treatment at terminals or preferential terminal leases, whether filed with the Commission or not filed with the Commission pursuant to the exemptions granted in 46 CFR Part 572; or any agreement filed with the Commission authorizing space chartering, or pooling of cargo or revenues with other ocean common carriers;

(e) Impose a fee, not to exceed $1,000,000 per voyage;

(f) Request the collector of customs at the port or place of destination in the United States to refuse the clearance required by section 4197 of the Revised Statutes, 46 U.S.C. app. 91, to a vessel of a foreign carrier which is or whose government is identified as contributing to the unfavorable conditions described in subpart C;

(g) Request the collector of customs at the port or place of destination in the United States to collect any fees imposed by the Commission under paragraph (e) of this section;

(h) Request the Secretary of the department in which the Coast Guard is operating to deny entry, for purposes of oceanborne trade, of any vessel of a foreign carrier which is or whose government is identified as contributing to the unfavorable conditions described in subpart C, to any port or place in the United States or the navigable waters of

the United States, or to detain any such vessel at the port or place in the United States from which it is about to depart for any other port or place in the United States; or

(i) Take any other action the Commission finds necessary and appropriate to adjust or meet any condition unfavorable to shipping in the foreign trade of the United States.

§ 585.602 Penalty.

A common carrier that accepts or handles cargo for carriage under a tariff that has been suspended under § 585.505 or § 585.601 of this part, or after its right to use another tariff has been suspended under those sections, is subject to a civil penalty of not more than $50,000 for each day that it is found to be operating under a suspended tariff.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 93–30163 Filed 12–9–93; 8:45 am]

BILLING CODE 6730–01–W

Proposed Rules

Federal Register
Vol. 58, No. 236
Friday, December 10, 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.

FEDERAL TRADE COMMISSION

16 CFR Part 309

Labeling Requirements for Alternative Fuels and Alternative Fueled Vehicles

AGENCY: Federal Trade Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Federal Trade Commission ("Commission") invites written comments on issues that the Commission may address in proposed regulations required under section 406 of the Energy Policy Act of 1992, relating to labeling requirements for alternative fuels and alternative fueled vehicles. Comments received in response to this Notice will help the Commission develop its Notice of Proposed Rulemaking and a proposed labeling rule.

DATES: Written comments must be submitted on or before January 26, 1994.

ADDRESSES: Written comments should be identified as "16 CFR part 309" and sent to the Division of Enforcement, Federal Trade Commission, Washington, DC 20580. The Commission requests, but does not require, that original comments be filed with four copies.

FOR FURTHER INFORMATION CONTACT: Jeffrey E. Feinstein, Attorney, Division of Enforcement, Federal Trade Commission, Washington, DC 20580, telephone 202/326–2372.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Energy Policy Act of 1992 (EPA 92) [1] establishes a comprehensive national energy strategy designed to increase U.S. energy security and improve the economy in cost effective and environmentally beneficial ways.[2] It seeks to reduce U.S. dependence on oil imports; promote energy efficiency; reduce the use of petroleum-based fuels in automobiles; and provide new energy options.[3] Key programs in titles III, IV, V, and VI of EPA 92 promote the development of alternative fuels [4] and alternative fueled vehicles (AFV's).[5]

Section 406 of EPA 92 directs the Commission to promulgate a rule establishing uniform labeling requirements for alternative fuels and AFV's.[6] Once promulgated, the rule will require disclosure, to the greatest extent practicable, of appropriate information as to costs and benefits to help consumers make reasonable purchasing choices and comparisons. According to the Act, the labels must be simple, updated periodically, and, where appropriate, consolidated with other labels providing information to consumers. EPA 92 requires the Commission to issue a proposed labeling rule by April 25, 1994, and a final rule within one year thereafter.

In formulating its proposal, the Act requires the Commission to "obtain the views of" affected industries, consumer organizations, Federal and State agencies, and all other interested parties. The Commission also must give consideration to the problems associated with developing and publishing useful and timely cost and benefit information, taking into account lead time, costs, the frequency of changes in costs and benefits that may occur, and other relevant factors. The Secretary of the Department of Energy (DOE) is to provide technical assistance to the Commission in developing the labeling requirements,[7] and the Commission is to issue the rule "in consultation with" the DOE Secretary, the Administrator of the Environmental Protection Agency, and the Secretary of Transportation.[8]

The rulemaking required by section 406 differs in several respects with the proceeding the Commission recently completed to implement EPA section 1501.[9] As required by section 1501, the Commission expanded the scope of its former Octane Certification and Posting Rule [10] beyond automotive gasoline to include all liquid alternative fuels. Although the proceeding required by section 1501 was limited to the liquid alternative fuels, section 406 covers all alternative fuels. In addition, section 1501 requires certification and posting of a given fuel's rating, while section 406 requires disclosure of costs and benefits. Finally, the section 1501 rating sticker need only be posted on the dispensing pump, while section 406 mandates labeling requirements for alternative fuels and AFV's.

Comments received in response to this Notice will help the Commission develop its Notice of Proposed Rulemaking (NPR) and a proposed labeling rule. When the NPR is published there will be additional opportunity for public input.

II. Issues for Public Comment

The Commission invites interested persons to address any questions of fact, law, or policy that they believe may bear upon the Commission's development of labeling requirements. The Commission particularly desires comment, however, on the questions listed below. For all responses, the Commission strongly requests that answers be accompanied

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[1] Pub. L. 102–486, 106 Stat. 2776 (1992).

[2] H. Rep. No. 102–474(1), 102d Cong., 2d Sess. 132.

[3] *Id.*

[4] The term "alternative fuels" is defined to include:

[M]ethanol, denatured ethanol, and other alcohols; mixtures containing 85 percent or more (or such other percentage, but not less than 70 percent, as determined by the Secretary [of Energy], by rule, to provide for requirements relating to cold start, safety, or vehicle functions) by volume of methanol, denatured ethanol, and other alcohols with gasoline or other fuels; natural gas; liquefied petroleum gas; hydrogen; coal-derived liquid fuels; fuels (other than alcohol) derived from biological materials; electricity (including electricity from solar energy); and any other fuel the Secretary determines, by rule, is substantially not petroleum and would yield substantial energy security benefits and substantial environmental benefits[.]

42 U.S.C.A. 13211(2) (West Supp. 1993).

[5] The term "alternative fueled vehicle" is defined as "a dedicated vehicle or a dual fueled vehicle." 42 U.S.C.A. 13211(3) (West Supp. 1993).

[6] 42 U.S.C.A. 13232(a) (West Supp. 1993).

[7] 42 U.S.C.A. 13232(b) (West Supp. 1993).

[8] DOE also must establish a program to educate the public about the benefits and costs of the use of alternative fuels. See 42 U.S.C.A. 13231 (West Supp. 1993). Under that program, DOE will produce and make available an information package for consumers to assist them in choosing among alternative fuels and AFV's. That package will provide "relevant and objective" information on vehicle and fuel characteristics as compared to gasoline, including environmental performance, energy efficiency, domestic content, cost, maintenance requirements, reliability, safety, and "such other information as the Secretary [of DOE] determines is reasonable and necessary to help promote the use of alternative fuels in motor vehicles." *Id.* The DOE information package must be completed by April 25, 1994 (the same date by which the Commission must issue its Notice of Proposed Rulemaking), and updated annually "to reflect the most recent available information." *Id.*

[9] See 15 U.S.C.A. 2821–23 (West Supp. 1993).

[10] 16 CFR part 306.

by citations to supporting authority whenever available.

A. Scope

As noted, section 406 requires the Commission to promulgate labeling requirements both for "alternative fuels" and "alternative fueled vehicles." The Commission invites comment on which fuels and which vehicles should be covered by the labeling requirements.

1. Alternative Fuels

a. Which alternative fuels are presently available for consumer use? For each such fuel, describe:

(1) The fuel's composition;

(2) How the fuel is produced;

(3) The costs and benefits involved in utilizing the fuel for transportation.

b. Should the Commission limit the scope of the labeling requirements to presently available alternative fuels? If not, (a) how should the Commission decide which alternative fuels should be covered by its labeling requirements, and (b) using those criteria, which alternative fuels should be covered at the present time?

c. Not all alternative fuels are dispensed from a conventional fuel pump (e.g., electricity is dispensed from a recharging unit). How should alternative fuels not dispensed from a conventional fuel pump be labeled?

2. Alternative Fueled Vehicles

a. The term "alternative fueled vehicle" includes any dedicated or dual fueled vehicle. Should coverage of the labeling requirements extend to all such vehicles? If not, (a) how should the Commission decide which vehicles should be covered, and (b) using that criteria, which vehicles should be covered at the present time?

b. Should the Commission's labeling requirements extend to vehicles converted to use alternative fuels "after market" (i.e., after sale by original equipment manufacturers)?

B. Disclosure (Label Content)

The labels required by section 406 must disclose "appropriate" information with respect to costs and benefits. Accordingly, the Commission seeks comment on the types of information that could help consumers make reasonable purchasing choices and comparisons.

1. Should the Commission target the information to be disclosed in its labeling requirements to a particular class, or to particular classes, of consumers (e.g., individual purchasers, fleet owners)? If yes, which consumers?

2. What information will consumers need to make comparisons between alternative fuels and conventional gasoline products? Between alternative fuels and diesel fuel?

3. What information will consumers need to make comparisons between AFV's and gasoline-powered vehicles? Between AFV's and diesel-powered vehicles?

4. What information will consumers need to make comparisons among various alternative fuels?

5. What information will consumers need to make comparisons among various AFV's?

6. What information should be disclosed to consumers to help them make reasonable purchasing choices and comparisons of alternative fuels and AFV's?

a. For each information category, where should that information be disclosed: (a) On the fuel dispenser? (b) vehicle? (c) some other location?

b. For each information category, how should the information be displayed? For example, in quantitative or descriptive terms? Absolute or comparative terms? If comparative, compared to what (e.g., gasoline and/or diesel, or other alternative fuels)?

c. For each such information category, what should the authority (e.g., testing results, government report) for that information be? How should the information be determined by vehicle manufacturers, converters, and fuel sellers?

7. Section 406 requires the Commission to update its labeling requirements "periodically to reflect the most recent available information." How often should the Commission reexamine its labeling requirements and consider changes? What information should the Commission consider to update its labeling requirements? How significant should the change in information be to trigger an update?

8. Section 406 requires the Commission to consider consolidating its labeling requirements to be promulgated under this section with "other labels providing information to the consumer." Should the Commission consolidate the section 406 labeling requirements with other labels? Which ones? How might the labels be consolidated?

9. What label format or formats should the Commission consider to comply with section 406's mandate?

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 93–30148 Filed 12–9–93; 8:45 am]

BILLING CODE 6750–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1220

RIN 3095–AA48

Agency Program Evaluations

AGENCY: National Archives and Records Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule more fully describes agency and NARA responsibilities as part of the records management evaluations of Federal agencies that NARA conducts on a regular basis. It discusses the authority, purpose, and scope of these evaluations and describes specific agency requirements related to the evaluation notification, the evaluation process, and the transmittal of the report, and for producing action plans and regular progress reports.

DATES: Comments must be received by January 10, 1994.

ADDRESSES: Comments should be sent to Director, Policy and Program Analysis Division (NAA), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001.

FOR FURTHER INFORMATION CONTACT: Mary Ann Hadyka or Nancy Allard at 301–713–6730.

SUPPLEMENTARY INFORMATION: Following is a description of the changes made by this proposed rule.

A definition of evaluations, based on the statutory definition of inspections in 44 U.S.C. 2901, has been added to the definitions under § 1220.14.

A revised section on agency internal evaluations now specifies that these internal evaluations should be conducted at a minimum biennially and has been moved to § 1220.42 from § 1220.54. Because agency internal evaluations provide important information for NARA in effectively carrying out its records management oversight function, agencies are asked to provide copies to NARA's Office of Records Administration. Subpart C now refers entirely to NARA's agency records management evaluation program. The separate section on interagency program evaluations and studies has been eliminated. The information under that heading has been included in § 1220.50 as part of NARA's authority to carry out evaluations.

Sections 1220.50 and 1220.52 have been revised and expanded to describe NARA's authority to carry out evaluations and the purpose and scope of this program.

Section 1220.54 describes NARA's role in the evaluation notification

process and specifies agency requirements after that notification process has taken place. Because the evaluation process proceeds more smoothly if agency staff have been formally notified of the evaluation by the agency head, this requirement (b)(2) has been added. In addition, the NARA staff may need to reference this notification, so a requirement (b)(3) has been included that NARA be provided a copy. The requirements in (b) (4), (5), and (6) have generally been standard practice as part of NARA evaluations but are being spelled out as part of these revised regulations. The requirement for agencies to provide a list of schedules currently in effect and to list functions or information systems not currently covered by schedules is to allow NARA to better assess the quality and coverage of records schedules in the agency as part of the evaluation process.

Section 1220.56 describes NARA's role in the transmittal of the draft and final reports and specifies agency requirements in response to these transmittals. In particular, NARA now has a 120-day time limit for drafting the report once the agency visits have been completed.

The current regulations require both agency action plans in response to the evaluation recommendations and for regular progress reports every six months until the recommendations are fully implemented. Section 1220.58 includes new and more detailed requirements for these plans and reports. Based on NARA's experience with what makes for effective action plans and progress reports, the contents of these documents have now been specified in greater detail. In the action plans, the responsible official now needs to be identified as well as both starting and ending dates and milestones for completing the individual recommendations. Separate action plans for field sites may be requested. The progress reports, for which no content was previously specified, should include a description of what has been accomplished on each action in the plan since the last report, the current status of the recommendation, any changes in the offices or programs responsible for implementation, explanations of any delays in implementation, and revised target dates and milestones if necessary.

Section 1220.60 briefly describes potential NARA follow-up action and reviews.

As part of agencies' review of these regulations, NARA is particularly interested in receiving comments on two issues. The first concerns the criteria for selecting agencies for evaluations. NARA has very briefly described these criteria as perceived need, specific request, or a compliance monitoring cycle. We are interested in agency reactions to, or suggestions for, these criteria.

The second issue concerns criteria for performance measurement. NARA has not specifically discussed this issue in the regulations, but is soliciting agency comments. In addition to agency effectiveness in implementing the specific evaluation recommendations, what are fair and standard measures by which NARA can, across agencies, assess the success of the evaluation program in terms of programmatic improvements or improved work products?

This rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993. As required by the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant impact on small business entities.

List of Subjects in 36 CFR Part 1220

Archives and records.

For the reasons set forth in the preamble, NARA proposes to amend part 1220 of title 36 of the Code of Federal Regulations as follows:

PART 1220—FEDERAL RECORDS; GENERAL

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

Authority: 44 U.S.C. 2104(a) and chs. 29 and 33.

2. In § 1220.14, the term "Evaluation" is added in alphabetical order to read:

§ 1220.14 General definitions.

* * * * *

Evaluation means the inspection, audit, or review, either comprehensive or selective, of any Federal agency's records management programs or practices or its records with respect to effectiveness and compliance with records management laws. It includes recommendations for correction or improvement of records management.

* * * * *

3. Section 1220.42 is added to Subpart B to read as follows:

§ 1220.42 Agency internal evaluations.

Each agency must periodically, at a minimum biennially, evaluate its records management programs relating to adequacy of documentation, and maintenance, use, and disposition of records. These evaluations must determine compliance with NARA regulations in Subchapter B and assess the effectiveness of the agency's programs. Upon completion, agencies must provide copies of these internal evaluations to NARA's Office of Records Administration. Assistance in conducting internal evaluations is available from this office.

4. Subpart C is revised to read as follows:

Subpart C—NARA Evaluation Program

Sec.

1220.50 Authority.
1220.52 Purpose and scope.
1220.54 Evaluation process.
1220.56 Evaluation report.
1220.58 Agency action plans and progress reports.
1220.60 Followup notification and reviews.

§ 1220.50 Authority.

44 U.S.C. Chapter 29 vests in the Archivist of the United States the responsibility for providing guidance and assistance to Federal agencies with respect to ensuring adequacy of documentation and proper records disposition. Sections 2904 and 2906 specifically authorize the Archivist to conduct inspections or surveys of records and records management programs and practices within and between Federal agencies and require officers and employees of agencies to cooperate fully in such inspections. Section 2904 also authorizes the Archivist to report to the appropriate oversight and appropriations committees of the Congress and the Director of OMB on the results of inspections, the responses by agencies to NARA evaluation recommendations, and estimates of the costs to the Federal government resulting from the failure to implement such recommendations.

§ 1220.52 Purpose and scope.

(a) NARA evaluations measure how effectively Federal agencies make and preserve complete and accurate records of their organization, functions, policies, decisions, procedures, and essential transactions; and maintain an active, continuing records management program including proper records disposition. Agencies shall be evaluated for compliance with requirements in 44 U.S.C. chapters 31 and 33 and all the regulations issued thereunder in 36 CFR subchapter B.

(b) NARA evaluations may include comprehensive reviews of agency records management programs, or selective reviews focused on adequacy of documentation, on records disposition, on the management of specific types of record media or on the management of records in particular program areas. NARA evaluations may be inter-agency or multi-agency. These

evaluations may be conducted solely within headquarters offices, only at field locations, or at a combination of field sites and headquarters.

(c) Evaluations will involve site visits by NARA; submission by NARA to the agency of a written report containing findings, analyses, and recommendations; and submission to NARA by the agency of an action plan for implementing the recommendations followed by regular progress reports. Interagency report control number 0153–NARA–AR has been assigned to the action plan and progress reports in accordance with 41 CFR subpart 201–45.6.

§ 1220.54 NARA evaluation process.

(a) NARA selects Federal agencies to be evaluated on the basis of perceived need or specific request, or on the basis of a compliance monitoring cycle, and will determine the scope of the evaluation. An agency may request an evaluation of its records management program by contacting the Assistant Archivist for Records Administration; however, the final determination of agencies to be evaluated will be made by NARA. The heads of agencies will be notified in writing by the Archivist of the United States of the intent to conduct an evaluation at least 60 calendar days prior to initiating the evaluation.

(b) Once NARA has notified the agency, the agency head must, by the date specified in the Archivist's letter:

(1) Acknowledge in writing NARA's intention to evaluate, and provide the Archivist with the name and telephone number of the senior official with overall responsibility for records management and of a headquarters official who will work with NARA to facilitate the evaluation process;

(2) Provide written notification of the evaluation to all offices and contractors potentially involved, and to all IRM and records staff; this notification will include instructions to cooperate with NARA by setting up interviews, providing requested information, and making records available for inspection;

(3) Provide NARA with a copy of the written notification in paragraph (b)(2) of this section and with a list of names and telephone numbers of officials responsible for records management in field sites, if applicable, who will work with NARA during the evaluation;

(4) For comprehensive evaluations, provide NARA with a complete set of internal records management directives, orders, bulletins, or similar authoritative issuances; copies of the two most recent internal records management evaluations; and any special records-related reports. Included will be all issuances relating to adequacy of documentation and recordkeeping requirements; personal papers; management and disposition of textual, electronic, audiovisual, cartographic and architectural, micrographic, and vital records; disaster preparedness and recovery; and any other records-related documentation requested by NARA. A subset of this documentation will be requested for more limited evaluations;

(5) Provide NARA with a current version of the agency manual(s) covering records creation, maintenance, storage, and disposition; a list of all agency schedules currently in effect; and a list of any agency functions and information systems not currently covered by schedules;

(6) Arrange for appropriate management and program officials in headquarters and, if applicable, at field sites to be briefed by NARA at the beginning and at the end of the evaluation process; and

(7) Take immediate corrective action regarding any serious problems that NARA may bring to the agency's attention during the course of the evaluation process such as the unauthorized destruction of records or the unauthorized donation or other transfer of records to non-NARA facilities.

§ 1220.56 Evaluation report.

(a) NARA will submit a draft evaluation report for comment to the agency within 120 calendar days of the last evaluation site visit. After receipt of agency comments, NARA will finalize the report, incorporating any changes resulting from factual errors identified by the agency. The final report will be transmitted by the Archivist to the head of the agency.

(b) The head of the agency must:

(1) Comment within 60 calendar days, in writing, on the factual contents of the draft report. If necessary, agencies may request extensions. No response from the agency within the allotted time will indicate that the agency concurs in the factual accuracy of the draft report.

(2) Review the final report and assign implementation responsibility; and

(3) Distribute the final report to the senior official with responsibility for records management, all information resources management officials, all records managers and records liaison staff, and all affected program and management officials.

§ 1220.58 Agency action plans and progress reports.

(a) *Action plans.*

(1) The action plan must be submitted to NARA within 90 calendar days after the date of transmittal of the final report. The plan is submitted by the agency head or the senior management official responsible for records and information management. The action plan must include:

(i) The name of the senior official and the office responsible for coordinating implementation agency-wide;

(ii) The specific action(s) the agency will take to implement each evaluation report recommendation;

(iii) The name of the official and office or program specifically responsible for initiating and completing each proposed action;

(iv) The estimated time needed to complete each action and the proposed month and year for starting and completing each action;

(v) Major milestones with dates for tracking the completion of long-term or complicated actions; and,

(vi) If requested by NARA, separate action plans for each field site visited, incorporating the information required by paragraphs (a)(1) (i) through (v) of this section.

(2) NARA will analyze the action plan submitted by the agency for its adequacy and effectiveness in implementing the recommendations contained in the evaluation report. NARA will provide comments to the agency on the plan within 60 calendar days.

(3) The agency must revise the action plan until it is approved by NARA.

(b) *Progress reports.* (1) Once the action plan has been approved by NARA, the head of the agency must submit progress reports to NARA every 6 months. The reports must include:

(i) A description of what has been accomplished on each action since the last report;

(ii) The current status of the action;

(iii) Any changes in the offices or programs responsible for overall or specific action implementation; and,

(iv) If appropriate, explanation of any delays in implementation and revised target dates and milestones for completion of the action.

(2) The agency continues to submit these progress reports until all actions have been completed, subject to NARA verification, or until NARA indicates in writing that regular progress reports are no longer required.

(3) NARA will review and comment on agency progress reports, and work closely with the agency to provide assistance in evaluation implementation.

§ 1220.60 Follow-up notification and reviews.

(a) If NARA determines that the implementation of evaluation

recommendations is not progressing in a satisfactory manner, the Archivist may notify Congress and appropriate Federal oversight agencies of the evaluation findings and the agency response.

(b) NARA may initiate follow-up reviews at specific offices or field sites. Results of these follow-up reviews shall be communicated to the head of the agency and, if NARA determines it to be appropriate, to Congress and Federal oversight agencies.

Dated: November 30, 1993.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 93–30177 Filed 12–9–93; 8:45 am]

BILLING CODE 7515–01–W

POSTAL SERVICE

39 CFR Part 111

Special Bulk Third-Class Eligibility Restrictions

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: On October 28, 1993, the President signed into law H.R. 2403, the "Treasury, Postal Service and General Appropriations Act" for 1994. Title VII of H.R. 2403, the Revenue Forgone Reform Act, amends 39 U.S.C. 3626 by adding provisions to subsection (j) and new subsection (m). These sections concern the administration of special bulk third-class postage rates for certain qualified nonprofit organizations. The provisions, which are not to take effect until after December 31, 1993, make certain specific types of matter ineligible to be mailed at the special bulk third-class rates. This notice contains regulations the Postal Service proposes for implementing this legislation. The language in the regulations approximates that set forth in the law. Interested parties should submit their comments.

DATES: Comments must be received on or before January 10, 1994.

ADDRESSES: Written comments should be mailed or delivered to Manager, Mailing Standards, Marketing Systems, room 8430, 475 L'Enfant Plaza West SW., Washington, DC 20260–2419. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at the above address.

FOR FURTHER INFORMATION CONTACT: Ernest Collins, (202) 268–5316.

SUPPLEMENTARY INFORMATION: The new legislation establishes additional content-based restrictions on the matter eligible for special bulk third-class rates. In order for material that advertises, promotes, offers, or for a fee or consideration, recommends, describes, or announces the availability of any product or service to qualify for these rates, the sale of the product or the providing of the service must be substantially related to the exercise or performance by the organization of one or more of the purposes constituting the basis for the organization's authorization to mail at such rates. These determinations are to be made in accordance with standards established under the Internal Revenue Code. The legislation also establishes restrictions for mailing products at the special rates. Low cost products as defined under the Internal Revenue Code, items donated or contributed to the qualified organization, and periodical publications of qualified organizations are the only products mailable at the special bulk third-class rates. The Postal Service views the new provisions as supplementary to rather than a change to or replacement for existing restrictions on special rate mailings. That is, mailings ineligible for the special rates under existing rules remain ineligible for these rates, regardless whether or not they violate the new restrictions. Further, mailings which violate the new restrictions would not be eligible for the special rates, whether or not they would be eligible under existing rules. In addition, the proposed rules would deny the use of special bulk third-class rates for mailpieces, including catalogs and periodicals, that contain advertisements for products or services that are not substantially related to the purposes constituting the basis for the organization's authorization to mail at the special bulk third-class rates, regardless of the inclusion of other advertisements that qualify for mailing at those rates. As a separate matter, the Postal Service is planning to require a certification statement where an official of the qualified organization would submit a signed statement at the time of mailing certifying that the mailing qualifies for the special bulk third-class rates.

Although exempt from the notice and comment provisions of the Administrative Procedures Act (5 U.S.C. 553 (b) and (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comments on the following proposed amendments of part E370 of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR part 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 is revised to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. In the Domestic Mail Manual, section E371 is amended by adding 5.4(d), 5.9, and 5.10. The proposed text is as follows:

Eligibility Module

* * * * *

E370 Special (Nonprofit) Bulk Rates

E371 Basic Standards

* * * * *

5.4 Prohibitions

* * * * *

(Add new d. as follows:)

d. Any product or service (other than those described in 5.4a, b, and c) if the sale of the product or the provision of such service is not substantially related (aside from the need, on the part of the organization promoting such product or service, for income or funds or the use it makes of the profits derived) to the exercise or performance by the organization of one or more of the purposes constituting the basis for the organization's authorization to mail at such rates. The sale of a product or the provision of a service is not considered to be "substantially related" unless the sale of the product or the performance of the service contributes importantly to the accomplishment of the purposes of the organization in accordance with standards established by the Internal Revenue Service and the courts with respect to 26 U.S.C. 513 (a) and (c), Internal Revenue Code. This restriction does not apply if the product involved is a periodical publication meeting the eligibility criteria in E211 including the criteria for one of the qualification categories listed in E211.1.1 and published by one of the types of qualified nonprofit organizations listed in E371.2.0, or a subscription to receive such a periodical publication.

(Add new 5.9 as follows:)

5.9 Qualifying and Nonqualifying Products and Services

a. Material that advertises, promotes, offers, or, for a fee or consideration, recommends, describes, or announces the availability of products or services under the conditions described below generally will not be ineligible under 5.4d for mailing at the special bulk

third-class rates, although that decision must be made on a case-by-case basis and the circumstances in an individual case may require a different result. These products and services include, but are not limited to:

(1) Courses given by a university that is a qualified nonprofit educational organization.

(2) Religious tracts or articles sold by a qualified nonprofit religious organization.

(3) Educational films shown by a qualified museum in the museum's auditorium.

(4) Performances by students in a qualified school for the performing arts where student participation in performances is an essential part of their training.

b. Material which advertises, promotes, offers, or, for a fee or consideration, recommends, describes, or announces the availability of products or services under the conditions described below generally will be ineligible under 5.4d for mailing at the special bulk third-class rates. These products and services include, but are not limited to:

(1) Activities which generate income on which the qualified organization could be required to pay unrelated business income tax.

(2) Mugs and T-shirts sold by a university's bookstore.

(3) One or more products or services advertised in the qualified organization's periodical publication which are not substantially related to the qualified organization's purpose, notwithstanding the presence of advertisements for items which are so related. For example, a religious organization's periodical publication containing advertisements for religious tracts could not qualify if it also contained advertisements for T-shirts.

(4) One or more products or services which are not substantially related to the qualified organization's purpose included in a catalog that also offers items which are so related. For example, a university's catalog of textbooks including prices for courses offered by the university would not qualify if it also offered mugs and T-shirts that can be purchased at the university's bookstore.

(5) General entertainment films shown by a qualified museum in the museum's auditorium.

(Add new section 5.10 as follows:)

5.10 Products Mailable at Special Bulk Third-Class Rates

The following products are mailable at special bulk third-class rates:

a. Low cost items within the meaning of 26 U.S.C. section 513(h)(2), Internal Revenue Code. Under this standard, low cost items are currently those having a value of not more than $6.20. Cost is based on the item's actual value, represented value, or retail value, whichever is highest.

b. Items donated or contributed to the qualified organization.

c. Periodical publications of a qualified nonprofit organization (see E371.5.4d).

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 93-30336 Filed 12-8-93; 12:22 pm]

BILLING CODE 7710-12-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Group 3400

[WO-600-4130-02-24 1A]

RIN 1004-AC16

Logical Mining Units (LMU's) in General; LMU Application Procedures; LMU Approval Criteria; LMU Diligence; and Administration of LMU Operations

AGENCY: Bureau of Land Management, Interior.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Department of the Interior gives notice of its intention to amend the regulations at 43 CFR Group 3400 relating to logical mining units (LMU's) for coal mining operations to improve its procedures for review of LMU applications and to improve its administration of LMU operations. The purpose of this proposed amendment would be to place greater emphasis on the stewardship of the Federal coal resources and to ensure that Federal coal resources are developed in a legal, efficient, economical, and orderly manner with due regard to the conservation of coal reserves and other resources. This notice solicits public comments to help guide preparation of a proposed rule.

DATES: Comments on this advance notice of proposed rulemaking must be submitted in writing by February 8, 1994. Comments received after this date may not be considered in the issuance of the proposed rule.

ADDRESSES: Comments should be sent to: Director (140), Bureau of Land Management, room 5555, Main Interior Building, 1849 C Street, NW., Washington, DC 20240. Comments will be available for public review at the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Paul Politzer, Chief, Division of Solid Minerals, Bureau of Land Management, (202) 452-0350.

SUPPLEMENTARY INFORMATION: The amendments to the regulations being considered stem in part from an effort to improve the administration and management of LMU's consistent with the Department of the Interior's responsibility to ensure that any development of the Federal mineral estate is responsible.

This advance notice of proposed rulemaking presents only a general description of the actions being considered, and includes no regulatory text. Regulations governing issues related to the processing of LMU applications and the administration of LMU's appear in many specific sections of 43 CFR Group 3400. Public comments regarding BLM's administration of all facets of LMU's in the Federal Coal Program are invited and will be considered in the development of a proposed rule.

This notice is directed toward placing greater emphasis on the stewardship of the Federal coal resources and to ensure that Federal coal resources are developed in an efficient, economical, and orderly manner with due regard to the conservation of coal reserves and other resources within the concept of ecosystem management. Specifically, BLM will be examining regulatory provisions such as those that allow for establishment of an LMU as a basis for substitution of LMU diligent development requirements for statutory lease-specific diligent development requirements.

In publishing this advance notice of proposed rulemaking, the BLM requests information and public comments related to LMU's that will assist the BLM in addressing the following questions:

1. Is any change in the current regulations related to LMU diligent development required or necessary?

2. Is it appropriate for the approval of an LMU to allow LMU diligent development requirements to supersede lease-specific diligence?

3. Is it appropriate to tie LMU diligent development requirements to the date of the most recent Federal lease included in the LMU?

4. What criteria should be used to establish LMU diligent development requirement?

5. How should LMU diligent development requirements be related to the lease-specific diligent development requirements of those leases included in the LMU?

6. Should the regulations continue to allow an LMU to be effective as early as the date that a complete LMU application was submitted?

7. Should the regulations require that at least one Federal lease be either producing or included in an approved Surface Mining Control and Reclamation Act permit in order to be included in an LMU application?

8. What would be a viable, working definition of the term "producing" or "production" under the Federal Coal Leasing Amendments Act and the Mineral Leasing Act as the term relates to LMU's? Should separate definitions of "producing" and "production" be developed specifically for LMU's? If so, what should the definition be?

The public is invited to raise any additional issues of concern relating to diligent development requirements for LMU's and submit suggested solutions.

The principal author of this advance notice of proposed rulemaking is Harold Moritz of the Division of Solid Minerals, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

Dated: December 6, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 93–30257 Filed 12–9–93; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 1370

RIN 0970–AB21

Family Violence Prevention and Services Programs

AGENCY: Administration for Children and Families (ACF), HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule proposes requirements for sections 303, 308, 311, and 314 of the Family Violence Prevention and Services Act, as amended by the Child Abuse, Domestic Violence, Adoption, and Family Services Act of 1992 (Pub. L. 102–295), and is intended to provide States, Indian tribes and other grantees with information on grants available under these sections of the statute

DATES: Interested persons and agencies are invited to submit written comments concerning these proposed regulations no later than February 8, 1994.

ADDRESSES: Comments should be submitted in writing to the Assistant Secretary for Children and Families, Attention: William D. Riley, OCS/DSA, Fifth Floor, 370 L'Enfant Promenade SW., Washington, DC 20447, or be delivered to the Administration for Children and Families, Office of Community Services, Fifth Floor, 370 L'Enfant Promenade SW., Washington, DC, between 8 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during the same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: William D. Riley, Administration for Children and Families, Office of Community Services, Fifth Floor, 370 L'Enfant Promenade SW., Washington, DC 20447, telephone (202) 401–5529.

SUPPLEMENTARY INFORMATION:

I. Program Description

The Family Violence Prevention and Services Act (the Act) authorizes formula and discretionary grant programs which fund a range of activities designed to both prevent family violence and provide services to victims of family violence. Enacted as title III of the Child Abuse Amendments of 1984, the Act was amended and reauthorized most recently by Public Law 102–295, the Child Abuse, Domestic Violence, Adoption, and Family Services Act of 1992.

Under section 303 of the Act, funds are awarded as formula grants to States and Indian tribes and tribal organizations to assist in supporting activities to prevent incidents of family violence and to provide immediate shelter and related assistance for victims of family violence and their dependents These grants have supplemented many already established community-based family violence prevention and service activities. They also have allowed States and tribes to expand current service programs and establish additional new centers in rural and underserved areas, on Native American reservations, and in Alaskan Native Villages and Regional Corporation Areas. In most areas, there is private sector as well as State and local funding for these emergency shelters.

Under section 311 of the Act, added by the 1992 amendments, formula grants are available to private non-profit State domestic violence coalitions to conduct activities to promote domestic violence intervention and prevention and to increase public awareness of domestic violence issues. Grant funds are expected to support training and technical assistance activities as well as public education services.

Discretionary grants have funded an array of activities to prevent domestic violence and to better meet the needs of victims of domestic violence. Prior to the passage of Public Law 102–295, the Department used discretionary funds to support the operation of the Clearinghouse on Family Violence Information, research activities with the Bureau of Justice Statistics, regionally based training and technical assistance for State and local law enforcement personnel through the Department of Justice, and technical assistance to State and local agencies and nonprofit organizations administering family violence prevention and services programs.

The 1992 amendments added a new section 308 to the Act which requires the Secretary to establish and maintain a national resource center for family violence prevention and services and up to six special issue resource centers. The national resource center and the special issue resource centers are expected to offer resource, policy, and training assistance to Federal, State, and local government agencies, to domestic violence service providers, and to other professionals and interested parties on issues pertaining to domestic violence.

The national resource center is expected to maintain a central resource library to collect and disseminate information relating to the incidence and prevention of family violence and the provision of immediate shelter and related assistance. The special interest resource centers are expected to provide a specialization, on a nationwide basis, in at least one area of domestic violence service, prevention, or law.

Discretionary grants also are awarded under section 314 of the Act to public and private non-profit agencies, tribes, and tribal organizations to assist in the development of public information and community awareness campaign activities that will serve as information models for the prevention of family violence.

II. New Statutory Requirements

Public Law 102–295 amended the Family Violence Prevention and Services Act and expanded its formula and discretionary grant programs. The amendments were designed to increase public awareness about domestic violence, enhance professional training, improve direct services offered to family violence victims and their children, involve additional agencies in family

violence prevention and services, and to improve the general administration of the Act.

A summary of the major amendments made by Public Law 102–295 follows:

- The Department must make available not less than 10 percent of the appropriations for grants under section 303 of the Act to Indian tribes, tribal organizations and non-profit private organizations approved by an Indian tribe. (sec. 303)
- The match rate provided by local entities funded by the State is required to be 20, 35, and 50 percent for the 1st, 2nd, and 3rd years, respectively. This is a reduction from previous match rate requirements. (sec. 303)
- The Secretary must report to Congress every two years on the effectiveness of the programs administered under the Family Violence Prevention and Services Act. (sec. 306)
- The Secretary is required to establish a national resource center and up to six technical assistance special interest resource centers to provide resource information, training and technical assistance. (sec. 308)
- The Secretary is required to award grants to fund State domestic violence coalitions to further the purposes of domestic violence intervention and prevention through their work with judicial law enforcement agencies, family law judges, child protective services agencies, and children's advocates; conduct public education campaigns regarding domestic violence; and participate in planning and monitoring of the distribution of grants and grant funds to their State under section 303(a). (sec. 311)
- The Secretary may make grants to public or private non-profit entities for public information campaigns regarding domestic violence. (sec. 314)
- The Secretary is required to publish regulations to implement sections 303, 308, 311, and 314 of the Act. (sec. 311(h) and sec. 312(a))

III. Discussion of Part 1370—Family Violence Prevention and Services Programs

Purpose (Sec. 1370.1)

Sections 311(h) and 312(a) of the Family Violence Prevention and Services Act, as amended, require the Secretary to publish regulations implementing sections 303, 308, 311, and 314 of the Act. These proposed regulations would address this requirement.

State and Indian Tribal Grants (Sec. 1370.2)

This section proposes requirements for formula grants to States and Indian tribes and tribal organizations under section 303 of the Act.

Information and Technical Assistance Center Grants (Sec. 1370.3)

This section proposes requirements to support a national resource center and up to six special issue resource centers under section 308 of the Act.

State Domestic Violence Coalition Grants (Sec. 1370.4)

This section purposes requirements for formula grants to State domestic violence coalitions under section 311 of the Act.

Public Information Campaign Grants (Sec. 1370.5)

This section proposes requirements to fund discretionary grants for public information campaigns under section 314 of the Act.

IV. Impact Analysis

Executive Order 12866

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. An assessment of the costs and benefits of available regulatory alternatives (including not regulating) demonstrated that the approach taken in the regulation is the most cost-effective and least burdensome while still achieving the regulatory objectives.

This proposed rule simply proposes requirements for four ongoing programs authorized through the Family Violence Prevention and Services Act.

Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 96–354) requires the Federal Government to anticipate and reduce the impact of regulations and paperwork requirements on small entities. The primary impact of these rules is on State governments, non-profit organizations and individuals. We certify that these rules will not have a significant impact on a substantial number of small entities because they simply establish procedures for grant applications and include no standards or requirements which would burden small entities. Thus, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

Sections 1370.2 and 1370.4 of the proposed rule contain information collection requirements regarding activities supported by State and Indian tribal grants awarded under section 303 of the Act and activities supported by State domestic violence coalition grants under section 311 of the Act. The public reporting burden related to these requirements is estimated to be about 16 hours each for a grantee awarded funds under section 303 and 16 hours each for a grantee awarded funds under section 311. The collection of information requirements contained in these rules have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act. Other organizations and individuals desiring to submit comments on this information collection requirement should direct them to (1) William D. Riley, Administration for Children and Families, Office of Community Services, Fifth Floor, 370 L'Enfant Promenade SW., Washington, DC 20447, and (2) the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, room 3206, Washington, DC 20503. Attention: Desk Office for Administration for Children and Families, Department of Health and Human Services. After OMB approval is obtained we will publish the OMB control number in the **Federal Register**.

List of Subjects in 45 CFR Part 1370

Grant programs—Social programs, Domestic violence, Family violence, Spouse abuse, Elder abuse and neglect.

(Catalog of Federal Domestic Assistance Programs: 93.671, Family Violence Prevention and Services Program)

Dated: October 13, 1993.

May Jo Bane,

Assistant Secretary for Children and Families.

Approved: December 3, 1993.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

For the reasons set forth in the preamble, title 45, chapter H, of the Code of Federal Regulations is proposed to be amended by adding a new part 1370 to read as follows:

PART 1370—FAMILY VIOLENCE PREVENTION AND SERVICES PROGRAMS

Sec.

1370.1 Purpose.
1370.2 State and Indian tribal grants.
1370.3 Information and technical assistance center grants.
1370.4 State domestic violence coalition grants.
1370.5 Public information campaign grants.

Authority: Sections 311(h) and 312(a) of the Family Violence and Services Prevention Act, as amended (42 U.S.C. 10401 *et seq.*)

§ 1370.1 Purpose.

This part addresses section 303, 308, 311, and 314 of the Family Violence Prevention and Services Act (the Act), as amended. The Act authorizes the Secretary to implement programs for the purposes of increasing public awareness about and preventing family violence providing immediate shelter and related assistance for victims of family violence and their dependents; and providing for technical assistance and training relating to family violence programs to States, tribes, local public agencies (including law enforcement agencies, courts, legal, social service, and health care professionals), non-profit private organizations and other persons seeking such assistance. All programs authorized under the Act are funded subject to the availability of funds.

§ 1370.2 State and Indian Tribal Grants.

(a) Each grantee awarded funds under section 303 of the Act must meet the statutory requirements of the Act and all applicable regulations. An announcement which describes the application process, including information on other applicable regulations, is published in the **Federal Register.**

(b) All grantees under this section must meet the requirements 45 CFR part 92 and any applicable requirements of 45 CFR part 74 regarding administration of grants, including reporting requirements and the periods for obligation and liquidation of funds.

(c)(1) Each grantee shall submit an annual program activity report which is due 90 days after the end of the obligation period. The report shall contain:

(i) A description of the major activities supported by Family Violence Prevention and Services Act funds and the specific priorities addressed by the State, tribe or tribal organizations;

(ii) A description of the specific services and/or facilities funded, contracted with, or otherwise included in the implementation of the program (e.g., shelter, safe houses, related assistance);

(iii) A description of the characteristics and demographics of the persons served by service or activity (i.e., by shelter nights, transportation, counseling, etc.) and an estimate of the number of persons served by each service or activity; and

(iv) A description of the prevention activities supported during the program year (*i.e.,* information campaigns, community education, and public awareness efforts).

(2) Each grantee must also submit annual financial status reports, Standard Form 269 (SF–269). An interim financial status report is due 90 days after the end of the obligation period. A final financial status report is due 90 days after the end of the liquidation period.

(d) States and Indian tribes must provide documentation of the procedures that have been developed and implemented to insure the confidentiality of records pertaining to any individual provided family violence treatment or services (sec. 303(a)(2)(E) of the Act); and States must provide documentation that the State has a law or procedure that has been implemented for the eviction of an abusing spouse from a shared household (sec. 303(a)(2)(F) of the Act).

(e) Approval of a tribal organization of a non-profit organization to operate a family violence shelter on a reservation or for projects designed to prevent family violence shall be documented by a current tribal resolution stating that the organization or agency has the authority to submit an application on behalf of the Indian individuals in the tribe(s).

§ 1370.3 Information and technical assistance center grants.

(a) Each grantee awarded funds under section 308 of the Act must meet the statutory requirements of the Act and all applicable regulations. An announcement which describes the application process, including information on other applicable regulations, is published in the **Federal Register.**

(b) All grantees under this section must meet the requirements of 45 CFR part 74 regarding administration of grants, including reporting requirements and the periods for obligation and liquidation of funds.

(c) Each grantee must submit annual financial status reports, Standard Form 269 (SF–269). An interim financial status report is due 90 days after the end of the obligation period. A final financial status report is due 90 days after the end of the liquidation period.

§ 1370.4 State domestic violence coalition grants.

(a) Each grantee awarded funds under section 311 of the Act must meet the statutory requirements of the Act and all applicable regulations. An announcement which describes the application process, including information on other applicable regulations, is published in the **Federal Register.**

(b) All grantees under this section must meet the requirements of 45 CFR part 74 regarding administration of grants, including reporting requirements and the periods for obligation and liquidation of funds.

(c)(1) Each grantee shall submit an annual program activity report which is due 90 days after the end of the obligation period. The report shall describe the coordination, training and technical assistance activities as well as public education services supported by grant funds. The report must provide an assessment of the effectiveness of the activities supported by the grant.

(2) Each grantee must also submit annual financial status reports, Standard Form 269 (SF–269). An interim financial status report is due 90 days after the end of the obligation period. A final financial status report is due 90 days after the end of the liquidation period.

§ 1370.5 Public information campaign grants.

(a) Each grantee awarded funds under section 314 of the Act must meet the statutory requirements of the Act and all applicable regulations. An announcement which describes the application process, including information on other applicable regulations, is published in the **Federal Register.**

(b) All private entities which are grantees under this section must meet the requirements of 45 CFR part 74 regarding administration of grants, including reporting requirements and the periods for obligation and liquidation of funds. All other grantees under this section must meet the requirements of 45 CFR part 92 and any applicable requirements of 45 CFR part 74 regarding the administration of grants, including reporting requirements and the periods for obligation and liquidation of funds.

(c) Each grantee must also submit annual financial status reports, Standard Form 269 (SF–269). An interim financial status report is due 90 days after the end of the obligation period. A final financial status report is due 90 days after the end of the liquidation period.

[FR Doc. 93–30149 Filed 12–9–93; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 396

[FHWA Docket No. MC–90–7]

RIN 2125–AC47

Inspection, Repair and Maintenance; Rockwell Disc Brake Inspection; Reconsideration of Petition

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Reconsideration of petition; reopening of docket; request for comments.

SUMMARY: The FHWA is reconsidering a petition for rulemaking received from Rockwell International Corporation (Rockwell). Rockwell petitioned the FHWA to amend appendix G to the Federal Motor Carrier Safety Regulations, Minimum periodic inspection standards, to allow brake chambers activating the Rockwell disc brake an additional one-fourth of an inch pushrod stroke over that allowed for similar brake chambers activating drum brakes. On July 2, 1992 (57 FR 29457), the FHWA published a notice denying Rockwell's petition. The FHWA is reopening this docket and requesting comments on Rockwell's petition.

DATES: Comments must be received on or before February 8, 1994.

ADDRESSES: Submit written, signed comments to FHWA Docket No. MC–90–7, room 4232, HCC–10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except legal Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Office of Motor Carrier Standards, (202) 366–2981, or Mr. Paul Brennan, Office of the Chief Counsel, (202) 366–1350, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

On December 7, 1988 (53 FR 49402), the FHWA published the final rule on periodic inspection of commercial motor vehicles. The final rule codified detailed inspection criteria under appendix G to subchapter B of chapter III, title 49, Code of Federal Regulations. The criteria include readjustment limits for airbrake systems.

Rockwell submitted a petition for reconsideration of the final rule on January 4, 1989. Rockwell stated that "the necessary stroke requirements of the air disc brake have not been addressed in the subject rule." In discussing its concerns Rockwell explained:

Unlike drum brakes, where the lining-to-drum clearances increase as the brake components heat during braking, the disc brake operates exactly the reverse. As the brakes heat, the rotor disc-to-lining clearances decrease, resulting in brake fade resistance and continued excellent braking ability. Because of this lining-to-rotor disc decrease in clearance during braking, the brake must be initially set up to operate with a greater lining-to-rotor disc clearance than a drum brake. If this extra clearance is not provided, there is a possibility [of brake drag after heavy braking] with resultant brake overheating and its potential serious outcome. The Rockwell automatic slack adjusters for the disc brake are, therefore, designed to allow a slightly longer stroke range than the Rockwell automatic slack adjusters that are used with the drum brakes. These disc brake slack adjusters operate with an approximate ¼" longer stroke range than their drum brake counterparts. This slightly longer stroke range assures that brake drag does not occur.

Rockwell * * * has been attempting to rectify the air disc brake requirement for additional, allowable automatic slack adjuster stroke for the needed lining-to-rotor disc clearance with both the FHWA and the Commercial Vehicle Safety Alliance (CVSA) since 1986. Prior to 1986 both the CVSA inspection criteria and the DOT Motor Carrier Safety Training Text * * * allowed extra brake chamber stroke for air disc brakes before this allowance was omitted from both the CVSA Vehicle Out-Of-Service Criteria and the DOT Motor Carrier Safety Training Text. As a result of this omission, Rockwell on October 15, 1986 met with the FHWA * * * to request reinstatement of the disc brake stroke criteria as outlined in * * * (our) June 25, 1987 attachment (letter to the FHWA). Rockwell has also met formally on three occasions with the CVSA Vehicle Committee to present data and request the reinstatement of the disc brake criteria. * * * As part of this process, Rockwell has submitted to the CVSA extensive vehicle test results including parking and stopping data for both disc and cam brakes. This data gathered two months ago at the Transportation Research Center of Ohio ((TRC)), utilizing TRC drivers and with DOT personnel present at key tests, supported Rockwell's engineering analysis that vehicles equipped with disc brakes utilizing the needed extra brake chamber stroke meet or exceed the National Highway Traffic Safety Administration's MVSS #121 (Federal Motor Vehicle Safety Standard No. 121) requirements as well as equaling or outperforming similar vehicles equipped with cam brakes in both grade holding and high speed stop (stopping) tests.

Rockwell proposed that the following readjustment limits be used for air disc brakes:

Clamp type chamber	Maximum stroke at which brakes should be re-adjusted
16	2
20	2
24	2
24 (long stroke)	2¼
30	2¼

On May 2, 1990, the FHWA published a notice requesting comment on Rockwell's petition (55 FR 18355). The notice of petition included several questions for commenters to consider.

1. Should appendix G to subchapter B be amended to allow the Rockwell petition?

2. If the Rockwell petition is granted allowing the additional one-fourth inch pushrod stroke for disc brakes, do you foresee any problems in enforcement?

3. If the Rockwell petition is granted, do you foresee any problems in maintaining the disc brake assembly, including the automatic slack adjuster, within the requested pushrod stroke?

4. Would there be any enforcement problems created by allowing a different standard between those disc brakes with automatic slack adjusters and those with manual adjusters?

5. Would granting the relief requested have any effect on the braking efficiency as it relates to safe stopping distance?

The FHWA received nine comments to the notice of petition from: the American Trucking Associations (ATA); Bendix Heavy Vehicle Systems Group of Allied-Signal, Inc. (Bendix); the Commercial Vehicle Safety Alliance (CVSA); the State of Connecticut, Department of Motor Vehicles; Eaton Corporation; Ford Motor Company; Lucas Automotive; Maine State Police; and the Maryland State Police. All of the commenters, with the exception of Bendix, were opposed to granting the

petition. Bendix neither endorsed nor rejected the Rockwell petition, but commented on "issues that deserve further consideration."

The FHWA denied the Rockwell petition in a notice published on July 2, 1992 [57 FR 29457]. The FHWA concluded that:

> The brake adjustment criteria of appendix G should be based on the output characteristics of the brake chamber, not on the type of air brake or the type of brake adjuster being used. The Rockwell disc brake design uses brake chambers similar if not identical to the brake chambers used with drum brakes. As air pressure is exerted on the diaphragm, the pushrod is extended. The slack adjuster transfers the linear motion of the pushrod into rotational movement of the powershaft of the disc brake. Rotation of the powershaft clamps the brake pads against the disc. As the output force from the brake chamber decreases, the clamping force against the discs decreases.
>
> Brake adjustment (pushrod stroke) greatly affects the amount of torque that can be generated by the brake. Braking effectiveness decreases with increasing stroke. The decrease in braking force begins before the pushrod stroke reaches the current limits and accelerates rapidly as the full stroke or "bottom out" point is reached. The current brake adjustment limits reflect the maximum pushrod stroke before the output force of the brake chamber falls below acceptable levels. The levels used by the FHWA in appendix G are consistent with the recommended limits available from air brake manufacturers.
>
> The FHWA does not believe that an amendment to appendix G is necessary to accommodate the use of air disc brakes. Rockwell has indicated that design considerations for the air disc brake result in the "occasional violation" of the current pushrod stroke limits. The FHWA does not believe that safety standards should be amended because a manufacturer's design results in occasional violations. Rockwell has not shown that disc brakes inherently require additional stroke.

A complete review of the comments is also included in the notice.

Rockwell Request for Reconsideration

On August 18, 1992, Rockwell and the FHWA met to discuss the petition. Rockwell believed the July 2, 1992, decision may have been founded on incomplete or misstated information. The Federal Highway Administrator, in an August 21, 1992, letter, notified Rockwell that the FHWA would reopen the matter by issuing a subsequent notice to "assure that all relevant information is compiled, fully analyzed, and considered." Therefore, this notice of reconsideration of the Rockwell petition includes a detailed discussion of the data submitted by Rockwell. All information submitted by Rockwell is included in FHWA Docket No. MC–90–7.

Discussion of Rockwell's Disc Brake Data

1986 Presentation of Data

On October 15, 1986, Rockwell gave a presentation to the FHWA about its disc brake system. Several specific issues were covered in Rockwell's technical discussion as set forth below.

Output Force Reduction With ¼" Increase in Pushrod Stroke

The output force for the disc brake system using a type 24 brake chamber is reduced by 2.6 to 11.9 percent when the pushrod stroke is increased to 2 inches. "Calculations at the increased stroke and maximum pressure indicate that the vehicle 20 mph stopping distance increase is minimal, i.e. [0.9]–2.2 feet and is still within the [FHWA] 35 foot requirement for vehicle performance (§ 393.52)."

Rockwell states:

> [A]n increase in stopping distance will only occur at maximum available chamber pressure. At any pressure lower than the maximum, the driver has only to increase the application pressure slightly to achieve minimum stopping distance for the situation at hand. Rockwell has conducted many pressure spectrum analyses of vehicles in service which indicate that a maximum pressure stop is very rare indeed.

Dynamometer Tests of the Output Torque

Dynamometer tests indicate "increasing torque output with increasing pressure even beyond the 1¾ inch to 2 inch stroke range for Type 24 and Type 30 service chambers. * * * In addition, disc brakes do not have an increase in chamber stroke from the static to the dynamic mode. In fact, often the dynamic stroke for a disc brake is less than the static stroke * * *."

Deflection Characteristics and Temperature Expansion of Disc Brakes

Rockwell states that "the geometry, temperature expansion and deflection characteristics of disc brakes suggest that additional stroke allowances in the initial or brake off state are required." The total brake pad swell and rotor expansion is 0.054 inches at 1000 °F for materials used in the 1986 tests. "If [0.05] inches of clearance is allowed in the free state, * * * the current recommended chamber strokes will be exceeded at 85 psi if high temperature drag is to be prevented."

1988 Vehicle Performance Test Data

On October 25, 1988, Rockwell presented results of vehicle performance tests to the CVSA Vehicle Committee. The tests were performed at the Transportation Research Center, East Liberty, Ohio, on October 11, 19, and 20, 1988, and compared brake performance of vehicles equipped with disc brakes and vehicles equipped with drum brakes. Straight trucks (gross weight of 35,000 pounds) and tractor-semi-trailer combinations (gross weight of 80,000 pounds) were tested. A more detailed description of the test vehicles and their respective brake systems is provided in written material and video tapes submitted by Rockwell. This material also includes video tapes of the performance tests. Test conditions were: 20-percent grade holding; drawbar pull (only for the combination vehicles with the tractor parking brakes applied); 20 mph stopping distance (only for the combination vehicles); and 60 mph stopping distance.

Stopping Distance Tests

The 20 mph stopping distance tests of the tractor-semi-trailers show that the disc-braked vehicle (pushrod stroke at 2¼ inches) had stopping distances greater than those for the drum-braked vehicle (pushrod stroke at 2 inches) in four of the five test runs Rockwell discussed. The application pressures used in the five test runs were 20, 40, 60, 80 and 100 psi. The test run in which the brake application pressure was 40 psi is the only case in which the disc-braked vehicle had a shorter stopping distance.

The 60 mph stopping distance tests of the tractor-semi-trailers show that the disc-braked vehicle (pushrod stroke at 2¼ inches) had stopping distances greater than those for the drum-braked vehicle (pushrod stroke at 2 inches) at application pressures of 20 psi and 40 psi. At 60, 80 and 100 psi the disc-braked vehicle had shorter stopping distances than the drum-braked vehicle. At 60 and 80 psi, the disc-brake vehicle had stopping distances of 400.1 and 354.7 feet respectively. These distances were each approximately 13 feet shorter than those recorded for the drum-braked vehicle. At 100 psi the disc-braked vehicle had a stopping distance of 303.4 feet while the drum-braked vehicle had a stopping distance of 341.0 feet.

The 60 mph stopping distance tests for the straight truck were driver-best-effort tests. The application pressures were not reported. The tests compared the performance of the disc brake system with pushrod stroke of 2¼ inch and the drum brake system with the pushrod stroke of 2 inches. Three stops, with an average distance of 265.6 feet, were recorded for the disc-braked vehicle. Six stops with an average distance of 301.7 feet were recorded for the drum-braked vehicle. However, three of the six drum brake tests

recorded stopping distances less than 300 feet, and the average for the three shortest stopping distances was 285.1 feet.

20-Percent Grade Holding Results

The 20-percent grade-holding test information provided by Rockwell included results from four initial brake temperatures for the tractor-semi-trailers: 500 °F, 600 °F, 650 °F, and 700 °F. The disc-braked vehicle had parking brakes on each of the tandem axles on the tractor and trailer. The drum-braked vehicle had parking brakes on only one of the tandem axles on the tractor, and one of the tandem axles on the trailer.

During the grade-holding tests for the disc-braked tractor-semi-trailer (pushrod stroke of 2¼ inch) facing uphill, the vehicle "crept" when the initial brake temperature was 700 °F. At an initial brake temperature of 650 °F the disc brakes held while the brakes cooled to ambient temperature. The results for the tractor-semi-trailer facing downhill indicate the brakes held while the brakes cooled from an initial temperature of 600 °F to ambient temperature.

The grade-holding tests for the drum-braked tractor-semi-trailer (pushrod stroke of 2 inches) facing uphill recorded the greatest initial temperature at which the brakes would hold as 500 °F. The results for the tractor-semi-trailer facing downhill indicate that the brakes held when the initial temperature was 600 °F.

The grade-holding tests for the two-axle straight truck (pushrod stroke of 2¼ inches for the disc-braked vehicle, 2 inches for the drum-braked vehicle) included results from three initial brake temperatures: 100 °F, 600 °F, 700 °F. Rockwell indicated that the disc-braked truck was not able to hold the grade (facing uphill and facing downhill) when the initial brake temperature was 700 °F. With an initial temperature of 600 °F, the disc brakes held while the brakes cooled to 200 °F.

The grade-holding tests for the drum-braked vehicle indicate that the parking brakes held when the initial temperature was 100 °F but did not hold when the initial temperature was 600 °F. Results for temperatures between 100 °F and 600 °F were not provided.

Drawbar Pull

The drawbar test was performed on the tractor-semi-trailer vehicles to measure the parking brake retardation force (using only the tractor parking brakes). As noted in the 20-percent grade holding test, the disc-braked vehicle had parking brakes on each of the tandem axles on the tractor. The drum-braked vehicle had parking brakes on only one of the tandem axles on the tractor. The disc-braked vehicle had a retardation force of 12,500 pounds in both the forward and reverse directions. The drum-braked vehicle had a retardation force of 10,750 pounds in the forward direction and 11,000 pounds in the rear direction.

1989 Dynamometer Test Data

On September 27, 1991, Rockwell presented additional information to the FHWA. This data consisted of three dynamometer tests performed on July 5, July 7, and July 11, 1989. Rockwell indicated that the slack adjuster(s) used in the dynamometer tests were not manufactured by Rockwell.

The July 5, 1989, brake retardation data showed a pushrod stroke of 2.03 and 2.13 inches with rotor temperatures of 618 °F and 625 °F and application pressures of 70 and 80 psi respectively. The brake recovery test data (twenty sequences) indicates the minimum pushrod stroke was 2.06 inches (maximum application pressure of 77 psi, minimum application pressure 52 psi) while the maximum stroke was 2.20 inches (maximum application pressure of 89 psi, minimum application pressure 51 psi). The 60 mph brake performance tests indicate pushrod strokes of 2.11 inches and 2.26 inches at application pressures of 90 and 100 psi respectively. The 20 mph and 50 mph brake performance tests produced pushrod strokes less than two inches.

The July 7, 1989, data was similar to the July 5, 1989, data. However, only four of the twenty recovery sequences produced pushrod strokes of 2 inches or greater. The longest pushrod stroke was 2.03 inches (maximum application pressure of 72 psi, minimum application pressure of 54 psi). All of the remaining recovery sequences resulted in pushrod strokes between 1.95 inches and 1.99 inches (nine recovery sequences at 1.95 inches, one at 1.96 inches, four at 1.97 inches and two at 1.99 inches).

The July 11, 1989, brake retardation data indicate a pushrod stroke of 2.01 inches with a rotor temperature of 539° F and an application pressure of 80 psi. The twenty brake recovery sequences did not include any cases in which the pushrod stroke exceeded two inches. Fifteen of the twenty sequences resulted in a pushrod stroke of 1.84 inches. Four of the sequences resulted in a pushrod stroke of 1.83 inches and one of the sequences resulted in a pushrod stroke of 1.87 inches. The brake performance tests produced several cases with a pushrod stroke of two inches or greater. During the 20 mph test the pushrod stroke was 2.02 inches with an application pressure of 100 psi. The 50 mph stopping test resulted in a pushrod stroke of 2.00 inches at 90 psi, and 2.09 inches at 100 psi. The 60 mph stopping test resulted in pushrod strokes of 2.08 inches, 2.20 inches, and 2.31 inches with application pressures of 80, 90 and 100 psi, respectively.

1991 Pushrod Stroke Data Comparison Between the Disc Brake System With a Rockwell ASA and a Competitor's ASA

On August 20, 1992, Rockwell submitted data comparing the pushrod stroke of the disc brake system using Rockwell automatic slack adjusters (ASAs) and a competitor's ASAs. Rockwell states:

> The data was acquired during the inspection of twelve tractor units in September 1991. Six of the units were equipped with Rockwell automatic slack adjusters and six were equipped with a competitor's automatic slack adjusters. The front axles were equipped with type 16 air chambers and the rear axles were equipped with type 24 long stroke air chambers. Measurements were taken at a brake application pressure of 90 psi with a rule graduated in 1/16 inch increments.

Rockwell's summary of the pushrod stroke measurements from 1991 is provided below. Rockwell did not describe the vehicles used in the tests or the brake temperatures at which the pushrod stroke measurements were taken. Nevertheless, the rear axle comparison data that Rockwell provided with its August 20, 1992, letter suggest that the vehicle was a three-axle truck or truck-tractor.

	Rockwell ASA	Competitor's ASA
Front axle comparison:		
Maximum stroke	1.75	2.19
Minimum stroke	1.38	1.63
Average stroke	1.53	1.80
Rear axles (tandem) comparison:		
Maximum stroke	2.06	2.00
Minimum stroke	1.69	1.69
Average stroke	1.88	1.85

Rockwell believes the 1991 data summarized above support its claim that "replacement of the Rockwell automatic slack adjuster with a different adjuster would not be a viable solution of the stroke limit issue." Rockwell states "the need for a longer stroke is inherent in the air disc brake itself, and is not sensitive to the particular slack adjuster used on the system."

In response to the FHWA's request for information about the number of disc-braked vehicles cited for violation of the

brake readjustment limits, Rockwell states:

> While we do not have complete information to enable an answer to that question, we thought it would be helpful to enclose copies of two letters from major fleet customers. These letters were written in support of Rockwell's petition for reconsideration after the close of the comment period. These letters reiterate our customer's strong satisfaction with the performance of the air disc brake system and express their concern that the regulatory standards for maximum stroke will adversely affect the future of the air disc brakes.

The two fleet customers Rockwell refers to are Perdue Farms, Incorporated and Shell Oil Company. Both fleets sent letters to the FHWA in late 1991. The letters are included in FHWA Docket MC–90–7.

Concerns of Motor Carriers Using Rockwell Disc Brakes

Rockwell indicated that motor carriers using the Rockwell disc brake system have had problems with brake adjustment violations and vehicles being placed out of service. Rockwell did not provide specific figures on the total number of vehicles currently in service, and the percentage that are placed out of service within a given period of time. The FHWA did not receive any comments from motor carriers in response to the May 2, 1990, notice.

Waste Management, Inc. (Waste Management), however, did express support for the Rockwell petition. Waste Management and Rockwell met with the FHWA in Washington, DC, on September 27, 1991. Waste Management has more than 4,000 vehicles equipped with air disc brakes. Waste Management states:

> Our maintenance program calls for brake component, operation and adjustment inspection every 150 hours of operation or every 45 days, whichever occurs first. As with any component, and particularly components such as brakes associated with the safe operation of the vehicle, any noted discrepancies are corrected before releasing the vehicle for service. In our experience, the air disc brake does not require frequent brake adjustment.

With regard to problems noted during roadside inspections, Waste Management believes the FHWA should grant Rockwell's petition "so that safety conscious fleets already equipped and operating with these superior brakes will not continue to be subjected to needless tickets and fines." Waste Management did not provide any specific information on the frequency with which their disc-braked vehicles are cited for improper brake adjustment.

In November and December 1991, the FHWA received letters from four motor carriers (The Arundel Corporation, Provost Bulk Transport, Inc., Perdue Farms Incorporated, and Shell Oil Company) in support of the Rockwell petition. None of the letters included technical data or information quantifying problems with brake adjustment.

Request for Comments

The FHWA is requesting comments on the Rockwell petition and the data Rockwell submitted in support of its petition.

1. Roadside inspection data indicate that airbrake system deficiencies are the most frequent reasons heavy trucks are placed out of service. The most common airbrake system deficiency is improper brake adjustment. Are the brake adjustment problems described by Rockwell "inherent" to disc brake systems, or are they comparable to the brake adjustment problems with drum brake systems?

2. Does the Rockwell comparison between the performance of disc-braked vehicles (with pushrod stroke at 2¼ inches) and the performance of drum-braked vehicles (with pushrod stroke at 2 inches) provide conclusive information about the safety of operation of a disc-braked vehicle with pushrod strokes in excess of the readjustment limits in appendix G? The FHWA notes that such a comparison is one in which both vehicles would be placed out of service. The FHWA requests comments on how the FHWA should interpret data which indicate that a disc-braked vehicle (with brakes at 2¼ inches pushrod stroke) performs better, under some circumstances, than a drum-braked vehicle that would be placed out-of-service for improper brake adjustment.

3. Are the methods/procedures Rockwell uses to compare disc brake performance with drum brake performance technically valid? Does the comparison indicate that a disc-braked vehicle with pushrod strokes in excess of the readjustment limits in appendix G has braking efficiency or performance comparable to that of a drum-braked vehicle with brakes adjusted to comply with the limits in appendix G?

4. The FHWA notes that the Rockwell data shows several cases in which initial test temperatures were at 600 °F and above. As explained by Rockwell, "disc brakes when hot run at reduced clearance while hot drum brakes run at increased clearance and chamber stroke." If the Rockwell petition is granted, disc-braked vehicles with pushrod strokes almost ¼ inch greater than the readjustment limits of appendix G would pass roadside inspections and the annual inspection irrespective of the temperature of the brake at the time of the inspection. If the pushrod stroke is near the 2¼-inch limit (e.g., 2$^{3}/_{16}$ inches) while the temperature is almost 700 °F, would the pushrod stroke be in excess of 2¼ inches at temperatures 250 to 400 °F lower? Should the possibility of longer pushrod strokes at low to moderate brake temperature (e.g., 200 to 450 °F) be a consideration in the evaluation of the petition?

5. Rockwell states that "an increase in stopping distance will only occur at maximum available chamber pressure" when the additional pushrod stroke is allowed. Rockwell also states that a "maximum pressure stop is very rare indeed." The FHWA believes Rockwell is correct in its assertion about the frequency of maximum pressure stops. Such stops are generally associated with emergency situations. Would allowing the additional ¼-inch pushrod stroke decrease the effectiveness of the brakes during their most critical application—a panic stop—or would the alleged superiority of the disc brakes result in shorter stopping distances anyway?

6. Rockwell indicated that "certain initial design considerations" which were required for the air disc brake result in the "occasional violation" of the brake readjustment limits used in roadside inspections and in appendix G to subchapter B. Rockwell limited discussion to clearance between the rotors and pads. Could design considerations which were not discussed (e.g., length of the slack adjuster, dimensions of the power shaft, stiffness of the brake chamber mounting brackets and caliper) contribute to pushrod stroke problems of the nature that Rockwell described?

7. The brake readjustment limits of appendix G are generally 80-percent of pushrod stroke for the specific type of brake chamber. (Example: In the case of the Type 30, clamp chamber, the 2-inch readjustment limit is 80 percent of the 2½-inch maximum distance the pushrod can travel before the chamber "bottoms out.") If the petition is granted, the reserve stroke for a Type 30 brake chamber used in a disc brake system would be reduced from ½ inch to ¼ inch. Is a ¼-inch reserve stroke adequate to ensure the safe operation of vehicles equipped with disc brakes?

8. Does the information/data provided by Rockwell provide documentation of the existence of a problem that can only be resolved by amending appendix G to subchapter B?

The FHWA requests that commenters address the specific questions above. The FHWA also encourages commenters to include a discussion of any other issues that the commenters believe are relevant to the evaluation of Rockwell's petition.

List of Subjects in 49 CFR Part 396

Highway safety, Motor carriers, and Motor vehicle safety.

Authority: 49 U.S.C. 3102; 49 U.S.C. app. 2505; 49 CFR 1.48.

Issued on: December 3, 1993.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 93–30210 Filed 12–9–93; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC09

Endangered and Threatened Wildlife and Plants; Thirty-day Extension on the Proposed Rule To List the Hine's Emerald Dragonfly (Somatochlora Hineana) as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of extension of comment period and public hearing request deadline.

SUMMARY: The U.S. Fish and Wildlife Service (Service) extends for 30 days the period during which it will accept comments and requests for public hearings on the proposed rule (58 FR 51604–51607, October 4, 1993) to list the Hine's emerald dragonfly (*Somatochlora hineana*) as endangered pursuant to the Endangered Species Act of 1973, as amended. The Service believes a number of parties interested in these proposed listings may not have received notice of the proposals in sufficient time to submit comments or request public hearings during the original comment periods. The extension will provide sufficient time for comment preparation and submission of requests for public hearings.

DATES: This extension will result in the comment period for the proposal ending on January 3, 1994. The public hearing request period will end on December 20, 1993.

ADDRESSES: The complete file for this proposal is available for inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Division of Endangered Species, Bishop Henry Whipple Federal Building, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056.

FOR FURTHER INFORMATION CONTACT: Terence J. Miller, Acting Chief, Division of Endangered Species, at the above address (telephone 612/725–3276).

SUPPLEMENTARY INFORMATION:

Background

The Hine's emerald dragonfly has been proposed for listing as an endangered species due to strong evidence that its range and numbers have declined dramatically, primarily as a result of the destruction of habitat, and that the threats to its habitat are continuing. The Illinois habitat, which includes three counties, consists of complex wetlands with small, shallow, spring-fed streams that drain into wet meadows and cattail marshes. The Wisconsin habitat, encompassing one county, consists of small, calcareous, marshy streams and associated cattail marshes on dolomite bedrock.

Since the publication of the October 4, 1993, proposal to list this dragonfly as an endangered species, the Service has been attempting to contact owners of property upon which the Hine's emerald dragonfly is believed to exist. The Service has also been contacting the major national, regional, and state scientific societies; and county, state, and federal governmental agencies having activities in these areas to notify them of the proposals and their potential effects. However, the Service believes a significant number of interested and affected parties may not have received notification in time for them to review the proposal and submit comments or requests for public hearings. The Service considers input from all interested and affected parties to be a vital component of the listing process. Therefore, the Service is providing additional opportunity for all parties to prepare and submit comments on the proposal and to request public hearings.

Author

The author of this notice is Carlita Shumate, U.S. Fish and Wildlife Service, Division of Endangered Species, Bishop Henry Whipple Federal Building, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056.

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1543; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: December 6, 1993.

Sam Marler,

Regional Director.

[FR Doc. 93–30193 Filed 12–9–93; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Finding on Petition and Initiation of Status Review on Reclassification of Cotton-top Tamarin

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding and status review.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the 90-day finding that a petition to reclassify the North American captive populations of the cotton-top tamarin has presented substantial information indicating that the action may be warranted. A status review of these populations is initiated.

DATES: The finding announced herein was made on November 10, 1993. Comments and information may be submitted until March 10, 1994.

ADDRESSES: Comments, information, and questions should be submitted to the Chief, Office of Scientific Authority; Mail Stop: room 725, Arlington Square; U.S. Fish and Wildlife Service; Washington, DC 20240 (Fax number 703–358–2276). Express and messenger-delivered mail should be addressed to the Office of Scientific Authority; room 750, 4401 North Fairfax Drive; Arlington, Virginia 22203. The petition finding, supporting data, and comments are available for public inspection, by appointment, from 8 a.m. to 4 p.m., Monday through Friday, at the Arlington, Virginia address.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Chief, Office of Scientific Authority, at the above Virginia address (phone 703–385–1708).

SUPPLEMENTARY INFORMATION: Section 4(b)(3) of the Endangered Species Act of 1973, as amended in 1982, requires that within 90 days of receipt of a petition to list, delist, or reclassify a species, or to revise a critical habitat designation, a finding be made on whether the petition has presented substantial information indicating that the requested action may be warranted, and that such finding be published promptly in the **Federal Register**. If the finding is positive, section 4(b)(3) also requires commencement of a review of the status of the involved species. The Service

hereby announces a positive 90-day finding on a recently received petition.

The petition was submitted by Dr. Ronald D. Hunt, Director, New England Regional Primate Research Center. It was dated April 28, 1992, and was received by the Service on May 1, 1992. It requests that the North American captive populations of the cotton-top tamarin (*Saquinus oedipus*), also known as the cotton-top marmoset, be reclassified from endangered to threatened. Such reclassification could allow these populations to be covered by special rules, CFR 17.40(c), facilitating their management in captivity. The provision being sought by the petitioner would be similar to that now covering the chimpanzee (*Pan troglodytes*). The petition included data suggesting that the involved populations were large, genetically diverse, and well managed, and would soon substantially exceed wild populations in size.

The petitioner pointed out that there are now about 1,800 cotton-top tamarins in the international studbook for the species. About half of that number are now in captivity in North America, and about half the latter are held at the petitioner's facility. This colony has been growing at a rate of 11–13 percent annually for the past five years, with over 60 percent of the animals now held being captive born. The petitioner indicated that at current rates of growth the over-all captive cotton-top population in North America will double in five years. He stated that such a growth rate would be more than enough to sustain the captive population, to supply the needs of research and conservation, and to eliminate any demand for wild animals.

The Service has examined the petition and supporting data, and finds that substantial information has been presented indicating that the requested reclassification may be warranted. However, more information is sought and the Service encourages the submission of appropriate data, opinions, and publications in the course of the status review that now is initiated. In particular more information is needed on the status of captive populations in North American countries outside of the United States. In accordance with Section 4(b)(3), within 12 months of receipt of the petition, the Service will make another finding as to whether the requested action is warranted, not warranted, or warranted but precluded by other listing measures.

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: November 10, 1993.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93–30237 Filed 12–9–93; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 58, No. 236
Friday, December 10, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

American Lobster Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent to prepare a supplemental environmental impact statement (SEIS); and request for comments.

SUMMARY: NMFS announces the intention of the New England Fishery Management Council (Council) to prepare an SEIS for proposed Amendment 5 to the American Lobster Fishery Management Plan (FMP). The purpose of Amendment 5 is to eliminate or avoid overfishing through adoption of a management program in the EEZ with anticipated future complementary management action in state waters through state initiatives. The proposed measures, where they constitute new actions not currently in state laws and regulations, would not apply in state waters. The Council also announces a continuing public process to determine the scope of issues under consideration and significant issues related to controlling access to public fishery resources. The purpose of this notification is to inform the public of this ongoing process and of the opportunity to participate in the further development of Amendment 5 to the FMP. All persons affected by, or otherwise interested in, the proposed amendment are invited to participate in determining the scope of significant issues to be considered in the SEIS by submitting written comments. The scoping process also will identify and eliminate from detailed study issues that are not significant.

DATES: Send written comments on the scoping process and scope of the SEIS to the Council by December 15, 1993.

ADDRESSES: Written scoping comments and requests for additional information should be sent to Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01906. Copies of the public hearing document for this amendment may be obtained from this address. Mark the outside of the envelope "Request for Lobster Amendment 5 public hearing document."

FOR FURTHER INFORMATION CONTACT: Douglas G. Marshall, (617) 231–0422 (see **ADDRESSES**).

SUPPLEMENTARY INFORMATION: Amendment 4 to the FMP, implemented on December 27, 1991 (57 FR 214, January 3, 1992), suspended the scheduled increases in the minimum carapace length, establishing a minimum gauge size of 3¼ inches (8.26 cm), with the proviso that a new, approvable, and comprehensive amendment (Amendment 5) would be transmitted to the Secretary of Commerce (Secretary) prior to December 26, 1993. Amendment 4 also proposed a definition of overfishing approved by the Secretary with a preliminary indication that overfishing may be occurring in the offshore stock. As a consequence of this preliminary finding, the Council began the scoping process by announcing its intention to develop a comprehensive amendment to the FMP, which reflected an industry consensus on how to manage the fishery and eliminate any overfishing.

Representatives of the U.S. lobster industry formed the Lobster Industry Working Group (LIWG) and, in the spring of 1992, began development of a comprehensive statement of management principles with the aid of the University of New Hampshire Office of Sea Grant. The LIWG submitted a report to the Lobster Oversight Committee and the Council. The industry plan (plan) was subsequently accepted by the Council as the basis for development of Amendment 5 at the January 13, 1993, Council meeting.

The plan basically reaffirmed the current management regime, with the stipulation that the minimum size should remain at 3¼ inches (8.26 cm), but also proposed several new management measures, including a mandatory data reporting system and a short-term moratorium on new entrants to the fishery. Arguably, the most controversial provisions of the plan included a limited entry system to be put in place on expiration of the moratorium and severe restrictions on the mobile gear fishery. The plan also proposed a revised definition of overfishing.

The plan recognized that certain facets of the overall management regime, such as a uniform minimum size and protection for egg-bearing females, should have universal application in the U.S. fishery. However, the industry also stated that management should recognize the heterogeneous character of the fishery; socio-economic conditions are sufficiently diverse between different segments of the harvesting sector to warrant tailoring the overall management program accordingly. For example, if controls on fishing effort should become necessary, then a sub-regional approach was recommended, whereby various programs would be put in place to achieve an overall uniform result.

Public hearings on the proposed amendment were held at 11 locations from Maryland through Maine in early November 1993, and the Council is continuing to consider public comment on these proposals.

Proposed Management Measures and Preferred Alternative

(1) A freeze on the minimum size limit for all lobsters landed by Federally permitted vessels at the current minimum carapace length of 3¼ inches (8.26 cm). The scheduled increases in the minimum carapace length and the escape vent size under Amendment 4 would not take place.

(2) Implementation of either a 5-year or a 2-year moratorium on new Federal vessel permits with a formal review of the effects of the moratorium in the third year. Under either alternative, no new vessel permits would be issued to vessels that did not possess a valid Federal lobster fishing permit, or to vessels or fishermen that did not possess a Federally endorsed state permit prior to the January 9, 1991, control date, subject to the following guidelines:

(a) If a system of assigning fishing privileges is developed as part of the FMP, such assignments would be based

on historical levels of participation in the fishery prior to January 9, 1991, with consideration for recent investments that have not yet been reflected in measures of participation.

(b) New or re-rigged vessels would be given consideration in the assignment of fishing privileges if: (i) They were under construction or re-rigging for directed lobster fishing as of January 9, 1991, as evidenced by written construction contracts, work orders, equipment purchases, or other evidence of substantial investment and intent to participate in the lobster fishery; and (ii) they possessed a lobster permit and landed lobster prior to January 9, 1991.

(c) The record of historical participation would be transferred with the transfer of a vessel for transfers made after January 9, 1991, unless such transfer is accompanied by a written document indicating the agreement of both buyer and seller that any future fishing privileges applicable to that vessel are not being transferred with the vessel.

(d) The Council further intends that any system of assigning fishing privileges will take into consideration the following concerns relative to individuals or corporations that have sold a vessel within the time that may be chosen to determine historical fishing privileges: (i) The degree of economic dependence upon the lobster fishery, including, but not limited to, the percentage of income derived from the lobster fishery; (ii) The extent of past participation in the lobster fishery; (iii) The demonstration of intent prior to January 9, 1991, to re-enter the lobster fishery with another vessel.

(e) Any applicant denied a permit may appeal the denial, in writing. Any of the following grounds may form the basis for review: (i) The denial was based on mistaken or incorrect information or data; (ii) the applicant was prevented by circumstances beyond his/her control from meeting relevant criteria; or (iii) the applicant has new or additional information that might change the initial decision. The applicant will have the right to an oral hearing. Fishermen appealing a permit denial will be allowed to fish until the appeal is completed. An appeal of a moratorium permit denial must be filed within 1 year of the date of implementation of Amendment 5.

(3) Four categories of lobster permits would be implemented:

(a) Category A permits could be issued, upon implementation of Amendment 5, to either commercial or recreational vessels, including dive boats, operating any gear type, that would not qualify under the rules of the moratorium. Vessels that possess a Category A permit could not land or have in possession more than 100 lobsters.

(b) Category B permits could be issued to vessels, other than lobster trap vessels, that qualify under the moratorium, but that cannot document at least 300 pounds (136.07 kg) of lobster landings on at least one trip before the control date. Vessels applying for a Category B permit would be subject to catch restrictions during the first year of plan implementation as discussed below. In the second year of implementation of Amendment 5 and thereafter, these vessels could not land more than 300 lobsters per day or per trip, whichever is longer.

(c) Category C permits could be issued to vessels, other than lobster trap vessels, that qualify under the moratorium and that can document at least 300 pounds (136.07 kg) of lobster landings on at least one trip before control date. Category C permits would be issued beginning one year after implmentation of Amendment 5. Vessels applying for a Category C permit would be subject to catch restrictions during the first year of plan implementation as discussed below. In the second year of implmentation of Amendment 5 and thereafter, these vessels that fish lobster management area(s) requiring measures to eliminate overfishing, would be subject to restrictions equivalent to those for lobster trap vessels in the same management area(s).

(d) Category C permits could be issued to lobster trap vessels that qualify under the moratorium. These vessels would be subject to the provisions of the stock rebuilding program, if those provisions apply to the areas in which the vessels fish.

There could be restrictions on landings in the first year of implementation for vessels in permit categories B and C. A target catch of 4.5 million pounds (2 million kg) based on 8 percent of the total 1992 (56 million pound (25 million kg)) landings of lobsters may be established for the total catch of lobsters by vessels in these permit categories. After this target is reached, during the first year of implementation only, vessels in these categories could be limited to landing no more than 300 lobsters per day or per trip, whichever is longer.

(4) A new data collection system would require permit holders to submit logbooks. These would provide detailed information on all landings, total fishing effort and catch rates. Lobster dealers will be required to record statistics including, but not necessarily limited to, the weight of all landed lobsters at the first transaction, the name of the vessel, and the name of the Operator Permit holder landing the lobsters.

(5) Operators of all vessels with Federal lobster permits would be required to have a Federal Operator Permit. Under one alternative, operators would be required to have at least 2 years of commercial fishing experience and to document that at least 25 percent of his/her earned income for at least 1 year was derived from fishing.

(6) Any dealer of American lobster must have a Federal Lobster Dealer's Permit, would be held accountable for violations of fishing regulations and could be subject to permit sanctions.

(7) A stock rebuilding program that would establish four management areas in the EEZ, an Effort Management Team (EMT) for each area, and a framework process to implement possible stock rebuilding measures. The four management areas would be the Gulf of Maine Inshore, Southern New England Inshore, Middle Atlantic Inshore, and Offshore areas. The boundary lines for the proposed management areas may be adjusted and any Area may be redefined or subdivided, as appropriate.

Each EMT would be comprised of a common, core group of representatives from NMFS, Atlantic States Marine Fisheries Commission (ASMFC), and the Council, plus a group of industry representatives from each area. The industry representation for each EMT would be appointed by the Council and ASMFC and would be comprised of separate sub-panels representing the industry within the separate management areas.

The EMT's would maintain a consultative relationship with the Council's Lobster Committee and the ASMFC Lobster Board. Immediately upon establishment of the EMTs, following implementation of Amendment 5, the EMTs would begin developing their recommendations to the Council and ASMFC (through the Council's Lobster Committee and the ASMFCs) regarding the initial specification of the Stock Rebuilding Program to be established within each management area. Each EMT would make its report no later than 9 months following implementation of Amendment 5. By the end of the second year of implementation of Amendment 5, and at least annually thereafter, the EMTs would report to the Lobster Committee and the ASMFC Lobster Board the extent to which the objectives of Amendment 5 are being achieved, and would include in their report recommendations for further management actions, if required. The

EMTs would be required to continuously monitor aspects of the specified management program and make annual reviews regarding the most appropriate position for boundary lines between management areas.

The EMT would be guided by the most current resource stock assessment. Based on the most current assessment, the Council has determined that the Gulf of Maine segment of the resource is overfished and should be rebuilt over a 5-year period by reducing the fishing mortality rate a total of 20 percent at the rate of 5 percent per year. The Council also found that the Southern New England inshore resource is overfished and should be rebuilt over a 10-year period by reducing the fishing mortality rate a total of 50 percent at the rate of 5 percent per year.

If overfishing is occurring, the EMT may consider any of the following optional measures for any or all management areas to eliminate overfishing: (1) A minimum size limit; (2) a maximum size limit; (3) trap limits; (4) individual transferable trap limits (ITTs); (5) individual transferable quotas (ITQs); (6) seasonal closures of an entire management area(s); (7) closed areas or zones within a management area(s); (8) restrictions on allowable fishing times; (9) restrictions on catches; (10) additional restrictions on gear; or (11) any other restrictions that the Council/ASMFC may designate for the purpose of reducing or controlling fishing mortality rates.

Under the framework process, the Council would hold public hearings to receive comments on the stock rebuilding program provided by the EMT. After consultation with the Council and ASMFC and upon the recommendation of the Council and ASMFC, the Director, Northeast Region, NMFS (Regional Director), would promulgate appropriate regulations to implement the Stock Rebuilding Program within 1 year after the date of implementation of Amendment 5.

(8) If the Council fails to take action under the framework process in any year after the first year, one of the following alternative systems would be automatically implemented: (a) A 1/32-inch (.08 cm) increase in the minimum size limit would occur for each year in which the Council fails to take action; or (b) an overall quota, based on the acceptable biological catch consistent with the 10-percent level of fishing mortality, as determined through the Stock Assessment Review Committee/Stock Assessment Workshop process; or (c) management of the fishery in the EEZ would be assumed by the Secretary.

(9) An alternative to manage one or more areas under a proposal for an ITQ system was developed by the Atlantic Offshore Lobstermen's Association (AOLA). The proposal also contains provisions for different classes of quota, a 3-year quota period, percentage shares and poundage allocations, provisions for transfer of quota, monitoring of through electronic vessels tracking devices, etc.

(10) An overfishing definition would be revised such that, when information based on one or more abundance indices indicates a statistically significant decline at one or more distinct life history phases of pre-recruit lobsters to some percentage of a specified baseline level, the resource would be considered to be overfished. This criterion would be added as an alternative to the current threshold of 10 percent of maximum egg production per recruit.

Timetable for SEIS Preparation and Decision-Making Schedule

The Council has adopted a tentative schedule for preparation, review, and approval of Amendment 5. Under this schedule, the draft SEIS would be completed by the Council's December 7, 1993, meeting. At this meeting the Council will decide whether to submit Amendment 5 prior to December 26, 1993, to prevent an increase in the minimum carapace length from being implemented under the current FMP provisions. If the Council decides to submit the amendment by this deadline, it would then also consider whether to submit the draft SEIS for public review. The public will have the opportunity at the meeting to comment on the Council's decision to submit the draft SEIS. If the Council decides to submit the draft SEIS, public comments on the draft would be accepted during a 45-day comment period in December 1993 and January 1994. After considering public comments, the Council staff would prepare a final SEIS to be included in the review of Amendment 5. Under this schedule, the final SEIS would be submitted by the Council on February 18, 1993, and the Secretary would decide whether or not to approve the amendment by April 2, 1994.

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

Dated: December 3, 1993.

David S. Crestin,

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

[FR Doc. 93–30173 Filed 12–9–93; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Addition

AGENCY: Committee for Purchase from People who are Blind or Severely Disabled.

ACTION: Addition to procurement list.

SUMMARY: This action adds to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: January 10, 1994.

ADDRESSES: Committee for Purchase from People who are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On October 22, 1993, the Committee for Purchase from People who are Blind or Severely Disabled published notice (58 FR 54559) of the proposed addition to the Procurement List.

After consideration of the material presented to it concerning the capability of qualified nonprofit agencies to provide the service, fair market price, and the impact of the addition on the current or most recent contractor, the Committee has determined that the service listed below is a suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will not have a severe economic impact on current contractors for the service.

3. The action will result in authorizing small entities to furnish the service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Accordingly, the following service is hereby added to the Procurement List: Janitorial/Custodial, Social Security Administration Building, 1530 4th Street, Peru, Illinois.

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 93–30240 Filed 12–9–93; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: January 10, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action does not appear to have a severe economic impact on the current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following services to the Procurement List for production by the nonprofit agency listed:

Administrative Services, U.S. Army Corps of Engineers, Nashville District, Estes Kefauver Building and Adjacent Buildings, Nashville, Tennessee

Nonprofit Agency: Goodwill Industries—Middle Tennessee, Inc., Nashville, Tennessee

Commissary Shelf Stocking and Custodial, Fort Shafter, Hawaii

Nonprofit Agency: Goodwill Industries of Honolulu, Honolulu, Hawaii

Janitorial/Custodial, Buildings 433, 434, 435, 436, 437, 952, 953, 954, 956, 975, 980, 20140, 20202, 20204, 20350, 20602, 20604, 20684, 20685, 20686, Kirtland Air Force Base, New Mexico

Nonprofit Agency: The Rehabilitation Center, Inc., Albuquerque, New Mexico.

Beverly L. Milkman,

Executive Director.

[FR Doc. 93–30239 Filed 12–9–93; 8:45 am]

BILLING CODE 6820–33–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Amendment to Department of Defense Decision To Terminate Foreign Military Financing for Direct Commercial Contracts

AGENCY: Office of the Secretary, DoD.

ACTION: Notice.

SUMMARY: The Department of Defense (DoD) extends the effective date of 1 January 1994 for terminating the use of Foreign Military Financing (FMF) (announced by DoD letter, I–02446/93, dated 8 June 1993) for funding direct commercial contracts (DCCs). Congress enacted legislation, section 572 of the FY 94 Foreign Operations Appropriations Act (Public Law 103–87), requiring DoD to continue the use of FMF for funding DCCs until all parties affected by any such changes have been consulted. Accordingly, DoD has extended the policy for FMF funding of DCCs until 1 July 1994 to allow time for the required consultation and to give U.S. industry, foreign countries, and other affected parties an opportunity to provide additional comments concerning this policy change. In accordance with the new legislation, the DoD solicits any comments concerning this policy change for FMF funding of DCCs.

DATES: Submit comments before 31 January 1994 to:

ADDRESSES: Office of the Secretary of Defense, Defense Security Assistance Agency, rm. 4B740, ATTN: Operations Management Division, Pentagon, Washington, DC 20301–2800.

FOR FURTHER INFORMATION CONTACT: Major Kim Leach (703) 697–8108 or FAX (703) 697–1656.

Dated: December 7, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–30192 Filed 12–9–93; 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 OMB control number: Post Election Survey; OMB Control Number 0704–0125.

Type of request: Extension.

Number of respondents: 10,500.

Responses per respondent: 1.

Annual responses: 10,500.

Average burden per response: .166 hours.

Annual burden hours: 1,743.

Needs and uses: 42 U.S.C. 1973ff, "The Uniformed and Overseas Citizens Absentee Voting Act of 1986," (UOCAVA), is administered on behalf of the Secretary of Defense by the Federal Voting Assistance Program. It requires a report to be submitted to the President and to the Congress, "* * * on the effectiveness of assistance under this title, including a statistical analysis of voter participation and a description of State-Federal cooperation." UOCAVA covers the voting rights of all members of the Uniformed Services to include the National Oceanic and Atmospheric Administration, Public Health Service, Merchant Marine, all eligible dependents, and civilian citizens outside the United States. The post-election survey is conducted on a statistically random basis to determine participation rates which are representative of all citizens covered by the Act, and is designed to evaluate the effectiveness of the overall absentee

voting program. The information collected hereby is used for overall program management and improvement, and to compile the Congressionally mandated report to the President and the Congress.

Affected public: Individuals or households; State and local governments.

Frequency: Biennially (Form D) and Quadrennially (Form B).

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, VA 22202–4302.

Dated: December 7, 1993.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–30191 Filed 12–9–93; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Management Service, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before January 10, 1994.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Cary Green, Department of Education, 400 Maryland Avenue SW., room 4682, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Cary Green (202) 401–3200. Individuals who use a telecommunication 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 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (60 Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Cary Green at the address specified above.

Dated: December 7, 1993.

Cary Green,

Director, Information Resources Management Service.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.

Title: The Performance Report for Early Intervention Program for Infants and Toddlers with Disabilities Program, Under Part H of the Individuals with Disabilities Education Act (IDEA).

Frequency: Annually.

Affected Public: State or local governments.

Reporting Burden:

Responses: 57. Burden Hours: 855.

Recordkeeping Burden:

Recordkeepers: 0. Burden Hours: 0.

Abstract: States are required to submit an annual report to the Secretary from the State Lead Agency on the status of early intervention programs operating in the State for eligible children. This is to include a description of the services and how funds were spent. The information collected will be used by ED to determine a State's eligibility for receiving a grant award under this program.

Office of Postsecondary Education

Type of Review: New.

Title: Confirmation Report for the Graduate Assistance in Areas of National Need Program Fellowship Recipients.

Frequency: Annually.

Affected Public: Non-profit institutions.

Reporting Burden:

Responses: 150. Burden Hours: 150.

Recordkeeping Burden:

Recordkeepers: 0. Burden Hours: 0.

Abstract: The confirmation Report for the Graduate Assistance in Areas of National Need Program Fellowship Recipients is needed by university departments to document the students who receive fellowships under the Graduate Assistance in Areas of National Need grant. The U.S. Department of Education needs the form to measure and enforce compliance with the law and regulations.

[FR Doc. 93–30259 Filed 12–9–93; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No. 84.215B]

Fund for Innovation in Education (FIE)—Comprehensive School Health Education Program

AGENCY: Department of Education.

ACTION: Notice of extension of deadline date for transmittal of applications and announcement of additional invitational priority.

SUMMARY: A notice inviting applications for new awards for fiscal year 1994 under the Fund for Innovation in Education (FIE): Comprehensive School Health Education Program appeared on September 24, 1993 in the **Federal Register** (58 FR 50145). Subsequently, the Congress passed appropriation legislation for the Department of Education. In considering the intent of the Senate's Report accompanying the appropriation legislation, the Secretary has decided to add a second invitational priority to the previously published notice inviting applications for new awards under the FIE: Comprehensive School Health Education Program and to extend the deadline for transmitting applications to allow applicants time to respond to the new invitational priority.

DEADLINE FOR TRANSMITTAL OF APPLICATIONS: The deadline for applications has been extended from December 10, 1993 to January 21, 1994.

DEADLINE FOR INTERGOVERNMENTAL REVIEW: The deadline for

intergovernmental review has been extended from February 10, 1994 to April 21, 1994.

PRIORITIES: Under 34 CFR 75.105(c)(1) the Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications:

Invitational Priority 1—School and Family Partnerships

Projects in which schools work in partnerships with families and the community on comprehensive school health education for grades K–12.

Within this invitational priority the Secretary particularly invites applications that address one of the following:

(a) Demonstration or teacher professional development programs that involve new approaches to curriculum, instruction, and assessment in elementary or secondary schools or both.

(b) Projects in elementary or secondary schools or both to provide teachers and administrators with inservice professional development to assist in the implementation of new comprehensive school health education programs.

Invitational Priority 2—Low-Birthweight Babies

Projects which implement professional development programs for pre-service or in-service training of teachers, nutritionists, and appropriate health professionals who provide comprehensive health education to students at risk of having low-birthweight babies. Projects should incorporate the best and most current research on reducing the incidence of low-birthweight babies, including nutrition, prenatal care and effective use of health services, and should serve communities with a high incidence of low-birthweight babies.

FOR APPLICATIONS OR INFORMATION CONTACT: Shirley Jackson or John Roddy, U.S. Department of Education, 555 New Jersey Avenue, NW., room 300–Q, Washington, DC 20208–5524. Telephone (202) 219–1556. 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.

Program Authority: 20 U.S.C. 3151, 3155.

Dated: December 7, 1993.

Sharon P. Robinson,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 93–30255 Filed 12–9–93; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Pittsburgh Energy Technology Center; Restricted Eligibility

AGENCY: Pittsburgh Energy Technology Center, Department of Energy.

ACTION: Determination for Restricted Eligibility Solicitation.

SUMMARY: The Department of Energy (DOE), Pittsburgh Energy Technology announces that pursuant to 10 CFR 600.7(b)(1), and in support of the Metairie Site Office (MSO), it intends to conduct a competitive Program Solicitation No. DE–PS22–94MT94001 and to award on a restricted eligibility basis, financial assistance (grants) to U.S. Historically Black Colleges and Universities (who can show evidence of a collaborative effort with industry), in support of innovative research and advanced concepts pertinent to fossil resource conversion and utilization. Proposals will be subjected to a comparative merit review by a DOE technical panel, and awards will be made to a limited number of proposers on the basis of the scientific merit of the proposal, application of relevant program policy factors, and the availability of funds.

ADDRESSES: Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921–118, Pittsburgh, PA 15236.

FOR FURTHER INFORMATION CONTACT: For a copy of this solicitation or for further information, please write to: U.S. Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921–118, Pittsburgh, PA 15236–0940, Attn: Jo Ann C. Zysk, Contract Specialist.

SUPPLEMENTARY INFORMATION: Solicitation Number DE–PS22–94MT94001.

Title of Solicitation

"Support of Advanced Fossil Resource Utilization Research at Historically Black Colleges and Universities"

OBJECTIVE: The Department of Energy seeks proposals from Historically Black Colleges and Universities (HBCUs) and HBCU-affiliated research institutes (in collaboration with the private sector) for innovative research and advanced concepts pertinent to fossil resource conversion and utilization. The resultant grants are intended to maintain and upgrade educational, training, and research capabilities of our HBCUs in the fields of science and technology related to fossil energy resources; to foster private sector participation, collaboration, and interaction with HBCUs; and to provide for the exchange of technical information and to raise the overall level of HBCU competitiveness with other institutions in the field of fossil energy research and development. Thus the establishment of linkages between the HBCU and private sector fossil energy community are critical to the success of this program, and equally consistent with the Nation's goal of ensuring a future supply of fossil fuel scientists and engineers from a previously under-utilized resource. Eligibility for participation in this Program Solicitation is restricted to Historically Black Colleges and Universities (HBCUs) and HBCU-affiliated research institutes, and only those that meet all of the following criteria may submit applications in response to this solicitation: The Principal Investigator or a Co-Principal Investigator must be a teaching professor at the submitting university listed in the application; and at least one student registered at the university is to be compensated for work performed in the conduct of research proposed in the application; and each HBCU applicant must reflect collaboration with industry, i.e., the private sector. Proposals from HBCU-affiliated research institutes must be submitted through the college or university with which they are affiliated. The university (not the university-affiliated research institute) will be the recipient of any resultant DOE grant award. A small or large business enterprise will qualify as a "private" sector entity; however, the following are specifically excluded from recognition as private sector collaborators: Federal, state and/or local government agencies and non-HBCU colleges and universities. Collaboration by the private sector with the HBCU may be in the form of cash cost sharing, consultation, HBCU access to industrial facilities or equipment, experimental data and/or equipment not available at the university, or as a subgrantee/subcontractor to the HBCU.

Areas of Interest

In order to develop a focused national and regional program of HBCU research

on fossil technology and resources, the Department is particularly interested in innovative research and advanced concepts pertinent to fossil resource conversion and utilization limited to the nine (9) technical topics listed below. Some examples of subtopics in each category are also provided; however, these examples are generally not all inclusive.

Topic 1—Advanced Environmental Control Technology for Coal

Grant applications in support of Advanced Environmental Control Technology for Coal are only solicited for the following subtopics:

Coal Preparation

The research objectives are to develop technologies for (1) deeply depyritizing coal so that the clean coal product would generate significantly less SO_2 emissions when fired in utility boilers, and (2) preparing a cleaned coal product that can be used interchangeably with distillate and residual fuel oils, or natural gas, with minimum retrofit.

Hot Gas Stream Cleanup

The research objectives are: (1) TECHNIQUES for (a) removing physical and chemical contaminants to levels that are compatible with diesel, gas turbine, and fuel cell systems, (b) reducing emissions to levels below the promulgated standards for pulverized coal boilers, and (c) reducing gas stream contaminants to levels that are compatible with liquids production; (2) PROCESSES that (a) have multi-contaminant control capability, (b) directly convert sulfur in fuel gas from coal gasifiers to elemental sulfur, (c) remove ammonia and/or chloride in fuel gas from coal gasifiers, (d) use catalysts on particulate filters, processes using high temperature, high pressure membranes for contaminant separation, and (e) reduce SO_2 and NO_x emissions by reducing the sulfur and nitrogen content of gas-phase tars in fuel gas from coal gasifiers. Diagnostic instrumentation for measurements in hot gas streams are also of interest.

Advanced High Efficiency Emissions Control

The research objectives are innovative concepts (applicable to coal-fired combustors in the electric utility, industrial, commercial, and residential sectors) that allow more efficient, economical, and environmentally acceptable treatment of flue gas from atmospheric coal-fired combustors for reduction of pollution emissions of sulfur dioxide (SO_2), nitrogen oxides (NO, NO_2, and N_2), and carbon dioxide (CO_2).

Waste Management

The research objectives are: (1) To initiate or advance the development of novel uses for coal-derived residues, especially for the wastes from advanced coal combustion or conversion technologies; (2) to utilize the residues from the sulfur capture wastes produced in fluidized-bed combustion, limestone injection multistage burners, advanced flue gas cleaning, or gasification processes; (3) for cost avoidance technology for disposal of these waste products by utilities and smaller scale users of advanced coal technologies; and (4) for advance utilization techniques for waste from small-sized industrial boilers.

Topic 2—Advanced Coal Utilization

Grant applications in support of Advanced Coal Utilization are only solicited for the following subtopics:

Advanced Coal Combustion Systems

The research objective is the direct combustion of pulverized coal or other dry, liquid, or slurry coal-based fuels in either slagging or non-slagging systems other than fluidized beds and heat engines (residential, commercial, industrial, and utility applications).

Fluid Bed Combustion (FBC)

The research objective is for the direct utilization of coal fluidized combustion for both atmospheric and pressurized FBCs for innovative research to (1) Reduce capital, operating, and maintenance costs of FBC systems, (2) improve solids handling, (3) improve environmental performance (with further reduction in emissions of particulates and nitrogen oxides given special emphasis), (4) improve reliability and operability of critical FBC system components, (5) develop instrumentation for characterization of FBC parameters, and (6) integrate FBCs with other components (e.g., absorption coolers or cogeneration systems) to improve the economics of small FBC systems.

Topic 3—Coal Liquefaction Technology

Grant applications in support of Coal Liquefaction Technology are only solicited for the following subtopics:

Advanced Concepts for Conversion of Coal to Liquids

The research objectives are: (1) Novel catalysts or reaction chemistry to remove oxygen in the initial stages of direct coal liquefaction with minimal or reduced hydrogen consumption; and (2) preconversion processing to minimize the occurrence of condensation/retrogressive reactions during the initial reaction stages of coal liquefaction and the use of well dispersed (disposable) catalysts to promote more efficient conversion reactions.

Advanced Concepts for Conversion of Syngas to Liquids

The research objectives are: (1) Improved methods of methanol synthesis and of novel single step processes for producing gasoline and diesel hydrocarbons, (2) simpler routes to higher alcohols and ethers that can be used as octane enhancers, (3) novel catalyst systems making use of modern methods of materials science to facilitate the desired reaction sequences (these should be more active, more stable, and more selective than conventional catalysts), (4) process schemes which make more effective use of heat generated in synthesis, (5) novel systems which convert syngas directly into liquids or liquid precursors, and (6) improved instrumentation and analytical techniques that allow on-line determination of process stream composition or improve characterization of catalysts.

Coal-Oil Coprocessing

The research objectives are: (1) Better understanding the chemistry of interaction between the residue and the coal, (2) improved demetallization, or (3) novel techniques for the production of hydrogen from various coals and coal-based chars for use in direct liquefaction.

Advanced Catalysts

The research objective is the enhancement of depolymerization reactions while repressing the condensation reactions.

Topic 4—Biotechnology for Fossil Energy

Grant applications in support of Biotechnology for Fossil Energy are only solicited for the following subtopics:

Beneficiation of Coal Resources

The research objectives are: Studies and application of biotechnology to remove these organic and inorganic contaminants from typical U.S. coals at mild operating conditions.

Conversion of Fossil Energy Resources

The research objectives are: Types of biotechnical resource modification that include conversion of fossil energy resources to liquid or gaseous fuels, viscosity reduction of high viscosity

materials, or release of organic materials bound in inorganic matrices.

Bioreactors and Bioprocess Efficiency

The research objectives are: (1) Improved approaches (processes, processing systems, and (2) processing equipment) for bioprocessing fossil resources (or their products) including novel and innovative techniques either to increase bioprocess efficiency or to improve bioreactor designs.

Enhanced Oil and Gas Recovery

The research objectives are: (1) The development of processes using microorganisms or their products in the recovery of light and heavy oils or natural gas from low producing fields, specifically addressing new microorganisms capable of growing in underground reservoirs of oil or gas, and examining their metabolic and biochemical characteristics; and (2) both laboratory research and field testing designed to demonstrate the validity of laboratory results.

Topic 5—Enhanced Oil Recovery

Grant applications in support of Enhanced Oil Recovery are only solicited for the following subtopics:

Recovery of Light Oil

The research objective is to improve the recovery of light oil in the following areas: (1) In Depth Sweep Improvement for Enhanced Oil Recovery Processes; (2) Near Well Bore Sweep Improvement for Enhanced Oil Recovery Processes; and (3) Novel Surfactants for High Salinity, High Hardness, and High Temperature Reservoir Brines.

Recovery of Heavy Oil

The research objectives are novel techniques to: (1) Reduce wellbore heat losses using an effective, inexpensive insulating fluid in the tubing-casing annulus; (2) measure the downhole steam quality to determine wellbore heat loss and thus to allow design of better production operations; and (3) improve the effective sweep of the reservoir by reducing the effects of overriding gravity segregation, insufficient mobility control, and heterogeneities.

Oil-Field Geoscience

The research objectives are: (1) Novel methods of characterization to quantify reservoir parameters including porosity, permeability, pore structure, capillary pressure, fracture patterns, and facies geometry; and (2) development of oil data bases and oil atlas compilation and reservoir classification.

Topic 6—Advanced Technology for the Recovery of Natural Gas

Grant applications in support of Advanced Technology for the Recovery of Natural Gas are only solicited for the following subtopics:

Advanced Geotechnology in Production Applications

The research objectives are innovative approaches to improve the recovery of original gas in place and/or on inexpensive new geotechnical approaches or concepts to restore the flow rate of old gas wells.

Advanced Instrumentation and Interpretation Techniques for Locating and Characterizing Natural Gas Resources

The research objectives are advanced instrumentation and interpretation techniques for locating and characterizing gas reservoirs, including hydrates and deep gas, to improve resource recovery and to increase reserves.

Advanced Concepts for Natural Gas Conversion to Liquids

Research objectives are advanced concepts conversion of natural gas to liquids including catalytic and noncatalytic processes (with emphasis on the latter) for converting natural gas to liquid fuels.

Topic 7—Advanced Environmental Considerations in the Recovery and Processing of Oil and Natural Gas

Grant applications in support of Advanced Environmental Considerations in the Recovery and Processing of Oil and Natural Gas are only solicited for innovative methods and concepts that allow more efficient, effective, and economical reduction of environmental risk from the processing and primary, secondary, and enhanced extraction of oil and natural gas. Research relating to open oil spill cleanup technologies will not be considered.

Topic 8—Heavy Oil Upgrading and Processing

Grant applications in support Heavy Oil Upgrading and Processing, are sought for the following subtopics:

(a) Improved Understanding of the Chemistry and the Thermodynamics of Adding Hydrogen to Heavy Feedstocks;

(b) Improved Understanding of the Chemistry and the Thermodynamics of the Removal of the Contaminants, i.e., S, N, O, Metals, etc., from Heavy Feedstocks;

(c) Development of New and Less Expensive Means for Producing Hydrogen from Feedstocks other than Light Hydrocarbons which are Excellent Fuels as is;

(d) Development of New and Less Expensive Contaminant Removal Processes for Heavy Oils along with Environmentally Acceptable Means of Disposing of the Contaminants when Removed;

(e) Development of New Knowledge to be used to Improve Catalytic Cracking and Hydrocracking Catalysts and Process; and

(f) Development of the Knowledge, Catalysts and Processes Necessary to Eliminate the Production of Petroleum Coke or the Ability to Liquefy it so that it can be Recycled to the Refinery.

Topic 9—Faculty/Student Exploratory Grants

DOE is seeking grant applications from HBCU faculty and/or students for a supportable basic premise on any one of the subtopics covered under the above eight (8) technical topics. DOE will provide "seed" grants to the selected HBCU(s) to enable the faculty and/or student researcher(s) to conduct the proposed exploratory research and further develop the stated premise. This is the only topic (Topic nine (9)) under this Program Solicitation that does not require initial private sector collaboration for an application to be considered for selection.

Awards

DOE anticipates issuing financial assistance (grants) for each project. DOE reserves the right to support or not support any or all applications received in whole or in part, and to determine how many awards may be made through the solicitation subject to funds available in this fiscal year. The limitation on the maximum DOE funding for each selected grant to be awarded under this Program Solicitation is as follows:

	Maximum award
Topics 1–8:	
To 12 months grant duration	$80,000.00
13–24 months grant duration	$140,000.00
25–60 months grant duration	$200,000.00
Topic 9:	
To 12 months grant duration	$10,000.00

Approximately one (1) million dollars is planned for this solicitation. The total should provide support for approximately four (4) to eight (8) R&D proposal selections (Topics 1–8), and

approximately two (2) to six (6) facility/student exploratory proposal selections (Topic 9). The Program Solicitation is expected to be ready for mailing on or about November 26, 1993. Applications must be prepared and submitted in accordance with the instructions and forms in the Program Solicitation. To be eligible applications must be received by the Department of Energy by the closing date stated in the solicitation.

Dale A. Siciliano

Contracting Officer.

[FR Doc. 93–30264 Filed 12–9–93; 8:45 am]

BILLING CODE 6450–01–P

Financial Assistance Award; Intent To Award Cooperative Agreement to the Council of State Governments—Midwestern Office

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of intent to make a competitive financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.6(a)(5), it is making a discretionary financial assistance award based on the criterion set forth at 10 CFR 600.7(b)(2)(i)(D) to the Council of State Governments, Midwestern Office, under Cooperative Agreement Number DE–FC01–94RW00288. The objections of the cooperative agreement are to provide assistance to this nonprofit regional association to monitor and inform regional officials on issues related to the transportation and storage of high-level radioactive waste. This effort will have a total estimated cost of $894,557 to be provided by the DOE.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy; Office of Placement and Administration; Attn: Douglas L. Baptist, HR–531.23; 1000 Independence Avenue, SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION:

Scope

The cooperative agreement will provide funding to the Council of State Governments, Midwestern Office, which will: disseminate information to regional officials regarding the states of interim storage and the transportation of high-level radioactive waste in their states; monitor relevant regional emergency preparedness and emergency response initiatives; monitor and comment on the nuclear waste transportation related activities of the Commercial Vehicle Safety Alliance; monitor and comment on the Department of Energy's activities to develop transportation casks; and, participate in meetings with Departmental representatives. In accordance with 10 CFR 600.7(b)(2)(i)(D), it has been determined that the Council possesses the unique domestic capability to successfully perform the proposed activities based on its position as the chartered board representing midwestern states on energy matters pertaining to nuclear waste.

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

Scott Sheffield,

Director, Headquarters Operations Division B, Office of Placement and Administration.

[FR Doc. 93–30262 Filed 12–9–93; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Research

Energy Research Financial Assistance Program Notice 94–07: Computer Hardware Advanced Mathematics and Climate Physics (CHAMMP) Program

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Health and Environmental Research (OHER) of the Department of Energy (DOE) hereby announces its interest in receiving Financial Assistance applications to support the improvement of decade-to-century climate prediction in conjunction with the Environmental Sciences Division's (ESD) Computer Hardware, Advanced Mathematics and Climate Physics (CHAMMP) Program.

This notice requests applications for grants to support:

(Category 1): Theoretical limits to climate prediction over decade to multi-century time frames with sub-continental and smaller scale spatial accuracy.

(Category 2): The development of improved mathematical techniques, model formulations and computer algorithms for atmosphere, ocean and coupled atmosphere-ocean general circulation models (GCM) that more accurately and efficiently describe and predict global climate system behavior on the time and space scales mentioned above using advanced, parallel-processing scientific supercomputers.

(Category 3): The development of improved representations of key climate processes (surface processes, connective transport, etc.) that accurately simulate these processes on the appropriate scales used in GCM-based climate models that simulate decade-to-century climate change.

(Category 4): Continuation of activities previously funded by DOE under Program Notice 91–03 dated December 5, 1990, with grants that conclude in FY 1994.

DATES: Formal applications submitted in response to this notice must be received by 4:30 p.m. e.s.t., March 1, 1994, to permit timely consideration for award in Fiscal Year 1994.

ADDRESSES: Formal applications referencing Program Notice 94–07 should be forwarded to: U.S. Department of Energy, Office of Energy Research, Acquisition and Assistance Management Division, ER–64 (GTN), Washington, DC 20585, Attn: Program Notice 94–07. The following address must be used when submitting applications by U.S. Postal Service Express Mail, any commercial mail delivery service, or when hand carried by the applicant: U.S. Department of Energy, Office of Energy Research, Acquisition and Assistance Management Division, ER–64, 19901 Germantown Road, Germantown, MD 20874.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Riches, U.S. Department of Energy, Office of Health and Environmental Research, Environmental Sciences Division, ER–74 (GTN), Washington, DC 20585, telephone (301) 903–4328.

SUPPLEMENTARY INFORMATION: One of the major objectives of the ESD is to improve the performance and accuracy of Earth climate prediction models to make better forecasts of the climate system response to increasing concentrations of greenhouse gases.

The CHAMMP research program is a multi-year program to accelerate the development of more accurate and useful climate prediction capabilities to forecast climate change on sub-continental and smaller scales over time periods ranging from a decade to several centuries. It emphasizes more definitive theoretical foundations and improved computational methods on the current and next generations of high-performance scientific supercomputers to dramatically increase both the throughput and accuracy of model-based predictions of climate change.

To ensure that the program meets the broadest needs of the research community and the specific needs of the ESD, the successful applicants will participate as members of the CHAMMP Science Team along with selected scientists from other ESD programs that relate to the CHAMMP program. Costs for participation in the Science Team

meetings and workshops should be included in the respondent's application. Yearly estimates for Science Team travel should be based on one trip of five days to Washington, DC, one trip of five days to San Francisco, CA, and one trip of five days to Denver, CO.

Successful applicants for grants in support of Category 1 will conduct research into the capability of climate models to perform decade-to-century predictions of climate behavior for regions encompassing $10^4 - 10^9$ km^2. These applicants must demonstrate the role of their research in defining the predictability limits for model-based climate forecasts, because models will be used to determine the role of various factors, both natural and anthropogenic, in climate change. These studies may include, but are not limited to, both theoretical and modeling investigations of climate system variability over decade to century scales.

Successful applicants for grants in support of Category 2 will conduct research leading to the development of new mathematical techniques and numerical algorithms that can be incorporated into climate models running on highly parallel (50–2000 processor) computer systems of the type envisioned to be the next generation of scientific supercomputers capable of performing over 1011 floating-point operations per second (100 gigaFLOPS) in climate modeling applications. Applicants must demonstrate the role of their research in improving the accuracy and/or the computational efficiency of GCM-based climate models to perform forecasts of decade-to-century climate change. These techniques and algorithms may deal with any or all of the climate system process representations that will comprise GCM-based climate prediction models. These processes include, but are not limited to, atmospheric and oceanic dynamics and transport, surface energy and mass exchange, atmospheric radiative transfer, ocean convection, and sea-ice dynamics and thermodynamics.

Successful applicants for grants in support of Category 3 will conduct research to improve the representations of climate system processes for inclusion in GCM-based climate models used for the prediction of decade-to-century climate change. These studies will explore methods for incorporating the results of the U.S. Global Change Research Program's observational and experimental programs into model components that accurately describe climate system processes at the model resolution scales typically used for climate predictions over decades and longer time frames.

Successful applicants for continuation of grants placed under Program Notice 91–03, Category 4, will demonstrate (a) continued relevance of their work to the goals of the CHAMMP program; (b) the quality and relevance of work conducted under previous support to the goals of the CHAMMP Program, including a listing of the publications, presentations and reports; and (c) relevant contributions to the development of the CHAMMP Program, including participation in and the organization of meetings and workshops and collaboration with model development activities of the CHAMMP program. Applicants should include a special section entitled "Accomplishments Under Previous Support" which addresses items (b) and (c) discussed directly above. Applicants should be prepared to provide, on short notice, complete copies of all publications, reports, etc. listed in this section, should they be required by peer reviewers.

It is anticipated that approximately $1,500,000 will be available for awards for the combined activity under Categories 1, 2, 3, and 4 above in FY 1994, contingent upon the availability of appropriated funds. Multiple year funding of awards is expected, also contingent upon availability of funds. The allocation of funds among the four categories above will depend on the number and quality of the applications received. It is anticipated that a substantial fraction of the funds will support continuation of research under category 4 above. Typical ESD awards are $200,000 per year, but range from $50,000 to $750,000. Collaborative applications among multiple investigators or institutions covering two or more categories are encouraged. Awards are anticipated to begin on or about July 1, 1994.

The technical portion of the application should not exceed twenty-five (25) double-spaced pages. For applicants under Category 4 above, the "Accomplishments Under Previous Support" section should not exceed ten (10) double-spaced pages. Lengthy appendices are discouraged.

Available from ESD (see **ADDRESSES** above) to assist applicants is a copy of the CHAMMP Program Plan and summaries of current research activities. Information about development and submissions of applications, eligibility, limitations, evaluation and selection processes, and other policies and procedures are contained in the Application Guide for the Office of Energy Research Financial Assistance Program and 10 CFR part 605. The Application Guide is available from the U.S. Department of Energy, Office of Health and Environmental Research, Environmental Sciences Division, ER–74 (GTN), Washington, DC 20585. Telephone requests may be made by calling (301) 903–4902.

The Catalog of Federal Domestic Assistance number for this program is 81.049.

Issued in Washington, DC, on November 30, 1993.

D.D. Mayhew,

Director, Office of Management, Office of Energy Research.

[FR Doc. 93–30265 Filed 12–9–93; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. ES94–11–000, et al.]

Consolidated Edison Co. of New York, Inc., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

December 6, 1993.

Take notice that the following filings have been made with the Commission:

1. Consolidated Edison Company of New York, Inc.

[Docket No. ES94–11–000]

Take notice that on November 30, 1993, Consolidated Edison Company of New York, Inc. filed an application under § 204 of the Federal Power Act seeking authorization to issue not more than $300 million of short-term debt during the period January 1, 1994 through December 31, 1995, with a final maturity date no later than nine months after date of issuance.

Comment date: December 27, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. Duquesne Light Company

[Docket No. ES94–10–000]

Take notice that on November 30, 1993, Duquesne Light Company filed an application under § 204 of the Federal Power Act seeking authorization to issue not more than $325 million of promissory notes, commercial paper and other evidences of indebtedness from time to time through December 31, 1995, with a final maturity date no later than December 31, 1996.

Comment date: December 27, 1993, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a

motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–30270 Filed 12–9–93; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP94–112–000, et al.]

National Fuel Gas Supply Corp., et al.; Natural Gas Certificate Filings

December 6, 1993.

Take notice that the following filings have been made with the Commission:

1. National Fuel Gas Supply Corporation

[Docket Nos. CP94–112–000 and CP88–94–008]

Take notice that on November 17, 1993, National Fuel Gas Supply Corporation ("National"), 10 Lafayette Square, Buffalo, New York, 14203, filed amendment to an application pursuant to section 7(c) of the Natural Gas Act and part 157 of the Regulations under the Natural Gas Act (18 CFR part 157), for a certificate of public convenience and necessity authorizing the construction, acquisition and operation of facilities in Erie County, New York which would satisfy important operational concerns raised by National in its previous filings, but at considerably less expense than previously proposed. Total cost of constructing approximately 1.5 miles of pipeline and acquiring approximately 4.8 miles of pipeline, plus associated facilities, is estimated to be $3,772,110. National also requests that the Commission authorize the amendment of the Transportation Agreement between National and Transco Energy Marketing Corporation by adding an additional receipt point and an additional delivery point for that service. The details of National's proposal are more fully set forth in the amended application which is on file with the Commission and open to public inspection.

Comment date: December 27, 1993, in accordance with Standard Paragraph F at the end of this notice.

2. Tennessee Gas Pipeline Company

[Docket No. CP94–113–000]

Take notice that on December 1, 1993, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP94–113–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate a bi-directional interconnect with Columbia Gas Transmission Company (Columbia) under Tennessee's blanket certificate issued in Docket No. CP82–413–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee proposes to install, own, and operate a 6-inch hot tap assembly, measurement facility and 3,200 feet of 6-inch pipeline to interconnect its Line 313A–402 with Columbia's Line A–5. Tennessee states that the facilities will be located on its line at Mile Post 313A–402+6.04 in Steuben County, New York. Tennessee explains that the facilities would be used in performing an interruptible transportation service for New York State Electric and Gas. Tennessee indicates that peak and annual equivalent volumes would amount to 100,000 dekatherms per day and 36,500,000 dekatherms, respectively. Tennessee estimates that the facilities would cost $599,000 which would be reimbursed.

Comment date: January 20, 1994, in accordance with Standard Paragraph G at the end of this notice.

3. Natural Gas Pipeline Company of America

[Docket No. CP94–116–000]

Take notice that on December 3, 1993, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP94–116–000 an application pursuant to section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon a 1,040 H.P. compressor unit in Kankakee County, Illinois, which was authorized in Docket No. CP66–169 [1], all as more fully set forth in the application which is open to the public for inspection.

Natural proposes to abandon a 1,040 H.P. compressor unit no longer needed at its Herscher storage field in Kankakee County, Illinois. Natural states that the compressor unit has not been used since 1984 and is too expensive to operate and maintain. Natural also states that its abandonment of the compressor unit would not adversely affect storage injection or withdrawal rates and customer service, nor would overall system reliability be jeopardized. Natural further states that it intends to sell the compressor unit upon abandonment.

Comment date: December 27, 1993, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

[1] See order at 35 FPC 828 (1966).

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to § 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–30216 Filed 12–9–93; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. RP94–34–001]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

December 6, 1993.

Take notice that on December 1, 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 to be effective November 1, 1993:

Sub Third Revised Tariff Sheet No. 21
Sub Third Revised Tariff Sheet No. 22

Algonquin states that this filing reflects the revised rate of $8.5105 for the AFT–2 service as approved in the Commission's October 29, 1993 order in Docket No. CP89–661–024. On September 21, 1993, Algonquin filed an application to inter alia, amend its initial rates for service under Rate Schedule AFT–2 for the period November 1, 1993 to October 31, 1994. The Commission issued its "Order Amending Certificate" on October 29, 1993, granting Algonquin's request.

Algonquin states that copies of this tariff filing were mailed to all customers of Algonquin and interested state commissions shown on Algonquin's system.

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 § 385.211 of the Commission's Rules and Regulations. All protests should be filed on or before December 13, 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 in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–30217 Filed 12–9–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–3–48–000]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

December 6, 1993.

Take notice that on December 1, 1993, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 tariff sheets as referenced below, proposed to be effective January 1, 1994:

Third Revised Sheet No. 17
First Revised Sheet No. 163
First Revised Sheet No. 164
First Revised Sheet No. 165

ANR states that the above referenced tariff sheets are being filed to establish the revised Gas Research Institute (GRI) surcharges in accordance with Opinion No. 384 issued by the Commission in Docket No. RP93–140 on October 5, 1993.

ANR states that copies of the filing is being mailed to each of ANR'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 petitions or protests should be filed on or before December 13, 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. 93–30218 Filed 12–9–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–63–000]

Black Marlin Pipeline Co.; Petition for Waiver

December 6, 1993.

Take notice that on December 1, 1993, Black Marlin Pipeline Company (Black Marlin), tendered for filing a petition for waiver of certain part 284 reporting requirements.

Black Marlin requests a waiver of 18 CFR 284.106(a) (b) and (d) and 18 CFR 284.223 (d)(1), (d)(2), and (d)(4) to the extent necessary to implement temporary capacity release transactions on Black Marlin's system without filing initial reports or termination reports reflecting such temporary capacity release transactions.

Black Marlin also requests waiver of 18 CFR 284.106(1) (3)(iv), to the extent necessary to allow Black Marlin to add or delete receipt and delivery points without the filing subsequent reports under 18 CFR 284.106(b).

Any person desiring to be heard or to make any protest with reference to said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with sections 211 and 214 0f the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. All such petitions or protests should be filed on or before December 13, 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 this proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–30219 Filed 12–9–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–2–32–000]

Colorado Interstate Gas Co.; Proposed Changes in FERC Gas Tariff

December 6, 1993.

Take notice that on December 1, 1993, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Second Revised Sheet No. 11, with a proposed effective date of January 1, 1994.

CIG states that the tariff sheet reflects an increase in the fuel reimbursement percentage for Lost, Unaccounted-For and Other Fuel Gas from 0.15% to 0.52% effective January 1, 1994.

CIG states that copies of this filing have been served on CIG's jurisdictional customers and public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such petitions or protests should be filed on or before December 13, 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. 93–30220 Filed 12–9–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–4–21–000]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

December 6, 1993.

Take notice that on December 1, 1993, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets with a proposed effective date of January 1, 1994:

Second Revised Sheet No. 25
Second Revised Sheet No. 26
Second Revised Sheet No. 27
Second Revised Sheet No. 28
First Revised Sheet No. 30A
First Revised Sheet No. 30B
First Revised Sheet No. 30C
First Revised Sheet No. 30D

Columbia states the aforementioned tariff sheets are being filed to revise the Gas Research Institute (GRI) General RD&D Funding Unit Rates for the year 1994, as authorized by Order issued by the Federal Energy Regulatory Commission on October 5, 1993, in Docket No. RP93–140–000, Ordering Paragraph B. Under the funding mechanism Columbia will collect the GRI surcharge as follows: (1) A surcharge of $0.218/Dth included in the reservation charge of firm rate schedules for those customers with load factors exceeding 50%; (2) a surcharge of $0.134/Dth included in the reservation charge of firm rate schedules for those customers with load factors equal to or less than 50%; (3) a surcharge of .85¢/Dth on the commodity components of firm service rates and one-part interruptible rates; (4) a surcharge of 2.00¢/Dth for service to "small customers" with a GTS service agreement and a transportation demand not exceeding 10,000 Dth/Day applicable to one-part small customer service rates; and (5) a surcharge of 1.57¢/Dth on firm, one-part rates that do not quality as "small customer" rates.

Columbia states that copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 13, 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 Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–30221 Filed 12–9–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–3–2–000]

East Tennessee Natural Gas Co.; Proposed Changes in FERC Gas Tariff

December 6, 1993.

Take notice that on December 1, 1993, East Tennessee Natural Gas Company (East Tennessee), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, First Revised Tariff Sheet No. 4 and First Revised Tariff Sheet Nos. 166 and 167 for a proposed effective date of January 1, 1994.

East Tennessee states that this filing is in response to the Commission's order issued on October 5, 1993, in Docket No. RP93–140–000, in which the Commission approved the Gas Research Institute's (GRI) 1994 research, development, and demonstration program and related five-year plan, and directed all jurisdictional members to collect GRI funding amounts pursuant to the approved 1994 funding formula set forth in the Stipulation and Agreement Concerning Post-1993 GRI Funding Mechanism.

East Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to make any protest with reference to said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. All such petitions or protests should be filed on or before December 13, 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 this proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–30222 Filed 12–9–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA94–1–23–000, et al.]

Eastern Shore Natural Gas Co.; Technical Conference

December 6, 1993.

In the Commission's letter order issued on November 5, 1993, in the above-captioned proceedings, the Commission held that the filing raises issues for which a technical conference is to be convened. The conference to address the issues has been scheduled for Tuesday, December 14, 1993, at 1 p.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

All interested persons and staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 93–30223 Filed 12–9–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–1–99–000]

Kern River Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

December 6, 1993.

Take notice that on December 1, 1993, Kern River Gas Transmission Company (Kern River), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff

sheets, with a proposed effective date of January 1, 1994:

First Revised Sheet No. 5
First Revised Sheet No. 6
First Revised Sheet No. 15
First Revised Sheet No. 124
First Revised Sheet No. 500
Original Sheet No. 500A
First Revised Sheet No. 506
First Revised Sheet No. 600
Original Sheet No. 600A
First Revised Sheet No. 607
First Revised Sheet No. 608
First Revised Sheet No. 700
Original Sheet No. 700A
First Revised Sheet No. 710

Kern River states that this filing is in response to the Commission's order issued on October 5, 1993, in Docket No. RP93–140–000, in which the Commission approved the Gas Research Institute's (GRI) 1994 research, development, and demonstration program and related five-year plan, and directed all jurisdictional members to collect GRI funding amounts pursuant to the approved 1994 funding formula set forth in the Stipulation and Agreement Concerning Post-1993 GRI Funding Mechanism.

Kern River states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to make any protest with reference to said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. All such petitions or protests should be filed on or before December 13, 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 this proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–30224 Filed 12–9–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–1–53–000]

K N Interstate Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

December 6, 1993.

Take notice that on December 1, 1993, K N Interstate Gas Transmission Co. (KNI), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, Second Revised Sheet No. 4–D, with a proposed effective date of January 1, 1994.

KNI states that the proposed changes will adjust KNI's rates charged its jurisdictional customers pursuant to the Gas Research Institute charge adjustment provision (Section 21) of KNI's FERC Gas Tariff, Second Revised Volume No. 1–B. Such adjustment is to track the revised GRI funding mechanism, effective January 1, 1994, per Commission Opinion No. 384 dated October 5, 1993, in Docket No. RP93–140–000.

KNI states that copies of this filing were served upon KNI's jurisdictional customers, and interested public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 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 13, 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. 93–30225 Filed 12–9–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–3–5–000]

Midwestern Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

December 6, 1993.

Take notice that on December 1, 1993, Midwestern Gas Transmission Company (Midwestern), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Second Revised Tariff Sheet No. 5 and First Revised Tariff Sheet Nos. 82 and 83 for a proposed effective date of January 1, 1994.

Midwestern states that this filing is in response to the Commission's order issued on October 5, 1993, in Docket No. RP93–140–000, in which the Commission approved the Gas Research Institute's (GRI) 1994 research, development, and demonstration program and related five-year plan, and directed all jurisdictional members to collect GRI funding amounts pursuant to the approved 1994 funding formula set forth in the Stipulation and Agreement Concerning Post–1993 GRI Funding Mechanism.

Midwestern states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to make any protest with reference to said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Sections 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. All such petitions or protests should be filed on or before December 13, 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 this proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–30226 Filed 12–9–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–1–92–000]

Mojave Pipeline Co.; Proposed Changes in FERC Gas Tariff

December 6, 1993.

Take notice that on December 1, 1993, Mojave Pipeline Company (Mojave) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, First Revised Sheet Nos. 11 and 126, with a proposed effective date of January 1, 1994.

Mojave states that these sheets are being revised in order to implement the new GRI rates approved by the Commission.

Mojave states that copies of this filing were served upon all of Mojave's jurisdictional transportation customers.

Any person desiring to be heard to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 13, 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 in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–30227 Filed 12–9–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–2–37–000]

Northwest Pipeline Corp.; Proposed Changes in FERC Gas Tariff

December 6, 1993.

Take notice that on December 1, 1993, Northwest Pipeline Corporation (Northwest) tendered for filing and acceptance the following tariff sheets:

Third Revised Volume No. 1

First Revised Sheet No. 5
First Revised Sheet No. 5–A
Original Sheet No. 5–B
First Revised Sheet No. 8
First Revised Sheet No. 18
First Revised Sheet No. 225

Original Volume No. 2

Thirty-Fourth Revised Sheet No. 2.3

Northwest states that the purpose of this filing is to update its Commodity SSP Surcharge effective January 1, 1994, to reflect (1) interest applicable to October, November and December 1993, and (2) the amortization of principal and interest. The proposed Commodity SSP Charge contained in this instant filling is 4.06¢ per MMBtu for the three months commencing January 1, 1994. A further purpose of this filing is to update Northwest's tariff to reflect the current Commission approved commodity and demand GRI surcharges to be effective for the twelve months commencing January 1, 1994. The GRI adjustment demand surcharge, as set forth on Sheet No. 5, is 21.80¢ per MMBtu for Rate Schedule TF–1 (Large Customer) high load factor customers and 13.40¢ per MMBtu for Rate Schedule TF–1 (Large Customer) low load factor customers. The commodity surcharge is .85¢ per MMBtu, except in the case of the Rate Schedule TF–1 (Small Customer), which is 2.00¢ per MMBtu. Some technical changes applicable to certain GRI provision pages have also been made.

Northwest states that a copy of this filing has been served upon all jurisdictional customers and state regulatory commissions in its market area.

Any person desiring to be heard or protest said filing should file a motion to intervene of 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 of Practice and Procedure. All such motions or protests should be filed on or before December 13, 1993. Protests will be considered by the Commission 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. 93–30228 Filed 12–9–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–2–86–000]

Pacific Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

December 6, 1993.

Take notice that on December 2, 1993, Pacific Gas Transmission Company (PGT) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A and Second Revised Volume No. 1 proposed tariff sheets listed on the Appendix to the filing, to be effective January 1, 1994.

PGT states the purpose of this filing is to revise the Gas Research Institute's (GRI) funding unit adjustment component for certain transportation services effective January 1, 1994, in accordance with the Commission's March 22, 1993, and June 23, 1993 orders in Docket No. RP92–133–000 and its October 5, 1993 order in Docket No. RP93–140–000.

PGT further states that copies of its filing were served on all jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 13, 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. 93–30229 Filed 12–9–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–2–9–000]

Tennessee Gas Pipeline Co.; Proposed Changes in FERC Gas Tariff

December 6, 1993.

Take notice that on December 1, 1993, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Third Revised Tariff Sheet No. 30 and First Revised Tariff Sheet Nos. 384 and 385 with a proposed effective date of January 1, 1994.

Tennessee states that this filing is in response to the Commission's order issued on October 5, 1993, in Docket No. RP93–140–000, in which the Commission approved the Gas Research Institute's (GRI) 1994 research, development, and demonstration program and related five-year plan, and directed all jurisdictional members to collect GRI funding amounts pursuant to the approved 1994 funding formula set forth in the Stipulation and Agreement Concerning Post-1993 GRI Funding Mechanism.

Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to make any protest with reference to said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. All such petitions or protests should be filed on or before December 13, 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 this proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–30230 Filed 12–9–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT94–12–000]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

December 6, 1993.

Take notice that on December 1, 1993, Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1 and Original Volume No. 2, certain revised tariff sheets included in Appendix A attached to the filing. The proposed effective date of such tariff sheets is January 1, 1994.

TGPL states that the purpose of the instant filing is to terminate section 7(c) firm transportation service under Rate Schedules X–265, X–266, X–272 and X–273 and to convert such service to service provided under Rate Schedule FT and Part 284 of the Commission's regulations effective January 1, 1994. The rates applicable to the converted service are the generally applicable charges under Rate Schedule FT (including fuel), plus the reservation and commodity rate surcharges set forth on Sheet No. 40A to TGPL's Third Revised Volume No. 1 Tariff. Sheet No. 40A sets forth surcharges applicable to Incremental Leidy Line Annual Firm Transportation which has been converted from section 7(c) firm transportation service to service under part 284 of the Commission's regulations. Calculations supporting the surcharge levels at January 1, 1994, are set forth in Appendix B attached to the filing.

TGPL states that copies of the filing are being mailed to BUG, New Jersey Natural and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 13, 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. 93–30231 Filed 12–9–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–75–000]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

December 6, 1993.

Take notice that on December 1, 1993, Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain original tariff sheets included in Appendix A attached to the filing, with a proposed effective date of January 1, 1994.

TGPL states that the purpose of the instant filing is to implement TGPL's Order No. 636 Blanket Sales Certificate under subpart J of the Commission's part 284 regulations. TGPL states that such tariff sheets comprise TGPL's new Rate Schedule NS, and a Form of Service Agreement for service thereunder. TGPL states that Rate Schedule NS provides for fully negotiated terms, and is intended to cover all gas sales made by TGPL outside its existing sales service rate schedules.

TGPL states that it is serving copies of the instant filing to its customers, State Commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 13, 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. 93–30232 Filed 12–9–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ94–1–35–000]

West Texas Gas, Inc.; Proposed Changes in FERC Gas Tariff

December 6, 1993.

Take notice that on December 1, 1993, West Texas Gas, Inc. (WTG) tendered for filing as part of its FERC Gas Tariff, Revised Volume No. 1, Ninth Revised Sheet No. 4, with a proposed effective date of January 1, 1994.

WTG states that Ninth Revised Sheet No. 4 and the accompanying explanatory schedules constitute WTG's quarterly PGA filing submitted in accordance with the Commission's purchased gas adjustments regulations.

WTG states that copies of the filing were served upon WTG's customers and interested state commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. All such motions or protests should be filed on or before December 13, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party 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. 93–30233 Filed 12–9–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–2–43–000]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

December 6, 1993.

Take notice that on December 1, 1993, Williams Natural Gas Company (WNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Second Revised Sheet Nos. 6 and 6A, with a proposed effective date of January 1, 1994.

WNG states that this filing is being made to reflect the new GRI surcharges to be collected on nondiscounted transportation services, as approved by Commission order issued October 5, 1993, in Docket No. RP93–140–000.

WNG states that it entered into all new contracts as of October 1, 1993, in connection with its restructuring under Order No. 636, and therefore has no history to calculate customer load factors using the GRI formula. In addition, virtually all of WNG's sales prior to restructuring were made under its full requirements rate schedule which had no specified contract demand level. Therefore, WNG submits that the only fair way to assign load factors is to assume every customer is low load factor for purposes of the GRI calculation. For the calendar year 1995,

WNG will have history to determine actual load factors. As WNG will have no high load factor demand, to avoid confusion it has omitted the high load factor demand rate from its tariff.

WNG states that a copy of its filing was served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 13, 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. 93–30234 Filed 12–9–93; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–4705–9]

Intent To Prepare an Environmental Impact Statement (EIS) on the Proposed Eagle Pass Mine

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Proposed issuance of a "New Source" National Pollutant Discharge Elimination System (NPDES) permit for the discharge of waste water from the Dos Republicas Resources Company, Inc.'s (DRRC) proposed mining operation in Maverick County, Texas.

PURPOSE: To evaluate the potential significant impacts on the environment which may result from the EPA's proposed action, pursuant to the National Environmental Policy Act (NEPA).

SUMMARY: The DRRC has applied to the EPA for a NPDES permit to discharge waste waters from its Eagle Pass Mine into Elm Creek. The EPA determined the proposed project to be a major Federal action which could significantly affect the quality of the human environment. The proposed mine includes approximately 5,900 acres over the 19-year life of the project and an estimated 39,231,000 tons of coal will be excavated.

ALTERNATIVES: The EPA may issue or deny the new source NPDES permit.

SCOPING: The EPA will hold a scoping meeting at St. Joseph's Parish Hall in Eagle Pass, Texas on Tuesday, January 18, 1994, at 7 p.m. for the purpose of identifying areas to be evaluated in the Draft EIS.

FOR FURTHER INFORMATION OR TO BE PLACED ON THE EIS MAILING LIST: Contact Mr. Norm Thomas, Chief Federal Activities Branch, EPA Region 6(E–F), 1445 Ross Avenue, Dallas, Texas 75202–2733; telephone 214–655–2260.

ESTIMATED RELEASE DATE OF DRAFT EIS: March, 1994.

RESPONSIBLE OFFICIAL: Joe D. Winkle, Acting Regional Administrator.

Richard Sanderson,

Director, Office of Federal Activities.

[FR Doc. 93–30056 Filed 12–9–93; 8:45 am]

BILLING CODE 6560–50–P

[ER–FRL–4706–4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared November 15, 1993 Through November 19, 1993 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1993 (58 FR 18392).

Draft EISs

ERP No. D–USN–E11031–NC Rating EC2, Camp Lejeune Marine Corps Base, Disposal of Non-Hazardous Solid Waste Project, Implementation, COE section 404 and NPDES Permits, Onslow County, NC.

Summary: EPA expressed environmental concerns with the proposed landfill construction and waste minimization/ recycling effort can have a positive long-term impact on surface and groundwater quality at Camp Lejeune compared to the existing facility. There are potential environmental concerns associated with this action which require additional information.

Final EISs

ERP No. F–AFS–L65184–OR, 1991 Warner Creek Fire Recovery Project, Northern Spotted Owl Habitat and Other Resources Reforestation, Northern Spotted Owl Habitat Conservation Area 0–10, Willamette National Forest, Oakridge Ranger District, Lane County, OR.

Summary: EPA had no objection to the proposed action.

Dated: December 6, 1993.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 93–30314 Filed 12–9–93; 8:45 am]

BILLING CODE 6560–50–U

[ER–FRL–4706–3]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075. Weekly receipt of Environmental Impact Statements Filed November 29, 1993 Through December 3, 1993 Pursuant to 40 CFR 1506.9.

EIS No. 930429, Final EIS, COE, PR, Rio Grande de Arecibo Basin, Flood Control Plan, Implementation, Arecibo River, City of Arecibo, PR, Due: January 10, 1994, Contact: Barbara Cintron (904) 223–1692.

EIS No. 930430, Draft EIS, BLM, CA, Clear Creek Management Area, Land and Resource Management Plan Amendment, Implementation, San Benito and Fresno Counties, CA, Due: February 15, 1994, Contact: Tim Moore (408) 637–8183.

EIS No. 930431, Draft EIS, AFS, ID, Jenkins Timber Sale, Harvesting Timber and Road Construction, Payette National Forest, New Meadows Ranger District, Idaho and Adams Counties, ID, Due: January 28, 1994, Contact: Mike Balboni (208) 634–0629.

EIS No. 930432, Draft EIS, AFS, ID, Hazard Helicopter Timber Sale, Harvesting Timber and Road Construction, Payette National Forest, New Meadows Ranger District, Idaho County, ID, Due: January 28, 1994, Contact: Mike Balboni (208) 634–0629.

EIS No. 930433, Draft EIS, UAF, CO, Lowry Air Force Base (AFB) Disposal and Reuse, Implementation, Denver County, CO, Due: January 24, 1994, Contact: Gary Baumgartel (210) 536–3869.

EIS No. 930434, Final EIS, AFS, ID, Spruce Creek Timber Sale, Implementation, Boise National

Forest, Valley County, ID, Due: January 10, 1994, Contact: Ronn Julian (208) 382–4271.

EIS No. 930435, Draft EIS, AFS, TN, 1996 Olympic Whitewater Slalom Venue, Construction and Operation, Site Selected, Ocoee River, Cherokee National Forest, Ocoee Ranger District, Polk County, TN, Due: January 24, 1994, Contact: Keith Sandifer (615) 476–9700.

EIS No. 930436, Final Supplement, NOA, MA, ME, RI, NH, CT, Northeast Multi-Species Fishery Management Plan, Updated Information, Amendment 5, Implementation, Gulf of Maine, Georges Bank ME, NH, CT, RI and MA, Due: January 5, 1994, Contact: Rolland A. Schmitten (301) 713–2239. In accordance with 1502.9(c)(4) of the Council on Environmental Quality (CEQ) Regulations for implementing the procedural provisions of the National Environmental Policy Act alternative procedures have been approved by the Council for the filing of this FSEIS to reduce the comment period by 5 days. For further information contact Elisabeth Blaug, (CEQ) Phone No. 202–395–5754.

EIS No. 930437, Draft Supplement, AFS, CA, Bear Mountain Ski Resort Expansion, (formerly known as Goldmine) Additional Information, San Bernandino National Forest, Special-Use-Permit and Possible COE Section 404 Permit, San Bernandino County, CA, Due: January 31, 1994, Contact: Hal Seyden (714) 250–5555.

EIS No. 930438, Draft EIS, FHW, NC, NC–12 Replacement of Herbert C. Bonner Bridge (Bridge No. 11) over Oregon Inlet, Construction, Funding, Coast Guard Bridge Permit, Special-Use-Permit, Right-of-Way Permit, COE Section 10 and 404 Permits, Dare County, NC, Due: January 31, 1994, Contact: Nicholas L. Graf, P.E. (919) 856–4346.

Dated: December 8, 1993.

C. Marshall Cain,

Senior Legal Avisor, Office of Federal Activities.

[FR Doc. 93–30315 Filed 12–9–93; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1006–DR]

Missouri; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Missouri (FEMA–1006–DR), dated December 1, 1993, and related determinations.

EFFECTIVE DATE: December 1, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated December 1, 1993, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Missouri, resulting from severe storms, tornadoes, and flooding on November 13–19, 1993, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Missouri.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas. Public Assistance may be added at a later date, if requested and warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Warren M. Pugh, Jr., of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Missouri to have been affected adversely by this declared major disaster: Bollinger, Cape Girardeau, Carter, Howell, Iron, Jefferson, Madison, Oregon, Reynolds, Ripley, St. Francois, St. Louis, Shannon, and Wayne Counties for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James Lee Witt,

Director.

[FR Doc. 93–30205 Filed 12–9–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–3113–EM]

Texas; Amendment to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the State of Texas (FEMA–3113–EM), dated September 10, 1993, and related determinations.

EFFECTIVE DATE: December 1, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective November 15.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 93–30206 Filed 12–9–93; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Ocean Freight Express
2644 West Pico Blvd., Los Angeles, CA 90006
Jorge L. Rojas, Sole Proprietor

Intracon Incorporated
811 Banyan Drive, Elk Grove Village, IL 60007
Officers: Juergen Stoffel, President; Renate Daugill-Stoffel, Vice President/Secretary

Unlimited Freight Consultants, Inc.
7845C NW 57th Street, Miami, FL 33166

Officer: Marcos A. Niebla, President
Tommy C. May, Inc. dba Tommy C. May, CHB
P.O. Box 5067, Pasadena, TX 77508–5067
Officers: Tommy C. May, President; Mrs. Joe A. May, Vice President; Catalina H. Irwin, Secretary/Treasurer
International Transportation Experts, Limited
1801–H Crossbeam Drive, Charlotte, NC 28217
Officers: Klaus Hesse, President; Doris Larkin, Vice President; Joyce Therrell, Secretary
SCL Shipping (USA) Inc.
150–30 132nd Ave., #208, Jamaica, NY 11434
Officers: Derek Chan, President; Dennis Choy, Vice President/Treasurer; Carol Chan, Secretary/Director
William (Bill) J. Donovan
16, 120 Vanderbilt Drive, Odessa, FL 33556
Sole Proprietor
Freight Brokers International, Inc.
1235 North Loop West, Suite 601, Houston, TX 77008
Officers: Allan B. Appelbaum, President; Linda G. Appelbaum, Secretary
Elaine Forwarding
4311 East Alderdale Avenue, Anaheim, CA 92807
Takao Murooka, Sole Proprietor
Nora Jarvis
16, 674 Spruce Circle, Fountain Valley, CA 92708
Nora Akemi Jarvis, Sole Proprietor
Graebel Logistics International in association with Graebel/Houston Movers, Inc.
10901 Tanner Road, Houston, TX 77041–7105
Officer: A. Robert Kral, Vice President/General Manager
Central Forwarding Inc.
1600 West Loop 340, Waco, TX 76702–0817
Officers: James H. Alexander, President; Shawn M. Putnam, Vice President; Phillip L. Hering, Secretary; Barron W. Cagle, Director; Frank A. Espinola, Director; Randy L. Berry, Director
H.K. Forwarding Company
2039 West Artesia Blvd., #144, Torrance, CA 90504
Heywal S. Kahng, Sole Proprietor
Arrow Freight Services Inc.
2479 NW., 36th Street, Miami, FL 33142
Rene I. Carrasco, President/Director/Stockholder; Antonio Leal, Vice President/Director/Stockholder; Lourdes M. Herrera, Secretary/Director/Stockholder
B.L.G. Air-Ocean Transport Corporation
9601 N.W. 12th Street, Miami, FL 33172
Officers: Pedro A. Govea, President/Stockholder; Dagmar Herran, Vice President; Juan A. Alvarez, Secretary/Stockholder

Dated: December 7, 1993.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 93–30214 Filed 12–9–93; 8:45 am]

BILLING CODE 6730–01–M

[Petition Nos. P102–93, P103–93, P104–93]

Hoegh Lines, et al.; Petition for Temporary Exemption From Electronic Tariff Filing Requirements

In the matter of Petition of Hoegh Lines, Petition of Independent Container Line Ltd., Petition of P&O Containers Limited.

Notice is hereby given of the filing of petitions by the above named petitioners, pursuant to 46 CFR 514.8(a), for temporary exemption from electronic, tariff filing requirements of the Commission's ATFI System. To facilitate thorough consideration of the petitions, interested persons are requested to reply to the petitions no later than December 15, 1993. Replies shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573–0001, shall consist of an original and 15 copies, and shall be served as follows:

P102–93—Wayne R. Rohde, Esq., Sher & Blackwell, 1255 Twenty-third Street, NW., Suite 500, Washington, DC 20037–1194
P103–93—George A. Quadrino, Esq., Warren & Associates, P.C., 1100 Connecticut Avenue, NW., Washington, DC 20036
P104–93—Paul D. Coleman, Esq., Hoppel, Mayer & Coleman, 1000 Connecticut Avenue, NW., Washington, DC 20036

Copies of the petitions are available for examination at the Washington, DC office of the Secretary of the Commission, 800 N. Capitol Street, NW., room 1046.

Joseph C. Polking,

Secretary.

[FR Doc. 93–30164 Filed 12–9–93; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of September 21, 1993

In accordance with § 271.5 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on September 21, 1993.[1] The directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests that economic activity is continuing to expand at a moderate pace. Total nonfarm payroll employment edged down in August after a sizable gain in July, but the average workweek rose to a relatively high level and the civilian unemployment rate declined to 6.7 percent. Industrial production has advanced moderately over recent months. Retail sales changed little in real terms in July and August after increasing appreciably in the second quarter. Housing starts were down slightly in July but rose substantially in August. Available indicators suggest a slowing in the expansion of business capital spending from a robust pace earlier in the year. The nominal U.S. merchandise trade deficit was about unchanged in July from its average rate in the second quarter. After rising at an accelerated rate in the early part of the year, consumer prices have increased more slowly and producer prices have fallen in recent months.

Short-term interest rates have changed little since the Committee meeting on August 17, while yields on intermediate- and long-term debt obligations have declined somewhat. In foreign exchange markets, the trade-weighted value of the dollar in terms of the other G-10 currencies depreciated substantially over the intermeeting period.

M2 continued to expand at a slow rate in August, while M3 turned up after declining in June and July. For the year through August, M2 and M3 are estimated to have grown at rates close to the lower end of the Committee's ranges for the year. Total domestic nonfinancial debt has expanded at a moderate rate in recent months, and for the year through July it is estimated to have increased at a rate in the lower half of the Committee's monitoring range.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. In furtherance of these objectives, the Committee at its meeting in July lowered the ranges it had established in February for growth of M2 and M3 to ranges of 1 to 5 percent and 0 to 4 percent respectively, measured from the fourth quarter of 1992 to the fourth quarter of 1993. The Committee anticipated that developments contributing to unusual velocity increases would persist over the balance of the year and that money growth within these lower ranges would be consistent with its broad policy objectives. The monitoring range for growth of total domestic nonfinancial debt also was lowered to 4 to 8 percent for the year. For 1994, the Committee agreed on tentative ranges for monetary growth, measured from the fourth quarter of 1993 to the fourth quarter of 1994, of 1 to 5 percent for M2 and 0 to 4 percent for M3. The Committee provisionally set the monitoring range for growth of total domestic nonfinancial debt at 4 to 8 percent for 1994. The behavior of the monetary aggregates will continue to be evaluated in the light of progress toward price level stability, movements in their velocities, and developments in the economy and financial markets.

[1] Copies of the Minutes of the Federal Open Market Committee Meeting of September 21, 1993, which include the domestic policy directive issued at that meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

In the implementation of policy for the immediate future, the Committee seeks to maintain the existing degree of pressure on reserve positions. In the context of the Committee's long-run objectives for price stability and sustainable economic growth, and giving careful consideration to economic, financial, and monetary developments, slightly greater reserve restraint or slightly lesser reserve restraint might be acceptable in the intermeeting period. The contemplated reserve conditions are expected to be consistent with modest growth in M2 and M3 over the balance of the year.

By order of the Federal Open Market Committee, December 3, 1993.

Normand Bernard,

Deputy Secretary, Federal Open Market Committee.

[FR Doc. 93–30143 Filed 12–9–93; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Paperwork Reduction Act Applications

AGENCY: Federal Trade Commission.

ACTION: Notice of application to OMB under the Paperwork Reduction Act (44 U.S.C. 3501–3520) for clearance of information collection requirements contained in several regulations issued or enforced by the Commission.

SUMMARY: The FTC is seeking OMB clearance for provisions of several regulations, issued or enforced by the Commission, that contain or may contain requirements for the collection of information under the Paperwork Reduction Act ("PRA"). The FTC previously sought and obtained OMB clearance for these regulations, including provisions requiring disclosures to consumers or other third parties. The Supreme Court subsequently has held that third-party disclosure requirements are not subject to the Paperwork Reduction Act, *Dole* v. *United Steelworkers of America*, 494 U.S. 26 (1990). The Commission is therefore revising its estimates of burdens imposed by these rules to reflect only those provisions that, in light of *Dole* and other relevant law, impose or may impose information collection requirements subject to the PRA. As provided in OMB's regulations, 5 CFR 1320.7(b)(1), the estimates of information collection burden exclude effort that would be expended in the absence of the requirement, such as recordkeeping in the ordinary course of business.

DATES: Comments on this application must be submitted on or before January 10, 1994.

ADDRESSES: Send comments both to Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3228, Washington, DC 20503, ATTN: Desk Officer for the Federal Trade Commission, and to the Office of the General Counsel, Federal Trade Commission, Washington, DC 20580. Copies of the submission to OMB, including the application, may be obtained from the Public Reference Section, room 130, Federal Trade Commission, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Elaine W. Crockett, Attorney, Office of General Counsel, Federal Trade Commission, Washington, DC 20580, (202) 326–2453.

SUPPLEMENTARY INFORMATION: The following rules will be affected:

1. The Games of Chance Rule, 16 CFR part 419, establishes requirements, including disclosure requirements, for food and gasoline retailers in conducting and advertising games of chance. The Rule also requires that games promoters retain records showing compliance with certain provisions, and records identifying winners, prizes, and number of game pieces. The recordkeeping requirements assist in the enforcement of the Rule.

Estimate of Information Collection Burden. In 1988, the burden imposed by the "information collection requirements" associated with the Games of Chance Rule was estimated at 10,000 hours. After excluding disclosure requirements, staff estimates the burden associated with the Rule at approximately 4,500 hours.

Respondents: Game promoters.

Number of respondents: 30.

Frequency of response: An average of 50 games per year.

Average burden per response: 3 hours.

2. The Funeral Rule, 16 CFR part 453, prohibits as unfair or deceptive acts or practices a variety of misrepresentations and other practices in sale of funeral goods and services, and requires disclosure of certain items of information to customers for such goods and services. The Rule also requires that funeral providers retain records demonstrating their compliance with certain provisions of the Rule for a one-year period. The recordkeeping requirements assist in the enforcement of the Rule.

The Rule provides for a mandatory review four years after promulgation to determine whether the Rule should be amended or terminated. The Commission has conducted that review, and on January 28, 1993, tentatively approved an amended Funeral Rule that retains the substance of the original recordkeeping requirements.

Estimate of Information Collection Burden. In 1988, the burden imposed by the "information collection requirements" associated with the Funeral Rule, including disclosure requirements, was estimated at 177,000 hours. After excluding disclosure requirements, staff estimates the burden associated with the Rule at approximately 21,000 hours. This estimate is consistent with the 1988 estimate for recordkeeping hours.

Respondents: Funeral providers.

Number of respondents: 21,000.

Frequency of response: Ongoing.

Average burden per response: 1 hour.

3. The Equal Credit Opportunity Act ("ECOA"), 15 U.S.C. 1691 *et seq.*, prohibits discrimination in the extension of credit on the basis of sex, marital status, race, color, religion, national origin, age, derivation of income from a public assistance program, or good faith exercise of any right under the Consumer Credit Protection Act. Regulation B, 12 CFR part 202, promulgated by the Board of Governors of the Federal Reserve System, implements the ECOA. Among other things, § 202.12 of Regulation B requires creditors to retain records relating to consumer credit applications for 25 months, and records of business credit applications for 12 months. Section 202.13 of Regulation B requires creditors that receive mortgage credit applications to record the applicant's race or national origin, sex, marital status, and age. Appendix B of Regulation B includes a model form that creditors may, but need not, use to request the information required by § 202.13. These requirements assist in enforcement of the Act and implementing regulations. The FTC is the enforcing agency as to all creditors except those (such as federally chartered or insured depository institutions) that are subject to the regulatory authority of another Federal agency.

Estimate of Information Collection Burden. In 1987, the burden imposed by the "information collection requirements" associated with Regulation B, including disclosure requirements, was estimated at 6,357,400 hours. After excluding disclosure requirements, staff estimates the burden at 1,004,000 hours.

Recordkeeping respondents: Credit firms.

Number of respondents: 1,000,000.

Frequency of response: Ongoing.

Average burden per response: 1 hour.

Collection of monitoring information:

Respondents: Mortgage credit firms.

Number of respondents: 4,000.

Frequency of response: Ongoing.

Average burden per response: 1 hour.

4. The Electronic Fund Transfer Act, 15 U.S.C. 1693 *et seq.* ("EFTA"), requires accurate disclosure of the costs, terms and rights relating to electronic fund transfer (EFT) services to consumers. Regulation E, promulgated by the Board of Governors of the Federal Reserve System, implements the EFTA. Among other things, § 205.13 of Regulation E requires entities subject to the EFTA to retain evidence of compliance with the regulation for two years. These requirements assist in the enforcement of the Act and implementing regulations. The FTC is the enforcing agency for the EFTA and Regulation E as to all entities providing EFT services except those (such as federally chartered or insured depository institutions) that are subject to the regulatory authority of another Federal agency.

Estimate of Information Collection Burden. In 1987, the burden imposed by the "information collection requirements" associated with Regulation E, including disclosure requirements, was estimated at 726,000 hours. After excluding disclosure requirements, staff estimates the burden at 500,000 hours.

Respondents: Firms offering EFT services to consumers.

Number of respondents: 500,000.

Frequency of response: Ongoing.

Average burden per response: 1 hour.

5. The Consumer Leasing Act, 15 U.S.C. 1667 *et seq.*, was enacted to foster comparison shopping and informed decisionmaking by requiring accurate disclosure of the costs and terms of leases to consumers. Regulation M, promulgated by the Board of Governors of the Federal Reserve System, implements the Consumer Leasing Act. Section 213.6 of Regulation M requires lessors to retain evidence of compliance with the regulation (other than advertising requirements) for two years after the date that disclosures are required to be made. These requirements assist in enforcement of the Act and implementing regulations. The FTC is the enforcing agency for the Consumer Leasing Act as to all lessors except those (such as federally chartered or insured depository institutions) that are subject to the regulatory authority of another Federal agency.

Estimate of Information Collection Burden. In 1987, the burden imposed by the "information collection requirements" associated with regulation M, including disclosure requirements, was estimated at 80,700 hours. After excluding disclosure requirements, but adjusting for an increase in number of industry members and of leasing activity, staff estimates the burden at 100,000 hours.

Respondents: Firms leasing products to consumers.

Number of respondents: 100,000.

Frequency of response: Ongoing.

Average burden per response: 1 hour.

6. The Truth-in Lending Act, 15 U.S.C. 1601 *et seq.* ("TILA"), provides for calculation and disclosure of credit costs and terms in all types of consumer credit transactions. The TILA also establishes billing error resolution procedures and limits consumer liability for the unauthorized use of credit cards. Regulation Z, promulgated by the Board of Governors of the Federal Reserve System, implements the TILA. Among other things, § 226.25 of Regulation Z requires creditors to retain evidence of compliance with the regulation (other than the advertising requirements) for two years after the date disclosures are required to be made or other action is required to be taken. These requirements assist in enforcement of the Act and implementing regulations. The FTC enforces the TILA as to all creditors except those (such as federally chartered or insured depository institutions) that are subject to the regulatory authority of another Federal agency.

Estimate of Information Collection Burden. In 1987, the burden imposed by the "information collection requirements" associated with Regulation Z, including disclosure requirements, was estimated at 19,000,000 hours. After excluding disclosure requirements, staff estimates the burden at 1,000,000 hours.

Respondents: Credit firms.

Number of respondents: 1,000,000.

Frequency of response: Ongoing.

Average burden per response: 1 hour.

7. Administrative Activities. The information collection requests that are currently approved by OMB in this item, OMB control number 3084–0047, constitute administrative or procedural matters. Each of these requests specifies information to be submitted voluntarily to the Commission by persons who wish to do business with or receive some benefit from the agency. Because of the limited burden imposed, these requests for OMB approval of administrative/procedural matters have been combined into a single item. The requests currently included in this subsection related to:

(a) FTC procurement activities;

(b) The document order form used by the FTC public reference branch;

(c) Procedures under which states may petition the FTC for exemptions from certain FTC rules; and

(d) Rules governing claims under the Equal Access to Justice Act.

The FTC seeks to modify item (c) to add three requests and delete one currently included request. There are no changes to the other items. The FTC is revising the description of item (c) to read as follows:

(c) Procedures for applying to the FTC for specific exemptions or modifications under certain FTC rules.

The item currently includes procedures (16 CFR part 901) under which states may petition the FTC for exemptions from the Fair Debt Collection Practices Act, 5 U.S.C. 1692. A procedure for state petitions for exemption from Commission rules under the Credit Practices Rule, 16 CFR 444.5, has been omitted from this item. Unlike the procedure under 16 CFR part 901, this procedure does not specify any information to be provided as part of the petition. Pursuant to OMB regulations under the PRA, 5 CFR 1320.7(j)(10), the Director of OMB has determined that nonspecific requirements are excepted from coverage. OMB/OIRA Information Collection Review Handbook, p. 32 (1989).

The following requests are added to the item: procedures for requesting the establishment of generic names for textile fibers under the Textile Fiber Products Identification Act ("Textile Act"), 15 U.S.C. 70; procedures for applications to exclude certain articles and products from disclosure requirements under the Wool Products Labeling Act ("Wool Act"), 15 U.S.C. 68; and procedures for exemption from certain disclosure requirements under the Fur Products Labeling Act ("Fur Act"), 15 U.S.C. 69.

Under Section 303.8 of the FTC's regulations implementing the Textile Act, 16 CFR 303.8, textile firms may file applications to initiate a rulemaking proceeding to establish a generic name and definition for a new fiber. The applicant is required to provide specified information about the fiber. Under § 300.35 of the FTC's regulations implementing the Wool Products Labeling Act, 16 CFR 300.35, firms may file applications for hearing and determinations by the FTC concerning whether or not representations of the fiber content of a class of articles are commonly made, or whether or not the textile content of certain products is insignificant or inconsequential. The applicant is required to provide detailed technical information about the articles or products. Under § 301.19(k) of the FTC's regulations implementing the Fur Products Labeling Act, 16 CFR 301.19(k), firms may seek an exemption from the Act's labeling requirements in

specified circumstances. The applicant must provide an affidavit, together with supporting facts, establishing that certain types of fur pelts are always dyed or always natural, and that the pelts cannot reasonably be marked as the rule requires. In each case, the information will be used by the FTC to determine whether the application should be granted.

Estimate of Information Collection Burden. In 1988, the burden imposed by the "information collection requirements" was estimated at 15,540,000 hours for the Textile Act regulations (including disclosure requirements); at 2,281,000 hours for the Wool Act regulations; and at 108,000 hours for the Fur Act regulations. Because each of the above described provisions are the only provisions of these regulations that are subject to the OMB approval process, are rarely if ever used, entail a small burden, and entail a procedure for requesting a specific exemption or modification under an FTC rule, they have been incorporated into item (c) of the Administrative Activity matter. Staff estimates the combined burden of item (c) at 50 hours.

Respondents: States; textile, wool, or fur firms.

Number of respondents: 1.

Frequency of response: Once.

Average burden per response: 50 hours.

The burdens estimated for the unchanged requests are the same as those currently approved by OMB. See Supporting Statement for details. The total burden associated with the Administrative Activities item has been rounded up to 2,500 hours. That figure is unchanged from the currently approved item.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 93–30241 Filed 12–9–93; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3469]

Cooper Industries, Inc.; Prohibited Trade Practice, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, a Texas-based producer of low-voltage industrial fuses, within 12 months, to license certain technology to manufacture the fuses and to divest the necessary tooling, equipment, and machinery to the Commission-approved licensee. The consent order prohibits the respondent from acquiring, without prior Commission approval, any interest in any firm with more than $3.5 million in annual U.S. sales of the fuses, and requires the company to notify the Commission and wait a specified period before acquiring any firm selling less than that amount of fuses.

DATES: Complaint and Order issued October 26, 1993.[1]

FOR FURTHER INFORMATION CONTACT: Howard Morse, FTC/H–394, Washington, DC 20580. (202) 326–2949.

SUPPLEMENTARY INFORMATION: On Wednesday, July 14, 1993, there was published in the **Federal Register**, 58 FR 37939, a proposed consent agreement with analysis In the Matter of Cooper Industries, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to divest, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Donald S. Clark,

Secretary.

[FR Doc. 93–30242 Filed 12–9–93; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3132]

General Motors Corporation, et al.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Set aside order.

SUMMARY: The Federal Trade Commission has set aside a 1984 consent order with General Motors Corporation, *et al.*, (49 FR 18289), thus removing the Commission's requirement limiting the duration of the joint venture (New United Motor Manufacturing, Inc.) between General Motors Corporation and Toyota Motor Corporation to produce subcompact cars in California. The Commission concluded that changed conditions in the industry warranted reopening and setting aside the order.

DATES: Consent order issued April 11, 1984. Set Aside Order issued October 29, 1993.

FOR FURTHER INFORMATION CONTACT: Daniel Ducore, FTC/S–2115, Washington, DC 20580. (202) 326–2526.

SUPPLEMENTARY INFORMATION: In the Matter of General Motors Corporation, *et al.* The prohibited trade practices and/or corrective actions as set forth at 49 FR 18289, are removed as indicated.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Commissioners:

Janet D. Steiger, Chairman
Mary L. Azcuenaga
Deborah K. Owen
Roscoe B. Starek, III
Dennis A. Yao

Order Granting Petition to Reopen and Set Aside Order

In the matter of General Motors Corporation, a corporation, and Toyota Motor Corporation, a corporation.

On June 28, 1993, the respondents, General Motors Corporation ("GM") and Toyota Motor Corporation ("Toyota") (hereafter "the respondents"), together with their joint venture, New United Motor Manufacturing, Inc. ("NUMMI"),[1] filed a Petition To Reopen the Proceeding and To Vacate the Consent Order ("Petition"), pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and Section 2.51 of the Commission's Rules of Practice and Procedure, 16 CFR 2.51. In their Petition, the respondents ask the Commission to reopen the proceeding in Docket No. C–3132 and set aside the consent order issued by the Commission on April 11, 1984, in *General Motors Corporation, et al.*, 103 F.T.C. 374 (1984) ("order"). The Petition was placed on the public record for thirty days, pursuant to Section 2.51 of the Commission's Rules. Seventeen comments, all in favor of granting the Petition, were received.

After reviewing the Petition and other relevant information, the Commission has determined to grant the Petition. The respondents have shown changed conditions of fact, that eliminate the need for the order and make its continued application to the

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[1] Copies of the Complaint, the Decision and Order, and Commissioner Azcuenaga's statement are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue NW., Washington, DC 20580.

[1] NUMMI, the joint venture established by GM and Toyota, is not a respondent under the Commission's order.

respondents inequitable and harmful to competition.

I. The Complaint and Order and the Respondents' Petition

The Commission's 1984 complaint in this matter alleged that the proposed joint venture between GM and Toyota would violate section 7 of the Clayton Act, 15 U.S.C. 18, and section 5 of the FTC Act, 15 U.S.C. 45, by lessening competition in the "manufacture and sale of small new automobiles * * * includ[ing] * * * subcompact, compact, and intermediate sized automobiles" in the United States and Canada. The complaint alleged, among other things, that the proposed joint venture could lessen competition (1) by expanding the output of the joint venture beyond what would reasonably be necessary to accomplish the legitimate purposes of the joint venture, and (2) by failing to provide adequate safeguards against the exchange of competitively significant information beyond the minimum reasonably necessary to accomplish the legitimate purposes of the venture. These effects, singly or in combination, allegedly would increase significantly the likelihood of noncompetitive cooperation between GM and Toyota.

The Commission's order, issued with the consent of GM and Toyota, permitted them to undertake the joint venture, but limits the scope of the venture and the exchange of information between GM and Toyota and with any joint venture. The order limits the joint venture to manufacturing for, or selling to, GM not more than approximately 250,000 automobiles per year,[2] except with the prior approval of the Commission, and limits the duration of the joint venture to the earlier of twelve years from the start of production or December 31, 1997.

The order limits the exchange of nonpublic information concerning prices and costs of GM or Toyota cars or parts, sales or production forecasts, and marketing plans for any product. In addition, the order limits discussions of product designs, sales or production forecasts, and the cost of products supplied by the co-venturers to those "necessary to accomplish, and solely in connection with, the legitimate purposes or functioning" of the joint venture. The order also contains recordkeeping and other requirements to help monitor the respondents' compliance with the order.

The respondents ask the Commission to set aside the order "in its entirety" to permit GM and Toyota to continue the joint venture. In support of the Petition, the respondents assert, among other things, that in the context of what they view as fundamental changes in the relevant market since 1984, setting aside the order's limit on the scope of the joint venture will allow the continuation of important efficiency gains that benefit competition. The respondents also assert that setting aside the order's restrictions on the output of the joint venture and on certain communications would be in the public interest, because the restrictions "are burdens imposed on no other automotive producers and therefore place NUMMI at a serious competitive disadvantage." Petition at 21.

II. Standards for Reopening and Modifying an Order

Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), provides that the Commission shall reopen an order to consider whether it should be modified if the respondent "makes a satisfactory showing that changed conditions of law or fact" so require. A satisfactory showing sufficient to require reopening is made when a request to reopen identifies significant changes in circumstances and shows that the changes eliminate the need for the order or make continued application of it inequitable or harmful to competition. S. Rep. No. 96–500, 96th Cong., 2d Sess. 9 (1979) (significant changes or changes causing unfair disadvantage); *Louisiana-Pacific Corp.*, Docket No. C–2956, Letter to John C. Hart (June 5, 1986), at 4 (unpublished) ("Hart Letter").[3]

Section 5(b) also provides that the Commission may modify an order when, although changed circumstances would not require reopening, the Commission determines that the public interest so requires. Respondents are therefore invited in petitions to reopen to show how the public interest warrants the requested modification. Hart Letter at 5; 16 CFR 2.51. In such a case, the respondent must demonstrate as a threshold matter some affirmative need to modify the order. *Damon Corp.*, Docket No. C–2916, Letter to Joel E. Hoffman, Esq. (March 29, 1983), at 2 (unpublished) ("Damon Letter"). For example, it may be in the public interest to modify an order "to relieve any impediment to effective competition that may result from the order." *Damon Corp.*, Docket No. C–2916, 101 F.T.C. 689, 692 (1983). Once such a showing of need is made, the Commission will balance the reasons favoring the requested modification against any reasons not to make the modification. Damon Letter at 2. The Commission also will consider whether the particular modification sought is appropriate to remedy the identified harm. Damon Letter at 4.

The language of Section 5(b) plainly anticipates that the burden is on the petitioner to make a "satisfactory showing" of changed conditions to obtain reopening of the order. The legislative history also makes clear that the petitioner has the burden of showing, other than by conclusory statements, why an order should be modified. The Commission "may properly decline to reopen an order if a request is merely conclusory or otherwise fails to set forth specific facts demonstrating in detail the nature of the changed conditions and the reasons why these changed conditions require the requested modification of the order." S. Rep. No. 96–500, 96th Cong., 1st Sess. 9–10 (1979); *see also* Rule 2.51(b) (requiring affidavits in support of petitions to reopen and modify). If the Commission determines that the petitioner has made the necessary showing, the Commission must reopen the order to consider whether modification is required and, if so, the nature and extent of the modification. The Commission is not required to reopen the order, however, if the petitioner fails to meet its burden of making the satisfactory showing required by the statute. The petitioner's burden is not a light one in view of the public interest in repose and the finality of Commission orders. *See Federated Department Stores, Inc.* v. *Moitie*, 425 U.S. 394 (1981) (strong public interest considerations support repose and finality).

II. The Respondents Have Shown Changed Conditions of Fact That Require Reopening the Order, and the Restrictions on the Scope of the Joint Venture Should Be Set Aside

The order limited the scope of the joint venture to preserve the incentives of GM independently to make and sell new automobiles and to prevent noncompetitive cooperation between GM and Toyota. The Commission finds that the respondents have made a satisfactory showing of changed conditions in the North American

[2] In addition, the order limits the cars made by the joint venture for GM to cars "derived from the Toyota Sprinter." NUMMI presently makes the Chevrolet Geo Prizm for GM. The order does not similarly limit NUMMI's production for Toyota. NUMMI makes the Corolla and a compact pickup truck for Toyota and also makes automobile parts.

[3] *See also* United States v. Louisiana-Pacific Corp., 967 F.2d 1372, 1376–77 (9th Cir. 1992) ("A decision to reopen does not necessarily entail a decision to modify the order. Reopening may occur even where the petition itself does not plead facts requiring modification.").

automobile market that require reopening the order. The Commission also finds that the changed conditions demonstrated by the respondents eliminate the need for the order's restrictions on the duration and the output of the joint venture.

Since 1984, when the order was issued, significant new entry and expansion in the automobile industry have occurred in North America,[4] including the United States, Canada and Mexico.[5] Sales in the United States of subcompact, compact and midsized automobiles (the product market identified in the complaint) have grown from about 58% to more than 77% of new car sales.[6] In 1984, U.S. car buyers could choose among 16 subcompact, 14 compact and 24 midsized cars;[7] in 1992, U.S. car buyers could choose among 42 subcompact, 20 compact and 37 midsized cars.[8] GM and Toyota each has made major investments in car production in the United States, outside the NUMMI joint venture. GM has developed new models of its existing lines of cars and introduced the Saturn line of automobiles. Toyota has built two assembly plants in North America and has introduced new vehicles (the Lexus line of automobiles, the T–100 pickup truck and a new larger Camry) to compete with GM's larger cars.

The new automobile market has become less concentrated since 1984.[9] In 1984, GM was the leading maker and seller of cars in the United States, with 44.4% of passenger car sales.[10] Ford (19.26%) and Chrysler (9.51%) were second and third. Toyota, the third largest motor vehicle manufacturer in the world, had 5.4% of U.S. sales. Manufacturing capacity in the United States of foreign automobile producers ("transplant" producers) consisted of two plants, a Honda facility in Ohio and a Nissan truck facility in Tennessee. Imports from countries such as Korea and Mexico were not significant.

In 1992, GM remains the leading producer and seller of automobiles in the United States, with 34.6% of sales.[11] GM is followed by Ford (21.6%), Honda/Acura (9.4%), Toyota/Lexus (9.3%), Chrysler (8.3%), Nissan/Infiniti (5%) and VW/Audi (1.1%).[12] In 1992, 12 Japanese and 2 European transplant car assembly plants operated in North America (including Mexico).[13] The transplant assembly plants opened by Japanese car manufacturers, either directly or through joint ventures, during the period from 1982 through 1989, have added more than 2.5 million units of production of capacity in North America. Hyundai, a Korean car manufacturer, sold more than 1.2 million cars in North America between 1986 and 1992 and in 1989 opened a plant in Quebec with a capacity of 100,000 vehicles.[14] The transplant operations for the most part emphasize smaller cars, and their presence in North America ensures that their ability to expand sales is not limited by export restrictions.[15] Imports from other countries, including Korea, Mexico and Brazil, amounted to 412,471 cars in 1992.[16] Honda, Toyota and Nissan have expanded into new market niches by marketing Acura, Lexus and Infiniti cars in the "luxury" segment of the market.

A number of joint ventures and other cooperative arrangements between automobile manufacturers have been formed since 1984. Ford and Mazda formed Auto Alliance International, Inc., a joint venture that assembles small cars (Ford Probe, Mazda MX6, and Mazda 626) in a plant in Flat Rock, Michigan.[17] Ford and Mazda also cooperate in other areas. For example, Ford makes the Mazda Navajo sport-utility vehicle, which competes with Ford's Explorer, and Mazda and Ford collaborated on the development of Ford's subcompact Escort.[18] Ford recently formed a "cooperative association" with Nissan, Japan's second largest automobile producer (after Toyota), to produce Mercury Villager and Nissan Quest minivans at Ford's plant in Avon Lake, Ohio.[19]

In 1985, Chrysler and Mitsubishi Motors Corporation established Diamond-Star Motors to produce cars.[20] Although Chrysler sold its interest in Diamond-Star to Mitsubishi in 1991,[21] the two companies continue jointly to develop models produced by Diamond-Star. Chrysler distributes Japanese-made Mitsubishi vehicles in the United States, and Chrysler and Mitsubishi collaborate in design, engineering and manufacturing technology and know-how. Subaru and Isuzu[22] have established a North American assembly joint venture, Subaru-Isuzu Automotive, Inc. ("SIAI"). SIAI has a plant in Lafayette, Indiana, with an annual capacity of about 169,000 units.[23] GM

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[4] At the same time, new passenger car production in North America has declined from about 8.8 million units (U.S. and Canada) in 1984 to about 7.5 million (U.S., Canada and Mexico) in 1992. Automotive News, *1985 Market Data Book* at 4, 8 (hereafter "*(year) Market Data Book*"); *1993 Market Data Book* at 4. Total U.S. retail sales of domestic and imported cars were about 10.4 million in 1984 (*1985 Market Data Book* at 4) and about 9.5 million in 1992. *1993 Market Data Book* at 4.

[5] Although Mexico was not in the North American market identified in the complaint, since 1984, cars produced in Mexico have achieved about 10% of U.S. car sales. See *1993 Market Data Book* at 4.

[6] *1985 Market Data Book* at 22; *1993 Market Data Book* at 26.

[7] *See 1985 Market Data Book* at 12.

[8] *See 1993 Market Data Book* at 26. The top selling cars in the United States in 1992 were (1) Ford Taurus, (2) Honda Accord, (3) Toyota Camry, (4) Ford Escort, (5) Honda Civic, (6) Chevrolet Lumina, (7) Chevrolet Cavalier, (8) Pontiac Grand Am, (9) Ford Tempo, (10) Saturn, (11) Toyota Corolla, (12) Chevrolet Corsica-Beretta, (13) Nissan Sentra, (14) Buick LeSabre and (15) Cadillac Deville. *Id.* at 21.

[9] According to the respondents, based on 1983 and 1992 unit sales, the Herfindahl-Hirschman Index ("HHI") for car manufacturing has declined from 2455 to 1959 for the United States and from 2363 to 1859 for North America. Petition at 5. The amount of the decline in the HHI between 1983 and 1992 (about 500 points) is greater than the increase that would have resulted from a full merger between GM and Toyota in 1983 (about 480 points). Although the HHI has declined to 1859, the respondents' figures show that it remains above 1800, the level at which the 1992 Horizontal Merger Guidelines, *reprinted in* 4 Trade Reg. Rep. (CCH) ¶ 13,104, at § 1.5, define a market as highly concentrated.

[10] GM had 43% of North American automobile sales in 1984. Glassman, & Cronin, Economic Justifications for Authorizing Unrestricted Production of Automobiles by NUMMI 8–9 (June 29, 1993), submitted in support of respondents' Petition.

[11] GM's share of North American car sales was 33.4% in 1992. In 1984, GM produced cars in 24 facilities in the United States and Canada; in 1992, GM had 18 plants in the United States and Canada and one in Mexico. GM expects to close additional plants by 1996. Petition at 5.

[12] The transplant assembly plants in the United States accounted for 25% of 1992 U.S. car production. *1993 Market Data Book* at 12.

[13] In addition, BMW and Mercedes Benz recently have announced plans to build plants in the United States, with a combined announced capacity of 120,000 cars. Petition at 5.

[14] Petition at 4 and Tab 10.

[15] In 1984, when the order was issued, voluntary restraint agreements ("VRA") limited the number of cars that could be imported from Japan for sale in the United States. The VRAs expired in 1985. Since 1985, the government of Japan has implemented voluntary export restraints ("VER"). In recent years, the number of cars exported from Japan to the United States consistently has fallen below the VER limits. *See 1993 Market Data Book* at 4.

[16] Petition, Tab 11.

[17] Ford has a 25% equity interest in Mazda. Petition at 6.

[18] Petition, Tab 12 ("How Ford and Mazda Shared the Driver's Seat," *Business Week*, March 26, 1990, at 94).

[19] Petition, Tab 13 (A. Harmon, "A Van Vanguard; Ford, Nissan Overcome Distrust To Build Their First Vehicle Together," Los Angeles Times, July 20, 1992, at D1).

[20] Diamond-Star began making small cars in the U.S. in 1988. In 1991, it was making the Mitsubishi Eclipse and Mirage, the Plymouth Laser, and the Eagle Talon and Summit at its Normal, Illinois, plant. Petition, Tab 14 ("Chrysler, Mitsubishi Motors Agree to Major Restructuring of Diamond-Star Joint Venture," PR Newswire, October 29, 1991).

[21] Chrysler has a 5.9% equity interest in Mitsubishi.

[22] GM owns a 38% equity interest in Isuzu. Petition, Tab 7 (Rogers Affidavit).

[23] In 1992, SIAI produced 57,623 Subaru Legacy sedans and station wagons. The plant also produces Isuzu pickup trucks and sport-utility vehicles. Petition at 7.

and Suzuki[24] are partners in a joint venture called CAMI Automotive, Inc. CAMI's plant in Ontario, Canada, with an annual capacity of 205,000 cars, makes Chevrolet Geo Tracker and Metro vehicles for GM.[25]

Since the inception of NUMMI, GM has continued to make small cars (the "J" car (Chevrolet Cavalier and Pontiac Sunbird)) and has added two families of compact cars to its fleet (the "N" car (Pontiac Grand Am, Oldsmobile Achieva and Buick Skylark) and the "L" car (Chevrolet Corsica and Beretta)). GM produced more than 9 million "J," "L" and "N" cars in the United States between 1985 and 1992, which is more than ten times the number of cars that NUMMI produced for GM during the same period. Petition at 14–15. In 1985, GM created the Saturn Corporation, which began making cars in 1990. The Saturn plant in Spring Hill, Tennessee, currently makes 240,000 cars annually, and GM plans to increase production to more than 300,000 units by the end of 1993.[26] In addition, in the last six years, Toyota has built two plants in North America, in Georgetown, Kentucky, and Cambridge, Ontario, Canada. After completion of an expansion at the Georgetown plant, Toyota will have a North American capacity of 500,000 vehicles annually.[27]

The changes in the industry that are described above are changed circumstances that eliminate the need for the order's limitations on the output and the duration of the joint venture. Entry and expansion in the automobile market in North America, although costly and time-consuming, have occurred on a significant scale. In the face of such entry and expansion, the joint venture is unlikely to create or facilitate the exercise of market power.[28] In addition, the development by GM of the Saturn line of cars is a significant change that eliminates the concern that the establishment of NUMMI would deter independent development and production of small cars in North America by GM. GM's substantial investment in Saturn, the increasing presence of transplant operations and the substantial increase in small car models available to consumers since 1984 all suggest that the basis for the concern reflected in the complaint and order about diminished competition in the small car market has been eliminated. There appears to be no continuing need for the order's restrictions on the duration and scope of the joint venture, and continuing the restrictions in the context of the changed conditions may hinder the ability of the joint venture to respond to consumer demand.

The Commission has determined that the changes in the industry are significant changes that eliminate the need for the order's limitations on the output and the duration of the joint venture. Accordingly, the order should be reopened and Paragraphs II and III of the order should be set aside.

In addition to the changed conditions of fact that have eliminated the need for the order's limitations, GM and Toyota also assert significant efficiencies that have been realized and that will continue to be realized if the order is set aside and the joint venture is not terminated.[29] The record appears to show that NUMMI may be one of the more efficient assembly plants in the United States.[30] GM states that it is continuing to reap the benefits of gaining first-hand experience with an efficient production system.[31] Moreover, the parties assert that permitting NUMMI to continue its operations beyond 1996 will facilitate GM's efforts to reduce costs and give GM continued access to small cars, consistent with the recognition that NUMMI benefits GM by enabling it to obtain a low-cost domestic subcompact economy car.[32] Thus, NUMMI's benefits may well continue beyond 1996. Extending NUMMI will permit the continuance of any efficiency gains that benefit competition in the relevant markets.

III. The Order's Restrictions on Communications Also Should Be Set Aside

Having determined to reopen the order on the ground of changed conditions of fact and to set aside the order's restrictions on the duration and output of the joint venture, we next consider whether the remaining provisions of the order should be retained. The order's limitations on the exchange of certain nonpublic information among GM, Toyota and NUMMI addressed the concern, alleged in the complaint, that the joint venture might facilitate noncompetitive cooperation between GM and Toyota. The respondents claim that the restrictions of the order impede the ability of the joint venture to do business. They also claim that communications between participants in other automobile industry cooperative ventures created since the order was issued are not similarly restricted and that, as a result, GM, Toyota and NUMMI are unable to communicate as do their competitors.

The provisions of the order were designed to restrict communications that might facilitate noncompetitive cooperation between GM and Toyota, while permitting communications necessary to accomplish the legitimate purposes and functioning of the joint venture. The respondents have shown that, in some circumstances, the specific limitations of the order impede the ability of the respondents and the joint venture to engage in legitimate activity. For example, the respondents have shown that the limitation on the exchange of information concerning the prices of component parts supplied to the joint venture prevents the joint venture from obtaining savings that may result from combining its market search

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[24] GM owns a 5.3% equity interest in Suzuki. Petition, Tab 7 (Rogers Affidavit).

[25] Petition, Tab 7 (Rogers Affidavit). In 1992, CAMI produced 96,404 small cars, the Geo Metro and the Suzuki Swift. *1993 Market Data Book* at 10.

[26] Although the Commission has at times looked skeptically at certain evidence of post-acquisition exculpatory conduct that is within the control of the respondent, see, e.g., B.F. Goodrich, 100 F.T.C. 207, 340–42 (1988), GM's substantial investment in Saturn Corp., both in terms of dollars (more than $2 billion in the Tennessee plant and a similar amount in marketing the Saturn line) and good will, and Saturn's success in the market suggest that GM is unlikely to abandon the Saturn line in favor of output from NUMMI. In 1992, only two years after beginning production, the Saturn line of cars accounted for almost 8% of GM's total sales.

[27] Petition, Tab 8 (Yasuda affidavit).

[28] See 1992 Horizontal Merger Guidelines § 3.0; Genstar Limited, 104 F.T.C. 264 (1984) (order modified on showing of expansion and entry in the relevant market that eliminated need for order restriction); *cf.* Louisiana-Pacific Corp., 112 F.T.C. 547, 559 (1989) (no claim of changes in structural characteristics of market, such as ease of entry, that might obviate need for remedy provided by order).

[29] The respondents state that NUMMI is a successful project of cooperative labor/management relations that facilitates GM's efforts to learn the Toyota Production System, supplies the market with more than 300,000 high quality, low cost vehicles annually and diffuses trade frictions. Petition at 8–12. Because the Petition is granted on the ground of changed conditions of fact, the Commission need not address the question whether the public interest justifies the requested relief, including any efficiencies.

[30] Petition, Tab 1 (Convis Affidavit) (describing NUMMI's efficiency efforts). See Petition at 9 (referring to studies by industry authorities, management experts and academicians that show NUMMI's efforts to improve efficiency); Petition, Tab 16 at 97 (case study of NUMMI appearing in the February 1993, *Harvard Business Review* concluding, in part, that NUMMI "has succeeded in employing an innovative form of * * * time-and-motion regimentation on the factory floor not only to create world-class productivity and quality but also to increase worker motivation and satisfaction.").

[31] Petition, Tab 6 (Mutchler Affidavit) (GM initially adopted "a piece-meal approach to the learning process"; in 1989–90, however, GM "began to understand that each element of the Toyota Production System is an essential part of the whole."). See Petition at 11 (GM states that it "is still the high cost producer in North America.").

[32] Petition at 2, 11 (GM will be able to continue to obtain from NUMMI what it characterizes as "a high quality, low cost sedan—the Prizm—that is the flagship of the Geo distribution network").

activity with Toyota's, and from realizing cost savings to be generated by combining its purchases with Toyota's.[33] The provision of the order that bars GM from discussing marketing plans with Toyota or NUMMI allegedly has hindered the ability of the parties to realize market opportunities and increased their costs. For example, the respondents state that because GM was unable to tell NUMMI about a potential sale of cars in the fleet market, GM was unable to persuade NUMMI to make a price concession that might have resulted in a transaction beneficial to all of the parties. On another occasion, according to the respondents, as a result of GM's perceived inability under the order to tell the joint venture about GM's plans to re-badge the Nova as the Geo Prizm, NUMMI wastefully spent funds on tooling that was specific to Nova and that later had to be scrapped.[34]

The respondents have shown that in the context of significant changed conditions in the industry, the restrictions in the order on business communications may increase the costs of the joint venture and hinder the ability of the respondents and the joint venture to respond to competitive conditions. At the same time, the communications that are limited by the order are not *per se* unlawful, and setting aside these provisions of the order will not excuse the respondents from compliance with laws that prohibit collusive activity in restraint of trade. See *General Railway Signal Co.*, 108 F.T.C. 181 (1986) (modifying order). The Commission has concluded that in the context of the changed conditions in the industry, Paragraphs IV and V of the order should be set aside to permit the respondents and NUMMI to engage in communications ancillary to and reasonably necessary for the operation of the joint venture.[35]

Accordingly, *It is ordered*, That this matter be and it hereby is reopened and that the Commission's order in Docket C–3132, issued on April 11, 1984, be and it hereby is set aside, as of the effective date of this order.

[33] Petition at 16–17.

[34] Petition at 17–19; Kimura Affidavit; Rogers Affidavit.

[35] The recordkeeping requirements of the order are intended to assist the Commission in monitoring the respondents' compliance with the order's restrictions on the exchange of information. If the order's restrictions on communications are set aside, the recordkeeping and other compliance requirements of the order (Paragraphs VI through IX) also should be set aside.

By the Commission.

Donald S. Clark,

Secretary.

Concurring Statement of Commissioner Mary L. Azcuenaga in General Motors Corporation, Docket C–3132

I concur in the decision of the Commission to reopen and set aside the order in this matter on the ground of changed conditions in the automobile industry that eliminate the need for the order. I do not endorse as relevant to this decision the purported efficiency gains from NUMMI alleged by GM and Toyota. See Order at 9–10.

GM and Toyota have asserted efficiencies that may or may not be realized in the future, if the respondents decide to continue their joint venture.[1] I hope that the asserted efficiencies will be realized and that NUMMI will indeed benefit competition, but these are not independent reasons for reopening and setting aside the order. Nor would it matter, in the context of determining whether the order should be reopened, if NUMMI were inefficient. If the projected efficiencies of the joint venture were not sufficient to forestall imposition of the order in the first place, how could the failure fully to achieve those efficiencies[2] or even their continuation justify setting the order aside?

The order of the Commission is not premised on the efficiency (or inefficiency) of the joint venture but rather on concerns, described in the complaint, about the potential effects on competition of noncompetitive cooperation between GM and Toyota. When we are persuaded that changed conditions of fact in the market have eliminated that concern, our task is done, and we need not speculate, in the context of a petition to reopen, about the parties' predictions of potential efficiencies.

GM and Toyota, in their business judgment, would prefer to continue their joint venture beyond the twelve years provided in the order, because they believe that it will be profitable. To accept this reason as a basis for reopening and setting aside the order would relegate the decision whether to reopen final orders of the Commission to the business preferences of the respondent. The Commission has rejected this argument in the past, see *Louisiana-Pacific Corp.*, 112 F.T.C. 547, 569 (1989) (rejecting as a basis for reopening the order the argument that retaining rather than divesting a profitable plant would enhance the respondent's ability to compete), and it should continue to do so.

I fully concur in the decision to reopen and set aside the order on the ground of changed conditions of fact.

[1] The order having been set aside, GM and Toyota will be at liberty at any time (as they were at liberty while the order was in effect) to discontinue their joint venture. The alleged "formidable regulatory, tax and logistical disadvantages to operating an auto plant in California," the "inherent difficulties in assembling vehicles" in the 30-year-old plant, the cost of required improvements to NUMMI's plant (expected to exceed $500 million), Petition at 13, and the fact that NUMMI "has not been consistently profitable," Kimura Affidavit at 1, may provide incentives for doing so.

[2] *See* Jennings Affidavit at 4; Mutchler Affidavit at 2.

Concurring Statement of Commissioner Deborah K. Owen in General Motors Corporation, Docket No. C–3132

When the Commission accepted the consent order in this matter in 1984, it was generally recognized as a landmark effort to balance our dual responsibilities of vigorously enforcing the competition laws, while refraining from unnecessarily interfering with legitimate business activities. In light of marked changes in circumstances since that time, I believe that the Commission's determination to vacate the order today follows in the tradition of its original decision, and I strongly endorse it.

The *Merger Guidelines* recognize that the "larger universe" of combinations are "either competitively beneficial or neutral." § 0.1.[1] As part of their Petition for reopening, the parties have presented an impressive array of information about the positive contributions of NUMMI, including asserted efficiencies that have resulted from the joint venture. While the Order (at 9–10 n.29) notes that "[b]ecause the Petition is granted on the ground of changed conditions of fact, the Commission need not address * * * any efficiencies", the Commission nonetheless proceeds to comment on this issue. Order at 9–10. Without meaning to disparage the parties' assertions in this regard, because of the basis for our decision, it is not necessary for the Commission, in my judgment, to evaluate, much less opine on, the existence, extent and effect of such efficiencies as part of this endeavor. Engaging in dicta is not without peril.

[FR Doc. 93–30243 Filed 12–9–93; 8:45 am]

BILLING CODE 6750–01–M

[1] U.S. Dept. of Justice and Federal Trade Commission Horizontal Merger Guidelines, *reprinted in* 4 Trade Reg. Rep. (CCH) ¶ 13,104.

[Dkt. C–3470]

Gracewood Fruit Company; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, a Florida corporation to have competent and reliable scientific evidence to substantiate future claims that eating normal quantities of grapefruit provides a variety of health benefits, such as reducing serum cholesterol and the risk of stoke, heart attack, and several types of cancer. Also, the respondent is prohibited from misrepresenting any test or study in connection with the marketing of any food.

DATES: Complaint and Order issued October 26, 1993.[1]

FOR FURTHER INFORMATION CONTACT: Lee Peeler or Anne Maher, FTC/S–4002, 6th St. & PA. Ave., NW., Washington, DC 20580. (202) 326–3090 or 326–2987.

SUPPLEMENTARY INFORMATION: On Tuesday, April 20, 1993, there was published in the **Federal Register** 58 FR 21302, a proposed consent agreement with analysis In the Matter of Gracewood Fruit Company, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

A comment was filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Donald S. Clark,

Secretary.

[FR Doc. 93–30244 Filed 12–9–93; 8:45 am]

BILLING CODE 6750–01–M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

[File No. 912 3400]

Presto Food Products, Inc.; 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 prohibit, among other things, a California corporation from misrepresenting the absolute or comparative amount of total fat, saturated fat, or cholesterol in Mocha Mix, Mocha Mix Lite, or in any milk product or non-dairy substitute. It also would prohibit the respondent from misrepresenting the amount of these nutrients relative to the serving size being advertised for the products.

DATES: Comments must be received on or before February 8, 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: C. Lee Peeler, FTC/S–4002, Washington, DC 20580. (202) 326–3090.

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)).

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Presto Food Products, Inc., a corporation, hereinafter sometimes referred to as proposed respondent, and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between Presto Food Products, Inc., by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Presto Food Products, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its office and principal place of business located at 18275 Arenth Avenue, P.O. Box 584, City of Industry, California 91747–0584.

2. Proposed respondent admit all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusion 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.

4. This agreement shall not become 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 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 the proposed respondent, 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.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the attached draft complaint, or that the facts as alleged in the attached draft complaint, other than the jurisdictional facts, are true.

6. The 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 Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent: (1) Issue its complaint corresponding in form and substance with the draft complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding; and (2) make information public in respect thereto. When so entered, the order to cease and desist 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 proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any rights it 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.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definitions

For purposes of this Order, the term "milk product" shall mean any product for which a federal standard of identity has been established under 21 CFR part 131 as currently in effect as of the date of this Order.

For purposes of this Order, the term "non-dairy substitute" shall mean any product which is commonly used as a substitute for a milk product.

I

It is ordered That Presto Food Products, Inc., its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, advertising, labelling, promotion, offering for sale, sale or distribution of Mocha Mix, Mocha Mix Lite or any other food, in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Misrepresenting in any manner, directly or by implication, through numerical or descriptive terms or any other means, the absolute or comparative amount of total fat, saturated fat, or cholesterol in any milk product or any non-dairy substitute; and

B. Misrepresenting in any manner, directly or by implication, through numerical or descriptive terms or any other means, the existence or amount of total fat, saturated fat, or cholesterol in any milk product or non-dairy substitute relative to the serving size or amount customarily consumed for any particular use being advertised or promoted.

Provided, however, That nothing in provisions A and B above shall prohibit any representation as to the amount of total fat, saturated fat or cholesterol in any milk product or non-dairy substitute if such representation is specifically permitted in labeling, for the serving size advertised or promoted for such product, by regulations promulgated by the U.S. Food and Drug Administration pursuant to the Federal Food, Drug and Cosmetic Act.

II

It is further ordered That for three (3) years after the last date of dissemination of the representation, respondent, or its successors and assigns, shall maintain and, upon request, make available to the Federal Trade Commission for inspection and copying copies of:

A. All materials that were relied upon by the respondent is disseminating any representation covered by this Order; and

B. All test reports, studies, surveys, demonstrations or other evidence in its possession or control that contradict, qualify, or call into question any representation that is covered by this Order.

III

It is further ordered That respondent notify the Commission at least thirty (30) days prior to any proposed change, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other changes which may affect compliance obligations arising out of the Order.

IV

It is further ordered That respondent shall, within thirty (30) days after service upon it of this Order, distribute a copy of this Order to each of its operating divisions, to each of its managerial employees, and to each of its officers, agents, representatives, or employees engaged in the preparation or placement of advertising or other material covered by this Order.

V

It is further ordered That respondent shall, within sixty (60) days after service upon it of this Order and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondent Presto Food Products, Inc. ("Presto"), a California corporation.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's complaint in this matter charges Presto with making four false and misleading claims in its advertising of Mocha Mix and Mocha Mix Lite liquid non-dairy creamers. According to the complaint, Presto's advertisements for Mocha Mix represented that Mocha Mix is a low saturated fat product when consumed in an amount normal for use on cereal, on fruit or in cooking—uses that were promoted in Presto advertising. This representation is alleged to be false and misleading, because at the serving size commonly consumed for these uses, Mocha Mix exceeded the then-current standards for a low saturated fat food.

Second, the complaint alleges that Presto's advertisements for Mocha Mix falsely represented that Mocha Mix is lower in saturated fat than other foods, such as low-fat (1% or 2%) or whole milk, for which it might be used as a substitute on cereal, or fruit or in cooking. In fact, the complaint alleges, Mocha Mix has over three times the amount of saturated fat per serving as low-fat (1%) milk, over one and one half times the amount of saturated fat per serving as low-fat (2%) milk and about the same amount of saturated fat per serving as whole milk.

Third, the complaint alleges that Presto's advertisements for Mocha Mix Lite falsely represented that Mocha Mix Lite is a low-fat product when consumed in an amount normal for use on cereal, on fruit or in cooking—uses that were promoted in Presto advertising. The complaint alleges that, in fact, at the serving size commonly consumed for these uses, Mocha Mix Lite exceeded the then-current standards for a low-fat food.

Fourth, the complaint alleges that Presto's advertisements for Mocha Mix Lite represented that Mocha Mix Lite is

lower in fat than other foods, such as low-fat (1% or 2%) or whole milk, for which it might be used as a substitute on cereal, on fruit or in cooking. This representation is also alleged to be false and misleading because Mocha Mix Lite has nearly five times the amount of fat per serving as low-fat (1%) milk, nearly three times the amount of fat per serving as low-fat (2%) milk and over one and one half times the amount of fat per serving as whole milk.

The consent order contains provisions designed to remedy the violations charged and to prevent Presto from engaging in similar deceptive and unfair acts and practices in the future.

Part I of the order prohibits Presto from misrepresenting the absolute or comparative amount of total fat, saturated fat or cholesterol in Mocha Mix, Mocha Mix Lite or in any other milk product or non-dairy substitute. A milk product is defined as any product for which a standard of identity has been established by the Food and Drug Administration under 21 CFR part 131. A non-dairy substitute is defined, for purposes of the order, as a product which is commonly used as a substitute for a milk product. Part I also prohibits Presto from misrepresenting the amount of total fat, saturated fat or cholesterol in Mocha Mix, Mocha Mix Lite or any other milk product or non-dairy substitute, relative to the serving size being advertised. Finally, Part I provides that the order shall not prohibit representations as to the amount of total fat, saturated fat or cholesterol in a milk product or non-dairy substitute, provided such representation complies with regulations of the Food and Drug Administration for the serving size being depicted in the advertising.

Part II of the order requires Presto to maintain copies of all material relating to advertisements covered by this order and all documents relating to substantiation of advertising claims covered by this order.

Part III requires Presto to notify the Commission of any changes in the corporate structure that might affect compliance with the order.

Part IV requires Presto to distribute copies of the order to certain company officials and employees and certain other representatives and agents of the company.

Part V requires Presto to file with the Commission one or more reports detailing compliance with the order.

All of the advertisements challenged in the Commission's complaint were disseminated prior to January 6, 1993, the date upon which the Food and Drug Administration ("FDA") issued its regulations pursuant to the Nutrition Labeling and Education Act.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify their terms in any way.

Donald S. Clark,

Secretary.

[FR Doc. 93–30245 Filed 12–9–93; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3418]

S.C. Johnson & Son, Inc.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying order.

SUMMARY: This order reopens the proceeding and modifies the Commission's 1993 consent order by removing the requirements that the respondent hold separate and divest the international Renuzit assets to a Commission-approved acquirer. The Commission concluded that the hold separate and divestiture requirements are imposing costs on the respondent and that there do not appear to be any competitive reasons to retain the divestiture requirement.

DATES: Consent Order issued March 16, 1993. Modifying Order issued November 8, 1993.

FOR FURTHER INFORMATION CONTACT: Daniel Ducore, FTC/S–2115, Washington, DC 20580. (202) 326–2526.

SUPPLEMENTARY INFORMATION: In the Matter of S.C. Johnson & Son, Inc. the prohibited trade practices and/or corrective actions as set forth at 58 FR 26140, are changed as indicated.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Order Reopening Proceeding and Modifying Order

Commissioners: Janet D. Steiger, Chairman, Mary L. Azcuenaga, Deborah K. Owen, Roscoe B. Starek III, Dennis A. Yao.

On July 8, 1993, S.C. Johnson & Son, Inc. ("Johnson") filed a Request To Reopen and Modify Consent Order ("Request") pursuant to section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and Rule 2.51 of the Commission's Rules of Practice, 16 CFR 2.51. The Request was placed on the public record, and the thirty-day comment period expired on August 23, 1993. No comments were received.

In the Request, Johnson asks that the Commission reopen and modify the Order to eliminate any remaining obligation under Paragraph II to divest the "Renuzit air freshener business outside the United States and all non-domestic territories or countries in North America, north of and including Panama, the Caribbean and Cuba" ("international Renuzit assets"). In the alternative, Johnson requests that the Hold Separate Agreement ("Hold Separate"), dated December 17, 1992, and made a part of the Order, be terminated promptly since Johnson has completed the sale of all of the North American Renuzit assets.

The Order defines the "Renuzit Assets" as including all of Drackett's right, title and interest in and to both its air freshener products business, including the "Renuzit" brand, and its furniture care products business, including the "Endust" and "Behold" brands.[1] The Order only requires divestiture of the production facilities associated with either air freshener or furniture care products if desired by the acquirer. In defining the Renuzit Assets, the Order does not distinguish domestic assets from international assets nor does it exclude the international Renuzit assets from the divestiture and hold separate requirements. The Complaint identified the relevant geographic market for continuous and instant action air fresheners products as being the United States.

On May 14, 1993, the Commission approved Johnson's divestitures of the Endust and Behold furniture care products business to Sara Lee Corporation ("Sara Lee") and the North American Renuzit air freshener products business to The Dial Corp. ("Dial"). As it lacked international operations, Dial did not acquire the international Renuzit air freshener business from Johnson, and following the divestitures on May 18, 1993, Johnson retained the international Renuzit assets.

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[1] Paragraph I.G. of the Order states:

"Renuzit Assets" means all of Drackett's rights, title and interest in and to:

(1) Air freshener products, including, but not limited to, the brands and trademarks "Renuzit", "Renuzit Adjustable", "Renuzit Roommate", "Renuzit Freshell", "Renuzit Fragrance Jar", "Renuzit Aerosol", and "Renuzit Fresh 'n Dry";

(2) Furniture care products, including, but not limited to, the brands and trademarks "Endust" and "Behold", but excluding the brand and trademark "Mr. Muscle" outside the United States; and

(3) All of Drackett's assets and business associated with the development, production, distribution, and sale for resale of air freshener products and furniture care products and as further delineated in the subparagraphs of Schedule A, attached hereto and made a part hereof.

Part 2 of Schedule A lists assets that Johnson need not divest if the acquirer does not need them. See Order, Paragraph II.A.

Johnson asserts that reopening and modifying the Order to eliminate Johnson's obligation to divest the remaining international Renuzit assets will serve the public interest. The international Renuzit assets, which were not included in the divestiture to dial, consist of certain air freshener patents, trademarks, inventory and technology necessary to market Renuzit air freshener products outside of North America. Johnson does not request a reopening and modification on the basis of a change of fact or law. Johnson claims that the requested order modification will have no impact on competition in the U.S. market for continuous and instant action air freshener products as defined in the Complaint. Furthermore, Johnson argues that the remedial purposes of the Order have been fully satisfied by the divestiture of the domestic Renuzit air freshener business to Dial.

After reviewing respondent's Request, the Commission has concluded that the public interest warrants reopening and modifying the language of Schedule A, Part 2 of the Order to relieve Johnson of any further obligation to divest the international Renuzit assets.[2] With the elimination of any remaining divestiture obligations, the Hold Separate will terminate by its terms. Accordingly, there is no need to modify the Hold Separate itself.

Reopening and Modifying a Commission Order

Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), provides that the Commission shall reopen an order to consider whether it should be modified if the respondent "makes a satisfactory showing that changed conditions of law or fact" require such modification. A satisfactory showing sufficient to require such reopening is made when a request shows that the changes eliminate the need for the order or make continued application of it inequitable or harmful to competition. *Louisiana-Pacific Corp.*, Docket No. C–2956, Letter to John C. Hart (June 5, 1986), at 4.[3]

The Commission may modify an order when, although changed circumstances would not require reopening, the Commission determines that the public interest requires such action. *Id.* Therefore, Section 2.51 of the Commission's Rules of Practice invites respondents in petitions to reopen to show how the public interest warrants the requested modification. In the case of a request for modification based on public interest grounds, a petitioner must demonstrate as a threshold matter some affirmative need to modify the order. See *Damon Corp.*, Docket No. C–2916, Letter to Joel E. Hoffman, Esq., (March 29, 1983) (unpublished), at 2. If the showing of need is made, the Commission will balance the reasons favoring the requested modification against any reasons not to make the modification. *Id.* The Commission will also consider whether the particular modification sought is appropriate to remedy the identified harm.

Whether the request to reopen is based on changed conditions or on public interest considerations, the burden is on the respondent to make the requisite satisfactory showing. The language of Section 5(b) plainly anticipates that the petitioner must make a "satisfactory showing" of changed conditions to obtain reopening of the order. The legislative history also makes it clear that the petitioner has the burden of showing, other than by conclusory statements, why an order should be modified.[4] If the Commission determines that the petitioner has made the required showing, the Commission must reopen the order to consider whether modification is required and, if so, the nature and extent of the modification. The Commission is not required to reopen the order, however, if petitioner fails to meet its burden of making the satisfactory showing required by the statute. The petitioner's burden is not a light one given the public interest in repose and the finality of Commission orders.[5]

The Order Should be Reopened and Modified

Johnson has shown that public interest considerations warrant reopening and modifying the Order to remove its obligations to divest the international Renuzit assets and abide by the Hold Separate.[6] Johnson appears to have met its burden of showing a threshold injury caused by the continued operation of the Order. Johnson claims that in view of the divestiture to Dial of the North American Renuzit assets, of Dial's lack of interest in acquiring the international Renuzit assets and of the allegation in the Complaint that the relevant geographic market is the United States, the requirement of the Order that Johnson hold the international Renuzit assets separate and divest them is causing it unforeseen harm and having a negative impact on Johnson's ability to compete. Johnson also asserts that there is an affirmative need to release it from its obligation to divest these assets in order to remove the impediment to competition. Johnson argues that since it has completed the divestitures of substantially all of the Renuzit Assets, the Hold Separate has already achieved its purpose and the continuing harm from its application was not contemplated by the Order.

In *T&N plc*, Docket No. C–3312 (November 6, 1991), the Commission found that respondent demonstrated an affirmative need to modify the order by showing that requiring T&N to divest remaining inventory not wanted by the acquirer could create an impediment to T&N's ability to compete effectively. The Commission further found that T&N demonstrated that the continued application of the hold separate requirements to the remaining inventory imposed considerable costs on respondent's operations and limited its ability to respond to changes in the market. In *Chevron Corp.*, Docket No. C–3147, 105 F.T.C. 228 (1985), the Commission held that the costs associated with continuing a hold separate agreement after a respondent has complied substantially with the divestiture requirements of the order are relevant in determining whether to reopen and modify an order on public interest grounds. The continued costs that Johnson will incur by the continued

[2] In the Request, Johnson also proposes to acquire from Dial the existing Renuzit technology and related information reasonably necessary for Johnson to operate the international Renuzit business. The proposed acquisition covers "existing manufacturing specifications, process specifications, manufacturing formulas, toxicology data and reports, safety and other regulatory data, and any machinery specifications for equipment used to manufacture Renuzit air freshener products." Request, at 4. Johnson's proposal qualifies as an acquisition of "any assets used or previously used * * * in the manufacture or production of air freshener products." Order, ¶ VI(3). Therefore, prior Commission approval is required by the Order for this proposed acquisition. Because the international assets have no competitive significance in the domestic air freshener market and the proposed acquisition will not affect U.S. competition, the Commission is giving its approval to this acquisition by separate letter.

[3] *Cf. United States* v. *Louisiana-Pacific Corp.*, 967 F. 2d 1372, 1376–77 (9th Cir. 1992), where the court noted that "[a] decision to reopen does not necessarily entail a decision to modify the order. Reopening may occur even where the petition itself does not plead facts requiring modification." *Id.*

[4] The Commission may properly decline to reopen an order if the request is "merely conclusory or otherwise fails to set forth specific facts demonstrating in detail the nature of the changed conditions and the reason why these changed conditions require the requested modification of the order." S. Rep. No. 96–500, 96th Cong., 1st Sess. 9–10 (1979). See also Rule 2.51(b), which requires respondents to submit affidavits in support of petitions to reopen and modify.

[5] *See Federated Department Stores, Inc.* v. *Moitie*, 425 U.S. 394 (1981) (strong public interest considerations support repose and finality).

[6] As previously noted, Johnson does not request a reopening and modification on the basis of a change of law or fact.

application of the divestiture and hold separate requirements of the Order compare closely to the costs that the Commission recognized as the threshold injury showings in *T&N* and *Chevron*.

There appears to be no reason to retain the requirement that Johnson divest the international Renuzit assets. Because Johnson has completed the divestiture of the North American Renuzit air freshener assets to Dial, the remedial purposes of the Order have been fully accomplished. The Complaint identified the relevant geographic market in this matter as the United States, and the divestiture to Dial of the domestic Renuzit business completely cured the competitive concerns raised by the Complaint and Order. The international Renuzit business appears to have no effect on competition in the U.S. air freshener market. No imports of international Renuzit products occur in North America. Thus, there is no need, based on domestic competitive concerns, to require Johnson to divest the international Renuzit assets.

Balancing the reasons favoring the requested modification against any reason not to make the modification justifies modifying the Order in the public interest. The harm and costs to Johnson associated with the continuing divestiture and hold separate requirements seem significant. On the other hand, it does not appear that there would be any benefits to domestic competition from retaining the requirement to divest the international assets. Where the potential harm to the respondent outweighs any further need for the order, the Commission may modify the order in the public interest to allow the respondent to retain the relevant assets.[7]

In conclusion, Johnson has made a sufficient showing that public interest considerations support its Request that the Commission reopen and modify the Order to remove the requirements that it hold separate and divest the international Renuzit assets. The hold separate and divestiture requirements are imposing costs on Johnson. Moreover, there do not appear to be any competitive reasons to retain the divestiture requirement.

Accordingly, *It is ordered*, That the proceeding be, and it hereby is, reopened for the purpose of modifying the Order entered therein;

It is further ordered, That Schedule A, Part 2 of the Order be, and hereby is, modified by including the following paragraph:

(6) the international Renuzit assets, which are comprised of the air freshener patents, trademarks, inventory and technology reasonably necessary to produce Renuzit air freshener products for sale outside of the United States and all non-domestic territories or countries in North America, north of and including Panama, the Caribbean and Cuba.

By the Commission.

Donald S. Clark,

Secretary.

Concurring Statement of Commissioner Roscoe B. Starek, III

In the Matter of S.C. Johnson & Son, Inc. Docket No. C–3418.

Because of its successful effort to fulfill the core obligations in the Order, the respondent's obligation to divest the international Renuzit assets became extremely difficult and costly. Were this obligation intended by the Commission as fencing-in relief, or were it to support the core relief in the Order in any way, the removal of that obligation would not be warranted by the respondent's petition. But because I am not aware of any remedial purpose served by this obligation, the considerable costs that it appears to impose on the respondent justify its removal. Accordingly, I concur in the decision to modify the Order.

[FR Doc. 93–30246 Filed 12–9–93; 8:45 am]

BILLING CODE 6750–01–M

[7] In *T&N, supra*, the Commission modified the divestiture requirements of the order to permit the respondent to retain inventory not wanted by the acquirer. In *Chevron, supra*, the Commission reopened and modified the order to eliminate the hold separate requirement after the respondent had completed the majority of the divestitures required by the order. In *Batus, Inc.*, Docket No. C–3099, 104 F.T.C. 632 (1984), the Commission modified the order to excuse the respondent, which had been ordered to divest department stores sufficient to reduce its sales volume by $20 million, from divesting any additional department stores. The respondent had received Commission approval for divestitures totaling $17.9 million in sales volume, and the Commission determined that requiring an additional divestiture was unnecessary.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Meeting of the National Deafness and Other Communication Disorders Advisory Board

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Deafness and Other Communication Disorders Advisory Board on January 7, 1994. The meeting will take place from 8:30 a.m. to 4: 30 p.m. in Conference Room 10, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The meeting, which will be open to the public, is being held to discuss the Board's activities and to present special reports. Attendance by the public will be limited to the space available.

Summaries of the Board's meeting and a roster of members may be obtained from Ms. Monica Davies, Executive Director, National Deafness and Other Communication Disorders Advisory Board, Building 31, room 3C08, National Institutes of Health, Bethesda, Maryland 20892, 301–402–1129, upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Director in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.173, Biological Research Related to Deafness and Communication Disorders.)

Dated: December 6, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–30269 Filed 12–9–93; 8:45 am]

BILLING CODE 4140–01–M

Meeting of the National Advisory Council for Human Genome Research

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Council for Human Genome Research, National Center for Human Genome Research, January 24–25, 1994, in Chevy Chase I and II at the Embassy Suites Hotel, 4300 Military Road, Wisconsin at Western Avenue, Washington, DC.

This meeting will be open to the public on January 24, 1994, from 8:30 a.m. to 10:30 a.m. to discuss administrative details or other issues relating to committee activities. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on January 24 at 10:30 a.m. to recess and on January 25 from 8:30 a.m. to adjournment, for the review, discussion and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Elke Jordan, Deputy Director, National Center for Human Genome

Research, National Institutes of Health, Building 38A, room 605, Bethesda, Maryland 20892, (301) 496–0844, will furnish the meeting agenda, rosters of Committee members and consultants, and substantive program information upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Jane Ades, (301) 402–2205, two weeks in advance of the meeting.

(Catalogue of Federal Domestic Assistance Program No. 93.172, Human Genome Research.)

Dated: December 6, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–30268 Filed 12–9–93; 8:45 am]

BILLING CODE 4140–01–M

Prospective Grant of Exclusive License; Conocurvone as an Antiviral Agent Useful in the Treatment of Acquired Immunodeficiency Syndrome (AIDS)

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice in accordance with 15 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive world-wide license to practice the invention embodied in U.S. Patent Application SN 08/011,183 entitled "Antiviral Naphthoquinone Compounds, Compositions and Uses Thereof" and related foreign patent applications to AMRAD Corporation, Limited of Kew, Victoria, Australia. The patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. It is anticipated that this license may be limited to the field of treatment of viral infection in both humans and animals. This prospective exclusive license may be granted unless within 60 days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The patent application describes conocurvone and other novel antiviral naphthoquinone compounds which may be isolated from plants of the genus *Conospermum* or synthesized chemically. These compounds or derivatives may be used alone or in combination with other antiviral agents in compositions to inhibit the growth or replication of viruses, particularly HIV–1 or HIV–2, in the treatment or prevention of viral infection.

ADDRESSES: Requests for a copy of this patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Steven M. Ferguson, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, Box OTT, Bethesda, MD 20892. Telephone: (301) 496–7735; Facsimile: (301) 402–0220.

Applications for a license filed in response to this notice will be treated as objections to the grant of the contemplated license. Only written comments and/or applications for a license which are received by NIH within sixty (60) days of this notice will be considered. A signed Confidential Disclosure Agreement will be required to receive a copy of the patent application.

Dated: December 2, 1993.

Donald P. Christoferson,

Acting Director, Office of Technology Transfer.

[FR Doc. 93–30267 Filed 12–9–93; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Health; Division of Research Grants

Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Division of Research Grants Behavioral and Neurosciences Special Emphasis Panel.

The meeting will be closed in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications in the various areas and disciplines related to behavior and neuroscience. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301–594–7265, will furnish summaries of the meeting and roster of panel members.

Meeting to Review Individual Grant Applications

Scientific Review Administrator: Dr. Joe Marwah (301) 594–7158.

Date of Meeting: December 14, 1993.

Place of Meeting: Westwood Bldg, Rm 303, NIH, Bethesda, MD (Telephone Conference).

Time of Meeting: 2 p.m.

This notice is being published less than 15 days prior to the meeting due to the difficulty of coordinating the attendance of members because of conflicting schedules.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 7, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–30375 Filed 12–9–93; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–93–1917; FR–3350–N–61]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact Mark Johnston, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by

Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *U.S. Navy:* John J. Kane, Deputy Division Director, Dept. of Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–0474; *U.S. Air Force:* John Carr, Realty Specialist, HQ-AFBDA/BDR, Pentagon, Washington, DC 20330–5130; (703) 696–5569; *GSA:* Leslie Carrington, Federal Property Resources Services, GSA, 18th and F Streets NW, Washington, DC 20405; (202) 208–0619; *Dept. of Transportation:* Ronald D. Keefer, Director, Administrative Services & Property Management, DOT, 400 Seventh St. SW, room 10319, Washington, DC 20590; (202) 366–4246; *Dept. of Interior:* Lola D. Knight, Property Management Specialist, Dept. of Interior, 1849 C St. NW, Mailstop 5512–MIB, Washington, DC 20240; (202) 208–4080; (These are not toll-free numbers).

Dated: December 3, 1993.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 12/10/93

Suitable/Available Properties

Land (by State)

Mississippi

Jackson Installation Waterway
Loflin Street
Jackson Co: Hinds MS 39209-
Landholding Agency: GSA
Property Number: 549340002
Status: Excess
Comment: 34.88 acres, gas pipeline runs along eastern boundary, property is irregularly shaped, backs to a highway
GSA Number: 4–GR(1)–MS–478B

Washington

Asotin Quarry—Lower Lock & Dam
West of Upriver Road
Asotin Co: Asotin WA 99402-
Landholding Agency: GSA
Property Number: 549340001
Status: Excess
Comment: 39.42 acres, access easement, most recent use—rock quarry
GSA Number: 9–D–WA–824K

Suitable/Unavailable Properties

Land (by State)

Arizona

Land—640 acres
Ave. B—County 23 St.
Yuma Co: Yuma AZ 85364-
Landholding Agency: Interior
Property Number: 619340001
Status: Unutilized
Comment: desert land, currently no water available, possible lease restrictions

Tract No. APO–SRP–JL–4
West of 91st Ave. & South of Indian School Rd Co: Maricopa AZ
Landholding Agency: Interior
Property Number: 619340002
Status: Unutilized
Comment: 26 foot strip of land 800 foot long, possible easement restrictions

Unsuitable Properties

Buildings (by State)

California

Bldg. M–155
Mare Island Naval Shipyard
San Pablo and Suisun Avenues
Vallejo Co: Solano CA 94592-
Landholding Agency: Navy
Property Number: 779340002
Status: Unutilized
Reason: Secured Area

Bldg. 31104
Naval Air Weapons Station
China Lake Co: San Bernardino CA 93555-
Landholding Agency: Navy
Property Number: 779340003
Status: Unutilized
Reason: Secured Area

Florida

1600 Family Housing Units
Homestead Air Force Base
Miami Co: Dade FL 33218–0001
Landholding Agency: Air Force-BC
Property Number: 199340002
Status: Excess
Base closure Number of Units: 1600
Reason: Floodway; Other
Comment: Extensive Deterioration

9 Industrial Storage Bldgs.
Homestead Air Force Base
Miami Co: Dade FL 33218–0001
Landholding Agency: Air Force-BC
Property Number: 199340003
Status: Excess
Base closure Number of Units: 9
Reason: Floodway

17 Administrative Bldgs.
Homestead Air Force Base
Miami Co: Dade FL 33218–0001
Landholding Agency: Air Force-BC
Property Number: 199340004
Status: Excess
Base closure Number of Units: 17
Reason: Floodway

13 Dormitories
Homestead Air Force Base
Miami Co: Dade FL 33218–0001
Landholding Agency: Air Force-BC
Property Number: 199340005
Status: Excess
Base closure Number of Units: 13
Reason: Floodway

9 Miscellaneous Bldgs.
Homestead Air Force Base
Miami Co: Dade FL 33218–0001
Landholding Agency: Air Force-BC
Property Number: 199340006
Status: Excess
Base closure Number of Units: 9
Reason: Floodway

8 Recreational Facilities
Homestead Air Force Base
Miami Co: Dade FL 33218–0001
Landholding Agency: Air Force-BC
Property Number: 199340007
Status: Excess
Base closure Number of Units: 8
Reason: Floodway

6 Warehouses
Homestead Air Force Base
Miami Co: Dade FL 33218–0001
Landholding Agency: Air Force-BC
Property Number: 199340008
Status: Excess
Base closure Number of Units: 6
Reason: Floodway

Hawaii

Kahoolawe SW Point Light
Kahoolawe Island Co: Maui HI
Landholding Agency: DOT
Property Number: 879340003
Status: Underutilized
Reason: Other
Comment: Inaccessible

Maine

Bldg. 384
Naval Air Station Topsham
Brunswick Co: Sagadahoc ME
Landholding Agency: Navy
Property Number: 779340001
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Mississippi

Natchez Moorings
82 L.E. Berry Road
Natchez Co: Adams MS 39121-
Landholding Agency: DOT
Property Number: 879340002
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

North Carolina

Bldg. 54
Group Cape Hatteras
Buston Co: Dare NC 27902–0604
Landholding Agency: DOT
Property Number: 879340004
Status: Unutilized
Reason: Secured Area

Bldg. 83
Group Cape Hatteras
Buxton Co: Dare NC 27902–0604
Landholding Agency: DOT
Property Number: 879340005
Status: Unutilized
Reason: Secured Area

Water Tanks
Group Cape Hatteras
Buxton Co: Dare NC 27902–0604
Landholding Agency: DOT
Property Number: 879340006
Status: Unutilized
Reason: Secured Area

Land (by State)

Florida

Land
Homestead Air Force Base
Miami Co: Dade FL 33218–0001
Landholding Agency: Air Force-BC
Property Number: 199340001
Status: Excess
Base closure Number of Units: 1
Reason: Floodway

[FR Doc. 93–30061 Filed 12–9–93; 8:45 a.m.]

BILLING CODE 4210–29–F

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Meeting

AGENCY: Office of the Secretary, Interior.

SUMMARY: The Department of the Interior announces a public meeting of the Exxon Valdez Oil Spill Public Advisory Group to be held on Tuesday and Wednesday, January 11 and 12, 1994, at 9:30 a.m., in the first conference room, 645 "G" Street, Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Douglas Mutter, Department of the Interior, Office of Environmental Affairs, 1689 "C" Street, suite 119, Anchorage, Alaska (907) 271–5011.

SUPPLEMENTARY INFORMATION: The Public Advisory Group was created by Paragraph V.A.4 of the Memorandum of Agreement and Consent Decree entered into the United States of America and the State of Alaska on August 27, 1991, and approved by the United States District Court for the District of Alaska in settlement of *United States of America* v. *State of Alaska*, Civil Action No. A91–081 CV. The agenda will include status reports on restoration activities and a review of the proposed 1994 restoration Work Plan.

Dated: December 6, 1993.

Jonathan P. Deason,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 93–30238 Filed 12–9–93; 8:45 am]

BILLING CODE 4310–RG–M

Bureau of Land Management

[OR–030–04–4410–01: G4–040]

Availability of Environmental Assessment for the Leslie Gulch Area of Critical Environmental Concern (ACEC) Draft Amendment of the Northern Malheur Management Framework Plan and Draft ACEC Management Plan

AGENCY: Vale District, Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: An Environmental Assessment (EA) has been prepared and is available for the proposal to amend the Northern Malheur Management Framework Plan in relation to the Leslie Gulch Area of Critical Environmental Concern (ACEC). The issues are related to inholding acquisition, livestock grazing, mineral development and wild horses as they pertain to management of the relevant and important values of the ACEC.

The 11,900 acre Leslie Gulch ACEC is located 50 miles south of Ontario, Oregon and adjoins the east side of the Owyhee Reservoir.

The EA is available for public review upon request for 45 days from the date of this notice. This EA and public comment will be used to refine the issues and develop a proposed amendment. The proposed decision incorporating public comments should be available for public review in March 1994. A final decision is expected in June 1994 after a 30 day protest period and 60 day state and local government consistency review of the proposed decision. It is not anticipated there will be any public meetings or hearings, all comments are expected to be in writing.

Any one interested in participating during the public review process of this planning amendment may participate by requesting to be added to the mailing list.

FOR FURTHER INFORMATION CONTACT: Ralph Heft, Malheur Resource Area Manager, Bureau of Land Management, Vale District, 100 Oregon street, Vale, OR 97918, (Telephone 503 473–3144).

Vicki E. Hamel,

Assistant District Manager, Administration.

[FR Doc. 93–30162 Filed 12–9–93; 8:45 am]

BILLING CODE 4310–33–M

[CA–010–4210–03; CACA 31350PT]

Realty Action; Exchange of Public Lands, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, exchange of public and private lands in Tehama and Mono Counties, California.

SUMMARY: The following described public lands are being considered for exchange to the Trust for Public Land under section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716.

Note: Not all the land identified below will be included in the exchange. Some parcels may be deleted to eliminate possible conflicts that could arise during processing.

Additional public lands in Tehama County, California previously identified for exchange to The Trust for Public Land and published in the **Federal Register** on July 31, 1992 Vol. 57 No. 148 page 33969 and identified by Serial No. CACA 30080 may also be included in the exchange. The final selection of properties will be made to achieve comparable values between the offered and selected lands.

Selected Public Lands: The following parcels are identified for exchange of only the surface estate:

Mount Diablo Meridian, California

T. 3 S., R. 32 E.,
Sec. 2; W½SW¼, SE¼SW¼
Sec. 3; E½SE¼, SE¼, E½NW¼SE¼SE¼
Sec. 10; E½NE¼NE¼NE¼
Sec. 11; NW¼NW¼, E½SW¼NW¼,
E½NW¼SW¼NW¼,
E½NE¼NW¼SW¼
Sec. 25; E½E½

Comprising approximately 400 acres in Mono County, California.

In exchange for these lands, the United States will acquire non-federal lands in Mono County from The Trust for Public Land described as follows:

Mount Diablo Meridian, California

T. 3 N., R. 25 E.,
Sec. 4; E½W½, SW¼SW¼
Sec. 9; NW¼NW¼

Comprising approximately 240 acres in Mono County, California.

DATES: The publication of this notice in the **Federal Register** will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. Any subsequently tendered application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed, and shall be returned to the applicant. The segregative effect shall terminate as provided by 43 CFR 2201.1 (b).

ADDRESSES: Detailed information concerning the exchange is available for review at the Bishop Resource Area Office, 787 N. Main St. suite P, Bishop, California 93514 or by contacting Larry Primosch at (619) 872–4881.

SUPPLEMENTARY INFORMATION: The purpose of this exchange is to improve the resource management programs of the Bureau of Land Management through consolidation of ownership and to benefit the public interest by obtaining important resource values. The public lands to be exchanged are parcels identified by the Bureau's land use plans as unmanageable due to isolation from other Bureau administered public lands or identified for disposal for community expansion or agricultural use. The private lands to be exchanged have recreation, wildlife, fisheries, and forestry values that merit acquisition into public ownership. The exchange is consistent with the Bureau's land use plans and the public interest will be well served by the exchange. Final determination on disposal will await completion of an environmental analysis and compilation of further information. The value of the lands to be exchanged will be approximately equal. The federal acreage will be reduced and/or the proponent will make cash payment to equalize values upon completion of final appraisals of the lands. Lands to be transferred from the United States will be subject to the following reservations:

1. A reservation of the United States of a right-of-way for ditches and canals constructed by authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945).

2. Valid existing rights, including any right-of-way, easement, permit, or lease of record.

3. Grazing operations that will have their allotments affected by this exchange are entitled to a 2-year adjustment period. However, a permittee may waive this 2-year notice.

Lands to be acquired by the United States will be subject to valid existing rights of record.

Comments

For a period of 45 days from the date of publication of this notice, interested parties may submit comments to the District Manager, Bakersfield District Office, Bureau of Land Management, 800 Truxton Ave., room 311, Bakersfield, California 93301. Objections will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: December 3, 1993.

Genivieve D. Rasmussen,

Area Manager, Bishop Resource Area.

[FR Doc. 93–30195 Filed 12–9–93; 8:45 am]

BILLING CODE 4310–40–M

Fish and Wildlife Service

Availability of a Draft Recovery Plan for the Large-Flowered Fiddleneck (Amsinckia Grandiflora) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the large-flowered fiddleneck (*Amsinckia grandiflora*). This species occurs on public and private lands in California in Alameda, Contra Costa and San Joaquin Counties. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before February 8, 1994, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery may obtain a copy by contacting the Field Supervisor, Sacramento Field Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, room E–1803, Sacramento, California 95825–1846 or by calling (916) 978–4866. Written comments and materials regarding the draft recovery plan should be addressed to Field Supervisor, Sacramento Field Office, U.S. Fish and Wildlife Service at the address listed above. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Kirsten Tarp at the above address (telephone 916/978–4866).

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of

the species, establish criteria for the recovery levels for downlisting and delisting species, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act) as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised Recovery Plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

Historically known from a few locations in the northern Diablo Range, part of the Inner South Coast Range of California, natural populations of the large-flowered fiddleneck are currently restricted to western San Joaquin and eastern Alameda Counties. Reintroductions have been made in San Joaquin and Contra Costa Counties. Critically low numbers of individuals due to the loss of habitat from urbanization and agricultural conversion, and live-stock grazing, environmental and genetic stochasticity, and competition or interference from associated plants (mostly non-native weeds) imminently threaten the continued existence of the large-flowered fiddleneck. The primary objectives of the draft recovery plan are to stabilize the long-term status and ensure the viability of the species in the wild, thereby enabling the large-flowered fiddleneck to be downlisted.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified will be considered prior to approval of the plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: December 3, 1993.

David L. McMullen,

Acting Regional Director, U.S. Fish and Wildlife Service, Region 1.

[FR Doc. 93–30194 Filed 12–9–93; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service

Outer Continental Shelf, Alaska, Gas and Oil Lease Sale 144

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Call for Information and Nominations and Notice of Intent (Call/NOI) to Prepare an Environmental Impact Statement (EIS).

1. *Authority.* This Call/NOI is published pursuant to the Outer Continental Shelf (OCS) Lands Act (43 U.S.C. 1331–1356, (1988)), and the regulations issued thereunder (30 CFR part 256).

2. *Purpose of Call.* The purpose of the Call is to gather information for proposed OCS Lease Sale 144. This proposed sale, located in the Beaufort Sea Planning Area, is tentatively scheduled for December 1996.

Information and nominations on oil and gas leasing, exploration and development and production within the Beaufort Sea Planning Area are sought from all interested parties. This early planning and consultation step is part of the Area Evaluation and Decision Process and is important for ensuring that all interests and concerns are communicated to the Department of the Interior for future decisions in the leasing process pursuant to the OCS Lands Act, as amended (43 U.S.C. 1331–1356) (1988), and regulations at 30 CFR part 256. This Call does not indicate a preliminary decision to lease in the area described below. Final delineation of the area for possible leasing will be made at a later date and in compliance with all applicable laws including requirements of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), as amended, and with established departmental procedures.

3. *Description of Area.* The area of this Call, located offshore the State of Alaska in the Beaufort Sea Planning Area as identified on the attached map, extends offshore from around 3 miles to approximately 140 miles, in water depths from around 7 feet to 10,000 feet. The area available for nominations and comments consists of approximately 5,420 whole and partial blocks (about 29.5 million acres). Respondents may nominate and are asked to comment on any acreage within the entire Call area. A large scale map of the Beaufort Sea Planning Area (hereinafter referred to as the Call map) showing boundaries of the area on a block-by-block basis and a complete list of Official Protraction Diagrams (OPD's) are available from the Records Manager, Alaska OCS Region, Minerals Management Service, 949 East 36th Avenue, room 502, Anchorage, Alaska 99508–4302, telephone (907) 271–6621. The OPD's may be purchased from the Records Manager for $2 each.

Current editions of the listed OPD's are based on the North American Datum (NAD) of 1927. Prior to the issuance of the Notice of Sale, new editions of all the listed OPD's would be prepared based on the NAD of 1983.

4. *Instructions on Call.* Respondents are requested to nominate blocks within the Call area that they would like considered for inclusion in proposed OCS Lease Sale 144. Nominations must be depicted on the Call map by outlining the area(s) of interest along block lines. Respondents are asked to submit a list of whole and partial blocks nominated (by OPD designations) to facilitate correct interpretation of their nominations on the Call map. Although the identities of those submitting nominations become a matter of public record, the individual nominations are deemed to be proprietary information.

Respondents are also requested to rank areas nominated according to priority of interest (e.g., priority 1 (high), 2 (medium), or 3 (low). Areas nominated that do not indicate priorities will be considered priority 3. Respondents are encouraged to be as specific as possible in indicating areas or blocks by priority. Blanket priorities on large areas are not useful in the analysis of industry interest. The telephone number and name of a person to contact in the respondent's organization for additional information should be included in the response.

Comments are sought from all interested parties about particular geologic, environmental, biological, archaeological, or social and economic conditions, conflicts, or other information that might bear upon potential leasing and development in the Call area. Comments are also sought on potential conflicts with approved local coastal management plans (CMP's) that may result from the proposed sale and future OCS oil and gas activities. If possible, these comments should identify specific CMP policies of concern, the nature of the conflicts foreseen, and steps that MMS could take to avoid or mitigate the potential conflicts. Comments may be in terms of broad areas or restricted to particular blocks of concern. Those submitting comments are requested to list block numbers or outline the subject area on the large-scale Call map.

Nominations and comments must be received no later than 45 days following publication of this document in the **Federal Register** in envelopes labeled "Nominations for Proposed Beaufort Sea

Lease Sale 144," or "Comments on the Call for Information and Nominations for Proposed Beaufort Sea Lease Sale 144," as appropriate. The original Call map with indications of interest and/or comments must be submitted to the Regional Supervisor, Leasing and Environment, Alaska OCS Region, Minerals Management Service, 949 East 36th Avenue, room 603, Anchorage, Alaska 99508–4302.

5. *Use of Information from Call.* Information submitted in response to this Call will be used for several purposes. First, responses will be used to help identify the areas for potential oil and gas development. Second, comments on possible environmental effects and potential use conflicts will be used in the analysis of environmental conditions in and near the Call area. A third purpose for this Call is to assist in the scoping of the EIS and the development of alternatives to the proposed action for analysis. The Notice of Intent to Prepare an EIS is included later in this document. Fourth, comments may be used in developing lease terms and conditions to ensure safe offshore oil and gas activities. Fifth, comments may be used to assess the consistency between offshore oil and gas activities and the State's CMP.

6. *Existing Information.* The Information Base Review (IBR) step was completed in March 1993. The purpose of the IBR is to evaluate the status of information and information acquisition efforts. The IBR also involves an assessment of the quality of the information that will be considered in making a decision as to whether to proceed with planning efforts (including the Call/NOI) for the development of leasing proposals.

The IBR for Beaufort Sea Sale 144 included publication of a Request for Interest and Information in December 1992, with comments due by the end of January 1993, and Information Transfer Meetings in Anchorage, Alaska, in January 1993. On the basis of the information analyzed during the review process, a determination was made that there is sufficient information and interest to proceed with the Call.

The National Research Council of the National Academy of Sciences is conducting a study on environmental information for oil and gas leasing decisions in the Beaufort Sea, Chukchi Sea, and Navarin Basin OCS Planning Areas. This study, expected to be completed December 1993, will examine information needs, costs of obtaining information, potential improvements in the management and prediction of environmental effects that may result from acquiring additional information, and options to conducting additional studies. The conclusions of this report can be considered, along with information received in response to the Call and scoping efforts, in subsequent decisions in the prelease process.

An extensive environmental, social and economic studies program has been under way in this area since 1975. The emphasis has been on: Geologic mapping; environmental characterization of biologically sensitive habitats; endangered whales and marine mammals; physical oceanography; ocean-circulation modeling; and ecological effects of oil and gas activities. A complete listing of available study reports and information for ordering copies may be obtained from the Records Manager, Alaska OCS Region, at the address stated under Description of Area. The reports may also be ordered directly from the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161 or by telephone at (703) 487–4650.

In addition, a program status report for continuing studies in this area may be obtained from the Chief, Environmental Studies Section, Alaska OCS Region, at the address stated under Instructions on Call or by telephone at (907) 271–6620.

Summary Reports and Indices and technical and geologic reports are available for review at the MMS Alaska OCS Region (see address under Description of Area). Copies of the Alaska OCS Regional Summary Reports may also be obtained from the OCS Information Program, Office of Offshore Information and Publications, Minerals Management Service, 381 Elden Street, Herndon, Virginia 22070.

7. *Tentative Schedule.* Approximate dates for actions and decision and consultation points in the planning process are:

Milestones	Dates
Comments Due on the Call	January 1994.
Scoping Comments Due	February 1994.
Area Identification	June 1994.
Draft EIS/Proposed Notice of Sale Published.	July 1995.
Hearings on Draft EIS Held	September 1995.
Governor's Comments Due on Proposed Notice of Sale.	October 1995.
Final EIS Filed with EPA	July 1996.
Consistency Determination Signed.	July 1996.
Final Notice of Sale Published.	November 1996.
Sale	December 1996.

8. *Purpose of Notice of Intent to Prepare an Environmental Impact Statement.* Pursuant to the regulations (40 CFR 1501.7) implementing the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as amended, MMS is announcing its intent to prepare an EIS regarding the oil and gas leasing proposal known as Sale 144 Beaufort Sea. The MMS will conduct a scoping process, to give Federal, State, and local governments and other interested parties the opportunity to aid MMS in determining the significant issues and alternatives to be analyzed in the EIS and to identify possible needs for additional information.

The EIS analysis will focus on the potential environmental effects of leasing, exploration, and development of the blocks included in the area defined in the Area Identification procedure as the proposed area of the Federal action. Alternatives to the proposal that may be considered are to delay the sale, cancel the sale, or modify the sale.

9. *Instructions on Notice of Intent.* Federal, State, and local governments and other interested parties are requested to send their written comments on the scope of the EIS, significant issues that should be addressed, and alternatives that should be considered to the Regional Supervisor, Leasing and Environment, Alaska OCS Region, at the address stated under Instructions on Call above. Comments should be enclosed in an envelope labeled "Comments on the Notice of Intent to Prepare an EIS on the proposed Beaufort Sea Lease Sale 144." Comments are due no later than 45 days from publication of this Notice.

Tom Fry,

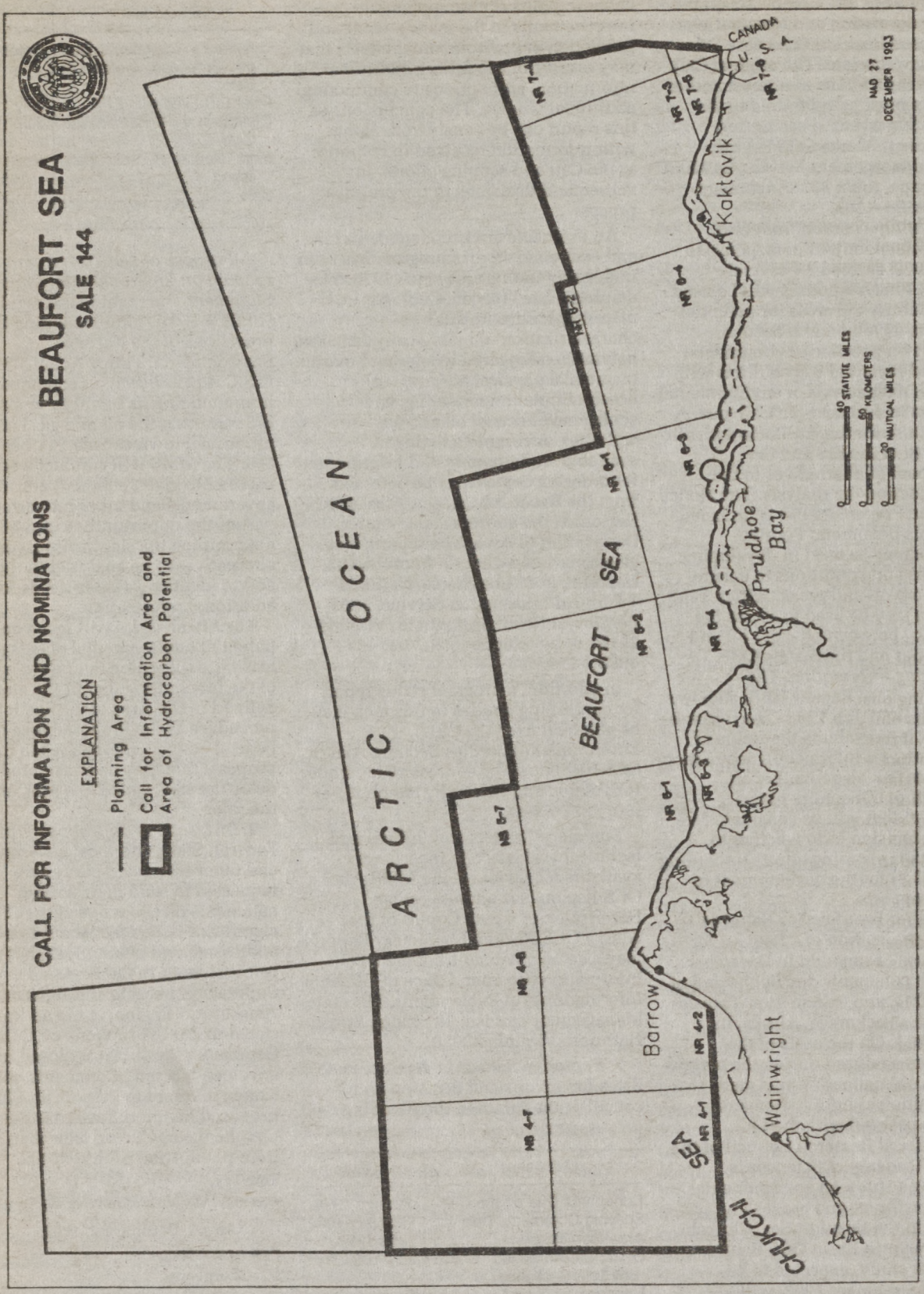
Director, Minerals Management Service.

Approved: December 2, 1993.

Bob Armstrong,

B.J. Thornberry,

Deputy Assistant Secretary, Land and Minerals Management.


CALL FOR INFORMATION AND NOMINATIONS
BEAUFORT SEA
SALE 144
EXPLANATION
Planning Area
Call for Information Area and Area of Hydrocarbon Potential
ARCTIC OCEAN
BEAUFORT SEA
CHUKCHI SEA
Barrow
Wainwright
Prudhoe Bay
Kaktovik
CANADA
U. S. A.
NAD 27
DECEMBER 1993
STATUTE MILES
KILOMETERS
NAUTICAL MILES

[FR Doc. 93–30158 Filed 12–9–93; 8:45 am]
BILLING CODE 4310–MR–M

National Park Service

Buffalo National River; Concession Contract

AGENCY: National Park Service, Interior.
ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to award a concession contract authorizing continued overnight accommodations and food service facilities for the public at Buffalo National River for a period of five (5) years from January 1, 1994, through December 31, 1999.

EFFECTIVE DATE: February 8, 1994.

ADDRESSES: Interested parties should contact the Superintendent, Buffalo National River, P.O. Box 1173, Harrison, Arkansas 72602–1173, for information as to the requirements of the proposed contract.

SUPPLEMENTARY INFORMATION: This contract 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 contract which expires by limitation of time on December 31, 1993, 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 contract and in the negotiation of a new contract, 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 contract 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 contract 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 contract 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 Regional Director not later than the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Dated: September 27, 1993.

John E. Cook,
Regional Director.

[FR Doc. 93–30271 Filed 12–9–93; 8:45 am]
BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent Corporation and address of principal office: Bunzl Distribution USA, Inc., 701 Emerson Rd., Suite 410, P.O. Box 419111, St. Louis, MO 63141–9111.

2. Wholly owned subsidiaries which will participate in the operations, and State(s) of incorporation:

Subsidiary	Assumed name	State of Inc.
Alliance Paper & Packaging Co.	Bunzl Packaging.	New York.
Bennett Paper Co.	Bunzl Bennett	Pennsylvania.
Bunzl Boston, Inc.	No Assumed Name.	Massachusetts.
Bunzl California, Inc.	Bunzl Supermarkets.	California.
Bunzl Columbus, Inc.	No Assumed Name.	Ohio.
Bunzl Dallas, Inc.	No Assumed Name.	Delaware.
Bunzl New Jersey, Inc.	No Assumed Name.	New Jersey.
Bunzl Reading, Inc.	No Assumed Name.	Pennsylvania.
Bunzl South Florida, Inc.	No Assumed Name.	Florida.
Bunzl USA Tampa, Inc.	Bunzl Tampa .	Florida.
Bunzl Utah, Inc.	Bunzl Salt Lake City.	Utah.
Capital Consolidated, Inc.	Bunzl Indianapolis.	Indiana.
	Bunzl Evansville.	
	Bunzl Louisville..	
	Bunzl Pritty Pak.	
Cast-Away Products, Co.	No Assumed Name.	New Jersey.
Consolidated Packaging, Inc.	Bunzl Denver .	Oklahoma.
	Bunzl Oklahoma City.	
	Papercraft Southwest.	
E. Greene and Company, Inc.	Bunzl New York.	New York.
Grossman Paper Company, Inc.	No Assumed Name.	Delaware.
The Label Company, Inc.	No Assumed Name.	Missouri.
Liberty Paper & Bag Company.	Bunzl Detroit ..	Michigan.
Mac-Pak, Inc .	Bunzl/Mac-Pak	Kentucky.
	Papercraft Southwest.	
Packaging Consultants, Inc.	Bunzl St. Louis.	Missouri.
	Bunzl Chicago Papercraft	
Packaging Materials, Inc.	Bunzl Minneapolis.	Minnesota.
Packaging Products Corporation of America.	Bunzl Dallas ..	Wisconsin.
Packaging Supply Company, Inc.	Bunzl Atlanta .	Georgia.
Papercraft Southeast.	Camelot Distributing.	Delaware.
Bunzl Richmond, Inc.	Papercraft Virginia.	Virginia.
Papercraft Southwest, Inc.	No Assumed Name.	Delaware.
Papercraft Inc	No Assumed Name.	California.
W.E. Buehler Paper Co.	No Assumed Name.	Ohio.
Western Packaging, Inc.	Bunzl Houston	Texas.
Y Not Better Papers, Inc.	Papercraft Southwest.	Texas.

Sidney L. Strickland, Jr.,
Secretary.

[FR Doc. 93–30199 Filed 12–9–93; 8:45 am]
BILLING CODE 7035–01–M

[Service Order/Directed Service Order No. 1514]

Decatur Junction Railway Co.—Request for Service Order/Directed Service Order—Cisco to Greene Switch, IL

Decatur Junction Railway (DJ) has requested that the Commission under either 49 U.S.C. 11123 or 11125, issue a service order or directed service order authorizing it to operate a line of

railroad between Greens Switch and Cisco, IL, a distance of approximately 13.4 miles. The line is owned by Cisco Cooperative Grain Company (CISCO) and has been served under contract by the Indiana Hi-Rail Corporation (IHR). DJ contends, however, that IHR refuses to serve the line unless Cisco prepays freight charges for a certain number of guaranteed carload shipments in advance of the shipments being tendered for transportation. IHR responded to DJ's contention asserting its right to require prepayment as a condition for service.

Upon receipt of the filings noted above by the Office of Compliance and Consumer Assistance (OCCA), a field inquiry was conducted by OCCA to determine whether the circumstances, as presented, meet the statutory criteria for directed service or other emergency action by the Commission. The field review showed that there are two active shippers on the Cisco line. The field review also confirmed that a dispute exists between the IHR and CISCO over certain conditions IHR has imposed on CISCO for the payment of charges which has resulted in the lapse of service on the line by IHR.

After a full review of all the circumstances, we do not believe that the conditions presented here meet the minimum magnitude standards of substantial regional impact on rail service required for Commission action under 49 U.S.C. 11123. Neither do we believe that service has been discontinued as contemplated by 49 U.S.C. 11125. The basis of the lapse of service relates only to a dispute between the parties, the circumstances of which do not meet any of the 49 U.S.C. 11125 requirements that permit directed service when operations have been discontinued without Commission authority. Moreover, DJ continues to hold authority from the Commission to lease and operate the line in question from CISCO. See Finance Docket No. 32365, *Decatur Junction Railway Co.—Lease and Operation Exemption—Lines in Illinois,* served October 18, 1993.

By separate letter of Counsel, dated November 13, 1993, IHR requested a Protective Order of a specific document identified as Attachment B, Exhibit 1 to DJ's filing in this matter. The request for a Protective Order will be denied inasmuch as the subject document was already in the public domain at the time the request for relief was filed.

Decided: December 3, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips and Philbin.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–30200 Filed 12–9–93; 8:45 am]

BILLING CODE 7035–01–P

[1] In a related matter, the Commission issued Show Cause Order No. 41162, served December 3, 1993, to determine whether IHR (the current operator of the line) or CISCO (the owner of the line) should have obtained authority from the Commission under 49 U.S.C. 10901 to acquire and operate as a common carrier by railroad. Until that matter is disposed of by the Commission it is unclear which party has the responsibility to provide service on the line.

[Docket No. AB–3; Sub-No. 110X]

Missouri Pacific Railroad Co.; Abandonment Exemption; in Dickinson County, KS

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904 the abandonment by Missouri Pacific Railroad Company of an 18.52-mile line of railroad, known as the Woodbine Industrial Lead, in Dickinson County, KS, subject to standard labor protective conditions, a historic resources condition, and terms and conditions for implementing interim trail use/rail banking.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on December 10, 1993. Formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [1] must be filed by December 20, 1993. Petitions to stay must be filed by December 27, 1993. Requests for a public use condition must be filed by December 30, 1993. Petitions to reopen must be filed by January 4, 1994.

ADDRESSES: Send pleadings, referring to Docket No. AB–3 (Sub-No. 110X), to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423; and (2) Petitioner's representative: Joseph D. Anthofer, 1416 Dodge Street #830, Omaha, NE 68179.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927–5610. (TDD for hearing impaired: (202) 927–5721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services at (202) 927–5721.)

Decided: December 2, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–30201 Filed 12–9–93; 8:45 am]

BILLING CODE 7035–01–P

[1] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

[Docket No. AB–3 (Sub-No. 113X)]

Missouri Pacific Railroad Co.—Abandonment Exemption—in Scott County, MO

Missouri Pacific Railroad Company (MP) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments and Discontinuances* to abandon an approximately 0.11-mile portion of its Sikeston Branch rail line between milepost 216.27 and milepost 216.38 near Miner, in Scott County, MO.

MP has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) that the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on January 9, 1994, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1]

[1] A stay will be issued routinely by the Commission in those proceedings where an

formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by December 20, 1993. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 30, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Joseph D. Anthofer, 1416 Dodge Street, room 830, Omaha, NE 68179.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

MP has filed an environmental report which addresses the abandonment effects, if any, on the environmental and historic resources. The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by December 15, 1993. Interested persons may obtain a copy of the EA by writing to SEE (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: December 2, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–30202 Filed 12–9–93; 8:45 am]

BILLING CODE 7035–01–P

COMMISSION ON IMMIGRATION REFORM

Hearing

AGENCY: U.S. Commission on Immigration Reform.

ACTION: Correction.

SUMMARY: This notice relates to a public hearing of the Commission on Immigration Reform announced in the **Federal Register** on December 7, 1993 (58 FR 64395). The date of the hearing will be December 13, 1993.

FOR FURTHER INFORMATION CONTACT: Beth Malks or Deborah Waller.

Telephone: (202) 673–5348.

Dated: December 7, 1993.

Susan Martin,

Executive Director.

[FR Doc. 93–30338 Filed 12–9–93; 8:45 am]

BILLING CODE 6820–97–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1350N–93]

RIN 1115–AD06

INS Immigration User Fee Increase

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: The Immigration and Nationality Act authorizes the Attorney General to collect a user fee per individual for the immigration inspection of each passenger arriving at a port of entry into the United States, or for the preinspection of a passenger outside of the United States prior to such arrival, aboard a commercial aircraft or commercial vessel, with certain exceptions. This Notice advises the public that the Congress recently increased the Immigration User Fee from $5.00 to $6.00 per individual.

EFFECTIVE DATE: December 20, 1993.

FOR FURTHER INFORMATION CONTACT: Robert Bevilacqua, Office of Finance, Immigration and Naturalization Service, 425 I Street NW., room 6321, Washington, DC 20036–0002, telephone 202–616–2754.

SUPPLEMENTARY INFORMATION: The Congress recently increased the Immigration User Fee from $5.00 to $6.00 per individual. Public Law 103–121, 107 Stat. 1153, which was signed into law by the President on October 27, 1993, amends section 286 of the Immigration and Nationality Act (8 U.S.C. 1356) to require carriers to collect a $6.00 fee per passenger.

The Immigration and Naturalization Service will make this rate change effective December 20, 1993. All tickets sold on or after December 20, 1993, should reflect the $6.00 user fee.

Dated: December 2, 1993.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 93–30198 Filed 12–9–93; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Office of the Secretary

Senior Executive Service; Appointment of a Member to the Performance Review Board

Title 5 U.S.C. 4314(c)(4) provides that Notice of the appointment of an individual to serve as a member of the Performance Review Board of the Senior Executive Service shall be published in the **Federal Register**.

The following individual is hereby appointed to a three-year term on the Department's Performance Review Board: Cecilia Bankins

FOR FURTHER INFORMATION CONTACT: Mr. Larry K. Goodwin, Director of Personnel Management, room C5526, U.S. Department of Labor, Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210, telephone: (202) 219–6551.

Signed at Washington, DC, this 6th day of December , 1993.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 93–30250 Filed 12–9–93; 8:45 am]

BILLING CODE 4510–23–M

Employment and Training Administration

Advisory Council on Unemployment Compensation; Meeting

SUMMARY: The Advisory Council on Unemployment Compensation (ACUC) was established in accordance with the provisions of the Federal Advisory Committee Act on January 24, 1992 (**Federal Register**, February 3, 1992, pg. 4067). Public Law 102–164, the Emergency Unemployment Compensation Act of 1991, mandated the establishment of the Council to evaluate the overall unemployment insurance program, including the purpose, goals, counter-cyclical effectiveness, coverage, benefit adequacy, trust fund solvency, funding of State administrative costs, administrative efficiency, and other aspects of the program; and to make recommendations for improvement. The Council has also been directed to focus on specific subjects such as the use of regional or sub-state triggers for the

informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

Extended Benefit (EB) program, the work search requirement for the EB program, and eligibility and unemployment coverage for alien agricultural labor.

TIME AND PLACE: The meeting will be held from 8:30 a.m. to 12:30 p.m. on January 11, 1994 and from 8:30 a.m. to 12:30 p.m. on January 12, 1994 at the Sheraton Palace Hotel, Mendocino Room, 2 Montgomery Street, San Francisco, California.

AGENDA: The agenda for the meeting is as follows:

(a) Discussion of recommendations that the Council might consider making on reform of the Extended Benefit program;

(b) Discussion of recommendations that the Council might consider making on trust fund solvency;

(c) Discussion of recommendations that the Council might consider making on alien agricultural workers' eligibility for Unemployment Compensation;

(d) Discussion of Council's report to Congress and the President; and,

(e) Set an agenda for the Council's next meeting.

PUBLIC PARTICIPATION: The meeting will be open to the public. Seating will be available to the public on a first-come, first-served basis. Seats will be reserved for the media. Handicapped individuals should contact the Designated Federal Official (DFO), listed below, if special accommodations are needed.

FOR ADDITIONAL INFORMATION CONTACT: Esther R. Johnson, DFO, Advisory Council on Unemployment Compensation, U.S. Department of Labor, 200 Constitution Avenue, NW., room S–4231, Washington, DC 20210. (202) 219–7831.

Signed at Washington, DC, this 6th day of December 1993.

Doug Ross,

Assistant Secretary of Labor.

[FR Doc. 93–30249 Filed 12–9–93; 8:45 am]

BILLING CODE 4510–30–M

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein. Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determination, 200 Constitution Avenue, NW., room S–3014, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State.

Volume I:

Maine—ME930026 (Dec. 10, 1993)
Pennsylvania—PA930061 (Dec. 10, 1993)
Pennsylvania—PA930062 (Dec. 10, 1993)
Vermont—VT930025 (Dec. 10, 1993)

Volume II:

Missouri—MO930021 (Dec. 10, 1993)
Missouri—MO930022 (Dec. 10, 1993)
Missouri—MO930023 (Dec. 10, 1993)
Missouri—MO930024 (Dec. 10, 1993)
Missouri—MO930025 (Dec. 10, 1993)
Missouri—MO930026 (Dec. 10, 1993)
Missouri—MO930027 (Dec. 10, 1993)
Missouri—MO930028 (Dec. 10, 1993)
Missouri—MO930029 (Dec. 10, 1993)
Missouri—MO930030 (Dec. 10, 1993)
Missouri—MO930031 (Dec. 10, 1993)
Missouri—MO930032 (Dec. 10, 1993)
Missouri—MO930033 (Dec. 10, 1993)
Missouri—MO930034 (Dec. 10, 1993)
Texas—TX930093 (Dec. 10, 1993)
Texas—TX930094 (Dec. 10, 1993)
Texas—TX930095 (Dec. 10, 1993)

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I:

Connecticut—CT930001 (Feb. 19, 1993)
Georgia—GA930003 (Feb. 19, 1993)
Georgia—GA930022 (Feb. 19, 1993)
Georgia—GA930032 (Feb. 19, 1993)

Kentucky—KY930028 (Feb. 19, 1993)
Massachusetts—MA930001 (Feb. 19, 1993)
Massachusetts—MA930002 (Feb. 19, 1993)
Massachusetts—MA930003 (Feb. 19, 1993)
Massachusetts—MA930005 (Feb. 19, 1993)
Massachusetts—MA930006 (Feb. 19, 1993)
Massachusetts—MA930007 (Feb. 19, 1993)
Massachusetts—MA930008 (Feb. 19, 1993)
Massachusetts—MA930009 (Feb. 19, 1993)
Massachusetts—MA930010 (Feb. 19, 1993)
Massachusetts—MA930012 (Feb. 19, 1993)
Massachusetts—MA930013 (Feb. 19, 1993)
Maine—ME930018 (Feb. 19, 1993)
New York—NY930009 (Feb. 19, 1993)
New York—NY930012 (Feb. 19, 1993)
New York—NY930018 (Feb. 19, 1993)
New York—NY930019 (Feb. 19, 1993)
New York—NY930020 (Feb. 19, 1993)
New York—NY930031 (Feb. 19, 1993)
New York—NY930042 (Feb. 19, 1993)
Pennsylvania—PA930001 (Feb. 19, 1993)
Pennsylvania—PA930002 (Feb. 19, 1993)
Pennsylvania—PA930003 (Feb. 19, 1993)
Pennsylvania—PA930007 (Feb. 19, 1993)
Pennsylvania—PA930008 (Feb. 19, 1993)
Pennsylvania—PA930009 (Feb. 19, 1993)
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Pennsylvania—PA930012 (Feb. 19, 1993)
Pennsylvania—PA930015 (Feb. 19, 1993)
Pennsylvania—PA930016 (Feb. 19, 1993)
Pennsylvania—PA930017 (Feb. 19, 1993)
Pennsylvania—PA930018 (Feb. 19, 1993)
Pennsylvania—PA930019 (Feb. 19, 1993)
Pennsylvania—PA930020 (Feb. 19, 1993)
Pennsylvania—PA930021 (Feb. 19, 1993)
Pennsylvania—PA930022 (Feb. 19, 1993)
Pennsylvania—PA930028 (Feb. 19, 1993)
Pennsylvania—PA930029 (Feb. 19, 1993)
Pennsylvania—PA930040 (Aug. 24, 1993)
Pennsylvania—PA930042 (Oct. 1, 1993)

Volume II:

Arkansas—AR930003 (Feb. 19, 1993)
Illinois—IL930001 (Feb. 19, 1993)
Illinois—IL930007 (Feb. 19, 1993)
Illinois—IL930017 (Feb. 19, 1993)
Indiana—IN930018 (Feb. 19, 1993)
Kansas—KS930007 (Feb. 19, 1993)
Kansas—KS930010 (Feb. 19, 1993)
Kansas—KS930011 (Feb. 19, 1993)
Kansas—KS930021 (May. 7, 1993)
Kansas—KS930023 (Jul. 2, 1993)
Kansas—KS930026 (Jul. 16, 1993)
Nebraska—NE930001 (Feb. 19, 1993)
Nebraska—NE930002 (Feb. 19, 1993)
Nebraska—NE930003 (Feb. 19, 1993)
Nebraska—NE930011 (Feb. 19, 1993)
Nebraska—NE930014 (Feb. 19, 1993)
Nebraska—NE930057 (Jun. 11, 1993)
Ohio—OH930001 (Feb. 19, 1993)
Ohio—OH930002 (Feb. 19, 1993)
Ohio—OH930003 (Feb. 19, 1993)
Ohio—OH930012 (Feb. 19, 1993)
Ohio—OH930014 (Feb. 19, 1993)
Ohio—OH930028 (Feb. 19, 1993)
Ohio—OH930029 (Feb. 19, 1993)
Ohio—OH930034 (Feb. 19, 1993)
Ohio—OH930035 (Feb. 19, 1993)
Texas—TX930051 (Feb. 19, 1993)
Texas—TX930073 (Feb. 19, 1993)

Volume III:

Colorado—CO930007 (Feb. 19, 1993)
Colorado—CO930009 (Feb. 19, 1993)
Colorado—CO930010 (Feb. 19, 1993)
Colorado—CO930011 (Feb. 19, 1993)
North Dakota—ND930002 (Feb. 19, 1993)
Oregon—OR930001 (Feb. 19, 1993)
Washington—WA930001 (Feb. 19, 1993)
Washington—WA930002 (Feb. 19, 1993)
Washington—WA930003 (Feb. 19, 1993)
Washington—WA930007 (Feb. 19, 1993)
Washington—WA930008 (Aug. 27, 1993)
Washington—WA930009 (Feb. 19, 1993)
Washington—WA930011 (Aug. 27, 1993)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from:

Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 3rd day of December, 1993.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 93–29972 Filed 12–9–93; 8:45 am]

BILLING CODE 4510–27–M

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Double "B" Mining, Inc.

[Docket No. M–93–304–C]

Double "B" Mining, Inc., P.O. Box 280, Tracy City, Tennessee 37387 has filed a petition to modify the application of 30 CFR 75.333(g) (ventilation controls) to its Mine No. 32 (I.D. No. 40–02666) located in Marion County, Tennessee. The petitioner proposes to designate specific locations, strategically positioned, and to evaluate the quantity and quality of air entering and leaving the affected areas instead of ventilating and evaluating each individual area. The petitioner states that application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

2. Double "B" Mining, Inc.

[Docket No. M–93–305–C]

Double "B" Mining, Inc., P.O. Box 280, Tracy City, Tennessee 37387 has filed a petition to modify the application of 30 CFR 75.360(b)(6) (preshift examination) to its Mine No. 32 (I.D. No. 40–02666) located in Marion County, Tennessee. The petitioner proposes to designate specific locations, strategically positioned, and to evaluate daily the methane and oxygen and the quantity and quality of air entering and leaving the affected areas instead of ventilating and evaluating each individual area. The

petitioner states that application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

3. Double "B" Mining, Inc.

[Docket No. M–93–306–C]

Double "B" Mining, Inc., P.O. Box 280, Tracy City, Tennessee 37387 has filed a petition to modify the application of 30 CFR 75.364(a) (1) and (6) (weekly examination) to its Mine No. 32 (I.D. No. 40–02666) located in Marion County, Tennessee. Due to deteriorating roof conditions, certain areas of the mine cannot be traveled safely. The petitioner proposes to establish evaluation check points at specific locations to monitor the quantity and quality of air entering and leaving the affected areas. The petitioner states that application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

4. Peabody Coal Company

[Docket No. M–93–307–C]

Peabody Coal Company, P.O. Box 1990, Henderson, Kentucky 42420 has filed a petition to modify the application of 30 CFR 75.900 (low- and medium-voltage circuits serving three-phase alternating current equipment; circuit breakers) to its Camp No. 11 Mine (I.D. No. 15–08357) located in Union County, Kentucky. The petitioner proposes to use vacuum contactor circuit interrupting devices in combination with circuit breakers subject to specific conditions listed in the petition. This petition modifies a Decision and Order on a previous petition, docket number M–92–128–C. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

5. Consolidation Coal Company

[Docket No. M–93–308–C]

Consolidation Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Robinson Run No. 95 Mine (I.D. No. 46–01318) located in Harrison County, West Virginia. To eliminate conflict between paragraph 25 of MSHA's Proposed Decision and Order, docket number M–92–90–C, and 30 CFR 75.342(a)(2), the petitioner requests that paragraph 25 be amended. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

6. Tennessee Energy Corporation

[Docket No. M–93–309–C]

Tennessee Energy Corporation, Route 3, Box 343A, Whitwell, Tennessee 37397 has filed a petition to modify the application of 30 CFR 75.333(g) (ventilation controls) to its Mine No. 50 (I.D. No. 40–02869) located in Sequatchie County, Tennessee. The petitioner proposes to designate specific locations, strategically positioned, and to evaluate the quantity and quality of air entering and leaving the affected area instead of ventilating and evaluating each individual area. The petitioner states that application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

7. Tennessee Energy Corporation

[Docket No. M–93–310–C]

Tennessee Energy Corporation, Route 3, Box 343A, Whitwell, Tennessee 37397 has filed a petition to modify the application of 30 CFR 75.364(a)(1) (weekly examination) to its Mine No. 50 (I.D. No. 40–02869) located in Sequatchie County, Tennessee. Due to deteriorating roof conditions, certain areas of the mine cannot be traveled safely. The petitioner proposes to establish evaluation check points at specific locations to monitor the quantity and quality of air entering and leaving the affected areas. The petitioner states that application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

8. Maple Meadow Mining Company

[Docket No. M–93–311–C]

Cannelton, Inc., 315 70th Street, Charleston, West Virginia 25304–2909 has filed a petition on behalf of Maple Meadow Mining Company of Fairdale, West Virginia to modify the application of 30 CFR 75.364(a)(1) (weekly examination) to its Maple Meadow Mine (I.D. No. 46–03374) located in Raleigh County, West Virginia. Due to deteriorating roof conditions in the intake air course in the 211l panel, the area cannot be traveled safely in its entirety. The petitioner proposes to establish a monitoring station at a point 50 feet outby spad #2076, No. 3 Entry to monitor the quantity and quality of air entering and leaving the affected area. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

9. Freeman United Coal Mining Company

[Docket No. M–93–312–C]

Freeman United Coal Mining Company, P.O. Box 100, West Frankfort, Illinois 62896–0100 has filed a petition to modify the application of 30 CFR 75.1722 (a) & (b) (mechanical equipment guards) to its Orient No. 6 Mine (I.D. No. 11–00599) located in Jefferson County, Illinois. The petitioner proposes to use area guarding along the west side of the 10th South Belt Drive and take-up area and the 2nd Main East Drive, due to tight clearance at points between the drive and take-up area, and the rib. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

10. Heatherly Mining, Inc.

[Docket No. M–93–313–C]

Heatherly Mining, Inc., P.O. Box 550, Henryetta, Oklahoma 74437 has filed a petition to modify the application of 30 CFR 75.1700 (oil and gas wells) to its Pollyana Mine (I.D. No. 34–01633) located in Okmulgee County, Oklahoma. The petitioner requests that its petition and MSHA's Proposed Decision and Order be amended to permit mining through the wells that have previously been plugged without redrilling and replugging the wells. The petitioner asserts that the proposed amendment would provide at least the same measure of protection as would the previously granted petition.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 10, 1994. Copies of these petitions are available for inspection at that address.

Dated: December 6, 1993.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 93–30251 Filed 12–9–93; 8:45 am]

BILLING CODE 4510–43–P

Occupational Safety and Health Administration

[Docket No. NRTL–2–92]

Canadian Standards Association

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Notice of request for expansion of current recognition as a national recognized testing laboratory.

SUMMARY: This notice announces the application of the Canadian Standards Association, Rexdale (Toronto) facility, for expansion of its recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7, and presents the Agency's preliminary finding.

DATES: The last date for interested parties to submit comments is January 10, 1994.

ADDRESSES: Send comments to: NRTL Recognition Program, Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue NW., Room N3653, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue NW., Room N3653, Washington, DC 20210.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Canadian Standards Association which previously made application pursuant to section 6(b) of the Occupational Safety and Health Act of 1970, (84 Stat. 1593, 29 U.S.C. 655), Secretary of Labor's Order No. 1–90 (55 FR 9033), and 29 CFR 1910.7, for recognition of its Rexdale (Toronto) facility as a Nationally Recognized Testing Laboratory (see 57 FR 23429, 6/3/92; amended 57 FR 48804, 10/28/92), and was so recognized (see 57 FR 61452, 12/24/92), has made application for an expansion of its current recognition, for the equipment or materials listed below.

The address of the concerned laboratory is: Canadian Standards Association, Toronto Facility, 178 Rexdale Boulevard, Rexdale (Toronto), Ontario M9W1R3, Canada.

EXPANSION OF RECOGNITION: The Canadian Standards Association (CSA), submitted an application for expansion of its current recognition of the Rexdale facility to include the following test standards, which are appropriate within the meaning of 29 CFR 1910.7(c).

UL 1278—Movable and Wall- or Ceiling-Hung Electric Room Heaters
UL 1419—Professional Video and Audio Equipment
UL 1492—Audio and Video Equipment
UL 1963—Refrigerant Recovery/Recycling Equipment
ANSI/ASME B17.5—Elevators and Escalator Electrical Equipment

The NRTL Recognition Program staff made an in-depth study of the details of CSA's original recognition and determination that CSA had the staff capability and the necessary equipment to conduct testing of products using the proposed test standards. The NRTL staff determined that an additional on-site review was not necessary since the proposed additional test standards were closely related to CSA's current areas of recognition.

Preliminary Finding

Based upon a review of the details of CSA's recognition and an evaluation of its present application including details of necessary test equipment, procedures, and special apparatus or facilities needed, the Assistant Secretary has made a preliminary finding that the equipment and expertise required to certify products using the four aforementioned standards are within the capabilities of the laboratory, and that the proposed additional test standards (product categories) can be added to CSA's recognition without the necessity for an additional on-site review.

All interested members of the public are invited to supply detailed reasons and evidence supporting or challenging the expansion of the current recognition of the Rexdale (Toronto) Facility of the Canadian Standards Association, as required by 28 CFR 1910.7. Submission of pertinent written documents and exhibits shall be made no later than January 10, 1994, and must be addressed to the NRTL Recognition Program, Office of Variance Determination, room N 3653, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue NW., Washington, DC 20210.

Copies of all pertinent documents (Docket No. NRTL–2–92), are available for inspection and duplication at the Docket Office, room N 2634, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address.

Signed at Washington, DC this 3rd day of December, 1993.

Joseph A. Dear,

Assistant Secretary.

[FR Doc. 93–30248 Filed 12–9–93; 8:45 am]

BILLING CODE 4510–26–M

Pension and Welfare Benefits Administration

[Application No. D–9176, et al.]

Proposed Exemptions; the Northern Trust Company, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

The Northern Trust Company (Northern Trust) Located in Chicago, IL

[Application No. D–9176]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a)(1)(A) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) of the Code, shall not apply to: (1) The purchase and sale of stocks between Index Funds and/or Model-Driven Funds (collectively, the Funds); and (2) the purchase and sale of stocks between the Funds and various large pension plans or other large accounts (collectively, the Large Accounts) pursuant to portfolio restructuring programs of the Large Accounts, provided that the following conditions are met:

(a) The Index or Model-Driven Fund is based on an index which represents the investment performance of a specific segment of the public market for equity securities in the United States and/or foreign countries. The organization creating and maintaining the index must be: (1) Engaged in the business of providing financial information, evaluations, advice or securities brokerage services to institutional clients, (2) a publisher of financial news or information, or (3) a public stock exchange or association of securities dealers. The index must be created and maintained by an organization independent of Northern Trust and its affiliates. The index must be a generally accepted standardized index of securities which is not specifically tailored for the use of Northern Trust or its affiliates.

(b) The price of the stock is set at the closing price for that stock on the day of trading; unless the stock was added to or deleted from an index underlying a Fund or Funds after the close of trading, in which case the price will be the opening price for that stock on the next business day after the announcement of the addition or deletion.

(c) The transaction takes place within three business days of the "triggering event" giving rise to the cross-trade opportunity. A "triggering event" is defined as:

(1) A change in the composition or weighting of the index underlying a Fund by the organization creating and maintaining the index;

(2) A change in the composition or weighting of a portfolio used for a Model-Driven Fund which results from an independent fiduciary's decision to exclude certain stocks or types of stocks from the Fund even though such stocks are part of the index used by the Fund;

(3) A change in the overall level of investment in a Fund as a result of investments and withdrawals made on the Fund's regularly scheduled "opening date" which are not directed by Northern Trust; or

(4) A declaration by Northern Trust (recorded on Northern Trust's records) that a "triggering event" has occurred which will be made upon an accumulation of cash in a Fund attributable to dividends on and/or tender offers for portfolio securities equal to not more than .5 percent of the Fund's total value.

(d) A Fund does not participate in a direct cross-trade if the assets of any employee benefit plan maintained by Northern Trust Corporation or its affiliates (the NTC Plans) in the Fund exceed 10 percent of the total assets of the Fund.

(e) Prior to any proposed cross-trading by a Fund, Northern Trust provides to each employee benefit plan which invests in a Fund information which describes the existence of the cross-trading program, the "triggering events" which will create cross-trade opportunities, the pricing mechanism that will be utilized for stocks purchased or sold by the Funds, and the allocation methods and other procedures which will be implemented by Northern Trust for its cross-trading practices. Any such employee benefit plan which subsequently invests in a Fund shall be provided the same information prior to or immediately after the plan's initial investment in a Fund.

(f) With respect to transactions involving a Large Account:

(1) It has assets in excess of $50 million.

(2) Fiduciaries of the Large Account who are independent of Northern Trust are, prior to any cross-trade transactions, fully informed in writing of the cross-trade technique and provide advance written authorization of such transactions.

Such authorization shall be terminable at will by the Large Account upon receipt by Northern Trust of written notice of termination. A form expressly providing an election to terminate the authorization, with instructions on the use of the form, must be supplied to the authorizing Large Account fiduciary concurrent with the receipt of the written information describing the cross-trading program. The instructions for such form must include the following information:

(i) The authorization is terminable at will by the Large Account, without penalty to the Large Account, upon receipt by Northern Trust of written notice from the authorizing Large Account fiduciary; and

(ii) Failure to return the termination form will result in the continued authorization of Northern Trust to engage in cross-trade transactions on behalf of the Large Account.

(3) Within 45 days of the completion of the Large Account's portfolio restructuring program such fiduciaries shall be fully apprised in writing of the results of such transactions. In addition, if the restructuring program takes longer than three months to complete, interim reports of the results of all transactions will be made within 30 days of the end of each three-month period.

(4) Such Large Account transactions occur only in situations where Northern Trust has been authorized to restructure

all or a portion of the Large Account's portfolio into an Index or Model-Driven Fund (including a separate account based on an index or computer model) or to act as a "trading adviser" in carrying out the liquidation or restructuring of the Large Account's equity portfolio.

(g) Northern Trust receives no additional direct or indirect compensation as a result of the cross-trade transaction.

(h) Northern Trust maintains or causes to be maintained for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (i) to determine whether the conditions of this exemption have been met, except that a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Northern Trust or its affiliates, the records are lost or destroyed prior to the end of the six-year period.

(i)(1) Except as provided in paragraph (i)(2) and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (h) are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(ii) Any fiduciary of a plan participating in an Index or Model-Driven Fund who has authority to acquire or dispose of the interests of the plan, or any duly authorized employee or representative of such fiduciary,

(iii) Any contributing employer to any plans participating in an Index or Model-Driven Fund or any duly authorized employee or representative of such employer, and

(iv) Any participant or beneficiary of any plan participating in an Index or Model-Driven Fund, or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (ii) through (iv) of this paragraph (i) shall be authorized to examine trade secrets of Northern Trust, any of its affiliates, or commercial or financial information which is privileged or confidential.

Definitions

For purposes of this proposed exemption: (a) The term "Index Fund" means any investment fund, account or portfolio sponsored, maintained and/or trusteed by Northern Trust or an affiliate in which one or more investors invest which is designed to replicate the capitalization-weighted composition of a stock index which satisfies condition (a) above.

(b) The term "Model-Driven Fund" means any investment fund, account or portfolio sponsored, maintained and/or trusteed by Northern Trust or an affiliate in which one or more investors invest which is based on computer models using prescribed objective criteria to transform an independent third-party stock index which satisfies condition (a) above.

(c) The term "Large Account" means a trust or other fund that is exempt from taxation under section 501 of the Code, and which has assets of at least $50 million. A trust that is exempt from taxation under section 501(a) of the Code may aggregate the assets of one or more employee benefit plans of a single employer or a controlled-group of employers the assets of which are invested on a commingled basis (e.g. through a master trust) for purposes of satisfying the $50 million requirement.

(d) The term "NTC Plan" means an "employee pension benefit plan" (as defined in section 3(2) of the Act) maintained by Northern Trust or any of its affiliates.

(e) The term "opening date" means the regularly scheduled date on which investments in or withdrawals from an Index or Model-Driven Fund may be made.

(f) The term "trading adviser" means a person whose role is limited to arranging a Large Account-initiated liquidation or equity restructuring within a stated time so as to minimize transaction costs.

Summary of Facts and Representations

1. Northern Trust Corporation (NTC) is a bank holding company regulated by and registered under the Bank Holding Company Act of 1956, as amended. Northern Trust is an Illinois banking corporation which is a wholly-owned subsidiary of NTC and its principal asset. Northern Trust manages substantial amounts of assets, typically as a trustee or investment manager, for a variety of clients, including employee benefit plans subject to the Act (the Client Plans). Northern Trust manages the assets of Client Plans either as separate investment portfolios for individual clients (including "master trust" accounts established for the commingled investment of related entities) or as collective investment funds, organized as group trusts pursuant to Rev. Rul. 81–100, for the commingled investment of various unrelated clients (collectively, the Client Accounts).

2. Northern Trust is one of the leading investment managers in the United States in the field of passive asset management. Passive asset management involves investment in a portfolio of securities structured along set investment guidelines, rather than the creation of a portfolio that changes according to an ongoing "active" evaluation of the desirability of particular equity securities. Northern Trust states that approximately $2.5 billion of its assets under management as of December 31, 1991 consisted of equity securities being passively managed in various Index Funds and Model-Driven Funds. Approximately $1.8 billion of the assets of the Funds are assets of the Client Plans.

Northern Trust has no beneficial ownership interest in any of the Funds. However, Northern Trust does maintain a defined benefit plan (the NTC Defined Benefit Plan) and a 401(k) savings plan (the NTC 401(k) Plan) for eligible employees of Northern Trust and its affiliates (i.e. the NTC Plans), assets of which may be invested from time to time in one or more Index Funds or Model-Driven Funds. As of December 31, 1991, the aggregate value of the assets of the NTC Plans was approximately $410.9 million, of which approximately $52.3 million was invested in the Index Funds.

3. The assets managed by Northern Trust in an Index Fund are invested pursuant to a strategy that attempts to replicate the performance of a predetermined third-party index, such as the Standard & Poors 500 Composite Price Index (the S&P 500 Index) and the Russell 2000 Small Stock Index (the Russell 2000 Index).

The current Index Funds maintained by Northern Trust are as follows: (1) The Collective Stock Index Fund, which invests in the common stock of companies listed in the S&P 500 Index in the same relative proportions as are used by the S&P 500 Index; and (2) the Collective Expanded Equity Fund, which invests in the common stock of companies listed in the Russell 2000 Index in the same relative proportions as are used by the Russell 2000 Index. The investment goal of these Index Funds is to replicate the capitalization-weighted total rate of return of the respective indexes upon which their portfolios are based.

The assets managed by Northern Trust in the Model-Driven Funds are invested pursuant to various strategies whereby investments are made in accordance with computer models which seek to earn a rate of return that either replicates or exceeds the rate of return achieved by a specific index, such as the S&P 500 Index, upon which the model is based.

The current Model-Driven Funds maintained by Northern Trust are as follows: (1) The Enhanced Index Fund; and (2) the Optimized Index Fund.

With respect to the Enhanced Index Fund, Northern Trust states that the Fund seeks to earn a rate of return greater than the S&P 500 Index by buying and selling the component stocks of the S&P 500 Index and stock index derivatives (i.e. exchange-traded futures or options contracts) based on the S&P 500 Index. However, Northern Trust states that the Enhanced Index Fund will not participate in the proposed cross-trading program.

With respect to the Optimized Index Fund, Northern Trust states that the Fund seeks to track the S&P 500 Index even though certain component stocks in such index are excluded by the Fund because investors (including Client Plans) want to avoid investing in companies which are involved in industries, practices, or locations that are deemed inappropriate on philosophical or other grounds. For example, certain categories of stocks (e.g. tobacco stocks) may be excluded by Northern Trust from a Fund pursuant to directions from the independent fiduciaries of the Client Plans that invest in the Fund. Northern Trust then weights the holdings of stocks otherwise deemed acceptable by the independent fiduciaries of the Client Plans using a computer model with an optimizing program which attempts to match the resulting portfolio, as closely as possible, to the aggregate portfolio characteristics and expected performance of the S&P 500 Index despite the elimination of certain stocks. The computer models for the Optimized Index Fund are developed by Northern Trust based on prescribed objective criteria established by Client Accounts that invest in the Fund. Northern Trust states that it does not exercise any discretion for investment decisions relating to the exclusion of certain stocks in the portfolio developed for the Optimized Index Fund.[1]

None of the Funds will use a third party index which includes in its portfolio any stock issued by NTC or its affiliates (NTC Stock).[2] Northern Trust notes that the S&P 400 Midcap Index is the only index which currently includes NTC Stock in its portfolio.

4. The applicant states that the holdings of any Fund may change if one of the following "trigger events" occurs.

First, there could be a change in the composition or weighting of the index underlying a Fund by the organization creating or maintaining the index (see condition (c)(1)). For example, Standard & Poors (S&P) may change the composition of the S&P 500 Index which would require corresponding changes in the make-up of the portfolios of Northern Trust's Index Funds corresponding to that index. With respect to any Model-Driven Fund, the computer model upon which the Fund is based may change as a result of a change in the stock index used for the model. For example, since the Optimized Index Fund is based on the S&P 500 Index, the Fund would need to buy or sell portfolio stocks in accordance with any changes in the S&P 500 Index which affect the computer model for the Fund. Northern Trust states that it does not have any discretion for the timing of "trigger events" relating to changes in the composition or weighting of an index used by a Fund because such changes are controlled by an independent organization which creates and maintains the index.

Second, a Model-Driven Fund may need to buy or sell portfolio stocks because of a decision by a Client Account investor to exclude certain stocks from the Fund's portfolio even though such stocks are held in the index upon which the Fund is based (see condition (c)(2)). The applicant states that such changes are not the result of any exercise of discretion by Northern Trust. In the case of a Client Plan, these "trigger events" are directed by an independent fiduciary for the Client Plan as a condition for its initial or continued investment in the Fund (as discussed above in Item 3).

Third, there could be a change in the overall level of investment in a Fund as a result of investments and withdrawals made by the Client Accounts on the Fund's regularly scheduled "opening date." In the case of the Client Plans, all such investments or withdrawals are made at the direction of an independent fiduciary, pursuant to written procedures established in an investment management agreement with Northern Trust. Such procedures specify, among other things, how a Client Plan's assets under management are to be allocated among the various Funds. In the case of the NTC Plans, Northern Trust will not engage in any cross-trades which result from the investments in or withdrawals from the Funds made by the NTC Defined Benefit Plan because such investments and withdrawals are made at the direction of Northern Trust (see condition (c)(3)). However, investments in and withdrawals from the Funds by the NTC 401(k) Plan which are participant-directed and not controlled by Northern Trust would be eligible for cross-trading by the Funds. In addition, all NTC Plans would participate in the proposed cross-trading program by the Funds to the extent that the cross-trading opportunities result from the other "trigger events" described herein. In any event, a Fund would not be eligible to participate in cross-trades if the assets of the NTC Plans in the Fund exceed 10% of the Fund's total assets (see condition (d)).

Fourth, there could be a declaration by Northern Trust (recorded on Northern Trust's records) that a "triggering event" has occurred which will be made upon an accumulation of cash in the Fund attributable to dividends on and/or tender offers for portfolio stocks which will be limited to a de minimis amount (see condition (c)(3)). Northern Trust states that relatively few stocks held in the Funds' portfolios are subject to tender offer transactions at any particular time.

The applicant represents that since the "trigger events" described above occur because of changes directed by independent sources, Northern Trust does not exercise any discretion for the

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[1] The Department notes that to the extent the fiduciaries of the Client Plans restrict their consideration of investment opportunities for non-economic reasons, such conduct may involve certain violations of Part 4 of Title I of the Act which would not be provided relief by the proposed exemption.

In this regard, section 404(a)(1) of the Act requires, among other things, that a fiduciary of a plan act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries. To act prudently, a plan fiduciary must consider, among other factors, the availability, riskiness, and potential return of alternative investments for the plan. Because the investments made by a Fund are investments which would be selected, if at all, in preference to alternative investments, such an investment would not be prudent if it provided the Client Plan with less return, in comparison to risk, than comparable investments available to the Client Plan, or if it involved a greater risk to the security of the Client Plan's assets than other investments offering a similar return.

The Department has construed the requirements that a fiduciary act solely in the interest of, and for the exclusive purpose of providing benefits to, participants and beneficiaries as prohibiting a fiduciary from subordinating the interests of participants and beneficiaries in their retirement income to unrelated objectives. Thus, in deciding whether and to what extent to invest in a particular investment, a fiduciary must ordinarily consider only factors relating to the interests of plan participants and beneficiaries in their retirement income. A decision to make an investment may not be influenced by non-economic factors unless the investment, when judged solely on the basis of its economic value to the plan, would be equal or superior to alternative investments available to the plan. (See DOL Advisory Opinion 81–12A, January 13, 1981.)

[2] See Prohibited Transaction Exemption 92–11 (57 FR 7801, March 4, 1992), regarding Wells Fargo Bank, for additional conditions required for the acquisition, holding and disposition of Wells Fargo & Co. Stock by Index Funds and Model-Driven Funds maintained by Wells Fargo Bank.

amount, nature and timing of trades by the Funds which result from such "trigger events".

5. The Funds are often required to sell a particular stock as a result of a "trigger event" when one or more of the other Funds will be in the process of purchasing that same stock in response to a different "trigger event". If the Funds effect the required transactions on the open market, each Fund incurs substantial transaction costs, including brokerage commissions, the so-called "marketmaker's spread", and the potential adverse market impact which may be caused by the trade itself. Northern Trust states that if it were able to effect these transactions by means of a pre-arranged direct cross-trade between the Funds that must sell the particular stock and the Funds which must buy that same stock, it could substantially reduce the amount of commission costs for the Funds. Based on an independent review of the potential direct cross-trade opportunities, Northern Trust estimates that the ability to effect direct cross-trades would generate substantial savings to the Funds. Further, by cross-trading the stocks, Northern Trust could eliminate entirely the marketmaker's spread and any potential for adverse market impact which would occur in an open-market transaction.

6. In addition to transactions arising in connection with the automatic trading activities of the Index Funds and Model-Driven Funds, Northern Trust is often retained to assist one of the Large Accounts in liquidating all or a substantial portion of the securities held in its equity portfolio. In such situations, Northern Trust acts as a "trading adviser" to the Large Account. The Large Account would be a trust or other fund exempt from taxation under section 501 of the Code (e.g. an employee benefit plan subject to Title I of the Act, a governmental plan, a church plan, a university endowment fund, a private foundation, etc.) which has total assets of at least $50 million. Northern Trust states that it is not a fiduciary for the Large Account with respect to the underlying asset allocation decision which results in the Large Account allocating assets to the Funds. Specifically, Northern Trust is not a fiduciary by reason of investment advice to the Large Account, including any Large Plan, when acting in the role of "trading adviser" to the Large Account. Northern Trust represents that its role as a "trading adviser" involves only advice on the mechanical aspects of accomplishing the Large Account's asset allocation decision, such as arranging for the stock transactions so as to minimize transaction costs. Northern Trust does not provide any advice as a fiduciary when acting as a "trading adviser" regarding which stocks or types of stocks should be sold by a Large Account to accomplish its asset allocation goals. Such liquidations are the result of the decision of an independent fiduciary to restructure the portfolio, in some cases to allow such portfolio to be managed by Northern Trust as an Index Fund or a Model-Driven Fund and in other cases to facilitate the realignment of the portfolio in connection with a change in investment managers or investment strategy. The applicant states that in the course of these restructurings, the Large Account will often be selling certain stocks which the Funds are simultaneously in the process of purchasing as a result of a "trigger event". In such cases, without an exemption to engage in cross-trading, the Large Account and the Funds would effect the transactions on the open market and both the Large Account and the Funds would incur the transaction costs described above.

7. Northern Trust represents that it would be in the best interest of the Client Plans and the Large Accounts, including Large Plans, for direct cross-trades to be arranged and effected to the maximum extent possible.[3] Northern Trust states that the avoidance or reduction of transaction costs made possible by direct cross-trading between the Funds, or between the Funds and the Large Accounts, would be an economic benefit to the Client Plans and the NTC Plans. The proposed cross-trading of the securities between the various Funds and Large Accounts generally will be effected as quickly as possible in order to minimize tracking errors relative to the index used for a Fund. However, the Funds typically accept deposits and withdrawals only once a week. Therefore, the applicant requests that the Funds be allowed up to three days to cross-trade securities in order to maximize the number of potential cross-trade opportunities between the Funds and Large Accounts which occur as a result of deposits or withdrawals made for any particular Fund. Cross trades will be accomplished within no more than three days of the "triggering event" for the trade and, if possible, on the same business day as a "triggering event" occurs in order to remain fully invested in stocks and to minimize tracking error relative to the index used for a particular Fund.

8. Northern Trust will receive its customary investment management or trustee fees with respect to the Client Plans and its fee for acting as "trading adviser" to a Large Account. However, Northern Trust will not receive any additional compensation on account of its effecting the direct cross-trades. Northern Trust intends to accomplish all possible cross-trades in-house without the use of a broker. However, Northern Trust represents that the utilization of an independent broker-dealer may be necessary in some cases to efficiently process the mechanical aspects of the direct cross-trade, particularly when Northern Trust is not the custodian or trustee for both parties to the transaction. For example, the need for an independent broker-dealer may arise in the context of transactions between the Funds, for which Northern Trust is the trustee or custodian, and one of the Large Accounts for which Northern Trust is only a "trading adviser" for the transaction but not a trustee or custodian for the assets of the Large Account involved. In such instances, Northern Trust may need to use a broker to effectuate the re-registration of stocks that are custodied at another financial institution. Northern Trust states that where it is the trustee or custodian for both parties, it generally will be able to efficiently process the mechanical aspects of the trade without the involvement of any broker-dealer, thereby resulting in the complete avoidance of any brokerage commissions. Northern Trust expects that its need to use a broker-dealer to process a cross-trade will be rare and that if a broker-dealer is used, the brokerage cost to the Funds and/or Large Accounts will be less than the cost that would be incurred if the trade were executed on the open market. In no event will Northern Trust or any of its affiliates receive any brokerage commissions or other additional compensation as result of the direct cross-trades.

9. All direct cross-trades will be for cash. For most "triggering events", direct cross-trades will be effected at a price equal to the closing price reported by the independent pricing service utilized by Northern Trust for purposes of valuing the particular stocks (and in the case of foreign stocks, the particular

[3] The applicant requests an exemption from the prohibitions of section 406(b)(2) of the Act for the cross-trading of stocks between the Funds or between the Funds and the Large Accounts because Northern Trust or an affiliate will be acting on behalf of both parties to such transactions. In addition, Northern Trust requests an exemption from the prohibitions of section 406(a)(1)(A) of the Act for the sale or exchange of stocks between the Funds and Large Accounts in the event a Client Plan invested in one of the Funds is a party in interest to another Client Plan invested in one of the other Funds or is a party in interest with respect to a Large Plan for which Northern Trust is acting as a "trading adviser" in such transaction.

currency). The independent pricing service used by Northern Trust gathers price information from all the relevant sources (i.e. the New York Stock Exchange, the American Stock Exchange, NASDAQ, etc.) and compiles the information into a format which is usable by the Northern Trust.[4] However, if the "triggering event" involves the addition or deletion of a particular stock from an independent third-party index after the close of trading, Northern Trust will effect such direct cross-trades at a price equal to the opening price for that stock on the next business day after the announcement of the addition or deletion. The pricing mechanism utilized by Northern Trust for cross-trading will be specified in advance to all Client Accounts prior to any transactions.

10. The direct cross-trade program will be effected pursuant to a proportional allocation system which will ensure that no Client Account will be favored over any other Client Account. In the event that the number of shares of a particular stock which all of the Funds or Large Accounts propose to sell on a given day is less than the number of shares of such stock which all the Funds or the Large Accounts propose to buy, the direct cross-trade opportunity will be allocated among potential buyers on a pro rata basis. Thus, any Client Accounts that invest in the Funds will have an opportunity to participate on a proportional basis in all cross-trade transactions during the operation of the cross-trading program.

11. Northern Trust states that when direct cross-trades occur between the Funds and one or more of the Large Accounts, the transactions would be effected only if the following conditions are satisfied: (i) The Large Account's fiduciary, which is independent of Northern Trust and its affiliates, is fully informed in writing of the cross-trading technique prior to the transactions; (ii) such fiduciary provides advance written approval, authorizing Northern Trust to utilize the cross-trade technique to effect the transactions as part of the Large Account's portfolio restructuring program; (iii) such fiduciary's authorization is terminable at will by the Large Account, without penalty to the Large Account, upon receipt by Northern Trust of written notice of termination (as described in condition (f)(2) above); and (iv) the Large Account's fiduciary is informed in writing of the results of all direct cross-trading transactions within 45 days of the completion of the Large Account's portfolio restructuring program. In addition, Northern Trust states that if the restructuring program takes longer than three months to complete, interim reports of the results of all transactions will be made within 30 days of the end of each three-month period.

Finally, Northern Trust will provide to each Client Plan and NTC Plan which invests in a Fund, prior to any cross-trading by a Fund, information which describes the existence of the cross-trading program, the "trigger events" which will create cross-trade opportunities, and the pricing mechanism that will be utilized for stocks purchased or sold by the Funds. Such information will also disclose the allocation methods and other procedures or restrictions implemented by Northern Trust for the cross-trading program. Northern Trust states that any Client Plan or NTC Plan which subsequently invests in a Fund will be provided the same information prior to or immediately after such plan's initial investment in a Fund.

12. In summary, the applicant represents that the proposed transactions will satisfy the statutory criteria of section 408(a) of the Act and section 4975 of the Code because, among other things: (a) The Index and Model-Driven Funds will buy or sell stocks in the proposed cross-trading program only in response to various "trigger events" which result from changes directed by independent sources that are not within Northern Trust's control; (b) the Large Accounts will engage in cross-trades only in situations where Northern Trust does not have any discretion for the investment decision made by a Large Account and the Large Account's fiduciary provides advance written approval authorizing Northern Trust to utilize the cross-trading technique to effect such transactions; (c) all cross-trades will occur within three business days of the "triggering event" necessitating the purchase or sale; (d) the price for the stocks will be set at the closing price for those stocks on the day of trading, unless the stock was added to or deleted from an index underlying a Fund after the close of trading, in which case the price will be the opening price for the stock on the next business day after the announcement of the addition or deletion; (e) the Funds and Large Accounts will save significant amounts of money on brokerage commissions and other transaction costs; and (f) Northern Trust will receive no additional compensation as a result of the proposed cross-trades.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

[4] Northern Trust currently uses Interactive Data Systems, Inc. (IDSI) as its primary source to value the stocks in the Funds. IDSI is a widely used independent pricing service and gives Northern Trust electronic access to stock prices. The stocks are valued at the composite closing price for the day. Thus, cross-trades between the Funds would be executed at the composite closing price for the stocks involved as provided by IDSI. Northern Trust has access to other independent pricing services in the event that ISDI does not price a particular stock. Northern Trust states that in no event will it use more than one pricing service to price a particular security in a cross-trade. In addition, the independent pricing services used by Northern Trust report the prices of all securities in U.S. Dollars, even if the security is officially denominated in a foreign currency. Consequently, Northern Trust has no discretion over price quotations and how price quotations are converted into U.S. Dollars from the applicable foreign currency. Northern Trust will maintain records of the prices at which all cross-trades are executed.

Fidelity Management Trust Co. Located in Boston, MA

[Application No. D–9282]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a)(1)(A) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) of the Code, shall not apply to the proposed cross-trading of securities by Fidelity Management Trust Company (Fidelity) on behalf of employee benefit plan accounts for which Fidelity acts as a fiduciary.

Part I—General Conditions

(A) Each Plan participating in Fidelity's cross-trading program has assets of at least $25 million;

(B) A Plan's participation in the cross-trade program is subject to a written authorization executed in advance by a fiduciary with respect to each such Plan;

(C) The authorization referred to in section (B) of this Part I is terminable at will without penalty to such Plan, upon receipt by Fidelity of written notice of such termination;

(D) Before an authorization is made, the authorizing Plan fiduciary must be furnished with any reasonably available information necessary for the authorizing fiduciary to determine whether the authorization should be made, including (but not limited to) a copy of this exemption, an explanation of how the authorization may be terminated, a detailed disclosure of the procedures implemented in Fidelity's

cross-trade practices, and any other reasonably available information regarding the matter that the authorizing fiduciary requests;

(E) Each cross-trade transaction involves only securities for which there is a generally recognized market;

(F) Each cross-trade transaction is effected at the current market value for the security on the date of the transactions, which shall be, for equity securities, the closing price for the security on the date of the transaction, and for debt securities, as determined in accordance with paragraph (b) of Rule 17a–7 issued by the Securities and Exchange Commission (SEC) under the Investment Company Act of 1940;

(G) Fidelity will not charge any Plan affected by a cross-trade transaction any fee or commission for such transaction;

(H) At least every three months, and not later than 45 days following the period to which it relates, Fidelity will furnish the authorizing Plan fiduciary with a report disclosing: (1) A list of all cross-trade transactions engaged in on behalf of the Plan, and (2) with respect to each cross-trade transaction, the highest and lowest prices at which the securities involved in the transaction were traded on the date of such transaction;

(I) The authorizing Plan fiduciary will be furnished with a summary of certain additional information at least once per year. The summary must be furnished within 45 days after the end of the period to which it relates, and must contain the following: (1) A description of the total amount of Plan assets involved in cross-trade transactions during the period, (2) a description of Fidelity's cross-trade practices, (3) a statement that the Plan fiduciary's authorization of cross-trade transactions may be terminated upon receipt by Fidelity of the fiduciary's written notice to that effect, and (4) a statement that the Plan fiduciary's authorization of the cross-trade transaction will continue in effect unless it is terminated; and

(J) The Accounts involved in cross-trade transactions will not include assets of any Plan established or maintained by Fidelity or its affiliates.

Part II—Specific Conditions

(A) Index Accounts: (1) The index of the account is based on an index which represents the investment performance of a specific segment of the public market for equity or debt securities in the United States and/or foreign countries. The organization creating and maintaining the index must be: (a) Engaged in the business of providing financial information, evaluations, advice or securities brokerage services to institutional clients, (b) a publisher of financial news or information, or (c) a public stock exchange or association of securities dealers. The index must be created and maintained by an organization independent of Fidelity and its affiliates. The index must be a generally accepted standardized index of securities which is not specifically tailored for the use of Fidelity or its affiliates.

(2) The transaction takes place within three business days of the "triggering event" giving rise to the cross-trade transaction. A triggering event is defined as:

(a) A change in the composition or weighting of the index underlying an Index Account; or

(b) A change in the overall level of investment in an Index Account as a result of investments and withdrawals made on the Index Account's opening date (the regularly-scheduled date on which investments in or withdrawals from an Index Account may be made).

(3) Fidelity maintains or causes to be maintained for a period of six years from the date of the transaction the records necessary to enable the persons described in section (4) of this Part II (A) to determine whether the conditions of this exemption have been met, except that a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Fidelity or its affiliates, the records are lost or destroyed prior to the end of the six-year period.

(4)(a) Except as provided in subsection (b) of this section (4) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in section (3) of this Part II are unconditionally available at their customary location for examination during normal business hours by—

(1) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(2) Any fiduciary of a Plan participating in an Index Account who has authority to acquire or dispose of the interests of the Plan or any duly authorized employee or representative of such fiduciary,

(3) Any contributing employer to any Plan participating in an Index Account or any duly authorized employee or representative of such employer, and

(4) Any participant or beneficiary of any Plan participating in an Index Account, or any duly authorized employee or representative of such participant or beneficiary.

(b) None of the persons described in paragraphs (2) through (4) of subsection (a) of this section (4) shall be authorized to examine trade secrets of Fidelity, any of its affiliates, or commercial or financial information which is privileged or confidential.

(B) Managed Accounts: (1) An independent fiduciary of each Plan must specifically authorize each cross-trade transaction in accordance with the following procedure:

(a) No more than three business days prior to the execution of any cross-trade transaction, Fidelity must inform an independent fiduciary of each Plan involved in the cross-trade transaction that Fidelity proposes to buy or sell specified securities in a cross-trade transaction if an appropriate opportunity is available, the current trading price for such securities, and the total number of shares to be acquired or sold by each such Plan.

(b) Prior to each cross-trade transaction, the transaction must be authorized either orally or in writing by the independent fiduciary of each Plan involved in the cross-trade transaction;

(c) If a cross-trade transaction is authorized orally by an independent fiduciary, Fidelity will provide written confirmation of such authorization in a manner reasonably calculated to be received by such independent fiduciary within one business day from the date of such authorization;

(d) The authorization referred to in this Part II(B) will be effective for a period of three business days; and

(e) No more than ten days after the completion of a cross-trade transaction, the independent fiduciary authorizing the cross-trade transaction must be provided a written confirmation of the transaction and the price at which the transaction was executed;

(2) A cross-trade transaction will be effected only where the transaction involves less than five percent of the aggregate average daily trading volume for the securities involved in the transaction for the week immediately preceding the authorization of the transaction. A cross-trade transaction may exceed this limit only by express authorization of independent fiduciaries on behalf of Plans affected by the transaction; and

(3) The cross-trade transaction is effected at a price which is within ten percent of the closing price of the security on the day before the date on which Fidelity receives authorization by the independent Plan fiduciary to engage in the cross-trade transaction.

Part III—Definitions

(A) "Account" means an account holding assets of one or more employee benefit plans which are subject to the

Act (the Plans), for which Fidelity or an affiliate of Fidelity acts as a fiduciary;

(B) "Affiliate" means any person, directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with Fidelity;

(C) "Cross-trade transaction" means a purchase and sale of securities between Accounts for which Fidelity or an affiliate of Fidelity acts as a trustee or investment manager;

(D) "Index Account" means an Account for which Fidelity and the Plan sponsor or other named fiduciary have agreed that the investment of the assets in question will be designed to replicate the capitalization-weighted composition of a stock or bond index; and

(E) "Managed Account" means an Account for which Fidelity and the Plan sponsor or other named fiduciary have agreed that the investment of the assets in question will be managed actively at the discretion of Fidelity, pursuant to written guidelines as to which types of securities to buy or sell for the Account.

Summary of Facts and Representations

1. Fidelity is a bank and trust company domiciled in and chartered under the banking laws of the Commonwealth of Massachusetts. Fidelity is a wholly-owned subsidiary of FMR Corp., an organization which, through its subsidiaries, provides a broad range of financial services to a variety of clients, including individuals, institutions, registered investment companies and employee benefit plans. Fidelity serves as investment manager or trustee for a substantial number of qualified pension and profit sharing plans (Plans), and serves as custodian for individual retirement accounts and accounts maintained pursuant to section 403(b)(7) of the Code. Fidelity currently has more than $20 billion in assets under management. Plan accounts maintained and managed by Fidelity are of two general categories: Index Accounts and Managed Accounts.

2. Under the terms of Index Accounts, Fidelity and the Plan sponsor(s) or other named fiduciary have agreed that the assets in question will be managed in accordance with a passive investment model which is designed to allocate the investment of assets in the equity or debt securities of certain companies solely pursuant to an index maintained and published by a third party. Examples of such indices are the S&P 500 Index, an index of equity securities, and the Lehman Brothers Bond Indices, which are indices of debt securities.[5] The investment model for some Index Accounts may refer to a published index as modified pursuant to written guidelines which have been approved by the Plan sponsor or other named fiduciary. The organizations maintaining and publishing the indices utilized by the Index Accounts in all instances will be independent of Fidelity and its affiliates, and such organizations are engaged in the business of providing financial information, evaluations, advice or securities brokerage services to institutional clients, or publishing such information. Additionally, some indices are maintained by public stock exchanges and associations of securities dealers.

3. Managed Accounts are those for which Fidelity provides active portfolio management. Investment decisions are generally subject to the Fidelity investment manager's discretion, subject to general written guidelines as to which types of securities to acquire or sell for the Account. For some Managed Accounts, investment selections are based in part on the corresponding decisions made on behalf of registered investment companies or institutional accounts for which Fidelity or its affiliate serves as the investment advisor.

4. Frequent purchases and sale of securities in the Index Accounts are required to accomplish portfolio balances in accordance with the particular index models in use. Securities sales and purchases for Managed Accounts result from the active decision making by the Account manager. In addition, some securities transactions may be prompted by a client Plan's request to add funds to, or withdraws funds from, an Account. Under any of these circumstances, Fidelity's disposition of a particular security for one Account may involve a security which a portfolio manager may need or desire for another Account, presenting an opportunity to save substantial commissions for both the liquidating Account and the acquiring Account. This saving is enabled by a cross-trade transaction, which involves matching Fidelity's sell orders for a particular day with its buy orders for the same day, and the execution of trades between the Accounts in off-market transactions. Under current procedures, all securities transactions, including cross-trades between accounts maintained by Fidelity, are executed by a broker on behalf of a purchasing or selling Account, at the direction of Fidelity, dealing with a second broker acting on behalf of a purchasing or selling second party.

5. Fidelity proposes to take advantage of opportunities to cross trade Account securities directly between the Accounts, or directly with other client accounts for which Fidelity is the investment manager, or with mutual funds or institutional accounts for which Fidelity is the investment advisor. Fidelity maintains that comparable trades on the open market between unrelated parties would require a commission equal to between four and five cents per share for each sale or purchase transaction. However, Fidelity proposes to execute cross-trade transactions on behalf of the Accounts without charging any commissions. By participating in its cross-trading program, Fidelity represents that the Accounts will incur substantially lower expenses in relation to the affected transactions.

Fidelity also represents that by participating in its cross-trading program, the Accounts will benefit by not incurring the cost, in terms of price, of dealing with a person or firm acting as "market maker" for the particular security involved in a cross-trade transaction. This cost is measured by the spread between the asking and bidding prices for the security. Additionally, Fidelity represents that where trading of a particular security is "thin" (limited in numbers of shares available), participation in the cross-trading program may enable the Accounts to obtain early opportunities to acquire or sell such securities.

6. Participation by Plans, through any of the Accounts, in Fidelity's cross-trading program, will be subject to several conditions which will apply to both Index Accounts and Managed Accounts. Participation by Plans in Fidelity's cross-trade program is limited to Plans with assets of at least $25 million. Further, Accounts involved in Fidelity's cross-trade transactions will not include assets of any Plan established or maintained by Fidelity or its affiliates. The proposed exemption will apply to cross-trade transactions involving only securities for which there is a generally-recognized market. Each cross-trade transaction will be effected at the current market value of the security on the date of the transactions. For equity securities the "current market value" will be the closing price for the security on the date of the transaction. For debt securities the "current market value" will be determined pursuant to paragraph (b) of

[5] The applicant represents that indices of debt securities, such as the Lehman Brothers Bond Indices, consist primarily of high-quality fixed-income securities representing the U.S. government, corporate, and mortgage-backed securities sectors of the bond market in the United States.

Rule 17a–7 issued by the Securities and Exchange Commission, which contains four possible means of determining "current market" value depending on such factors as whether the security is a reported security and whether its principal market is an exchange. A Plan's participation in Fidelity's cross-trading program must be authorized in writing, prior to the execution of any specific cross-transaction, by a Plan fiduciary which is independent of Fidelity, and such authorization is terminable at will upon written notice by such independent fiduciary. Prior to any such authorization, Fidelity will provide the authorizing Plan fiduciary with all materials necessary to permit an evaluation of the cross-trade program. Such materials will include a copy of this exemption, if granted, an explanation of how the authorization may be terminated, a description of Fidelity's cross-trade practices, and any other available information which the authorizing Plan fiduciary may reasonably request. Fidelity will not charge any commission or fee for the cross-trading transactions, and no penalty or other charge will result from termination of a Plan's participation in the cross-trading program.

7. After a Plan's participation in Fidelity's cross-trading program is authorized, Fidelity will furnish periodic reports to the authorizing Plan fiduciary. At least once every three months, and not later than 45 days following the period to which it related, the authorizing Plan fiduciary will be furnished a report disclosing: (a) A list of all cross-trade transactions engaged in on behalf of the Plan, and (b) with respect to each cross-trade transaction, the highest and lowest prices at which the securities involved in the transaction were traded on the date of such transaction. Additionally, at least once each year, within 45 days after the end of the relevant period, the authorizing Plan fiduciary will be furnished with a report which includes the following: (a) A description of the total amount of Plan assets involved in cross-trade transactions during the period, (b) a description of Fidelity's cross-trade practices, (c) a statement that the Plan fiduciary's authorization of cross-trade transactions may be terminated upon receipt by Fidelity of the fiduciary's written notice to that effect, and (d) a statement that the Plan fiduciary's authorization of the cross-trade transaction will continue in effect unless it is terminated.

8. The Plans' participation in Fidelity's cross-trading program through the Index Accounts will be subject to certain special conditions. With respect to cross-trades involving Index Accounts, the proposed exemption is limited to transactions which take place within three business days of the "triggering event" giving rise to the cross-trade transaction. A "triggering event" is defined as: (1) A change in the composition or weighting of the index underlying an Index Account, or (2) a change in the overall level of investment in an Index Account as a result of investments and withdrawals made on the Fund's opening date (the regularly-scheduled date on which investments in or withdrawals from an Index Account may be made).

In connection with cross-trade transactions involving Index Accounts, Fidelity is also required to maintain, for at least six years, records necessary to enable a determination of whether the conditions of this exemption, if granted, have been satisfied. Such records are to be made available to: (a) Any duly authorized employee or representative of the Department or the Internal Revenue Service, (b) any fiduciary of a Plan participating in an Index Account who has authority to acquire or dispose of the interests of the Plan or any duly authorized employee or representative of such fiduciary, (c) any contributing employer to any Plan participating in an Index Account or any duly authorized employee or representative of such employer, and (d) any participant or beneficiary of any Plan participating in an Index Account, or any duly authorized employee or representative of such participant or beneficiary.

9. The Plans' participation in Fidelity's cross-trade program through the Managed Accounts is also subject to certain special conditions. In addition to requiring a general authorization of a Plan's participation in Fidelity's cross-trade program, an independent fiduciary of each Plan with assets in a Managed Account must specifically authorize each cross-trade transaction involving that Managed Account. Any such authorization is effective only for a period of three business days and will be subject to pricing and volume limitations, described below. The authorization to proceed with the transaction may be either oral or written. If a cross-trade transaction is authorized orally by an independent fiduciary, Fidelity will provide a written confirmation of such authorization in a manner reasonably calculated to be received by such independent fiduciary within one business day of such authorization. Subsequently, after the cross-trade transaction is consummated, the Plan fiduciary will be sent a written confirmation of the cross-trade, including the price at which it was executed, within ten days of the completion of the transaction.

A cross-trade transaction will be effected on behalf of a Managed Account only where the trade involves less than five percent of the aggregate average daily trading volume for the securities involved in the transaction for the week immediately preceding the authorization of the transaction. A cross-trade transaction may exceed this limit only by express written or oral authorization of an independent fiduciary on behalf of the Plans affected by the transaction. With respect to pricing, a cross-trade may not be made at a price which differs by more than ten percent from the price at the close on the day before specific authorization was provided by an independent fiduciary.

10. Fidelity represents that it is conceivable that situations will arise in which it will be necessary to allocate cross-trade opportunities among several client accounts. In this regard, the applicant represents that the issues presented in allocating cross-trade opportunities among client accounts are no different than the issues which Fidelity must face daily in determining the allocation of limited investment opportunities among client accounts. Fidelity represents that it will make these decisions considering all the relevant facts and circumstances in a manner which it believes to be consistent with its fiduciary responsibilities under the Act and which is equitable to all accounts involved in such allocation decisions. Fidelity will consider, among other things the relative liquidity needs of the client accounts, the composition of the portfolios and the number of cross-trade opportunities which have been made available to the client accounts. In this regard, Fidelity does not believe than any automatic allocation system would be appropriate because it would interfere with the proper discharge of the fiduciary duties of an investment manager.[6]

11. In summary, the applicant represents that the proposed transactions satisfy the criteria of section 408(a) of the Act for the following reasons: (a) An independent Plan fiduciary must provide written authorization, terminable at will and without penalty, for each Plan's participation in the cross-trading program; (b) Each Managed Account cross-trade transaction, which must

[6] The Department is not proposing, nor is the applicant requesting, any relief for any prohibited transaction which may arise from Fidelity's allocation of investment opportunities among accounts over which it has investment discretion.

satisfy certain price and volume requirements, must be specifically authorized orally or in writing by the independent fiduciary of each Plan affected by the transaction; (c) Cross-trades involving Index Accounts will result solely from "triggering events" and, Fidelity will maintain records necessary to determine the Index Accounts' compliance with the conditions of the exemption; (d) All cross-trades will be executed at the current market price for the security on the date of the transaction; (e) All securities involved in cross trades will be ones for which there is a generally recognized market; (f) Fidelity will receive no fees or commissions as a result of the proposed cross trades; (g) Plans participating in the cross-trading program will realize savings due to eliminated brokerage commissions; (h) The Plans participating in the cross-trade program will be large Plans, with assets of at least $25 million; and (i) The Plans participating in the cross-trade program will not include any Plan established or maintained by Fidelity or its affiliates.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Retirement Plan for Employees, Holsum Bakery, Inc. (the Plan) Located in Phoenix, AZ

[Application No. D–9457]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale (the Sale) by the Plan of certain improved real property (the Property) to Holsum Bakery, Inc. (the Employer), a party in interest with respect to the Plan.

This proposed exemption is conditioned upon the following requirements: (1) The Sale is a one-time cash transaction; (2) the Plan is not required to pay any commissions, costs or other expenses in connection with this transaction; (3) the Property is appraised by qualified, independent appraisers; (4) the sales price for the Property is the greater of either: (a) $250,000, representing the original amount paid by the Plan at the time of acquisition; or (b) its fair market value on the date of the Sale; (5) an independent, qualified fiduciary, who has made an initial determination that the proposed sale is appropriate for the Plan, monitors its terms for the Plan; and (6) within ninety days of the publication in the **Federal Register** of the grant of this notice of proposed exemption, the Employer files Forms 5330 with the Internal Revenue Service (the Service) and pays all applicable additional excise taxes that are due by reason of the prohibited lease transactions.

Summary of Facts and Representations

1. The Plan is a defined benefit plan sponsored by the Employer. The Employer, an Arizona corporation, engages primarily in the business of preparing and distributing bread and other bakery products. As of December 31, 1992, the Plan had 146 participants and total assets of $1,891,210. The trustee of the Plan is Bank One, Arizona, N.A., formerly known as Valley National Bank of Arizona, N.A. (the Trustee). The Trustee possesses the sole investment authority for the Plan with respect to this asset.

2. Effective December 31, 1989, the Employer "froze" the Plan and discontinued future benefits accruals under the Plan, providing retirement benefits for service after that date through a 401(k) plan. On June 24, 1993, the Trustee applied to the Internal Revenue Service (the Service) for a ruling to the effect that the termination of the Plan would not adversely affect its tax-qualified status.

3. In order to enable final distributions to the participants, the assets of the Plan must be liquidated. Among the Plan's assets is the Property, which consists of a single-story, grade-level industrial building situated on a 37,500 square-foot parcel of land located at 17815 North 25th Avenue, Phoenix, Arizona. Adjacent to the Property is a parcel of land owned by the Employer. In 1985, the Plan acquired the Property from the Employer (the Purchase) for the total cash consideration of $250,000 pursuant to the terms and conditions of prohibited Transaction Exemption (PTE) 85–130, which was issued by the Department on July 26, 1985 at 50 FR 30544.[7] Under PTE 85–130, the Trustee, as the independent, qualified fiduciary, provides exclusive representation of the Plan's interests under the Lease with the Employer. In such capacity, the Trustee has monitored the Lease on behalf of the Plan.

Contemporaneously with its acquisition of the Property, the Plan, as permitted by PTE 85–130, commenced leasing the property to the Employer for an initial annual rental of $30,600 under the terms of a written lease (the Lease) having a five-year duration. The Lease provides for annual adjustments of the rental based upon the "All Urban Index" of the Consumer Price Index (CPI). However, in no event shall the rental rate be less than the initial rate of $30,600 per annum. PTE 85–130 also provides that the Employer pay all costs relating to the Property, including maintenance, utilities, taxes, and insurance.

In accordance with the terms of the Lease, and as further authorized under PTE 85–130, the Employer is permitted to renew the Lease for up to two successive periods of five years each. On August 31, 1990, the Employer renewed the Lease for an additional five years through September 15, 1995. The Employer represents that it has the right to renew the Lease through September 2000.

At present, the Employer pays the Plan a monthly rental of $3,326 and has paid $279,540 in rental as of September 1993. The Employer represents that all payments under the Lease have been paid in a timely manner and there have never been any defaults or delinquencies by the Employer other than as described below (see Item #4 below).

4. An audit of the Plan by the Los Angeles Area office of the Department (the Area Office) disclosed that the Plan had paid real estate taxes, licensing fees, and one appraisal fee between September 23, 1985 and October 28, 1991. In this regard, the Plan's Advisory Committee received written notification from the Area Office on May 26, 1993 that certain provisions of PTE 85–130 requiring the Employer pay all costs relating to the Property, including maintenance, utilities, taxes and insurance had been violated, resulting in prohibited transactions. By letter dated October 21, 1992, the Area Office stated that on August 27, 1992, the Employer reimbursed the Plan in the amount of $33,901 for all property-related expenses, including lost opportunity income between September 23, 1985 and July 31, 1992. The Employer also represents that on February 2, 1993, excise taxes in the amount of $11,473 were paid to the Service for the years ending December 1989, 1990 and 1991. The Employer represents that within ninety days of the

[7] On May 15, 1984, Warren L. Searles, STA, ASA of Searles & Campbell, real estate appraiser and consultants located in Scottsdale, Arizona placed the fair market value of the Property at $280,000 and its fair market rental value at $28,897.

publication in the Federal Register of the grant of this notice of proposed exemption, the Employer will file Forms 5330 with the Service and pay all applicable additional excise taxes that are due by reason of prohibited lease transactions from 1992 until the date the exemption is granted.[8]

5. The Employer represents that it is an appropriate purchaser of the Property because it utilizes the Property in its daily operations and is involved in a long-term lease arrangement with the Plan. In addition, the Employer represents that the proposed transaction will allow the Plan to avoid costs associated with a sale to a third party because the Plan will not pay any fees or commissions in connection with the Sale. Therefore, the Employer requests an administrative exemption from the Department to permit Holsum's purchase of the Property from the Plan under the terms and conditions described herein.

6. The Property has been appraised by Messrs. Wendell L. Montandon, MAI and R. John McDonald, Analyst, qualified appraisers affiliated with the real estate appraisal firm of Winius Montandon, Inc. (the Appraisers) located in Phoenix, Arizona. Mr. Montandon represents that Winius Montandon, Inc. is unrelated to and independent of the Employer or its affiliates. In an appraisal report dated February 26, 1993, the Appraisers, placed the fair market value of the leased fee interest in the Property at $210,000 as of February 15, 1993.[9]

By letter dated July 9, 1993, Mr. Montandon represented that the appraisal took into consideration any special value which the Property might have to the Employer by reason of its proximity to other real property owned by the Employer. Mr. Montandon stated that the Employer's ownership of adjacent real estate did not impact on the fair market value of the Property because the Employer's existing land is adequate for purposes of its economic pursuits.

Because the fair market value of the Building is less than its original purchase price, the Building will be purchased by the Employer for $250,000, the original purchase price paid by the Plan. In addition, the Plan will not be required to pay any real estate fees or commissions in connection with the Sale.

7. The Trustee, a national bank, will serve as independent fiduciary for the Plan with respect to the Sale. After an evaluation of the terms of the Sale, the Trustee represents that the Sale is in the best interests of the Plan and its participants. The Sale will enable the continuing liquidation of the Plan's assets by facilitating a disposition of the Property, without cost to the Plan, at a price which is in excess of the Property's fair market value. The Trustee acknowledges its responsibility to monitor the terms of the Sale on behalf of the Plan.

8. In summary, it is represented that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) the Sale will represent a one-time cash transaction; (b) the Plan will not be required to pay any commissions, costs or other expenses in connection with the transaction; (c) the Property will be appraised by qualified, independent appraisers; (d) the sales price for the Property will be the greater of: (1) $250,000, representing the original amount paid by the Plan at the time of acquisition; or (2) its fair market value on the date of the Sale; and (e) the Trustee, as an independent fiduciary for the Plan, will make an initial determination that the proposed sale is appropriate for the Plan and will monitor its terms for the Plan; and (f) within ninety of the publication in the Federal Register of the grant of this notice of proposed exemption, the Employer will file Forms 5330 with the Service and pay all applicable additional excise taxes that are due by reason of the prohibited lease transactions.

FOR FURTHER INFORMATION CONTACT: Ms. Kathryn Parr of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

W.J. Casey Trucking & Rigging Co., Inc. Employees Profit Sharing Plan and Trust (the Plan) Located in Union, NJ

[Application No. D–9506]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to: (1) The proposed seven-year loan of $300,000 (the Loan) by the Plan to W. J. Casey Trucking & Rigging Co., Inc. (the Employer), a party in interest with respect to the Plan; and (2) the proposed personal guarantees of the Employer's obligations under the Loan by James P. and Nicholas J. Biondi (the Biondis), parties in interest with respect to the Plan.

This proposed exemption is conditioned upon the following requirements: (a) All terms and conditions of the Loan are at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party; (b) the Loan will not exceed twenty-five percent of the Plan's assets at any time during the transaction; (c) the Loan is secured by a first lien interest on certain equipment (the Equipment), which has been appraised by a qualified, independent appraiser to ensure that the fair market value of the Equipment is at least 200 percent of the amount of the Loan; (d) the Employer's obligations under the Loan are personally guaranteed by the Biondis; (e) the fair market value of the Equipment remains not less than 200 percent of the outstanding balance of the Loan throughout the duration of the Loan; (f) an independent, qualified fiduciary determines on behalf of the Plan that the Loan is administratively feasible, in the best interests of the Plan, and protective of the Plan and its participants and beneficiaries; and (g) the independent, qualified fiduciary monitors compliance with the terms and conditions of the exemption and the Loan throughout the duration of the transaction, taking any action necessary to safeguard the Plan's interest, including foreclosure on the Equipment in the event of default.

Summary of Facts and Representations

1. The Plan is a profit sharing plan sponsored by the Employer, a New Jersey specialty trucking company. As of December 31, 1992, the Plan had total assets of $3,433,553 and twenty-one participants. The trustees of the Plan are the Biondis, who have the sole investment discretion over the Plan's assets.

2. The Employer requests an administrative exemption from the

[8] In March 1990, the Trustee discovered that it had not properly adjusted Lease payments to reflect changes in the CPI as required under the terms of the Lease (see #3 above) for all Lease payments due September 1, 1986 through 1989. Accordingly on July 19, 1990, the Employer made additional lease payments of $9,989 to reflect the increases in the monthly Lease payments as required by the terms of the Lease. The trustees represents that the required annual rental adjustments have been properly implemented for the years between 1990 and 1993. The Employer further represents that on February 2, 1993, additional excise taxes in the amount of $97 were paid to the Service for the years ending December 1989 and 1990.

[9] The Appraisers also included in their letter dated February 26, 1993, a second valuation of the Property which did not take the Lease into consideration. This alternative valuation placed the fair market value of the fee simple interest of the Property at $165,000.

Department to permit the Plan to lend $300,000 to the Employer under the terms and conditions described below. The Employer represents that the Loan proceeds will be used to finance the $300,000 purchase price of a new heavy-duty specialized trailer (the Trailer) manufactured by Industrie Cometto of Cuneo, Italy. The Trailer will be utilized by the Employer in its trucking operation.

3. The Loan will be in a principal amount of $300,000. The applicant states that at no time will the amount of the Loan represent more than twenty-five percent of the Plan's total assets. The Loan will be secured by a first lien interest on the Equipment. The Equipment consists of the Trailer and five heavy-duty trailer/trucks (the Trucks) owned by the Employer. UCC–1 Filing Statements and a Security Agreement will be filed with the Clerk of Union County, New Jersey and the Secretary of the State of New Jersey to reflect the Plan's security interest in the Equipment. In addition, the Employer will insure the Equipment against casualty loss and will designate the Plan as the loss payee of such insurance. The Loan will also be guaranteed as to interest and principal by the Trustees. The applicant has provided financial statements which indicate that James P. Biondi and Nicholas J. Biondi's net worth was $2,455,517 and $2,713,244, respectively, as of December 31, 1992, exclusive of the market value of the assets held in the Plan and various individual retirement accounts as of such date.

4. The Loan will have a seven year term and will be evidenced by a promissory note (the Note). The Note will require the Employer to make equal monthly installments of principal and interest amortized over the seven year period. Interest will accrue on the Loan at a fixed rate of two percentage points above the prime rate of First Fidelity Bank of Cranford, New Jersey (First Fidelity) on the date the Loan is made. The terms of the Note provide that the Loan may be prepaid in full without penalty. The Plan will not incur any fees, commissions, or other expenses in connection with the Loan.

First Fidelity has indicated it would charge the Employer interest equal to its prime lending rate plus one and one-half percentage points for a secured, five-year loan in the amount of $300,000. In addition, First Fidelity states that it would charge the Employer a facility fee of one-half of a percentage point, making the overall interest rate the prime rate plus two percentage points for such loan.

5. H. Norman Shurts, an independent retail salesman for Mack Trucks, Inc. located in North Plainfield, New Jersey, appraised the Equipment (the Appraisals). Mr. Shurts represents that he has more than twenty-five years of experience in selling both new and used vehicles as well as appraising them. In appraisal reports dated December 30, 1992, Mr. Shurts placed the total fair market value of the Trucks at $327,500. A summary of the fair market values for each Truck as determined by Mr. Shurts is as follows:

Make	Model	Year	Fair market value
Mack	RW633	1989	$45,000
Mack	RW633	1991	50,000
Mack	RW600GK	1992	70,000
Mack	RW733	1986	37,500
Kenworth	548CH	1979	125,000
Total		.....	327,500

In an April 21, 1993 appraisal, Mr. Shurts valued the Trailer, which is a new Cometto 4-axle transport module and components. Mr. Shurts compared the Trailer to a Cometto module unit #25 which was recently appraised at $75,000. Taking into consideration the additional modifications and improvements to the Trailer, Mr. Shurts placed the fair market value of the Trailer at $300,000, which is equivalent to the purchase price. Mr. Shurts represents that he has confirmed this value with other users of this type of heavy transport equipment. Thus, the aggregate fair market value of the Equipment is $627,500 (which is in excess of 200 percent of the amount of the Loan).

6. Roch T. Williams, Esq., a partner in the law firms of Snevily, Ely, Williams & Gurrieri located in Westfield, New Jersey, will serve as the independent qualified fiduciary on behalf of the Plan with respect to the Loan. Mr. Williams has practiced law since 1958 and has substantial legal experience in the areas of commercial transactions, wills, probate and real estate law. Mr. Williams represents that he is unrelated to and independent of the Employer and its affiliates, including the Biondis. Mr. Williams states that he understands and acknowledges his duties, responsibilities, and liabilities in acting as a fiduciary with respect to the Plan, based upon consultation with counsel experienced with the fiduciary responsibility provisions of the Act.

Mr. Williams has reviewed the terms of the Loan and all of the documents and relevant information in connection with the Loan, including the Appraisals. Mr. Williams states that the terms of the Loan compare favorably with the terms of similar transactions between unrelated parties as evidenced by the terms offered by First Fidelity (see Item #4). Mr. Williams believes that the Loan is in the best interests of the Plan because it offers a guaranteed rate of return of two percentage points above the prime rate on an adequately secured investment.

Mr. Williams has reviewed the current investment portfolio of the Plan and considered the diversification of the Plan's assets as well as the liquidity needs of the Plan. Based on this analysis, Mr. Williams believes that the proposed transaction would be in the best interests of the Plan and its participants and beneficiaries as an investment for the Plan's portfolio. Mr. Williams states that the Loan would be an appropriate and desirable investment for the Plan, based on the Loan's rate of return, the collateral securing the Loan, the character and diversification of the Plan's other assets, and the projected liquidity needs of the Plan.

Mr. Williams has reviewed the financial condition of the Employer in order to establish its ability to repay the Loan. In this regard, Mr. Williams states that he has examined the most recent financial statements for the Employer. Mr. Williams concludes that the Employer will have sufficient cash to make the requisite $4,601 monthly payments as they fall due based upon the Employer's current profit level, the recent satisfaction by the Employer of prior indebtedness, and the expected additional revenues to be generated by the addition of the Trailer. Mr. Williams has also analyzed the financial

statements for the Biondis and believes that their aggregate net worth would be more than sufficient to personally guarantee the Employer's obligations under the Loan.

Mr. Williams represents that he will monitor the Loan throughout its entire duration and will take any appropriate action necessary to protect the interests of the Plan and its participants and beneficiaries, including foreclosure on the Equipment in the event of a default. Mr. Williams will monitor the condition and adequacy of the Equipment as collateral for the Loan to ensure that the Loan remains secured by collateral worth at least 200 percent of the Loan at all times.

Mr. Williams will monitor the Plan's assets to ensure that the outstanding amount of the Loan will at all times remain less than twenty-five percent of the Plan's total assets. Mr. Williams will require the Employer to provide additional payments on the Loan to the Plan, if necessary, to reduce the principal amount of the Loan to maintain the appropriate ratio between the outstanding principal balance of the Loan and the Plan's total assets.

Mr. Williams has acknowledged his responsibility to monitor compliance of all parties with the terms and conditions of the proposed exemption, including the twenty-five percent limitation.

7. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) All terms and conditions of the Loan will be at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party; (b) the amount of the Loan will not exceed twenty-five percent of the assets of the Plan; (c) the Loan will be secured by Equipment valued by Mr. Shurts, an independent appraiser, in excess of 200 percent of the amount of the Loan; (d) the Employer's obligations under the Loan are personally guaranteed by the Trustees in their individual capacities; (e) the fair market value of the collateral remains not less than 200 percent of the outstanding balance of the Loan throughout the duration of the Loan; (f) Mr. Williams, as the Plan's independent, qualified fiduciary, will determine on behalf of the Plan that the Loan is feasible, in the best interests of the Plan and protective of the Plan and its participants and beneficiaries; and (g) Mr. Williams will monitor the terms and conditions of the exemption and the Loan throughout the duration of the transaction, taking any action necessary to safeguard the Plan's interest, including foreclosure on the Equipment in the event of default.

FOR FURTHER INFORMATION CONTACT: Ms. Kathryn Parr of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

David Rothman, M.D. Employee's Pension Plan and David Rothman, M.D. Employee's Profit Sharing Plan (collectively, the Plans) Located in Miami, FL

[Application Nos. D–9575 and D–9576]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed cash sale (the Sale) of certain real property (the Property) by the individual accounts of David Rothman, M.D. (Dr. Rothman) in the Plans to Dr. Rothman, a party in interest with respect to the Plans; provided that the consideration paid for the Property is no less than the fair market value of the Property on the date of the Sale as determined by a qualified, independent appraiser.

Summary of Facts and Representations

1. The Plans consist of two defined contribution plans; a money purchase plan and a profit sharing plan, respectively. As of December 31, 1992, the assets of the Plans totalled $748,166 and the participants in each of the Plans consisted of the same 4 individuals. Excluding Dr. Rothman, the remaining 3 participants in the Plans had the assets in their respective individual accounts invested entirely in certificates of deposit issued by banks. The individual accounts in the Plans for Dr. Rothman were invested primarily in the Property, which, as of December 31, 1992, represented approximately 76 percent of the total assets in the Plans.[10]

The sponsoring employer (the Employer) of the Plans is a Florida professional association engaged in the practice of obstetrics and gynecology and is located in Miami, Florida.

Dr. Rothman, who is the fiduciary of the Plans, is also the sole officer, director, and owner of the Employer.

2. The Property was acquired by Dr. Rothman's individual accounts in the Plans on May 21, 1986, for the consideration of $350,000 from an unrelated person. The Property consists of approximately 4.328 acres located at the NW. Corner of Sunset Dr. and SW. 123rd Avenue in Miami, Dade County, Florida, and is vacant, unimproved land. While the Property is zoned for agricultural purposes, the applicant represents that zoning variances could be obtained for building religious and educational facilities and civic buildings, but not for residential construction. Also, the applicant represents that the Property is not located adjacent to any property owned by a party in interest with respect to the Plan.

The Property has been appraised at the behest of Dr. Rothman and his former wife at the time of their divorce in 1992. Mr. Lee H. Waronker, MAI, SRPA, Certificate No. 162 of Waronker and Associates, Inc., Miami, Florida, as of July 19, 1992, determined that the fair market value of the Property was $540,000. Ms. Sue Slack, MAI of Slack and Johnston, Miami, Florida, as of July 20, 1992, determined that the fair market value of the Property was $600,000.

3. The applicant represents that the Property is subject to a Qualified Domestic Relations Order (QDRO), entered August 4, 1993, by the Circuit Court of the 11th Judicial Circuit in and for Dade County, Florida. The QDRO states, *inter alia*, that the court entered a final judgment on August 21, 1992, dissolving the marriage between Dr. Rothman and Lidya Rothman (now known as Lidya Abramovici; hereinafter referred to as Lidya Abramovici) and the court approved a Marital Settlement Agreement (the Agreement), dated August 3, 1992, between the parties.[11] The Agreement requires, *inter alia*, that the entry of a QDRO provide for the division and deposition of the accrued benefits due Dr. Rothman under the Plans. As a consequence of the QDRO, the Property is to be either sold to the highest bidder and the proceeds divided equally between Lidya Abramovici, individually, and Dr. Rothman's individual accounts in the Plans; or the Plans are to convey a one-half interest in the Property to Lidya Abramovici. The QDRO also provides that both Dr.

[10] The Department notes that the decisions to acquire and hold the Property are governed by the fiduciary responsibility requirements of part 4, subtitle B, title I of the Act. In this regard, the Department herein is not proposing relief for any violations of part 4 of the Act which may have arisen as a result of the acquisition and holding of the Property.

[11] Lidya Abramovici is not a participant in the Plans.

Rothman and Lidya Abramovici are entitled to bid for the Property against each other or any other individuals.

4. The applicant seeks an exemption from the prohibited transaction provisions of the Act so that the Property may be sold to Dr. Rothman, provided that he is the highest bidder; and so that the proceeds from the Sale maybe divided equally between Lidya Abramovici and Dr. Rothman's individual accounts in the Plans as required by the QDRO. The bidding will be conducted either in the office of Dr. Rothman's attorney or in the office of Lidya Abramovici's attorney. The applicant represents that on the date of the Sale a determination of the fair market value of the Property will be made by a qualified, independent appraiser; and the Plans will only accept a bidding offer as consideration for the Sale that is not less than the fair market value. Dr. Rothman intends to begin the bidding process with a bid in excess of $600,000. In addition, the applicant represents that the Plans will receive cash in consideration for the Sale and the Plans will not incur any costs or expenses from the Sale.

Furthermore, the applicant represents that not only will the QDRO be complied with by the Sale; but, the individual accounts of Dr. Rothman in the Plans will be able to diversify their investments, creating a greater liquidity with income-producing assets.

5. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) The proposed Sale will be a one-time transaction for cash; (b) the Plans will not pay any real estate commissions or fees and will not incur any other costs or expenses from the transaction; (c) the Plans will not receive any amount that is less than the fair market value of the Property as determined by a qualified, independent appraiser on the date of the Sale; and (d) Dr. Rothman, who is the only participant of the Plans that will be affected by the proposed transaction, desires that the transaction be consummated.

Notice to Interested Persons: Since Dr. Rothman is the only participant affected by the proposed transaction, there is no need to distribute notice to interested persons. Comments and requests for a hearing must be received by the Department within 30 days after publication of this notice in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Mr. C.E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 7th day of December, 1993.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration.

[FR Doc. 93–30253 Filed 12–9–93; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL SCIENCE FOUNDATION

Office of Polar Programs; Permit Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Thomas F. Forhan, Permit Office, Office of Polar Programs, National Science Foundation, Washington, DC 20550.

SUPPLEMENTARY INFORMATION: On November 5, 1993 the National Science Foundation published a notice in the **Federal Register** of permit applications received. Permit for taking, was issued to Antarctic Support Associates on December 3, 1993.

Thomas F. Forhan

Permit Officer.

[FR Doc. 93–30160 Filed 12–9–93; 8:45 am]

BILLING CODE 7555–01–M

Antarctic Conservation Act of 1978; Permit Modification

AGENCY: National Science Foundation.

SUMMARY: The Foundation modified a permit to conduct activities regulated under the Antarctic Conservation Act of 1978 (Pub. L. 95–541; Code of Federal Regulations title 45, part 670).

FOR FURTHER INFORMATION CONTACT: Guy G. Guthridge, 202–357–7817. Permit Office, Office of Polar Programs, National Science Foundation, Arlington, Virginia 22230.

Applicant: Gerald L. Kooyman, Scripps Institution of Oceanography, University of California, San Diego.

Description of Permit and Modification: The Foundation issued a permit to Dr. Kooyman, an ornithologist, on 20 November 1993 after posting a notice in the 19 October 1993 **Federal Register.** Public comments were not received. The permit allows hand capture and release of emperor penguins at three antarctic locations to glue depth

and velocity recorders and transmitters to the back feathers between the wings. The devices are removed during a second capture. The permit also allows approach to emperor penguins in the Site of Special Scientific Interest at Cape Crozier to count chicks and adults. The study, United States Antarctic Program project S–026, enables comparison of foraging effort and breeding success and is a basis for observing emperor penguins as environmental monitors in the Ross Sea area.

The modification, issued on 2 December 1993, allows capture and release of emperor penguins at Cape Crozier for the same study as at the other three sites. The number of birds to be captured and released remains 40, same as in the original permit. Cape Crozier is designated a Site of Special Scientific Interest for such studies as this. The site's management plan will be followed. Adding the fourth site will increase the validity of the study.

Location: Cape Crozier, Antarctica.

Dates: 11/20/93–12/31/94.

Guy G. Guthridge,

Permit Office, Office of Polar Programs.

[FR Doc. 93–30161 Filed 12–9–93; 8:45 am]

BILLING CODE 7555–01–M

Permit Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT:

Thomas F. Forhan, Permit Office, Office of Polar Programs, National Science Foundation, Washington, DC 20550.

SUPPLEMENTARY INFORMATION: On November 5, 1993 the National Science Foundation published a notice in the **Federal Register** of permit applications received. Permit to enter specially protected area and enter site of special scientific interest, was issued to the Dr. Colin M. Harris on December 6, 1993.

Thomas F. Forhan,

Permit Officer, Office of Polar Programs.

[FR Doc. 93–30175 Filed 12–9–93; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to OMB for review the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. Type of submission, new, revision or extension: New.

2. The title of the information collection: Applicant Self-Assessment.

3. The form number, if applicable: NRC Form 563.

4. How often the collection is required: The Applicant Self-Assessment will be requested from basically qualified external applicants applying for engineering and scientific positions at the time their initial application is received in the NRC's Office of Personnel.

5. Who will be required or asked to report: Basically qualified external applicants applying for engineering and scientific positions with the NRC.

6. An estimate of the number of annual responses: 1,500.

7. An estimate of the total number of annual hours needed to complete the requirement or request: 125 (five minutes per response).

8. Section 3504(h), Public Law 96–511: Not applicable.

9. Abstract: The Applicant Self-Assessment will be used to collect uniform information from external applicants as to which technical specialties they possess that are unique to the needs of the NRC. This information will be reviewed by Office of Personnel staff and used to match applicants' technical specialties with those required by selecting officials when an engineering or scientific position vacancy is to be filled.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC 20555.

Comments and questions should be directed by mail to the OMB reviewer: Tim Hunt, Office of Information and Regulatory Affairs (3150–), NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

NRC Clearance Officer is Brenda Jo Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 1st day of December, 1993.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 93–30157 Filed 12–9–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–302]

Florida Power Corp. Crystal River Unit 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–72, issued to Florida Power Corporation (FPC, the licensee), for operation of Crystal River, Unit 3, (CR–3) located in Citrus County, Florida.

Environmental Assessment

Identification of the Proposed Action

The proposed amendment will replace the existing Technical Specifications (TS) in their entirety with the Improved Technical Specifications (ITS). The proposed action is in accordance with the licensee's amendment request dated August 25, 1989.

The Need for the Proposed Action

It has been recognized that nuclear safety in all plants would benefit from improvement and standardization of TS. The "NRC Interim Policy Statement on Technical Specification Improvements for Nuclear Power Reactors," (**Federal Register** 52 FR 3788, February 6, 1987) and later the Final Policy Statement, formalized this need. To facilitate the development of individual ITS, each reactor vendor owners group (OG) and the NRC staff developed standard Technical Specifications. For Babcock & Wilcox (B&W) plants, the standard TS (STS) is NUREG–1430, which formed the basis of the CR–3 ITS. The NRC Committee to Review Generic Requirements (CRGR) reviewed the STS and made note of the safety merits of the STS and indicated its support of conversion by operating plants to the STS.

Description of the Proposed Change

The proposed revision to the TS is based on NUREG–1430 and on guidance provided in the Policy Statement. Its objective is to completely rewrite,

reformat, and streamline the existing TS. Emphasis is placed on human factors principles to improve clarity and understanding. The Bases section has been significantly expanded to clarify and better explain the purpose and foundation of each specification. In addition to NUREG–1430, portions of the existing TS were also used as the basis for the ITS. Plant-specific issues (unique design features, requirements, and operating practices) were discussed at length with the licensee, and generic matters with the licensee and the B&W and other OGs.

The proposed changes from the existing TS can be grouped into four general categories, as follows:

Non-Technical (administrative) changes were intended to make the ITS easier to use for plant operations personnel. They are purely editorial in nature or involve the movement or reformat of requirements without affecting technical content. Every section of the CR–3 TS has undergone these types of changes. In order to ensure consistency, the NRC staff and FPC have used NRC–1430 as guidance to reformat and make other administrative changes.

Relocation of requirements includes items that were in the existing CR–3 TS, but did not meet the criteria set forth in the Policy Statement for inclusion in TS. In general, the proposed relocation of items in the CR–3 TS to the Final Safety Analysis Report (FSAR), appropriate plant-specific programs, procedures, and ITS Bases follows the guidance of the B&W STS, NUREG–1430. Once these items have been relocated by removing them from the TS to other licensee-controlled documents, the licensee may revise them under the provisions of 10 CFR 50.59 or other NRC staff-approved control mechanisms which provide appropriate procedural means to control changes.

More restrictive requirements are those proposed CR–3 ITS items that are either more conservative than corresponding requirements in the existing CR–3 TS, or are additional restrictions which are not in the existing CR–3 TS, but are contained in NUREG–1430. Examples of more restrictive requirements include: placing a Limiting Condition of Operation (LCO) on plant equipment which is not required by the present TS to be operable; more restrictive requirements to restore inoperable equipment; and more restrictive surveillance requirements.

Less restrictive requirements are relaxations of corresponding requirements in the existing CR–3 TS which provided little or no safety benefit or placed unnecessary burden on the licensee. These relaxations were the result of generic NRC action or other analyses. They have been justified on a case-by-case basis for CR–3 as described in the Safety Evaluation to be issued with the license amendment, which will be noticed in the **Federal Register**. Examples of such requirements are: Modification of the Axial Power Imbalance TS to be consistent with NUREG–1430 and the current staff position; and modification of action requirements on quadrant power tilt to achieve consistency between the FSAR and the TS.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the TS. Changes which are administrative in nature have been found to have no effect on technical content of the TS, and are acceptable. The increased clarity and understanding these changes bring to the TS are expected to improve the operator's control of the plant in normal and accident conditions.

Relocation of requirements to other licensee-controlled documents does not change the requirements themselves. Future changes to these requirements may be made by the licensee under 10 CFR 50.59 or other NRC-approved control mechanisms, which assure continued maintenance of adequate requirements. All such relocations have been found to be in conformance with the guidelines of NUREG–1430 and the Policy Statement, and, therefore, to be acceptable.

Changes involving more restrictive requirements have been found to be acceptable.

Changes involving less restrictive requirements have been reviewed individually. When requirements have been shown to provide little or no safety benefit or to place unnecessary burden on the licensee, their removal from the TS was justified. In most cases, relaxations previously granted to individual plants on a plant-specific basis were the result of a generic NRC action, or of agreements reached during discussions with the OG and found to be acceptable for CR–3. Generic relaxations contained in NUREG–1430 have also been reviewed by the NRC staff and have been found to be acceptable.

In summary, the proposed revision to the TS was found to provide control of plant operations such that reasonable assurance will be provided that the health and safety of the public will be adequately protected.

These TS changes will not increase the probability or consequences of accidents, no changes are being made in the types of any effluent that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed TS amendment.

With regard to potential non-radiological impacts, the proposed amendment involves features located entirely within the restricted areas as defined in 10 CFR part 20. It does not affect non-radiological plant effluent and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed amendment, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the amendment would be to deny the amendment request. Such action would not enhance the protection of the environment.

Alternative Use of Resources

This action does not involve the use of resources not considered previously in the Final Environmental Statement for Crystal River, Unit 3.

Agencies and Persons Consulted

The NRC staff consulted with the State of Florida regarding the environmental impact of the proposed action.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this proposed action, see the licensee's letter dated August 25, 1989. This letter is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 32629.

Dated at Rockville, Maryland this 3rd day of December 1993.

For the Nuclear Regulatory Commission.

Bart C. Buckley,

Acting Director, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–30180 Filed 12–9–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–302]

Florida Power Corp.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 148 to Facility Operating License No. DPR–72 issued to Florida Power Corporation (the licensee), which revised the Technical Specifications for operation of Crystal River, Unit No. 3, located in Citrus County, Florida. The amendment is effective as of the date of issuance.

The amendment revises the containment integrity section 3/4.6.1 of the existing Technical Specifications. It is comprised of that portion of the Improved Technical Specifications requested by an application dated August 25, 1989. Separate issuance of this portion was requested by the licensee in a letter dated October 25, 1993.

The application for amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on November 8, 1989 (54 FR 46998). No request for hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an Environmental Impact Statement. Based upon the Environmental Assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment (58 FR 60468).

For further details with respect to the action see (1) the application for amendment dated August 25, 1989, as supplemented October 25, 1993, (2) Amendment No. 148 to License No. DPR–72, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the local public document room located at the Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 32629.

Dated at Rockville, Maryland, this 3rd day of December 1993.

For the Nuclear Regulatory Commission.

Harley Silver,

Senior Project Manager, Project Directorate II–2, Division of Reactor Projects—I/II.

[FR Doc. 93–30181 Filed 12–9–93; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–33273; File No. SR–MBS–93–02]

Self-Regulatory Organizations; MBS Clearing Corp.; Filing of Proposed Rule Change Relating to Minimum Capital Requirements of Broker Applicants for Membership

December 2, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on March 3, 1993, the MBS Clearing Corporation ("MBS") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–MBS–93–02) as described in Items I, II, and III below, which Items have been prepared primarily by the self-regulatory organization. On August 12, 1993, MBS filed Amendment No. 1 to the proposed rule change.[2] The Commission is publishing this notice to solicit comments from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

MBS proposes to amend Article III, Rule 1, Sec. 2 of its rules concerning the minimum capital requirements for membership of broker applicants.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Letter from George T. Simon, Foley & Lardner, to Jack Drogin, Branch Chief, Division of Market Regulation, Commission (August 12, 1993).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspectes of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to amend the minimum capital requirements for membership of broker applicants to bring the minimum capital requirements more in line with the levels of risk posed by different types of participants. Under the proposed rule change, in order for a broker applicant to become a participant, they will be required to have net capital (as determined in accordance with Securities Exchange Act Rule 15c3–1[3] or in accordance with the Government Securities Act of 1986[4]) of not less than $5,000,000.

The proposed rule change is consistent with section 17A(b)(3) (A) and (F) of the Act[5] in that it will promote the safeguard of securities and funds in the custody or control of MBS, or for which it is responsible.

B. Self-Regulatory Organization's Statement on Burden on Competition

MBS does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

MBS has not solicited written comments with respect to the proposed rule change, and none have been received.

[3] 17 CFR 240.15c3–1.

[4] Pub. L. 99–571, 100 Stat. 3208 (1986).

[5] 15 U.S.C. 78q–1(b)(3) (A) and (F) (1988).

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 reason for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of MBS. All submissions should refer to File Number SR–MBS–93–02 and should be submitted by January 3, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–30165 Filed 12–9–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33274; File Nos. 600–19 and 600–22]

Self-Regulatory Organizations; MBS Clearing Corp.; Filing of Application for Extension of Temporary Registration as a Clearing Agency

December 2, 1993.

Notice is hereby given that on November 29, 1993, MBS Clearing Corporation ("MBS") filed with the Securities and Exchange Commission ("Commission") pursuant to section 19(a) of the Securities Exchange Act of 1934 ("Act"),[1] a request for extension of its registration as a clearing agency under section 17A of the Act for a period of 12 months.[2] The Commission is publishing this notice to solicit comments on the request for extension of registration from interested persons.

On February 2, 1987, the Commission granted MBS's application for registration as a clearing agency, pursuant to sections 17A(b) and 19(a)(1) of the Act[3] and Rule 17Ab2–1(c)[4] thereunder, on a temporary basis for a period of 18 months.[5] Subsequently, the Commission issued orders that extended MBS's temporary registration as a clearing agency, the last of which extended MBS's registration through December 31, 1993.[6] MBS provides clearance and settlement services for members in processing transactions in mortgage-backed securities.

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 all written comments will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. All submissions should refer to the File Nos. 600–19 and 600–22 and should be submitted by January 3, 1994.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–30166 Filed 12–9–93; 8:45 am]

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[1] 15 U.S.C. 78s(a).

[2] Letter from J. Craig Long, Foley & Lardner, to Ari Burstein, Attorney, Division of Market Regulation, Commission, dated November 29, 1993.

[3] 15 U.S.C. 78q–1(b) and 15 U.S.C. 78s(a)(1).

[4] 17 CFR 240.17Ab2–1(c).

[5] Securities Exchange Act Release No. 24046 (February 2, 1987), 52 FR 4218 (Order granting MBS registration as a clearing agency for a period not to exceed 18 months).

[6] Securities Exchange Act Release Nos. 25957 (August 2, 1988), 53 FR 29537; 27079 (July 31, 1989), 54 FR 32412; 28492 (September 28, 1990), 55 FR 41148; 29751 (September 27, 1991), 56 FR 50602; and 31750 (January 21, 1993), 58 FR 6424.

[7] 17 CFR 200.30–3(a)(50).

[Release No. 34–33290; File No. SR–NASD–93–67]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to an Interim Extension of the OTC Bulletin Board® Service Through February 1, 1994

December 3, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 15, 1993, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is simultaneously approving the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

On June 1, 1990, the National Association of Securities Dealers, Inc., ("NASD") initiated operation of The OTC Bulletin Board Service ("OTCBB Service" or "Service") in accord with the Securities and Exchange Commission's ("Commission") approval of File No. SR–NASD–88–19, as amended.[1] The OTCBB Service provides a real-time quotations medium that NASD member firms can elect to use to enter, update, and retrieve quotation information (including unpriced indications of interest) for securities traded over-the-counter that are neither listed on The Nasdaq Stock Market℠ nor on a registered national securities exchange (collectively referred to as "unlisted securities"). Essentially, the Service supports NASD members' market making in unlisted securities through authorized Nasdaq Workstation units. Real-time access to quotation information captured in the Service is available to subscribers of Level 2/3 Nasdaq service as well as subscribers of vendor-sponsored services that now carry OTCBB Service data. The Service is currently operating under interim approval.[2]

The NASD hereby files this proposed rule change, pursuant to section 19(b)(1) of the Act and Rule 19b–4 thereunder,

[1] Securities Exchange Act Release No. 27975 (May 1, 1990), 55 FR 19124 (May 8, 1990).

[2] Securities Exchange Act Release No. 32384 (May 28, 1993) 58 FR 31773 (June 4, 1993).

to obtain authorization for an interim extension of the Service through February 1, 1994. During this interval, there will be no material change in the OTCBB Service's operational features, absent Commission approval of a corresponding Rule 19b–4 filing.[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in 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

The purpose of this filing is to ensure continuity in the operation of the OTCBB Service while the Commission considers an earlier NASD rule filing (File No. SR–NASD–92–7) that requested permanent approval of the Service. For the month ending October 31, 1993, the Service reflected the market making positions of 360 NASD member firms displaying quotations/indications of interest in approximately 4,183 unlisted securities.

During the proposed extension, foreign securities and American Depositary Receipts (collectively, "foreign/ADR issues") will remain subject to the twice-daily, update limitation that traces back to the Commission's original approval of the OTCBB Service's operation. As a result, all priced bids/offers displayed in the Service for foreign/ADR issues will remain indicative.

In conjunction with the launch of the Service in 1990, the NASD implemented a filing requirement (under section 4 of Schedule H to the NASD By-Laws) and review procedures to verify member firms' compliance with Rule 15c2–11 under the Act. During the proposed extension, this review process will continue to be an important component of the NASD's self-regulatory oversight of broker-dealers' market making in unlisted securities. The NASD also expects to work closely with the Commission staff in developing further enhancements to the Service to fulfill the market structure requirements mandated by the Securities Enforcement Remedies and Penny Stock Reform Act of 1990 ("Reform Act"), particularly section 17B of the Act.[4] The NASD notes that implementation of the Reform Act entails Commission rulemaking in several areas, including the development of mechanisms for gathering and disseminating reliable quotation/transaction information for "penny stocks."

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with sections 11A(a)(1), 15A(b) (6) and (11), and section 17B of the Act. Section 11A(a)(1) sets forth the Congressional findings and policy goals respecting operational enhancements to the securities markets. Basically, the Congress found that new data processing and communications techniques should be applied to improve the efficiency of market operations, broaden the distribution of market information, and foster competition among market participants. Section 15A(b)(6) requires, *inter alia*, that the NASD's rules promote just and equitable principles of trade, facilitate securities transactions, and protect public investors, subsection (11) thereunder authorizes the NASD to adopt rules governing the form and content of quotations for securities traded over-the-counter for the purposes of producing fair and informative quotations, preventing misleading quotations, and promoting orderly procedures for collecting and disseminating quotations. Finally, section 17B contains Congressional findings and directives respecting the collection and distribution of quotation information on low-priced equity securities that are neither Nasdaq nor exchange-listed.

The NASD believes that extension of the Service through February 1, 1994 is fully consistent with the foregoing provisions of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD requests that the Commission find good cause, pursuant to section 19(b)(2) of the Act, for approving the proposed rule change prior to the 30th day after its publication in the **Federal Register** to avoid any interruption of the Service. Otherwise, the NASD will be required to suspend operation of the Service pending Commission action on the proposed extension.

The NASD believes that accelerated approval is appropriate to ensure continuity in the Service's operation pending a determination on permanent status for the Service, as requested in File No. SR–NASD–92–7. Continued operation of the Service will ensure the availability of an electronic quotation medium to support member firms' market making in approximately 4,183 unlisted equity securities and the widespread dissemination of quotation information on these securities. The Service's operation also expedites price discovery and facilitates the execution of customer orders at the best available price. From a regulatory standpoint, the NASD's capture of quotation data from participating market makers supplements the price and volume data reported by member firms pursuant to section 2 of Schedule H to the NASD By-Laws.

The Commission finds that approval of the proposed rule change is consistent with the Act and the rules and regulations thereunder, and, in particular, with the requirements of section 15A(b)(11) of the Act, which provides that the rules of the NASD relating to quotations must be designed to produce fair and informative quotations, prevent fictitious or misleading quotations, and promote orderly procedures for collecting, distributing, and publishing quotations.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of

[3] On July 16, 1993, the Commission issued Securities Exchange Act Release No. 32647 approving an NASD rule change to establish real-time trade reporting requirements for members' transactions in OTCBB Service-eligible securities. These new requirements will take effect on December 20, 1993 and will support the price and volume reporting requirements under Section 2 of Schedule H to the NASD By-Laws.

[4] On November 24, 1992, the NASD filed an application with the Commission for interim designation of the Service as an automated quotation system to section 17B(b) of the Act. On December 30, 1992, the Commission granted "Qualifying Electronic Quotation System" status for the Service for purposes of certain penny stock rules that became effective on January 1, 1993. The OTCBB will retain its QEQS status for the term of the proposed extension.

publishing notice of the filing thereof. Accelerated approval of the NASD's proposal is appropriate to ensure continuity in the Service's operation as an electronic quotation medium that supports NASD members' market making in these securities and that facilitates price discovery and the execution of customers orders at best available price. Additionally, continued operation of the Service will materially assist the NASD's surveillance of trading in unlisted securities that are eligible and quoted in the Service.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by January 3, 1994.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved for an interim period through February 1, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–30266 Filed 12–9–93; 8:45 am]

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Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

December 3, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Putnam Investment Grade Municipal Trust III
Shares of Beneficial Interest (File No. 7–11643)

Van Kampen Merritt Select Sector Municipal Trust
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–11644)

Chateau Properties, Inc.
Common Stock, $.01 Par Value (File No. 7–11645)

Associated Realty Estates Corporation
Common Stock, No Par Value (File No. 7–11646)

Newfield Exploration Company
Common Stock, $.001 Par Value (File No. 7–11647)

Morgan Stanley High Yield Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–11648)

Everest and Jennings International Ltd.
Common Stock, $.01 Par Value (File No. 7–11649)

Property Trust of America
Cum. Cv. Series A Pfd. Shares of Beneficial Interest, $1.00 Par Value (File No. 7–11650)

Korea Equity Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–11651)

Magma Copper Company
Cum. Conv Pfd. Stock Series E, $.01 Par Value (File No. 7–11652)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 27, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–30171 Filed 12–9–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33275; File No. SR–MSRB–93–06]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change Relating to Automated Comparison of Inter-Dealer Transactions

December 2, 1993.

On April 13, 1993, the Municipal Securities Rulemaking Board ("MSRB") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–MSRB–93–06) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The proposed rule change requires the use of an automated comparison system for all eligible inter-dealer transactions. The Commission published notice of the proposed rule change in the **Federal Register** on May 11, 1993.[2] No comments were received as a result of the **Federal Register** notice.[3] For the reasons discussed below, the Commission is approving the proposed rule change, with an effective date of February 1, 1994.[4]

I. Description

The proposed rule change amends MSRB Rule G–12(f)(i), relating to automated comparison of inter-dealer transactions.[5] The proposed rule change eliminates the exemption in Rule G–12(f)(i) which previously allowed a transaction to be compared outside of the comparison system if at least one party to the transaction is neither a direct nor indirect member in a registered securities clearing agency offering automated comparison systems. All inter-dealer transactions eligible for automated comparison (i.e., having CUSIP numbers), will now be required to be submitted for comparison and compared in an automated comparison

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 32262 (May 4, 1993), 58 FR 27757.

[3] In August 1991, the MSRB published the proposed rule change for comment as well as other draft amendments to Rules G–12(f) and G–15(d). Sixteen comment letters were received. Twelve commenters generally supported the August 1991 draft amendments, two were opposed, and two commenters addressed a possible modification without specifically supporting or opposing the draft amendments. There were no comments specifically opposing this proposed rule change.

[4] See letter from Judith A. Somerville, MSRB, to Judith C. Poppalardo, Assistant Director, Division of Market Regulation, Commission (November 29, 1993).

[5] Trade comparison, or the matching of the two sides of the transaction, is the process after a trade has been executed by which broker-dealers confirm with each other the trade's terms and the existence of a contract. Comparison is the first of the three major steps in processing a securities transaction (the other two being clearance and settlement).

system, without regard to whether either party, or their agents, are participants in such a system. A dealer engaging in inter-dealer transactions, therefore, will be required to access an automated comparison system, either through direct membership in a registered clearing agency or through the use of an agent that will compare inter-dealer transactions for the dealer. The proposed rule change will become effective February 1, 1994.

II. Written Comments

As noted earlier, the MSRB published for comment the proposed rule change as well as other draft amendments to MSRB Rules G–12(f) and G–15(d) and received sixteen comment letters.[6] There were no comments specifically opposing this particular proposed rule change.

In addition, the MSRB's proposed implementation timetable for the draft amendments was published for comment in April 1992. Two comment letters were received.[7] The commenters generally supported the implementation plan as it related to the proposed rule change. One commenter noted, however, that the implementation date of the proposed rule change should coincide with the effective date of an amendment on book-entry settlement of dealer-to-dealer transactions.[8] The MSRB, however, decided to implement the rule change on book-entry delivery first, to allow additional time for some dealers to make changes in their clearing arrangements to accomplish automated comparison.

In addition, the automated comparison system operated by the National Securities Clearing Corporation ("NSCC") was being redesigned.[9] The MSRB believed that additional time was necessary to resolve implementation issues arising from that system prior to requiring additional users to participate in a comparison system. Since that time, however, the MSRB has concluded that implementation of NSCC's automated comparison system has proceeded successfully.

III. Discussion

The Commission believes that the MSRB's proposed rule change is consistent with sections 15B and 17A of the Act.[10] Section 15B, among other things, requires that the MSRB's rules be designed to foster cooperation and coordination with persons engaged in clearing, settling, and processing information with respect to, and facilitating transactions in, municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.[11] Section 17A mandates the creation of a national system for automated clearance and settlement of securities transactions. While municipal securities are defined generally as exempted securities under the Act,[12] municipal securities are specifically included for purposes of section 17A of the Act.[13]

The comparison of municipal securities transactions is primarily accomplished through the use of automated comparison systems operated by clearing corporations registered with the Commission. The automated systems have provided substantial efficiencies and cost savings to the municipal securities market by eliminating much of the time consuming and expensive manual processing associated with transactions processed outside of the automated systems. The use of an automated comparison system also helps reduce processing problems associated with high levels of transaction volume and increases the likelihood of timely settlement. There continues, however, to be some transactions that are eligible for processing in the automated systems, but are compared with the use of mailed paper confirmations to validate trade data on executed trades prior to settlement.

Currently, MSRB Rule G–12(f)(i) requires the use of a comparison system for most inter-dealer transactions eligible for settlement in those systems. When that rule was adopted in 1983, the MSRB considered whether this requirement should apply to all eligible inter-dealer transactions. The MSRB received comment from the industry which suggested the need for additional time on the part of some dealers to adjust to the automated clearance and settlement systems. Based on those comments, the MSRB decided to provide an exemption within MSRB Rule G–12(f)(i) which effectively allowed a transaction to be compared outside of the comparison system if at least one party to the transaction was neither a direct nor indirect member in a registered securities clearing agency offering comparison systems. The MSRB, however, also stated its intention that, ultimately, the rules should apply to all inter-dealer transactions in order for the market to obtain the maximum benefits and efficiencies possible from automated comparison systems.[14]

The proposed rule change, which will now require the use of an automated comparison system for all eligible inter-dealer transactions, is part of the second phase of the MSRB's overall plan to complete the transition of the municipal securities market to automated techniques of clearance and

[6] See letter from Philip Lanz, Managing Director, Bear, Stearns Securities Corp., to Harold L. Johnson, Deputy General Counsel, MSRB (December 16, 1991); letter from Jan Fenty, President, The Cashier's Association of Wall Street, Inc., to Harold L. Johnson, Deputy General Counsel, MSRB (December 3, 1991); letter from William J. Winter, Vice President, Cashiers Department, A.G. Edwards and Sons, Inc., to Harold L. Johnson, Deputy General Counsel, MSRB (December 13, 1991); letter from Kathleen Graffam, First Chicago Capital Markets, Inc., to Harold L. Johnson, Deputy General Counsel, MSRB (December 13, 1991); letter from Steve Harris, Executive Vice President, Golden Harris Capital Group, Inc., to Harold L. Johnson, Deputy General Counsel, MSRB (October 7, 1991); letter from John J. Lynch, Jr., Executive Vice President, J.F. Hartfield and Co., Inc., to Harold L. Johnson, Deputy General Counsel, MSRB (December 3, 1991); letter from John F. Lee, President, New York Clearing House, to Harold L. Johnson, Deputy General Counsel, MSRB (December 18, 1991); letter from Harold Durk, Duke McElroy & Company, to Harold L. Johnson, Deputy General Counsel, MSRB (December 3, 1991); letter from Lawrence Morillo, Senior Vice President, Pershing, to Harold L. Johnson, Deputy General Counsel, MSRB (December 6, 1991); letter from James H. Pyle, Managing Partner, Terry L. McCullough, Partner, Richard E. Whalen, Partner, and Benita I. Simon, Partner, Elmer E. Powell and Company, to Harold L. Johnson, Deputy General Counsel, MSRB (November 27, 1991); letter from George Brakatselos, Vice President, Public Securities Association, to Harold L. Johnson, Deputy General Counsel, MSRB (November 19, 1991); letter from Thomas Sargant, Vice President, The Regional Municipal Operations Association, to Harold L. Johnson, Deputy General Counsel, MSRB (December 12, 1991); letter from George J. Minnig, Chairman, Regulatory and Clearance Committee, Securities Industry Association, to Harold L. Johnson, Deputy General Counsel, MSRB (December 6, 1991); letter from Jerome Clair, Managing Director, and Robert Mattei, Assistant Manager, Smith Barney, Harris Upham & Co., Inc., to Harold L. Johnson, Deputy General Counsel, MSRB (December 9, 1991); letter from Roger Springate, Jr., Springate and Company, to Harold L. Johnson, Deputy General Counsel, MSRB (December 13, 1991); and letter from Rick Farrell, Assistant Vice President, United Missouri Bank, N.A., to Harold L. Johnson, Deputy General Counsel, MSRB (November 5, 1991).

[7] See letter from Margaret Sullivan, Assistant Vice President, The First National Bank of Chicago, to Harold L. Johnson, Deputy General Counsel, MSRB (May 26, 1992) and letter from Mario P. DeAngelo, Vice President, Alex. Brown & Sons, to Harold L. Johnson, Deputy General Counsel, MSRB (April 29, 1992).

[8] See *supra*, note 6, letter from Alex. Brown & Sons.

[9] For further details concerning NSCC's redesigned bond comparison program, see Securities Exchange Act Release No. 32747 (August 23, 1993), 58 FR 44530.

[10] 15 U.S.C. 78o–4 and 78q–1 (1988).

[11] 15 U.S.C. 78o–4(b)(2)(C) (1988).

[12] 15 U.S.C. 78c(a)(12)(A)(ii) (1988).

[13] 15 U.S.C. 78c(a)(12)(B)(ii) (1988).

[14] Securities Exchange Act Release No. 20365 (November 14, 1983), 48 FR 52531.

settlement.[15] The Commission, therefore, believes that the proposal furthers the goals of section 17A of the Act by reducing reliance on inefficient manual procedures for clearing trades in municipal securities. In addition, the Commission believes the proposed rule change is consistent with section 15B of the Act because the proposed rule change is designed to foster cooperation and coordination with persons engaged in clearing, settling, and processing information with respect to, and facilitating transactions in, municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest. The Commission also notes that the proposed rule change is consistent with the recommendations of the Bachmann Task Force, [16] and the Group of Thirty concerning automated clearance and settlement.[17] The proposal also is consistent with efforts by other self-regulatory organizations to accelerate the comparison of trades among market participants.[18]

The MSRB requested that implementation of the proposed rule change be delayed until sixty days after Commission approval to provide sufficient time to notify industry members of the rule change.[19] The Commission agrees with the MSRB that sixty days is both a sufficient and an appropriate amount of time in which to notify those members and therefore is delaying implementation of the proposal until February 1, 1994.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the Act, and in particular with sections 15B and 17A of the Act, and with the rules and regulations thereunder.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[20] that the proposed rule change (File No. SR–MSRB–93–06) be, and hereby is, approved. Consistent with the MSRB's request, the proposal is approved with an effective date of February 1, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–30167 Filed 12–9–93; 8:45 am]

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[15] For further details concerning the MSRB's overall plan, see Securities Exchange Act Release No. 31645 (December 23, 1992), 57 FR 62407.

[16] The Bachmann Task Force was a panel of financial industry leaders formed to study improvements necessary to the clearance and settlement system. For further details concerning the recommendations of the Bachmann Task Force, see Report of the Bachmann Task Force on Clearance and Settlement Reform in U.S. Securities Markets (May 1992).

[17] The Group of Thirty is an independent, non-partisan, non-profit organization established in 1978 whose function is to study international economic and financial issues. The Group of Thirty's recommendations are discussed in Group of Thirty, Clearance and Settlement Systems in the World's Securities Markets (March 1989). One of these recommendations was that all comparison of trades between direct market participants (i.e., brokers, broker/dealers and other exchange members) should be accomplished by T+1 As discussed above, the Commission believes automated systems facilitate earlier trade comparison, which is integral to shortening the settlement cycle in the U.S. clearance and settlement system. See Securities Act Release No. 7022; Securities Exchange Act Release No. 33023; and Investment Company Act Release No. 19768 (October 6, 1993), 58 FR 52891 (adopting new rule 15c6–1 under the Act that establishes three business days instead of five business days as the standard settlement timeframe for broker-dealer transactions).

[18] See Securities Exchange Act Release No. 26627 (March 14, 1989), 54 FR 11470 (order approving the New York Stock Exchange's Overnight Comparison System providing for next-day comparison of securities transactions) and Securities Exchange Act Release No. 27851 (March 27, 1990), 55 FR 12759 (order approving the American Stock Exchange's proposal requiring certain securities transactions to be compared or otherwise closed out by the close of business the day following the trade date ("T+1")).

[19] See *supra,* note 4, letter from the MSRB.

[20] 15 U.S.C. 78s(b)(2) (1988).

[21] 17 CFR 200.30–3(a)(12).

[Release No. 34–33289; File No. SR–NASD–92–12, Amendment No. 4]

Self-Regulatory Organizations; Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Amendments to the NASD's Proposed Short Sale Rule

December 3, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 19, 1993, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is amending its proposed short sale rule or "bid test" applicable to stocks traded on the Nasdaq National Market ("Nasdaq") by modifying the proposed limited exemption from the rule for certain short sales effected by options market makers ("options market maker exemption"). Specifically, for an eighteen-month pilot period, the amended options market maker exemption provides that an NASD member shall be permitted, consistent with its quotation obligations, to execute a short sale for the account of an options market maker that would otherwise be in contravention of the NASD's short sale rule so long as the short sales are hedges of existing or contemporaneously established options positions and the options market maker receives, or is eligible to receive, good faith credit pursuant to section 220.12 of Regulation T under the Act when establishing the short position, among other things. Accordingly, this Amendment No. 4 to the filing supersedes and replaces the proposals contained in Amendment No. 3 with respect to "qualifying short sales" effected by options market makers. In addition, the NASD is proposing a similar eighteen-month pilot for a hedging exemption for registered warrant market makers on Nasdaq. The NASD also is proposing two other minor amendments to the NASD's short sale rule that: (1) Clarify language pertaining to exempt market maker's risk arbitrage activity; and (2) clarify how a market maker may become or remain a qualified market maker after the announcement of a merger or acquisition involving two securities.

The text of the proposed rule change is available at the Office of the Secretary of the NASD 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 NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in 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

As originally proposed, the NASD's short sale rule provided qualified Nasdaq market makers with an exemption from the rule, however, the rule did not exempt any options market

makers. The options exchanges and options market makers have consistently argued, among other things, that the absence of a parallel exemption for options market makers will have an adverse impact on the liquidity and pricing of options on Nasdaq securities and that it is inconsistent with the Act to afford Nasdaq market makers an exemption from the rule and not options market makers.[1]

The NASD continues to be cognizant and fully appreciative of the needs of options market makers to effectively hedge their long options positions through short sales. At the same time, however, the NASD does not want broad and sweeping exemptions from the NASD's short sale rule to subsume the rule and eviscerate its effectiveness. Accordingly, in December 1992, the NASD proposed an amendment to its short sale rule that would have provided options market makers with access to Nasdaq's SelectNet service and a limited exemption from the NASD's short sale rule when an options market maker's order in SelectNet is traded through.[2] While the NASD continues to believe that this proposal provides options market makers with an adequate vehicle to effectively hedge their positions in options overlying Nasdaq stocks, the NASD believes a second approach, which relies on the surveillance capabilities of the options exchanges, may also equally satisfy the needs of the options exchanges and the NASD. Accordingly, this revised options market maker exemption supersedes and replaces the exemption proposed in Amendment No. 3 to this filing.[3]

In essence, this alternative approach provides options market makers with an exemption from the NASD's short sale rule if the short sales are effected to hedge options positions established as a result of bona fide market making activity. In order to ensure that exemptions from the rule are only granted for legitimate hedging transactions associated with market making activity, the proposal provides that an options market maker cannot avail himself of the exemption unless the exchange of which he is a member has received SEC approval of certain rules governing its members usage of the exemption, which rules are described in more detail below. In this connection, the NASD fully expects that the NASD's short sale rule and the corresponding rules of the options exchanges will become effective simultaneously. Nevertheless, if the NASD believes a particular options exchange is not moving forward in a good faith effort to seek SEC approval of the necessary rules, the NASD will not delay unnecessarily the effective date of its short sale rule if other options exchanges have received SEC approval for their rules governing the exemption.

Specifically, under the amended version of the options market maker exemption an NASD member will be permitted, consistent with its quotation obligations, to execute a short sale for the account of an options market maker that would otherwise be in contravention of the NASD's short sale rule so long as: (1) The short sale is an "exempt hedge transaction"; and (2) the options market maker is registered with a "qualified options exchange" as a "qualified options market maker."[4] An "exempt hedge transaction" is defined to be a short sale that was effected to hedge an existing offsetting options position or an offsetting options position that was created in a transaction(s) contemporaneous with the short sale,[5] provided that when establishing the short position the options market maker receives, or is eligible to receive, good faith margin pursuant to § 220.12 of Regulation T under the Act. A "qualified options exchange" is defined to be a national securities exchange that has received SEC approval of rules and procedures governing: (1) The designation of options market makers as qualified options market makers; (2) the surveillance of its market makers' utilization of the exemption; and (3) authorization of the NASD to withdraw, suspend, or modify the designation of a qualified options market maker in the event that the options exchange determines that the qualified options market maker has failed to comply with the terms of the exemption and the exchange believes that such action is warranted in light of the substantial, willful, or continuing nature of the violation.

Thus, an options market maker would become a "qualified options market maker" for certain classes of stock options only if it has received an appointment as such from a qualified options exchange. In this regard, the rule is designed to ensure that only those options market makers who regularly engage in making markets in options overlying Nasdaq-listed securities are designated as qualified options market makers. Specifically, before an options exchange can become a qualified options exchange, it must have rules in place to identify and designate as qualified options market makers those market makers who regularly engage in market making activities in particular options classes.

In addition, to help ensure that the options market maker exemption will not have an adverse market impact on Nasdaq, the NASD believes that the Intermarket Surveillance Group Agreement among and between the NASD and the options exchanges, among others, will serve as an effective vehicle for the markets to evaluate possible manipulative activity and other possibly market destabilizing short selling activity by qualified options market makers and other options market makers in Nasdaq securities.

The NASD also has proposed that the revised options market maker exemption shall only be in effect for an eighteen-month pilot period. Throughout this eighteen-month period, the NASD will review and analyze with the options exchanges whether the exemption is resulting in destabilizing trading in Nasdaq stocks. In addition, should the NASD decline to modify, withdraw or extend the option market maker exemption before termination of the eighteen-month pilot period, the exemption will remain in effect until the exemption is so modified, withdrawn, or extended.

Similarly, the NASD is proposing to extend the same hedging exemption to registered Nasdaq warrant market makers for an eighteen-month pilot period. For the same rationale as described above for granting options market makers a limited hedging exemption, the NASD believes that an

[1] See Securities Exchange Act Release No. 31729 (January 13, 1993), 58 FR 5791 ("Amendment No. 3 Notice"). See also, e.g., letter to Jonathan G. Katz, Secretary, SEC, from the American, New York, Pacific and Philadelphia Stock Exchanges and the Chicago Board Options Exchange dated February 18, 1993.

[2] See Amendment No. 3 Notice supra note 1.

[3] In the NASD's letter to the SEC responding to comment letters submitted on the NASD's short sale rule proposal, the NASD suggested that the options market maker exemption set forth in Amendment No. 3 to this filing be implemented on a one-year pilot basis. Because this current amendment to the filing supersedes and replaces the provisions in Amendment No. 3 concerning "qualifying short sales" effected by options market makers, the suggestion of a one-year pilot for these provisions raised in the NASD's response letter likewise is superseded and replaced by the current filing. See letter to Jonathan G. Katz, Secretary, SEC, from Richard G. Ketchum, Executive Vice President & Chief Operating Officer, NASD, dated June 24, 1993 at p. 17.

[4] The NASD notes, however, that an NASD member would not be in violation of the NASD's short sale rule if it executed an order for the account of an options market maker in the good faith belief that the order was in full compliance with the NASD's short sale rule and it was subsequently determined that the order was either not entitled to the exemption or it was incorrectly marked long.

[5] The phrase contained in the proposed rule "contemporaneous with the short sale" is meant to include transactions occurring simultaneously as well as transactions occurring within the same brief period of time.

exemption should be afforded to warrant market makers. In addition, the NASD is clarifying that risk arbitrage activities that are not linked to the member firm's market making activities will not be considered as bona fide market making deserving of the market maker exemption. This language will clarify that registered Nasdaq market makers that qualify for the exemption according to the standards of sections 46 and 47 would relinquish their market making exemption if the risk arbitrage department of the firm took over the market making functions after the announcement of a merger or acquisition. Finally, the NASD is proposing a minor amendment to section 46(l) (which previously was designated as section 46(k) before this amendment) to provide that the language contained in section 46(l)(3) parallels language in section 46(l)(3)(iii) concerning how a market maker may become or remain a qualified market maker after the announcement of a merger or acquisition involving two securities.

The NASD believes the proposed rule change is consistent with sections 15A(b)(6) and 11A(c)(1)(F) of the Act. Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market. Section 11A(c)(1)(F) assures equal regulation of all markets for qualified securities and all exchange members, brokers, and dealers effecting transactions in such securities. Specifically, as noted in prior filings regarding the NASD's short sale rule, approval of the proposed short sale rule would result in equivalent short sale regulation in the exchange and Nasdaq markets and would work to prevent fraud and manipulation with respect to short sales in the Nasdaq market. Moreover, the NASD believes that affording options market makers with an exemption from the rule for legitimate hedging transactions associated with their bona fide options market making activity will serve to minimize the potential adverse impacts, if any, on the options markets resulting from adoption of the NASD's short sale rule. In addition, in light of the safeguards proposed in conjunction with the options market maker exemption (e.g., the eligibility of exempt short sales for good faith margin treatment), the NASD does not believe that the revised options market maker exemption will subsume or eviscerate the effectiveness of the NASD's short sale rule.

In addition, the NASD believes it is reasonable and appropriate to approve the options market maker exemption on an eighteen-month pilot basis. As noted in prior NASD filings concerning the NASD's short sale rule, in the absence of a comparable short sale rule for the options markets, it is not entirely clear to the NASD that abusive short sellers will not be able to circumvent the NASD's short sale rule through use of the options markets. Specifically, if options market makers are not required to adhere to the NASD's short sale rule, the NASD believes it is possible that market participants could aggressively buy puts or sell calls confident in the knowledge that the options market makers likely to bear the other side of the contract would almost surely employ their short sale exemption to sell into the bid on Nasdaq. Accordingly, the NASD believes it would be prudent and consistent with the maintenance of fair and orderly markets to approve the options market maker exemption on an eighteen-month pilot basis. During the term of the pilot, the NASD, in cooperation with the options exchanges, will conduct a thorough analysis of the market impacts, if any, resulting from short sales effected pursuant to the exemption. Depending on the results of the study, the NASD will consider whether to seek permanent approval of the exemption, modify the exemption, or withdraw the exemption. In this connection, it is the NASD's intention to not modify or withdraw the exemption unless it can be shown that the exemption is causing demonstrable harm to Nasdaq. Moreover, should it become clear during the term of the pilot that the options market maker exemption is having an adverse impact on Nasdaq, the NASD will endeavor to make a good faith effort to work with the options exchanges to correct or rectify the concerns associated with the operation of the exemption before seeking to withdraw the pilot. Finally, in order to minimize unnecessary market disruption, should the NASD fail to obtain SEC approval of a proposal concerning the status or scope of the options market maker exemption by the termination of the pilot period, the proposal provides that the exemption will remain in effect until the SEC takes action on such a proposal.

Finally, for the above-noted reasons, the NASD believes a parallel eighteen-month pilot program for a hedging exemption for registered Nasdaq warrant market makers is consistent with the Act. The NASD also believes that the proposals to clarify the language of the rule with respect to exempt market maker's risk arbitrage activity and the status of market makers as qualified market makers in the event of a merger or acquisition of two securities will serve to reduce investors' confusion concerning the application and operation of the NASD's short sale rule, thereby promoting efficient and fair markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing amendment.[6] 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

[6] The Commission has received approximately 400 comment letters on the original proposed rule change and Amendment No. 3 to the filing. Commentators are asked to limit their comments to the changes proposed in Amendment No. 4.

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by January 3, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–30168 Filed 12–9–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33272; File Nos. SR–OCC–93–12 and SR–ICC–93–5]

Self-Regulatory Organizations; The Options Clearing Corp. and The Intermarket Clearing Corp.; Order Approving Proposed Rule Changes Relating to Trilateral Cross-Margining With the Commodity Clearing Corp.

December 2, 1993.

On May 24, 1993, The Options Clearing Corporation ("OCC") and The Intermarket Clearing Corporation ("ICC") each filed a proposed rule change (File Nos. SR–OCC–93–12 and SR–ICC–93–5) with the Securities and Exchange Commission ("Commission") under section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The purpose of the filings is to enable OCC and ICC to establish a cross-margining program among OCC, ICC, and the Commodity Clearing Corporation ("CCC").[2] The Commission published notice of these proposals in the **Federal Register** on July 2, 1993.[3] OCC and ICC filed technical amendments to their proposals on September 29, 1993.[4] No written comments were received. For the reasons discussed below, the Commission is approving the proposals.

I. Description

Pursuant to the proposals, OCC, ICC, and CCC will enter into a cross-margining agreement ("OCC/ICC/CCC X–M Agreement") to establish the OCC/ICC/CCC cross-margining program. The OCC/ICC/CCC cross-margining program will consist of trilateral cross-margining among OCC, ICC, and CCC and bilateral cross-margining between OCC and ICC, between OCC and CCC, and between ICC and CCC. The OCC/ICC/CCC cross-margining program will include both proprietary positions and non-proprietary, market professional positions.

The OCC/ICC/CCC X–M Agreement and the OCC/ICC/CCC cross-margining program are substantially similar to the cross-margining agreement among OCC, ICC, and the Chicago Mercantile Exchange ("CME") ("OCC/ICC/CME X–M Agreement") and the OCC/ICC/CME cross-margining program[5] except for the differences described below.

First, OCC, ICC, and CCC will not conduct any settlements on Good Friday. Therefore, Good Friday is not defined as a "business day" for purposes of section 7 of the OCC/ICC/CCC X–M Agreement.

Second, the parties have determined that it is unnecessary to require that oral agreements be made over a recorded telephone line and later confirmed in writing. Accordingly, all references relating to the use of recorded telephone lines in making oral agreements and to confirming such agreements in writing have been deleted from the OCC/ICC/CCC X–M Agreement. Such references are most notable in sections 5, 6, 7, and 14 of the OCC/ICC/CME X–M Agreement.

Third, certain deadlines set forth in the OCC/ICC/CCC X–M Agreement have been established to accommodate CCC's settlement times. These deadlines are most notable in section 7 of the OCC/ICC/CCC X–M Agreement.

Fourth, provisions of section 8 relating to the suspension of a clearing member or a pair of affiliated clearing members and the liquidation of X–M accounts have been drafted to accommodate the inclusion of the restructured OCC/ICC cross-margining program.[6] The basic formula for the sharing of any surplus or shortfall among or between OCC, ICC, and CCC, however, is the same among and between OCC, ICC, and CME in the OCC/ICC/CME cross-margining program.

Fifth, the list of contracts eligible for cross-margining is set forth in Exhibit A to the OCC/ICC/CCC X–M Agreement and is tailored for the OCC/ICC/CCC cross-margining program.[7] The forms of account agreements and subordination agreements used in the OCC/ICC/CCC cross-margining program are substantially identical to those used in the OCC/ICC/CME cross-margining program.[8]

II. Discussion

The Commission believes that OCC's and ICC's proposals are consistent with the Act and in particular with section 17A thereunder.[9] As discussed below, the proposal will facilitate the development of linked or coordinated clearing facilities for intermarket positions.[10] will promote the prompt and accurate clearance and settlement of securities transactions, and appears to

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[7] 17 CFR 200.30–3(a)(12) (1989).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] CCC acts as the clearing organization for certain futures contracts and options on future contracts for which FINEX, Inc., a division of the New York Cotton Exchange, has been designated as the contract market by the Commodity Futures Trading Commission pursuant to the Commodity Exchange Act.

[3] Securities Exchange Act Release No. 31499 (June 28, 1993) 58 FR 35992.

[4] The amendments conform the terms of the cross-margining agreement between OCC, ICC, and CCC to the terms of the recently approved cross-margining agreement between OCC, ICC, and the Chicago Mercantile Exchange. Letter from Jean M. Cawley, Staff Attorney, OCC, to Jerry W. Carpenter, Branch Chief, Division of Market Regulation ("Division"), Commission (September 28, 1993) and letter from Jean Cawley, Staff Attorney, ICC, to Jerry Carpenter, Branch Chief, Division, Commission (September 28, 1993).

[5] For a detailed description of the OCC/ICC/CME X–M Agreement and cross-margining program, refer to Securities Exchange Act Release No. 32534 (June 28, 1993), 58 FR 36234 (File Nos. SR–OCC–92–28 and SR–ICC–92–5) (order approving OCC/ICC/CME cross-margining program).

[6] For a discussion of the restructured OCC/ICC cross-margining program, refer to Securities Exchange Act Release No. 32646 (July 16, 1993), 58 FR 39587 (File Nos. SR–OCC–93–07 and SR–ICC–93–04) (notice of proposed rule change restructuring OCC/ICC cross-margining program).

[7] Eligible OCC-cleared contracts include put and call options on the: (1) S&P 100 Index, (2) S&P 500 Index, (3) Major Market Index, (4) New York Stock Exchange Composite Index, (5) Financial News Composite Index, (6) Institutional Index, (7) Deutschemark, (8) French Franc, (9) Swiss Franc, and (10) European Currency Units.

Eligible ICC-cleared contracts include futures and put and call options on the futures on the New York Stock Exchange Composite Index and futures on the (1) Deutschemark, (2) French Franc, (3) Swiss Franc, and (4) European Currency Unit Futures.

Eligible CCC-cleared contracts include futures and put and call options on the futures on the U.S. Dollar Index ("USDX").

[8] The account agreements and subordination agreements used in the OCC/ICC/CME cross-margining program are included in Amendment No. 2 to File Nos. SR–OCC–92–28 and SR–ICC–92–5.

[9] 15 U.S.C. 78q–1 (1988).

[10] Section 17A(a)(2)(A)(ii) (15 U.S.C. 78q–1 (a)(2)(A)(ii) (1990)), which was added to the Act when Congress enacted the Market Reform Act of 1990 (Pub. L. No. 101–432, 104 Stat. 963 (1990)), directs the Commission to use its authority under the Act "to facilitate the establishment of linked or coordinated facilities for clearance and settlement of transactions in securities, securities options, contracts of sale for future delivery and options thereon, and commodity options." For a detailed discussion of the progress toward coordination or linkage in the national clearance and settlement system, refer to Commission, Report on Progress Toward Establishing Linked or Coordinated Facilities for Clearance and Settlement of Transactions in Securities, Options, and Futures (March 5, 1993).

be designed to safeguard securities and funds.[11]

Since it granted approval of the first cross-margining program in 1988,[12] the Commission repeatedly has found that cross-margining programs are consistent with clearing agency responsibilities under section 17A of the Act. As the Commission previously noted, cross-margining programs, among other things, tend to enhance clearing member and systemic liquidity both in times of normal trading and in times of stress.[13] By enhancing market liquidity, cross-margining programs reduce the risk that clearing members will become insolvent in times of extreme market stress. Furthermore, by enhancing market liquidity, cross-margining arrangements remove impediments to and help perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. This in turn promotes the safety of the entire clearance and settlement system by decreasing the threat of a ripple effect of insolvencies caused by the demise of a major market participant.[14]

As with other X–M arrangements, the proposal links and coordinates the various clearance and settlement facilities of options and futures clearing organizations (OCC, ICC, and CCC in this proposal) in an effort to manage jointly the risks associated with clearing members' intermarket portfolios.[15] Cross-margining arrangements are a significant improvement over the past practice where individual clearing organizations were required independently to manage the risk of separate components of clearing members' portfolios of options and futures positions. Thus, cross-margining programs, such as the one proposed here, facilitate the establishment of linked or coordinated facilities for clearance and settlement of transactions in securities options, futures, and options on futures in furtherance of the goals of section 17A(a)(2)(A)(ii) of the Act.[16]

The OCC/ICC/CCC cross-margining program is based on the OCC/ICC/CME model, which embodies the concept of equal control and interest in assets held in cross-margin accounts. Furthermore, this program retains virtually all of the important safety provisions of the OCC/ICC/CME program. As with the OCC/ICC/CME cross-margining program, the Commission believes that the OCC/ICC/CCC cross-margining program proposed here is consistent with clearing agencies' statutory obligation to assure the safeguarding of funds and securities which are in their custody or control or for which they are responsible.

Because the establishment of the OCC/ICC/CCC cross-margining program will allow clearing members to cross-margin ICC-cleared contracts with CCC-cleared contracts, the amount of margin deposited on the futures side should decrease appreciably. In addition, participating clearing members generally will benefit through lower administrative costs.[17] Currently, the clearing organizations must maintain cross-margining accounts with multiple clearing banks. By extending cross-margining on both a bilateral basis and a trilateral basis, the proposal will allow participating clearing organizations to maintain accounts at fewer clearing banks and thereby will reduce costs associated with such accounts. These cost savings, in turn, may be passed on to clearing members.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule changes are consistent with the Act and in particular with section 17A thereunder.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule changes (File Nos. SR–OCC–93–12 and SR–ICC–93–5) be, and hereby are, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

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[11] Section 17A(b)(3)(F) provides, among other things, that the rules of a clearing agency must be designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of funds and securities which are in the custody or control of the clearing agency or for which it is responsible. 15 U.S.C. 78q–1(b)(3)(F) (1988).

[12] Securities Exchange Act Release No. 26153 (October 3, 1988), 53 FR 39567 (approving non-proprietary cross-margining program between OCC and ICC).

[13] See, e.g., Securities Exchange Act Release Nos. 30413 (February 26, 1992) 57 FR 7830 (order approving OCC/Kansas City Board of Trade Clearing Corporation cross-margining program for proprietary positions); 29991 (November 26, 1991), 56 FR 61458 (order approving expansion of OCC/CME cross-margining program to include positions held for market professionals); 29888 (October 31, 1991), 56 FR 56680 (order approving OCC/Board of Trade Clearing Corporation cross-margining program for proprietary positions); 27296 (September 26, 1989), 54 FR 41195 (order approving OCC/CME cross-margining program for proprietary positions).

[14] Shortly after the 1987 market break, then Treasury Secretary Nicholas F. Brady referred to the clearance and settlement system as the weakest link in the nation's financial system and noted that improvements to the clearance and settlement system, such as those provided by X–M arrangements, would "help ensure that a securities market failure does not become a credit market failure." The Market Reform Act of 1989: Joint Hearings on S. 648 before the Subcomm. on Securities and the Senate Comm. on Banking, Housing, and Urban Affairs, 101st Cong., 1st Sess. 225 (Oct. 26, 1989) (statement of Nicholas F. Brady, Secretary of the Treasury).

[15] Approximately 39 of OCC's 142 clearing members are registered both as broker-dealers and as futures commission merchants. Telephone conversations between Jean M. Cawley, Staff Attorney, OCC, and Peter R. Geraghty, Attorney, Division, Commission (October 15, 1993).

[16] *Supra* note 10 and accompanying text.

[17] Telephone conversation between Jean M. Cawley, Staff Attorney, OCC, and Peter R. Geraghty, Attorney, Division, Commission (October 15, 1993).

[18] 17 CFR 200.30–3(a)(12) (1992).

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Chicago Stock Exchange, Inc.

December 3, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Chateau Properties, Inc.
Common Stock, $.01 Par Value (File No. 7–11610)

Benson Eye Care
Common Stock, $.01 Par Value (File No. 7–11611)

Harte Hanks Communications, Inc.
Common Stock, $1.00 Par Value (File No. 7–11612)

MuniBond Income Fund, Inc.
Common Stock, $.10 Par Value (File No. 7–11613)

MuniYield Arizona Fund II, Inc.
Common Stock, $.10 Par Value (File No. 7–11614)

American Real Estate Investment Corporation
Common Stock, $.001 Par Value (File No. 7–11615)

SunCoast Plastics, Inc.
Common Stock, $.01 Par Value (File No. 7–11616)

NVR, L.P.
Common Stock, $.01 Par Value (File No. 7–11617)

NVR, L.P.
Warrants, No Par Value (File No. 7–11618)

Hill Stores Company
Common Stock, $.01 Par Value (File No. 7–11619)

Triarc Companies, Inc.
Common Stock, $.10 Par Value (File No. 7–11620)

CV Reit
Rights to Subscribe, No Par Value (File No. 7–11621)

Asia Pacific Fund, Inc.
Rights to Subscribe, No Par Value (File No. 7–11622)

Mexico Equity & Income Fund, Inc.

Rights to Subscribe, No Par Value (File No. 7–11623)
Salant Corporation
Warrants, No Par Value (File No. 7–11624)
Hillhaven Corporation
Common Stock, $.75 Par Value (File No. 7–11625)
Alumax, Inc.
Common Stock, $.01 Par Value (File No. 7–11626)
Frederick's of Hollywood
Class A Capital, $1.00 Par Value (File No. 7–11627)
Frederick's of Hollywood
Class B Capital, $1.00 Par Value (File No. 7–11628)
Prospect Street High Income Portfolio, Inc.
Rights to Subscribe, No Par Value (File No. 7–11629)
Singapore Fund, Inc.
Rights to Subscribe, No Par Value (File No. 7–11630)
United States Cellular Corporation
Rights to Subscribe, No Par Value (File No. 7–11631)
MHI Group, Inc.
Common Stock, $.40 Par Value (File No. 7–11632)
Allerion, Inc.
Common Stock, No Par Value (File No. 7–11633)
Continental Airlines
Class B, $.01 Par Value (File No. 7–11634)
Gaylord Container
Warrants, No Par Value (File No. 7–11635)
Asia Tigers Fund, Inc.
Common Stock, $.001 Par Value (File No. 7–11636)
Hawaiian Airlines
Common Stock, $3.00 Par Value (File No. 7–11637)
Heritage U.S. Government Income Fund
Shares of Beneficial Interest (File No. 7–11638)
Korea Equity Fund, Inc.
Common Stock, $.10 Par Value (File No. 7–11639)
Morgan Stanley High Yield Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–11640)
National Intergroup
$4.20 Cum. Exch. Ser. A Pfd. Stock, No Par Value (File No. 7–11641)
Trans World Airlines
When Issued Voting Trust Certificates, No Par Value (File No. 7–11642)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 27, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–30170 Filed 12–9–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–25937]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

December 3, 1993.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 27, 1993, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Jersey Central Power & Light, et al. (70–8182)

Jersey Central Power & Light Company ("JCP&L"), 300 Madison Avenue, Morristown, New Jersey 07960, Metropolitan Edison Company ("MEC"), 2800 Pottsville Pike, Reading, Pennsylvania 19605, Pennsylvania Electric Company ("PEC"), 1001 Broad Street, Johnstown, Pennsylvania 15907, GPU Service Corporation ("Service"), 100 Interpace Parkway, Parsippany, New Jersey 07054, and GPU Nuclear Corporation ("Nuclear" and, together with JCP&L, PEC, MEC, and Service, "Applicants"), One Upper Pond Road, Parsippany, New Jersey 07054, each a subsidiary company of General Public Utilities Corporation, a registered holding company, have filed a declaration pursuant to sections 6(a) and 7 of the Act.

The Applicants each seek authority through December 31, 1996 to borrow funds under installment credit agreements (each a "Credit Card Agreement") that each company would establish with one or more financial institutions. Pursuant to such agreements, the financial institution or institutions would issue credit cards to designated employees of such company to purchase small purchases of goods and services for the company.

It is anticipated that the credit card issuer would establish accounts with certain specified vendors who regularly provide goods and services to one or more Applicants. These vendors would then accept orders from designated employees of an Applicant against such accounts. The Applicants state that conducting such purchases would reduce the time and documentation associated with the current system of making such purchases using petty cash and limited purchase orders. The cards would not be for employees' personal use.

In a prior order dated March 18, 1992 (HCAR No. 25493), the Commission authorized each of JCP&L, MEC and PEC to engage in short-term borrowings in amounts that did not exceed its charter limits. As of December 31, 1991, this limit was set at $236 million, $95 million and $123 million for JCP&L, MEC and PEC, respectively. JCP&L, MEC and PEC state that the amounts borrowed by each under its Credit Card Agreement would not, when combined with borrowed amounts authorized in that order, exceed the borrowing limits on each of those Applicants specified in that order. Further, the amounts borrowed by all Applicants under all Credit Card Agreements would not exceed $3 million at any one time.

Under each Credit Card Agreement, an Applicant would be given a specified period of time, which would be no less than ten days following receipt of a statement from the credit card issuer, to repay in full all charges billed in that statement. After that period, the issuer would be entitled to assess interest on unpaid balances in an amount not to exceed 125% of the credit card issuer's or other recognized prime rate per annum. In addition, the credit card issuer would be entitled to assess a

separate late charge in an amount not to exceed one percent of the unpaid balance, if payment of that balance were not made within a specified longer period of time following receipt of the statement from the credit card issuer, which period would be no less than thirty days. Additionally, under each Credit Card Agreement, an Applicant would pay an annual fee not to exceed $25 for each card issued.

The Southern Company (70–8277)

The Southern Company ("Southern"), 64 Perimeter Center East, Atlanta, Georgia 30346, a registered holding company, has filed an application-declaration under sections 6(a), 7, 12(b), 32 and 33 of the Act and Rules 45, 50, 50(a)(5) and 53 thereunder.

Southern proposes to issue and sell up to ten million shares of its authorized but unissued common stock, par value $5 per share, as such number may be adjusted for any share split or distribution hereafter authorized by the Commission ("Common Stock"), in one or more transactions from time to time, through December 31, 1996.

Southern proposes to effect the issuance and sale of some or all of the shares of the Additional Common Stock through a primary shelf registration program in accordance with Rule 415 under the Securities Act of 1933, as amended. Southern further proposes to enter into a Sales Agency Agreement ("Agreement") with a broker/dealer ("Agent") providing for the offer and sale of some or all of the Common Stock subject to the terms and conditions stated therein.

Accordingly, Southern would appoint the Agent exclusively for the purpose of offering and selling the Common Stock by one or more of the following methods: (1) In ordinary regular-way transactions in the auction market on the floor of the New York Stock Exchange, or any regional exchange on which Southern's common stock may be admitted to trading privileges; (2) in block transactions of such exchanges or in the over-the-counter market, in which the Agent may act as a principal for its own account; and (3) in "fixed-price offerings" off the floor of such exchanges, or "special offerings" and "exchange distributions" in accordance with the rules of such exchanges.

The sale of the Common Stock will be made at market prices prevailing at the time of sale in the case of transactions on exchanges and at prices negotiated by the Agent and related to prevailing market prices in the case of over-the-counter transactions. Southern proposes to issue and sell the Common Stock under methods (1) and (2) above pursuant to the alternative competitive bidding procedures as modified by the Commission's Statement of Policy dated September 2, 1982 (HCAR No. 22623). Southern states that it will either comply or by amendment herein will request an exception from such requirements in connection with sale of Common Stock pursuant to (3) above should circumstances develop which, in the opinion of Southern's management, make such exception in the best interests of Southern and its investors and consumers. The Commission is requested to reserve jurisdiction over the sale by Southern of any of the Common Stock pursuant to an exception from the requirements of competitive bidding under Rule 50.

Southern proposes to use the net proceeds from the sale of the Common Stock, together with other available funds, to make additional equity investments in subsidiary companies. Such investments will include cash capital contributions to Southern's operating utility subsidiary companies and in exempt wholesale generators ("EWG") and foreign utility companies ("FUCO"), as defined in Sections 32 and 33, respectively, such that its subsidiary companies are permitted to acquire and own, and to fund ongoing development costs associated with potential direct or indirect investments by Southern in such entities, and for other corporate purposes.

Investments by Southern in subsidiary companies would only be made in accordance with existing or future authorizations in separate proceedings, or in accordance with such exemptions as may exist under the Act and the rules and regulations thereunder. Southern currently has authority to make investments in Southern Company Services, Inc. (HCAR No. 25874), Southern Electric International, Inc. (HCAR No. 24476), and Southern Nuclear Operating Company (HCAR No. 25792), each of which is a wholly-owned non-utility subsidiary company. Southern represents that no part of the proceeds from the sale of the Common Stock will be utilized by Southern Electric International, Inc. for a purpose that is currently permitted under HCAR No. 24476 unless such purpose would also be permitted under an order in File No. 70–7932. Presently, Southern does not have authority to make additional investments in its operating utility subsidiary companies, but intends to request such authority in a separate filing.

Southern proposes to guarantee the securities of one or more EWG or FUCO from time to time through December 31, 1996, in an aggregate amount not to exceed $500 million at any one time outstanding ("Guarantees"), provided that any Guarantee outstanding on December 31, 1996 shall remain effective until expiration or termination in accordance with its terms.

Southern anticipates that the capital costs of EWGs and FUCOs, in which it may invest, will be financed in part by loans obtained from banks and other institutional lenders that are secured solely by the assets and revenues of such entities and that are otherwise non-recourse to Southern. However, Southern expects that it will be necessary from time to time to guarantee certain amounts of the indebtedness or financial commitments of such EWGs or FUCOs.

Entergy Corporation (70–8299)

Entergy Corporation, 225 Baronne Street, New Orleans, Louisiana 70112 ("Entergy"), a registered holding company, has filed an application-declaration with the Commission pursuant to sections 6(a), 7, 9(a), 10 and 12(c) of the Public Utility Holding Company Act of 1935, as amended ("Act") and Rules 42 and 50(a)(5) thereunder. The original notice of this filing was issued by the Commission on November 19, 1993 (HCAR No. 25927).

Entergy, as further defined below, requests authority through March 31, 1997 to issue from time to time up to 2 million shares of its common stock, par value of $5 per share, or any security issued in exchange for such stock ("Stock"), in connection with a proposed nonstatutory Stock Investment Plan ("Plan"). For the purposes of the Plan, Entergy would include any company that is a successor in interest, including the surviving corporation following the proposed merger of Entergy and Gulf States Utilities Company. Under the Plan, eligible employees ("Eligible Employees") of Entergy and of other participating companies (collectively, "Participating Employers") would be granted options ("Options") to purchase shares of Stock. In addition to Entergy, Participating Employers would include any corporation (a) 50% or more of the common stock of which is owned, directly or indirectly, by Entergy and (b) which is, from time to time, designated as a Participating Employer in the Plan. Designation as a Participating Employer would be made by a committee, more particularly described below ("Committee"), that is charged with administering the Plan. Eligible Employees generally would include all regular, full-time employees of a Participating Employer, including those

employees who at the time of the grant of the applicable Option, are on paid leave of absence.

The purpose of the Plan is to provide Eligible Employees of Entergy and other Participating Employers with an opportunity to acquire a proprietary interest in Entergy through the purchase of Stock. Entergy would make three consecutive annual offerings ("Offerings") of Stock, each corresponding to a twelve month period ("Plan Year") commencing on April 1 ("Commencement Date") and ending March 31 of the following year ("Termination Date"). The first Plan Year with respect to the Plan would be the twelve month period beginning April 1, 1994 and ending March 31, 1995. An Eligible Employee would become a participant with respect to any Offering ("Participant") by enrolling in the Offering prior to the applicable Commencement Date and authorizing payroll deductions during the course of the corresponding Plan Year. A Participant could authorize deductions up to a maximum level of 10% of the Participant's base pay to pay for the Stock which is covered by the Participant's option. Generally, each Participant would be granted an Option on each Commencement Date to purchase the most amount of Stock ("Option Shares") allowed by the amount credited to his account on the Termination Date with respect to that Offering at the Option exercise price. The Option exercise price ("Exercise Price") with respect to any Offering would be the lower of:

a. 85% of the closing price of the Common Stock on the Commencement Date for that Offering or the nearest prior business day on which trading occurs on the New York Stock Exchange; or

b. 85% of the closing price of the Common Stock on the Termination Date for that Offering or the nearest prior business day on which trading occurs on the New York Stock Exchange.

Unless a Participant elected to withdraw from the Plan with respect to any Offering, the Participant's Option would be deemed to be automatically exercised on the applicable Termination Date for the purchase of the number of Option Shares covered by the Option. Such purchase would be reflected by an appropriate entry on Entergy's books and records evidencing that the Option Shares purchased by a Participant with respect to the Offering had been acquired by the Participant as of that date. Any excess amount credited to the Participant's account would be paid to the Participant in cash. If a Participant withdrew from an Offering prior to the exercise of the applicable Option, he would receive a refund of funds paid, less administrative expenses.

The Plan would be administered by a committee whose members would be appointed by the Chairman of the Board of Directors of Entergy. The Committee would consist of no fewer than three members selected from directors, officers or employees of Entergy and of other Participating Employers ("Committee"). Subject to the express provisions of the Plan, the Committee would have the exclusive authority to interpret and construe any and all of its provisions and to make all other determinations deemed necessary or advisable for its administration. The Committee may, in its discretion, permit Participants to make contributions by one or more lump sum payments, in addition to payroll deductions. Such permission would be subject to, *inter alia*, the condition that the total of all amounts credited to a Participant's account in any Plan Year could in no event exceed 10% of the Participant's base pay.

It is proposed that the Option Shares be issued from treasury shares, rather than from newly issued shares. Therefore, Entergy requests authority under the Act to purchase from time to time during the period through March 31, 1997, up to a maximum of 2 million shares of Stock on the open market, to be held as treasury shares, pending resale to Participants, for the purpose of satisfying the anticipated requirements of the Plan. The timing of such purchases would depend upon the anticipated needs of the Plan and then existing market conditions. Funds for the purchase of shares of Stock from the open market to satisfy the requirements of the Plan would be obtained from internally generated funds. Proceeds from the sale of shares of Stock under the Plan will become part of the general corporate funds of Entergy and will be used (i) to purchase Stock of Entergy sold or to be sold by Entergy under the Plan, or (ii) for other general corporate purposes.

Entergy additionally requests an exemption from the competitive bidding requirements of Rule 50 under the Act pursuant to subsection (a)(5) thereof with respect to the issuance of the Options and the issuance and sale of Stock pursuant to the Plan.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–30172 Filed 12–9–93; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

Bureau of Politico-Military Affairs

[Public Notice 1909]

Determinations Under the Arms Export Control Act and the Foreign Assistance Act of 1961

Pursuant to section 654(c) of the Foreign Assistance Act of 1961, as amended (the "Act"), notice is hereby given that the President has made a determination pursuant to section 498A of the Act and has concluded that publication of the determination would be harmful to the national security of the United States. Pursuant to section 654(c) of the Act, notice is further given that the Under Secretary of State for International Security Affairs has made a determination pursuant to section 81 of the Arms Export Control Act and has concluded that publication of the determination would be harmful to the national security of the United States.

Dated: November 22, 1993.

Robert L. Gallucci,

Assistant Secretary of State for Politico-Military Affairs.

[FR Doc. 93–29999 Filed 12–9–93; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended December 3, 1993

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 49286
Date filed: December 1, 1993
Parties: Members of the International Air Transport Association
Subject: TC123 Reso/P 0114 dated November 9, 1993 North/Mid/South Resolutions r-1 to r-8 Minutes—TC123 Meet/P 0051 dated November 26, 1993 Tables—TC123 Fares 0037 dated November 30, 1993
Proposed Effective Date: March 1, 1994.

Docket Number: 49287
Date filed: December 1, 1993
Parties: Members of the International Air Transport Association
Subject: COMP Telex Mail Vote 657 Rounding Unit for Egypt
Proposed Effective Date: December 15, 1993.

Docket Number: 49291
Date filed: December 3, 1993
Parties: Members of the International Air Transport Association

Subject: TC23 Reso/P 0613 dated October 8, 1993 Europe-South Asian Subcontinent r-1 to r-15.
Proposed Effective Date: January 1, 1994.

Phyllis T. Kaylor,
Chief, Documentary Services Division.

[FR Doc. 93–30207 Filed 12–9–93; 8:45 am]
BILLING CODE 4910–62–P

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended December 3, 1993

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 49283
Date filed: November 30, 1993
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 28, 1993
Description: Application of Federal Express Corporation, pursuant to section 401(d)(1) of the Act, and subpart Q of the Regulations for renewal of its existing authority to provide foreign air transportation of property and mail between a point or points in the United States, on the one hand, and a point or points in Italy, on the other hand, as contained in Segment 1 of Federal Express' certificate of public convenience and necessity for Route 119, and as contained in Federal Express' certificate of public convenience and necessity for Route 553.

Docket Number: 49284
Date filed: November 30, 1993
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 28, 1993
Description: Application of Federal Express Corporation, pursuant to section 401(d)(1) of the Act and subpart Q of the Regulations, for renewal of its existing authority to provide foreign air transportation of property and mail between a point or points in the United States, on the one hand, and a point or points in the Philippines, on the other hand, as contained in Segment 3 of Federal Express' certificate of public convenience and necessity for Route 205–F.

Phyllis T. Kaylor,
Chief, Documentary Services Division.

[FR Doc. 93–30208 Filed 12–9–93; 8:45 am]
BILLING CODE 4910–62–P

Federal Aviation Administration

[AC No. 120–XX]

Development of Advisory Circular (AC) on Flightcrew Sleeping Quarters/ Facilities

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of FAA intent to consider the design and installation criteria for flightcrew rest facilities on commercial transport aircraft contained in Aerospace Recommended Practice (ARP) 4101/3 in the development of AC 120–XX, Flightcrew Sleeping Quarters/ Facilities; and request for comments concerning the adequacy and appropriateness of these criteria.

SUMMARY: This notice contains a reprint of the Society of Automotive Engineers (SAE) document ARP4101/3, Crew Rest Facilities, which contains information that the FAA intends to consider in development of AC 120–XX, Flightcrew Sleeping Quarters/Facilities. When developed and issued, this AC would provide guidance for one means, but not the only means, for Federal Aviation Regulations (FAR) parts 121 and 135 certificate holders to obtain an FAA finding regarding the adequacy of sleeping quarters/facilities to be used for flight crewmembers sleeping in flight. These sleeping quarters/facilities would be used: (1) By three- and four-pilot crews during long-range flights under FAR part 135; and (2) when applicable, by flight crewmembers in the conduct of flag and supplemental operations under FAR part 121. This notice gives all interested persons an opportunity to present their views on the adequacy of the information in the subject SAE document for the purpose described herein. The FAA will consider all comments received prior to issuing any notice of availability of draft AC 120–XX, Flightcrew Sleeping Quarters/ Facilities.

DATES: Comments must be received on or before February 6, 1994.

ADDRESSES: Send all comments on the subject SAE document to: Federal Aviation Administration, Air Carrier Branch, AFS–220, 800 Independence Avenue, SW., Washington, DC 20591. Comments may be inspected at the above address between 9 a.m. and 4 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Don Streeter, AFS–220, at the address above, telephone (202) 267–7579.

SUPPLEMENTARY INFORMATION: In developing a flightcrew sleeping quarters/facilities AC, the FAA intends to provide standard technical definitions and guidelines for FAR part 121 certificate holders and, based on comments received, FAR part 135 certificate holders. The definitions and guidelines would then be used by these certificate holders to develop plans for a sleeping quarters installation in a particular type airplane and to obtain an FAA finding regarding the adequacy of that installation for sleeping purposes. This AC will reference recommended guidelines based on suggested criteria contained in ARP4101/3 for the design and installation of crew rest facilities on commercial transport aircraft capable of ultra-long-range operations with augmented/enlarged crew complements.

FAR section 135.269 permits certificate holders to assign three- or four-pilot crews to flights having extended duty periods, under certain conditions. One condition that must be met to authorize such assignments is that adequate sleeping quarters must be available for use on such flights. The FAA recognizes that accepting certain guidance criteria in ARP4101/3 may be difficult for FAR part 135 operators. Therefore, comments from FAR part 135 operators regarding the adequacy of the ARP4101/3 criteria are requested to ensure the development of equitable guidelines. Some of the issues in need of comment are:

(1) Aircraft size is limited under FAR part 135, therefore, recognizing the size differential, should or can the ARP4101/3 criteria be applied to FAR part 135 aircraft?

(2) Should the proposed AC include FAR part 135 guidelines? If so, should the FAR part 135 guidelines be separate from the FAR part 121 guidelines?

(3) Should a separate AC be developed for FAR part 135 operators?

(4) What additions or changes in the ARP4101/3 criteria would be needed to accommodate the needs of FAR part 135 operators? The following related SAE documents may also prove to be useful in the development of the draft AC:

SAE ARP4101—Flight Deck Layout and Facilities
SAE ARP4101/4—Flight Deck Environment

SAE ARP1323—Type Measurements of Aircraft Interior Sound Pressure Levels During Cruise

SAE AIR 4245—Quantities for Description of the Acoustical Environment in the Interior of Aircraft

Copies of these documents may be obtained, for a fee, by contacting: SAE, The Engineering Society For Advancing Mobility Land, Sea, Air, and Space International, 400 Commonwealth Drive, Warrendale, PA 15096–0001, Attention: Mr. Richard A. Vandame, Jr., telephone (412) 776–4841.

Issued in Washington, DC, on December 6, 1993.

Donald W. Streeter,

Acting Branch Manager, Flight Standards, Air Carrier Operations Branch.

The Engineering Society For Advancing Mobility Land Sea Air and Space®
INTERNATIONAL
400 Commonwealth Drive, Warrendale, PA 15096-0001

AEROSPACE RECOMMENDED PRACTICE

SAE ARP4101/3

Issued 1992-02-28

Submitted for recognition as an American National Standard

CREW REST FACILITIES

1. SCOPE:

This document recommends criteria for the design and installation of flight crew rest facilities on commercial transport aircraft capable of ultra long-range operations with augmented/enlarged crew complement.

2. REFERENCES:

2.1 This annex should be used in conjunction with ARP4101 Core Document. The following documents may also be applicable:

SAE ARP4101/4	Flight Deck Environment
SAE ARP1323	Type Measurements of Aircraft Interior Sound Pressure Levels During Cruise
SAE AIR4245	Quantities for Description of the Acoustical Environment in the Interior of the Aircraft

2.2 Definitions:

CREW REST FACILITY: An area designed for the purpose of providing sleeping, stowage, and changing clothes for off-duty flight crew.

SLEEPING AREA: Any area designated for the purpose of providing an isolated space with a horizontal sleeping surface for the off-duty flight crew.

SLEEPING SURFACE: Any horizontal surface such as a bed, bunk, or sleeping seat that meets the criteria defined by this ARP.

FREE SPACE: An area designated for the use of the crew to change and stow clothing.

SAE Technical Standards Board Rules provide that: "This report is published by SAE to advance the state of technical and engineering sciences. The use of this report is entirely voluntary, and its applicability and suitability for any particular use, including any patent infringement arising therefrom, is the sole responsibility of the user."

SAE reviews each technical report at least every five years at which time it may be reaffirmed, revised, or cancelled. SAE invites your written comments and suggestions.

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SAE ARP4101/3

3. OPERATIONAL REQUIREMENTS:

3.1 Crew Rest Facility:

The facility should be located close to the flight deck, but physically isolated from active areas. It should contain sleeping and free-space areas.

3.1.1 The resting crew shall be able to control access to a nearby lavatory that incorporates provisions for assuring privacy when entering or leaving.

3.1.2 The entrance door shall have a device to prevent passengers from entering the rest area.

3.1.3 Adequate volume shall be provided for sleep, personal storage, and changing of clothes. The following volumes are recommended:

a. Individual sleeping volume: 1.0 m^3 (35 ft^3).

b. Free space adjacent to the sleeping surfaces for ingress/egress and changing of clothes: 1.85 m^3 (65 ft^3).

3.2 Sleeping Surface Criteria:

Minimum dimensions for each sleeping surface shall be 1.98 x 0.76 m (78 x 30 in).

3.2.1 Minimum spacing for an over and under sleeping surface arrangement should be 0.66 m (26 in). The space above the upper surface should not be less than 0.66 m (26 in). The interior aircraft contour should not impinge at an angle of more than 35 degrees.

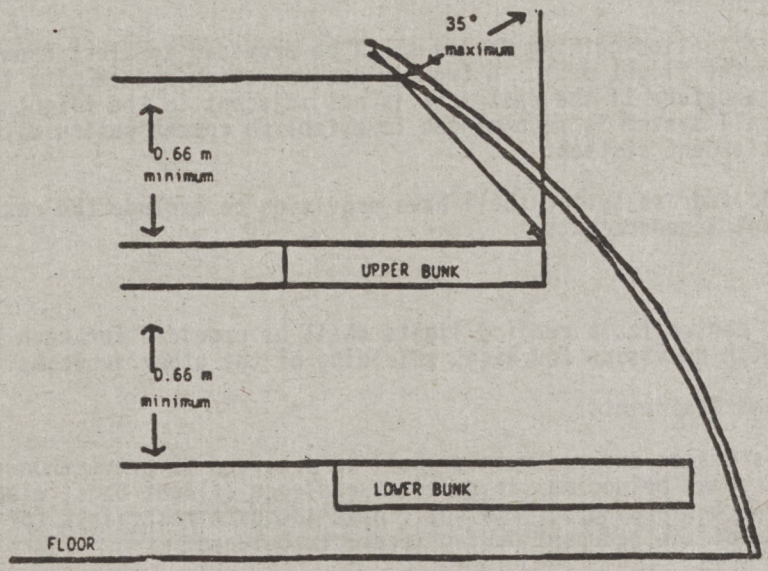

FIGURE 1 - Crew Rest Facility Cross Section

3.2.2 The sleeping surfaces should be designed so that they are as level as practicable during cruise.

3.2.3 If convertible seats are used for sleeping surfaces, they shall have a smooth, even surface when in the horizontal position.

3.2.4 Suitable means should be provided to assure the required privacy for each sleeping area such as curtains in an over-and-under arrangement or a divider/curtain in a side-by-side arrangement.

3.3 Isolation:

The crew rest area shall be located where noise, odors, and vibration can be kept to a minimum. The crew rest area should be located in close proximity to the flight deck. Noise level should be equal or lower than the best noise environments on the aircraft. The noise spectra should be broadband and free of tones. Maximum noise levels during cruise flight in the range of 70-75 db(A) are considered reasonable design objectives. A 70 db(A) maximum should be the design goal.

Special attention should be given to the design of doors, systems, public address systems, etc. in the immediate area to minimize intrusive noise.

3.4 Environmental:

Airflow and temperature control shall provide a uniformly well-ventilated atmosphere, free from draft, cold spots, and temperature gradient. The sleeping area should be designated a nonsmoking area. Installation of a humidifier may be considered.

3.5 Alerting Device:

An aural attention-getting device shall be provided to alert crew members to return to the flight deck. A two-way communication system with the flight deck is mandatory if the rest area is not adjacent to the flight deck. A one-way call system is recommended to establish communication with the main flight attendant station.

The public address system shall have provision to exclude the rest area from nonrelevant announcements.

3.6 Lighting:

Separate, controllable reading lights shall be provided for each sleeping surface with provision for light shielding of the other surfaces.

3.7 Stowage and Restraints:

Suitable stowages and restraints shall be provided to prevent unwanted motion of all personal belongings in severe turbulence (flight bags, clothing, and shoes). Each sleeping surface shall have adequate restraints for the protection of the occupant during severe turbulence.

3.8 Emergency Equipment:

Emergency oxygen equipment and appropriate visual signals such as "NO SMOKING" and "FASTEN SEAT BELTS" shall be provided. A smoke detector shall be provided. Additional items of emergency equipment will be required if not immediately available in close proximity to crew rest facility (smoke hood, or protective breathing equipment, BCF extinguisher, fire gloves).

3.9 Nonsleeping Accommodations:

Consideration should be given to providing seating for off-duty crew members for rest and relaxation with IFE audio and visual. If installed, independent controls shall be provided for each crew member. Location and size of visual displays shall not cause interference to other crew member(s).

PREPARED BY SAE COMMITTEE S-7,
FLIGHT DECK AND HANDLING QUALITIES STANDARDS FOR TRANSPORT AIRCRAFT

[FR Doc. 93–30258 Filed 12–9–93; 8:45 am]
BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: Windham County, VT

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project [NH 010–1(33)] in Windham County, VT.

FOR FURTHER INFORMATION CONTACT: Donald J. West, FHWA Division Administrator, Vermont, or Patrick M. Arno, Environmental Program Manager, P.O. Box 568, Montpelier VT 05601, tel.: (802) 828–4423, or Samuel Lewis, Project Manager, Vermont Agency of Transportation, tel.: (802) 828–3966.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the Vermont Agency of Transportation will prepare an environmental impact statement (EIS) to evaluate alternatives to provide a bypass or upgrading of Vermont Routes 9 and 100 at Wilmington in Windham County, Vermont. The proposed improvements are considered necessary to provide for the existing and projected traffic demand.

Alternatives under consideration include (1) taking no action; (2) improvements to the existing Routes 9 and 100, including Transportation Systems Management/Transportation Demand Management measures (TSM/TDM); (3) An east-west bypass located south of the center of Wilmington; (4) A north-south bypass located west of the center of Wilmington; (5) A north-south bypass located east of the center of Wilmington. Combinations of these alternatives, and other alternatives developed during the scoping process, will also be evaluated. Incorporated into and studied with the various build alternatives will be design variations of grade and alignment.

The EIS will evaluate, but not be limited to assessing the environmental impacts, including secondary and culumative impacts on the affected environment for the following impact categories: Socio-economic including residential, business, and employment; historical and archaeological; cultural resources; parklands; recreation; aesthetics; traffic; noise; surface water hydrology and quality; air quality; wetlands; wildlife habitat; fisheries; vegetation; geology; soils; and groundwater resources. The EIS will also evaluate impacts on the affected environment resulting from construction period traffic and induced economic growth associated with the project.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A scoping meeting will be held on Monday, January 24, 1994 at 7 p.m. at the Wilmington Town Hall. In 2 addition, a series of public meetings will be held during the preparation of the EIS, and a public hearing will be held after the draft EIS is published. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal Programs and activities apply to this program)

Issued on: November 29, 1993.

William K. Fung,

Engineering Coordinator, Montpelier, Vermont.

[FR Doc. 93–30272 Filed 12–9–93; 8:45 am]
BILLING CODE 4910–22–P

National Highway Traffic Safety Administration

[Docket No. 93–77; Notice 1]

Bugatti Automobili, S.p.A.; Receipt of Petition for Temporary Exemption From Standard No. 208

Bugatti Automobili, S.p.A., of Modena, Italy, has petitioned for a temporary exemption until November 1, 1995, from the automatic protection requirements of Federal Motor Vehicle Safety Standard No. 208, Occupant Crash Protection. The basis of the petition is that compliance would cause substantial economic hardship.

Notice of receipt of the petition is published in accordance with agency regulations on the subject (49 CFR part 555) and does not represent any judgment of the agency on the merits of the petition.

Petitioner's Hardship Arguments

Under 15 U.S.C. 1410(a)(1)(A), the Administrator may provide a temporary exemption upon a finding that "compliance would cause substantial economic hardship and that the manufacturer has, in good faith, attempted to comply * * *"

The following is a summary of Bugatti's petition. Bugatti was formed as an Italian corporation in 1987 for the purpose of manufacturing automobiles. It is 80.66% owned by Bugatti International Holding, S.A., a Luxembourg corporation, which between 1987 and 1994 will have invested in excess of $115,000,000 in facilities, personnel, research and development. Four years after its founding, in 1991, Bugatti presented a prototype vehicle to the public. The factory was completed in 1992, and production of its first model, the EB 110, began in April 1993. To date, "fewer than 50 cars have been produced." As the company only began realizing income with the commencement of sales earlier this year, its lifetime cumulative net losses now exceed $30,000,000.

In its early years, the company's focus was to establish itself and to commence sales in markets other than the United States. The company's permanent management team was not in place until 1991, and its permanent engineering team was finalized only in 1993. Initially, it "seriously considered not even coming to the United States at all" because of "product liability exposure and insurance, homologation costs, and the often volatile nature of the high performance/exotic car market in the United States." In the Spring of 1993, however, it made the decision to enter the U.S. market and intends to do so in mid-1994. Because of the requirement in the Intermodal Surface Transportation Act of 1991 mandating the phase-in of airbags beginning in September 1996, the company decided not to develop an automatic belt system but, instead, to provide an air bag system from the beginning as a means of complying with Standard No. 208.

Lacking the in-house engineering staff capable of developing an air bag system, and concurrently with its decision to enter the U.S. market, Bugatti began a search to locate an "engineering design and development firm to manage Bugatti's air bag project." Fourteen companies were approached, and in September 1993, the proposal by Lotus Engineering was accepted. The cost of the proposal is "in excess of $1.2

million (not including the cost of the vehicles to be crashed)." The company anticipates that it will be able to commence production of air bag equipped vehicles in April 1995, well before the end of the 2-year exemption it has requested.

Late in August 1993, Bugatti International Holding, which, as previously noted, owns 80.66% of the petitioner, signed a contract to purchase Group Lotus plc, including Lotus Engineering. Lotus is also a manufacturer of motor vehicles, whose production in 1992 was 688 units. According to the petitioner, Lotus "lost over $35 million in 1992 on revenues of approximately $92 million." The purchase of Lotus would be financed by capital investments into Bugatti International Holding earmarked for that specific purpose.

In the absence of an exemption, the company projects continuing net losses through 1994.

Arguments Why an Exemption Would be in the Public Interest and Consistent With Traffic Safety Objectives

In order to grant an exemption, the Administrator must also find that the exemption is in the public interest and consistent with the objectives of the National Traffic and Motor Vehicle Safety Act. In support of its petition, Bugatti has informed NHTSA that it "will make every effort possible to design its air bag system so that it can retrofit with air bags all vehicles sold under the exemption." It also argued that it does not expect to sell more than 100 cars under the exemption. Each car, equipped with a three-point belt system, would be labeled with a seat belt use reminder. Further, all vehicles will meet amended Standard No. 214 Side Door Strength in advance of the requirement to do so, as well as all other Federal motor vehicle safety standards.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the Docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh St. SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the Federal Register pursuant to the authority indicated below.

Comment closing date: January 10, 1994.

Authority: 15 U.S.C. 1410; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 6, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93–30145 Filed 12–9–93; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 93–72; Notice 2]

Determination That Nonconforming 1977 Bristol VRT Buses Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of determination by NHTSA that nonconforming 1977 Bristol VRT buses are eligible for importation.

SUMMARY: This notice announces the determination by NHTSA that 1977 Bristol VRT buses that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they have safety features that comply with, or are capable of being modified to comply with, all such standards.

DATES: The determination is effective as of December 10, 1993.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. § 1397(c)(3)(A)(i)(I), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards. Where there is no substantially similar U.S. certified motor vehicle, section 108(c)(3)(A)(i)(II) of the Act, 15 U.S.C. 1397(c)(3)(A)(i)(II), permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being modified to comply with, all applicable Federal motor vehicle safety standards based on destructive test data or such other evidence as NHTSA determines to be adequate.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the Federal Register.

Double Decker Bus Company of Denver, Colorado (Registered Importer R–93–015) petitioned NHTSA to determine whether 1977 Bristol VRT buses are eligible for importation into the United States. NHTSA published notice of the petition on September 30, 1993 (58 FR 51125) to afford an opportunity for public comment. As described in that notice, the petitioner claimed that the 1977 Bristol VRT bus has safety features that comply with Standard Nos. 102 Transmission Shift Lever Sequence * * * (based on schematic diagram indicating starter interlock protection and photograph showing shift lever positions), 103 Defrosting and Defogging Systems (based on statement and photograph indicating that system incorporates electrically heated elements and heated air blowers), 104 Windshield Wiping and Washing Systems (based on statement and photographs indicating that system is pneumatically driven and offers full coverage of windshield at two set speeds and intermittently), 107 Reflecting Surfaces (based on statement and photographs indicating that reflective glare is kept to a minimum in the driver's cab through the use of matt black paint on the windshield wipers, the rearview mirror frame, the dash, and the cab walls), 120 Tire Selection and Rims for Motor Vehicles other than Passenger Cars (based on statement and photographs showing certification markings on tires supplied by vehicle purchaser and rims selected by petitioner, and describing contents of tire information placard), 121 Air Brake Systems (based on statement, photographs, and specifications indicating that vehicle is equipped with an air compressor and associated

equipment that provides greater cut-in pressure than 85 p.s.i.), 124 Accelerator Control Systems (based on statement and photographs indicating that throttle return is provided by pneumatic valve, supplemented by a spring loaded foot pedal), 205 Glazing Materials (based on statement and photographs showing that glazing materials bear DOT certification markings), 207 Seating Systems (based on statement and photographs indicating that seats are securely mounted to the vehicle's floor), 217 Bus Window Retention and Release (based on statement describing window retention test results and calculations indicating size and distribution of emergency exits), and 302 Flammability of Interior Materials (based on statements and photographs indicating composition of upholstery, and test results).

The petitioner also contended that the 1977 Bristol VRT bus is capable of being modified to comply with the following standards, in the manner indicated:

Standard No. 101 Controls and Displays: (a) Installation of a potentiometer wired in series to provide variation in panel lighting; (b) installation of dash-mounted high beam telltale; (c) installation of U.S.-model license plate lamp.

Standard No. 106 Brake Hoses: Replacement of flexible brake hoses on front wheels with U.S.-model parts.

Standard No. 108 Lamps, Reflective Devices, and Associated Equipment: installation of the following equipment bearing DOT certification markings: (a) Two sealed beam headlamps, three amber identification lamp clusters, two amber clearance lamps, and two amber length and height markers at the front end of the vehicle; (b) three red identification lamp clusters, two red clearance lamps, two red length and height markers, two red side marker/reflectors, and one license plate illumination lamp at the rear end of the vehicle; (c) two amber reflectors at the midsection of the vehicle's right side; (d) two amber reflectors at the midsection of the vehicle's left side.

Standard No. 111 Rearview Mirrors: Replacement of the rearview mirrors with U.S.-model parts.

Standard No. 125 Warning Devices: Procurement of three U.S.-model reflective warning triangles to be carried on vehicle.

Standard No. 208 Occupant Crash Protection: Installation of a Type 2 seat belt at the driver's position.

Standard No. 209 Seat Belt Assemblies: Installation of a U.S.-model Type 2 seat belt at the driver's position.

Standard No. 210 Seat Belt Assembly Anchorages: Use of 16–20UNF–2A hardened bolts, flat washers, lock washers, and nuts as anchorage hardware.

No comments were received in response to the notice of the petition. Based on its review of the information submitted by the petitioner, NHTSA has determined to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VCP 4 is the vehicle eligibility number assigned to vehicles admissible under this determination.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby determines that 1977 Bristol VRT buses are eligible for importation into the United States because they have safety features that comply with, or are capable of being modified to comply with, all applicable Federal motor vehicle safety standards.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(II) and (C)(iii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 6, 1993.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 93–30147 Filed 12–9–93; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 93–66; Notice 2]

Determination that Nonconforming 1990 Mercedes-Benz 420SEL Passenger Cars are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of determination by NHTSA that nonconforming 1990 Mercedes-Benz 420SEL passenger cars are eligible for importation.

SUMMARY: This notice announces the determination by NHTSA that 1990 Mercedes-Benz 420SEL passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the U.S.-certified version of the 1990 Mercedes-Benz 420SEL), and they are capable of being readily modified to conform to the standards.

DATES: The determination is effective as of the date of its publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards must be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register.**

Champagne Imports, Inc. of Lansdale, Pennsylvania (Registered Importer R–90–009) petitioned NHTSA to determine whether 1990 Mercedes-Benz 420SEL (Model ID 126.035) passenger cares are eligible for importation into the United States. NHTSA published notice of the petition on September 14, 1993 (58 FR 48086) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has determined to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating

that the vehicle is eligible for entry. VSP 48 is the vehicle eligibility number assigned to vehicles admissible under this determination.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby determines that a 1990 Mercedes-Benz 420SEL (Model ID 126.035) not originally manufactured to comply with all applicable Federal motor vehicle safety standards is substantially similar to a 1990 Mercedes-Benz 420SEL originally manufactured for importation into and sale in the United States and certified under section 114 of the National Traffic and Motor Vehicle Safety Act, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Authority: 15 U.S.C. 1397(c)(3) (A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 6, 1993.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 93–30146 Filed 12–9–93; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 93–70; Notice 2]

Determination that Nonconforming 1988 Acura Legend Passenger Cars are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of determination by NHTSA that nonconforming 1988 Acura Legend passenger cars are eligible for importation.

SUMMARY: This notice announces the determination by NHTSA that 1988 Acura Legend passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the U.S.-certified version of the 1988 Acura Legend), and they are capable of being readily modified to conform to the standards.

DATES: The determination is effective as of the date of its publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT:

Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards must be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register.**

Champagne Imports, Inc. of Lansdale, Pennsylvania (Registered Importer R–90–009) petitioned NHTSA to determine whether 1988 Acura Legend passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on September 23, 1993 (58 FR 49542) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has determined to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP 51 is the vehicle eligibility number assigned to vehicles admissible under this determination.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby determines that a 1988 Acura Legend not originally manufactured to comply with all applicable Federal motor vehicle safety standards is substantially similar to a 1988 Acura Legend originally manufactured for importation into and sale in the United States and certified under section 114 of the National Traffic and Motor Vehicle Safety Act, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Authority: 15 U.S.C. 1397(c)(3) (A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 3, 1993.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 93–30144 Filed 12–9–93; 8:45 am]

BILLING CODE 4910–59–M

Research and Special Programs Administration

Pipeline Safety Advisory Bulletin ADB–93–05 Drug Testing Information

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Drug testing information for pipeline operators and contractors.

SUMMARY: The information provided herein is meant to assist pipeline operators and contractors in evaluating their anti-drug plans for compliance with 49 CFR parts 199 and 40.

Advisory

When anti-drug plans are reviewed or evaluated omissions or inadequacies should be remedied as needed, with particular attention to the following sections of the regulations and the "Failures" noted:

- § 199.7 Failure to clearly delineate between DOT anti-drug testing requirements and company mandated testing requirements that are contained in a single document.
- § 199.7 Failure to comply with part 40 requirements in anti-drug plan.
- § 199.11 Failure to identify procedures or provide record documentation on various types of drug testing.
- § 199.17 Failure to document or provide procedures for retention of samples and retesting provisions.
- § 199.19 Failure to provide necessary requirements for Employee Assistance Programs (EAP) and employee/supervisor training.

• § 199.21 Failure to adequately "monitor" contractor compliance with regard to parts 199 and 40.

• § 40.25 Failure to provide adequate collection procedures in the anti-drug plan.

• § 40.31 Failure to conduct and process blind performance testing samples.

• § 40.33 Failure to provide adequate medical review officer procedures in the anti-drug plan.

The following are two other areas for operators and contractors to review/evaluate to help make sure their anti-drug plans are fully in compliance:

• § 199.11(e) Return-to-duty Testing—This concerns the scheduling of unannounced testing for employees who have tested positive and are returned to duty to perform covered functions. Several operator anti-drug plans had defined specific unannounced testing schedules; however, further evaluation of the testing records failed to indicate that the testing schedules for these employees were carried out by the operator and the Medical Review Officer (MRO). § 199.11(e) stipulates that "An employee who returns to duty shall be subject to a reasonable program of follow-up testing without prior notice for not more than 60 months after his/her return to duty." The MRO guide published by DOT indicates the MRO may make a return-to-duty recommendation if satisfied that an individual meets the requirements. Following the recommendation, the MRO must also establish an unannounced drug testing program for the individual. Such testing may be in effect for up to 60 months. The frequency of unannounced testing should be determined by the MRO based on the assessment and recommendation of the counselor and the employer.

• § 40.31(d) Employer Blind Performance Test Procedures—This concerns the lack of documentation and submission of the appropriate number of blind samples as set forth in the Employer Blind Performance Test Procedures under § 40.31(d). A recent analysis indicated that a large portion of pipeline operators who have been audited had failed to either (1) provide documentation to substantiate compliance with the provisions, or (2) submit the required number of blind samples based on the total number of employee tests submitted to each National Institute of Drug Abuse (NIDA) laboratory. Many operators are purchasing and submitting "spiked" blind samples even though they are not mandated under the current regulations. Operators are required to submit "spiked" blind samples when their employee total is greater than 2,000 covered employees. Each operator is required to submit three blind performance test specimens for each 100 employee specimens it submits, up to a maximum of 100 blind performance test specimens submitted per quarter to each NIDA laboratory being utilized by the operator.

Background

Office of Pipeline Safety (OPS) Regional Offices and the various state pipeline safety program agencies have conducted numerous drug inspections of pipeline operators since drug testing was started in April/August 1990. A recent OPS review of enforcement actions from those inspections revealed some areas where probable violations are commonly found. These are listed and briefly described in the foregoing section ("Advisory") to help ensure operator compliance with parts 199 and 40.

George W. Tenley, Jr.,

Associate Administrator for Pipeline Safety.

[FR Doc. 93–30256 Filed 12–9–93; 8:45 am]

BILLING CODE 4910–60–M

UNITED STATES INFORMATION AGENCY

International Educational and Cultural Activities Discretionary Grant Program

AGENCY: United States Information Agency.

ACTION: Notice—request for proposals.

SUMMARY: The Office of Citizen Exchanges (E/P) announces a discretionary grants program for private, non-profit organizations in support of projects that link their international exchange interests with counterpart institutions/groups in ways supportive of the aims of the Bureau of Educational and Cultural Affairs. Interested applicants are urged to read the complete **Federal Register** announcement before addressing inquiries to the Office or submitting their proposals. After the deadline for submitting proposals, USIA officers may not discuss this competition in any way with applicants until final decisions are made.

ANNOUNCEMENT NUMBER: All communications concerning this announcement should refer to the Spring Discretionary Grant Program. The announcement number is E/P–94–14. Please refer to title and number in all correspondence or telephone calls to USIA.

DATES: Deadline for Proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Friday, February 25, 1994. Faxed documents will not be accepted, nor will documents postmarked on February 25, 1994, but received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by the above deadline. This action is effective from the publication date of this notice through February 25, 1994, for projects whose activities will begin between July 1, 1994, and December 31, 1994.

ADDRESSES: The original and *14* copies of the completed application, including required forms, should be submitted by the deadline to: U.S. Information Agency, REF: E/P Discretionary Grant Competition, Grants Management Division (E/XE), 301 4th Street, SW., room 336, Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested organizations/institutions must contact the Office of Citizen Exchanges, Bureau of Educational and Cultural Affairs, United States Information Agency, 301 4th Street, SW., Washington, DC 20547, (202) 619–5326, to request detailed application packets, which include award criteria, all necessary forms, and guidelines for preparing proposals, including specific budget preparation information.

SUPPLEMENTARY INFORMATION: The Office of Citizen Exchanges of the United States Information Agency announces a program to encourage, through limited awards to non-profit institutions, increased private sector commitment to and involvement in international exchanges. Awarding of any and all grants is contingent upon the availability of funds.

The Office of Citizen Exchanges works with U.S. private sector non-profit organizations on cooperative international group projects that introduce American and foreign participants to each others' social, economic, and political structures; and international interests. The Office supports international projects in the United States or overseas involving leaders or potential leaders in the following fields and professions: Urban planners, jurists, specialized journalists (specialists in economics, business, political analysis, international affairs), business professionals, environmental specialists, parliamentarians, educators, economic planning and other government officials.

Applicants should carefully note the following restrictions/recommendations

for proposals in specific geographical areas:

The Newly Independent States

USIA and other agencies of the U.S. government have numerous programs in the countries of the NIS (Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan). As such, the amount of funds for that part of the world in this competition will be extremely limited. Proposals which would normally be considered for other USIA grant competitions will not be accepted. E/P encourages organizations to seek clarification on these points before presenting a proposal.

Europe, Eastern Europe, and the Baltics (EU)

Projects are encouraged involving Western Europe. Due to the fact that the office has or is in the process of conducting specific competitions in Eastern Europe and the Baltics, we will not accept proposals for youth exchange programs or for programs in the following thematic areas: public administration, business management, independent media development, journalism training, and local government administration and municipal management.

East Asia and the Pacific (EA)

Priority consideration will be given to the following: (1) Projects for journalists (print or electronic). Priorities are projects for Korea, joint projects for Hong Kong and Singapore, or regional projects focused on Southeast Asia. The projects may consist of but are not limited to in-country workshops, site tours, seminars and discussions, and internships. Internships are to be practical work experiences rather than passive job shadowing. An internship should be at least three weeks, including orientation activities. (2) Projects concerned with the strengthening of democracy or environmental issues. Priority will be given to regional projects or single country projects that focus on Cambodia, Mongolia, Philippines, and Thailand.

American Republics (AR)

Priority will be given to projects in the following areas: good governance, anti-corruption, public administration, decentralization—state and local government.

Africa (AF)

Proposals on strengthening democracy are encouraged.

North Africa, Near East and South Asia (NEA)

Priority will be given to projects which promote democratization, economic reform, free markets, tolerance and pluralism, and conflict resolution.

The Office of Citizen Exchanges strongly encourages the coordination of activities with respected universities, professional associations, and major cultural institutions in the U.S. and abroad, but particularly in the U.S. Projects should be intellectual and cultural, not technical. Vocational training (an occupation other than one requiring a baccalaureate or higher academic degree; i.e., clerical work, auto maintenance, etc. and other occupations requiring less than two years of higher education) and technical training (special and practical knowledge of a mechanical or a scientific subject which enhances mechanical, narrowly scientific, or semi-skilled capabilities) are ineligible for support. In addition, scholarship programs are ineligible for support. Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character, should be balanced and representative of the diversity of American political, social and cultural life.

The Office does not support proposals limited to conferences or seminars (i.e., one to fourteen-day programs with plenary sessions, main speakers, panels, and a passive audience). It will support conferences only insofar as they are part of a larger project in duration and scope which is receiving USIA funding from this competition. USIA-supported projects may include internships; study tours; short-term, non-technical training; and extended, intensive workshops taking place in the United States or overseas.

The themes addressed in exchange programs must be of long-term importance rather than focused exclusively on current events or short-term issues. In every case, a substantial rationale must be presented as part of the proposal, one that clearly indicates the distinctive and important contribution of the overall project, including where applicable the expected yield of any associated conference.

No funding is available exclusively to send U.S. citizens to conferences or conference-type seminars overseas; neither is funding available for bringing foreign nationals to conferences or to routine professional association meetings in the United States.

Projects that duplicate what is routinely carried out by private sector and/or public sector operations will not be considered. USIS post consultation by applicants, *prior* to submission of proposals, is strongly recommended for all programs.

Additional Guidelines and Restrictions

Office of Citizen Exchanges grants are not given to support projects whose focus is limited to technical or vocational subjects, or for research projects, for publications funding, for student and/or teacher/faculty exchanges, for sports and/or sports related programs. Nor does this office provide scholarships or support for long-term (a semester or more) academic studies. Competitions sponsored by other Bureau offices are also announced in the **Federal Register.**

For projects that would begin after December 31, 1994, competition details will be announced in the **Federal Register** on or about June 1, 1994. Inquiries concerning technical requirements are welcome prior to submission of applications.

Selection of Participants

All grant proposals should clearly describe the type of persons who will participate in the program as well as the process by which participants will be selected. It is recommended that programs in support of U.S. internships include letters tentatively committing host institutions to support the internships.

In the selection of foreign participants, USIA and USIS posts retain the right to nominate all participants and to accept or deny participants recommended by grantee institutions. However, grantee institutions will often provide support, as requested by USIA, in the nomination of participants. The grantee institution will also provide the names of American participants and brief biographical data to the Office of Citizen Exchanges for information purposes. Priority will be given to foreign participants who have not previously travelled to the United States.

Funding

Althugh no set funding limit exists, proposals for less than $150,000 will receive preference. Organizations with less than four years of successful experience in managing international exchange programs are limited to $60,000.

Applicants are invited to provide both an all-inclusive budget as well as separate sub-budgets for each program component, phase, location, or activity in order to facilitate USIA decisions on funding. While an all-inclusive budget

must be provided with each proposal, separate component budgets are optional. Competition for USIA funding support is keen.

The selection of grantee institutions will depend on program substance, cross-cultural sensitivity, and ability to carry out the program successfully. Since USIA grant assistance constitutes only a portion of total project funding, proposals should list and provide evidence of other anticipated sources of financial and in-kind support. The Recipient must provide a minimum of 33 percent cost sharing of the total project cost. Cost sharing may be in the form of allowable direct of indirect costs. The Recipient must maintain written records to support all allowable costs which are claimed as being its contribution to cost participation, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, Attachment E—Cost Sharing and Matching and should be described in the proposal. In the event the Recipient does not provide a minimum of 33 percent cost sharing, the Agency's contribution will be reduced in proportion to the Recipient's contribution. Proposals with cost sharing of less than 33 percent of the total project cost will be considered ineligible.

The recipient's proposal shall include the cost of an audit that: (1) Complies with the requirements of OMB Circular No. A–133, Audits of Institutions of Higher Education and Other Nonprofit Institutions; (2) complies with the requirements of American Institute of Certified Public Accountants (AICPA) Statement of Position (SOP) No. 92–9; and (3) includes review by the recipient's independent auditor of a recipient-prepared supplemental schedule of indirect cost rate computation, if such a rate is being proposed.

The audit costs shall be identified separately for: (1) Preparation of basic financial statements and other accounting services; and (2) preparation of the supplemental reports and schedules required by OMB Circular No. A–133, AICPA SOP 92–9, and the review of the supplemental schedule of indirect cost rate computation.

The following project costs are eligible for consideration for funding:

1. International and domestic air fares; visas; transit costs; ground transportation costs.

2. Per Diem. For the U.S. program, organizations have the option of using a flat $140/day for program participants or the published U.S. Federal per diem rates for individual American cities. For activities outside the U.S., the published Federal per diem rates must be used. NOTE: U.S. escorting staff must use the published Federal per diem rates, not the flat rate.

3. Interpreters: If needed, interpreters for the U.S. program are provided by the U.S. State Department Language Services Division. Typically, a pair of simultaneous interpreters is provided for every four visitors who need interpretation. USIA grants do not pay for foreign interpreters to accompany delegations from their home country. Grant proposal budgets should contain a flat $140/day per diem for each Department of State interpreter, as well as home-program-home air transportation of $400 per interpreter plus any U.S. travel expenses during the program. Salary expenses are covered centrally and should not be part of an applicant's proposed budget.

4. Book and cultural allowance: Participants are entitled to and escorts are reimbursed a one-time cultural allowance of $150 per person, plus a participant book allowance of $50. U.S. staff do not get these benefits.

5. Consultants. May be used to provide specialized expertise or to make presentations. Daily honoraria generally do not exceed $250 per day. Subcontracting organizations may also be used, in which case the written agreement between the prospective grantee and subcontractor should be included in the proposal.

6. Room rental, which generally should not exceed $250 per day.

7. Materials development. Proposals may contain costs to purchase, develop, and translate materials for participants.

8. One working meal per project. Per capita costs may not exceed $5–8 for a lunch and $14–20 for a dinner; excluding room rental. The number of invited guests may not exceed participants by more than a factor of two to one.

9. A return travel allowance of $70 for each participant which is to be used for incidental expenditures incurred during international travel.

10. All USIA-funded delegates will be covered under the terms of a USIA-sponsored health insurance policy. The premium is paid by USIA directly to the insurance company.

11. Other costs necessary for the effective administration of the program, including salaries for grant organization employees, benefits, and other direct and indirect costs per detailed instructions in the application package. Note: the 20 percent limitation of "administrative costs" included in previous announcements does not apply to this RFP.

Application Requirements

Proposals must be structured as outlined in the application package. Confirmation letters from American and foreign co-sponsors noting their intention to participate in the program will enhance an institution's submission.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the appropriate geographic area office, and the budget and contract offices. Proposals may also be reviewed by the USIA's Office of General Counsel.

Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer. The award of any grant is subject to the availability of funds.

The U.S. Government reserves the right to reject any or all applications received. USIA will not pay for design and development costs associated with submitting a proposal. Applications are submitted at the risk of the applicant; should circumstances prevent award of a grant, all preparation and submission costs are at the applicant's expense. USIA will not award funds for activities conducted prior to the actual grant award.

Review Criteria

USIA will consider proposals based on their conformance with the objectives and considerations already stated in this RFP, as well as the following criteria:

1. *Quality of Program Idea:* Proposals should exhibit originality and substance. Their rationale should persuade the reader that the U.S. taxpayer's dollar is being well-spent for a clearly defined need.

2. *Institution Reputation/Ability:* Institutions should demonstrate their potential for program excellence and/or provide documentation of successful programs. If an organization is a previous USIA grant recipient, responsible fiscal management and full compliance with all reporting requirements for past USIA grants as determined by USIA's Office of

Contracts (M/KG) will be considered. Relevant program evaluation of previous projects may also be considered in this assessment.

3. *Project Personnel:* Personnel's professional and logistical expertise should be relevant to the proposed program. Resumes should be relevant to the specific proposal.

4. *Program Planning:* Detailed agenda and work plan should demonstrate substance and logistical capacity.

5. *Thematic Expertise:* Proposal should demonstrate the organization's expertise in the subject area.

6. *Cross-Cultural Sensitivity/Area Expertise:* Evidence of sensitivity to historical, linguistic, and other cross-cultural factors; relevant knowledge of geographic area.

7. *Ability to Achieve Program Objectives:* Objectives should be realistic and attainable. Proposal should clearly demonstrate how the grantee institution will meet the program objectives.

8. *Multiplier Effect:* Proposed programs should strengthen long-term mutual understanding, to include maximum sharing of information and establishment of long-term institutional ties.

9. *Cost-Effectiveness:* Overhead and administrative costs should be kept as low as possible. All other items proposed for USIA funding should be necessary and appropriate to achieve the program's objectives.

10. *Cost-Sharing:* Proposals should maximize cost-sharing through other private sector support as well as direct funding contributions and/or in-kind support from the prospective grantee institution.

11. *Follow-on Activities:* Proposals should provide a plan for continued exchange activity (without USIA support) which ensures that USIA-funded programs are not one-time events.

12. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success. In this respect the applicant should include a draft survey questionnaire or other technique and a methodology to use to link outcomes to original project objectives. Applicants will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

Additional Guidance

The Office of Citizen Exchanges offers the following additional guidance to prospective applicants:

1. The Office of Citizen Exchanges encourages project proposals involving more than one country. Pertinent rationale which links countries in multi-country projects should be included in the submission. Single-country projects that are clearly defined and possess the potential for creating and strengthening continuing linkages between foreign and U.S. institutions are also welcome.

2. Proposals for bilateral programs are subject to review and comment by the USIS post in the relevant country, and pre-selected participants will also be subject to USIS post review.

3. Bilateral programs should clearly identify the counterpart organization and provide evidence of the organization's participation.

4. The Office of Citizen Exchanges will consider proposals for activities which take place exclusively in other countries when USIS posts are consulted in the design of the proposed program and in the choice of the most suitable venues for such programs.

Notice

The terms and conditions published in the RFP are binding and may not be modified by any USIA representative. Explanatory information provided by USIA that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the U.S. Government. Awards cannot be made until funds have been fully appropriated by the U.S. Congress and allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about June 1, 1994. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: December 7, 1993.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 93–30247 Filed 12–9–93; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 236
Friday, December 10, 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: 10 a.m., Wednesday, December 15, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda:

Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Cost of Federal Reserve notes in 1994.

Discussion Agenda:

2. Proposed amendments to Regulation A to implement Section 142 of the Federal Deposit Insurance Corporation Improvement Act of 1991 regarding limits on discount window advances. (Proposed earlier for public comment; Docket No. R–0808)

3. Proposed 1994 Federal Reserve Bank budgets.

4. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: December 8, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–30362 Filed 12–8–93; 12:35 am]

BILLING CODE 6210–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 12 noon, Wednesday, December 15, 1993, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments.

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: December 8, 1993

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–30363 Filed 12–8–93; 12:35 pm]

BILLING CODE 6210–01–P

federal register

Friday
December 10, 1993

Part II

Environmental Protection Agency

40 CFR Part 82

Protection of Stratospheric Ozone; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–4810–7]

Protection of Stratospheric Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final rulemaking.

SUMMARY: With this action, EPA is amending the schedule for the phaseout of ozone-depleting chemicals that is specified in section 604 of the Clean Air Act, as amended in 1990 (the Act). This action responds to several petitions and comments submitted by environmental organizations and industry groups seeking an accelerated phaseout of ozone-depleting substances, as authorized under section 606 of the Act. Today's action also establishes regulations implementing the amendments, adjustments and decisions adopted by the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer at their November 1992 meeting. In this action, EPA adds methyl bromide to the list of class I substances, in response to new scientific information, a petition submitted under section 602 of the Act, and the decision of the Protocol Parties to classify methyl bromide as a controlled substance with an ozone-depleting potential (ODP) of 0.7. EPA is also adding hydrobromofluorocarbons (HBFCs) to the list of class I substances. In addition, in accordance with trade provisions in Article 4 of the Montreal Protocol, EPA is banning specified trade between the U.S. and foreign states not party to, nor complying with the Protocol. Finally, this regulation modifies several recordkeeping and reporting requirements to streamline the reporting burden, and facilitate compliance.

EFFECTIVE DATE: The effective date of this rule is January 1, 1994, except that appendix A of subpart A of 40 CFR part 82, sections E. & G. (the addition of Methyl bromide and the HBFCs to the list of class I substances) is effective December 10, 1993 and § 82.4(d) is effective January 10, 1994. See the **SUPPLEMENTARY INFORMATION** section of this document for reasons why a 30 day notice is neither necessary nor appropriate.

ADDRESSES: Materials relevant to the rulemaking are contained in Air Docket No. A–92–13 at: U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The public docket room is located in room M–1500, Waterside Mall (Ground Floor). Materials may be inspected from 8:30 a.m. until noon and from 1:30 p.m. until 3:30 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials. Information on this rulemaking can also be obtained from the Stratospheric Protection Information Hotline at 1–800–296–1996.

FOR FURTHER INFORMATION CONTACT: The Stratospheric Protection Information Hotline at 1–800–296–1996 or Peter Voigt, U.S. EPA, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation, 6205J, 401 M Street, SW., Washington, DC 20460, (202) 233–9185.

SUPPLEMENTARY INFORMATION:

Additional Information on the Effective Date

The effective date of this rule is January 1, 1994. Methyl bromide and the HBFCs are added to the list of class I substances as of the date of publication. Section 602(d) of the Clean Air Act specifies that extension of the phaseout schedule for a newly listed substance may not extend the date for termination of production for any class I substance to a date more than 7 years after January 1 of the year after the year in which the substance is added to the list of class I substances. EPA believes Congress intended the seven years to be tolled from no later than the date of publication of the listing, and that 30 days notice before the listing becomes effective for this purpose is neither necessary nor appropriate.

EPA believes that the time between publication and January 1, 1994 is sufficient for industry to comply with the annual production and consumption limits beginning January 1, 1994. The Agency believes this is a reasonable amount of notice for this kind of regulation. Compliance with the annual production period controls necessitates less advance notice than regulations for which compliance is measured over a shorter period. Also, since title VI controls of production and consumption are implemented on an annual basis, implementation on January 1, 1994 is necessary to avoid delaying the implementation of control until January 1, 1995. EPA believes that the environmental benefits associated with the 1994 controls warrant this action. Moreover, the Agency notes that 1994 restrictions on class I substances (other than methyl bromide) are necessary for compliance with the Montreal Protocol. Other regulatory provisions in this rule are tied to the production and consumption phaseout. (The class II restrictions do not take effect until much later). Finally, EPA has taken steps to provide notice of this final action to the regulated industry upon signature of the rule and prior to publication. For these reasons, EPA believes that the amount of time provided before the rule becomes effective is reasonable.

EPA notes that the general requirement under 5 U.S.C. 553(d) (the Administrative Procedure Act), that publication or service of a substantive rule be made not less than 30 days before its effective date does not apply here. Section 307(d)(1) of the Clean Air Act specifically applies to regulations under title V of the Clean Air Act and provides that "[t]he provisions of sections 553 through 557 and section 706 of title VI shall not, except as expressly provided in this subsection, apply to actions to which this subsection applies." Nowhere does subsection 307(d) expressly provide that section 553(d) of title V applies. Even if section 553(d) were to apply, EPA believes that, for the reasons described above, there is good cause under section 553(d)(3) of title V to provide less than 30 days notice following publication.

The contents of today's preamble are listed in the following outline:

I. Background
II. Accelerated Phaseout of Class I Controlled Substances
  A. Summary of Proposal
  B. Comments on Proposal
  C. Final Schedule
  D. Legal Authority
III. Accelerated Phaseout of Class II Controlled Substances
  A. Statutory Authority
  B. Copenhagen Amendments to the Montreal Protocol
  C. CAA Petitions
  1. NRDC/FOE/EDF
  2. CFC Alliance Petition
  3. IEER Petition
  4. EPA's Proposed Action
  5. Response to IEER Petition
  6. Today's Final Action
IV. Addition of Methyl Bromide to List of Class I Substances and Phaseout Schedule
  A. Summary
  B. Legal Authority
  1. CAA Legal Authority
  2. Public Comments on Legal Issues
C. Background
  1. Initial Identification of Risks of Methyl Bromide
  2. Petition to List
  3. Montreal Protocol Actions
  4. Domestic Regulatory Action
  D. Today's Final Action
  1. Summary
  2. Decision to List
  3. Scientific Issues Related to Methyl Bromide
  a. Faster Formation of HOBr
  b. HBr Branching
  c. Other Sinks for Methyl Bromide

d. Natural and Man-made Emissions
e. Summary of ODP Discussion
4. Uses and Substitutes for Methyl Bromide
a. The NAPIAP Study
b. Comments
c. Soil Fumigation
d. Commodity Fumigation
e. Structural Fumigation
5. Analysis of Costs and Benefits
6. Group Assignment and Baseline Year
7. Interim Reductions and Phaseout Schedule
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V. Additional of Hydrobromofluorocarbons (HBFCs) to the List of Class I Substances and to the Phaseout Schedule
VI. Trade Restrictions
A. Description of Proposed and Final Requirements
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VII. Changes in Definition of Production
A. Definition of Production
1. Transformation
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b. Recordkeeping and Reporting Changes Relative to Transformation
2. Destruction
a. Elimination of Coincidental Unavoidable Byproducts Provision
b. Destruction—Background
c. Definition of Destruction/Change in Definition of Production
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VIII. Other Issues
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B. Tracking Essential Uses
C. Addition of HCFCs to the EPCRA Section 313 List
D. Environmental Impact Statement
E. Recycled and Used Controlled Substances
F. Transhipments
G. Publication of the Regulatory Text
IX. Changes from the Proposal and Current Program
X. Impact of Final Action
XI. Additional Information
A. Executive Order 12866
B. Regulatory Flexibility Act
C. Paperwork Reduction Act

I. Background

A broad scientific consensus has emerged that continuing depletion of the stratospheric ozone layer will lead to increased penetration of harmful UV-B radiation to the earth's surface, resulting in potential damage to human health and the environment. The risks from ozone depletion include increases in skin cancer and cataracts, suppression of the human immune response system, damage to crops and aquatic organisms, increased formation of ground-level smog, and accelerated weathering of outdoor plastics.

Several national and international assessments have been conducted over the past years and provide useful summaries of the information supporting the linkage between emissions of certain chlorine and bromine-containing substances, depletion of the earth's protective ozone layer, and damage to human health and the environment. See for example, "Assessing the Risks of Stratospheric Ozone" EPA (1985); "Scientific Assessment of Ozone Depletion" WMO/UNEP (1989 and 1991); "Health and Environmental Effects of Ozone Depletion" UNEP (1989 and 1991), and "Methyl Bromide: Its Atmospheric Science, Technology, and Economics."

While considerable uncertainties remain in fully understanding the complex reactions that occur in the atmosphere that cause depletion of the ozone layer, scientific research has made remarkable progress since 1974 in understanding the atmospheric processes that lead to depletion of the ozone layer both in the polar regions and globally. In response to the growing body of evidence that links chlorofluorocarbons (CFCs) and other chlorinated and brominated compounds to ozone depletion, the international community reached agreement in 1987 on a landmark treaty.

The Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol) initially called for a fifty percent reduction in CFC production and consumption by the year 1998 and a freeze in halon production and consumption. When originally negotiated in 1987, it had been signed by 23 nations and the European Community.

In the six years since its initiation, the Protocol has evolved rapidly in response to new scientific and technology developments. As new evidence was developed suggesting that the risk of ozone depletion from CFCs and other compounds was greater than had previously been thought, nations of the world responded by strengthening the Protocol first in 1990 and again in 1992.

As the treaty currently stands, the number of Parties has grown to over 125 nations. Instead of a reduction of 50% in CFCs by 1998, the Protocol now calls for a phaseout in 1996 with the possible exception for critical uses. In the case of halons, the Protocol calls for their phaseout by the end of 1993. In addition to the originally controlled compounds, additional compounds were added first in 1990 when methyl chloroform and carbon tetrachloride were added by the Parties and scheduled for phaseout. The phaseout date for both of these compounds is now 1996. In addition, at their meeting in 1992, the Parties adopted an amendment calling for controls and the eventual phaseout of HCFCs and a freeze on production and consumption of methyl bromide (except quarantine and preshipment uses).

The accelerated phaseout and expanded scope of compounds covered by the Montreal Protocol were in response to a series of reports from the scientific community stating that ozone depletion in Antarctica appears to be directly the result of increased concentrations of man-made chlorinated and brominated compounds, that the potential exists for more significant depletion in the Arctic region, and that mid-latitude concentrations of ozone have also been reduced over the past decade or so. A more detailed description of recent scientific evidence is included in EPA's March notice of proposed rulemaking (NPRM) (March 18, 1993, 58 FR 15014).

The most recent scientific reports on ozone depletion were completed after the publication of the March proposal and show that ozone values over mid-latitudes have been substantially lower in the winter of 1992 and spring of 1993 than had been previously recorded for these times of the year. On April 23, 1993, a paper by Gleason et al. was published in Science and included data from the Total Ozone Mapping Spectrometer (TOMS) instrument on-board the Nimbus 7 satellite which showed that global ozone levels were 2–3% lower than any previous year for these months and 4% lower than normal. Ozone levels for the northern mid-latitudes were about 10% lower than historical averages for this time of the year for this region and appear to have continued at these low levels through the early part of the summer. While the precise cause of these low ozone values cannot yet be determined, it may well prove that they are the result of the indirect effects from the eruption of Mt. Pinatubo in June 1991. These effects could result from the injection of aerosol particles into the stratosphere which provide surfaces for accelerated depletion of ozone by chlorine or bromine species or which increase

stratospheric temperatures and, therefore, lead to faster reactions involving chlorinated and brominated species resulting in more depletion. Investigations continue into better defining the exact role of the sulfur particles from the volcano in the recent increase in depletion.

II. Accelerated Phaseout of Class I Controlled Substances

A. Summary of Proposal

EPA considered several schedules in the March 18 proposal to accelerate the phaseout of class I controlled substances. The Agency had received prior to the proposal two petitions to accelerate the phaseout, as well as several industry comments on those petitions, submitted under section 606 of the Clean Air Act Amendments. These two petitions laid out recommended schedules to complete the phaseout sooner than the year 2000, the date required under section 604 of the Clean Air Act. The Alliance for a Responsible CFC Policy (the Alliance) petitioned the Agency to complete the phaseout by 1996, allowing for a limited volume of CFC production until 2000 to service existing refrigerator and air-conditioning systems. The Alliance suggested a cut of 50 percent of 1986 production levels for 1993, with subsequent cuts to 40 percent and 25 percent in 1994 and 1995, respectively. The Natural Resources Defense Council, the Friends of the Earth, and the Environmental Defense Fund (NRDC/FOE/EDF) requested more drastic reductions in 1992, 1993 and 1994 of 40 percent, 25 percent and 15 percent, respectively, with a complete phaseout by the end of 1994 for CFCs. The environmental groups also requested that the production of halons and carbon tetrachloride stop as of 1992, with a 50 percent of baseline cut for methyl chloroform in 1992, and its complete phaseout by 1993.

In November of 1992, the Parties to the Montreal Protocol met and agreed to a set of "adjustments", or changes to the phaseout schedules for the existing controlled substances. The Parties agreed to phase out all CFCs by 1996, allowing for production and consumption of 25 percent of baseline level in 1994 and 1995. The Parties also agreed to cut carbon tetrachloride to 15 percent of baseline levels in 1995, and to complete its phaseout by 1996. Methyl chloroform was to be eliminated by 1996 also, with a cut to 50 percent of baseline in 1994 and 1995. The Parties agreed to phase out the production of halons by the end of 1993. In order to facilitate these expedited reduction schedules, the Parties also established criteria for exempting essential uses from the production phaseout.

In response to the two petitions and the agreement reached by the Parties in Copenhagen, the Agency proposed in the March 18 NPRM to cut CFC production and consumption to 25 percent of baseline in 1994, with a subsequent cut to 15 percent by 1995. The Agency proposed to phase out CFCs by 1996, with no production extending beyond that date to service existing equipment, as had been requested by the Alliance, but discussed criteria established under the Montreal Protocol for granting essential use exemptions. Since the publication of the March 18 NPRM, the Agency came to believe that the 15 percent level it had proposed for 1995 would be too stringent for the sectors that rely on CFCs. Although CFC use has dropped significantly over the last few years, a reduction to 15 percent of baseline levels for CFCs in 1995 could hurt certain sectors, where alternatives are not yet feasible (e.g. metered dose inhalers, possibly household refrigerators), or where CFCs are required for servicing equipment with long useful lifetimes such as the automobile air conditioner and comfort cooling sectors. Since retrofits for existing equipment are still being evaluated and tested for several large use sectors, the Agency believed that the proposed level of 15 percent in 1995 could deleteriously affect consumers and these user groups. EPA asked for comments at the public hearing on changing the 1995 limit to 25 percent and published a separate notice requesting comment on this issue (58 FR 25793, April 28, 1993).

After its proposed regulation was initially signed by the EPA Administrator, DuPont announced its intent to phase out its production of CFCs by the end of 1994. Since DuPont has historically been allocated about half of all allowances (based on the 1986 base year), its decision to stop production a year ahead of the schedule proposed by EPA has potentially significant consequences. EPA also requested comments at the public hearing on the possible implications of DuPont's action on sectors requiring CFCs.

With respect to class I substances other than CFCs, the Agency proposed to phase out production of carbon tetrachloride and methyl chloroform by January 1, 1996 also, with interim reductions of 50 percent and 15 percent of baseline for carbon tetrachloride in 1994 and 1995, and 50 percent and 30 percent of baseline cuts for methyl chloroform for those years.

B. Comments on Proposal

EPA received eight comments supporting the proposed accelerated schedule with the modified 1995 limit of 25% baseline production and consumption. These commenters, primarily CFC and methyl chloroform users, believed the proposed schedule feasible, and that many were on the way to completing the phaseout. However, several of these companies warned that any further acceleration would jeopardize phaseout plans and would possibly force the use of unsafe substitutes. Many agreed that the United States must adhere to the international phaseout dates set in the Montreal Protocol, but that it should not unilaterally expedite the phaseout.

Two environmental groups objected to the proposed scheduling, both arguing that a faster accelerated schedule was possible and that CFC production should cease as of January 1, 1995. One commenter cited DuPont's and the European Community's announcements to stop production as of that date as proof that such a phaseout is possible. Both commenters believe that methyl chloroform could be phased out in 1995, and that carbon tetrachloride could be phased out by January 1, 1994.

In addition, EPA received several comments on the issue of Dupont's decision not to produce CFCs in 1995. Several major industry groups stated that full production of the 25 percent allowance is critical to the smooth transition out of CFCs and that without this quantity available in 1995 severe shortages are likely to exist and significant economic hardship to consumers and equipment owners is likely to result. One commenter opposed any Agency action on this issue, suggesting that DuPont's decision is better for the environment. DuPont in its comments reiterated that it believes that demand will drop off to such a degree in 1995 that its allocation will not be necessary, but that if the Agency believes that production of the full 25 percent of baseline levels for 1995 is necessary it would not object if the Agency were to take action to facilitate this production.

Based on its current view of the marketplace, EPA expects that almost all major uses of CFCs in new equipment will have shifted by January 1, 1995, with the possible exception of metered dose inhalers and some lines of home refrigerators. Thus, the major source of demand for CFCs in 1995 will

be to service existing refrigeration and air-conditioning equipment.

To reduce future demand by those sectors, EPA has initiated a number of activities to implement its mandatory recycling and recovery and disposal rules, to minimize leaks from equipment, and to encourage retrofits and replacements of existing air-conditioning and refrigeration systems. However, in the absence of a drop-in refrigerant to service existing CFC–12 vehicles, the Agency has determined that the Protocol allowable production and consumption of 25% in 1995 is necessary to minimize economic disruption and to facilitate a smoother transition out of CFCs on the accelerated schedule adopted today. Furthermore, as explained below in the section on essential uses, EPA denied several such applications related to servicing air conditioning and refrigeration equipment on the assumption that steps will be taken to ensure that full production of CFCs is permitted in 1994 and 1995 to provide additional supplies beyond 1995 in order to minimize the costs of the phaseout to vehicle and equipment owners. As a result, the rulemaking contains the legally permissible 25 percent allowable production level in 1995 and the Agency intends to follow-up on the issue to ensure that this level of production is made available.

C. Final Schedule

In today's rule, the Agency has finalized the following schedule for the accelerated phaseout of the class I, groups I through V controlled substances. This is the schedule originally proposed in the March 18 notice, with the exception of the 25 percent level for CFCs in 1995, which is the level on which the Agency requested comment in its April 28, 1993, Federal Register Notice.

FINAL SCHEDULE FOR CLASS I CONTROLLED SUBSTANCES, GROUPS I, II, III, IV AND V

[Percent Allowable of Baseline Production and Consumption]

Year (beginning Jan. 1)	CFCs (Group I and III)	Halons (Group II)	Carbon tetrachloride (Group IV)	Methyl chloroform (Group V)
1994 .	25	0	50	50
1995 .	25	0	15	30
1996 .	0	0	0	0

The Agency has decided on this accelerated schedule for several reasons. First, with one exception discussed below, this is the schedule that the Parties agreed to in Copenhagen in November of 1992. The United States agreed to this schedule at that time, and believe that the schedule appropriately reflects the fastest technological and economically feasible reduction schedule. The United States, as well as the majority of the Parties, believes that a 1996 phaseout is possible, but that an earlier phaseout would exceed technological capabilities and result in excessive economic costs. Without international commitment to a phaseout date, this unilateral action by the United States to phase out earlier would pose significant costs, but would yield few benefits. It is true that despite the agreed-to 1996 phaseout, the European Community and several other countries party to the Protocol have decided to phase out of the class I chemicals one year earlier (i.e., January 1, 1995). However, EPA understands that the European Community and other countries pursuing an earlier phaseout are not as dependent on CFCs for refrigeration and air-conditioning as the United States. Consequently, the financial cost of such a phaseout by the European Community is not nearly as great as it would be for the United States (see cost implications below). EPA believes that the schedule set in Copenhagen is sufficient to allow an orderly transition out of class I chemicals without significantly further degrading the ozone layer. However, EPA believes that a faster schedule for the reduction in 1995 of methyl chloroform in the United States is both technically and economically feasible and environmentally desirable. As a result, EPA proposed and is today finalizing the proposed reduction to 30 percent of baseline levels for this compound compared to the 50 percent reduction required by the Montreal Protocol for 1995.

Recent analysis indicates that substantial costs to U.S. industry and consumers would occur if the U.S. were to accelerate further the phaseout for CFCs to 1995, rather than 1996. Much of this cost would fall on consumers and equipment owners in the refrigeration and air-conditioning sector. Unlike other sectors, such as solvents and foam blowing, the switch to alternatives has been complicated by the search for refrigerants that could be used to service existing equipment and would not diminish the efficiency and capacity of existing equipment, and by the search for refrigerant-compatible lubricating oils. Although alternatives have been developed for new equipment, the issue of servicing existing equipment with useful lifetimes well exceeding the 1995 phaseout is substantially more complicated. In many cases, owners of existing equipment must make modifications to accommodate possible alternatives. This problem is complicated by the large amount of air-conditioning and refrigeration equipment in existence. EPA and industry estimates that over 100 million mobile air-conditioners currently require CFC–12 as a refrigerant. Some percentage of these will need to be retrofitted if CFC–12 is not available past the phaseout. Although refrigerant recycling and recovery at disposal sites will supply this sector some CFC–12 past 1995, the required volume of refrigerant will exceed the supply of recycled CFC–12, even with 1995 production at 25% of baseline. (EPA could not allow production at greater than 25% level, however, because the Protocol establishes the level of 25% for 1995.)

For stationary refrigeration sectors, EPA estimates that more than 67,000 CFC chillers, as well as 7,000 industrial process chillers are currently operating in the United States. This equipment has a useful life of 30 years or longer. Although owners are beginning to retrofit and replace these chillers, the pace of these activities has been slow, and it is not clear that there will be sufficient recycled refrigerant past 1995. Retrofits are available, but costs vary significantly by sector and even within sectors by type of equipment.

The Agency had proposed in its March 18 NPRM to limit production and consumption to only 15 percent of baseline in 1995. However, EPA requested comment on whether the less stringent reduction to 25 percent baseline would be more appropriate (58 FR 25793). In today's final action, EPA is allowing the 25 percent baseline production to be consistent with the provisions of the Copenhagen agreement by the Parties, and because consumers and equipment owners would face significant retrofit costs if production levels were further reduced in 1995. The need for full allowable production under the Montreal Protocol in 1995 is even more critical given the limited essential uses likely to be granted under the Montreal Protocol for production after that date.

EPA is limiting carbon tetrachloride to 50 percent of baseline in 1994, with a subsequent cut to 15 percent of baseline in 1995, and no production in 1996, consistent with the Protocol. Environmentalists, in their comments on the proposal, requested a carbon tetrachloride phaseout date of January 1, 1994. In response, the Agency believes

that significant steps have been taken to eliminate the use of this chemical for both health and environmental reasons. However, the remaining uses are often unique applications for which the industry continues to search for substitutes. EPA believes that this remaining 15 percent of production and consumption for carbon tetrachloride is necessary to assist the industry in the transition to a complete phaseout.

EPA intends to limit methyl chloroform to 50 percent of baseline allowances in 1994, and to further reduce consumption and production of this chemical to 30 percent of baseline in 1995, with a complete phaseout in 1996 also. Environmentalists commented that EPA should phase out this chemical in 1995. In response, EPA believes that the 1996 phaseout is more appropriate. This user sector has been subjected to more immediate and drastic reductions than the other major controlled substances over the last three years, and to phase out one year earlier than required under the Montreal Protocol would place an undue burden on a sector that involves many small users and has faced continually changing reduction schedules. Despite this, EPA is only allowing production and consumption equal to 30 percent of baseline, due to the advancements made by the user sector rather than the 50 percent allowed under the Protocol. EPA believes that this level is a feasible one.

EPA performed a comprehensive review of all costs and benefits of the phaseout of class I chemicals associated with the various proposed schedules. However, the quantification of benefits is difficult. In the past, scientists have generally underpredicted the extent of ozone depletion caused by these chemicals. For this reason, scientists and policymakers have relied more on chlorine loading calculations as a surrogate for risk of ozone depletion than predictions of ozone depletion. Policymakers have set a target concentration of 2 parts per billion (ppb) of chlorine as the level that existed prior to the Antarctic ozone hole. All policies are directed toward reducing the peak chlorine levels and minimizing the length of time that concentrations exceed 2 ppb.

EPA examined the impact on chlorine levels under the schedules proposed by the environmental groups and by industry as well as their suggested schedules submitted in their comments on the proposal. According to this analysis, all three schedules would return chlorine concentrations to below 2 ppb at the same time over the next 100 years. As for "peak" concentrations, the environmental groups' schedule limited peak concentrations to little over 4.0 ppb by the turn of the century, with the concentrations under the schedules announced here also peaking at this time, but at approximately 4.1 ppb. The chlorine loadings for the industry schedule rose to about 4.2 ppb, but peaked at a later date than either the final rule schedule or the environmentalists' schedule. Under all schedules, chlorine concentrations would decrease from the peak level several years after the 1995 phaseout and again following the HCFC ban. Although chlorine concentrations under the environmentalists' schedules do peak at the lowest level of the chlorine concentrations of the three schedules, EPA believes that the total volume of additional chlorine loading from the final rule schedule over the earlier phaseout of environmentalists' schedule is not significant, especially when considered over the next century.

EPA calculated the benefits for the various accelerated schedules and compared those benefits with their corresponding costs through a more traditional cost-benefit analysis. In past analysis of the benefits of reducing production and consumption of ozone-depleting chemicals, the Agency has monetized many of the health and environmental benefits (skin cancer and cataract cases avoided, crop loss, materials damage, etc.) due to the protection of the ozone layer. Social costs reflect the expenses incurred from the transition to alternatives.

The table below presents the costs and benefits for the phaseout schedules analyzed for the rulemaking.

INCREMENTAL COSTS AND BENEFITS OF THE ACCELERATED CLASS I PHASEOUTS OVER THE 2000 PHASEOUT (METHYL BROMIDE NOT INCLUDED; COSTS AND BENEFITS DISCOUNTED AT A 2% DISCOUNT RATE)

[In Billions of Dollars—Cumulative Costs: 1989–2075 in 1985 Dollars]

Scenario	Benefits	Costs	Net benefits
Final rule	48–189	7	41–182
NRDC	56–221	29	27–192
Alliance [1]	39–152	1	38–151

[1] The "Alliance" is the Alliance for a Responsible CFC Policy, an industry lobby group representing producers and users of these chemicals.

The table does not reflect the large number of uncertainties associated with such an analysis. The numerical value of benefits varies depending on the assumed value of life, while costs reflect social costs and not necessarily the actual costs faced by companies. However, despite these uncertainties, the analysis does provide a range of net benefits for the phaseout of class I chemicals, and indicates that these net incremental benefits range from approximately $37 to $192 billion. The NRDC phaseout achieves the highest net benefit under one set of benefit assumptions, but the lower end of its net benefit range is below the range for both the Alliance and the final rule schedule. This is because of the relatively high cost of the NRDC phaseout. (The Agency analyzed the reduction schedule suggested in NRDC's response to the proposed rule. EPA's analysis indicates that, although costs are lowered, the net incremental benefits are approximately the same as those of the schedule proposed in their petition.) Both the final rule schedule and the Alliance schedule have similar net benefits, but the upper range of the benefits of the final rule schedule exceeds the benefits range for the Alliance schedule. For these reasons, the Agency believes it appropriate to set the reduction schedules as specified in this final rule.

In performing this analysis, the Agency examined the necessary reductions to meet the production and consumption targets of this rule. For CFCs, the final rule schedule requires a 75% reduction in the 1986 baseline in both 1994 and 1995. For the air-conditioning and refrigeration sectors, EPA assumes that there is full implementation of recovery of refrigerant at servicing and disposal. Also, the Agency assumes that all new equipment in these sectors contain such alternatives as HFC–134a, HCFC–123, ternary blends and ammonia, and that high-efficiency purges have been installed on half of the existing chillers by the end of 1995.

For the foam sector in 1994 and 1995, the Agency estimates that more than 23% of the rigid polyurethane boardstock market will have shifted to product substitutes, and that the remaining share of that sector will shift to HCFC substitutes. One commenter did note that the appliance manufacturers would not completely shift to HCFC replacements by the end of 1993, as had been noted in the proposal. All other foams have shifted to water blown foams or product substitutes. With the exception of appliance foam, EPA expects all uses of CFCs in this sector will have been eliminated by the end of 1993.

EPA expects that both the solvent and sterilant sectors will continue to use engineering and housekeeping controls to limit use of CFCs and shift to alternatives or process changes. Aqueous, semi-aqueous cleaning, and "no clean" technologies continue to penetrate the new equipment market, while existing equipment adopts drop-in replacements. Many of the aerosol products have already moved to alternative propellants and delivery systems. EPA expects that all uses of CFCs in these sectors will be eliminated by the end of 1995.

By the beginning of 1996 all CFC use sectors, except for certain essential uses, will have made the transition to alternative chemicals and products. However, as noted earlier, existing air-conditioning and refrigeration equipment will require utilizing some combination of existing CFC inventories, maximum recycling and recovery at disposal, retrofits, actions to minimize leaks, and replacement of older, less energy efficient equipment.

The final rule schedule calls for a 50% reduction in 1989 baseline use of methyl chloroform in 1994, with an additional 20 percent reduction in 1995. The Agency believes that this sector may accomplish these reductions in 1994 through implementation of engineering and housekeeping controls in all solvent equipment, and by industry beginning to use aqueous cleaning in cold cleaning and conveyorized vapor degreasers. The adhesives sector will continue implementation of water-based adhesives, and begin to use hot melts and other solvent based adhesives, while the coatings and inks sector will continue to use powder coatings, and expand use of water based coatings.

The 1995 target of 30% of baseline may be achieved by implementation of additional alternative solvents in new and existing cold cleaning, conveyorized and open-top equipment. In addition, methyl chloroform aerosol producers and users will begin to adopt petroleum distillates and water based applications. The industry will completely phase out of methyl chloroform by the full penetration of these technologies by 1996 except possibly for limited essential uses.

The schedule in today's final rule requires the complete phaseout of halons by January 1, 1994. Indeed the Agency understands that all manufacturers in the United States will soon have stopped production of these compounds. The fire prevention community has successfully completed the transition by adopting alternatives as well as minimizing the emission of halons during training, and increased recycling through the recent establishment of halon banks. EPA commends the halon user sector for their efforts in the elimination of their use of new, virgin halon. Efforts to establish halon banks are now underway and should provide adequate supplies of recycled halons for all critical uses well into the future. The cooperation of this industry and its resolve to minimize emissions represents a model for the remaining sectors to achieve the same results.

In the March proposal, EPA also discussed in detail the essential use provision provided for in a decision taken by the Parties to the Montreal Protocol at their 1992 meeting in Copenhagen. The proposal discussed the criteria established by the Parties for granting essential uses, noted that any uses granted under domestic rules must be consistent with actions taken by the Parties, and stated that EPA would be requesting essential use nominations through separate **Federal Register** announcements.

EPA has published two such announcements in the past six months. The initial announcements dealt with essential use nominations for halons for 1994 (58 FR 6788). Following that, EPA issued a second announcement (58 FR 29410) covering CFCs, carbon tetrachloride, methyl chloroform, and HBFCs for production in 1996.

In the case of halons, EPA received a number of applications for essential uses, but was able to cooperate with each of the applicants to address their short-term needs, and therefore the United States did not nominate any essential uses for halons for 1994. Nominations were, however, submitted by about a dozen other nations. As a first step in the review process, these nominations were examined by the halon committee of the Technology and Economic Assessment Panel under the Montreal Protocol. This panel concluded that either adequate substitutes existed for each of these applications or adequate supplies existed in the halon bank, and therefore recommended against any additional production in 1994 for halon essential uses. This recommendation was unanimously supported at the Open-Ended Working Group which met in August 1993 in Geneva. The final decision will be taken this year by the Parties at their meeting in Thailand.

In the case of the other compounds, EPA received approximately twenty. In evaluating whether additional production would be needed in 1996, one important consideration is whether adequate supplies will exist, either from recycled or recovered sources or from production allowed in 1995 or before, that might be available for use in 1996 and beyond. To the extent that supplies are available from any of these sources, then the criteria of "no available supply" necessary for granting an essential use would not be satisfied.

The United States Government reviewed these applications and forwarded to the Protocol's Secretariat nominations for production after 1995 for use in: Metered dose inhalers and other specified medical applications; a bonding agent for the Space Shuttle; aerosol wasp killers; a limited use in a specified bonding application and specified polymer application; and a general nomination for laboratory uses under specified limitations. The United States did not forward applications submitted in the area of servicing automobile air conditioners and building chillers. These were rejected because the government believed that by taking all economically feasible steps including shifting to alternatives, initiating retrofits, reducing emissions and utilizing 1994 and 1995 productions of CFCs, adequate supplies would exist for servicing for 1996 and for the same period beyond. However, in putting forward its nominations, the United States discussed its continued concern about the potential costs if a significant number of expensive retrofits are required. It reserved the right in future years to submit nomination in areas other than those submitted for 1996. The decision by the Parties on essential uses for CFCs, MCF, carbon tetrachloride and HBFCs for 1996 will be taken at the 1994 Meeting of the Parties. EPA will periodically inform the public through **Federal Register** notices of the schedule for future essential use nominations and the outcome and decisions by the Parties of past nominations.

D. Legal Authority

Section 606 of the Act provides the Administrator with authority to accelerate the phaseout of ozone-depleting substances. That section authorizes the Administrator to promulgate regulations that "establish a schedule for phasing out the production and consumption of class I and class II substances (or use of class II substances) that is more stringent than set forth in section 604 or 605, or both, if:

(1) Based on an assessment of credible current scientific information (including any assessment under the Montreal Protocol) regarding harmful effects on the stratospheric ozone layer associated with a class I or class II substance, the Administrator determines that more

stringent schedule may be necessary to protect human health and the environment against such effects,

(2) Based on the availability of substitutes for listed substances, the Administrator determines that such a more stringent schedule is practicable, taking into account technological achievable, safety, and other relevant factors, or

(3) The Montreal Protocol is modified to include a schedule to control or reduce production, consumption, or use of any substance more rapidly than the applicable schedule under this title. In making any determination under paragraphs (1) and (2), the Administrator shall consider the status of the period remaining under the applicable schedule under this title."

As explained above, section 606(a) of the Act sets forth the criteria on which EPA is to base a decision to accelerate the phaseout schedule for ozone-depleting substances. The accelerated schedules established today are justified under both sections 606(a)(1) (necessary to protect human and the environment) and 606(a)(2) (technologically feasible).

Recent scientific evidence, including the latest of the Montreal Protocol assessments, provide ample "credible" evidence of the need for further reductions. As discussed above, the latest scientific evidence provided by NASA, NOAA, and the UNEP assessment demonstrates that ozone depletion is occurring at a far more rapid rate than was thought to be the case at the time of the enactment of the 1990 Clean Air Act Amendments. This evidence clearly warrants an acceleration of the phaseout schedule. With respect to section 606(a)(2), the substantial reductions in production of class I substances highlight the progress being made in shifting to alternatives. Furthermore, the latest UNEP Technology Assessment provides adequate documentation of the technological availability of accelerating the phaseout of these chemicals.

Section 606(a)(3) also provides authority for implementing the adjustments to the Protocol agreed to at the Fourth Meeting of the Parties, i.e., the acceleration of the phaseouts of CFCs, halons, carbon tetrachloride, and methyl chloroform. Unlike amendments, adjustments do not need to be ratified by a specified number of Parties before they enter into force. The adjustments entered into force on September 22, 1993, prior to the promulgation of this phaseout rule. Thus, EPA believes that section 606(a)(3) provides additional authority for accelerating the phaseout of class I substances at this time.

With respect to amendments approved by the Parties to the Protocol that accelerate the phaseout of substances listed under the CAA, such as HCFCs, section 606(a)(3) provides additional authority for the acceleration of their phaseout schedules once the amendments have been ratified by the necessary 20 Parties; all that remains is the passage of time before the amendments enter into force.

EPA also notes that section 614(b) of the CAA provides that in the case of a conflict between title VI of the CAA and the Protocol, the more stringent provision shall govern. Thus, the Act requires the Agency to establish phaseout schedules at least as stringent as the accelerated ones agreed to by the Parties. The phaseout schedules that the Agency is establishing today are at least as stringent as those required by the adjustments to the Protocol. The final phaseout dates that are required for all Class I substances are the same as those in the new adjustments. The interim reductions required for CFCs in 1994 and 1995, for methyl chloroform in 1994, and for carbon tetrachloride in 1995 are also identical to those contained in the adjustments. The other required interim reductions are more stringent than those contained in the adjustments. These are being established under the authority granted in section 606(a) (1) and (2), as explained in the NPRM (58 FR 15021–22).

EPA believes that an acceleration of the phaseout can be justified under either paragraph (1) or paragraph (2) of section 606(a), but that even if EPA determines that an accelerated schedule is warranted based solely on an assessment of credible scientific information under paragraph (1), it can take into account the availability of substitutes in determining the specific accelerated schedule that it promulgates.

EPA believes that this view is reasonable and supported by both the language and the legislative history of the 1990 Clean Air Act Amendments. The last sentence of section 606(a) provides that in making any determination under paragraphs (1) and (2), the Administrator shall consider the status of the period remaining under the applicable schedule under this title. Implicit in the sentence is the notion that EPA will consider both environmental need and technological achievability in making "any" determination to accelerate the phaseout schedule. On its face, the sentence provides that even when making a decision regarding acceleration pursuant to paragraph (1), EPA is to "consider the status of the period remaining under the applicable schedule." This connotes that EPA is to consider the practicality of an accelerated schedule, including the availability of substitutes.

Even apart from the language at the end of section 606(a), which was added during the House-Senate Conference on the 1990 Clean Air Act Amendments, EPA believes it has the authority to take into account the technological achievability of a specific schedule in accelerating a phaseout schedule on the basis of scientific findings. Congress itself recognized the linkage between the need to phase out the production and consumption of ozone-depleting chemicals to protect the environment and human health and the availability of substitutes for those chemicals. Even though Congress understood that any delay in phasing out ozone-depleting substances would delay a return to normal ozone levels, Congress did not require an immediate phaseout. Instead, Congress established a schedule phasing out the chemicals over a period of several years to allow time for substitutes to be developed and for affected industries to adjust.

The Senate Environment and Public Works Committee noted that the "importance of accelerating the phaseout schedule is reflected in the estimate, presented by expert witnesses, that a three to five year delay in the phaseout deadline translates into an additional 20 to 30 years of elevated chlorine levels in the atmosphere. An additional 20 years of elevated chlorine levels presents an unacceptable risk that must be avoided if it is at all possible to do so." (S. Comm. Rep. No. 101–228 at 394). Furthermore, with respect to a provision concerning the phaseout of HCFCs, the Committee Report stated that it must be recognized "that the goal of eliminating the potent, long-lived CFCs as rapidly as possible is, to some extent, dependent on the near-term availability of HCFCs as intermediate substitutes * * *." (Id. at 395) Thus, the Senate clearly recognized that the availability of substitutes had to be taken into account in determining how quickly CFCs could be phased out, notwithstanding the environmental benefits that would result from an even more rapid phaseout.

Moreover, in explaining the provision of the Senate Committee Report concerning the acceleration of the phaseout schedule, which provided for EPA to accelerate the schedule if any of three criteria substantially identical to those in the Amendments were met, the Committee stated that "[i]n keeping with the national policy of eliminating

the production before the year 2000, to the maximum extent practicable, the Administrator is directed to determine no less often than every 18 months whether any of three conditions requiring acceleration of the schedule has been satisfied." (S. Comm. Rep. No. 101–228, Dec. 20, 1989, at 393., emphasis added). The Committee's use of the terms, "as rapidly as possible" and "to the maximum extent practicable," demonstrates its recognition of the role of considerations other than strictly scientific ones in the application of section 606(a).

In taking the availability of substitutes into account, the Administrator may consider the future potential for substitutes, as well as the cost of the substitutes, and adopt a phaseout schedule that will be technology-forcing by inducing the development of substitutes on a more accelerated pace than would otherwise have been the case. This is confirmed by the same Senate Committee Report that indicated a role for technological factors in the establishment of a phaseout schedule. The report notes that a unilateral acceleration of the phaseout schedule by the Administrator may be necessary "to accelerate technological developments." (*Id.* at 393).

EPA believes that the accelerated phaseout schedules for class I substances are fully justified and within its authority.

III. Accelerated Phaseout of Class II Controlled Substances

In today's final rule, EPA accelerates the phaseout of production and consumption of HCFC–22, HCFC–141b and HCFC–142b, three relatively high ODP-weighted HCFCs. The Agency believes that this approach will meet the requirements of the Copenhagen Amendments, as well as comply with the requirements of the Clean Air Act. Specifically, the Agency will ban the production and consumption of HCFC–141b as of January 1, 2003. The production and consumption of HCFC–142b and HCFC–22 will be frozen at baseline levels in 2010, with a complete phaseout of these chemicals by January 1, 2020. Production and consumption of these chemicals between 2010 and 2020 can only be for the purpose of servicing equipment manufactured prior to January 1, 2010. Production and consumption of the remaining HCFCs will be frozen at baseline levels beginning January 1, 2015, with all uses of virgin production of these materials banned except for use as a feedstock or as a refrigerant in appliances manufactured prior to January 1, 2020. The final category of HCFCs would be phased out by January 1, 2030.

The Agency has not established a baseline year or corresponding levels for these HCFCs at this time. EPA will continue to monitor the production and consumption of these chemicals to determine the appropriate baseline to ensure that the requirements of the Copenhagen Amendments and the Clean Air Act are met. Although a baseline level may be required in order to establish the appropriate freeze levels in 2010 and 2015 as required under section 605(d) of the Clean Air Act, the Agency believes that action so far in advance of these dates is neither necessary nor desirable.

A. Statutory Authority

Today's final rule accelerates the phaseout of production and consumption of specified HCFCs. The revised schedule for phasing out these compounds modifies the schedule contained in section 605 of the CAA, which states: "(a) That effective January 1, 2015, it shall be unlawful for any person to introduce into interstate commerce or use any class II substance unless such substance—(1) has been used, recovered, or recycled; (2) is used and entirely consumed (except for trace quantities) in the production of other chemicals; or (3) is used as a refrigerant in appliances prior to January 1, 2020, and (b) that effective January 1, 2015, it shall be unlawful for any person to produce any class II substance in an annual quantity greater than the quantity of such substance produced by such person during the baseline year. Effective January 1, 2030, it shall be unlawful for any person to produce any class II substance."

The authority to accelerate the phaseout of HCFCs is contained in section 606 of the CAA, which has been discussed above in the context of the accelerated phaseout of class I substances. As part of the petitions submitted to the Agency under section 606 of the CAA, both NRDC/FOE/EDF and the CFC Alliance proposed modified dates for the phaseout of certain HCFCs. In addition, the Agency received a third petition dealing with class II substances submitted by the Institute for Energy and Environmental Research (IEER). The Agency responded to the first two sections in the March 18 proposal while the Agency's response to the IEER petition is discussed in detail below.

B. Copenhagen Amendments to the Montreal Protocol

At the Fourth Meeting of Montreal Protocol in Copenhagen in November 1992, the Parties agreed to amend the Protocol to include a control regime restricting the consumption of HCFCs. The measures adopted by the Parties place an overall cap on consumption of these compounds based on their ozone-depleted weights, and gradually reduce the permissible amount allowed under this cap. The regime also calls for a phaseout of consumption in 2030. The consumption cap for each of the developed countries is equal to the sum of 3.1 percent of the country's 1989 ODP-weighted consumption of CFCs in Group 1 of Annex A and the ODP-weighted level of HCFCs also consumed in that year. The HCFC restrictions are to begin in 1996, assuming that the Copenhagen Amendments have entered into force by that date. The amendments further call for a 35% reduction under the cap in 2004, followed by a 65% reduction in 2010, a 90% reduction in 2015, a 99.5% reduction in 2020, and a total phaseout in 2030.

Under a separate **Federal Register** notice (58 FR 40048), EPA has requested the 1989 HCFC and CFC data it needs to establish the exact level of the cap that would be applicable to the United States under the Protocol amendments. Once EPA has calculated the United States' baseline, the Agency shall publish in the **Federal Register** the consumption baseline for the purposes of the Montreal Protocol.

C. CAA Petitions

1. NRDC/FOE/EDF

The NRDC/FOE/EDF petition requested, among other things, that the Agency accelerate the phaseout of certain HCFCs, with the earliest phaseout dates proposed for those compounds with the highest ODP. Specifically, the petitioners requested that the production and consumption of HCFC–22, HCFC–141b, and HCFC–142b be prohibited from use in new equipment by January 1, 2000. The environmentalist would allow these compounds to be available for an additional 5 years, until January 1, 2005, to service existing equipment.

2. CFC Alliance Petition

The CFC Alliance Petition proposed an acceleration of the same compounds identified in the NRDC/FOE/EDF petition, but requested different phaseout dates. It suggested a January 1, 2010 ban on the production and use of HCFC–22, HCFC–141b, and HCFC–142b in new equipment, with a total phaseout of these compounds in 2020. The petition submitted by the CFC Alliance was generally supported in comments provided by the Association of Home

Appliance Manufacturers and the Air Conditioning and Refrigeration Institute.

3. IEER Petition

IEER also submitted a petition dated April 23, 1992 that relates to the issue of controls on class II substances. IEER requested that EPA: (1) Reclassify HCFC–22, HCFC–141b, HCFC–142b as class I substances; (2) recalculate the ozone depletion potential of any partially halogenated substance with an atmospheric lifetime of six months or more based on its peak contribution to atmospheric chlorine relative to CFC–11 following an instantaneous release of each; and (3) survey all chlorine-containing substances with an atmospheric lifetime greater than one month and list as a class II substance any such compound that contributes greater than three parts per trillion to atmospheric chlorine.

The IEER petition argues that the use of "steady state" ODPs are an inappropriate basis for dealing with the risks associated with various compounds. The calculation of an ODP is based on its contribution to ozone depletion compared to that of CFC–11 over a period of roughly 200 years, which is based on the length of time that CFC–11 would contribute to ozone depletion. This is referred to as the "steady state" ODP. Since the HCFCs have a considerably shorter atmospheric lifetime, their contribution to the risks of ozone depletion occurs over a period of a few years to several decades, a period far shorter than that of CFC–11. The IEER petition argues that using the "steady state" period of roughly 200 years for analyzing the impact of the HCFCs is inappropriate and masks their near-term impact. IEER contends that, most importantly, since the risks of ozone depletion are greatest over the next decade or so when atmospheric chlorine and bromine levels are likely to peak and then begin to decline, EPA should alter its method of calculating ODPs to that proposed by the petitioner and list compounds as class I or II substances based on this modified approach.

4. EPA's Proposed Action

In its proposal, EPA addressed both the Copenhagen Amendments and the issues raised in the NRDC/FOE/EDF and CFC Alliance petitions. The proposal incorporated several key concepts contained in these petitions, including distinguishing among HCFCs based on their ODP and phasing out use in new equipment prior to use for servicing existing equipment. The proposal did not explicitly follow the cap approach adopted internationally under the Copenhagen Amendments, but instead contained specific timetables for the phaseouts of each compound that EPA expects will result in full compliance with the phased reductions called for by the Protocol Amendment.

The proposal set forth the following schedule for HCFC reductions: by January 1, 2003, all production and consumption of HCFC–141b would be eliminated; by January 1, 2010, production and consumption of HCFC–22 and HCFC–142b would be frozen at baseline levels and virgin material could only be used only as a feedstock or as a refrigerant in appliances manufactured prior to January 1, 2010; by January 1, 2015, baseline production and consumption of all other HCFCs would be frozen and all uses of virgin production of these materials would be banned except for use as a feedstock or as a refrigerant in appliances manufactured prior to January 1, 2020; by January 1, 2020, production and consumption of HCFC–22 and HCFC–142b would be prohibited; and by January 1, 2030, production and consumption of all other HCFC substances would be banned.

In this proposal, the Agency discussed at length the basis for accelerating the phaseout of HCFCs to respond to increased risks of ozone depletion. It also described its rationale for rejecting the earlier phaseout dates requested in the NRDC/FOE/EDF petition. EPA's rationale focused primarily on the fact that alternatives to many of the HCFCs have not yet been developed to the point that the Agency could determine that commercialization would be feasible on a faster timetable. The Agency views HCFCs as important interim substitutes that will allow for the earliest possible phaseout of CFCs and other Class I substances. However, the Agency believes that the use of HCFCs should be limited to only those applications where other environmentally acceptable alternatives do not exist. EPA has proposed limitations under its section 612 rulemaking (Significant New Alternatives Policy Program) to implement this approach. 58 FR 28094 (May 12, 1993).

By distinguishing between HCFCs based on their relative contributions to ozone depletion, the Agency has also sought to minimize risks associated with the use of HCFCs. In particular, the early phaseout date for HCFC–141b was proposed because its ODP is substantially greater than any other of the HCFCs. Similarly, in allowing until 2030 for the phaseout of HCFC–123 and other HCFCs with very low ODPs, the Agency's proposed action reflected the fact that these compounds will contribute substantially less to the risks of ozone depletion.

The Agency's proposal also explained in detail the rationale behind implementing a regulatory scheme that differed in approach from that adopted by the Protocol. The Agency explained that the cap approach adopted in the Protocol could create unworkable administrative problems in allocating allowances and that its proposed regime built on activities (e.g., HCFC production and use plans) already well underway and would be less disruptive and provide greater certainty for industries moving aggressively out of class I substances.

Most importantly, the proposal explained the basis for the Agency's belief that its regulatory scheme would ensure compliance with the United States' obligations under the Montreal Protocol. The Agency presented detailed, sector-by-sector, analysis of likely uses of HCFCs and determined that based on conservative assumptions, total use within the United States under its proposal would not exceed the limits established in the Protocol.

5. Response to IEER Petition

While EPA's March 18, 1993 proposal on class II substances addresses many of the issues raised in the IEER petition, the Agency did not explicitly respond to the petition in the context of that proposal. In doing so here, the Agency believes it is important to address directly the issues raised by IEER concerning the listing of several HCFCs as class I substances and the method of calculating ODPs.

As discussed above, the IEER petition requested that the Agency shift its methodology in calculating ODPs from the "steady state" calculations that have traditionally been used by EPA under the Clean Air Act and under the Montreal Protocol to a calculation based on the ODP at the time of a compound's peak contribution to atmospheric chlorine or bromine. The rationale behind this proposal is that an ODP calculated in this manner better represents the risks of ozone depletion associated with compounds that have relatively short atmospheric lifetimes and that this approach is particularly appropriate given that atmospheric chlorine levels, and therefore health and environmental risks, are likely to peak around the turn of the century. The table below contains ODP calculations for different periods of time that have recently been published in the scientific literature. It demonstrates the general point made in the IEER petition that ODPs for all of the HCFCs are

substantially higher over the short- than over the longterm.

SEMI-EMPIRICAL POLAR OZONE DEPLETION POTENTIALS

	Time horizon (yrs.)			
	10	20	100	500
HCFC–22	0.17	0.14	0.07	0.05
HCFC–141b	0.45	0.33	0.13	0.11
HCFC–123	0.19	0.08	0.03	0.02
HCFC–142b	0.16	0.14	0.08	0.07

Source: Solomon and Albritton (1992).

The Agency believes that the need to consider the short-term impacts of HCFCs on ozone depletion is important in its decisions to set various control measures for controlled substances required for phaseout. The decision to accelerate the phaseout of Class II substances and to require a faster phaseout of those HCFCs with a higher ODP reflects the Agency's response to this concern. Indeed, EPA's modeling analysis accounts for short term effects. Thus, this consideration supports the Agency's decision to phase out HCFC–141b before any other HCFC.

While recognizing the importance of short-term impacts on ozone depletion in its regulatory decisions, the Agency has decided not to modify the manner in which it calculates ODPs for the purposes of regulating compounds under the CAA. The Agency believes it has adequate authority to consider a compound's short-term impact in shaping its regulatory policy without such a change. For example, in calculating the risks associated with different phaseout schedules and interim reduction targets, the Agency's analytical tools (e.g., modeling of chlorine and ozone depletion) take into consideration both the near-term and longer-term impacts associated with each compound. Indeed publication of an atmospheric lifetime and halogen loading potential reveals these impacts, when considered together with the steady state ODP. The Agency has authority under section 602 to add substances to the class I and II lists based on their overall harm to the ozone layer and under section 606 to accelerate the phaseout of class II substances in the light of these impacts.

The Agency believes that changing the calculation methodology for ODPs as IEER suggests would conflict with the Agency's goals in protecting against ozone depletion which reach beyond simply reducing the near-term risks. The Agency and the Montreal Protocol also have as an important goal restoring ozone to the levels existing before the onset of the Antarctic ozone hole. To achieve this goal, it is necessary to also reduce the use of the compounds with longer atmospheric lifetimes and very high ODPs, including the CFCs and carbon tetrachloride. To the extent that the availability of HCFCs allows for the accelerated phaseout of CFCs, their use contributes to this important objective. (For several important uses of CFCs, HCFCs are currently the only available alternatives.) Changing the method for calculating ODPs could limit the Agency's flexibility to allow continued use of certain HCFCs as transitional substitutes for the CFCs.

Furthermore, the Agency has decided not to modify its method for calculating ODPs because of two potentially important inconsistencies that such a change would create. First, the 0.2 threshold in section 602 for listing a class I substance was specified by Congress on the basis of a steady state ODP. Since this level is fixed in the CAA, shifting to short-term ODPs for determining whether a compound should be listed would produce unintended results. While the Agency always has the flexibility to add substances to the class I list based on significant contribution to ozone depletion, considering all relevant information, the Agency believes the 0.2 mandatory listing threshold was established with a steady-state ODP concept in mind. Congress itself assigned steady state ODPs in section 602, Table 1. While the Agency is authorized to adjust the Table 1 ODPs. The numbers Congress assigned indicates that the 0.2 threshold was intended to represent a steady state ODP. Furthermore, Congress explicitly called on the Agency to use steady state ODPs as the basis for evaluating impacts instead of using chlorine loading potentials, even though the concept of chlorine loading was recognized at the time the legislation was adopted and EPA is required to publish a compound's chlorine loading potential under section 602(e).

Congress' understanding that ODPs are calculated as a "steady state" is clearly reflected in the legislative history, as is Congress's intent that chlorine and bromine loading potentials be published to allow analysis of "future peaks and rates of increase or decline." See Senate Committee Report, Report No. 101–228, 101st Cong., 1st Sess., at 389 (December 20, 1989) (hereinafter "Senate Report") ("ODPs * * * reflect the relative chronic ozone destruction * * * of a substance after nearly constant emissions for a century. ODPs * * * do not clearly reflect the contribution of different halocarbons to the amount of chlorine in the atmosphere over the next decade and beyond.").

The second reason the Agency has elected not to modify the way it calculates ODPs is that section 602(e) of the CAA requires that the ODPs used by the Agency be consistent with the Montreal Protocol. The Agency, therefore, believes the steady state approach must be used to assign ODPs under the CAA in order to be consistent with the steady state approach used under the Montreal Protocol's Copenhagen Amendments, at least when those Amendments to the Protocol enter into force (likely sometime in 1994). Even before the Amendments enter into force, the Agency believes it would be inappropriate for EPA to adopt one set of values now only to have to change them within the next several months when the Copenhagen Amendments entered into force for the United States.

Short-term ODPs were discussed as part of the Scientific Assessment report to the Montreal Protocol Parties and therefore were before the Parties as an option to be adopted. However, neither the Scientific Assessment Panel nor the Parties themselves recommended or even considered any proposal to shift the calculation of ODPs from a steady-state to a short-term basis. Despite being explicitly included in the Scientific Assessment report the Parties rejected a shift to short-term ODPs primarily because they view as the objective of the Protocol both the near-term reduction of risks and the longer-term return of the atmosphere to pre-Antarctic ozone hole conditions. A shift to short-term ODPs might compromise the longer-term objective.

EPA believes, for the reasons discussed above, that to adopt an approach to ODPs that the Scientific Assessment Panel and the Parties rejected would be "inconsistent" with the Montreal Protocol and therefore in these circumstances in conflict with section 602(e).

While EPA has rejected IEER's request for modifying the way it defines and calculates ODPs for assignment under the CAA, the Agency notes that if it had done so, very little would change in its regulatory program. Of the three compounds that IEER requested be shifted to class I status (HCFC–22, –141b, –142b), only HCFC–141b would appear to exceed 0.2 based on the 10–20 year lifetimes calculated in the scientific literature and based on the calculations made by IEER using its "peak" approach. Thus, if the Agency were to proceed today to propose listing

HCFC–141b and allowed the full seven years extension time permitted under section 602(d) based on what is attainable, it would require a phaseout in 2002, only one year earlier than today's final action provides. The other compounds (HCFC–22 and –142b) have short-term ODPs below 0.2 based on the calculation contained in the scientific literature and therefore would not have to be added to the class I list based on the assigned ODP alone.

EPA also does not believe that the addition of these HCFCs to the class I list can be justified independently on the basis that they "contribute significantly" to ozone depletion. EPA believes that the use of these HCFC compounds will allow for the accelerated phaseout of CFCs in several important sectors and therefore facilitates rather than increases reduction in both short-term and to a greater extent long-term risks of depletion.

The final request in the IEER petition involves a review of other partially halogenated substances to determine if they contribute to ozone depletion and if they should be listed as class II substances. While EPA has not conducted an exhaustive review of all other halogenated compounds, it believes that the limited data available for such high-volume chlorinated compounds as perchloroethylene and methylene chloride support the view that these compounds have very short atmospheric lifetimes (e.g., much shorter lifetime than any of the HCFCs) and therefore do not contribute in any significant way to ozone depletion.

6. Today's Final Action

HCFC restrictions and the approach included in today's final rule have not changed from those proposed by the Agency in March. EPA received comments from several groups on different aspects of its proposal. In general, these comments supported the general approach taken by the Agency in implementing the Montreal Protocol's restrictions on HCFCs. These comments supported the Agency's proposal to phase out compounds based on their relative ODPs with the compounds with higher ODPs phased out earlier than those with lower ODPs. Comments also generally supported the decision to phase out consumption in new equipment prior to that for servicing existing equipment. Comments strongly opposed using an allowance allocation or auction to more directly implement the cap approach adopted in the Protocol.

Several commenters, however, argued for earlier phaseout dates for several of the HCFCs. These commenters argued that EPA's proposal would allow too long a period for the use of HCFCs. For example, these comments suggested that HCFC–141b could be phased out earlier in foam and HCFC–22 could be eliminated at an earlier date in refrigeration applications. Other commenters argued that while alternatives might be feasible by the proposed dates, it was still too early to tell if they would be and that the Agency should build in additional flexibility to allow use to continue for a longer period of time in the event alternatives do not become available. While EPA intends to monitor closely the development of alternatives, it has decided against either requiring an earlier phaseout date for these HCFCs or allowing greater flexibility by extending the dates. The Agency believes that critical research into alternatives, particularly for HCFC–141b in foam and in limited solvent applications and HCFC–22 in refrigeration and airconditioning is currently on-going and should result in the availability of substitutes by the dates contained in the HCFC phaseout schedule. While promising alternatives for these compounds are currently in early stages of evaluation, considerably more product testing and energy efficiency evaluations are required. Any conclusions concerning earlier availability or commercialization of those alternatives would currently be premature.

Issues related to HCFCs are also undergoing further review by the Parties to the Protocol. A new scientific and technical assessment of relevant issues should be available in late 1994 and will be used by the Parties in reviewing its current HCFC limitations in 1995. EPA believes that any further actions regarding HCFCs should await the outcome of that process.

Finally, in the proposed regulation, EPA restricted both the production and consumption of the specific HCFC compounds at specified dates. The Agency received comments stating that the Montreal Protocol provision on HCFCs restricted only consumption of HCFCs, defined in the Protocol as the amount produced plus the amount imported minus the amount exported and that EPA should similarly restrict only consumption.

Section 602(c) of the Clean Air Act requires that EPA restrict production and consumption of class II substances on the same schedule. Furthermore, EPA believes that, even if authorized by the Act, it could not adopt final rules restricting only consumption without requesting public comment on the approach since it would represent a significant departure from the proposal, which dealt with both production and consumption.

Moreover, EPA notes that, notwithstanding the production phaseout, section 605(d)(2) of the CAA allows for continued export of HCFCs to developing countries that are Party to the Protocol for their basic domestic needs through 2040. While the section provides a cap on the amount beyond the baseline permitted for such experts, as noted earlier, EPA is deferring for now the establishment of any specific baseline levels for HCFCs.

EPA proposed quarterly reporting of all HCFC production and use in order to monitor compliance with the Montreal Protocol. Several commenters objected to quarterly reporting, stating that such reporting was burdensome. However, EPA continues to believe that quarterly reporting is necessary. EPA has developed an approach to limit HCFCs by targeting for phaseout the high ODP-weighted HCFCs. By accelerating the phaseout of HCFC–141B, HCFC–142B and HCFC–22, EPA believes it will meet its obligations to the Montreal Protocol. However, the Agency must receive HCFC production and consumption data (i.e., imports and exports) quarterly to ensure U.S. compliance. If it should appear that the United States is to exceed its limits, EPA may act to ensure that compliance is maintained. Although there may be several approaches that EPA may use to control production and consumption under these circumstances, it is likely that EPA would resort to rulemaking during this period, including the use, if necessary, of a direct or interim final rule. For this reason, EPA will require quarterly reporting of production imports and exports of HCFCs. With this data EPA can monitor national consumption of these data. (EPA does note that to date companies have always significantly underproduced their allowable level).

Although the March 18 Notice stated that EPA proposed to require use data, the Agency will not require information on use from the user sectors. EPA believes that only data on production imports and exports are required at this time.

IV. Addition of Methyl Bromide to List of Class I Substances and Phaseout Schedule

A. Summary

Based on recent scientific assessments and the most recent actions by the Parties to the Montreal Protocol, EPA proposed on March 18, 1993 to list

methyl bromide as a class I substance under section 602(c)(3) of the Clean Air Act; and to phase out production and consumption of this substance by the year 2000. This was in response to a petition filed on December 3, 1991 by Natural Resources Defense Council, Friends of the Earth, and the Environmental Defense Fund (hereafter referred to as NRDC/FOE/EDF petition).

As part of that proposal, EPA rejected the more stringent phaseout schedule proposed by the petitioners, based on the lack of available substitutes in the near-term. Instead, EPA proposed a freeze in production and consumption of methyl bromide beginning on January 1, 1994 at 1991 levels, no interim reductions, and a phaseout by the year 2000. In addition, the Agency proposed that ozone depletion warning labels required under section 611 of the Clean Air Act for products "manufactured with" ozone-depleting substances does not apply to agricultural products, such as fruits and vegetables. See, Response to Comments on section 611 labeling rulemaking.

EPA received 560 comments on the methyl bromide aspects of its March 18th proposal. The large majority of comments were from members of the agricultural community and generally raised scientific issues regarding the ozone depletion potential (ODP) of methyl bromide, the lack of alternatives, and the economic impact of phasing out the production of this compound.

Today's final action examines in detail the issues raised by these comments, and adopts an approach that, consistent with the ozone layer protection requirements of the Clean Air Act, responds to the current state of scientific understanding concerning this compound. The regulatory schedule (freeze without interim reductions followed by the required phaseout of the compound), fully utilizes the limited flexibility permitted by the statute.

Specifically, today's final action lists methyl bromide as a class I substance with an ODP of 0.7 as specified in the latest Montreal Protocol international scientific assessment and as agreed to by the Parties to the Protocol at their meeting in Copenhagen in November 1992. The final rule does not require any interim reductions and provides the longest possible period (7 years or until January 1, 2001) allowed under section 602 for the phaseout. Finally, for the reasons explained in the proposal, EPA is interpreting "manufactured with" in section 611 to mean "the mechanical or chemical transformation of materials into new products or to assemble component products" and to exclude agricultural processes. Agricultural products for which methyl bromide is used thus need not be labeled under section 611.

B. Legal Authority

1. CAA Legal Authority

Under section 602(a), EPA is to add to the list of class I substances any substance that the Administrator finds causes or contributes significantly to harmful effects on the stratospheric ozone layer, including all substances that the Administrator determines have an ozone depletion potential of 0.2 or greater.

Under section 602(e), simultaneously with any addition to the class I list, the Administrator shall assign to each listed substance a numerical value representing the substance's ozone depletion potential. In addition, the Administrator shall publish the chlorine and bromine loading potential and the atmospheric lifetime of each listed substance. Section 601(10) of the Act defines ODP as "a factor established by the Administrator to reflect the ozone depletion potential of a substance on a mass per kilogram basis, as compared to chlorofluorocarbon-11 (CFC–11)," and goes on to state that "such factor shall be based upon the substance's atmospheric lifetime, the molecular weight of bromine and chlorine, and the substance's ability to be photolytically disassociated, and upon other factors determined to be an accurate measure of relative ozone depletion potential."

Section 602(e) also states that "[w]here the ozone depletion potential of a substance is specified in the Montreal Protocol, the ozone depletion potential specified for that substance under the subsection shall be consistent with the Montreal Protocol." When the Copenhagen amendments to the Montreal Protocol, which include the ODP for methyl bromide as 0.7, enter into force for the United States, this statutory provision will apply for methyl bromide.

Under section 602(c)(3), any person may petition the Administrator to add a substance to the list of class I substances. Such a petition is to include a showing by the petitioner that there are data on the substance adequate to support the petition.

Also, section 604 authorizes EPA to promulgate regulations phasing out the production of class I substances from baseline levels, in accordance with the schedule specified in that section. The "baseline year" is defined in section 601(2)(C) to mean a representative calendar year selected by the Administrator in the case of substances added to the class I list. Section 607 authorizes EPA to promulgate regulations providing for production and consumption allowances of class I substances.

Under section 602(d), for a newly listed class I substance (such as methyl bromide), the Administrator may extend any schedule or compliance deadline contained in section 604 if that schedule is unattainable considering when it is added to the list. But the provision specifies that no extension under that subsection may extend the phaseout to a date more than 7 years after January 1 of the year after the year in which the substance is added to the class I list. As EPA is adding methyl bromide to the class I list in 1993, the phaseout date may not be extended beyond January 1, 2001.

2. Public Comments on Legal Issues

While many commenters argued that EPA should delay action until scientific uncertainties are resolved, the Agency received few comments specifically questioning its legal authority to act under title VI of the CAA.

The Methyl Bromide Working Group (MBWG) provided the only extensive comments questioning the Agency's legal authority to list methyl bromide. Its comments stated that EPA's only nondiscretionary action was to respond to the petition by NRDC/EDF/FOE and that a more appropriate response would be to deny the petition on the basis of scientific uncertainty and instead to issue a "tentative, non-binding ODP range for methyl bromide—without listing it as a class I substance".

In making this argument, the MBWG argued that the ODP listed in the report issued by the Montreal Protocol assessment panel (Methyl Bromide: Its Atmospheric Science, Technology and Economics, Montreal Protocol Assessment Update, June 1992; hereafter referred to as Assessment Update) should not be the basis for U.S. domestic regulatory action and that EPA is required to undertake its own evaluation of this compound's ODP.

EPA has thoroughly reviewed the issue of whether a range of values for the ODP would be more appropriate than the 0.7 value contained in its proposal. As explained in detail below, in the context of this review the Agency has considered the statutory language and treatment of ODPs, the actions taken by the Parties to the Montreal Protocol, the Scientific Assessment Update, and other relevant scientific information. Based on this review, the Agency has determined that a listing of methyl bromide with an ODP of 0.7 is warranted.

Section 602(e) of the Clean Air Act addresses the impact of the Protocol's ODP on EPA's regulatory obligations. When the Protocol enters into force, EPA must assign an ODP "consistent with the Montreal Protocol." The commenter argued that a range of values including the one adopted by the Protocol would be legally valid. The Agency notes, however, that the Parties to the Montreal Protocol expressly considered adopting a range of values for the ODP of methyl bromide and rejected this approach. EPA believes that adoption of such a range would, under these circumstances, be inconsistent with their action.

The Protocol's Scientific Assessment Update on methyl bromide also considered a range of values (from .25 to 1.11) for the ODP but offered in their report a single value for the ozone depleting potential for methyl bromide. While both the experts involved in the assessment panel and the Parties to the Protocol recognize that the calculation of ODPs for all controlled substances involves some degree of uncertainty, the Parties have nonetheless always adopted a single value for each specific compound. This approach has historically been used because of the need to use the "calculated level" of production and consumption for a group of compounds, but has also been adopted in the case of methyl chloroform and carbon tetrachloride, which are single compounds in distinct groups similar to methyl bromide.

Section 602(e) of the CAA also provides single values for the ODP of each listed substance in Table 1 and states that the Agency shall assign "a numerical value representing the substance's ozone depletion potential." (Emphasis added) Scientific uncertainty is inherent in assigning any ODP, and EPA has concluded that scientific uncertainty in the case of methyl bromide does not warrant a different approach to assigning ODP.

The Parties to the Protocol will reconsider the ODP of methyl bromide at their 1995 meeting based on an update by the scientific assessment panel and could at that time recommend modification. Should such a change occur, EPA would also reconsider the ODP assigned to methyl bromide under the Clean Air Act.

EPA's legal obligation under section 602(e) to assign an ODP to methyl bromide consistent with that specified in the Montreal Protocol technically will not arise until the Copenhagen Amendments to the Montreal Protocol enter into force. Those amendments are to enter into force on January 1, 1994, provided that twenty Parties have ratified the amendments by that time. Otherwise, the amendments will enter into force 90 days after the twentieth instrument of ratification is deposited by a Party. As of September 1993, seven Parties have deposited their instruments of ratification.

EPA also believes that the best scientific evidence currently available supports assigning methyl bromide an ODP of 0.7. This evidence is addressed in the Scientific Assessment Panel's updated assessment report on methyl bromide. The world's leading experts on this issue prepared and peer reviewed this report, and it represents the best available scientific analysis for EPA evaluation and a sound basis for EPA action. A detailed discussion of the scientific issues surrounding methyl bromide's ODP is presented below.

Finally, EPA has also examined closely the scientific issues raised by the MBWG and others in the comments and addresses these concerns in detail below. Based on this review and for the reasons stated above, EPA has rejected the idea of using a range of value for the ODP of methyl bromide.

The MBWG contends that EPA has failed to demonstrate that methyl bromide "contributes significantly to harmful effects on the stratospheric ozone layer" under section 602(a). Section 602(a) of the Clean Air Act specifies that the Administrator shall add to the class I list all substances having an ODP of 0.2 or greater. Since EPA has concluded that methyl bromide's ODP exceeds this threshold, application of the less objective "contributes significantly" standard is unnecessary. In any case, however, EPA believes the best current scientific evidence clearly supports adding methyl bromide to the class I list under this standard, as well. It is noteworthy that, because methyl bromide has a relatively short atmospheric lifetime relative to CFC–11, the 0.7 ODP understates the near-term damage methyl bromide causes in comparison to the CFCs. As explained below, the 0.7 ODP reflects the comparative damage of methyl bromide and CFC–11 over a 200-year time period. Over a 10-year time period, the best estimate of methyl bromide's ODP would be 7. This short-term ODP is vastly higher than any other substance not currently on the class I list, and thus supports different treatment than that accorded such other substances (See discussion of IEER petition and HCFCs above.) Therefore, methyl bromide's near-term contribution to ozone depletion over the near-term is much higher than even the 0.7 ODP suggests. The Protocol's Assessment Update Report reflects this perspective:

"These model results suggest that anthropogenic emissions of (methyl bromide) could have accounted for about one-twentieth to one-tenth of the current observed ozone loss of 4–6%, and could grow to about one-sixth of the predicted loss by the year 2000 if emissions continue to increase at the present rate of about 5–6% per year."

While uncertainties affect this and any model calculations about ozone depletion, this statement further supports the conclusion that, absent steps under the Protocol to limit emissions, man-made methyl bromide plays a significant role in ozone layer damage.

The MBWG next contends that "prior to imposing any ban EPA is obligated to demonstrate, with a high measure of certainty, that termination of this product will be attainable," but provides no legal basis for this obligation. As discussed in the preamble to the March 18 proposal, EPA believes that the Clean Air Act requires that all substances that the Administrator determines have an ODP of 0.2 or above be added to the class I list, without regard to whether a phaseout is attainable. The Clean Air Act separately allows EPA to extend the phaseout schedule under section 602(d) for a seven-year limited time if the otherwise applicable phaseout schedule is unattainable, considering when the substance is added to the list. Indeed the specific limitation of the extension authority to seven years confirms that the issue of whether a phaseout is attainable is not relevant to EPA's decision whether to add the substance to the class I list.

The MBWG further states that EPA's failure to consider the availability of substitutes in setting the phaseout date makes EPA's decision "legally flawed." As discussed extensively in the preamble to the proposal, the Agency believes that, under section 602(c), methyl bromide's significant contribution to stratospheric ozone depletion, and its ozone depletion potential, constitute a sufficient basis for adding this substance to the class I list. While the ultimate phaseout of methyl bromide is a consequence of this listing, the Agency does not believe it has authority to consider the economic impact of the phaseout in determining whether to add methyl bromide to the list.

At the same time, however, the Agency believes that economic impacts are relevant to its decision whether to extend the section 604(a) statutory schedule under section 602(d). As

explained in the proposal, the Agency may extend the section 604(a) phaseout schedule within specified limits if it is unattainable, considering when the new substance is added to the class I list. The economic impact of a phaseout is integral to the question of whether a phaseout is "unattainable." Based on the unavailability of substitutes for methyl bromide, EPA has concluded that near-term reductions are unattainable and that a freeze on production and consumption is the most stringent interim reduction schedule that can be established. As section 602(d) specifically limits EPA's authority to extend the phaseout schedule to seven years following the year methyl bromide is added to the class I list, EPA may not extend the phaseout date past January 1, 2001 (assuming listing in 1993). EPA does not believe it has discretion to further extend this phaseout date based on economic impacts.

EPA proposed to extend the schedule until January 1, 2000, rather than January 1, 2001. EPA gave two reasons for this position. First, the Agency explained that it did not believe the phaseout should be extended beyond the January 1, 2000 final termination date specified in section 604 for class I substances absent an affirmative basis to believe that termination will be unattainable at that time. Second, EPA explained that it would not have had authority to extend the phaseout beyond January 1, 2000, had the Agency complied with the statutory schedule for responding to the petition to add methyl bromide to the class I list.

Several commenters urged the Agency to extend the final phaseout date until January 1, 2001 as allowed under section 604. These commenters stated that the additional year is important given the limited time currently available to develop alternatives and to have these alternatives approved for use by the required regulatory agencies. EPA agrees with these commenters that the Agency cannot now conclude that these considerations will be any less important in the year 2000 than in the years prior to that time. Thus, EPA now believes that these considerations justify extending the freeze until the 2001 phaseout. Of course, as noted in the proposal, EPA will, in cooperation with the Office of Pesticide Programs and the USDA, monitor the availability of substitutes and could accelerate the phaseout or establish interim reductions, if justifiable based on future information.

The MBWG also stated in its comment that section 612(a) of the Act "requires EPA to ensure that its regulatory decisions under subchapter VI actions do not result in increased risks to health and the environment." Section 612(a) requires EPA "to the maximum extent practicable" to take steps to ensure that more harmful substances are not used to replace class I and II substances. But the Agency's decision to list a substance which is to be determined solely based on the criteria specified in section 602(a), which does not include such a general risk standard.

C. Background

1. Initial Identification of Risks of Methyl Bromide

Action to list methyl bromide as a class I substance can be traced back to the international scientific assessment prepared in 1991 for the Parties to the Montreal Protocol. Article 6 of the Montreal Protocol calls for a periodic assessment of scientific, economic, technical, and environmental issues related to ozone depletion. The 1991 Scientific Assessment Report issued in December 1991 first identified methyl bromide as a potential significant contributor to ozone depletion and listed the ozone depletion potential of this compound at 0.6.

2. Petition To List

Following the publication of the assessment, NRDC/FOE/EDF petitioned EPA on December 3, 1991, requesting among other things that the Agency add methyl bromide to the list of class I substances under section 602(c) and phase out its production and consumption on an accelerated basis under section 606. It also requested that the Agency take emergency action under section 303 to reduce methyl bromide production in 1992 by 50 percent, with a total phaseout by January 1, 1993.

Because section 602 provides a timetable for responding to petitions and because no imminent hazard was involved, EPA rejected the petitioners' request for emergency action under section 303 and otherwise responded to the petition in its March 18, 1993, Federal Register proposal.

Section 602(c)(3) specifies that within 180 days of receiving a petition, EPA shall either propose to add the substance to the list of class I or II substances or publish an explanation of the reason for denying the petition. If the decision is to propose listing, EPA is given one year after receipt of the petition to add the substance to the list by rule, or make a final determination not to add the substance to the list. EPA proposed to add methyl bromide to the class I list on March 18, 1993 (58 FR 15014). Today's notice constitutes final action granting the petition to add methyl bromide to the class I list.

3. Montreal Protocol Actions

The Montreal Protocol Parties at the April 1992 meeting of the Open-Ended Working Group began discussions on possible changes to the Protocol based on the 1991 assessment reports. At this meeting, the United States first proposed adding methyl bromide to the Montreal Protocol based on the concerns raised in the Scientific Assessment Report. The U.S. proposed to phase out production and consumption by the year 2000. In an effort to provide more detailed information for the Parties to consider, the Open-Ended Working Group called on the Chairman of the Assessment Panels to provide additional information on both scientific and technical/economic issues related to controls on methyl bromide.

In response to this request, the Panels prepared an update of the scientific assessment report that focused specifically on methyl bromide. The report drew extensively from material presented at a two-day scientific workshop organized by the Methyl Bromide Global Coalition and held on June 2–3, 1992 in Washington, DC.

The resulting Protocol Assessment Update report concluded that, while substantial uncertainties exist, the current best estimate of the ozone depletion potential of methyl bromide was 0.7 (revised upward from 0.6 contained in the initial Scientific Assessment Report). Furthermore, it concluded that if man-made emissions continued at current rates of increase, atmospheric models predict that man-made methyl bromide would account for 5–10 percent of current depletion and one-sixth of depletion in the year 2000. The report identified as key areas of uncertainty such factors as the potential for additional sinks for methyl bromide and the possibility of the compound breaking down in the atmosphere into less reactive species. These uncertainties are discussed in the section on scientific issues below.

A workshop to review technical issues concerning the use and availability of substitutes for methyl bromide was held from June 16–18, 1992, also in Washington, DC. The workshop was attended by over 90 experts from 20 countries and included sessions on each of the key areas of use of this compound. It concluded that use of methyl bromide could be reduced substantially, but that no single alternative exists as a substitute for all uses of methyl bromide and that

alternatives for some important uses do not currently exist.

A report summarizing the findings of both the scientific and technical workshops was prepared, thoroughly peer reviewed, and issued by the Chairman of the Assessment Panels (Dr. Robert Watson), "Methyl bromide: Its Atmospheric Science, Technology and Economics" in June 1992 (referred to here as Assessment Update). The report served as the basis for continued discussions among the Parties to the Protocol concerning the possibility of action to restrict production and consumption of methyl bromide.

At the Fourth Meeting of the Parties to the Montreal Protocol held in November 1992 in Copenhagen, the issue of what action, if any, to take on methyl bromide was widely debated. A number of nations, including Israel and many developing countries, maintained the position that the scientific evidence was so uncertain and the economic impact potentially so great that any action at this time to add this compound to the Protocol was premature. They advocated that the Parties should agree only to undertake additional studies to evaluate the need for and the nature of any future action. In contrast, the United States and many developed nations argued that action to restrict methyl bromide would make a significant contribution to global efforts to protect the ozone layer and that restrictions now on the production and consumption of this compound with an exemption for essential uses would be the appropriate course of action. The United States proposed phasing out the compound in the year 2000 while other nations favored either a near-term freeze or freeze with a reduction step.

The Parties to the Protocol reached a consensus decision with the adoption of an amendment calling for a freeze on methyl bromide production and consumption beginning in 1995 at 1991 levels with an exemption for quarantine and preshipment applications. The Parties also agreed that in adding methyl bromide to the list of controlled substances as Annex E, that it should be listed with an ozone depletion potential of 0.7.

In addition, the Parties unanimously adopted a non-binding resolution urging nations to take all steps to reduce emissions of methyl bromide and urging the Parties to take further steps to agree on reductions and an appropriate phaseout date based on the next round of Protocol assessments. The scientific and technical assessments have already been initiated and are due to be completed in November 1994. They will serve as the basis for further decisions by the Parties to be taken at their Sixth Meeting in 1995.

4. Domestic Regulatory Action

As part of its efforts to develop information to respond to the petition by the environmental groups to list methyl bromide as a class I substance, on July 27, 1993, EPA issued a request for information under section 114(a) of the Clean Air Act. This letter was sent to key industry and government organizations that potentially had useful information on the uses of methyl bromide, emissions from those uses, the availability of alternatives, and scientific information concerning the ozone depletion potential and impact of methyl bromide on the ozone layer.

EPA received responses from a broad spectrum of the agricultural community which provided useful information on the uses of methyl bromide and the difficulties in identifying viable alternatives. Many of the respondents also questioned the scientific basis for linking their use of methyl bromide to ozone depletion and urged the Agency to delay action pending greater scientific certainty.

On March 18, 1992, EPA responded to the NRDC/EDF/FOE petition in the context of its proposed rule. The key elements of that proposal as it related to methyl bromide are the following:

—Methyl bromide would be added to the list of class I substances and its ODP would be listed as 0.7.
—Production and consumption of the compound would be frozen at 1991 levels beginning on January 1, 1994 and phased out by January 1, 2000.
—No interim reductions in production and consumption were included in the proposal.
—Methyl bromide was established as the only compound in a newly created group six within the list of Class I substances.
—The labeling provisions under section 611 would not apply to agricultural products for which methyl bromide is used need not be labeled under section 611.

EPA believes that its proposal would minimize the impact on the agricultural community of listing methyl bromide as a class I substance. EPA proposed to exercise its authority to extend the phaseout schedule under section 602(d) to a freeze as the most stringent schedule for phaseout it could propose in place of the section 604(a) schedule. This extension would provide maximum flexibility for the agricultural community to identify and shift to alternatives.

With regard to the ODP of methyl bromide, the Agency based its proposal and its evaluation of the ODP on the recommendations of the Protocol's Scientific Assessment report and its update, and the action taken by the Parties to the Montreal Protocol. As stated above, the Protocol's assessment update report represents the most authoritative review of scientific evidence related to methyl bromide's impact on the ozone layer. While the report of that group recognized that important uncertainties related to the compound's ODP remain, they nonetheless provided an estimate of the ODP of methyl bromide as 0.7. The Agency evaluated all the evidence available to it at the time of its proposal and determined that no new or additional information existed that was not available and considered at the time of the assessment and that supported reaching any alternative conclusion. The Agency believes the ODP provided for by that assessment represents the best current scientific evaluation of methyl bromide's ODP. Further discussion of the scientific basis for the 0.7 ODP is contained below.

In proposing to move forward to regulate methyl bromide based on the 0.7 ODP, the Agency fully recognizes that uncertainties remain and that additional information will become available over the next several years and could alter the ODP contained in future assessments. To address this issue, EPA clarified in its proposal that it believes it has the authority under section 602(c)(1) to delist methyl bromide as a class I substance in the event that new information or future action taken under the Montreal Protocol shifts the ODP below 0.2 and other wise demonstrates that methyl bromide does not contribute significantly to harmful effects on the stratospheric ozone layer, including near term effect. EPA explained the rationale behind this position at length in its proposal (58 FR 15037). Essentially, the Agency believes that the restriction on delisting class I substances contained in section 602(c)(4) applies only to substances explicitly listed in the Act itself by Congress and contained in section 602(a). EPA is adding methyl bromide to the class I list under subsection (c) of section 602, and methyl bromide is thus not explicitly "referred to" in subsection (a). EPA believes it would not be covered under the prohibition, contained in section 602(c)(4), against removing a substance from the list.

The Agency reasons that without the ability to delist a substance, EPA would hesitate to add a substance to the class I list until all uncertainties are resolved, despite much evidence of the substance's danger. The chilling effect

of requiring absolute certainty prior to listing a substance would appear to run directly counter to Congressional intent that the Agency take reasonable steps to safeguard the ozone layer. Several respondents in their comments support EPA on this interpretation as set out in the proposal.

With regard to the phaseout schedule, the proposal set January 1, 2000 as the phaseout date for production and consumption of this compound. This date was based on language in section 602 that requires that any newly listed substance be phased out no later than seven years after the year in which it is added to the list of class I substances. The proposal acknowledged that if methyl bromide were listed in 1993, that the Agency could postpone its phaseout until 2001. However, for the reasons explained above, EPA has decided to extend the freeze in this final rule until January 1, 2001.

The proposal did not require any interim reductions in production and consumption of methyl bromide and instead jumps directly to the required phaseout. In determining the interim schedule prior to the mandated seven-year phaseout, the Agency is authorized to extend the schedule in section 604(a) if that schedule is unattainable. In its proposal, the Agency stated that it believed the stringent phasedown schedule in 604(a) is, in fact, unattainable based on the current availability of substitutes for methyl bromide. While the Protocol's technology assessment and EPA's own review have identified potential substitutes for many of the major uses of methyl bromide, several years or longer will likely be necessary to resolve possible regulatory and commercial barriers to the widespread use of these alternatives and to shift to these substitutes in a reasonably cost-effective manner. The proposal also stated that a number of near-term steps were being taken to reduce use and emissions and that these efforts would effectively allow for the maintenance of baseline production at 1991 levels without creating any significant economic impact until the year of the phaseout. Finally, the Agency acknowledged that should significant technological progress in shifting to alternatives occur prior to the phaseout, then it would reconsider the interim dates if it determined that interim reductions would be achievable. The Agency further recognized citizens' option under section 606 to petition the Agency to accelerate the reduction schedule based on future information.

EPA proposed to place methyl bromide in a newly created sixth group within the list of class I substances rather than adding it to a previously existing group. In proposing this approach to listing methyl bromide, the Agency was following the historical precedent established both under previous actions under the Clean Air Act and by the Parties to the Protocol in the Copenhagen Amendments. In addition, EPA has placed methyl bromide in a separate group due to its own phaseout schedule.

In a final issue raised in the proposal, the Agency requested comment on whether the statute allows for any exemptions for essential uses from the phaseout of methyl bromide. EPA received comments supporting two different positions on this issue. Some commenters stated that since Title VI is silent on the grant of essential use exemptions for newly listed substances, but allows specified exemptions for currently listed substances, that the Agency has the authority to grant exemptions beyond the phaseout date for any newly listed substances. Other commenters supported the position that since no explicit authority exists and the exemptions listed in section 604 are narrowly defined, that EPA lacks the authority to grant essential uses for newly listed substances such as methyl bromide. EPA's response to these comments is presented below.

D. Today's Final Action

1. Summary

Today's final rule lists methyl bromide as a class I substance with an ozone depletion potential of 0.7. While recognizing that scientific uncertainties remain, EPA believes that the best available scientific evidence warrants this action. In listing methyl bromide as a class I substance in a newly established Group VI, the Agency is freezing production and consumption at 1991 levels for the control period beginning on January 1, 1994. The phaseout of production and consumption is scheduled for January 1, 2001, and no interim reductions in production or consumption are required during the period prior to the phaseout. Consistent with the Agency's interpretation of section 611, products that utilize methyl bromide as part of an agricultural process need not be labeled under that section.

In taking final action on the listing of methyl bromide at this time, the Agency seeks to craft a regulatory approach that is both consistent with the requirements of the CAA and with past and possible future action by the Parties to the Montreal Protocol. The Agency has limited discretion under section 602 to decide when and how to regulate compounds as class I substances. The Agency is obligated under section 602(a) to list any substance the Administrator finds "cause or contributes significantly to harmful effects on the stratospheric ozone layer" as well as "all substances that the Administrator determines have an ozone depletion potential of 0.2 or greater." Once listed, the Agency's authority to extend the statutory phaseout schedule is limited to the situation where that schedule is "unattainable" under section 602(d) and in any event cannot extend beyond 7 years. As discussed in the proposal, the Agency believes the sense of the statutory scheme is that the most stringent attainable schedule should be applied to the newly listed substance. See 58 FR at 15034. EPA believes that maintaining the freeze level until 2001 is the most stringent schedule it can promulgate. EPA cannot now conclude that any faster phaseout schedule is attainable. EPA has considered the economic impact of a methyl bromide phaseout in determining the most stringent schedule of interim reductions it could promulgate.

EPA does not believe further technology forcing through interim reductions is necessary or appropriate. The Agency believes that it should allow the agricultural community the maximum length of time under these circumstances to develop and implement cost-effective alternatives to methyl bromide. Also, while not strictly relevant to what is attainable, the Agency notes that the freeze established today will avoid any unnecessary economic impact in the unlikely event that the scientific understanding of methyl bromide's ODP changes significantly so that it is reduced below 0.2 and otherwise merits reconsideration of the listing based on its contribution to ozone depletion.

The next Montreal Protocol scientific assessment will be completed in November 1994 and the Parties to the Montreal Protocol will again address the issues of methyl bromide limitations and ODP at their Sixth Meeting in 1995. The Agency will review its action today in light of future scientific data and information, the outcome of the updated scientific assessment, and any relevant future actions by the Parties to the Protocol.

2. Decision To List

EPA believes that the scientific evidence warrants the Agency's conclusion that methyl bromide's ODP is greater than 0.2, and that this is most consistent with action being taken under the Montreal Protocol to include

methyl bromide's ODP as 0.7. Thus, the statutory requirements for adding methyl bromide to the class I list, in EPA's judgment, have been satisfied. Based on the scientific evidence regarding the ODP and also the evidence that methyl bromide's destructive impact is concentrated in the near-term, EPA believes this action is both legally supportable and environmentally appropriate.

As discussed above in the section on "Legal Authority," EPA believes that the reasoning and conclusions of the Montreal Protocol Scientific Assessment and its update, and actions by the Parties to the Montreal Protocol form an adequate basis for the Administrator's judgment that the threshold requirements for adding methyl bromide to the class I list have been fully satisfied. In particular, a key conclusion of the scientific assessment update was the following: ". . . model results suggest that anthropogenic emissions of CH3Br (methyl bromide) could have accounted for one-twentieth to one-tenth of the current observed ozone loss of four to six percent, and could grow to about one-sixth of the predicted ozone loss by the year 2000 if emissions continue to increase at the present rate of five to six percent per year." This conclusion reached by the Scientific Assessment Panel underscores the potential significant near-term impact of methyl bromide on ozone depletion in the absence of actions to restrict emissions.

This international scientific assessment based on the best scientific evidence available, clearly supports the Agency's conclusion that man-made methyl bromide represents a significant risk to the earth's ozone layer. The Agency does not believe that uncertainty inherent in all ozone depletion model calculations justifies a different conclusion or a "wait and see" approach.

Furthermore, the scientific assessment panel also established the ODP of methyl bromide at 0.7, recognizing that uncertainties exist and that other factors could alter the ODP calculation. This value was adopted by the Parties to the Montreal Protocol at their Fourth Meeting as part of the Copenhagen amendments to the Protocol. At the time these amendments enter into force (likely in 1994), EPA is required by section 602(e) to adopt an ODP consistent with that contained in the Montreal Protocol. Prior to that time, EPA believes that, absent a compelling reason to modify the ODP in favor of a different value, that it is appropriate to move forward with the same value contained in both the Protocol's scientific assessment update and adopted by the Parties. EPA has carefully reviewed the public comments on the science assessment and newly published information contained in the scientific literature that relates to the ODP and impact of methyl bromide on the ozone layer. The Agency does not believe that a substantial case has been made for discarding or overriding the conclusions reached in the Protocol's Assessment Update or to modify on an interim basis the ODP contained in the Copenhagen Amendments to the Protocol that are likely to enter into force next year.

3. Scientific Issues Related to Methyl Bromide

In the preamble to its proposed regulations, EPA discussed at length the scientific basis for its proposal to list methyl bromide. Specifically, it presented the key findings of the Montreal Protocol's Scientific Assessment report and update that dealt with methyl bromide and that represented the most authoritative review of these issues. The Agency also cited the areas of significant scientific uncertainty described in that report, including the possibility of additional oceanic and terrestrial sinks for methyl bromide, the potential for some percentage of atmospheric reactions to lead to the sequestering of bromine in less reactive compounds (i.e., referred to as Hbr branching) or more reactive compounds (i.e., increased HOBr formation), and the possibility that emissions of methyl bromide from man-made activities are smaller than estimated and that natural sources of methyl bromide are larger. EPA received extensive comments on each of these issues, primarily from the Methyl Bromide Working Group (MBWG). These and other related issues are discussed in the following sections.

a. Faster Formation of HOBr. While discussed at the scientific assessment workshop in June 1992, the conclusions of the panel in calculating the ODP of methyl bromide do not take into consideration the faster rate constant of the formation of HOBr from BrO plus HO_2. This faster measurement differs from earlier slower estimates of this rate constant and now provides a measurement basis for the recommendation found in the compendium of rate constants published by the Jet Propulsion Laboratory (JPL) in 1992. However, the 95% confidence limit set forth in this compendium still encompasses the slower rate.

The effect of including the faster reaction would be to raise the ODP of methyl bromide, all other things being equal. The impact of including this faster reaction rate on the ODP of methyl bromide was included in the public comments submitted by the MBWG as calculated by Sze et. al. Based on these model calculations, assuming a 2.1 year atmospheric lifetime of methyl bromide, the ODP would be increased from 0.64 to 0.85. Assuming a lifetime of 1.3 years, the ODP would increase from 0.4 to 0.53.

EPA recognizes that the evidence regarding this rate constant appears to warrant an upward adjustment of the methyl bromide ODP from 0.7, which was calculated without using this faster rate constant. However, since the Protocol scientific assessment addressed this possible faster rate constant as an area of remaining uncertainty and did not include it in its calculations, EPA does not believe it should adopt an upwardly adjusted ODP for methyl bromide as a regulatory matter at this time. Additional review of this issue by the scientific community is underway and will provide a stronger basis for any modifications to the ODP related to this issue in future years. EPA notes that a slight increase in methyl bromide's ODP would not alter the regulatory regime adopted for this compound. Also, the Agency does not believe it should, as a regulatory matter, continually adjust the ODP of any compound as scientific investigation yields preliminary new information that has not been fully accepted by the international assessment process and that may be further modified with additional research.

Rather, the Agency believes that, to the extent there is no regulatory impact, the ODP should be established consistent with the scientific information presented in the two-year cycle of scientific assessments under the Montreal Protocol, and thus correspond to actions taken by the Parties to the Protocol. The Agency notes the mandate in section 602(e) of the Clean Air Act that the ODP specified under the Act "shall be consistent" with the ODP specified under the Protocol supports this approach.

b. Hbr Branching. Assuming the faster rate of formation of HO_2 with BrO as discussed above, an important area of uncertainty is whether and to what extent reaction of HO_2 with BrO leads to the formation of Hbr plus O_3. To the extent such reactions occur in the stratosphere, the ozone depletion potential of methyl bromine would be decreased.

This issue was examined in detail in the update report from the Scientific Assessment Panel. It stated that "a

major uncertainty in the calculation of bromide-related ozone loss and ODPs is associated with quantification of the rate of formation of HBr in the stratosphere."

While the assessment panel had before it several calculations assuming different rates of "HBr branching" and included one of these calculations in its report, it nonetheless rejected including these estimates in its final determination of methyl bromide's ODP. The panel report stated two factors as arguments against its inclusion. First, there is no evidence of analogous chlorine reactions producing HCl. Second, while additional data on BrO measurements is necessary to draw any firm conclusions, the assessment report states: "Although the upper range of the observed BrO would appear to be in conflict with a significant HBr source, that lack of definitive data for HBr and the large scatter in observed BrO made it difficult to rule out this possibility."

Comments on these issues were submitted by the Methyl Bromide Working Group. They argue that no basis exists to believe that an analogous reaction with HCl would in any way be relevant to HBr branching; that limited measurements of HCl do exist; and that HBr branching is consistent with recent atmospheric measurements.

The MBWG provided limited data to support the contentions that production of HCl is significant or not relevant to whether HBr formation occurs. Additional research will be important to fully resolve this issue, including more data on observed values of HBr and BrO. Based on the evidence available at the time of assessment, however, the Panel concluded that the inclusion of HBr branching was sufficiently speculative that the Panel excluded it from its best estimate of the ODP of methyl bromide. The assessment panel report states that the higher ODP values for inclusion of a faster BrO plus HO_2 reaction "is not recommended" and "neither is the lower value of the ODP obtained when it is assumed that 10% of the BrO plus HO_2 reaction produces HBr." The rejection of HBr branching by the Panel was based on insufficient data on relevant reaction rates under stratospheric conditions of temperature and pressure and the need for additional studies on the formation of HBr by other reaction such as BrO plus OH and Br plus HO_2 to improve the understanding of partitioning of bromine in the stratosphere. This lack of evidence supporting HBr partitioning along with the belief that no evidence exists that analogous chlorine reactions (ClO plus HO_2 and ClO plus OH) produce HCl were the basis for the Panel's decision not to include HBr branching when they recommended the estimate of the ODP of methyl bromide. For the reasons discussed below, EPA fully concurs with this decision and with the Panel's conclusion.

To evaluate the impact of different degrees of HBr branching on the ODP of methyl bromide, the MBWG commissioned an analysis using a state of the art atmospheric chemistry model. The model calculated the ODP assuming first, an estimated lifetime of methyl bromide of 2.1 years, and second, assuming a significant oceanic sink resulted in an atmospheric lifetime of 1.3 years. Assuming that a 10% branching of HBr occurs, and using the faster rate constant for BrO plus HO_2 (see above), the model calculated an ODP of 0.24 and 0.15 for an atmospheric lifetime of 2.1 years and 1.3 years, respectively. If HBr branching occurred at the rate of 5%, the calculated ODPs are 0.4 and 0.24, for lifetimes of 2.1 and 1.3 years, respectively. The authors then go on to compare the model calculated levels of HBr with the limited data from the field. While stating that 10% HBr branching leads to a 6–7 parts per trillion by volume (pptv) of HBr at 32 km compared to an upper limit of 4 pptv measured by Traub, the authors concluded that despite the inconsistency, branching of as much as 10% cannot be ruled out given the "expected temporal and spatial variability of HBr and the relatively small samples of data from which the upper limits are derived." Finally, the authors state that their model calculation does not take into consideration possible losses of methyl bromide to land surfaces which would further reduce the calculated ODP.

In addressing the basis for the conclusions reached in the Assessment Update report, the MBWG first argues that branching to form HCl is consistent with atmospheric measurements. They cite a paper by Stachnick et al., in Geophysical Research Letters to support this claim. While the paper provides a number of possible explanations for the elevated level of HCl, it does not mention the relevant analogous reaction (HO_2 plus ClO) as a plausible explanation. Furthermore, laboratory studies of OH plus ClO have produced no direct evidence in support of the formation of HCl. (Memorandum from NASA to EPA, August 19, 1993.) The MBWG cites a paper by Lee (J. Chin. Chemical Society) as containing laboratory evidence that HCl is formed by the reaction HO_2 plus ClO. Concerns have been raised that this paper represents the only published work demonstrating this reaction, that internal controls used in the experiment were inadequate, and that efforts to date in the United States to verify this experiment have not been successful. (Memorandum from NASA to EPA August 19, 1993.)

Finally, the MBWG's comments argue that since the scientific community agrees that the possibility of HBr branching cannot be ruled out, it is improper that "EPA in effect does just that, by adopting an ODP value which fails to take this possibility into account." However, when presented with much the same information, for the reasons described above, the scientific assessment panel also deemed it more appropriate to calculate the ODP of methyl bromide without factoring in any specific value for HBr branching. The Agency also believes that the evidence provided by the MBWG is either scientifically flawed or insufficient for the reasons stated above to include HBr branching in its calculation of methyl bromide's ODP. While the Agency recognizes that additional research is necessary to better understand the issue of HBr branching, the evidence available to date does not merit including it in its ODP calculations.

It is important to note that the paper submitted by the MBWG on these issues was also submitted for publication in a scientific journal and has since been modified and resubmitted for publication. (Telephone conversation with author September 23, 1993). It is also worth noting that key aspects of analysis presented in the paper that the MBWG relies upon were also reviewed prior to the issuance of the update report by the Scientific Assessment Panel. As discussed in detail above, the update report concluded that the role of HBr branching was sufficiently speculative that it should not be taken into account in its calculation of ODP. Based on its review of all of the evidence, EPA concurs with the view that inclusion of HBr branch, in the calculation of methyl bromide's ODP is too speculative. Should additional measurements or modeling provide more conclusive evidence in support of HBr branching, then the Agency would consider future changes to reduce the ODP of methyl bromide.

c. *Other Sinks for Methyl Bromide.* In proposing an ODP of 0.7, EPA stated that this calculation was based only on reactions with the OH radical and that an important area of uncertainty was whether other oceanic or landbased sinks for methyl bromide exist. To the extent significant additional sinks for methyl bromide exist, they would result in a lower ODP for this compound.

Similarly, in the update of the Protocol's Scientific Assessment on methyl bromide, the panel concluded that "possible oceanic and terrestrial surface removal processes are one of the major areas of uncertainty in determining the global budget for methyl bromide." EPA received extensive comments from the MBWG and has reviewed several recent papers published related to the broader issue of the global "budget" of methyl bromide.

The comments from the MBWG point out the possible discrepancy between the past commercial sales of methyl bromide and measurements of atmospheric concentrations of this compound. They cite papers by Cicerone (1988) and by Khalil (1993) to argue that while commercial sales increased in the mid-1980s, measured atmospheric concentrations increased only slightly if at all. From this possible anomaly, the MBWB argues that an additional important sink must exist for methyl bromide. The comment fails, however, to reflect additional data presented by Khalil (1993), which concludes that atmospheric concentrations did increase from the period 1988–1992 at the rate of about 3% plus or minus 1% per year. Because these data on production and concentrations do not portray a consistent picture, no firm conclusions can be drawn from them concerning the existence of additional sinks for methyl bromide. The potential for both additional sources and sinks for methyl bromide is an important area of uncertainty and more information should be available in future years.

In order to estimate the potential impact of the oceans as a substantial sink for methyl bromide, the MBWG included information based on modelling performed by Sze as described above. This analysis showed that, even if the oceans were indeed a major sink for methyl bromide, the atmospheric lifetime based on this factor alone would decrease from 2.1 years to 1.3 years, and decrease the ODP to 0.4, still well above the 0.2 threshold.

EPA also received a paper from a research scientist at NOAA that examines the potential role of the oceans in regulating the atmospheric concentrations of methyl bromide (Butler, 1993). This paper was submitted to the docket at the same time it was submitted for publication in a scientific journal. Based on comments received from the journal, this paper has been substantially revised and resubmitted for review and possible publication. (Telephone conversation with author, September 16, 1993). This original paper suggests that any evaluation of the atmospheric lifetime and impact on ozone of methyl bromide must include the role of the oceans. The paper suggests that the oceans are the largest source of methyl bromide, and that they could act as a regulator of the atmospheric concentrations of methyl bromide. Thus, even if man-made emissions of methyl bromide were reduced through regulatory action, this paper suggests that reductions in atmospheric concentrations may not be reduced correspondingly. According to this paper, the oceans could increase their emissions to the atmosphere, largely or in part offsetting any gains from reductions in man-made emissions.

However, recent time series data published by Khalil (1993) suggest that atmospheric concentrations have been slowly increasing over the past four years. This data appears to contradict the hypothesis that atmospheric concentrations would not change if manmade emissions decreased.

To explore his hypothesis, Butler develops a simplified model combining both oceanic and atmospheric responses. The results from this model show the relationship between the atmospheric lifetime of methyl bromide and the saturation anomaly of the compound. The saturation anomaly is calculated by comparing the ratio of measurements of atmospheric concentrations with levels of oceanic concentrations. His analysis suggests that if the value for the saturation anomaly is 100%, then the atmospheric lifetime would be slightly less than 2.0 years. If, however, the value for the saturation anomaly were 300 percent, then the atmospheric lifetime of methyl bromide would be reduced to slightly less than one year.

Only limited and somewhat conflicting data exist of measurements of the saturation anomaly of methyl bromide. Khalil (1993) reports on data from two shipboard experiments that occurred in 1983 and 1987. Based on measurements taken on these voyages, he estimated a saturation anomaly of 40–80 percent. This value would be consistent with an atmospheric lifetime of methyl bromide of just over 2 years. In contrast, a paper by Singh (1993) reports on data from a different oceanic experiment conducted in 1981–82 which produced values for the saturation anomaly at 180–240 percent, which would lead to an atmospheric lifetime of methyl bromide of 1–1.2 years.

Without additional data, it is impossible to reconcile the range in values provided by the two limited data sets. However, in the explanation of his data, Singh (1993) suggests that it may not be appropriate to generalize to the entire ocean from the data he collected in the eastern Pacific. He points to productivity maps that suggest the sampled area is 2–4 times more productive than the oceans as a whole. The model developed by Butler is necessarily simplified (given the paucity of data) and models the oceans as a whole. Nonetheless, additional data is essential to narrow the uncertainties raised in Bulter's analysis. Given the data available to date, the Agency does not believe it is prudent to modify the current regulatory strategy based on the hypothesis that the saturation anomaly across the entire oceans would be substantially greater than that obtained in the measurements reported by Khalil.

Finally, the MBWG comments also suggest that terrestrial sinks could be significant and further reduce the ODP of methyl bromide. While methyl bromide acts as a strong methylating agent, no published data exist concerning the possible magnitude of losses through land-based surface removal. The commenter essentially cited information contained in a presentation made on this issue at the Scientific Workshop on methyl bromide by Kolb. This presentation focused primarily on what studies could be done to evaluate land-based sinks and contained no data specifically demonstrating that such a sink exists for methyl bromide. Since no additional information is presented in support of modifying the ODP to reflect this factor, EPA must reach the same conclusion as the Scientific Assessment Panel, that an insufficient basis exists for altering the ODP based on the existence of land-based sinks. Should additional information be developed demonstrating that surface losses are an important sink for methyl bromide, the calculation of its ODP could be modified accordingly in the future.

d. Natural and Man-Made Emissions. In addition to emissions from human activities, the oceans also represent a significant source of emissions of methyl bromide. The relative role of emissions from natural versus man-made sources of methyl bromide is one of the key areas of uncertainty and has important implications for the effectiveness of measures to safeguard stratospheric ozone. Also, the total amount of emissions is relevant to the issue of atmospheric lifetime and therefore the calculation of ODP.

Based on their review of relevant data on this issue, the Protocol's Scientific Assessment update concluded that man-made emissions amounted to 25% percent plus or minus 10% of total

methyl bromide in the atmosphere. This calculation assumes that the atmospheric lifetime of methyl bromide is two years and calculates that corresponding total emissions are roughly 75–110 thousand metric tonnes annually to obtain the measured atmospheric abundance of 9–13 pptv. Of this amount, roughly 25 thousand tonnes would be from man-made sources and the remaining roughly 75 thousand tonnes would be from natural sources.

In their comments, the MBWG pointed out that if a one-year atmospheric lifetime were assumed instead of two years, that the percent contribution from man-made sources would be cut in half. However, if the lifetime of methyl bromide were a year, annual emissions would have to double to 150–220 thousand metric tonnes in order to maintain the measured atmospheric abundance of 9–13 pptv. While that amount cannot be ruled out, Khalil (1993), in the most extensive review of the methyl bromide budget published to date, estimated that emissions from the oceans amount to only 35 thousand metric tonnes. In another paper on this issue, Singh (1993) estimated that emissions from the oceans are on the order of 60 (40–80) thousand metric tonnes/year. While both papers point out the substantial uncertainties and limited availability of data to calculate the methyl bromide budget, based on the information available to these investigators, they calculated that in the absence of other significant sources, emissions from the oceans appear to be well below the amount required to support a one-year atmospheric lifetime of methyl bromide. However, a related area of uncertainty is whether methyl bromide from the burning of biomass could also represent a significant source of man-made emissions. (Khalil, 1993).

Finally, the MBWG's comments discuss a number of possible alternative explanations for the north-south gradient that exists in measurements of methyl bromide's atmospheric abundance. The science assessment update suggests that this gradient reflects a significant source of methyl bromide from agricultural sources primarily in the northern hemisphere consistent with commercial sales and use of this compound. While direct measurements of emissions of methyl bromide from agricultural applications, of course, provide clearer evidence of the role of man-made methyl bromide, the existence of an interhemispheric gradient with higher concentration in the north may be an indirect confirmation that such emissions occur. This evidence tends to counter the contention by some agricultural groups that methyl bromide injected into the soil largely breaks down prior to its release into the atmosphere.

The comments by the MBWG suggested that the gradient could occur for a number of other reasons including: the fact that the oceans constitute a far greater percentage of the Southern hemisphere total mass and, therefore, constitute a larger sink in that half of the globe; that northern hemispheric oceans are biologically active and represent a larger natural source of emissions; that the larger land mass in the northern hemisphere represents a larger land sink; that the gradient in north to south of the OH radical is responsible for the gradient in methyl bromide abundances; and that large emissions of methyl bromide from biomass burning in the southern hemisphere is the reason it does not demonstrate a hemispheric gradient. Each of these hypotheses is presented in the comments as an equally feasible explanation for the interhemispheric gradient of methyl bromide. Without presenting any convincing arguments for any of these alternative hypotheses, the MBWG's comments state that "it is unscientific for EPA to simply pick one hypothesis 'out of the hat' and to dismiss all other plausible explanations for the interhemispheric gradient." The possible explanation of the interhemispheric gradient included in EPA's proposal was identified by the Protocol's Scientific Assessment Panel as the most plausible explanation. The panel stated that the interhemispheric gradient was clear from the available atmospheric measurements and "most probably indicated an excess source in the Northern Hemisphere." It reached this tentative conclusion rather than the ones preferred by the MBWG because it had data on methyl bromide use indicating higher emissions in the north than the south. Either no data, or inconclusive or conflicting data, was all that was available for each of the alternative hypotheses presented by the MBWG. While additional data will help clarify this issue in future assessments, the Agency believes that no additional information was presented in the comments to justify disagreeing with the statement on the possible cause of the interhemispheric gradient contained in the assessment panel update report.

One final area of uncertainty relates to the burning of leaded gasoline as another possible source of man-made methyl bromide. While the use of leaded gasoline is decreasing in favor of unleaded gasoline, this source may prove to be a significant source of methyl bromide in the short-term. The source of the methyl bromide in leaded fuel is ethylene dibromide (EDB), a material that is added to the fuel as a lead scavenger (0.015g EDB/liter fuel). Limited data exists suggesting that the exhaust of a vehicle using leaded fuel may contain some 22–44% organic bromines, with the portion of this emitted as methyl bromide varying between 54–82%. Additional studies will be required to fully evaluate the situation. However, in the United States, leaded fuel usage is only 1 percent or less of total fuel usage, making the atmospheric contribution of methyl bromide from this source negligible. However, to the extent leaded fuel, is still used in other parts of the world, it is an important issue for calculating the methyl bromide budget and for possible future international controls.

e. Summary of ODP Discussion. Both the Protocol's Scientific Assessment Update on methyl bromide and the discussion of methyl bromide's ODP in the preamble to EPA's proposed action identify a number of important uncertainties concerning the ODP. EPA received extensive comments related to these uncertainties and some commenters suggested that because, in their view, the ODP is likely to fall below 0.2, the Agency should delay taking any action.

In reviewing these comments, EPA believes most if not all of these uncertainties were reviewed by the Scientific Assessment Panel in their update report. While recognizing that the ODP may change in the future as additional information becomes available, the panel concluded that 0.7 was the current best estimate for the ODP of methyl bromide. It explicitly rejected both higher and lower estimates based on the same factors commenters on EPA's proposal have since raised.

The comments further demonstrate that any single factor alone, even in an extreme case, is unlikely to reduce the ODP below 0.2. Thus, even the high value for HBr branching (10 percent) alone would reduce the ODP to only 0.24. To reduce the ODP below 0.2 would require both a substantial oceanic sink and significant HBr branching.

To put the 0.2 ODP value in context, it is important to note that compounds with values below 0.2 are also being severely regulated under both the Montreal Protocol and CAA regulations. For example, methyl chloroform has an ODP of 0.12 (based on the latest scientific assessment) and is being phased out by January 1, 1996 both under the Protocol and CAA regulations. HCFC–141b has an ODP of 0.11 and is scheduled for phaseout in

today's regulations by 2003. Thus, even if the ODP of methyl bromide were to drop below 0.2, the compound could still be regulated in much the same time frame established by today's rule.

Finally, the above discussion of the ODP has focused exclusively on steady-state values for the ODP of methyl bromide. The steady-state value calculates the impact of the compound on ozone relative to CFC–11 over a period of several hundred years. To the extent that the greatest concerns about the impact of ozone depletion will occur over the next ten years after which peak depletion will be declining, EPA also considers the ODP over that shorter time period important. Because of its shorter atmospheric lifetime compared to CFC–11 (2 years compared to 60 years), the short-term impact of methyl bromide on ozone is substantially greater than its impact calculated over a much longer period of time. The scientific assessment update report calculates the ODP of methyl bromide over a period of 10 years at 7.0. The Agency believes it is important to consider that short-term reduction in risks to the ozone layer is an important part of its efforts under Title VI of the CAA, (See section on HCFCs and IEER petition, above). EPA believes methyl bromide "contributes significantly to harmful efforts on the stratospheric ozone layer" to an extent much greater than reflected in its steady-state ODP. Methyl bromides short-term effect, even if the steady state ODP is proven to be just below 0.2, would still be much higher than any substance not currently on the class I list, and could well still merit listing based on its substantial contribution to stratospheric ozone depletion.

4. Uses and Substitutes for Methyl Bromide

Methyl bromide is a broad spectrum pesticide which is widely used as a fumigant in the control of insects, nematodes, weeds, pathogens, and rodents. It is primarily utilized for soil fumigation (80 percent of world-wide use), commodity and quarantine treatment (15 percent of use), and structural fumigation (5 percent of use). Because of its relatively low price, and its physical and chemical attributes, it is used world-wide in many different situations. Due to the versatility of this chemical, there is no single alternative treatment that can duplicate the action of methyl bromide in all its many applications. It is possible, however, to consider alternative chemicals and production methods that can replace methyl bromide to a significant degree in numerous situations.

In the last several months, activities related to several alternatives have been initiated. While additional research field tests and regulatory approvals will be necessary to define efficacy and applicability and may take considerable time, these initial steps represent an important beginning. Specifically, carbonyl sulfide has been identified by researchers in Australia as a potentially effective pest control material for commodity pests such as beetles, fruit flies, moths, mites and termites, as well as a soil fumigant for nematodes. Whether or not registration is sought for this material in the U.S. remains an important issue. Enzone has just recently been approved for registration for use as a pesticide for nematode and disease control on grapes and citrus in the United States. In addition, new application methods are currently being field tested for metam sodium which show significant improvement in coverage and penetration. And in 1994, Telone will likely be investigated in large scale field trials in California, with the intention of a possible future reentry of use in that state. Several researchers have recently began developing a system utilizing carbon dioxide in combination with reduced dosages of existing fumigant agents in structural and commodity applications to achieve control levels better than what has been seen with methyl bromide alone. In addition, EPA expects an application to be filled shortly with the EPA Office of Pesticide Programs for the use of Dazomet as a soil fumigant for a number of high value applications which now use methyl bromide. While none of these alternatives are likely to make significant near-term inroads into the use of methyl bromide, depending on the outcome of additional efforts, they could contribute to the transition by 2001.

a. The NAPIAP Study. The United States Department of Agriculture (USDA) issued a document in April 1993 entitled, "The Biologic and Economic Assessment of Methyl Bromide," which was prepared by the National Agriculture Pesticide Impact Assessment Program (NAPIAP), and which will henceforth be referred to as the NAPIAP assessment. The NAPIAP assessment was intended to evaluate the impact on American agriculture from an immediate ban of methyl bromide.

EPA believes that the report represents a useful analysis if methyl bromide were banned immediately, but that it was not designed nor intended to evaluate the proposed phaseout of this compound in the year 2000. Because it looks at the impact of an immediate ban, it assures little use of replacement materials by the agricultural community.

The NAPIAP assessment considered an acceptable alternative to methyl bromide to be one that duplicates its biocidal actions. This serves to restrict the range of materials which the NAPIAP report considered to replace methyl bromide. Methyl bromide is used to control pests which would otherwise cause crop damage and economic losses. However, it is not necessary (and probably not possible) to duplicate methyl bromide's broad spectrum efficacy to achieve pest control. EPA believes, nonetheless, that it is possible to manage the pests currently controlled by methyl bromide with other chemical pest control tools, as well as nonchemical and cultural means.

Many years of research have perfected the use of methyl bromide as a soil and commodity fumigant. It is reasonable to expect that major research efforts will be needed to improve the performances of metam-sodium, dazomet, 1,3-dichloropropene and other alternative pest control techniques. For example, preplant methyl bromide fumigation has shaped the way in which research, breeding programs, and commercial practices are pursued with strawberry cultivation in California. Strawberry cultures were bred and selected in soils fumigated with methyl bromide. Under these circumstances, there has been no need to maintain or improve resistance to minor root pathogens, let alone major diseases such as Verticillium. Very little is known about cultivar resistance to root diseases because commercial strawberries are grown under "near axenic" soil conditions. Researchers are likely to overcome at least part of the impacts of the methyl bromide phaseout by focusing on different strawberry cultures and developing appropriate pest management practices.

b. Comments. Several individuals and groups submitted comments to EPA on substitutes and alternatives to methyl bromide. In many cases, those in the agricultural community indicated they believed that alternatives to this material were extremely "limited", which would result in a situation where pests currently controlled by methyl bromide would be left uncontrolled, causing severe economic losses. EPA acknowledges that there is no chemical currently in existence nor envisioned in the short-term which will duplicate the broad spectrum biocidal action of methyl bromide. However, EPA believes that in order to prevent crop damage, and keep pests below the economic damage threshold, it is not necessary to duplicate the broad spectrum efficacy of

methyl bromide. There are, in existence and under development, both chemical and non-chemical pest control tools which can manage insects, weeds, nematodes, and plant diseases. In pest management cases where alternatives are not currently available, EPA supports research, such as that now being spearheaded by the USDA, to identify and implement good alternative pest control materials and methods.

EPA agrees with comments that stated that methyl bromide is a crop protection tool that currently satisfies a number of important needs. If other tools can satisfy these needs, however, they will be accepted and utilized by the agricultural community. In this light, a fumigant with analogous broadspectrum biocidal characteristics as methyl bromide is not essential to combat pests which cause crop damage and yield losses. Better utilization of existing chemical pesticides, together with non-chemicals and cultural methods, can address a many of the pest problems now managed by methyl bromide. Therefore, alternatives to methyl bromide need not be identical to this chemical in order to manage pests that can cause crop loss.

Comments were raised concerning materials that have potential to be used in place of methyl bromide and that must be evaluated on a case-by-case, crop-by-crop basis, appraising efficacy against the target pest, practical feasibility in a particular crop, economic viability, health and environmental risks, and regulatory issues. Several chemical and non-chemical pesticides exist today that are effective against insects, weeds, nematodes, and plant diseases. These will need to undergo further research to determine if they are practical field replacements for pests now controlled by methyl bromide. These materials are not general biocides like methyl bromide, but are action-specific to a particular set of pests. Therefore, it is likely that these materials will need to be used in combination with each other, and in conjunction with a good integrated pest management program, to replace the use of methyl bromide. Research is currently underway on both the governmental and academic levels, as well as in the private sector, to ensure that alternative materials and methods will be viable and available before methyl bromide is phased out.

A number of individuals and associations commented on the potential negative health effects of increased UV–B radiation, supporting the phaseout of methyl bromide to ensure protection of the ozone layer, thereby protecting human health and the environment in general. EPA agrees with this assessment, believing that the benefits to be expected with the phaseout of this chemical are considerably greater than any short-term costs.

Several commenters discussed the health and environmental problems that increased UV–B radiation would cause, the toxicity of methyl bromide, especially regarding the potential for worker exposure. The Physicians for Social Responsibility commented that methyl bromide appears to produce lasting neural behavioral deficits that are likely to impair cognitive functions even when used under conditions currently judged to be acceptable. They also noted that since this chemical is a potent alkylating agent and mutagenic, it may be carcinogenic.

Several commenters stated that once methyl bromide has been listed as a class I ozone depleting substance, EPA should implement other pertinent sections of the CAA Title VI, notably sections 608 and 610. Section 608 concerns emissions control, which in the case of methyl bromide would require users to reduce emissions as much as technologically possible in the interim. Section 610 allows for a ban on non-essential uses of class I substances, which would require users to immediately implement existing replacements for aerosol applications of methyl bromide. However, after careful review and due consideration, EPA believes that it is premature to consider additional regulations at this time.

Some commenters have raised concerns over regulatory issues, citing the time and cost involved in processing and registering pesticides with EPA. It is an EPA requirement to thoroughly test any material which will be utilized as a pesticide to evaluate the potential for unreasonable adverse health and environmental. See, 40 CFR part 1 (58). This can take many years, depending upon the type of material and the complexity of testing needed. However, despite the time involved, pesticides are registered, and do become commercially available. While this issue may slow the short-term accessibility of some materials and is one reason for not requiring interim reductions, it should not be a significant long-term barrier to the development of methyl bromide replacements.

c. Soil Fumigation. One of the most common uses of methyl bromide is as a soil fumigant. It is utilized to control nematodes, pathogens, insects, and weeds which reside in the soil and uncontrolled, can cause significant crop loss. Methyl bromide, especially when combined with chloropicrin, can thoroughly eliminate these pests from the soil. However, since this material will no longer be available, other pest control means will need to be developed and utilized to allow farmers to produce consistent and quality produce. EPA recognizes that this process will involve considerable research on existing and developing pesticides, as well as the registration of new pesticides. The process of pesticide registration includes both health and environmental testing, and may compromise the near-term utilization of some of these materials.

Several individual farmers and grower organizations commented on the potential lack of pest control materials with which to replace methyl bromide. As discussed above, EPA believes that alternatives to this chemical should be judged not upon their ability to duplicate the biocidal action of methyl bromide, but upon their ability to effectively and economically control pests currently managed by methyl bromide. In this light, methyl bromide, while effective, is not the only material registered with EPA which can control plant pathogens, nematodes, weeds, and insects. In this light, materials which are currently registered on other crops for other uses may have applications for as alternatives to methyl bromide.

Several chemical pesticides are currently on the market which effectively control insects, weeds, nematodes, and plant diseases, and therefore have good potential to replace methyl bromide in specific soil pest control situations. Application methods for many of these materials will need to be modified in order to manage pests now exclusively controlled by methyl bromide. EPA recognizes that several years of research will be required before good alternatives to methyl bromide will be available to the agricultural community.

Among the existing chemical pesticides that can replace methyl bromide, the methyl isothiocyanate (MIT) generators (Metam Sodium and Dazomet), and 1,3-dichloropropene (1,3–D, Telone) have the greatest potential to manage pests currently controlled by methyl bromide. These materials are not, and should not be construed to be equivalent to methyl bromide. In order to achieve full control of the wide spectrum of soil pests that can decrease yield, these pesticides will often need to be augmented by other chemical pesticides, non-chemical materials and cultural practices (e.g., development of resistant stock, and shift in cropping practices).

Both the MIT generators and 1,3–D will need to undergo field research on

soil incorporation and general application methods to ensure that the chemical is well distributed at rates and depths needed to control target pests. Research will be required to delineate efficacious dosages, application procedures and reentry periods. Several commenters noted that these substitutes need better delivery systems to adequately replace methyl bromide. These pesticides are undergoing a review of application methods on both the Federal and state (California and Florida) levels with regard to worker exposure. It is likely that registration reinstatement will involve modifications in the use of these materials to insure safe and efficacious applications. Many commenters from the agricultural community noted the effectiveness of replacement materials for specific crop applications (see Background and Summary Document).

In addition, as numerous comments pointed out, there are several outstanding regulatory and registration issues regarding these pesticides. For example, Dazomet is not yet registered for food crops in the U.S., and Telone is not currently permitted in California. EPA believes that, given the time allowed before the phase out of methyl bromide, many of the near-term developmental and regulatory hurdles may be overcome and the necessary adaptations may be made with these and other materials.

One advantage of the current and potential methyl bromide replacement materials is that they are, in general, far more selective than methyl bromide. The broad spectrum activity of methyl bromide, often considered an advantage, thoroughly sterilizes the soil, destroying both the pest organisms, as well as those that are a beneficial part of the soil ecology. Replacement pesticides are on the whole more selective since they affect only specific pest classes, thereby having potentially less impact on the overall soil fauna and flora. However, several comments expressed concern regarding the possibility that, in order to achieve good control of economic pests, replacement pesticide application rates and frequency of application may cause secondary environmental problems. EPA believes that through the use of improved application techniques now under development (e.g., deeper injections, thicker tarps, use of carrier agents), it is likely that effectiveness could be increased while dosage, and thereby risks to ozone depletion, can be reduced.

Other chemicals that are already on the market and may have potential when combined with other materials and practices include chloropicrin and carbon disulfide, as well as nonfumigant nematicides (carbofuran, oxamyl, fenamiphos, ethoprop, aldicarb, etc.) combined with fungicides (benomyl, metalaxyl, etc). Chloropicrin, currently used in combination with methyl bromide, may prove to be efficacious when used with other pesticides. Each pest situation and control method needed will have to be evaluated in relation to the target pest, the crop grown, the temporal and geographic effects, and the existing integrated pest management program.

Several pesticides are currently in the developmental stage, and will need significant laboratory and field research before reaching the marketplace and before their value as methyl bromide substitutes can be fully assessed. These include the inorganic azides, bromonitromethane, nemamort, and carbonyl sulfide, among others. These materials are currently in the developmental stage, and will require further evaluation before their potential as substitutes can be determined.

There are numerous methods for managing soil pests that are nonchemical in nature. While some of these methods are already used to manage economic pests, many of these techniques will need to be field tested on the specific target pests now controlled by methyl bromide, and therefore are part of a longer-term solution. These include crop rotation, the use of organic amendments, steam, solar heating, biological control agents, various cultural practices, plant breeding, biotechnology, grafting, and the physical destruction of pests and their habitat. Although these pest control methods cannot control all economic pests when used singly, when part of an overall integrated pest management program, these and other techniques may be effective in reducing pest numbers. Research will be needed on these and other methods to determine their effectiveness in reducing pest numbers.

Since many of the replacement pest control methods may be new to growers reliant on methyl bromide, an agricultural extension program will likely be required during the initial stages of implementation. Several commenters noted existing limitations for many of the proposed replacements, and noted that cost and supplemental effort may render some replacements infeasible in the short-term. While this may seem true in the short-term, new and better application methods of existing chemicals may dramatically help both the short- and long-term situation.

Other commenters discussed the process by which methyl bromide use can increase the amount of soil nitrogen available to plants, indicating that this will not be possible without the use of this chemical. However, there are numerous ways to add nitrogen, as well as other nutrients, to the soil through the use of commercially available fertilizers, as well as organic amendments and crop rotation programs. A program of good soil management can supply plant nutrients without increased pollution or ground water contamination, resulting in healthier plants which are more resistant to pests than those which are stressed due to poor nourishment.

The issue of seed bed disease protection was raised by commenters who perceive that yields would substantially decrease without methyl bromide. EPA believes that several of the existing fungicides, along with those in development, may adequately prevent the spread of disease and a significant decline in production. While research will be necessary to define dosages and application procedures, it is highly probable that efficacious and economically viable materials will be in place by the phaseout date.

EPA agrees with several comments that cite the beneficial health effects of fresh fruits and vegetables. However, there is no evidence to support the assertion that fruits and vegetables will no longer be available following the phaseout of methyl bromide. EPA expects that both currently available control strategies, and those which are in development, may be utilized to control pests and minimize crop loss when methyl bromide is no longer available.

d. *Commodity Fumigation.* Methyl bromide is currently used to treat both food and nonfood commodities prior to shipment, during shipment, and while in storage. It is utilized as an effective quarantine tool to prevent exotic pest invasions and to assure that pests specific to a particular area are not carried to new regions. In this regard, incoming fruits and vegetables, as well as other commodities, are treated if suspected of harboring economic pests, or if the commodity origin is an area where such pests are known to exist. Commodities in storage or in transport are also treated to ensure that the material is not destroyed by pests. About five to eight percent of methyl bromide use is in commodity fumigation and is utilized primarily for insect pests, but also for disease and rodent control.

EPA received several comments expressing the concern that a good

chemical fumigant does not exist for use in place of methyl bromide. EPA acknowledges that a single chemical which duplicates the action of methyl bromide is not now available for use. However, various chemical and non-chemical treatments are available today which can effectively control commodity pests, and promising alternatives appear possible in the future (e.g., nitrogen). Although many of the transport and storage systems currently in use will have to be modified to accommodate the change, EPA believes it is likely that existing and potential alternatives will prove both efficacious and cost effective once implemented.

Some comments discussed the potential losses which may occur in commodities not treated with methyl bromide. This was discussed especially with regard to fresh fruits and vegetables. EPA believes that pest control materials and methods exist today, or are under development, which could potentially replace methyl bromide in many of the commodity applications. EPA acknowledges that as of this date, there are some quarantine use areas where replacements do not currently exist. As the final phaseout date approaches, EPA will work with concerned parties to ensure that quarantine integrity is not compromised.

Several comments were received that discussed the regulatory issues that will be impacted by the phaseout. The United States Department of Agriculture, Animal Plant Health Inspection Service (USDA/APHIS) regulations, which require the use of methyl bromide on certain imported commodities, was seen as a case in point. In addition, similar regulations in other countries, most notably Japan, were also seen as a potential issue. As alternatives to methyl bromide are established, governmental bodies that set agricultural quarantine regulations will need to adapt and change such regulations in a way which best protects domestic agriculture and imported commodities. Therefore, EPA agrees that this is an important issue and one that could take many years to address.

In a related issue, commenters discussed the registration of pesticides. Several commenters expressed concern regarding the possibility that pesticides that have important but minor uses may not be supported for registration or reregistration. In addition, some comments stated that the EPA pesticide registration process is so lengthy and costly that few new pesticides will be available before methyl bromide is phased out. EPA is aware of this concern, and understands that the testing needed to ensure registration of a viable pesticide can appear formidable. Because of this issue, EPA has set up a special task force in the Office of Pesticide Programs to coordinate and track methyl bromide substitution activities, and, if possible, to ease or accelerate the regulatory process for pesticides that are considered alternatives to methyl bromide.

A number of comments were received concerning the prospects of utilizing irradiation as an alternative to methyl bromide. Most notably, commenters believed that the capital cost and time required to irradiate would render this substitute infeasible.

Some considered this option as the replacement for all methyl bromide commodity treatments. EPA believes this is an unlikely, and certainly costly scenario. Several comments discussed the issue of public acceptance, speculating that this pest control would be widely rejected. While public apprehension to irradiation currently exists, with additional research and public education, this option could potentially become more attractive over time.

EPA is aware that significant research is ongoing on other attractive alternatives for commodity and quarantine applications. Particular attention is being paid to controlled atmospheres as a potentially attractive alternative to the use of methyl bromide. For example, new, less expensive and more flexible systems for using nitrogen in a controlled atmosphere are now being marketed. However, for controlled atmosphere to be a viable quarantine/commodity pest control technique, it will require approval by the countries to which commodities are being exported to. In addition, the potential for the recovery and recycling of methyl bromide is being investigated. EPA supports this effort as an important short-term solution.

Existing fumigants may also replace methyl bromide in certain applications. Among the chemical pesticides which may be potential replacements are phosphine, propylene oxide, hydrogen cyanide, ethyl formate, and ethylene oxide. Non-chemical pest control tools such as irradiation, controlled atmosphere, heat and cold treatments, pest-free zones, physical isolation, microbials, biological control, and host resistance may be potential integrated replacement materials as well. Research will be necessary to define the activity of these materials, as well as what human or environmental hazards could exist. In addition, research in basic pest biology, identification, and survey methods will need to be examined to ensure the availability of management tools over the long-term.

Many comments received on this use area stated that single alternatives such as phosphine, temperature treatments, and controlled atmospheres, among others, could not be used on all commodities now treated with methyl bromide. EPA understands and agrees that research must be conducted to define what commodity can be treated, with what protocol, against what pest, and under what circumstances. Nevertheless, EPA believes that this is achievable, and with research commodity pests can be managed without methyl bromide. Commenters also noted that the aeration time needed with phosphine and holding time with heat, cold and controlled atmospheres can be longer than what is needed with methyl bromide. EPA acknowledges that this will take considerable adjustment on the part of shipping and storage firms, but does not believe this is an insurmountable barrier. Adaptations of existing technologies (e.g., combinations using heat or carbon dioxide) might reduce dose and time of exposure requirements.

EPA received comments in support of the phaseout of methyl bromide, with special regard to worker-exposure issues in commodity processing facilities. Several examples were given of workers who had been adversely affected by this material. The commenters strongly support efforts to strengthen worker-exposure and safety regulations, and thus requested that EPA accelerate the phaseout process and require that commodities treated with methyl bromide be labeled. EPA recognizes that the phaseout of methyl bromide in order to protect stratospheric ozone could also have collateral benefits by reducing occupational exposure to this chemical. Of course, worker exposure to methyl bromide substitutes may continue to be a concern in some cases. In any event, EPA does not believe reduction in worker exposure is a basis to accelerate the phaseout under Title VI. Nor is this a basis to require labelling under Title VI. As explained below, EPA does not believe the section 611 labelling requirement applies to agricultural products fumigated with methyl bromide.

e. *Structural Fumigation.* Methyl bromide has been utilized to effectively control wood destroying and boring insects in buildings, as well as rodents and other pests in food processing facilities. Although this use accounts for less than five percent of the total global usage, it has been considered a

significant pest control tool due to its effectiveness.

EPA received comments on the potential for alternatives to replace methyl bromide for structural treatments. Most of them compared existing alternatives with methyl bromide. While methyl bromide is a good biocide, replacements will not necessarily need to duplicate its effectiveness in order to be good structural pest control tools. As with other chemical and non-chemical replacements, pest control tools in this use area will need to be thoroughly evaluated in regard to pest control efficacy, practical feasibility, and economic viability. It is essential that research be done on alternatives to the use of methyl bromide in the milling industry and the food processing industry to insure that chemical residue problems are addressed.

Several options exist with regard to pest problems in dwellings, with sulfuryl fluoride the principal chemical alternative. In this area, methods to reduce methyl bromide dosage by combining the pesticide with carbon dioxide, have shown good success. Contact pesticides which control certain wood boring pests include diazinon, carbaryl, permethrin, cypermethrin, fenvalerate, propoxur and borate which is now registered in the United States for control of termites and other wood destroying insects, and is currently being successfully utilized on a commercial basis. Non-chemical treatments include heat and cold treatments and the use of microwaves. Due to these developments, EPA believes it is likely that methyl bromide use will decline significantly, and this sector will not be adversely impacted to a significant degree by the phaseout.

The principal methyl bromide replacement for commodity storage warehouses and food production facilities is phosphine. While this material is not applicable in all situations due to its ability to corrode certain metals, when it is combined with carbon dioxide the amount of phosphine needed can be significantly reduced, which in turn diminishes the potential for phosphine-induced metal corrosion. As discussed in the proposal (58 FR 15014), other treatments include heat, cold, modified atmospheres, and inert dust. Additional research will be required in this area to ensure that all current users of methyl bromide will have acceptable replacements by 2001. Here, target pests and control options must be well defined in order to utilize pest control materials which are specific to the situation.

5. Analysis of Costs and Benefits

EPA received comments that in the March proposal it had not adequately addressed the costs and benefits of action to phase out methyl bromide. On the contrary, EPA included extensive documents in the docket which examined the uses of methyl bromide and the applicability and costs of various alternatives. (See for example, Preliminary Use and Substitutes Analysis of Methyl Bromide in Agricultural and Other Uses (June, 1992) and Montreal Protocol Assessment Update on Methyl Bromide: Science, Technology and Economics, UNEP (1993)). In the case of health and environmental impacts, the Protocol's assessment update provides significant information on the likely impact of continued use of methyl bromide on stratospheric ozone.

In comments received on the proposed rule, the MBWG conducted its own cost-benefit analysis ("Comparing the Costs and Benefits of EPA's proposed Phaseout of Methyl Bromide"). This analysis purports to calculate benefits based on EPA's methodology and findings used in past regulatory impact analysis. It calculates costs based primarily on an economic impact study performed by NAPIAP and discussed in detail in the previous section of this notice. The MBWG study concludes that the benefits of the methyl bromide phaseout in 2000 would be $19–29 million dollars and the costs would be $5–9 billion. This analysis is flawed for many reasons. The benefits calculations are drawn from an analysis of the impact of increased emissions of CFC–11. This scenario completely excludes the impact of bromine on stratospheric ozone depletion and therefore very substantially understates the magnitude of depletion. The benefits of avoided ozone depletion from CFC–11 occur over a period of 200 years, whereas the benefits from decreased emissions of methyl bromide occur within five to ten years. This factor is omitted from the MBWG's analysis. The analysis of the costs of phasing out methyl bromide dramatically overstates estimates for the reasons discussed in detail above in the critique of the NAPIAP study. The cost estimates assume an immediate phaseout, assume no additional alternatives are available in 2000, assume that no improvements in the use of existing alternatives are feasible, and assume that the market response by farmers is in some cases simply to abandon their fields.

EPA conducted an extensive review of the costs and benefits of its final action on methyl bromide (see, "The Cost and Cost-Effectiveness of the Proposed Phaseout of Methyl Bromide," EPA, 1993). This study includes the latest information on the costs and effectiveness of potential new alternatives by the year 2001 and on the costs and benefits of improved utilization of existing alternatives. The Agency estimates the total costs of a phaseout from 1994–2010 to be $1.7–2.3 billion. The benefits analysis contained in this report reflects the key assumptions about manmade emissions, impact on ozone of bromine, and likely growth in use absent regulations that are contained in the Protocol assessment update report. Based on this reasonable set of assumptions, EPA calculates the benefits of the final rule phasing out methyl bromide to be between $244 and $952 billion. (The benefits for the phaseout of methyl bromide between 1994 and 2010 is between $14 and 56 billion). These benefits result primarily from avoided cases of non-melanoma skin cancer. The range in values results from different estimates for the value associated with a human life.

6. Group Assignment and Baseline Year

Whenever a substance is added to the list of class I substances, section 602(c)(1) provides that the Agency assign it to an existing group or create a new group. The Agency proposed to create a new group (Group VI) following the historical precedent of actions both under the Montreal Protocol and the CAA.

Since the Agency did not receive any substantive comments on this aspect of its proposal, today's final rule adopts that approach. For the reasons summarized above and elaborated on in the proposal, methyl bromide will be listed as Group VI within the list of class I substances.

EPA proposed using 1991 as the base year for determining the level at which to set the production and consumption cap. This was chosen because it is the last year prior to discussions to regulate this compound and therefore avoids the possibility of companies increasing production in an effort to increase their baseline. The same reasoning was used in setting the appropriate year for other substances covered in both the CAA and the Montreal Protocol. The baseline established in the Montreal Protocol for methyl bromide is also 1991.

The only comment on this issue supported this year as the baseline. For the reasons stated above, today's final rule adopts 1991 as the baseline. In a separate notice (58 FR 40048), EPA had requested data to support the development of both a 1991

consumption and production baselines for allocating allowances. EPA published proposed allowances based on 1991 levels on November 9, 1993 in the **Federal Register**. The Agency intends to publish final allowances before the end of the calendar year in order to implement the freeze established in this rule beginning January 1, 1994.

In an important distinction between the Montreal Protocol and this rule, EPA has not excluded quarantine and preshipment uses from its baseline and from the coverage of this regulation. Thus, the Agency intends to maintain records on both the baseline and annual production and consumption without the exemption of quarantine and preshipment uses as required under the CAA and with those exemptions as specified in the Copenhagen Amendments to the Montreal Protocol.

7. Interim Reductions and Phaseout Schedule

EPA is obligated under the CAA to impose the schedule of reductions called for in section 604 unless under section 602(d) it can demonstrate that such a schedule is unattainable. In its place, the Act appears to require the Agency to adopt the most stringent attainable phaseout schedule.

The proposed schedule for methyl bromide was to freeze production in 1994 and to maintain that level until the 2000 phaseout. EPA's rationale behind this schedule was that some near-term alternatives for methyl bromide existed, but for many of these, additional testing and government approval would be required, which could take several years. Moreover, additional time is essential to allow for the testing of newly developed substitutes and to allow for a comparison of different alternatives to determine which would be most beneficial in terms of efficacy and in terms of impact on the environment.

The Agency received many comments on the issue of interim reductions. One group of commenters urged the Agency to make deep reductions in the early years because of the availability of substitutes and other methods of reducing use. Many other commenters pointed to the lack of currently available alternatives and argued against any interim reduction steps.

EPA recognizes that in some cases alternatives are already available and could be shifted to in the near-term. The Agency encourages methyl bromide users to make these shifts. Moreover, recent requirements in California seek to reduce use and emissions through reduced dosage, deeper injections and thicker tarps in an effort to reduce ambient exposures and reduce health risks. These efforts will also reduce use, as much as 10–20% according to one commenter. However, the Agency expects that such reductions in use will primarily serve to offset the historic growth rate in the use of methyl bromide. While EPA encourages these and other near-term efforts to reduce use and emissions, the Agency does not believe at this time that an adequate case exists for relying on these measures as the basis for interim cuts, and instead believes that they will primarily offset increasing demand for methyl bromide.

While the Agency believes that several alternative fumigants, including such compounds as metam sodium, telone, and dazomet could be widely used as replacements for methyl bromide, it recognizes that some time will be required for this shift to occur. Regulatory hurdles, equipment modifications, more extensive field testing, and improved application techniques are all reasons why the Agency cannot now conclude that a more stringent near-term schedule be un is attainable. Furthermore, as discussed, many non-fumigant alternatives may also be viable options to replace methyl bromide. These alternatives, including soil sterilization, crop rotation, and plant breeding, will take several years or longer to develop and evaluate. In order to allow for these alternatives to be fully developed and evaluated, and to provide adequate time for regulatory approvals through EPA and USDA, today's final rule does not impose any interim reductions on production or consumption of methyl bromide prior to the phaseout.

Consistent with the provisions of section 602(d), today's final action allows the full seven years after January 1 of the year after the compound is listed for a phaseout. For the reasons discussed earlier in this notice, the phaseout of methyl bromide would be required by January 1, 2001 instead of 2000 as proposed.

EPA received many comments calling for EPA to allow the maximum time permitted under the statute. These comments generally argued that the additional time is needed to allow for the development and approval of alternatives. Given the considerable uncertainties in knowing how long it will take for a full complement of alternatives to be developed and implemented, the Agency believes it would be prudent at this time to permit the additional year prior to the phaseout. However, the Agency will continue to review the development and implementation of alternatives and could decide at some future date that an earlier phaseout is attainable.

8. Labeling

Today's rule does not directly deal with labeling requirements under section 611; once a compound is listed as class I, then labeling would be required one year after the designation becomes effective (see, 40 CFR 82.102). EPA has determined that activities involved in growing, harvesting, storing and transporting food are part of an agricultural process that falls outside the intent of Congress to require labeling on products "manufactured with" a class I or II substance. Thus, containers of methyl bromide would be required to be labeled beginning on January 1, 1995, but products treated with methyl bromide would not require labeling.

EPA received comments both supporting this interpretation of its labeling rule and arguing that labeling of these products was clearly intended by Congress and that providing this information to consumers was precisely the intent of section 611.

EPA recognizes that the general purpose of alerting consumers that certain goods were produced in a manner that may cause harm to stratospheric ozone could apply to certain agricultural products for which methyl bromide is used. Nevertheless, the Agency believes that the section 611 requirement that products "manufactured with" a class I or II substance should reasonably be interpreted to not apply to agricultural products as such products are grown and not manufactured.

The ordinary sense of the phrase "manufactured with" does not include agriculture. The dictionary defines "manufacture" to mean making something made "from raw materials by hand or by machinery." (Webster's Ninth New Collegiate Dictionary (1983)). Fruits and vegetables are generally not made from raw materials by hand or machinery. EPA further believes that labeling products raises issues that Congress did not foresee in enacting section 611. For example, applying the labeling provision to agricultural products for which methyl bromide is used is practically more difficult than labeling of most manufactured products. Raw agricultural products are ordinarily not packaged in the same manner as other manufactured products. In many if not most cases, consumers purchase fruits and vegetables without any packaging at all. Labeling such produce would be particularly difficult.

9. Essential Uses

EPA asked for comment in its proposal on whether it has the statutory authority under section 604 to grant essential use exemptions for methyl bromide. EPA received one comment on this issue suggesting that it has such authority and that limits on essential uses specified in section 604 deal only with those compounds already listed and should not in any way restrict the Agency's flexibility in crafting essential uses for newly listed substances. Another commenter suggested that the Agency should go back to Congress for explicit authority to grant essential uses.

EPA believes that it is premature at this time to attempt to resolve this issue. If, as the phaseout date approaches, it becomes clear that important uses are still without substitutes, the Agency anticipates it would seek an appropriate remedy.

V. Addition of Hydrobromofluorocarbons (HBFCs) to the List of Class I Substances and to the Phaseout Schedule

In today's rule, the Agency is adding hydrobromofluorocarbons(HBFCs) as group VII, class I controlled substances. These chemicals have a parallel chemical structure to the HCFCs, with bromine atoms taking the place of chlorine atoms. Multiple ODPs of these chemicals were agreed to by the Parties of the Montreal Protocol as part of the 1992 Amendment which phases out these compounds by January 1, 1996. As explained in other parts of this rule, the Agency expects these amendments to enter into force during the first few months of 1994. The multiple values contained in the Protocol Amendment on the ODPs of the listed HCFCs do not reflect scientific uncertainties. The upper value of the ODP range provided is the estimate for the isomer with the highest ODP, and the lower value is the estimate of the ODP for the isomer with the lowest ODP. The Parties to the Protocol at their meeting in Copenhagen agreed that the ODP for these chemicals shall be the upper value in the range, and that these chemicals should be phased out by January 1, 1996. All the upper ODP values for the HBFCs ODPs exceed 0.2.

As provided under section 602(e) of the Clean Air Act, the ODP of a substance specified under section 602 shall be consistent with the ODP specified for that substance under the Protocol. Also section 602(a) provides that the Administrator shall add to the class I list all substances that the Administrator determines to have an ODP of 0.2 or greater. The Agency is assigning ODPs to the HBFCs based on the isomers with the highest ODP, consistent with the approach taken under the protocol. Because such ODPs are above 0.2, the Agency is adding the HBFCs to the class I list. The Agency has assigned HBFCs to group VII of the class I chemicals.

Once listed, these chemicals are subject to the phaseout schedule specified in section 604 of the Clean Air Act. However, section 606(a)(3) provides authority for accelerating the phaseout of class I substances on the grounds that the Montreal Protocol is modified to include a schedule that is more stringent than the schedule otherwise applicable under title VI. Section 614 provides that in case of conflict between any provision of title VI and any provision of the Montreal Protocol, the more stringent provision shall govern. Therefore, the Agency is adopting the schedule agreed to by the Parties in Copenhagen to phase out these chemicals by January 1, 1996.

Furthermore, EPA had proposed, and today makes final, a freeze on the production and consumption of HBFCs, starting January 1, 1994 at 1991 baseline levels. The Agency is aware of only one HBFC in production, HBFC–22B1, used as a fire suppressant with an ODP of 0.74. Use of this chemical is extremely limited, and it is only manufactured by one company. As a result, EPA does not anticipate any significant economic consequences from the phaseout of HBFCs.

EPA published a **Federal Register** notice requesting data on 1991 production and consumption of HBFCs for the purposes of establishing baselines and allowances. Based on responses to that request, EPA published proposed allowances on November 9, 1993, and intends to publish final allowances before the end of the year to implement the freeze beginning January 1, 1994.

VI. Trade Restrictions

A. Description of Proposed and Final Requirements

In order to implement the requirements of the Clean Air Act, the decisions of the 4th Meeting of the Parties to the Montreal Protocol, and the London and Copenhagen Amendments to the Montreal Protocol, EPA proposed and is today requiring a number of restrictions on trade with foreign states that are not Parties to the Protocol or its amendments. The trade restrictions being promulgated by this rule add to existing trade restrictions promulgated in 1990 (see 40 CFR 82.4(d)). Specifically, today's actions require a ban on bulk exports of controlled substances from the U.S. of Annex A substances (Class I, Groups I and II) to foreign states that are not Party to the 1987 Montreal Protocol. While this provision will not be legally effective until the effective date of today's rulemaking, EPA had asked U.S. companies to comply with this trade ban. All indications suggest compliance has occurred. Today's rule also imposes a ban on bulk imports and exports of controlled substances listed in Annex B to the Protocol (Class I, Groups III, IV, and V) from and to foreign states, respectively, that are non-Parties to the London Amendment. While this provision also will not be legally effective until the effective date of today's rulemaking, EPA has asked all relevant companies to ban the import and export of these chemicals effective August 10, 1993, the effective date of the relevant Protocol provision. Finally, today's rulemaking imposes a ban on imports from foreign states not Party to the 1987 Montreal Protocol of specified products listed in Annex D to the Protocol that contain the controlled substances specified in Annex A (Group I and II, Class I controlled substances). This provision will become effective January 10, 1994. The EPA proposal notified all companies of the applicability of these provisions.

The Montreal Protocol provides, and EPA is also allowing an exception from the trade bans for foreign states that are not Party to the Protocol, but have been determined by a Meeting of the Parties to the Protocol to be in compliance with Articles 2A to 2E and 4 of the Protocol. This includes countries that have complied with the terms of decision IV/17c of the 4th Meeting of the Parties to the Montreal Protocol, which provisionally determined compliance until the 5th Meeting of the Parties (November, 1993 Bangkok) for certain non-Parties that submitted specified data by March 31, 1993. A list of those qualifying countries can be found in appendix C, Annex 2 of this rule. An updated list of countries which are Party to the Protocol and its amendments can be found in appendix C, Annex 1. Over the last several months, the number of Parties to the Protocol has been increasing at a relatively fast pace. As a consequence, EPA will update the list of Parties to the Protocol every other month. One commenter noted that EPA must make this list available as readily and easily as possible. A dated list of Protocol Parties and Parties qualifying for an exemption from the Protocol's trade bans can be obtained by calling EPA's

Stratospheric Protection Hotline at 1–800–296–1996. The Agency will update this list every two months, and companies may trade with the newly added countries without EPA rulemaking.

Finally, in the proposed rule, EPA asked for comment on whether the information requirements currently in place for trade in bulk chemicals should be applied to the importation of controlled products. As noted below, one commenter stated that the recordkeeping and reporting requirements discussed in the proposal were unduly burdensome, and that EPA should rely on U.S. Custom's records for this information. EPA had not formally proposed recordkeeping and has decided not to impose such information requirements. Since the publication of the proposed rule, the number of Protocol Parties has risen from 91 to 126, and there is every indication that additional Parties will be joining shortly. The current list of countries complying with the Protocol includes all known producers, and since all Protocol Parties are under an obligation to ban the export of controlled substances to non-Parties, the possibility that non-Parties would be producing and exporting products which contain controlled substances is narrow. Given these circumstances, EPA believes that it would be overly burdensome to require such information for importation of controlled products.

B. Response to Major Comments

One commenter misunderstood EPA's description of the relationship of Taiwan to the Montreal Protocol. In the proposed rule, EPA affirmed that the trade provisions of the Protocol only apply to "a State not party to the Protocol," and noted that Taiwan, which did not fall under this Protocol category as a state, had nonetheless submitted data to the Protocol secretariat indicating that it was in compliance with the control provisions of the Protocol. The commenter asked for clarification as to what action EPA would take if Taiwan were found at some future date to be out of compliance with those provisions. Should that situation arise, EPA would review its options and would take actions consistent with U.S. laws and policies to strongly encourage full and prompt compliance with the Montreal Protocol.

C. Legal Authority

As discussed in more detail in the proposal, section 615 of the Clean Air Act provides EPA with the authority to promulgate these trade restrictions. That section authorizes the Agency to promulgate regulations, if in the Administrator's judgment, any substance, practice, process, or activity may reasonably be anticipated to affect the stratosphere and such effect may reasonably be anticipated to endanger public health or welfare. These trade bans imposed by this rulemaking would prevent shipments of ozone depleting substances from the U.S. to countries with no regulatory infrastructure to control their use. Limiting access in this way will reduce their release of such substances into the atmosphere, thereby, reducing effects on public health and welfare. Moreover, the bans on imports to the U.S. from non-Party foreign states of controlled substances and products would help discourage shifts of production to non-Party foreign states to the Protocol by eliminating the U.S. as a market for such production.

D. Definitions

As proposed, in this final rule, EPA has further defined Parties to the Protocol in the regulation to distinguish Parties complying with the original 1987 Montreal Protocol, the 1990 London Amendments and the 1992 Copenhagen Amendments.

E. Foreign States not Party to the Protocol

Article 4 of the Montreal Protocol provides foreign states which are not Party to the Protocol with a mechanism to demonstrate compliance with key Protocol provisions and seek exemption from the Protocol's trade measures against non-Parties. Specifically, paragraph 8 of Article 4 states that trade with non-Parties will be permitted if a meeting of the Parties finds those states to be in full compliance with Articles 2, 2A to 2E and 4 of the Protocol. It is anticipated that once granted, such status will be reviewed by each subsequent meeting of the Parties to ensure continuing compliance with the relevant Protocol provisions.

At the 4th Meeting of the Parties, the Parties reviewed the data submission of Colombia, and based on their demonstration of compliance, decided to suspend measures against that non-Party. Additionally, by Decision 4/17C, the Parties decided to determine provisionally, pending a final decision at the 5th Meeting of the Parties, that any foreign state non-Party to the Protocol which submitted data by March 31, 1993, was in compliance with the relevant provisions and could be exempt from the trade restrictions until the 5th Meeting of the Parties when that data could be reviewed. Fourteen non-Parties to the Montreal Protocol submitted data based on that decision. Additionally, eight non-Parties to the London Amendment to the Protocol submitted data. Due to the timing of their submissions, EPA was not able to list in the proposed rule those countries with interim status as a Foreign State not Party to the Montreal Protocol but complying with Montreal Protocol and/or the London Amendment.

VII. Changes in Definition of Production

A. Definition of Production

In the March 18 proposal, EPA proposed to define "production" as the manufacture of a controlled substance from any raw material or feedstock chemical, but not to include: "(1) The manufacture of a controlled substance that is subsequently transformed; (2) the reuse or recycling of a controlled substance; or (3) amounts that are destroyed by the approved technologies." The current definition of "production" excludes controlled substances that are subsequently transformed and the reuse or recycling of a controlled substance.

In today's rule, in response to a variety of comments to be discussed in this section, the definition of production is revised to mean "the manufacture of a controlled substance from any raw material or feedstock, but does not include:

(1) The manufacture of a controlled substance that is to be subsequently transformed;

(2) The reuse or recycling of a controlled substance;

(3) The manufacture of a controlled substance that is subsequently destroyed by one of the five approved technologies, to the extent that destruction is considered to have occurred under this rule; and

(4) Controlled substances that are vented or spilled unintentionally."

Several commenters indicated that after the phaseout, production allowances would no longer be available to produce controlled substances intended to be transformed or destroyed, using the current system of expending production allowances and applying to EPA to receive allowance reimbursement for controlled substances that are transformed. In response to those comments, along with revising the definition of production, EPA is also revising its approach to requiring production and consumption allowances in cases where controlled substances are to be transformed or destroyed.

Under today's rule, production and consumption allowances are required

only for the "production" of controlled substances that will result in emissive uses. As a result, producers of ozone-depleting chemicals that are to be used as feedstock do not need to expend allowances to manufacture these chemicals. That is also true for producers of such substances that are manufactured for production processes that will result in their destruction. Similarly, allowances are not required when importing reused or recycled substances. The changes in the definition of production will serve to facilitate business operations by eliminating the need for EPA's paperwork related to refunding and trading allowances in these limited situations. The Agency believes that these changes will assist industry in their business operations, but have no significant impact upon the ozone layer.

1. Transformation

a. Changes in Treatment of Transformation. Under the current regulations, producers expend production and consumption allowances when producing and importers expend consumption allowances when importing controlled ozone-depleting substances (except for carbon tetrachloride produced as a feedstock). When the chemicals are sold to a second party and subsequently transformed, new allowances are provided to that second party transformer upon request. These allowances are then traded back to the producing company by the transforming firm.

Several commenters, although agreeing with the proposed definition of production, indicated that the current administrative procedures for dealing with transformation and destruction under the allowance system should be modified. Since, only after a company transformed the controlled substance and submitted documentation to EPA that transformation occurred, would EPA "refund" those allowances expended, commenters indicated that allowances should not be required for the production of ozone-depleting substances that are to be transformed or destroyed.

Commenters further indicated that these requirements pose significant burdens upon industry. The paperwork and staff time, both for industry and EPA, to grant and trade allowances is excessive, and it may be months before a producer had allowances returned. The EPA recognizes that as the number of allowances becomes smaller with the annual reduction schedule, producers will become hard pressed for available allowances. It is not EPA's intent to hinder business operations that are allowed under the Montreal Protocol (i.e., production for transformation is not limited). Finally, EPA recognizes that under the current program, no manufacturer could produce past 1995 except for essential uses and exports to Article 5 countries, since no allowances will be available.

Consequently, EPA's procedures of the allowance system for ozone-depleting substances are now changed. In essence, the Agency is now extending the system previously applicable only to carbon tetrachloride transformation to other controlled substances. Because controlled substances that are transformed are excluded from the definition of production, producers that transform or sell to purchasers that transform do not need allowances for such production. Companies that buy these chemicals for transformation purposes will no longer need to request allowance redemptions once transformation has occurred, and thus will no longer need to trade those allowances back to the producers. This change would be imperative once U.S. production and imports of controlled substances is fully phased out. Without such changes, companies would be unable to produce controlled substances that were to be transformed or later destroyed after use.

The Agency does recognize that some production may have been intended for emissive uses and allowances expended, to produce those chemicals but they are later transformed. In these cases, EPA intends to allow persons to redeem those allowances where persons certify that transformation has occurred (see discussion on certifications below).

b. Recordkeeping and Reporting Changes Relative to Transformation. In addition to the simplification of the program to eliminate the unnecessary requesting and trading of allowances, EPA will require only annual reports from companies that transformed ozone-depleting chemicals. To track transformation on a quarterly basis, EPA will rely upon producers' quarterly reports which will record the volume of chemical sold for transformations. The Agency found tracking transformation between producers' reports and transformers' reports difficult. Generally, chemicals, once produced, are sold, used, or put into inventory. In some cases, companies will stretch out inventory over years. This makes it difficult for EPA to match production intended for transformation to when it is actually consumed or transformed. Consequently, EPA has decided to eliminate the transformer's quarterly report. However, EPA has not eliminated recordkeeping by companies that consume these chemicals as feedstock. EPA will audit transformers to ensure compliance with the requirements of this regulation. Transformers must maintain the following records as is currently required under the existing program: dated records of the quantity and level of each controlled substance transformed; copies of the invoices or receipts documenting the sale or transfer of the controlled substance to the person; dated records of the names, commercial uses, quantities of the resulting chemicals, and dated records of shipments to purchasers of the resulting chemicals; dated records of all shipments of controlled substances received by the person, and the identity of the producer or importer of the controlled substances; and dated records of inventories of controlled substances at each plant on the first day of each quarter.

Companies that purchase class I controlled substances and then transform those controlled substances must report the annual volume transformed within 45 days of the end of the control period.

In the case where production and/or consumption allowances are expended and the substance is later transformed, a person who transforms may receive allowances for transformation of controlled substances. The person must submit the following information: the identity and address of the person who transformed the substance; the quantity and level of controlled substance transformed; a copy of the invoice or receipt documenting the sale of the controlled substance; the name, quantity and verification of the commercial use of the resulting chemical transformed; and signature of the certifying party. The person must also certify that the production of the controlled substance expended either production and/or consumption allowance. The Agency believes that this information is necessary to ensure that transformation has occurred.

2. Destruction

In today's action, the Agency is implementing in its regulation a recent decision of the Parties in Copenhagen that addressed destruction (Decision IV/11), removing controlled substances to be destroyed under certain conditions from the definition of "production." As will be described below, EPA believes that the implementation of this decision is consistent with House-Senate Conference Report that accompanied the Clean Air Act Amendments of 1990, and will provide more clarity as to the

definition of production and the conditions under which destruction is allowed. Today's rule eliminates from the definition of production those ozone-depleting chemicals that are to be destroyed, similar to the manner in which transformation of such chemicals falls outside of the definition of production. The Agency believes that this change poses insignificant environmental harm and lessens the administrative burden of the current regulation.

a. Elimination of Coincidental Unavoidable Byproducts Provision. As a result of actions by the Parties to the Protocol regarding destruction, the need for the current coincidental unavoidable byproducts (CUBP) provision is eliminated. Under the current regulations, that provision allows for an exemption from production restrictions for any controlled substance that is a coincidental unavoidable byproduct and is subsequently contained and destroyed by the maximum achievable control technology, or MACT. With today's rule eliminating those quantities of controlled substances destroyed from the definition of production, the CUBP provision becomes unnecessary and duplicative. Therefore, as proposed, today's rule deletes the CUBP provision of the current phaseout regulations. Commenters supported the striking of the CUBP provision, given the treatment to be afforded through the destruction and insignificant quantities (see discussion below) provisions outlined in the proposal and followed through in today's final rulemaking.

b. Destruction—Background. Under the existing Protocol, "production" of controlled substances is defined as "the amount of controlled substances produced, minus the amount destroyed by technologies to be approved by the Parties." At the Fourth Meeting of the Parties to the Montreal Protocol, the Parties approved five destruction technologies to be used for destroying controlled substances.

With the approval of the five destruction technologies—liquid injection incineration, reactor cracking, gaseous/fume oxidation, rotary kiln incinerators, and cement kilns, Parties to the Protocol can now subtract from the definition of production that amount of controlled substance(s) that is destroyed by these means, under certain conditions discussed below.

Liquid injection incinerators are typically single-chamber units with waste burners. They may also include liquid injection stages of a multiple-chamber incinerator. These incinerators are used to destroy wastes with a low ash content and can be used to destroy sludge, slurry, vapor, or combustible liquid. Liquid wastes are burned in suspension after being injected through burners and atomized to fine droplets.

A reactor cracking process uses a cylindrical graphite, water-cooled reactor and an oxygen-hydrogen burner system. Since 1983, this process has treated waste gases resulting from the production of CFCs. The gases are converted to hydrofluoric acid, hydrochloric acid, carbon dioxide, chlorine, and water. The two acids are usable in-house and/or marketable, and the chlorine is scrubbed, leaving only water vapor, oxygen, and carbon dioxide as waste gases.

Gaseous/fume oxidation destroys waste vapor streams, most often volatile organic compounds. A combustion temperature of around 1100 degrees centigrade is needed to destroy most ozone-depleting compounds. Acid gas scrubbers are required for incineration of halogenated waste vapors, such as those from controlled substances. Fume incinerators can be direct flame incinerators, consisting of the combustion chamber and a burner, or recuperative fume incinerators that use heat exchangers to preheat the waste vapor feed stream or the combustion air. Fume incinerators are usually found in chemical process or manufacturing plants.

Rotary kiln incinerators can handle a wide variety of both solid and liquid wastes. Rotary kiln incinerators typically have at least two combustion chambers, the afterburner ensuring that complete combustion of exhaust gases takes place. Liquid wastes can be fed either into the rotary kiln area or directly into the afterburner chamber. If fed into the afterburner chamber, the liquid is atomized in the burner or combustion zone.

Cement kilns, under proper operation, can destroy most organic chemical wastes. Tests have been conducted using CFC–113, with a destruction efficiency of greater than 99.99 percent demonstrated. Destruction of ozone-depleting substances in cement kilns appears beneficial.

c. Definition of Destruction/Change in Definition of Production. In today's rulemaking, the Agency defines "destruction" as "the expiration of a controlled substance to the destruction efficiency actually achieved, unless considered completely destroyed as defined by this section. Such destruction does not result in a commercially useful end product and uses one of the following controlled processes. . ." The Agency believes it has the authority to develop this definition to be consistent with the Protocol. While section 601 (11) of the CAA does not require EPA to exclude quantities of controlled substances that are destroyed from the definition of "production," EPA believes it has the discretionary authority to exclude from the definition of "production" controlled substances that are destroyed through the use of the technologies approved by the Protocol Parties at the Copenhagen meeting. Section 601 (11) provides that the terms 'produce', 'produced', and 'production', refer to the manufacture of a substance from any raw material or feedstock chemical, but such terms do not include amounts of substances that are transformed or reused.

EPA notes that the Conference Report of the 1990 Clean Air Act Amendments stated that the "conference agreement does not include a requirement to construe the term 'production' in a manner consistent with the Protocol. The Protocol's exclusion for manufactured substances that are subsequently destroyed is too broad and does not include adequate safeguards to preclude abuse." The Conference Report then proceeded to state that "[i]n the course of implementing this Act, however, EPA shall consider whether an exclusion will be allowed on a case-by-case basis for the manufacture of controlled substances that are: (1) Coincidental, unavoidable byproducts of a manufacturing process; and (2) immediately contained and destroyed by the producer using maximum available control technologies." EPA proceeded to establish a process that exempted such production as CUBP, as discussed above, in the July 30, 1992 final rule (57 FR 33754).

While section 601 (11) of the CAA does not contain language requiring EPA to follow the Protocol in terms of excluding destroyed controlled substances from production, it also does not contain language precluding EPA from following the Protocol Parties' approach to destruction. Moreover, the Conference Report assumes that EPA has the authority to exclude quantities that are destroyed from production. Otherwise, Congress could not have directed EPA to consider excluding only certain types of destroyed production. EPA believes that while it is not required to follow the approach of the Protocol Parties regarding destruction, it has the authority to do so at this juncture because the approach adopted by the Parties, in specifically approving the five destruction technologies, adequately satisfies the concerns expressed in the Conference Report. Those concerns were expressed at a time when it was not known how the

Parties would treat destruction; by specifically approving these five technologies, the Parties have satisfied the concern of the House-Senate Conference Committee that the Protocol's exclusion associated with destruction is too broad. Furthermore, by requiring reliable documentation of the amount destroyed, EPA's implementing regulations further address the concerns raised in the conference language.

The Agency believes that with the adoption of this definition of destruction, a modified definition of production consistent with the Protocol's decision to approve the five destruction technologies, and the recordkeeping and reporting requirements described below, the concern regarding destruction expressed in the Conference Report language is adequately addressed.

d. Treatment of Destruction. Today's rule, with its definition of destruction, treats destruction in a manner parallel to the treatment of transformation in this final rule. Those substances that are produced for use in production processes that result in their destruction, using one of the five approved destruction technologies, are exempt from the definition of production. Therefore, production and consumption allowances are not required for production and importation of controlled substances that are to be destroyed.

It is important to note that EPA modified the method adopted in this rule for treating transformation and thus, destruction, from the proposed rule in response to comments. While producers or importers transforming or destroying carbon tetrachloride would not have been required to hold allowances to produce or import under the proposal, producers and importers of other controlled substances, and non-producers were required to apply for allowance credits after transformation or destruction had taken place. EPA made this decision due to the number of comments it received requesting this treatment. The Agency believes that as long as there are adequate safeguards to ensure that the chemical is eventually destroyed, then this administrative change would have no impact on the environment. The Agency has acknowledged that these requirements would have needed amending to implement the complete phaseout successfully. In today's final rule, in cases where the producer or an importer knows that any controlled substance is to be transformed or destroyed by the producer or importer itself or by a non-producer of the controlled substance, that substance will not fall under the definition of "production" and "consumption," negating the requirement for production and/or consumption allowances.

This rule does allow persons other than producers or importers to receive allowances when they destroy the controlled substance. Where allowances are expended in producing a substance that is sold for emissive use and that substance is later destroyed by one of the five approved technologies, the final rule is requiring that a certification be submitted to the Agency by the person requesting the allowances who destroyed the substance that allowances had been expended for the production or import of this controlled substance.

The person requesting these allowances should provide the following information: the identity and address of the person who destroyed the substance; the name, quantity and volume of controlled substance destroyed; copy of the invoice or receipt documenting the sale of the controlled substance to the person; and the destruction unit's efficiency. Finally, the person shall submit a certification that allowances had been expended for the production or import of this controlled substance. The Agency believes that this information, similar to the information required for receipt of allowances for transformation, is necessary to ensure that destruction has occurred.

As will be discussed below, EPA is also requiring that each person who intends (knowing at the time of purchase) to destroy controlled substances submit to the producer or importer from whom they purchase those substances a verification that the substances they purchase will be destroyed. The purchaser or importer will keep this verification on file. Also discussed below, EPA is requiring that a one-time report be submitted by those who destroy controlled substances, stating the destruction unit's destruction efficiency and the methods used to record the volume destroyed and those used to determine destruction efficiency as well as other federal or state regulations governing the destruction technology. The combination of these two one-time (unless information in verification or report changes) requirements will supply adequate information to EPA and to the producer/importer, such that destruction can be confirmed. This will minimize the amount of information the person destroying will need to submit to the producer/importer after substances are actually destroyed.

All companies that destroy class I controlled substances must report volume destroyed during the control period within 45 days of the end of the control period.

As will be explained in greater detail below, a substance will be considered completely destroyed if it is destroyed by one of the five technologies at a demonstrable destruction efficiency of 98 percent or greater. Substances destroyed by one of the five technologies at a destruction efficiency of less than 98 percent will be considered destroyed only to that percentage; thus, only that percentage of the substance that is to be destroyed will be exempt from the definition of production. The remaining percentage will fall under the definition of production and thus require production and/or consumption allowances to produce or import.

This differs slightly from the treatment of transformation in this final rulemaking, in that substances transformed, meaning entirely consumed except for trace quantities, are exempt from the definition of production. There are no provisions for less than full transformation, except for trace quantities. A destruction exemption can be obtained, however, for whatever percentage is demonstrated to be destroyed by one of the approved technologies.

e. Response to Major Comments. EPA received numerous comments relative to its proposal to grant credits or exempt a controlled substance from the definition of "production" for destruction of the covered substances. Of those, only one stated that the Agency should not grant such credits or exemptions. The specific concern of this commenter centered around the potential ability of a company to transfer production credits among chemicals. According to the commenter, if a company had a surplus of one substance, destroyed that surplus, received credits, then used those credits to produce another substance, the Agency could be creating a disincentive to move out of those substances.

In this final rulemaking, EPA allows transfers of allowances to occur only within a Group (eg., Group I, which includes CFC–11, –12, –113, –114, and –115). CFC allowances could not be traded for halon credits, as this commenter suggested. (Indeed, production of halons will be phased out in 1994, and therefore, no trades would occur among individual halons.) Additionally, all transfers of allowances among chemicals within a group must be adjusted according to the ODP of each substances. The Agency thus

believes that, even in the event of an unlikely scenario described by the commenter, the implementation of these decisions will result in no environmental damage, yet will minimize disruptions for companies that require controlled substances past the phaseout date.

Companies will only receive a destruction exemption for the volume of controlled substances that have been destroyed by one of these five approved destruction technologies, unless a 98 percent or greater destruction efficiency is achieved; only then would a full destruction exemption be granted. Because the environmental goal of this rule, as well as the whole of title VI, is to minimize and ultimately eliminate emissions of ozone-depleting chemicals, treating destruction in the same manner as transformation is treated in this final rule merely recognizes a process that destroys potential emissions of these substances consistent with these environmental goals.

The Agency received comments claiming that it is unreasonable to exclude from the definition of destruction those processes where heat or energy that may be commercially useful is produced as a byproduct of destruction. EPA agrees. The intent of the destruction process is to destroy the substance, for which a byproduct in the way of heat or energy may be produced, rather than production of an end product being the goal of the destruction activity. Heat or energy are in fact potential byproducts of the process of destruction, rather than end products of the substance(s) itself. Therefore, EPA does not consider heat or energy produced as a byproduct of destruction to be considered an end product. As a result, the production of heat or energy as a byproduct of an approved destruction technology under this section does not preclude the substance or substances from falling under the definition of destruction.

One commenter suggested that the Agency clarify that any other destruction process that is later approved by the Parties to the Protocol and added to this list of five destruction technologies should also be deemed an acceptable destruction technology under this rule. While EPA does not believe it appropriate to authorize the use of as yet unapproved destruction technologies, it intends to propose authorizing use of additional destruction technologies through future rulemakings, as such technologies are approved by the Parties.

Another commenter pointed out that, although listed properly in the Preamble, the regulatory text of this rulemaking listed the destruction technologies incorrectly, splitting out liquid injection incineration into two technologies—liquid injection and incineration. The regulatory text has now been corrected to include liquid injection incineration as one technology.

One commenter stated that controls of emissions of these substances by product recovery devices should be treated in the same manner as destruction via one of these five approved technologies. Another commenter stated that RCRA boilers and industrial furnaces should also be covered by the exemption. Both claimed that the end results would be avoidances of emissions. In keeping with the intent of Congress, where concerns centered around too broad an exemption of a substance from the definition of production as a result of destruction, and in maintaining consistency with the decision reached by the Parties to the Protocol, the Agency is today allowing destruction exemptions only for those five destruction technologies approved by the Parties.

Another commenter requested that EPA clarify that an incidental use of a substance prior to destruction, adequately contained so as to prevent any emissions, not disqualify it from receiving destruction credits/exemptions. EPA expects that these substances will be used in a production process prior to being sent for destruction. Consequently, where uses of a substance occur in a contained environment and that substance is subsequently destroyed, the destruction exemption described in this section would apply.

Another commenter requested that the Agency clarify that off-site disposal is equally acceptable in taking advantage of this destruction credit. If handled according to applicable requirements, off-site destruction should ensure the same environmental benefits as on-site destruction. Consequently, as long as the requirements of this section are met, including all reporting and recordkeeping requirements, off-site destruction will be treated in the same manner as on-site destruction.

A commenter expressed concern over the manner in which fugitive emissions are treated and accounted for. EPA has not counted fugitive emissions of controlled substances in its current definitions of "controlled substance" or "production." The Agency believes that, with the accelerated phaseout of these substances, the higher costs associated, and general operational efficiency concerns, producers and manufacturers have economic incentives to reduce fugitive emissions of controlled substances to a minimum. Additionally, major sources under section 112 of the Clean Air Act will have requirements imposed that will necessitate minimizing emissions of covered controlled substances. For these reasons, in keeping with past practice, fugitive emissions are not included in today's definitions of "controlled substance" or "production." If EPA's expectations turn out to be wrong, and fugitive emissions are not kept to a minimum, EPA will revisit the matter in a subsequent rulemaking.

*f. Degree of Exemption/Credit Afforded for Destruction.*Under the current regulations, companies could only claim the CUBP exemption for carbon tetrachloride and methyl chloroform destroyed at a 99.99 percent efficiency. The Agency had developed this destruction efficiency for these two chemicals, as well as others, when they were characterized as hazardous wastes under 40 CFR 343(a) and 40 CFR 266.104, pursuant to the Resource Conservation and Recovery Act (RCRA, 42 U.S.C. 6901 *et seq*). In the July 30, 1992 rulemaking for the protection of stratospheric ozone (57 FR 33754), the Agency adopted this definition of MACT in § 82.4(e)(1)(v) to exempt CUBP from production limits. However, today's rule eliminates the CUBP provision and the Agency has now focused on developing standards for destruction of controlled substances in order to exempt those substances from the definition of "production," making use of the Agency's experiences with MACT under the CUBP provision, RCRA regulations, and proposed CAA section 112 regulations.

Under RCRA, the Agency currently requires that industries that incinerate hazardous waste covered by the RCRA regulations meet "at stack" standards of 99.99 percent, or four nines. In addition to these "at stack" standards, RCRA also establishes performance standards to control fugitive emissions of hazardous substances which can occur at other point sources, such as waste storage facilities (§ 264.345(d)). While there are currently no quantified controls for such emissions, EPA is developing such standards for point sources under the CAA section 112 rule.

Of the substances regulated by RCRA, the only controlled substances covered are methyl chloroform and carbon tetrachloride. The remaining controlled substances are regulated under RCRA only when they are blended with hazardous waste, such as used solvents, and incinerated.

The Agency is today making available the granting of full exemption from production, or full allowance credits, based on the destruction of controlled substances when they are covered by, and operated in compliance with, RCRA section 343(a) and 40 CFR 266.104. If the Agency were to exempt from the definition of production only that volume destroyed, 99.99 percent in the case of RCRA permitted facilities, the company would never be able to redeem the full amount of the chemical used, and would eventually be unable to obtain sufficient volumes to operate efficiently.

Under some situations, these chemicals are not covered by RCRA regulations, but will be covered by regulations to be promulgated under section 112 of the Clean Air Act. The Agency published a proposed rule (known as the Hazardous Organic NESHAPS [HON] rule) on December 31, 1992 (57 FR 62608) to implement section 112, stating that companies are required to control air emissions occurring in chemical manufacturing processes to the established MACT levels. The HON proposal covers approximately 400 manufacturing processes associated with the Synthetic Organic Manufacturing Industry (SOCMI), as well as seven non-SOCMI source categories. The Clean Air Act contained a list of 189 hazardous air pollutants (HAPS) of which a portion are known to be emitted by the above mentioned industries. Of those listed, the only controlled substances are methyl chloroform (MCF), carbon tetrachloride (CCl4) and methyl bromide (listed as a class I substance in today's accelerated phaseout rule).

The HON proposal covers five kinds of emission points within such facilities where these substances are emitted, including process vents, wastewater streams, transfer operations, storage tanks, and equipment leaks. The Agency proposed that each emissions source would require a "reference control technology" with specific applicability criteria, such as a 98% control efficiency with vapor incinerators for process vents and 95% for storage tanks. The HON proposes performance standards for operating the technologies, as well as criteria for the design of the control equipment.

The Agency proposed that when organic hazardous air pollutants are released through process vent sources, companies may route these emissions to a gaseous/fume oxidation incinerator for destruction. The Agency has proposed that such incinerators operate with an efficiency of 98 percent.

For the purposes of this rulemaking, the Agency establishes that when other regulations apply, such as ones promulgated under section 112 of the Clean Air Act, rather than RCRA, and the 98 percent destruction efficiency is achieved by vapor incinerators to which emissions of controlled substances are routed, the Agency will grant the full exemption or allotment of allowances for substances that are destroyed under these conditions.

Several commenters claimed that there may be situations whereby a destruction efficiency of at least 98 percent is achieved through one of the approved destruction technologies, but the process does not fall under the jurisdiction of RCRA or section 112 regulations. In such cases, the commenters argued, the full exemption for destruction should be granted. EPA agrees. EPA recognizes that there may be a situation in which, for example, a facility in which destruction at or above a 98 percent efficiency level takes place is not a major source and thus, is not covered by section 112 regulations—nor is it regulated under RCRA for the disposal of hazardous wastes. Therefore, if a facility using one of these approved destruction technologies does not fall within the jurisdiction of RCRA or section 112 regulations, but achieves at least a 98 percent destruction efficiency and fulfills the requirements of this section (which include documentation of destruction efficiency and the methods for determining that efficiency), a full exemption can be granted for destruction.

Another commenter requested that the Agency define "completely destroy" in order to clarify situations in which full credit will be granted through destruction of these substances. Consequently, EPA has added a definition of "completely destroy" which covers destruction of 98 percent or greater of the substance that is sent for destruction, using one of the five approved destruction technologies.

The Agency recognizes that these five approved destruction technologies, although capable under test situations of destroying controlled substances at a 99.99 percent efficiency rate, may not be as efficient as is required for carbon tetrachloride and methyl chloroform covered under either RCRA or the proposed section 112 regulations. If the destruction efficiency in destroying these controlled substances, including carbon tetrachloride and methyl chloroform, is below 98 percent, then EPA will exempt from production only those volumes that have indeed been destroyed. For example, if an approved technology destroys only 80 percent of the chemical, then the Agency will only exempt the portion destroyed from the requirement to hold production allowances. Under such a program, companies that do not completely destroy their controlled substances would be unable to recoup, through allowances, their full volume of controlled substances needed to operate. Once the phaseout occurs, such companies will need to destroy close to 100 percent of the controlled substance, depending on technical limitations, in order to continue to operate at intended capacity.

g. Standards for Destruction. In cases where a destruction unit falls under the jurisdiction of RCRA or section 112 regulations, standards are required for those units pertaining to destruction efficiency, combustion efficiency, flow, monitoring, etc. For purposes of this rulemaking, those units must fulfill the requirements of the relevant regulations under which they are otherwise regulated; the Agency finds no rationale for developing additional standards for the destruction of such controlled substances in these regulations.

In cases where a destruction unit is not covered by one of these other regulations, consistent with the decision of the Parties to the Protocol, the Agency encourages the adoption of the minimum standards and subsequent recordkeeping requirements set forth in chapter 5.5 of the Ad-Hoc Technical Advisory Committee on ODS Destruction Technologies as the minimum requirements to be met under this section. The Ad-Hoc Technical Advisory Committee on ODS Destruction Technologies presents a list of minimum standards for pollutants emitted during destruction with stack concentrations for hydrochloric acid, hydrofluoric acid, particulate, and carbon monoxide.

The report entitled, Ad-Hoc Technical Advisory Committee on ODS Destruction Technologies, also recommends that atmospheric releases of controlled substances shall be monitored at all facilities with air emission discharges. For controlled substances, this report recommends use of flow meters or continuously recording weighing equipment for individual containers. The Agency recognizes that flow meters are not always compatible with certain equipment. However, EPA requires that a means be available with which to monitor potential releases and actual destruction. Therefore, where flow meters or continuously recording weighing equipment is not feasible, at a minimum, containers are to be weighed

"full" and "empty" to establish quantities destroyed.

h. Comments on Reporting and Recordkeeping Associated with Destruction. The Agency is requiring, consistent with the proposal, that producers or importers of controlled substances for use in a production process that will result in destruction, using one of the approved technologies, maintain dated records of the quantity of controlled substances produced and sold for use in processes that result in destruction, and any applicable verifications from purchasers that the substance is to be destroyed. The Agency requires this recordkeeping in order to verify exemptions from production due to destruction.

Also consistent with the proposal, producers and importers of controlled substances must report to the Agency the amount of that substance sold to each person who then subsequently destroys the chemical and any applicable certification showing that the purchaser of the controlled substance intends to destroy the chemical.

Companies that both produce controlled substances and destroy those same substances must report the volume destroyed on their quarterly production report in a manner similar to that required for transformation. The final rule requires the same recordkeeping of persons who purchase controlled substances and subsequently destroy them as those outlined in the proposal.

The Agency received comments expressing concern that IRS certificates indicating feedstock use do not address the issue of destruction, making the certificates meaningless as a reporting requirement for destruction. None of the IRS certificates relating to controlled substances require information on those substances intended to be destroyed or actually destroyed. Consequently, these certificates are useful for substances to be transformed, but not for those to be destroyed. As a result, EPA is requiring purchasers who intend to destroy controlled substances to provide producers or importers from whom they purchase a one-time verification (unless any aspect of the information in the verification changes, thus requiring a revision) that includes the following information: the identity and address of the person intending to destroy the substance; indication of whether those controlled substances will be completely destroyed, as defined in § 82.3 of this rule, or less than completely destroyed, in which case the destruction efficiency at which such substances will be destroyed must be included; period of time over which the person intends to destroy controlled substances; and signature of the certifying party. The Agency believes that this information, similar to the information required for receipt of allowances for transformation, is necessary to ensure that destruction will occur. Without such verification information, a determination that the substances are to be destroyed and that the producer is thus able to avoid expending production allowances for such substances would not be possible.

Companies that purchase controlled substances that are subsequently destroyed must keep the following records: the identity and address of the person destroying the substance; the quantity and level of controlled substance destroyed; a copy of the invoice or receipt documenting the sale of the controlled substance; dated records of substance received by the person and the identity of the person from whom the controlled substance was purchased; dated records of inventories of controlled substances at each plant on the first day of each quarter; and a copy of the certification of intent to destroy, if applicable.

Several commenters stated that the proposed reporting and recordkeeping requirements, complemented by the recordkeeping requirements of other applicable regulatory regimes, would suffice for purposes of this section, and that more detailed requirements than what was proposed would be duplicative and unnecessary. As discussed above, these approved destruction technologies are often regulated under other statutes, such as RCRA, or are expected to be regulated under section 112 of the Clean Air Act. The implementing regulations for these statutes have detailed recordkeeping and reporting requirements to ensure that destruction has taken place. The Agency agrees and believes that these regimes provide adequate standards as well as recordkeeping requirements; the Agency believes that the recordkeeping information outlined in the paragraph above would be maintained in response to these various recordkeeping requirements. At a minimum, regardless of the regime under which a facility is regulated, the recordkeeping and reporting requirements outlined in this section are necessary in order to determine compliance with this final rule.

The Agency requested comments in the proposal on whether all companies that intend to destroy controlled substances should submit a one-time report to the Agency describing their methods used to record the volume destroyed and to determine destruction efficiency ratings. Two comments received by the Agency supported the one-time reporting of these methods. One commenter stated that the Agency should ask for the volume destroyed but not the method used in making that determination. EPA believes that in order to judge adequately whether the reported volume destroyed is accurate, it must know the destruction efficiency and understand the method that is used to determine volume and degree of destruction. Therefore, EPA will require the one-time report on the unit's destruction efficiency, and the methods used to record volume destroyed and to determine destruction efficiency rating.

The Parties to the Protocol in Copenhagen agreed that all Parties were to submit annual data on ozone-depleting chemicals destroyed. To comply with this agreement, the Agency requires an annual reporting requirement that all persons who destroy Class I and Class II chemicals report to EPA the volume destroyed if such a report had not been submitted to the Agency by the end of 120 days after the effective date of this rule.

Another commenter that produces controlled substances only as CUBPs stated that the recordkeeping required under the destruction provision is more burdensome than the recordkeeping for CUBP production. EPA clarifies in this response that the producer of coincidentally produced byproducts would fall outside of the allowance requirements through either the insignificant quantity exemption of this section or due to the destruction of that which is produced. EPA believes that the recordkeeping and reporting requirements associated with the destruction exemption are minimal and not overly burdensome to a producer of coincidentally produced byproducts. Therefore, EPA, with this rule, establishes the reporting and recordkeeping requirements as proposed for controlled substances that are destroyed.

3. Spills. The definition of production in both the current rule and the proposed regulations accompanying the March 18 proposal includes spilled or vented controlled substances equal to or in excess of one hundred pounds per event.

The Agency received a number of comments on this aspect of the definition of production. Allowances are currently required in cases of a spill or venting that exceeds 100 pounds. Commenters requested that EPA delete this part of the definition of production. Producers of ozone-depleting substances who currently hold allowances indicated that this provision may place companies in non-compliance after the

phaseout, since allowances to cover spills would not be available. Once the phaseout is completed, there will be no means by which to comply with this requirement. Furthermore, commenters indicated that this provision does not allow for unusual circumstances. For example, a company that needs to quickly and safely shut down a manufacturing process may need to vent controlled substances. Commenters suggested that the Agency should rely on emission reduction rules promulgated under other authority by EPA to deal with venting or spill situations, rather than the "zero emission" program that would be in place after the phaseout.

The Agency agrees that requiring allowances for vents and spills over 100 pounds would lead to unintentional noncompliance following the production phaseout, since allowances will no longer be available. With this action, EPA is deleting spills from the definition of production. Therefore, allowances will not be expended in cases of spills or venting of any amount. Spills had been included in the definition of production to limit release of ozone-depleting chemicals. EPA believed that companies could avoid compliance action by the Agency if they over-produced and then spilled this excess production. Although such action is still possible, the Agency is beginning to address these implementation issues in preparation for the phaseout. With the phaseout, companies would not be placed in situations where they would over-produce. Once the phaseout occurs, companies will only produce for exempted uses. However, the Agency requires in today's rule that companies keep records of spills in excess of 100 pounds. EPA will monitor the frequency of spills through plant inspections and Section 114 information requests when appropriate.

While the purpose of the definition of production is not to control vents and spills, but to determine the need for allowances for production of controlled substances, EPA agrees with commenters that other existing and proposed EPA regulations governing controls of spills and venting are designed to provide control of such emissions. The Agency believes that the proposed Hazardous Organic National Emission Standard for Hazardous Air Pollutants (HON) authorized under section 112(d) of the Clean Air Act will be an appropriate mechanism for controlling venting of several of these substances. These regulations are to be published by EPA in early 1994. Furthermore, current regulations governing the accidental release of chemicals are designed to require appropriate action in the event of spills.

B. Imports

In this final rule, EPA is modifying the requirements of allowances for imports to make them consistent with the requirements of production allowances established in this rule. Under the system currently in place, importers expend consumption allowances to import controlled substances intended for transformation, and to import used or recycled controlled substances. However, under the regulations promulgated with today's notice, importers will not need to expend consumption allowances for controlled substances intended for transformation or destruction, or for ozone-depleting substances that are used or recycled. Several commenters requested this change to ensure consistency in the treatment of chemicals that are produced and chemicals that are imported. In addition, transformers or destroyers of imports for which consumption allowances were expended may redeem consumption allowances and trade them back to the importer.

C. International Issues

1. Exports

Under current regulations, there is no distinction made between exports for emissive uses and exports for transformation. Commenters have noted that under current regulations, these substances will no longer be able to be produced, despite an intent to transform or destroy, since there will be no allowances available after the phaseout. These commenters claim that this situation could severely affect the U.S. global market for feedstock, since several class I chemicals are feedstocks in production of alternatives. Without this change, commenters claim that many producers would be shut out of the international markets.

Nevertheless, EPA recognizes that industry must ensure that adequate controls are in place to verify that the export is indeed transformed or destroyed. Tracking and verifying that exports are transformed or destroyed proves to be much more difficult than for imports and domestically produced and sold controlled substances. Consequently, EPA retains its current process for handling exports. Allowances will be required for all exports regardless of whether they are bound for emissive uses or transformation or destruction. However, EPA recognizes the problems that this system would impose upon exporters after the phaseout in 1996. Therefore, the Agency intends to issue a supplemental rule prior to the phaseout of class I chemicals scheduled for the end of 1995 under this rule, in order to address issues involving allowances for exports.

2. Transfers of Production Rights Between Nations

The phaseout regulations currently in effect provide for the granting of production allowances commensurate with any production rights transferred by foreign companies to companies in the United States. However, under the existing regulations, consumption rights are not also granted as a part of these trades. Under the existing program, EPA only granted production allowances because consumption allowances would be redeemed after production had been exported. The Agency had used this mechanism to ensure that the production had in fact been exported. This approach was reasonable prior to the adoption of the phaseout schedule. However, EPA recognizes that as the United States approaches the phaseout date, consumption allowances will become more limited and companies may be unable to wait until consumption allowances are redeemed for the export. Commenters have indicated that these provisions make the trading of production rights from foreign countries to companies in the U.S. of little if any use, because both production and consumption allowances are required in order to produce controlled substances for domestic consumption.

In response to this concern, the Agency will grant consumption allowances equal to the level of production allowances for a trade from another Party to the Protocol. The company receiving these allowances must certify that this production is intended for export. However, when the United States trades production to another country, EPA will only lower the production allowances for the company involved in the trade. The corresponding consumption allowances would be retained in order to be used to import the production transferred abroad.

D. Insignificant Quantities

In today's action, the Agency is implementing in its regulation a recent decision of the Parties in Copenhagen that addressed "insignificant quantities" (Decision IV/12). Today's rule exempts from the definition of "controlled substance" a substance produced in "insignificant quantities." The Agency

believes that this change poses insignificant environmental harm and lessens the administrative burden of the current regulation and thus changes its definition of controlled substance in today's rule to exempt insignificant quantities.

1. Insignificant Quantities of Substances Other Than Methyl Bromide

EPA is also implementing the Parties' decision on insignificant quantities. During the Fourth meeting of the Parties to the Montreal Protocol held in Copenhagen November 23–25, 1992, the Parties approved a decision (Decision IV/12) stating that the definition of "controlled substance" will not include insignificant quantities of those substances under certain conditions. Specifically, it stated that in the following situations, insignificant quantities of controlled substances shall not be considered to be covered by the definition of "controlled substances":

- insignificant quantities originating from inadvertent or coincidental production during a manufacturing process; or,
- insignificant quantities originating from use of controlled substances as process agents (including unreacted feedstocks) which are present in chemical substances or products as trace impurities.

Since these activities are excluded from the definition of controlled substances, and thus could not be counted against production or consumption, production and consumption allowances are not required in order to produce or import these substances.

In either of these situations, the Parties recognized that insignificant quantities of controlled substances may result or remain in a product after processing. In taking this decision, the Parties understood that the existence or creation of controlled substances in these contexts were an essential consequence of continued production of various products (Section 2.10.4, UNEP report of the Technology and Economic Assessment Panel), were likely to be insignificant in quantity, and in fact, had not heretofore been included in the definition of controlled substance, or taken into account by countries in their implementation of the current definition. Thus, the decision clarified the fact that CFCs and other compounds covered by the Montreal Protocol as controlled substances that are created or found in these contexts are not included within the scope of the Protocol's definition of controlled substance. Nevertheless, the Decision calls on the Parties to endeavor to take steps to minimize such emissions.

Pursuant to the decision of the Parties and comments received supporting this proposed action, EPA today is exempting from the definition of "controlled substances" insignificant quantities of controlled substances that originate from inadvertent or coincidental production during a manufacturing process, from unreacted feedstock, or from their use as process agents and residual presence in chemical substances or products as trace impurities. This exemption will apply so long as the substances produced in this manner are not themselves, as distinct products, offered for commercial sale.

One commenter asked for clearer language explaining inadvertent production. EPA interprets inadvertent production to be production that occurs unintentionally as a result of a chemical reaction in the production process. Because the production is inadvertent, the substance itself is neither made for, nor offered for, commercial sale. Inadvertent production occurs in small quantities, since production of inadvertent substances constitutes inefficiencies in the production process and manufacturers work to keep such inadvertent production to a minimum.

EPA carefully considered the environmental implications of this decision and its relationship to current regulations. First, as it relates to environmental protection, EPA studied available information, and has determined that the quantities of controlled substance emissions associated with the above noted situations are small. Estimates indicate that they are on the order of 500 ODP-weighted metric tons worldwide. In the U.S., in many cases, these small emissions are reduced even further by regulatory treatment under other EPA requirements. An example of the size of related production can be found in trace impurities of carbon tetrachloride remaining in finished products made in the U.S. This residual is estimated to amount to 32 metric tons per year. Levels of inadvertent production of controlled substances are also very small. For example, some carbon tetrachloride is produced during the manufacture of chloroethanes. The worldwide estimate of levels expected to be emitted during these processes are estimated to be on the order of 100–200 ODP MT. However, carbon tetrachloride produced in this manner is generally not emitted; rather it is recycled within the plant, or, as required by RCRA, destroyed by an appropriate technology. A further factor which will help to reduce related emissions is the phaseout itself. By the year 2000, emissions from these situations are expected to constitute less then .1% of the amount of controlled substances produced in their baseline year. The realization of the small quantities involved was a factor in the Parties decision to exclude the insignificant quantities resulting from these processes from the definition of controlled substances. (UNEP OzL Pro. 4 CRP 2ter).

Regarding present regulatory treatment, § 82.4(e) of EPA's current regulations provided an exemption from control for Group IV or V substances, if those substances were produced as a coincidental unavoidable byproduct of a manufacturing process, and were immediately contained and destroyed. In light of the regulations EPA is promulgating today concerning incidental production and destruction, EPA is today repealing the current requirements of § 82.4(e), effective with the 1994 control period. This action is being taken to align EPA regulations with Montreal Protocol requirements that will be adhered to internationally, and to eliminate the ambiguity of certain situations that may or may not have met the requirements of § 82.4(e).

With this rule, all companies that meet these conditions are exempt from production and consumption control and do not need to file exemption requests. Finally, it fashions a more workable allowance system that will be necessary as the U.S. moves forward toward a more rapid phaseout.

One commenter expressed concern, given the elimination of the coincidental unavoidable byproduct provision, that no guidance is given for what constitutes an insignificant quantity. EPA clarifies in this response that the producer of coincidentally produced byproducts would either fall outside of the allowance requirements through the insignificant quantity exemption of this section or due to the destruction of that which is produced. While the Agency believes that a specific number or percentage that constitutes an insignificant quantity cannot be defined in terms of volume or concentration for all instances, those coincidentally produced byproducts that fall outside of the insignificant quantity realm as determined by the commenter can be exempted from the definition of production as a result of destruction of the byproduct.

In taking these actions, EPA is mindful of the portion of the Parties' decision that urges all Parties to take steps to minimize emissions associated with inadvertent and trace quantity production. In this regard, EPA reserves

the right to implement measures to reduce such emissions in the event it finds that they are or have become significant.

In conclusion, today's rule, in implementing the decision of the Parties to the Protocol on insignificant quantities, removes from the definition of "controlled substance" those substances that are:

- insignificant quantities originating from inadvertent or coincidental production during a manufacturing process; or
- insignificant quantities originating from use of controlled substances as process agents (including unreacted feedstocks) which are present in chemical substances or products as trace impurities.

2. Insignificant Production of Methyl Bromide

Several commenters noted that in the preamble to the proposed rulemaking, EPA misstated that methyl bromide was inadvertently produced in the production of polyethylene. In fact, methyl bromide is an inadvertent byproduct of the manufacture of terephthalic acid (TPA) and dimethyl terapthalate (DMT), feedstocks which are used in the production of polyethylene terephthalate.

While supporting EPA's proposal to exempt inadvertent production of methyl bromide from the definition of controlled substances, one commenter disagreed with EPA's conclusion that "substantial" emissions of methyl bromide are inadvertently produced during the manufacture of TPA/DMT. This commenter noted that emissions of methyl bromide during the production of these chemicals ranges from .0001 to .0007 pounds of TPA/DMT produced, making them non-substantial. On the other hand, one commenter noted that inadvertent methyl bromide emissions reported to the toxic release inventory showed that byproduct emissions in 1990, which can also come from methyl bromide manufacturing, totaled over 1.5 million pounds, and therefore, should not be exempted from control as an insignificant quantity.

EPA's statement in the proposal regarding the magnitude of emissions of methyl bromide are produced stemmed from the total quantity of related emissions. Data provided from the 3 domestic manufacturers of TPA/DMT which emit methyl bromide estimated 1990 methyl bromide emissions amounted to 2.5 million pounds. EPA will continue to work with the industry to reduce these emissions and to monitor these emissions to determine if regulatory action is needed in the future.

As noted in the comments of several TPA/DMT producers, the 3 domestic producers of TPA/DMT have committed to achieve a 20% plus reduction in their emissions by 1997, and an 85% plus reduction by 2000. Several commenters noted the cost of requiring industry to make these reductions using presently available technology. Given the fact that the rules being promulgated today do not require any reductions in methyl bromide emissions until the year 2001, and the industry has committed to make short term reductions, EPA believes that it is prudent to let industry investigate new and innovative measures which will allow it to meet this commitment at the lowest possible costs. EPA will, however, continue its discussion with this industry in order to monitor, carefully, progress toward their commitment. EPA is committed to taking necessary actions to ensure that related emissions are indeed insignificant.

Several commenters noted that equity dictated that similar commitments to reduce inadvertent production of methyl bromide should be made globally to ensure that US manufactures are not put at a competitive disadvantage for having to comply with these provisions. The EPA will help to ensure that this matter is considered by the Parties to the Protocol in a manner which preserves the lead time which will be useful in the investigation of technological reduction options.

VIII. Other Issues

A. Definition of Importer

The March 18 Notice proposed a revision to the definition of "importer" to include the actual owner, the consignee, and the transferee of the import. The Agency proposed this revision to ensure that requirements imposed on importers affected the parties most directly responsible for the import.

EPA proposed to define "Importer" to mean any person who imports a controlled substance, or a controlled product into the United States. "Importer" includes the person primarily liable for the payment of any duties on the merchandise or an authorized agent acting on his or her behalf. The term could also include, as appropriate:

(1) The consignee;
(2) The importer of record;
(3) The actual owner; or
(4) The transferee, if the right to draw merchandise in a bonded warehouse has been transferred.

Several commenters stated that this definition was unsatisfactory because it continued to list "importers of record" as legally responsible for conforming to the regulations. The commenters were concerned that since custom brokers often act as importers of record, they would be legally liable transactions. The commenters believed that brokers, since they act solely for the purpose of facilitating the entry of goods, should be exempted from liability in cases where they are acting as an importer of record. Commenters further suggested that customs brokers, even when they are "importers of record," are financially uninterested parties in those instances where they are merely acting as nominal importers.

The commenters also suggested that, as an alternative, the proposed regulations be modified to include a hierarchy of persons to be held responsible for imports. The commenters believed that such an enforcement hierarchy will indicate that the customs broker would be held responsible for regulatory compliance only in those situations where there is no owner/purchaser and no consignee set forth on the entry form and/or located in the United States. The following hierarchy was suggested:

(1) Owner;
(2) Purchaser;
(3) Consignee;
(4) Transferee; and
(5) Customs broker (if acting as the importer of record).

In response EPA however, has decided not to change its definition of "importer" from the one proposed. EPA will consider adopting a hierarchy, such as the one suggested by the commenters, as part of its enforcement strategy for this program. EPA does not agree that all customs brokers listed as "importers of record" are financially uninterested parties. As indicated by the comments to the proposed rule, customs brokers provide services which facilitate the entry of merchandise into the United States. The brokers are a part of the chain of persons that participate in an import transaction, and fees are charged for the services that are provided. As a result, EPA views customs brokers as knowledgeable professionals regarding import matters. In light of these considerations, EPA has included customs brokers who act as importers of record in its list of persons responsible for import of controlled substances.

It should also be noted that only one party to an import transaction needs to hold consumption allowances for the importation of a controlled substance. This issue was raised by a commenter who is concerned that allowances are

frequently held by the owners or purchasers of controlled substances and not by the importer of record. Under this regulation, only one of the several parties included in the definition of importer needs to hold and expend consumption allowances for a particular transaction. However, the other parties involved in that transaction need to be aware of the import requirements promulgated under this rule. Therefore, while the "importer of record" need not hold consumption allowances, it is a part of its function to determine that the necessary allowances are being held and expended.

B. Tracking Essential Uses

Several commenters indicated that additional changes may need to be made in the tracking procedures in order to accommodate any essential use exemptions that are granted under the Montreal Protocol. EPA agrees that any granted essential use exemptions will necessitate changes in the tracking system. Changes such as these will be proposed and finalized in a rulemaking to be initiated at a later date when provisions to allow production for specified essential uses are established.

C. Addition of HCFCs to the EPCRA Section 313 List

The March 18 Notice indicated that the Agency published a **Federal Register** action on June 24, 1992 (57 FR 28159) proposing to add HCFCs to the list of toxic chemicals subject to reporting under EPCRA section 313. In that proposal EPA also solicited comments on alternative options for listing the HCFCs, such as listing those HCFCs known to be in production or commercially viable individually and providing some mechanism, such as a Significant New Use Rule, to add HCFCs that come into production in the future. In this proposal, EPA also identified five HCFCs as currently in production or commercially available. These are: HCFC–141b, HCFC–22, HCFC–142b, HCFC–123, and HCFC–124. Comments regarding this proposed rule are currently being analyzed and the Agency expects to issue a final rule on this matter in the near future.

D. Environmental Impact Statement

One commenter stated that EPA is obligated to prepare an environmental impact statement (EIS) under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, for its action to regulate methyl bromide. While EPA has extensively considered the environmental impacts of this action, section 7(c)(1) of the Energy Supply and Environmental Coordination Act (ESECA), 15 U.S.C. 793(c)(1), exempts EPA from preparing an EIS under NEPA. That provision states: "No action taken under the Clean Air Act shall be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1069." The Agency further notes that its policy statement published on May 7, 1974 does not obligate the Agency to prepare an EIS. See 39 FR 16186. In that policy statement, EPA recognized, prior to enactment of section 7(c)(1) of the ESECA, that "[t]he Federal Courts of Appeals have held that the Agency need not prepare environmental impact statements for its environmentally protective activities." *Id.* While EPA announced that it would voluntarily prepare EISs for certain major regulatory actions specified in the policy statement (not including actions under the subsequently enacted title VI of the Clean Air Act), the Agency made clear that "[t]he voluntary preparation of impact statements in no way legally subjects the Agency to NEPA's requirements." *Id.*

E. Recycled and Used Controlled Substances

The Agency proposed to exclude recycled and used ozone-depleting substances when calculating consumption. EPA proposed this change to conform the U.S.'s treatment of used and recycled controlled substance with a recent decision (Decision IV/24) in Copenhagen by the Parties to exclude such chemicals from the calculation of consumption. EPA received support from three commenters on this proposed change.

Prior to this Protocol decision and this rulemaking, used and recycled controlled substances did count as part of a country's consumption. Within the United States, importers were required to hold consumption allowances to import used or recycled controlled substances. In turn, an exporter could receive additional consumption allowances for the export of used or recycled controlled substances.

With this rule, the importation of used or recycled controlled substances will not require consumption allowances, and therefore will be unrestricted. Similarly, the exporters of used or recycled controlled substances will not receive consumption allowances for such export.

EPA did not describe specific recordkeeping requirements in the proposal, but asked for comment on the need for further revisions "to effectuate this intent of the Parties." One commenter suggested that importers and exporters make some certification that the shipment is "being done properly and legally". Although the commenter did not describe specifics on how this could be done, the Agency believes that it would be reasonable to require that importers and exporters state on all bills of lading and invoices covering shipments of used or recycled controlled substances that the "shipped product is a used or recycled controlled substance as defined in 40 CFR 82.3". EPA believes that such documentation represents a minimal reporting burden and should provide adequate control to safeguard against fraud.

EPA proposed that importers and exporters of recycled halons and HCFCs report on an annual basis to EPA. EPA proposed to require this data in order to report these volumes to UNEP as required by the Protocol. The Agency received no comments on this provision and therefore requires such reports within 45 days after the end of each control period.

F. Transhipments

The Agency proposed to exclude transhipments of bulk controlled substances from the consumption limits for the United States. EPA proposed this exclusion to implement Decision IV/14 of the Parties. Transhipments are shipments of bulk chemicals from one party to another through the United States that are not repackaged within the United States. The United States serves only as a shipping corridor for the controlled substances. EPA did not receive any comments on this issue. With this final rule, the Agency excludes transhipments from the consumption limits. Companies that tranship must keep records that the transhipment does not enter interstate commerce in the United States.

G. Publication of the Regulatory Text

Some commenters have suggested EPA was obligated to publish proposed regulatory text. EPA believes its March 18 proposal that explained the basis and purpose of its intended actions and notified the public of the availability of the regulatory text was legally sufficient.

Section 307(d) of the Clean Air Act applies to "promulgation or revision of regulations under title VI (relating to stratosphere and ozone protection)" to govern the rulemaking procedures here. See section 307((d)(1)(I). That subsection specifically provides that: notice of proposed rulemaking shall be published in the **Federal Register**, as provided under section 553(b) of title 5, shall be accompanied by a statement of its basis and purpose and shall specify the period available for public

comment. * * * The statement of basis and purpose shall include a summary of—

(A) The factual data on which the proposed rule is based;

(B) The methodology used in obtaining the data and in analyzing the data; and

(C) The major legal interpretations and policy considerations underlying the proposed rule.

Section 553(b) of title V (the Administrative Procedure Act, or APA) provides, in turn, that "general notice of proposed rule making shall be published in the **Federal Register**. * * * The notice shall include— * * * either the terms or substance of proposed rule or a description of the subjects and issued involved."

Clean Air Act section 307(d) nowhere mentions publication of the terms of substance of a proposed rule. Furthermore, APA section 553(b) clearly offers an agency the choice of whether to include the terms of substance of the proposal or a description of the subjects and issues involved. EPA's extensive discussion of the subjects and issues involved in its proposal, published on March 18, thus satisfies the publication requirements of the Clear Air Act and APA.

In any case, the published rule provided adequate notice to apprise interested parties of the subject of the rulemaking in order to afford them a meaningful opportunity to participate and comment on the issues involved. *See, e.g., Florida Power & Light Co.* v. *United States,* 846 F.2d 765 (D.C. Cir. 1988); *South Carolina ex rel. Tindal* v. *Block,* 717 F.2d 874, 885 (4th Cir. 1983); *Small Refiners Lead Phase-Down Task Force* v. *EPA,* 705 f.2D 506, 547 (D.C. Cir. 1983) (cases summarizing purpose of notice to provide opportunity to comment). There is no question that EPA's published proposal sufficiently alerted interested parties of the likely alternatives being considered within the scope of the proceedings for the final rule. *See Spartan Radiocasting Co.* v. *FCC.* 619 f.2d 314, 321 ((4th Cir. 1980) (proposal must notify persons of likely alternatives so that they know whether their interests are at stake); *see also Bonney Motor Express, Inc.* v. *United States,* 640 F.2d 646, 650 (5th Cir. 1981)(final rule can be substantially different from proposal if proposal fairly apprised interested parties of subject and issues before the Agency).

EPA did in fact notify the public in the published proposal that regulatory language could be obtained through the EPA hotline, and provided a telephone number for obtaining it. See 58 FR 15014 (March 18, 1993). The regulatory language was available before the public hearing held on April 2, 1993, and the public of course also had an opportunity to comment on the proposed regulatory language by the close of the comment period on May 19.

IX. Changes From the Proposal and Current Program

This section discusses the changes EPA has made in this final rule and how they differ from the proposed rule and the current program.

§ 82.1 Purpose and Scope.

This section changes slightly from the current rule to include the new definition of consumption, and the trade provisions. There are no changes from the proposal.

§ 82.2 Effective date.

January 1, 1994, is the effective date for this rule, except for §§ 82.4(d) and 82.3(h) and (l) which are effective January 10, 1994. The effective date for the listing of methyl bromide as a class I controlled substance is December 10, 1993.

§ 82.3 Definitions.

Section 82.3 contains some modifications to definitions or additions to definitions. In the final rule, a new subsection (g) has been inserted, defining "completely destroy", which means to cause the expiration of a controlled substance at a destruction efficiency of 98 percent or greater, using one of the destruction technologies approved by the Parties.

A new paragraph (h) was inserted in § 82.3 in the proposed rule and is retained in this final rule, defining "complying with the Protocol" to mean when referring to a foreign state not Party to the 1987 Montreal Protocol, the London Amendments, or the Copenhagen Amendments, as indicated in appendix C to this subpart by a meeting of the Parties as noted in the records of the Directorate of the United Nations Secretariat to be in full compliance with the provisions of the Montreal Protocol specified in Article 4 paragraph 8 of the Montreal Protocol.

A new paragraph (i) was inserted in the proposed rule and is retained in this final rule, defining "consumption" to mean the production plus imports minus exports of a controlled substance (other than transhipments, or recycled or used controlled substances).

A new paragraph (l) was inserted in the proposed rule and is retained in the final rule, defining "controlled product" as a product that contains a controlled substance listed as a class I, Group I or II substance in appendix A of the rule, and that belongs to one or more of six categories of products, which include automobile and truck air-conditioning units, domestic and commercial refrigeration and air-conditioning/heat pump equipment, aerosol products (except medical aerosols), portable fire extinguishers, insulation boards, panels and pipe covers, and pre-polymers. The definition also states that controlled products include, but are not limited to, those products listed in appendix D to this subpart.

Current paragraph (i), defining "controlled substance," was modified in the proposal and in this final rule, with the modified definition of "controlled substance" becoming paragraph (m). Also added to the new definition is a sentence explaining that inadvertent or coincidental creation of insignificant quantities of listed substances, (1) during a chemical process, (2) resulting from unreacted feedstock, or (3) from the controlled substance's use as a process agent present in the chemical as a trace impurity substance being manufactured are not deemed controlled substances. Furthermore, the definition is modified to explain that class I substances are now divided into seven, rather than five groups.

The definition of "CUBP," paragraph (j) in the current rule, is removed from this final rule.

A new paragraph (o) was inserted in the proposed rule and in this final rule to define "destruction" as the expiration of a controlled substance that does not result in a commercially useful end product and that uses one of the five destruction technologies (listed in the definition) approved by the Parties to the Protocol. In the final rule, an additional clarification is added, inserting "to the destruction efficiency actually achieved, unless considered completely destroyed under the rule" after the phrase "expiration of a controlled substance."

A new paragraph (t) was inserted in the proposed and final rules, defining "foreign state not Party to or Non-Party" as a foreign state that has not deposited instruments of ratification, acceptance, or other form of approval with the Directorate of the United Nations Secretariat, evidencing the foreign state's ratification of the provisions of the 1987 Montreal Protocol, the London Amendments, or of the Copenhagen Amendments, as specified.

The definition of "import", new paragraph (u), was modified in the proposal to add to the exemptions from the definition, "bringing a controlled product into the U.S. when transported in a consignment of personal or household effects or in a similar non-

commercial situation normally exempted from U.S. Customs attention."

In the proposal, the current definition of "importer" was stricken, with a revised definition inserted (new paragraph (v)). The revised definition of importer is any person who imports a controlled substance or a controlled product into the United States. The definition elaborates that importer includes the person primarily liable for the payment of any duties on the merchandise or an authorized agent acting on his behalf. The term also includes, as appropriate, the consignee; the importer of record; the actual owner, if such a declaration and superseding bond has been filed; or the transferee, if the right to draw merchandise in a bonded warehouse has been transferred.

A new paragraph (w) was inserted into the proposed and final rules, defining "London Amendments" as the Montreal Protocol, as amended at the Second Meeting of the Parties to the Montreal Protocol in London in 1990.

Paragraph (p) of the current rule, defining "MACT," is stricken from this final rule.

A new paragraph (y) was inserted into the proposed rule and in the final rule, defining "1987 Montreal Protocol" as the Montreal Protocol, as originally adopted by the Parties in 1987.

The definition of "Party" (paragraph (aa)) was expanded in the proposal and retained as such in the final rule. In the new definition, "any foreign state" is substituted for "any nation." Added to the end of the current definition is the following: "(pursuant to instruments of ratification, acceptance, or approval deposited with the Depository of the United Nations Secretariat), as having ratified the specified control measure in effect under the Montreal Protocol. Thus, for purposes of the trade bans specified in § 82.4(d)(2) pursuant to the London Amendments, only those foreign states that are listed in Appendix C to this subpart as having ratified both the 1987 Montreal Protocol and the London Amendments shall be deemed to be Parties."

In the proposal, the definition of "production" (paragraph (ee)) was modified to add to exemptions from the definition, those amounts that are destroyed by the approved technologies. The final rule additionally exempts those amounts that are spilled or vented unintentionally, rather than only those amounts less than 100 pounds per event, as in the current rule and in the March 18, 1993 proposal.

A new paragraph (hh) was added in the proposal and final, defining "transhipment" as the continuous shipment of a controlled substance from a foreign state of origin through the United States or its territories to a second foreign state of final destination.

The definition of "unexpended consumption allowances" (paragraph (ii)) was modified in the proposed rule and in the final rule to exclude transhipments in the part of the calculation where controlled substances that the person has produced or imported are subtracted from the total level of that person's consumption allowances held.

The final rule adds paragraph (kk) to define used or recycled control substances as controlled substances that have seen service in their intended use systems.

All paragraphs are re-lettered accordingly.

§ 82.4 Prohibitions.

This section of the current rule has been replaced with new regulatory language. EPA has modified § 82.4(a) to exempt the production of controlled substances that will either be transformed or destroyed from the production allowance limit. This exemption is expanded from that proposed in the March 18 notice to include not only Group IV class I controlled substances, but all class I controlled substances.

Similarly, § 82.4(b) which limits production and importation through consumption allowances provides for the same expanded exemptions as § 82.4(a).

Section 82.4(c) states the conditions when consumption allowances and production allowances are used in conjunction to produce controlled substances. As with the current program, only consumption allowances are needed to import. This section restates the exemptions for production and consumption for controlled substances that are transformed or eventually destroyed, or those for exempted uses under § 82.4(k).

Section 82.4(d) has not changed since the proposal. EPA has expanded the existing § 82.4(d) to include not only the prohibition on the export or import of a Group I and Group II, class I controlled substance to and from a foreign state not party to the Protocol (or complying with the Protocol), but also the prohibition on the export or import of Groups III, IV, and V, class I controlled substances to or from foreign states not party to the London Amendments (or complying with the London Amendments). Also, the proposal, and today's final rule, includes the prohibition on the importation of certain products containing group I and II, class I controlled substances, from foreign states not party to the Montreal Protocol (or complying with the Montreal Protocol).

EPA has dropped existing and proposed § 82.4(e) from this final rule. This subparagraph had described the accounting procedures that the Agency would perform to calculate the level of transformation of Group IV, class I controlled substance done in the proceeding control period, that would be attributed to the control period. As already noted, EPA found this accounting procedure cumbersome, and will no longer require this calculation.

The proceeding subparagraphs that address class II controls are re-alphabetized. Proposed § 82.4(f) becomes (e). The Agency has further modified the proposed restrictions on production of HCFC–141b to exempt destruction, transformation, or for exemptions stated in § 82.4(l) (for medical devices or exports to a developing countries). The proposal restricted all production. Similarly, proposed § 82.4(g) becomes (f), and provides exemptions to the prohibition for the import of HCFC–141b effective January 1, 2003. These exemptions include import for the purposes of transformation, destruction, or for the exemptions in § 82.4(l).

Proposed § 82.4(h) becomes (g) with the re-lettering. The proposal had limited production HCFC–22 and HCFC–142b to the level of consumption and production baseline allowances allocated under § 82.5(h) (reserved) and § 82.6(h) reserved. The Agency has modified this to allow exemptions under § 82.4(l) (medical devices and exports to developing countries). The final rule does not allocate either production or consumption allowances at this time, but states that these HCFCs may only be produced or imported for the purposes of servicing existing equipment, and for transformation or destruction.

Proposed § 82.4(j) is now § 82.4(h) and, which now restricts the production and consumption of HCFC–22 and HCFC–142b starting in the year 2020 to only uses that transform or destroy these chemicals, or for exemptions in § 82.4(l).

Proposed § 82.4(k) becomes § 82.4(i). EPA has modified this section to restrict production and consumption of any other class II controlled substance that had not been previously controlled to baseline production and consumption allowances defined in § 82.5(h) or for feedstock use or transformation, for uses that eventually destroy the controlled substance, for use as a refrigerant in

equipment manufactured prior to 2020 or for exemptions in § 82.4(l).

Proposed § 82.4(l) becomes § 82.4(j) and has been substantially modified. This paragraph prohibits the production or importation of any class II controlled substance in 2030 and beyond except for uses as a feedstock, where it is destroyed, or for exemptions in § 82.4(l).

Proposed § 82.4(n) becomes (k) and is reserved for exemptions for essential uses for class I controlled substances.

EPA has added an additional paragraph (l) that will state exemptions to the class II bans. As allowed under the Clean Air Act, excess production and consumption may be used for medical devices or for export to developing countries. These paragraphs are reserved.

§ 82.5 Apportionment of Baseline Production Allowances.

This section remains as part of the current program but now includes paragraphs for Groups VI and VII, class I controlled substances.

§ 82.6 Apportionment of Baseline Consumption Allowances.

This section remains as part of the current program but now includes paragraphs for Groups VI and VII, class I controlled substances. These paragraphs are reserved.

§ 82.7 Grant and phased reduction of baseline production and consumption allowances for class I controlled substances.

This section amends the current program to accelerate the phaseout in the production and consumption of class I chemicals. This section has not changed from the proposal except that the phaseout date for methyl bromide is 2001, not 2000 as proposed.

§ 82.8 Grant and freeze of baseline production and consumption allowances for class II controlled substances.

This section continues to be reserved. The Agency had proposed a reduction schedule for the class II chemicals that was tied to an allowance system. In the development of the final rule, as described elsewhere, EPA controls class II chemicals under § 82.4 of this rule through an allowances program. However, EPA will most likely amend this rule in the future when the decision to have an allowance system in place to control class II controlled substances.

§ 82.9 Availability of production allowances in addition to baseline production allowances.

The Agency had not proposed changes to § 82.9(a). However, during the comment period, EPA received comments that the dates cited in this section had not changed to accommodate the accelerated phaseout of class I chemicals. EPA has not accelerated these dates in this final rule but intends to propose such changes in the near future.

The Agency had not proposed any changes to § 82.9(b). However, in this final rule, EPA will increase consumption allowances for a company equal to production allowances it would receive in a trade of production from another Party to the Protocol, and that such a trade of production allowances now requires a signed statement from a person that the increased production is intended for export to the Party trading its production.

The Agency had proposed dropping the provisions of § 82.9(c), and to establish a system where allowances could be redeemed for controlled substances that were transformed or destroyed. EPA has further modified this requirement to require persons requesting additional allowances to certify that allowances had been expended for the production of the controlled substances transformed or destroyed. The Agency also stipulates requirements for "complete destruction" of controlled substances.

§ 82.10 Availability of consumption allowances in addition to baseline allowances.

For § 82.10(a), The Agency proposed and makes final today the ability for exporters to receive additional consumption allowances for exports, except for controlled substances that are transhipped. However, EPA has expanded this exclusion to used or recycled controlled substances. The Agency had not included this exclusion in the proposed regulatory text, but had discussed this exclusion in the preamble.

EPA proposed to change § 82.10(b) to allow persons who transformed or destroyed all class I chemicals, including groups VI and VII, to receive additional consumption allowances upon proof that, indeed, the chemicals had been destroyed or transformed. EPA has modified this provision to require a certification that production and/or consumption allowances were expended in the production or import of the destroyed or transformed controlled substances requirements in § 82.10(b)(1) that include the identity and address of the person, the name, level and quantity of the volume transformed or destroyed, invoice documenting sale of the controlled substance and the name of the resulting chemical of the transformation, and the efficiency of the relevant destruction process.

Section 82.10(b)(2) remains as proposed, providing for Agency review of these transactions. EPA has added further clarification of "completely destroyed", allowing for 100 percent redemption of allowances for 98 percent destruction of controlled substances.

Finally, the current § 82.10(c) is eliminated, and replaced by another provision that grants persons increased consumption allowances, when such persons receive production allowances for trades of production from another Party to the Protocol. This paragraph complements § 82.9(b), and requires identical information. The Agency assumes that compliance with § 82.9(b) is compliance with § 82.10(c).

§ 82.11 Exports to Article 5 Parties.

This section remains as proposed. However, EPA has broadened the exclusion to used or recycled controlled substances. The reporting requirements remain the same as the current program.

§ 82.12 Transfers.

This section remains as proposed. EPA has deleted the requirement that a statement be included that the trade is for the purposes of reimbursing a producer or an importer for allowances expended.

§ 82.13 Recordkeeping and Reporting.

Section 82.13(a) changes the effective date to January 1, 1993, from the January 1, 1992 effective date of the current phaseout rule. Final § 82.13(f) differs from the proposal and only applies to class I substances. Paragraph (f)(2), requiring reporting on by-products not destroyed is deleted, because the destruction provisions cover this aspect in other paragraphs.

The newly-numbered paragraph (f)(2) adds dated records of the quantity of each controlled substance produced at each facility to the records that producers must maintain. Currently section (f)(2) refers only to Group IV references and has been eliminated, because all controlled substances are now being treated in a similar manner. Requirements for maintaining dated records of the sale of controlled substances for feedstock or destruction and copies of certifications that the substance will be transformed or destroyed are added.

Producers' reporting requirements currently in § 82.13(f)(4) are now found in § 82.13(f)(3). They now require production information for each quarter by company, rather than by plant, as in the current rule and the March 18, 1993 proposal. New subparagraph (3)(i) now only requires that production be reported, specifying the quantity of any

controlled substance used for feedstock purposes; the phrase "for controlled and noncontrolled substances for each plant and totaled by class I controlled substance for all plants owned by the producer" has been deleted from that sentence in current subparagraph (4)(i). New subparagraph (3)(ii) adds "for use in processes resulting in destruction" to the requirement in current (4)(ii) that requires that the amount of production for feedstock use be reported. The phrase "for each plant, totaled by controlled substance for all plants for that quarter and for the control period to date" is deleted from current subparagraph (4)(iii), and current subparagraph (4)(iv) is deleted. Current subparagraph (4)(v) becomes (3)(iv). References to "at each plant" are removed. Additionally, "or eventual destruction" is added to current (4)(vii), now the new (3)(vi). Current (4)(viii), now (3)(vii), adds the requirement that a purchaser's destruction verification, in the case of destruction, be submitted, showing that the controlled substance is to be destroyed.

Paragraph (5) now becomes paragraph (4).

Recordkeeping for importers, paragraph (g), is changed as follows:

Subparagraph (g)(1)(i) refers only to class I controlled substances. A new (g)(1)(ii) is added requiring that records be maintained on the quantity of controlled substances imported for transformation or destruction, and the quantity sold for each use. Current subparagraphs (ii), (iii), and (iv) now become (iii), (iv), and (v). Current subparagraph (v), which asks for port of exit, is deleted. Destruction was added in the proposal to the required dated records documenting sale of controlled substances for feedstock use; the addition is retained in the final rule. Added to the records to be maintained under (g)(1) are IRS certifications or destruction verifications that the controlled substances are to be transformed or destroyed, respectively.

Paragraph (g)(2) refers now to "class I controlled substance" and adds destruction to those reporting requirements that address substances imported or sold for feedstock and certifications that transformation is to occur. A new subparagraph (x) is added, requiring that the quantity of recyclable and recycled controlled substances imported during the quarter be reported.

Paragraph (h) refers to how the class I controlled substances modification is retained in this final rule to change references to class I substances to controlled substances.

Paragraph (i) was modified in the proposal and such modification is retained in this final rule to include destruction information to the recordkeeping requirements in this paragraph wherever transformation is addressed, in a manner parallel to transformation (i.e., "transform or destroy"), except where requirements only apply to transformation; such requirements then specify as such in the final rule. Any references to "Group IV" are stricken, so that the requirements apply to all controlled substances, as specified in this paragraph. A new recordkeeping requirement has been added to paragraph (i): copy of the relevant certifications of intent to transform or destroy, where substances were sold for transformation or destruction purposes.

Paragraph (j), having been retained in the proposal, is stricken in the final rule.

Paragraph (k) was stricken in the proposal and remains stricken in this final rule.

A new paragraph (j) is added in the final rule that requires those who destroy controlled substances to provide EPA with a one-time report stating the destruction unit's destruction efficiency and the methods used to record the volume destroyed and those used to determine destruction efficiency.

A new paragraph (k) is inserted into the final rule that requires those who purchase and subsequently destroy class I controlled substances to provide the producer from whom they purchase the substances with a one-time (unless circumstances change) verification that the controlled substances they purchase will be destroyed. Any changes related to the verification will require a revised verification.

A new paragraph (l) is added in the final rule that requires persons who purchase controlled substances intended for transformation to provide the producer or importer with the IRS certification that the controlled substances are to be used in a process resulting in transformation.

A new paragraph (m) is added to the final rule requiring persons who transform or destroy controlled substances to report annually to EPA the volume of those substances transformed or destroyed.

A new paragraph (n) requires every person who produces, imports or exports class II chemicals must report its quarterly level of production, imports and exports of these chemicals within 45 days of the end of each quarter.

Paragraph (o) contains new requirements that those who import or export used or recycled controlled substances label their bill of lading or invoice indicating that the controlled substance is used or recycled.

A new paragraph (p) requires companies that import or export used or recycled Group II, class I controlled substances, or used or recycled class II controlled substances must report annually.

Finally paragraph (q) requires records for transhipments.

X. Impact of Final Action

The Agency developed a cost-benefit analysis of various possible phaseout schedules presented in the petitions and in the comments as well as the schedule for the accelerated phaseout of ozone-depleting compounds finalized by EPA today. In all the scenarios analyzing the various reduction schedules, the analysis yielded net incremental benefits of the same order of magnitude for all the options with the Alliance schedule yielding the least net incremental benefits over the current 2000 year phaseout, and the NRDC and EPA's proposed schedule yielding the most net incremental benefits, depending on the valuation of benefits. Given the uncertainties implicit in any cost benefit analysis of this kind, the net incremental benefits of these scenarios are approximately equal with the lower bound estimate of $175 billion to a higher bound estimate of $790 billion (at a 2 percent discount rate).

The analysis includes cost assumptions for HCFC replacements. However, these costs are only hypothetical, assuming that HCFC replacements are between 10% and 30% more expensive than the HCFC themselves. EPA needed to make such assumptions since HCFC replacements have not been yet been identified for some important uses. When high replacements costs are used, the net incremental benefits range from $164 billion to $776 billion (at a 2 percent discount rate).

As such analysis indicates that various schedules yield comparable net benefits, the Agency chose as the schedule that it is finalizing today, with limited modifications, the schedule adopted in Copenhagen over both the NRDC schedule and the Alliance schedule based on EPA's judgement on the availability of technologies and infrastructure support. Although the cost-benefit analysis suggests that the NRDC schedule is a possible option, the analysis performed on that scenario assumes the widespread use of various technologies that are dependent on a supporting industry infrastructure that may not be present. It is the Agency's judgement that although such technologies are available, the

deployment of these technologies may incur significant but unaccounted for costs, as industry would need to adopt controls quickly without full knowledge of possible cost implications of their actions, and full support of an infrastructure necessary to support that technology.

For example, the RIA analysis indicates that retrofit of air-conditioning and refrigeration equipment must occur under all schedules. However, the NRDC schedule requires extensive retrofitting with total costs approaching $9 billion (at a 2 percent discount rate). The retrofit cost under EPA's proposed schedule would be substantially lower.

Furthermore, all of the phaseout schedules considered would require significant recycling and recovery at disposal. Although this will occur, the infrastructure necessary to provide recycling services, as well as to establish the bank of halons and CFCs, is under development, and would be severely strained under any accelerated phaseout. However, the Agency believes that its proposed schedule provides sufficient lead time for this infrastructure to develop.

The Agency is also finalizing a less stringent schedule for the phaseout of HCFCs rather than the schedules suggested in comments by environmental groups for these chemicals. Although the cost-benefit analysis indicates that the NRDC schedule may yield higher net benefits, assuming different valuation of benefits, the RIA does not calculate the possible adverse effects of the rapid phaseout of HCFCs required under such a schedule. The Agency believes that too short a period for the allowable use of HCFCs would further encourage the continued use of CFCs in the short-term by making the use of HCFCs as an alternative unattractive. It could also force the industry to move to untested alternatives that may pose unknown adverse environmental and health effects. For this reason the Agency is finalizing today a less stringent phaseout of HCFCs. The cost of the Alliance petition and EPA's schedule for HCFCs are comparable.

EPA has also used a discount rate of 4.5% as well as 7% in valuing future costs and benefits. When such a discount rate is used, the incremental cost of the accelerated phaseout (over the Clean Air Act phaseout) is $21 billion, with benefits ranging from $31 billion to $124 billion. At a 7% discount rate, the incremental costs are $12 billion, with benefits ranging from $8 billion to $24 billion.

EPA also examined the cost and benefits for a 2001 phaseout date for methyl bromide. The Agency has stated that a number of possible alternatives exist for users of methyl bromide, but that time is required for commercialization and use. EPA's cost analysis of these alternatives examined their likely range of costs, and coupled those assumptions with a monte carlo analysis, presenting a set of costs, (median, mean, minimum and maximum costs) that could be expected with the methyl bromide phaseout. This analysis indicates that the minimum social cost is approximately $7 million while the maximum cost is roughly $16 billion. The mean cost is a little more than $2 billion while the medium cost was estimated to be $1.7 billion. These are the total social costs between 1994 and 2010. These costs were discounted at 2%.

EPA calculated the benefits of phasing out of methyl bromide by 2001 between the years 1994 and 2011. EPA estimates benefits for this period to range from $14 billion to 56 billion, at a 2 percent discount rate. The Agency estimated that costs at a 4.5% discount rate would be $1.2 billion with benefits ranging from $4 billion to $16 billion. At a 7% discount rate, the costs would be $.8 billion with benefits ranging from $1.6 to $6.4 billion.

XI. Additional Information

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, a sector of 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, 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 the Executive Order 12866, it has been determined that this rule is a "significant regulatory action" because the final rule has an annual effect on the economy of $100 million or more. 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

In the proposed rulemaking, the EPA certified, pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that the proposal would not have "a significant impact on a substantial number of small entities." During the public comment period, the Agency received comments suggesting that this regulatory flexibility "certification" was not appropriate because the proposal failed to include a regulatory flexibility analysis on the impact of methyl bromide phaseout on small businesses (especially small farmers).

However, a regulatory flexibility analysis is required only for small entities which are directly regulated by rulemaking. *See Mid-Tex Electric Cooperative, Inc.* v. *FERC*, 773 F.2d 327 (D.C. Cir. 1985) (agency's certification need only consider the rule's impact on regulated entities and not indirect impact on small entities not regulated). The current rulemaking directly regulates only producers and importers of ozone depleting chemicals, by limiting the production and importation of such chemicals, including methyl bromide. As indicated in the proposed rulemaking, the Agency did analyze which producers and importers would be directly regulated by the rulemaking: no small entities would be directly subject to the rulemaking. There are only three producers and one importer of methyl bromide, and only one producer and importer of HBFCs. Since none of these entities qualify as small businesses within the meaning of the Regulatory Flexibility Act, no Regulatory Flexibility Act analysis is needed for either the proposed or final rule. Accordingly pursuant to section 605(b) of the Act, 5 U.S.C. 605(b), this rulemaking will not have a significant economic impact on a substantial number of small entities. EPA hereby makes this certification for this final rule.

Nonetheless, the Agency, in fact, did give consideration to the impact of the phaseouts on users, both large and small, even though they will not be directly regulated by the rulemaking. This is out of concern for user sectors, which will need to find replacements for controlled substances. For CFCs, EPA has prepared an analysis to examine specifically the effect on the phaseout of existing small businesses.

(The Agency is not at this time able to quantify the impact of the long-term phaseout of class II chemicals.) For these chemicals, EPA examined the impact of the phaseout on the user communities which may face increased costs during the phaseout of these chemicals. (All companies regulated under 40 CFR part 82, subpart A that produce or import are either not small businesses as defined by the Small Business Administration, or will simply produce or import the Class I alternatives, not incurring any additional cost to their business.) In its analysis of these impacts, EPA believed that the most affected sectors, household refrigeration, mobile airconditioners, chillers and process refrigeration, would need to retire or retrofit existing equipment but that consumers, rather than business, would bear the final costs. In some cases, such as industrial process refrigeration or chillers, retrofits will be such a small cost relative to operation costs that the impact will be minimal. For the other sectors, sterilization, solvent cleaning, portable fire extinguisher, and foam blowing, the alternative technologies are now readily available, and business closures are not expected in these sectors.

With regard to methyl bromide, the Agency's proposed rulemaking did not discuss the specific impacts on small businesses per se. However, the proposal did extensively consider the question of the impact of phaseout on users with regard to availability of alternatives. As a result for methyl bromide, EPA believes it has adopted an approach that mitigates the impact on users, including small businesses, to the greatest extent permissible, consistent with our legislative mandates.

As noted on page 15034 of the proposal, and in today's document, a newly listed class I substance is automatically subject to the section 604(a) phaseout schedule unless: (1) The Administrator accelerates that schedule pursuant to section 606; or (2) the Administrator determines that the 604(a) schedule is unattainable and extends the schedule pursuant to section 602(d).

Under section 602(d), in the case of any substance added to the list of class I or II, the Administrator may extend any schedule or compliance deadline contained in section 604 or section 605 to a later date than specified in such sections if such schedule is unattainable, considering when such substance is added to the list. However, an extension under section 602(d) may not extend the termination of production date for a class I substance to a date more than 7 years after January 1 of the year after the year that it is listed as a class I substance. With today's notice, the United States will phase out production and consumption of methyl bromide by January 1, 2001, a full seven years after the January 1, following listing. As noted in the proposal as well in today's document, EPA believes this is the most flexible regulatory program allowable under the Clean Air Act. Moreover, by not requiring interim reductions prior to the phaseout, EPA is further minimizing the impact of this rule on methyl bromide users.

This final rule also notes that the labeling requirements of section 611 of the Clean Air Act Amendments do not pertain to the crops and produce that had been fumigated with methyl bromide. Although products that are manufactured with a class I substance are required to be labeled, the Agency has interpreted the phrase "manufactured with" as "the mechanical or chemical transformation of materials or substances into new products or to assemble component products". EPA believes that agricultural processes are excluded from this definition of "manufactured", and that crops and produce do not need to be labeled under section 611 of the Clean Air Act. This interpretation of the labeling requirement alleviates further regulatory burden on users of methyl bromide.

Finally, the Agency states that it will continue to monitor the development of substitutes over the next seven years, and that some solution to provide essential use exemptions may be explored if there are no substitutes, in order to prevent undue impacts on small businesses.

Given the time frame and restrictions contained in the regulation of methyl bromide, an assessment of its impact on small businesses must look closely at both near-term and long-term impacts. For the next seven years, production will be frozen at 1991 levels. Because of on-going efforts to reduce occupational and ambient levels of methyl bromide, its use in many soil fumigation and structural applications has recently been decreasing. As a result, maintaining the 1991 production levels through 2001 should not have any economic impact on current users of methyl bromide.

Seven years from now, after the production phaseout in 2001, the impact on users will largely be driven by the costs and availability of alternatives. It is extremely difficult to quantify the long-term impact of the phaseout given the existence of a wide range of potential alternatives either currently available or potentially available by the year 2001. While the document prepared by the United States Department of Agriculture (USDA) entitled, "The Biologic and Economic Assessment of Methyl Bromide," attempts to calculate the costs of a methyl bromide phaseout, as discussed earlier, this analysis focused on an immediate ban and not a phaseout in 2001. Given the number of potential alternative chemicals and non-chemicals already under review, the potential exists for additional alternatives to be available in 2001.

Some alternatives available and used after 2001 may indeed prove to be more expensive than methyl bromide which may result in lower profits to users if these costs cannot be passed on to consumers. However, EPA has found that the impacts from regulatory actions which remove pesticides from the market are mitigated over time as new pest control technologies are introduced and adjustments are made to compensate for the loss of the pesticide through alternative pest control practices. It is reasonable to expect that research efforts already underway to improve the performance and acceptability of metam sodium, dazomet, 1,3-dichloropropene and other chemical and non-chemical alternative pest control techniques will result in minimizing the impact of a methyl bromide phaseout to small entities. When used in combination, and in conjunction with a good integrated pest management program, these materials should be able to replace many if not all of the major uses of methyl bromide. Research is currently underway on both the governmental and academic levels, as well as in the private sector, to ensure that alternative materials and methods will be viable and available before methyl bromide is phased out.

EPA has also considered the economic impact that the removal of methyl bromide may have on the American agricultural community. To estimate the total social cost of the phaseout, forecasting must include the incremental cost and likely prevalence of the various methyl bromide alternatives in each end use. The result of such an analysis, including the future costs of likely alternatives, applications rates, market share, and efficacy of each alternative, can be extremely variable due to marked differences in the characteristics of various crops, soil types, and climatic conditions in various parts of the country. To reflect the uncertainty associated with a number of these key factors, EPA's analysis was performed using a "monte carlo" technique. This analysis resulted

in an estimated total social cost of the phaseout of this chemical (between 1994 and 2010) varies between a low of $24 million, and a high of $12.2 billion, with a median total cumulative cost through 2010 of $1.3 billion. EPA believes that all scenarios except the "high cost" case represent acceptable impacts. Moreover, the high costs case represents a scenario in which a strong case could be made for pursuing an essential use provision for those applications where economically viable alternatives do not exist.

As the agricultural research community and the private sector explore viable alternative chemicals and growing methods that can substitute for methyl bromide, it is likely that the majority of current use areas will find economically viable and environmentally sound substitutes prior to the 2001 phaseout. EPA, along with USDA, intend to continue to work closely with the agricultural community to support the expedited development and review of these alternatives. Furthermore, the Agency intends to assess throughout the period leading up to the phaseout the extent to which substitutes may not become available for important uses of methyl bromide and to take timely steps to ensure that, if necessary, to pursue an appropriate measures to allow for essential uses.

C. Paperwork Reduction Act

The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and have been assigned control number 2060–170.

This collection of information has an estimated reporting burden estimated to vary from 2 to 15 hours per response with an average of 9 hours per response and an estimated annual recordkeeping burden averaging 250 hours per respondent. These estimates include time for reviewing instruction, 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 reduction of this burden to Chief, Information Policy Branch; EPA; 401 M Street, SW. (Mail Code 2136); 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".

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Lists of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Chlorofluorocarbons, Exports, Imports, Ozone Layer, Reporting and recordkeeping requirements, Stratospheric ozone.

Dated: November 30, 1993.

Carol M. Browner,

Administrator.

Part 82, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7671–7671q.

2. Part 82 is amended by revising subpart A to read as follows:

Subpart A—Production and Consumption Controls

Sec.

82.1 Purpose and scope.
82.2 Effective date.
82.3 Definitions.
82.4 Prohibitions.
82.5 Apportionment of baseline production allowances.
82.6 Apportionment of baseline consumption allowances.
82.7 Grant and phased reduction of baseline production and consumption allowances for class I controlled substances.
82.8 Grant and phased reduction of baseline production and consumption allowances for class II controlled substances. [Reserved]
82.9 Availability of production allowances in addition to baseline production allowances.
82.10 Availability of consumption allowances in addition to baseline consumption allowances.
82.11 Exports to Article 5 Parties.
82.12 Transfers.
82.13 Recordkeeping and reporting requirements.

Appendix A to Subpart A—Class I Controlled Substances

Appendix B to Subpart A—Class II Controlled Substances

Appendix C to Subpart A—Parties to the Montreal Protocol

Appendix D to Subpart A—Harmonized Tariff Schedule Description of Products That May Contain Controlled Substances in Appendix A, Class I, Groups I and II

Appendix E to Subpart A—Article 5 Parties

Appendix F to Subpart A—Listing of Ozone Depleting Chemicals

Subpart A—Production and Consumption Controls

§ 82.1 Purpose and scope.

(a) The purpose of the regulations in this subpart is to implement the Montreal Protocol on Substances that Deplete the Ozone Layer and sections 602, 603, 604, 605, 607 and 616 of the Clean Air Act Amendments of 1990, Public Law 101–549. The Protocol and section 604 impose limits on the production and consumption (defined as production plus imports minus exports, excluding transhipments and used or recycled controlled substances) of certain ozone depleting substances, according to specified schedules. The Protocol also requires each nation that becomes a Party to the agreement to impose certain restrictions on trade in ozone depleting substances with non-Parties.

(b) This subpart applies to any person that produces, transforms, destroys, imports or exports a controlled substance or imports a controlled product.

§ 82.2 Effective date.

(a) The regulations under this subpart take effect January 1, 1994, except for § 82.3 (h) and (l) and § 82.4(d) that are effective January 10, 1994. The listing of methyl bromide and HBFCs as a class I

controlled substances is effective December 10, 1993.

(b) The regulations under this part that were effective prior to January 1, 1994 continue to apply for purposes of enforcing the provisions that were applicable prior to January 1, 1994.

§ 82.3 Definitions.

As used in this subpart, the term:

(a) *Administrator* means the Administrator of the Environmental Protection Agency or his authorized representative.

(b) *Baseline consumption allowances* means the consumption allowances apportioned under § 82.6.

(c) *Baseline production allowances* means the production allowances apportioned under § 82.5.

(d) *Calculated level* means the weighted amount of a controlled substance determined by multiplying the amount (in kilograms) of the controlled substance by that substance's ozone depletion weight listed in appendix A or appendix B of this subpart.

(e) *Class I* refers to the controlled substances listed in appendix A of this subpart.

(f) *Class II* refers to the controlled substances listed in appendix B of this subpart.

(g) *Completely destroy* means to cause the expiration of a controlled substance at a destruction efficiency of 98 percent or greater, using one of the destruction technologies approved by the Parties.

(h) *Complying with the Protocol,* when referring to a foreign state not Party to the 1987 Montreal Protocol, the London Amendments, or the Copenhagen Amendments, means that the non-Party has been determined as complying with the Protocol, as indicated in appendix C of this subpart, by a meeting of the Parties as noted in the records of the directorate of the United Nations Secretariat.

(i) *Consumption* means the production plus imports minus exports of a controlled substance (other than transhipments, or recycled or used controlled substances).

(j) *Consumption allowances* means the privileges granted by this subpart to produce and import class I controlled substances; however, consumption allowances may be used to produce class I controlled substances only in conjunction with production allowances. A person's consumption allowances are the total of the allowances he obtains under §§ 82.7, 82.6 and 82.10, as may be modified under § 82.12 (transfer of allowances).

(k) *Control period* means the period from January 1, 1992 through December 31, 1992, and each twelve-month period from January 1 through December 31, thereafter.

(l) (1) *Controlled product* means a product that contains a controlled substance listed as a Class I, Group I or II substance in appendix A of this subpart, and that belongs to one or more of the following six categories of products:

(i) Automobile and truck air conditioning units (whether incorporated in vehicles or not);

(ii) Domestic and commercial refrigeration and air conditioning/heat pump equipment (whether containing controlled substances as a refrigerant and/or in insulating material of the product), e.g. Refrigerators, Freezers, Dehumidifiers, Water coolers, Ice machines, Air conditioning and heat pump units;

(iii) Aerosol products, except medical aerosols;

(iv) Portable fire extinguishers;

(v) Insulation boards, panels and pipe covers; and

(vi) Pre-polymers.

(2) Controlled products include, but are not limited to, those products listed in appendix D of this subpart.

(m) *Controlled substance* means any substance listed in appendix A or appendix B of this subpart, whether existing alone or in a mixture, but excluding any such substance or mixture that is in a manufactured product other than a container used for the transportation or storage of the substance or mixture. Thus, any amount of a listed substance in appendix A or appendix B of this subpart which is not part of a use system containing the substance is a controlled substance. If a listed substance or mixture must first be transferred from a bulk container to another container, vessel, or piece of equipment in order to realize its intended use, the listed substance or mixture is a "controlled substance". The inadvertent or coincidental creation of insignificant quantities of a listed substance in appendix A or appendix B of this subpart: (1) During a chemical manufacturing process, (2) resulting from unreacted feedstock, or (3) from the listed substance's use as a process agent present as a trace quantity in the chemical substance being manufactured, is not deemed a controlled substance. Controlled substances are divided into two classes, Class I in appendix A of this subpart, and Class II listed in appendix B of this subpart. Class I substances are further divided into seven groups, Group I, Group II, Group III, Group IV, Group V, Group VI, and Group VII as set forth in appendix A of this subpart.

(n) *Copenhagen Amendments* means the Montreal Protocol on Substances That Deplete the Ozone Layer, as amended at the Fourth Meeting of the Parties to the Montreal Protocol in Copenhagen in 1992.

(o) *Destruction* means the expiration of a controlled substance to the destruction efficiency actually achieved, unless considered completely destroyed as defined in this section. Such destruction does not result in a commercially useful end product and uses one of the following controlled processes approved by the Parties to the Protocol:

(1) Liquid injection incineration;

(2) Reactor cracking;

(3) Gaseous/fume oxidation;

(4) Rotary kiln incineration; or

(5) Cement kiln.

(p) *Export* means the transport of virgin, used, or recycled controlled substances from inside the United States or its territories to persons outside the United States or its territories, excluding United States military bases and ships for on-board use.

(q) *Exporter* means the person who contracts to sell controlled substances for export or transfers controlled substances to his affiliate in another country.

(r) *Facility* means any process equipment (e.g., reactor, distillation column) used to convert raw materials or feedstock chemicals into controlled substances or consume controlled substances in the production of other chemicals.

(s) *Foreign state* means an entity which is recognized as a sovereign nation or country other than the United States of America.

(t) *Foreign state not Party to* or *Non-Party* means a foreign state that has not deposited instruments of ratification, acceptance, or other form of approval with the Directorate of the United Nations Secretariat, evidencing the foreign state's ratification of the provisions of the 1987 Montreal Protocol the London Amendments, or of the Copenhagen Amendments, as specified.

(u) *Import* means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into any place subject to the jurisdiction of the United States whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States, with the following exemptions:

(1) Off-loading used or excess controlled substances or controlled products from a ship during servicing;

(2) Bringing controlled substances into the U.S. from Mexico where the controlled substance had been admitted into Mexico in bond and was of U.S. origin; and

(3) Bringing a controlled product into the U.S. when transported in a consignment of personal or household effects or in a similar non-commercial situation normally exempted from U.S. Customs attention.

(v) *Importer* means any person who imports a controlled substance or a controlled product into the United States. "Importer" includes the person primarily liable for the payment of any duties on the merchandise or an authorized agent acting on his or her behalf. The term also includes, as appropriate:

(1) The consignee;

(2) The importer of record;

(3) The actual owner; or

(4) The transferee, if the right to draw merchandise in a bonded warehouse has been transferred.

(w) *London Amendments* means the Montreal Protocol, as amended at the Second Meeting of the Parties to the Montreal Protocol in London in 1990.

(x) *Montreal Protocol* means the Montreal Protocol on Substances that Deplete the Ozone Layer, a protocol to the Vienna Convention for the Protection of the Ozone Layer, including adjustments adopted by the Parties thereto and amendments that have entered into force.

(y) *1987 Montreal Protocol* means the Montreal Protocol, as originally adopted by the Parties in 1987.

(z) *Nations complying with, but not joining, the Protocol* means any nation listed in appendix C , Annex 2, of this subpart.

(aa) *Party* means any foreign state that is listed in appendix C of this subpart (pursuant to instruments of ratification, acceptance, or approval deposited with the Depositary of the United Nations Secretariat), as having ratified the specified control measure in effect under the Montreal Protocol. Thus, for purposes of the trade bans specified in § 82.4(d)(2) pursuant to the London Amendments, only those foreign states that are listed in appendix C of this subpart as having ratified both the 1987 Montreal Protocol and the London Amendments shall be deemed to be Parties.

(bb) *Person* means any individual or legal entity, including an individual, corporation, partnership, association, state, municipality, political subdivision of a state, Indian tribe; any agency, department, or instrumentality of the United States; and any officer, agent, or employee thereof.

(cc) *Plant* means one or more facilities at the same location owned by or under common control of the same person.

(dd) *Potential production allowances* means the production allowances obtained under § 82.9(a).

(ee) *Production* means the manufacture of a controlled substance from any raw material or feedstock chemical, but does not include:

(1) The manufacture of a controlled substance that is subsequently transformed;

(2) The reuse or recycling of a controlled substance;

(3) Amounts that are destroyed by the approved technologies; or

(4) Amounts that are spilled or vented unintentionally.

(ff) *Production allowances* means the privileges granted by this subpart to produce controlled substances; however, production allowances may be used to produce controlled substances only in conjunction with consumption allowances. A person's production allowances are the total of the allowances he obtains under §§ 82.7, 82.5 and 82.9 as may be modified under § 82.12 (transfer of allowances).

(gg) *Transform* means to use and entirely consume (except for trace quantities) a controlled substance in the manufacture of other chemicals for commercial purposes.

(hh) *Transhipment* means the continuous shipment of a controlled substance from a foreign state of origin through the United States or its territories to a second foreign state of final destination.

(ii) *Unexpended consumption allowances* means consumption allowances that have not been used. At any time in any control period a person's unexpended consumption allowances are the total of the level of consumption allowances the person has authorization under this subpart to hold at that time for that control period, minus the level of controlled substances that the person has produced or imported (not including transhipments and used or recycled controlled substances) in that control period until that time.

(jj) *Unexpended production allowances* means production allowances that have not been used. At any time in any control period a person's unexpended production allowances are the total of the level of production allowances he has authorization under this subpart to hold at that time for that control period, minus the level of controlled substances that the person has produced in that control period until that time.

(kk) *Used or recycled controlled substances* means controlled substances that have been recovered from their intended use systems.

§ 82.4 Prohibitions.

(a) No person may produce, at any time in any control period, any class I controlled substance (except for controlled substances that are transformed or destroyed or substances that are produced pursuant to an exemption as specified in paragraph (k) of this section) in excess of the amount of unexpended production allowances for that substance held by that person under the authority of this subpart at that time for that control period. Every kilogram of excess production constitutes a separate violation of this subpart.

(b) No person may produce or (except for transhipments, or for used or recycled controlled substances) import, at any time in any control period, any class I controlled substance (except for controlled substances that are transformed, destroyed, or substances that are produced or imported pursuant to an exemption as specified in paragraph (k) of this section) in excess of the amount of unexpended consumption allowances held by that person under the authority of this subpart at that time for that control period. Every kilogram of excess production or importation (other than transhipments or used and recycled controlled substances) constitutes a separate violation of this subpart.

(c) A person may not use production allowances to produce a quantity of a class I controlled substance (with the exceptions set forth in paragraph (a) of this section) unless he holds under the authority of this subpart at the same time consumption allowances sufficient to cover that quantity of class I controlled substances nor may a person use consumption allowances to produce a quantity of class I controlled substances (with the exceptions set forth in paragraph (a) of this section) unless the person holds under authority of this subpart at the same time production allowances sufficient to cover that quantity of class I controlled substances. However, only consumption allowances are required to import class I controlled substances with the exceptions set forth in paragraph (b) of this section.

(d) No person may:

(1) Import or export any quantity of a controlled substance listed in Class I, Group I or Group II, in appendix A of this subpart from or to any foreign state not listed as a Party to the 1987 Montreal Protocol unless that foreign state is complying with the 1987

Montreal Protocol (As noted in appendix C, Annex 2 of this subpart);

(2) Import or export any quantity of a controlled substance listed in Class I, Group III, Group IV or Group V, in appendix A of this subpart, from or to any foreign state not Party to the London Amendments (as noted in appendix C, Annex 1, of this subpart), unless that foreign state is complying with the London Amendments (as noted in appendix C, Annex 2, of this subpart); or

(3) Import a controlled product from any foreign state not Party to the 1987 Montreal Protocol (as noted in appendix C, Annex 1, of this subpart), unless that foreign state is complying with the Protocol (as noted in appendix C, Annex 2, of this subpart).

(4) Every kilogram of a controlled substance, and every controlled product, imported or exported in contravention of this subpart constitutes a separate violation of this subpart.

(e) Effective January 1, 2003, no person may produce HCFC–141b except in a process resulting in its transformation, use in a process resulting in destruction, or for exceptions stated in paragraph (l) of this section.

(f) Effective January 1, 2003, no person may import HCFC–141b except for use in a process resulting in its transformation, use in a process resulting in destruction, or for exceptions stated in paragraph (l) of this section.

(g) Effective January 1, 2010, no person may produce or consume (excluding used or recycled controlled substances, or transhipments) HCFC–22 or HCFC–142b for any purpose other than for use in a process resulting in their transformation, use in a process resulting in their destruction, for use in equipment manufactured prior to January 1, 2010, or for exceptions stated in paragraph (l) of this section in excess of baseline allowances allocated §§ 82.5(h) and 82.6(h).

(h) Effective January 1, 2020, no person may produce or consume HCFC–22 or HCFC–142b (excluding used or recycled controlled substances, or transhipments) for any purpose other than for use in a process resulting in their transformation, use in a process resulting in their destruction or for exceptions stated in paragraph (l) of this section.

(i) Effective January 1, 2015, no person may produce or consume class II substance (excluding used or recycled controlled substances, or transhipments) not previously controlled, for any purpose other than for use in a process resulting in its transformation, use in a process resulting in their destruction, as a refrigerant in equipment manufactured before January 1, 2020, or for exceptions stated in paragraph (l) of this section, in excess of baseline production and consumption levels defined in §§ 82.5(h) and 82.6(h).

(j) Effective January 1, 2030 no person may produce or import class II substances, (excluding used or recycled controlled substances, or transhipments) for any purpose other than for use in a process resulting in their transformation, use in a process resulting in their destruction, or for exceptions stated in paragraph (l) of this section.

(k) The following exemptions apply to the production and consumption restrictions under paragraphs (a) and (b) of this section: [Reserved]

(l) The following exemptions apply to the production and consumption restrictions under paragraphs (e), (f), (g), (h), (i) and (j) of this section:

(1) Medical Devices [Reserved]

(2) Exports to developing countries [Reserved]

§ 82.5 Apportionment of baseline production allowances.

Persons who produced controlled substances in Group I or Group II in 1986 are apportioned baseline production allowances as set forth in paragraphs (a) and (b) of this section. Persons who produced controlled substances in Group III, IV, or V in 1989 are apportioned baseline production allowances as set forth in paragraphs (c), (d), and (e) of this section. Persons who produced controlled substances in Group VI and VII in 1991 are apportioned baseline allowances as set forth in paragraphs (f) and (g) of this section.

Controlled Substance	Person	Allowances (kg)
(a) For Group I controlled substances:		
CFC–11	Allied-Signal, Inc	23,082,358
	E.I. DuPont de Nemours & Co	33,830,000
	Elf Atochem, N.A	21,821,500
	Laroche Chemicals	12,856,364
CFC–12	Allied-Signal, Inc	35,699,776
	E.I. DuPont de Nemours & Co	64,849,000
	Elf Atochem, N.A	31,089,807
	Laroche Chemicals	15,330,909
CFC–113	Allied-Signal, Inc	21,788,896
	E.I. DuPont de Nemours & Co	58,553,000
CFC–114	Allied-Signal, Inc	1,488,569
	E.I. DuPont de Nemours & Co	4,194,000
CFC–115	E.I. DuPont de Nemours & Co	4,176,000
(b) For Group II controlled substances:		
Halon-1211	Great Lakes Chemical Corp	826,487
	ICI Americas, Inc	2,135,484
Halon-1301	E.I. DuPont de Nemours & Co	3,220,000
	Great Lakes Chemical Corp	1,766,850
Halon-2402		
(c) For Group III controlled substances:		
CFC–13	Allied-Signal, Inc	127,125
	E.I. DuPont de Nemours & Co	187,831
	Elf Atochem, N.A	3,992
	Great Lakes Chemical Corp	56,381
	Laroche Chemicals	29,025
CFC–111		
CFC–112		

Controlled Substance	Person	Allowances (kg)
CFC–211	E.I. DuPont de Nemours & Co	11
CFC–212	E.I. DuPont de Nemours & Co	11
CFC–213	E.I. DuPont de Nemours & Co	11
CFC–214	E.I. DuPont de Nemours & Co	11
CFC–215	E.I. DuPont de Nemours & Co	511
	Halocarbon Products Corp	1,270
CFC–216	E.I. DuPont de Nemours & Co	170,574
CFC–217	E.I. DuPont de Nemours & Co	511
(d) For Group IV controlled substances:		
CCl_4	Akzo Chemicals, Inc	7,873,615
	Degussa Corporation	26,546
	Dow Chemical Company, USA	18,987,747
	E.I. DuPont de Nemours & Co	9,099
	Hanlin Chemicals-WV, Inc	219,616
	ICI Americas, Inc	853,714
	Occidental Chemical Corp	1,059,358
	Vulcan Chemicals	21,931,987
(e) For Group V controlled substances:		
Methyl chloroform	Dow Chemical Company, USA	168,030,117
	E.I. DuPont de Nemours & Co	2
	PPG Industries, Inc	57,450,719
	Vulcan Chemicals	89,689,064
(f) For Group VI controlled substances: [Reserved]		
(g) For Group VII controlled substances: [Reserved]		
(h) For class II controlled substances: [Reserved]		

§ 82.6 Apportionment of baseline consumption allowances.

Persons who produced, imported, or produced and imported controlled substances in Group I or Group II in 1986 are apportioned chemical-specific baseline consumption allowances as set forth in paragraphs (a) and (b) of this section. Persons who produced, imported, or produced and imported controlled substances in Group III, Group IV, or Group V in 1989 are apportioned chemical-specific baseline consumption allowances as set forth in paragraphs (c), (d), and (e) of this section. Persons who produced, imported, or produced and imported controlled substances in Group VI or VII in 1991 are apportioned chemical specific baseline consumption allowances as set forth in paragraphs (f) and (g) of this section.

Controlled substance	Person	Allowances (kg)
(a) For Group I controlled substances:		
CFC–11	Allied-Signal, Inc	22,683,833
	E.I. DuPont de Nemours & Co	32,054,283
	Elf Atochem, N.A	21,740,194
	Hoechst Celanese Corporation	185,396
	ICI Americas, Inc	1,673,436
	Kali-Chemie Corporation	82,500
	Laroche Chemicals	12,695,726
	National Refrigerants, Inc	693,707
	Refricentro, Inc.	160,697
	Sumitomo Corporation of America	5,800
CFC–12	Allied-Signal, Inc	35,236,397
	E.I. DuPont de Nemours & Co	61,098,726
	Elf Atochem, N.A	32,403,869
	Hoechst Celanese Corporation	138,865
	ICI Americas, Inc	1,264,980
	Kali-Chemie Corporation	355,440
	Laroche Chemicals	15,281,553
	National Refrigerants, Inc	2,375,384
	Refricentro, Inc	242,526
CFC–113	Allied-Signal, Inc.18,241,928.	
	E.I. DuPont de Nemours & Co	49,602,858
	Elf Atochem, N.A	244,908
	Holchem	265,199
	ICI Americas, Inc	2,399,700
	Refricentro, Inc	37,385
	Sumitomo Corporation of America	280,163
CFC–114	Allied-Signal, Inc	1,429,582
	E.I. DuPont de Nemours & Co	3,686,103
	Elf Atochem, N.A	22,880
	ICI Americas, Inc	32,930
CFC–115	E.I. DuPont de Nemours & Co	2,764,109
	Elf Atochem, N.A	633,007

Controlled substance	Person	Allowances (kg)
	Hoechst Celanese Corporation	8,893
	ICI Americas, Inc	2,366,351
	Laroche Chemicals	135,520
	Refricentro, Inc	27,337
(b) For Group II controlled substances:		
Halon-1211	Elf Atochem, N.A	411,292
	Great Lakes Chemical Corp	772,775
	ICI Americas, Inc	2,116,641
	Kali-Chemie Corporation	330,000
Halon-1301	E.I. DuPont de Nemours & Co	2,772,917
	Elf Atochem, N.A	89,255
	Great Lakes Chemical Corp	1,744,132
	Kali-Chemie Corporation	54,380
Halon-2402	Ausimont	34,400
	Great Lakes Chemical Corp	15,900
(c) For Group III controlled substances:		
CFC–13	Allied-Signal, Inc	127,124
	E.I. DuPont de Nemours & Co	158,508
	Elf Atochem, N.A	3,992
	Great Lakes Chemical Corp	56,239
	ICI Americas, Inc	5,855
	Laroche Chemicals	29,025
	National Refrigerants, Inc	16,665
CFC–111		
CFC–112	Sumitomo Corporation of America	5,912
	TG (USA) Corporation	9,253
CFC–211	E.I. DuPont de Nemours & Co	11
CFC–212	E.I. DuPont de Nemours & Co	11
CFC–213	E.I. DuPont de Nemours & Co	11
CFC–214	E.I. DuPont de Nemours & Co	11
CFC–215	E.I. DuPont de Nemours & Co	511
	Halocarbon Products Corp	1,270
CFC–216	E.I. DuPont de Nemours & Co	170,574
CFC–217	E.I. DuPont de Nemours & Co	511
(d)For Group IV controlled substances:		
CCl_4	Crescent Chemical Co	56
	Degussa Corporation	12,466
	Dow Chemical Company, USA	8,170,561
	E.I. DuPont de Nemours & Co	26,537
	Elf Atochem, N.A	41
	Hanlin Chemicals-WV, Inc	103,133
	Hoechst Celanese Corporation	3
	ICC Chemical Corp	1,173,723
	ICI Americas, Inc	855,466
	Occidental Chemical Corp	497,478
	Sumitomo Corporation of America	9
(e) For Group V controlled substances:		
Methyl Chloroform	3V Chemical Corp	3,528
	Actex, Inc	50,171
	Atochem North America	74,355
	Dow Chemical Company, USA	125,200,200
	E.I. DuPont de Nemours & Co	2
	IBM	2,026
	ICI Americas, Inc	14,179,850
	Laidlaw	420,207
	PPG Industries	45,254,115
	Sumitomo	1,954
	TG (USA) Corporation	7,073
	Unitor Ships Service, Inc	14,746
	Vulcan Chemicals	70,765,072

(f) For Group VI controlled substances: [Reserved]
(g) For Group VII controlled substances: [Reserved]
(h) For Class II controlled substances: [Reserved]

§ 82.7 Grant and phased reduction of baseline production and consumption allowances for class I controlled substances.

For each control period specified in the following table, each person is granted the specified percentage of the baseline production and consumption allowances apportioned to him under §§ 82.5 and 82.6.

Control period	Class I substances in groups I and III (percent)	Class I substances in group II (percent)	Class I substances in group IV (percent)	Class I substances in group V (percent)	Class I substances in group VI (percent)	Class I substances in group VII (percent)
1994	25	0	50	50	100	100
1995	25	0	15	30	100	100
1996	0	0	0	0	100	0
1997	0	0	0	0	100	0
1998	0	0	0	0	100	0
1999	0	0	0	0	100	0
2000	0	0	0	0	100	0
2001	0	0	0	0	0	0

§ 82.8 Grant and phased reduction of baseline production and consumption allowances for class II controlled substances. [Reserved]

§ 82.9 Availability of production allowances in addition to baseline production allowances.

(a) Every person apportioned baseline production allowances for class I controlled substances under § 82.5 (a) through (e) is also granted potential production allowances equal to:

(1) 10 percent of his apportionment under § 82.5 for each control period ending before January 1, 2000; and

(2) 15 percent of his apportionment under § 82.5 for each control period beginning after December 31, 1999 and ending before January 1, 2011 (January 1, 2013 in the case of methyl chloroform).

(3) A person may convert potential production allowances, either granted under this paragraph (a) or obtained under § 82.12 (transfer of allowances), to production allowances only to the extent authorized by the Administrator under § 82.11 (Exports to Article 5 Parties). A person may obtain authorizations to convert potential production allowances to production allowances by requesting issuance of a notice under § 82.11 or by completing a transfer of authorizations under § 82.12.

(b) A person may also increase or decrease its production allowances by trading with another Party to the Protocol. A nation listed in appendix C, Annex 1 of this subpart (Parties to the Montreal Protocol) must agree either to transfer to the person for the current control period some amount of production that the nation is permitted under the Montreal Protocol or to receive from the person for the current control period some amount of production that the person is permitted under this subpart. A request for production allowances shall also be considered a request for consumption allowances under § 82.10(c).

(1) For trades from a Party, the person must obtain from the principal diplomatic representative in that nation's embassy in the United States a signed document stating that the appropriate authority within that nation has established or revised production limits for the nation to equal the lesser of the maximum production that the nation is allowed under the Protocol minus the amount transferred, the maximum production that is allowed under the nation's applicable domestic law minus the amount transferred, or the average of the nation's actual national production level for the three years prior to the transfer minus the production allowances transferred. The person must submit to the Administrator a transfer request that includes a true copy of this document and that sets forth the following:

(i) The identity and address of the person;

(ii) The identity of the Party;

(iii) The names and telephone numbers of contact persons for the person and for the Party;

(iv) The chemical type and level of production being transferred;

(v) The control period(s) to which the transfer applies; and

(vi) A signed statement by the person that this increased production is intended as an export to the Party.

(2) For trades to a Party, a person must submit a transfer request that sets forth the following:

(i) The identity and address of the person;

(ii) The identity of the Party;

(iii) The names and telephone numbers of contact persons for the person and for the Party;

(iv) The chemical type and level of allowable production to be transferred; and

(v) The control period(s) to which the transfer applies.

(3) After receiving a transfer request that meets the requirements of paragraph (b)(2) of this section, the Administrator may, at his discretion, consider the following factors in deciding whether to approve such a transfer:

(i) Possible creation of economic hardship;

(ii) Possible effects on trade;

(iii) Potential environmental implications; and

(iv) The total amount of unexpended production allowances held by United States entities.

(4) The Administrator will issue the person a notice either granting or deducting production allowances and specifying the control periods to which the transfer applies, provided that the request meets the requirement of paragraph (b)(1) of this section for trades from Parties and paragraph (b)(2) of this section for trades to Parties, unless the Administrator has decided to disapprove the trade under paragraph (b)(3) of this section for trades to Parties. For a trade from a Party, the Administrator will issue a notice that revises the allowances held by the person to equal the unexpended production allowances held by the person under this subpart plus the level of allowable production transferred from the Party. For a trade to a Party, the Administrator will issue a notice that revises the production limit for the person to equal the lesser of:

(i) The unexpended production allowances held by the person under this subpart minus the amount transferred; or

(ii) The unexpended production allowances held by the person under this subpart minus the amount by which the United States average annual production of the controlled substance being traded for the three years prior to the transfer is less than the total allowable production allowable for that substance under this subpart minus the amount transferred. The change in

allowances will be effective on the date that the notice is issued.

(5) If after one person obtains approval for a trade of allowable production of a controlled substance to a Party, one or more other persons obtain approval for trades involving the same controlled substance and the same control period, the Administrator will issue notices revising the production limits for each of the other persons trading that controlled substance in that control period to equal the lesser of:

(i) The unexpended production allowances held by the person under this subpart minus the amount transferred; or

(ii) The unexpended production allowances held by the person under this subpart minus (the amount by which the United States average annual production of the controlled substance being traded for the three years prior to the transfer is less than the total allowable production for that substance under this subpart) multiplied by the amount transferred divided by (the total amount transferred by all the other persons trading the same controlled substance in the same control period) minus the amount transferred by that person.

(iii) The Administrator will also issue a notice revising the production limit for each person who previously obtained approval of a trade of that substance in that control period to equal the unexpended production allowances held by the person under this subpart plus the amount by which the United States average annual production of the controlled substance being traded for the three years prior to the transfer is less than the total allowable production under this subpart multiplied by the amount transferred by that person divided by (the amount transferred by all of the persons that have traded that controlled substance in that control period). The change in production allowances will be effective on the date that the notice is issued.

(c) A person may obtain production allowances for that controlled substance equal to the amount of that controlled substance produced in the United States that was transformed or destroyed within the United States in cases where production allowances were expended to produce such substance in accordance with the provisions of this paragraph. A request for production allowances under this section will be considered a request for consumption allowances under § 82.10(b).

(1) A person must submit a request for production allowances that includes the following:

(i) The identity and address of the person;

(ii) The name, quantity, and level of controlled substance transformed or the name, quantity and volume destroyed;

(iii) A copy of the invoice or receipt documenting the sale of the controlled substance to the person;

(iv) A certification that production allowances were expended for the production of the controlled substance;

(v) If the controlled substance is transformed, the name, quantity, and verification of the commercial use of the resulting chemical transformed; and

(vi) If the controlled substance is destroyed, the efficiency of the destruction process.

(2) The Administrator will review the information and documentation submitted under paragraph (c)(1) of this section and will assess the quantity of class I controlled substance that the documentation and information verifies was transformed or destroyed. The Administrator will issue the person production allowances equivalent to the controlled substances that the Administrator determines were transformed or destroyed. For controlled substances completely destroyed under this subpart, the Agency will grant allowances equal to 100 percent of volume intended for destruction. For those controlled substances destroyed at less than a 98 percent destruction efficiency, the Agency will grant allowances commensurate with that percent of destruction efficiency that is actually achieved. The grant of allowances will be effective on the date that the notice is issued.

(3) If the Administrator determines that the request for production allowances does not satisfactorily substantiate that the person transformed or destroyed controlled substances as claimed, or that modified allowances were not expended, the Administrator will issue a notice disallowing the request for additional production allowances. Within ten working days after receipt of notification, the person may file a notice of appeal, with supporting reasons, with the Administrator. The Administrator may affirm the disallowance or grant an allowance, as he finds appropriate in light of the available evidence. If no appeal is taken by the tenth day after notification, the disallowance will be final on that day.

§ 82.10 Availability of consumption allowances in addition to baseline consumption allowances.

(a) Any person may obtain, in accordance with the provisions of this section, consumption allowances equivalent to the level of class I controlled substances (other than used or recycled controlled substances or a transshipment) that the person has exported from the United States and its territories to a Party (as listed in appendix C, Annex 1 of this subpart), other than a transshipment.

(1) The exporter of the class I controlled substances must submit to the Administrator a request for consumption allowances setting forth the following:

(i) The identities and addresses of the exporter and the recipient of the exports;

(ii) The exporter's Employer Identification Number;

(iii) The names and telephone numbers of contact persons for the exporter and the recipient;

(iv) The quantity and type of controlled substances exported;

(v) The source of the controlled substance and the date purchased;

(vi) The date on which and the port from which the controlled substances were exported from the United States or its territories;

(vii) The country to which the controlled substances were exported;

(viii) The bill of lading and the invoice indicating the net quantity of controlled substances shipped and documenting the sale of the controlled substances to the purchaser; and

(ix) The commodity code of the controlled substance exported.

(2) The Administrator will review the information and documentation submitted under paragraph (a)(1) of this section, and will assess the quantity of controlled substances that the documentation verifies was exported. The Administrator will issue the exporter consumption allowances equivalent to the level of controlled substances that the Administrator determined was exported. The grant of the consumption allowances will be effective on the date the notice is issued.

(b) A person may obtain consumption allowances for that controlled substance equal to the amount of a controlled substance either produced in or imported into the United States that was transformed or destroyed in the United States in the case where consumption allowance were expended to produce or import such substance in accordance with the provisions of this paragraph.

(1) A person must submit a request for consumption allowances that includes the following:

(i) The identity and address of the person;

(ii) The name, quantity, and level of controlled substance transformed or the name, quantity and volume destroyed;

(iii) A copy of the invoice or receipt documenting the sale of the controlled substance to the person;

(iv) A certification that production and/or consumption allowances were expended for the production and/or import of the controlled substance;

(v) If the controlled substance is transformed, the name, quantity, and verification of the commercial use of the resulting chemical transformed; and

(vi) If the controlled substance is destroyed, the efficiency of the destruction process.

(2) The Administrator will review the information and documentation submitted under paragraph (b)(1) of this section and will assess the quantity of controlled substance that the documentation and information verified was transformed or destroyed. The Administrator will issue to the person consumption allowances equivalent to the level of controlled substances that the Administrator determines was transformed or destroyed. For controlled substances completely destroyed under this subpart, the Agency will grant allowances equal to 100 percent of volume intended for destruction. For those controlled substances destroyed at less than a 98 percent destruction efficiency, the Agency will grant allowances commensurate with that percent of destruction efficiency that is actually achieved. The grant of allowances will be effective on the date that the notice is issued.

(3) If the Administrator determines that the request for consumption allowances does not satisfactorily substantiate that the person transformed or destroyed controlled substances as claimed, or that production or consumption allowances had not been expended, the Administrator will issue a notice disallowing the request for additional consumption allowances. Within ten working days after receipt of notification, the person may file a notice of appeal, with supporting reasons, with the Administrator. The Administrator may affirm or vacate the disallowance. If no appeal is taken by the tenth day after notification, the disallowance will be final on that day.

(c) A person may also increase its consumption allowances by receiving production from another Party to the Protocol. A nation listed in appendix C, Annex 1 of this subpart (Parties to the Montreal Protocol) must agree to transfer to the person for the current control period some amount of production that the nation is permitted under the Montreal Protocol. A request for consumption allowances shall also be considered a request for production allowances under § 82.9(b). For trades from a Party, the person must obtain from the principal diplomatic representative in that nation's embassy in the United States a signed document stating that the appropriate authority within that nation has established or revised production limits for the nation to equal the lesser of the maximum production that the nation is allowed under the Protocol minus the amount transferred, the maximum production that is allowed under the nation's applicable domestic law minus the amount transferred, or the average of the nation's actual national production level for the three years prior to the transfer minus the production allowances transferred. The person must submit to the Administrator a transfer request that includes a true copy of this document and that sets forth the following:

(1) The identity and address of the person;

(2) The identity of the Party;

(3) The names and telephone numbers of contact persons for the person and for the Party;

(4) The chemical type and level of production being transferred;

(5) The control period(s) to which the transfer applies; and

(6) A signed statement by the person that this increased production is intended as an export to the Party.

§ 82.11 Exports to Article 5 Parties.

In accordance with the provisions of this section, any person may obtain authorizations to convert potential production allowances to production allowances by exporting class I controlled substances (not including transshipments, or used or recycled controlled substances) to foreign states listed in appendix E to this subpart (Article 5 Parties). Authorizations obtained under this section will be valid only during the control period in which the controlled substance departed the United States. A request for authorizations under this section will be considered a request for consumption allowances under § 82.10(a) as well.

(a) The exporter must submit to the Administrator a request for authority to convert potential production allowance to production allowances. That request must set forth the following:

(1) The identities and addresses of the exporter and the recipient of the exports;

(2) The exporter's Employee Identification Number;

(3) The names and telephone numbers of contact persons for the exporter and for the recipient;

(4) The quantity and the type of controlled substances exported, its source and date purchased;

(5) The date on which and the port from which the controlled substances were exported from the United States or its territories;

(6) The country to which the controlled substances were exported;

(7) A copy of the bill of lading and invoice indicating the net quantity shipped and documenting the sale of the controlled substances to the purchaser;

(8) The commodity code of the controlled substance exported; and

(9) A copy of the contract covering the sale of the controlled substances to the recipient that contains provisions forbidding the reexport of the controlled substance in bulk form and subjecting the recipient or any transferee of the recipient to liquidated damages equal to the resale price of the controlled substances if they are reexported in bulk form.

(b) The Administrator will review the information and documentation submitted under paragraph (a) of this section, and assess the quantity of controlled substances that the documentation verifies were exported to an Article 5 Party. Based on that assessment, the Administrator will issue the exporter a notice authorizing the conversion of a specified quantity of potential production allowances to production allowances in a specified control year, and granting consumption allowances in the same amount for the same control year. The authorizations may be used to convert potential production allowances to production allowances as soon as the date on which the notice is issued.

§ 82.12 Transfers.

(a) *Inter-company transfers.* Any person ("transferor") may transfer to any other person ("transferee") any amount of the transferor's consumption allowances, production allowances, potential production allowances, or authorizations to convert potential production allowances to production allowances, as follows:

(1) The transferor must submit to the Administrator a transfer claim setting forth the following:

(i) The identities and addresses of the transferor and the transferee;

(ii) The name and telephone numbers of contact persons for the transferor and the transferee;

(iii) The type of allowances or authorizations being transferred, including the names of the controlled substances for which allowances are to be transferred;

(iv) The group of controlled substances to which the allowances or

authorizations being transferred pertains;

(v) The amount of allowances or authorizations being transferred;

(vi) The control period(s) for which the allowances or authorizations are being transferred;

(vii) The amount of unexpended allowances or authorizations of the type and for the control period being transferred that the transferor holds under authority of this subpart as of the date the claim is submitted to EPA; and

(viii) The amount of the one-percent offset applied to the unweighted amount traded that will be deducted from the transferor's allowance balance (except for trades of potential production allowances, authorizations to convert, or trades from transformers and destroyers to producers or importers for the purpose of allowance reimbursement).

(2) The Administrator will determine whether the records maintained by EPA, taking into account any previous transfers and any production, allowable imports and exports of controlled substances reported by the transferor, indicate that the transferor possesses, as of the date the transfer claim is processed, unexpended allowances or authorizations sufficient to cover the transfer claim (i.e., the amount to be transferred plus, in the case of transferors of production or consumption allowances, one percent of that amount). Within three working days of receiving a complete transfer claim, the Administrator will take action to notify the transferor and transferee as follows:

(i) If EPA's records show that the transferor has sufficient unexpended allowances or authorizations to cover the transfer claim or if review of available information is insufficient to make a determination, the Administrator will issue a notice indicating that EPA does not object to the transfer and will reduce the transferor's balance of unexpended allowances or authorizations by the amount to be transferred plus, in the case of transfers of production or consumption allowances, one percent of that amount. When EPA issues a no objection notice, the transferor and the transferee may proceed with the transfer. However, if EPA ultimately finds that the transferor did not have sufficient unexpended allowances or authorizations to cover the claim, the transferor and transferee will be held liable for any violations of the regulations of this subpart that occur as a result of, or in conjunction with, the improper transfer.

(ii) If EPA's records show that the transferor has insufficient unexpended allowances or authorizations to cover the transfer claim, or that the transferor has failed to respond to one or more Agency requests to supply information needed to make a determination, the Administrator will issue a notice disallowing the transfer. Within 10 working days after receipt of notification, either party may file a notice of appeal, with supporting reasons, with the Administrator. The Administrator may affirm or vacate the disallowance. If no appeal is taken by the tenth working day after notification, the disallowance shall be final on that day.

(3) In the event that the Administrator does not respond to a transfer claim within the three working days specified in paragraph (b)(2) of this section, the transferor and transferee may proceed with the transfer. EPA will reduce the transferor's balance of unexpended allowances or authorizations by the amount to be transferred plus, in the case of transfers of production or consumption allowances, one percent of that amount. However, if EPA ultimately finds that the transferor did not have sufficient unexpended allowances or authorizations to cover the claim, the transferor and transferee will be held liable for any violations of the regulations of this subpart that occur as a result of, or in conjunction with, the improper transfer.

(b) *Inter-pollutant conversions.* Any person ("convertor") may convert consumption allowances, production allowances, potential production allowances, or authorizations to convert potential production allowances to production allowances for one class I controlled substance to the same type of allowance for another class I controlled substance within the group of controlled substances as the first as follows:

(1) The convertor must submit to the Administrator a conversion claim setting forth the following:

(i) The identity and address of the convertor;

(ii) The name and telephone number of a contact person for the convertor;

(iii) The type of allowances or authorizations being converted, including the names of the controlled substances for which allowances are to be converted;

(iv) The group of controlled substances to which the allowances or authorizations being converted pertains;

(v) The amount and type of allowances to be converted;

(vi) The amount of allowances to be subtracted from the convertor's unexpended allowances for the first controlled substance, to be equal to 101 percent of the amount of allowances converted (except for conversions of authorizations to convert potential production allowances and conversions of potential production allowances);

(vii) The amount of allowances or authorizations to be added to the convertor's unexpended allowances or authorizations for the second controlled substance, to be equal to the amount of allowances for the first controlled substance being converted multiplied by the quotient of the ozone depletion factor of the first controlled substance divided by the ozone depletion factor of the second controlled substance, as listed in appendix A of this subpart;

(viii) The control period(s) for which the allowances or authorizations are being converted; and

(ix) The amount of unexpended allowances or authorizations of the type and for the control period being converted that the convertor holds under authority of this subpart as of the date the claim is submitted to EPA.

(2) The Administrator will determine whether the records maintained by EPA, taking into account any previous conversions, any transfers, and any production, imports (not including transhipments, or used and recycled controlled substances), or exports (not including transhipments, or used and recycled controlled substances) of controlled substances reported by the convertor, indicate that the convertor possesses, as of the date the conversion claim is processed, unexpended allowances or authorizations sufficient to cover the conversion claim (i.e., the amount to be converted plus, in the case of conversions of production or consumption allowances, one percent of that amount). Within three working days of receiving a complete conversion claim, the Administrator will take action to notify the convertor as follows:

(i) If EPA's records show that the convertor has sufficient unexpended allowances or authorizations to cover the conversion claim or if review of available information is insufficient to make a determination, the Administrator will issue a notice indicating that EPA does not object to the conversion and will reduce the convertor's balance of unexpended allowances or authorizations by the amount to be converted plus, in the case of conversions of production or consumption allowances, one percent of that amount. When EPA issues a no objection notice, the convertor may proceed with the conversion. However, if EPA ultimately finds that the convertor did not have sufficient unexpended allowances or authorizations to cover the claim, the convertor will be held liable for any

violations of the regulations of this subpart that occur as a result of, or in conjunction with, the improper conversion.

(ii) If EPA's records show that the convertor has insufficient unexpended allowances or authorizations to cover the conversion claim, or that the convertor has failed to respond to one or more Agency requests to supply information needed to make a determination, the Administrator will issue a notice disallowing the conversion. Within 10 working days after receipt of notification, the convertor may file a notice of appeal, with supporting reasons, with the Administrator. The Administrator may affirm or vacate the disallowance. If no appeal is taken by the tenth working day after notification, the disallowance shall be final on that day.

(3) In the event that the Administrator does not respond to a conversion claim within the three working days specified in paragraph (b)(2) of this section, the convertor may proceed with the conversion. EPA will reduce the convertor's balance of unexpended allowances by the amount to be converted plus, in the case of conversions of production or consumption allowances, one percent of that amount. However, if EPA ultimately finds that the convertor did not have sufficient unexpended allowances or authorizations to cover the claims, the convertor will be held liable for any violations of the regulations of this subpart that occur as a result of, or in conjunction with, the improper conversion.

(c) *Inter-company transfers and Inter-pollutant conversions.* If a person requests an inter-company transfer and an inter-pollutant conversion simultaneously, the amount subtracted from the convertor-transferor's unexpended allowances for the first controlled substance will be equal to 101 percent of the amount of allowances converted and transferred in the case of transfer-conversions of production or consumption allowances.

§ 82.13 Record-keeping and reporting requirements.

(a) Unless otherwise specified, the recordkeeping and reporting requirements set forth in this section take effect on January 1, 1994.

(b) Reports and records required by this section may be used for purposes of compliance determinations. These requirements are not intended as a limitation on the use of other evidence admissible under the Federal Rules of Evidence.

(c) Unless otherwise specified, reports required by this section must be mailed to the Administrator within 45 days of the end of the applicable reporting period.

(d) Records and copies of reports required by this section must be retained for three years.

(e) In reports required by this section, quantities of controlled substances must be stated in terms of kilograms.

(f) Every person ("producer") who produces class I controlled substances during a control period must comply with the following recordkeeping and reporting requirements:

(1) Within 120 days of December 10, 1993, or within 120 days of the date that a producer first produces a class I controlled substance, whichever is later, every producer who has not already done so must submit to the Administrator a report describing:

(i) The method by which the producer in practice measures daily quantities of controlled substances produced;

(ii) Conversion factors by which the daily records as currently maintained can be converted into kilograms of controlled substances produced, including any constants or assumptions used in making those calculations (e.g., tank specifications, ambient temperature or pressure, density of the controlled substance);

(iii) Internal accounting procedures for determining plant-wide production;

(iv) The quantity of any fugitive losses accounted for in the production figures; and

(v) The estimated percent efficiency of the production process for the controlled substance.

Within 60 days of any change in the measurement procedures or the information specified in the report in paragraph (b), the producer must submit a report specifying the revised data or procedures to the Administrator.

(2) Every producer of a class I controlled substance during a control period must maintain the following records:

(i) Dated records of the quantity of each controlled substance produced at each facility;

(ii) Dated records of the quantity of controlled substances produced for use in processes that result in their transformation or for use in processes that result in their destruction and quantity sold for use in processes that result in their transformation or for use in processes that result in their destruction;

(iii) Copies of invoices or receipts documenting sale of controlled substance for use in processes resulting in their transformation or for use in processes resulting in destruction;

(iv) Dated records of the quantity of each controlled substance used at each facility as feedstocks or destroyed in the manufacture of a controlled substance or in the manufacture of any other substance, and any controlled substance introduced into the production process of the same controlled substance at each facility;

(v) Dated records identifying the quantity of each chemical not a controlled substance produced within each facility also producing one or more controlled substances;

(vi) Dated records of the quantity of raw materials and feedstock chemicals used at each facility for the production of controlled substances;

(vii) Dated records of the shipments of each controlled substance produced at each plant;

(viii) The quantity of controlled substances, the date received, and names and addresses of the source of recyclable or recoverable materials containing controlled substances which are recovered at each plant;

(ix) Records of the date, the controlled substance, and the estimated quantity of any spill or release of a controlled substance that equals or exceeds 100 pounds; and

(x) Copies of IRS certification that the controlled substance will be transformed or the verification that it will be destroyed.

(3) For each quarter, each producer of a class I controlled substance must provide the Administrator with a report containing the following information:

(i) The production by company in that quarter of each controlled substance, specifying the quantity of any controlled substance used in processing, resulting in its transformation by the producer;

(ii) The amount of production for use in processes resulting in destruction of controlled substances by the producer;

(iii) The levels of production (expended allowances) for each controlled substance;

(iv) The producer's total of expended and unexpended consumption allowances, potential production allowances, production allowances, and authorizations to convert potential production allowances to production allowances, as of the end of that quarter;

(v) The quantity, the date received, and names and addresses of the sources of recyclable and recoverable materials containing the controlled substances which are recovered;

(vi) The amount of controlled substance sold or transferred during the quarter to a person other than the producer for use in processes resulting

in its transformation or eventual destruction; and

(vii) Internal Revenue Service Certificates in the case of transformation, or the purchaser's destruction verification in the case of destruction, showing that the purchaser or recipient of a controlled substance intends to either transform or destroy the controlled substance.

(4) For any person who fails to maintain the records required by this paragraph (f), or to submit the report required by this paragraph (f), the Administrator may assume that the person has produced at full capacity during the period for which records were not kept, for purposes of determining whether the person has violated the prohibitions at § 82.4.

(g) Importers of class I controlled substances during a control period must comply with recordkeeping and reporting requirements specified in this section.

(1) Any importer of a class I controlled substance must maintain the following records:

(i) The quantity of each controlled substance imported, either alone or in mixtures, including the percentage of each mixture which consists of a controlled substance;

(ii) The quantity of controlled substances other than transhipments or used or recycled substances imported for use in processes resulting in their transformation or destruction and quantity sold for use in processes that result in their destruction or transformation;

(iii) The date on which the controlled substances were imported;

(iv) The port of entry through which the controlled substances passed;

(v) The country from which the imported controlled substances were imported;

(vi) The commodity code for the controlled substances shipped;

(vii) The importer number for the shipment;

(viii) A copy of the bill of lading for the import;

(ix) The invoice for the import;

(x) The quantity of imports of used and recycled class I controlled substances and class II controlled substances;

(xi) The U.S. Customs entry form;

(xii) Dated records documenting the sale or transfer of controlled substances for use in process resulting in transformation or destruction; and

(xiii) Copies of IRS certifications that the controlled substance will be transformed or destruction verifications that it will be destroyed.

(2) *Reporting Requirements-Importers.* For each quarter, every importer of a class I controlled substance must submit to the Administrator a report containing the following information:

(i) Summaries of the records required in paragraphs (g)(1) (i) through (vii) of this section for the previous quarter;

(ii) The total quantity imported in kilograms of each controlled substance for that quarter;

(iii) The levels of import (expended consumption allowances) of controlled substances for that quarter and totaled by chemical for the control-period-to-date;

(iv) The importer's total sum of expended and unexpended consumption allowances by chemical as of the end of that quarter;

(v) The amount of controlled substances imported for use in processes resulting in their transformation or destruction;

(vi) The amount of controlled substances sold or transferred during the quarter to each person for use in processes resulting in their transformation or eventual destruction;

(vii) Internal Revenue Service Certificates showing that the purchaser or recipient of imported controlled substances intends to transform those substances or destruction verifications showing that purchaser or recipient intends to destroy the controlled substances.

(h) *Reporting Requirements-Exporters.* For any exports of class I controlled substances not reported under § 82.10 (additional consumption allowances) or § 82.11 (Exports to Parties), the exporter who exported a class I controlled substances must submit to the Administrator the following information within 45 days after the end of the control period in which the unreported exports left the United States:

(1) The names and addresses of the exporter and the recipient of the exports;

(2) The exporter's Employee Identification Number;

(3) The type and quantity of each controlled substance exported and what percentage, if any, of the controlled substance are recycled or used;

(4) The date on which and the port from which the controlled substances were exported from the United States or its territories;

(5) The country to which the controlled substances were exported; and

(6) The commodity code of the controlled substance shipped.

(i) Every person who has requested additional production allowances under § 82.9(c) or consumption allowances under § 82.10(b) or who transforms or destroys class I controlled substances not produced by that person must maintain the following:

(1) Dated records of the quantity and level of each controlled substance transformed or destroyed;

(2) Copies of the invoices or receipts documenting the sale or transfer of the controlled substance to the person;

(3) In the case where those controlled substances are transformed, dated records of the names, commercial use, and quantities of the resulting chemical(s);

(4) In the case where those controlled substances are transformed, dated records of shipments to purchasers of the resulting chemical(s);

(5) Dated records of all shipments of controlled substances received by the person, and the identity of the producer or importer of the controlled substances;

(6) Dated records of inventories of controlled substances at each plant on the first day of each quarter; and

(7) A copy of the person's IRS certification of intent to transform or the purchaser's destruction verification of intent to destroy, in the case where substances were purchased for transformation or destruction purposes.

(j) Persons who destroy class I controlled substances shall provide EPA with a one-time report stating the destruction unit's destruction efficiency and the methods used to record the volume destroyed and those used to determine destruction efficiency and the name of other relevant Federal or state regulations that may apply to the destruction process. Any changes to the unit's destruction efficiency or methods used to record volume destroyed and to determine destruction efficiency must be reflected in a revision to this report to be submitted to EPA within 60 days of the change.

(k) Persons who purchase and subsequently destroy controlled class I substances shall provide the producer or importer from whom they purchase controlled substances to be destroyed with a verification that controlled substances will be used in processes that result in their destruction.

(1) The verification shall include the following:

(i) Identity and address of the person intending to destroy controlled substances;

(ii) Indication of whether those controlled substances will be completely destroyed, as defined in § 82.3, or less than completely destroyed, in which case the destruction efficiency at which such substances will be destroyed must be included;

(iii) Period of time over which the person intends to destroy controlled substances; and

(iv) Signature of the verifying person.

(2) If, at any time, any aspects of this verification change, the person must submit a revised verification reflecting such changes to the producer from whom that person purchases controlled substances intended for destruction.

(l) Persons who purchase class I controlled substances and who subsequently transform such controlled substances shall provide the producer or importer with the IRS certification that the controlled substances are to be used in processes resulting in their transformation.

(m) Any person who transforms or destroys class I controlled substances must report the names and quantities of class I controlled substances transformed and destroyed for each control period within 45 days of the end of such control period.

(n) Every person who produces, imports, or exports class II chemicals must report its quarterly level of production, imports, and exports of these chemicals within 45 days of the end of each quarter.

(o) Persons who import or export used or recycled controlled substances must label their bill of lading or invoice indicating that the controlled substance is used or recycled.

(p) Every person who imports or exports used or recycled group II, class I controlled substances, or class II controlled substances must report its annual level within 45 days of the end of the control period.

(q) Every person who transships a controlled substance must maintain records that indicate that the controlled substance shipment originated in one country destined for another country, and does not enter interstate commerce with the United States.

Appendix A to Subpart A—Class 1 Controlled Substances

	ODP
A. Group I:	
$CFC-1_3$-Trichlorofluoromethane (CFC–11)	1.0
CF_2C1_2-Dichlorodifluoromethane (CFC–12)	1.0
$C_2F_3C1_3$-Trichlorotrifluoroethane (CFC–113)	0.8
$C_2F_4C1_2$-Dichlorotetrafluoroethane (CFC–114)	1.0
C_2F_5C1-Monochloropentaf luoroethane (CFC–115)	0.6
C_2F_5C1–Monochloropentafluoroethane	
All isomers of the above chemicals	
B. Group II:	
CF_2C1Br-Bromochlorodifluoromethane (Halon-1211)	3.0
CF_3Br-Bromotrifluoromethane (Halon-1301)	10.0
$C_2F_4Br_2$-Dibromotetrafluoroethane (Halon-2402)	6.0
All isomers of the above chemicals	
C. Group III:	
CF_3C1-Chlorotrifluoromethane (CFC–13)	1.0
C_2FC1_5- (CFC–111)	1.0
$C_2F_2C1_4$- (CFC–112)	1.0
C_3FC1_7- (CFC–211)	1.0
$C_3F_2C1_6$- (CFC–212)	1.0
$C_3F_3C1_5$- (CFC–213)	1.0
$C_3F_4C1_4$- (CFC–214)	1.0
$C_3F_5C1_3$- (CFC–215)	1.0
$C_3F_6C1_2$- (CFC–216)	1.0
C_3F_7C1- (CFC–217)	1.0
All isomers of the above chemicals	
D. Group IV:	
$CC1_4$-Carbon Tetrachloride	1.1
E. Group V:	
$C_2H_3C1_3$-1,1,1 Trichloroethane. (Methyl chloroform)	0.1
All isomers of the above chemical except l,l,2-trichloromethane	
F. Group VI:	
CH3Br—Bromomethane (Methyl Bromide)	0.7
G. Group VII:	

	ODP
$CHFBR_2$	1.00
CHF_2Br (HBFC–22B1)	0.74
CH_2FBr	0.73
C_2HFBr_4	0.3–0.8
$C_2HF_2Br_3$	0.5–1.8
$C_2HF_3Br_2$	0.4–1.6
C_2HF_4Br	0.7–1.2
$C_2H_2FBr_3$	0.1–1.1
$C_2H_2F_2Br_2$	0.2–1.5
$C_2H_2F_3Br$	0.7–1.6
$C_2H_3FBr_2$	0.1–1.7
$C_2H_3F_2Br$	0.2–1.1
C_2H_4FBr	0.07–0.1
C_3HFBr_6	0.3–1.5
$C_3HF_2Br_5$	0.2–1.9
$C_3HF_3Br_4$	0.3–1.8
$C_3HF_4Br_3$	0.5–2.2
$C_3HF_5Br_2$	0.9–2.0
C_3HF_6Br	0.7–3.3
$C_3H_2FBR_5$	0.1–1.9
$C_3H_2F_2BR_4$	0.2–2.1
$C_3H_2F_3Br_3$	0.2–5.6
$C_3H_2F_4Br2$	0.3–7.5
$C_3H_2F_5BR$	0.9–1.4
$C_3H_3FBR_4$	0.08–1.9
$C_3H_3F_2Br_3$	0.1–3.1
$C_3H_3F_3Br_2$	0.1–2.5
$C_3H_3F_4Br$	0.3–4.4
$C_3H_4FBr_3$	0.03–0.3
$C_3H_4F_2Br_2$	0.1–1.0
$C_3H_4F_3Br$	0.07–0.8
$C_3H_5FBr_2$	0.04–0.4
$C_3H_5F_2Br$	0.07–0.8
C_3H_6FB	0.02–0.7

Appendix B to Subpart A—Class II Controlled Substances

	ODP
$CHFC1_2$-Dichlorofluoromethane (HCFC–21)	[res.]
CHF_2C1-Chlorodifluoromethane (HCFC–22)	0.05
CH_2FC1-Chlorofluoromethane (HCFC–31)	[res.]
C_2HFC1_4- (HCFC–121)	[res.]
$C_2HF_2C1_3$- (HCFC–122)	[res.]
$C_2HF_3C1_2$- (HCFC–123)	0.02
C_2HF_4C1- (HCFC–124)	0.02
$C_2H_2FC1_3$- (HCFC–131)	[res.]
$C_2H_2F_2C1_2$- (HCFC–132b)	[res.]
$C_2H_2F_3C1$- (HCFC–133a)	[res.]
$C_2H_3FC1_2$- (HCFC–141b)	0.12
$C_2H_3F_2C1$- (HCFC–142b)	0.06
C_3HFC1_6- (HCFC–221)	[res.]
$C_3HF_2C1_5$- (HCFC–222)	[res.]
$C_3HF_3C1_4$- (HCFC–223)	[res.]
$C_3HF_4C1_3$- (HCFC–224)	[res.]
$C_3HF_5C1_2$- (HCFC–225ca)	[res.]

	ODP
$C_3HF_5C1_2$ (HCFC–225cb)	[res.]
C_3HF_6C1- (HCFC–226)	[res.]
$C_3H_2FC1_5$- (HCFC–231)	[res.]
$C_3H_2F_2C1_4$- (HCFC–232)	[res.]
$C_3H_2F_3C1_3$- (HCFC–233)	[res.]
$C_3H_2F_4C1_2$- (HCFC–234)	[res.]
$C_3H_2F_5C1$- (HCFC–235)	[res.]
$C_3H_3FC1_4$- (HCFC–241)	[res.]
$C_3H_3F_2C1_3$- (HCFC–242)	[res.]
$C_3H_3F_3C1_2$- (HCFC–243)	[res.]
$C_3H_3F_4C1$- (HCFC–244)	[res.]
$C_3H_4FC1_3$- (HCFC–251)	[res.]
$C_3H_4F_2C1_2$- (HCFC–252)	[res.]
$C_3H_4F_3C1$- (HCFC–253)	[res.]
$C_3H_5FC1_2$- (HCFC–261)	[res.]
$C_3H_5F_2C1$- (HCFC–262)	[res.]
C_3H_6FC1- (HCFC–271)	[res.]
All Isomers of the above chemicals	

Appendix C to Subpart A—Annex 1–Parties to the Montreal Protocol:

Foreign state	Montreal protocol	London amend-ments	Copenha-gen amend-ments
Algeria	✔	✔	
Antigua and Barbuda	✔	✔	✔
Argentina	✔	✔	
Australia	✔	✔	
Austria	✔	✔	
Bahamas	✔	✔	✔
Bahrain	✔	✔	
Bangladesh	✔		
Barbados	✔		
Belarus	✔		
Belgium	✔	✔	
Benin	✔		
Bosnia and Herzegovina	✔		
Botswana	✔		
Brazil	✔	✔	
Burnei	✔		
Bulgaria	✔		
Burkina Faso	✔		
Cameroon	✔		
Canada	✔	✔	
Central African Republic	✔	✔	
Chile	✔		
China	✔	✔	
Costa Rica	✔	✔	
Cote Ivoire	✔		
Croatia	✔		
Cuba	✔		
Cyprus	✔		
Czech Republic	✔		
Denmark	✔	✔	
Dominica	✔	✔	

Foreign state	Montreal protocol	London amendments	Copenhagen amendments
Dominican Republic	✓		
Ecuador	✓	✓	
Egypt	✓	✓	
El Salvador	✓		
European E.C.	✓	✓	
Fiji	✓		
Finland	✓	✓	
France	✓	✓	
Gambia	✓		
Germany	✓	✓	
Ghana	✓	✓	
Greece	✓	✓	
Grenada	✓		
Guatemala	✓		
Guinea	✓	✓	
Hungary	✓		
Iceland	✓	✓	
India	✓	✓	
Indonesia	✓	✓	
Iran	✓		
Ireland	✓	✓	
Israel	✓		
Italy	✓	✓	
Jamaica	✓	✓	
Japan	✓	✓	
Jordan	✓		
Kenya	✓		
Kiribati	✓		
Korea, Republic of	✓	✓	
Kuwait	✓		
Lebanon	✓	✓	
Libya	✓		
Liechtenstein	✓		
Luxembourg	✓	✓	
Malawi	✓		
Malaysia	✓	✓	✓
Maldives	✓		
Malta	✓		
Marshall Islands	✓	✓	✓
Mauritius	✓		
Mexico	✓	✓	
Monaco	✓	✓	
Namibia	✓		
Netherlands	✓	✓	
New Zealand	✓	✓	✓
Nicaragua	✓		
Niger	✓		
Nigeria	✓		
Norway	✓		✓
Pakistan	✓	✓	
Panama	✓		
Papua New Guinea	✓		
Paraguay	✓	✓	
Peru	✓		
Philippines	✓	✓	
Poland	✓		
Portugal	✓	✓	
Romania	✓	✓	
Russian Federation	✓	✓	
Saint Kitts and Nevis	✓		
Samoa	✓		
Saudi Arabia	✓		
Senegal	✓	✓	
Seychelles	✓		
Singapore	✓	✓	
Slovenia	✓		
Solomon Islands	✓		
South Africa	✓	✓	
Spain	✓	✓	
Sri Lanka	✓	✓	
Sudan	✓		

Foreign state	Montreal protocol	London amendments	Copenhagen amendments
Swaziland	✔		
Sweden	✔	✔	✔
Switzerland	✔	✔	
Syrian Arab Republic	✔		
Tanzania	✔	✔	
Thailand	✔	✔	
Togo	✔		
Trinidad and Tobago	✔		
Tunisia	✔	✔	
Turkey	✔		
Tuvalu	✔		
Uganda	✔		
Ukranian SSR	✔		
United Arab Emirates	✔		
United Kingdom	✔	✔	
United States	✔	✔	
Uruguay	✔		
Uzbekistan	✔		
Venezuela	✔	✔	
Zambia	✔		
Zimbabwe	✔		

Appendix C to Subpart A, [1]—Annex 2—Nations Complying With, but not Parties to, the Protocol: Colombia

Appendix D to Subpart A—Harmonized Tariff Schedule

Description of Products that May Contain Controlled Substances in Appendix A, Class I Groups I and II

This Appendix is based on information provided by the Ozone Secretariat of the United Nations Ozone Environment Programme. The Appendix lists available U.S. harmonized tariff schedule codes identifying headings and subheadings for Annex D products that may contain controlled substances.

The Harmonized Tariff Schedule of the United States uses a enumeration system to identify products imported and exported to and from the U.S. This system relies on a four digit heading, a four digit subheading and additional two digit statistical suffix to characterize products. The United States uses the suffix for its own statistical records and analyses. This Appendix lists only headings and subheadings.

While some can be readily associated with harmonized system codes, many products cannot be tied to HS classifications unless their exact composition and the presentation are known. It should be noted that the specified HS classifications represent the most likely headings and subheadings which may contain substances controlled by the Montreal Protocol. The codes given should only be used as a starting point; further verification is needed to ascertain whether or not the products actually contain controlled substances.

[1] Regarding Taiwan, see preamble discussion VI (Trade Restrictions)

Category 1. Automobile and Truck Air Conditioning Units—(Whether Incorporated in Vehicles or Not)

There are no separate code numbers for air conditioning units specially used in automobiles and trucks. Although a code has been proposed for car air conditioners, it is not yet officially listed in the Harmonized Tariff Schedule (see category 2). The following codes apply to the vehicles potentially containing air conditioning units.

Heading/Subheading and Article Description

8701.(10, 20, 30, 90) [2]—Tractors
8702—Public-transport type passenger motor vehicles.
8702.10—With compression-ignition internal-combustion piston engine (diesel or semi-diesel).
8702.90—Other.
8703—Motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading 8702), including station wagons and racing cars.
8703.10—Vehicles specially designed for traveling on snow; golf carts and similar vehicles; includes subheading 10.10 and 10.50.
8703.(21, 22, 23, 24)—Other vehicles, with spark-ignition internal combustion reciprocating engines.
8703.(31, 32, 33, 90)—Other vehicles, with compression-ignition internal combustion piston engine (diesel or semi-diesel).
8704—Motor vehicles for the transport of goods.
8704.10.(10, 50)—Dumpers designed for off-highway use.
8704.(21, 22, 23)—Other, with compression-ignition internal combustion piston engine (diesel or semi-diesel).
8704.(31, 32, 90)—Other, with compression-ignition internal combustion piston engine.
8705—Special purpose motor vehicles, other than those principally designed for the transport of persons or goods (for example, wreckers, mobile cranes, fire fighting vehicles, concrete mixers, road sweepers, spraying vehicles, mobile workshops, mobile radiological units).
8705.10—Crane lorries.
8705.20—Mobile drilling derricks.
8705.30—Fire fighting vehicles.
8705.90—Other.

[2] At this time vehicle air conditioning units are considered components of vehicles or are classified under the general category for air conditioning and refrigeration equipment. Vehicles containing air conditioners are therefore considered products containing controlled substances.

Category 2. Domestic and Commercial Refrigeration and Air Conditioning/Heat Pump Equipment

Domestic and commercial air conditioning and refrigeration equipment fall primarily under headings 8415 and 8418.

Heading/Subheading and Article Description

8415—Air conditioning machines, comprising a motor-driven fan and elements for changing the temperature and humidity, including those machines in which the humidity cannot be separately regulated.

8415.20—Proposed code for air conditioning of a kind used for persons, in motor vehicles.
8415.10.00—A/C window or wall types, self-contained.
8415.81.00—Other, except parts, incorporating a refrigerating unit and a valve for reversal of the cooling/heat cycle.
8415.82.00—Other, incorporating a refrigerating unit; Self-contained machines and remote-condenser type air conditioners (not for year-round use); Year-round units (for heating and cooling); Air Conditioning evaporator coils; Dehumidifiers; and other air conditioning machines incorporating a refrigerating unit.
8415.83—Automotive air conditioners.
8418—Refrigerators, freezers and other refrigerating or freezing equipment, electric or other; heat pumps, other than air conditioning machines of heading 8415; parts thereof.
8418.10.00—Combined refrigerator-freezers, fitted with separate external doors.
8418.21.00—Refrigerators, household type, compression type.
8418.22.00—Absorption type, electrical.
8418.29.00—Other.
8418.30.00—Freezers of the chest type.
8418.40—Freezers of the upright type.
8418.50.0040—Other refrigerating or freezing chests, cabinets, display counters, showcases and similar refrigerating or freezing furniture.
8418.61.00—Other refrigerating or freezing equipment; heat pumps.
8418.69—Other Icemaking machines; drinking water coolers, self-contained; soda fountain and beer dispensing equipment; centrifugal liquid chilling refrigerating units; absorption liquid chilling units; reciprocating liquid chilling units; and other refrigerating or freezing equipment (household or other).
8479.89.10—Dehumidifiers (other than those under 8415 or 8424 classified as "machines and mechanical appliances having individual functions, not specified or included elsewhere").

Category 3. Aerosol Products

An array of different products use controlled substances as aerosols and in aerosol applications. Not all aerosol applications use controlled substances, however. The codes given below represent the most likely classifications for products containing controlled substances. The product codes listed include:[3]

- Varnishes.
- Perfumes.
- Preparations for use on hair.
- Preparations for oral and dental hygiene.
- Shaving preparations.
- Personal deodorants, bath preparations.
- Prepared room deodorizers.
- Soaps.
- Lubricants.
- Polishes and creams.
- Explosives.
- Insecticides, fungicides, herbicides, disinfectants.
- Arms and ammunition.
- Household products such as footwear or leather polishes.
- Other miscellaneous products.

Heading/Subheading and Article Description

3208—Paints and varnishes[4] (including enamels and lacquers) based on synthetic polymers of chemically modified natural polymers, dispersed or dissolved in a non-aqueous medium.
3208.10—Based on polyesters.
3208.20—Based on acrylic or vinyl polymers.
3208.90—Other.
3209—Paints and varnishes (including enamels and lacquers) based on synthetic polymers or chemically modified natural polymers, dispersed or dissolved in a an aqueous medium.
3209.10—Based on acrylic or vinyl polymers.
3209.90—Other.
3210.00—Other paints and varnishes (including enamels, lacquers and distempers) and prepared water pigments of a kind used for finishing leather.
3212.90—Dyes and other coloring matter put up in forms or packings for retail sale.
3303.00—Perfumes and toilet waters.
3304.30—Manicure or pedicure preparations.
3305.10—Shampoos.
3305.20—Preparations for permanent waving or straightening.
3305.30—Hair lacquers.
3305.90—Other hair preparations.
3306.10—Dentrifices.
3306.90—Other dental (this may include breath sprays).
3307.10—Pre-shave, shaving or aftershave preparations.
3307.20—Personal deodorants and antiperspirants.
3307.30—Perfumed bath salts and other bath preparations.
3307.49 Other (this may include preparations for perfuming or deodorizing rooms, including odoriferous preparations used during religious rites, whether or not perfumed or having disinfectant properties).
3307.90—Other (this may include depilatory products and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included).
3403—Lubricating preparations (including cuttingoil preparations, bolt or nut release preparations, anti-rust or anti-corrosion preparations and mould release preparations, based on lubricants), and preparations of a kind used for the oil or grease treatment of textile materials, leather, fur skins or other materials, but excluding preparations containing, as basic constituents, 70 percent or more by weight of petroleum oils or of oils obtained from bituminous minerals.
3402—Organic surface-active agents (other than soap); surface-active preparations, washing preparations and cleaning operations, whether or not containing soap, other than those of 3401.
3402.20—Preparations put up for retail sale.
3402.19—Other preparations containing petroleum oils or oils obtained from bituminous minerals.
3403—Lubricating preparations consisting of mixtures containing silicone greases or oils, as the case may be.
2710.00—Preparations not elsewhere specified or included, containing by weight 70 percent or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations.
3403.11—Lubricants containing petroleum oils or oils obtained from bituminous minerals used for preparations from the treatment of textile materials, leather, fur skins or other materials.
3403.19—Other preparations containing petroleum oils or oils obtained from bituminous minerals.
3405—Polishes and creams, for footwear, furniture, floors, coachwork, glass or metal, scouring pastes and

[3] Other categories of products that may contain controlled substances are listed below. EPA is currently working to match them with appropriate codes. They include: coatings and electronic equipment (e.g., electrical motors), coatings or cleaning fluids for aircraft maintenance, mold release agents (e.g. for production of plastic or elastomeric materials), water and oil repellant (potentially under HS 3402), spray undercoats (potentially under "paints and varnishes"), spot removers, brake cleaners, safety sprays (e.g., mace cans), animal repellant, noise horns (e.g., for use on boats), weld inspection developers, freezants, gum removers, intruder alarms, tire inflators, dusters (for electronic and non-electronic applications), spray shoe polish, and suede protectors.

[4] Although paints do not generally use contain controlled substances, some varnishes use CFC 113 and 1,1,1, trichlorethane as solvents.

powders and similar preparations excluding waxes of heading 3404.
3405.10—Polishes and creams for footwear or leather.
3405.20—Polishes for wooden furniture, floors or other woodwork.
36—Explosives.
3808—Insecticides, rodenticides, fungicides, herbicides, anti-sprouting products and plant-growth regulators, disinfectants and similar products, put up in forms or packings for retail sale or as preparations or articles (for example, sulphur-treated bands, wicks and candles, and fly papers).
3808.10—Insecticides.
3808.20—Fungicides.
3808.30—Herbicides, anti-sprouting products and plant growth regulators.
3808.40—Disinfectants.
3808.90—Other insecticides, fungicides.
3809.10—Finishing agents, dye carriers to accelerate the dyeing or fixing of dye-stuffs and other products and preparations (for example, dressings and mordants) of a kind used in the textile, paper, leather or like industries, not elsewhere specified or included, with a basis of amylaceous substances.
3814—Organic composite solvents and thinners (not elsewhere specified or included) and the prepared paint or varnish removers.
3910—Silicones in primary forms.
9304—Other arms (for example, spring, air or gas guns and pistols, truncheons), excluding those of heading No. 93.07. Thus, aerosol spray cans containing tear gas may be classified under this subheading.
0404.90—Products consisting of natural milk constituents, whether or not containing added sugar or other sweetening matter, not elsewhere specified or included.
1517.90—Edible mixtures or preparations of animal or vegetable fats or oils or of fractions of different fats or oils of this chapter, other than edible fats or oils or their fractions of heading No. 15.16.
2106.90—Food preparations not elsewhere specified or included.

Category 4. Portable Fire Extinguishers

Heading/Subheading and Article Description

8424—Mechanical appliances (whether or not hand operated) for projecting, dispersing, or spraying liquids or powders; fire extinguishers whether or not charged, spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines.
8424.10—Fire extinguishers, whether or not charged.

Category 5. Insulation Boards, Panels and Pipe Covers

These goods have to be classified according to their composition and presentation. For example, if the insulation materials are made of polyurethane, polystyrene, polyolefin and phenolic plastics, then they may be classified Chapter 39, for "Plastics and articles thereof". The exact description of the products at issue is necessary before a classification can be given.[5]

Heading/Subheading and Article Description

3917.21 to 3917.39—Tubes, pipes and hoses of plastics.
3920.10 to 3920.99—Plates, sheets, film, foil and strip made of plastics, noncellular and not reinforced, laminated, supported or similarly combine with other materials.
3921.11 to 3921.90—Other plates, sheets, film, foil and strip, made of plastics.
3925.90—Builders' ware made of plastics, not elsewhere specified or included.
3926.90—Articles made of plastics, not elsewhere specified or included.

Category 6. Pre-Polymers

According to the Explanatory Notes to the Harmonized Commodity Description and Coding System, "prepolymers are products which are characterized by some repetition of monomer units although they may contain unreacted monomers. Prepolymers are not normally used as such but are intended to be transformed into higher molecular weight polymers by further polymerization. Therefore the term does not cover finished products, such as di-isobutylenes or mixed polyethylene glycols with very low molecular weight. Examples are epoxides based with epichlorohydrin, and polymeric isocyanates."

Heading/Subheading and Article Description

3901—Pre-polymers based on ethylene (in primary forms).
3902—Pre-polymers based on propylene or other olefins (in primary forms).
3903, 3907, 3909—Pre-polymers based on styrene (in primary forms), epoxide and phenols.

Appendix E to Subpart A—Article 5 Parties

Algeria, Antigua and Barbuda, Argentina, Bahrain, Bangladesh, Barbados, Benin, Botswana, Brazil, Burkina Faso, Cameroon, Central African Republic, Chile, China, Costa Rica, Cote Ivoire, Croatia, Cuba, Cyprus, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Fiji, Gambia, Ghana, Grenada, Guatemala, Guinea, India, Indonesia, Iran, Jamaica, Jordan, Kenya, Kiribati, Lebanon, Libya, Malawi, Malasia, Maldives, Marshall Islands, Mauritius, Mexico, Namibia, Nicaragua, Niger, Nigeria, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Romania, Saint Kitts and Nevis, Samoa, Senegal, Seychelles, Slovenia, Sri Lanka, Sudan, Swaziland, Syrian Arab Republic, Tanzania, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Tuvalu, Uganda, Uruguay, Venezuela, Zambia, Zimbabwe.

Appendix F to Subpart A—Listing of Ozone Depleting Chemicals

Controlled substance	ODP	AT L	CLP	BLP
A. Class I 1. Group I:				
$CFC1_3$–Trichlorofluoromethane (CFC–11)	1.0	60.0	1.0	0.00
CF_2C1_2–Dichlorodifluoromethane (CFC–12)	1.0	120.0	1.5	0.00
$C_2F_3C1_3$–Trichlorotrifluoroethane (CFC–113)	0.8	90.0	1.11	0.00
$C_2F_4C1_2$–Dichlorotetrafluoroethane (CFC–114)	1.0	200.00	1.8	0.00
C_2F_5–C1Monochloropentafluoroethane (CFC–115)	0.6	400.0	2.0	0.00
All isomers of the above chemicals [reserved]				
2. Group II:				
CF_2 C1Br-Bromochlorodifluoromethane (Halon–1211)	3.0	12	0.06	0.13

[5] This category may include insulating board for building panels and windows and doors. It also includes rigid appliance insulation for pipes, tanks, trucks, trailers, containers, train cars & ships, refrigerators, freezers, beverage vending machines, bulk beverage dispensers, water coolers and heaters and ice machines.

Controlled substance	ODP	AT L	CLP	BLP
	−18	−.08	−.03	
CF_3 Br-Bromotrifluoromethane (Halon–1301)	10.0	72	0.00	1.00
	−107			
C_2F_4 Br_2 Dibromotetrafluoroethane (Halon–2402)	6.0	23	0.00	0.30
	−28		−.37	
All isomers of the above chemicals [reserved]				
3. Group III:				
CF_3C1–Chlorotrifluoromethane (CFC–13)	1.0	120	0.88	0.00
	−250	−1.83		
C_2FC1_5–(CFC–111)	1.0	60	1.04	0.00
	−90	−1.56		
$C_2F_2C1_4$–(CFC–112)	1.0	60	0.90	0.00
	−90	−1.35		
C_3FC1_7–(CFC–211)	1.0	100	1.76	0.00
	−500	−8.81		
$C_3F_2C1_6$–(CFC–212)	1.0	100	1.60	0.00
	−500	−7.98		
$C_3F_3C1_5$–(CFC–213)	1.0	100	1.41	0.00
	−500	−7.06		
$C_3F_4C1_4$–(CFC–214)	1.0	100	1.20	0.00
	−500	−6.01		
$C_3F_5C1_3$–(CFC–215)	1.0	100	0.96	0.00
	−500	−4.82		
$C_3F_6C1_2$–(CFC–216)	1.0	100	0.69	0.00
	−500	−3.45		
C_3F_7C1–(CFC–217)	1.0	100	0.37	0.00
	−500	−1.87		
All isomers of the above chemicals [reserved]				
4. Group IV:				
$CC1_4$–Carbon Tetrachloride	1.1	50.0	1.0	0.00
5. Group V:				
$C_2H_3C1_3$–1,1,1 Trichloroethane (Methyl chloroform)	0.1	6.3	0.11	0.00
All isomers of the above chemical except 1,1,2-trichloroethane [reserved]				
6. Group VI:				
CH3Br–Bromomethane (Methyl Bromide)	0.7		[reserved]	
7. Group VII:				
$CHFBR_2$–	1.00		[reserved]	
CHF_2Br(HBFC–22B1)	0.74		[reserved]	
CH_2FBr	0.73		[reserved]	
C_2HFBr_4	0.3 – 0.8		[reserved]	
$C_2HF_2Br_3$	0.5 – 1.8		[reserved]	
$C_2HF_3Br_2$	0.4 – 1.6		[reserved]	
C_2HF_4Br	0.7 – 1.2		[reserved]	
$C_2H_2FBr_3$	0.1 – 1.1		[reserved]	
$C_2H_2F_2Br_2$	0.2 – 1.5		[reserved]	
$C_2H_2F_3Br$	0.7 – 1.6		[reserved]	
$C_2H_3FBr_2$	0.1 – 1.7		[reserved]	
$C_2H_3F_2Br$	0.2 – 1.1		[reserved]	
C_2H_4 Br	0.07 – 0.1		[reserved]	
C_3HFBr_6	0.3 – 1.5		[reserved]	
$C_3HF_2Br_5$	0.2 – 1.9		[reserved]	
$C_3HF_3Br_4$	0.3 – 1.8		[reserved]	
$C_3HF_4Br_3$	0.5 – 2.2		[reserved]	
$C_3HF_5Br_2$	0.9 – 2.0		[reserved]	
C_3HF_6Br	0.7 – 3.3		[reserved]	
$C_3H_2FBR_5$	0.1 – 1.9		[reserved]	
$C_3H_2F_2BR_4$	0.2 – 2.1		[reserved]	
$C_3H_2F_3Br_3$	0.2 – 5.6		[reserved]	
$C_3H_2F_4Br_2$	0.3 – 7.5		[reserved]	
$C_3H_2F_5BR$	0.9 – 1.4		[reserved]	
$C_3H_3FBR_4$	0.08 – 1.9		[reserved]	
$C_3H_3F_2Br_3$	0.1 – 3.1		[reserved]	
$C_3H_3F_3Br_2$	0.1 – 2.5		[reserved]	
$C_3H_3F_4Br$	0.3 – 4.4		[reserved]	
$C_3H_4FBr_3$	0.03 – 0.3		[reserved]	
$C_3H_4F_2Br_2$	0.1 – 1.0		[reserved]	
$C_3H_4F_3Br$	0.07 – 0.8		[reserved]	
$C_3H_5FBr_2$	0.04 – 0.4		[reserved]	
$C_3H_5F_2Br$	0.07 – 0.8		[reserved]	
C_3H_6FB	0.02 – 0.7		[reserved]	
B. Class II:				
$CHFC1_2$–DiChlorofluoromethane (HCFC–21)	[res.]	2.1	0.03	0.00
CHF_2C1–Chlorodifluoromethane (HCFC–22)	0.05	15.3	0.14	0.00
CH_2FC1–Chlorofluoromethane (HCFC–31)	[res.]	1.44	0.02	0.00

Controlled substance	ODP	AT L	CLP	BLP
C_2HFC1_4–(HCFC–121)	[res.]	0.6	0.01	0.00
$C_2HF_2C1_3$–(HCFC–122)	[res.]	1.4	0.02	0.00
$C_2HF_3C1_2$–(HCFC–123)	0.02	1.6	0.016	0.00
C_2HF_4C1–(HCFC–124)	0.02	6.6	0.04	0.00
$C_2H_2FC1_3$–(HCFC–131)	[res.]	4.0	0.06	0.00
$C_2H_2F_2C1_2$–(HCFC–132b)	[res.]	4.2	0.05	0.00
$C_2H_2F_3C1$–(HCFC–133a)	[res.]	4.8	0.03	0.00
$C_2H_3FC1_2$–(HCFC–141b)	0.12	10.0	0.10	0.00
$C_2H_3F_2C1$–(HCFC–142b)	0.06	19.1	0.14	0.00
C_3HFC1_6–(HCFC–221)	[reserved]	.....	.....	0.00
$C_3HF_2C1_5$–(HCFC–222)	[reserved]	.....	.....	0.00
$C_3HF_3C1_4$–(HCFC–223)	[reserved]	.....	.....	0.00
$C_3HF_4C1_3$–(HCFC–224)	[reserved]	.....	.....	0.00
$C_3HF_5C1_2$–(HCFC–225ca)	[res.]	1.5	0.01	0.00
	−1.7	.....	.....	.....
(HCFC–225Cb)	[res.]	5.1	0.04	0.00
C_3HF_6C1–(HCFC–226)	[reserved]	.....	.....	0.00
$C_3H_2FC1_5$–(HCFC–231)	[reserved]	.....	.....	0.00
$C_3H_2F_2C1_4$–(HCFC–232)	[reserved]	.....	.....	0.00
$C_3H_2F_3C1_3$–(HCFC–233)	[reserved]	.....	.....	0.00
$C_3H_2F_4C1_2$–(HCFC–234)	[reserved]	.....	.....	0.00
$C_3H_2F_5C1$–(HCFC–235)	[reserved]	.....	.....	0.00
$C_3H_3FC1_4$–(HCFC–241)	[reserved]	.....	.....	0.00
$C_3H_3F_2C1_3$–(HCFC–242)	[reserved]	.....	.....	0.00
$C_3H_3F_3C1_2$–(HCFC–243)	[reserved]	.....	.....	0.00
$C_3H_3F_4C1$–(HCFC–244)	[reserved]	.....	.....	0.00
$C_3H_4FC1_3$–(HCFC–251)	[reserved]	.....	.....	0.00
$C_3H_4F_2C1_2$–(HCFC–252)	[reserved]	.....	.....	0.00
$C_3H_4F_3C1$–(HCFC–253)	[reserved]	.....	.....	0.00
$C_3H_5FC1_2$–(HCFC–261)	[reserved]	.....	.....	0.00
$C_2H_5F_2C1$–(HCFC–262)	[reserved]	.....	.....	0.00
C_3H_6FC1–(HCFC–271)	[reserved]	.....	.....	0.00
All isomers of the above chemicals [reserved]				

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December 10, 1993

Part III

Department of Transportation

Federal Highway Administration

23 CFR Part 655
National Standards for Traffic Control Devices; Manual on Uniform Traffic Control Devices; Work Zone Traffic Control Standards Revision; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 655

[FHWA Docket No. 89–1, Notice No. 7]

RIN 2125–AC83

National Standards for Traffic Control Devices; Manual on Uniform Traffic Control Devices; Work Zone Traffic Control Standards Revision

AGENCY: Federal Highway Administration (FHWA), (DOT).

ACTION: Final amendments to the Manual on Uniform Traffic Control Devices (MUTCD); Work Zone Traffic Control.

SUMMARY: This document contains amendments which have been adopted by the FHWA for inclusion in the MUTCD. The MUTCD is incorporated by reference in 23 CFR part 655, subpart F, and recognized as the national standard for traffic control devices on all public roads open to public travel. The amendments affect part VI of the MUTCD in its entirety, and are intended to improve the safety of workers, pedestrians, and motorists in temporary traffic control zones. The amendments are also intended to expedite implementation of the Intermodal Surface Transportation Efficiency Act of 1991, and improve traffic operations by providing more uniform application of traffic control devices in temporary traffic control zones.

DATES: The final rule is effective January 10, 1994. Incorporation by reference of the publications listed in the regulations is approved by the Director of the Federal Register as of January 10, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Rudolph M. Umbs, Office of Highway Safety, (202) 366–0411, or Mr. Wilbert Baccus, Office of Chief Counsel, (202) 366–0780, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: The MUTCD is approved by the FHWA as the National Standard for all streets and highways open to public travel. The MUTCD is available for inspection and copying as prescribed in 49 CFR part 7, appendix D. It may be purchased for $28.00 from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, stock No. 050–001–00308–2. Each amendment is assigned an identification number which indicates, by Roman numeral, the primary organizational part of the MUTCD affected and, by Arabic numeral, the order in which the request was received (e.g., Request VIII–9).

This document contains the disposition of Request VI–72(C) Total Revision of Part VI, concerning part VI of the MUTCD "Traffic Controls for Street and Highway Construction, Maintenance, Utility, and Emergency Operations" in its entirety. Part VI sets forth basic principles and prescribes standards for temporary traffic control zone operations on streets and highways in the United States. Also, part VI addresses the design, administration, and operation of street and highway temporary traffic control plans and projects. With the FHWA's current emphasis on rebuilding the Nation's highways and improving safety in work zone areas, an update of part VI will enable the MUTCD to better serve the highway community. Previous **Federal Register** actions regarding these amendments are contained in FHWA public docket 89–1, Notices 1 through 6.

The text changes resulting from these amendments to the MUTCD have been titled, "1988 MUTCD Revision 3," dated September 3, 1993. It will be available from the Government Printing Office (GPO), Superintendent of Documents, Washington, DC 20402, (202) 783–3238. Everyone currently appearing on the FHWA Office of Highway Safety's **Federal Register** mailing list will be sent a copy.

Discussion of Amendments

The FHWA received 251 comments in response to public docket 89–1, Notices 1 through 6. Of these, 157 were in response to Notices 1 through 5, and 94 were received in response to Notice No. 6. The majority of comments supported the following conclusions: (1) There is a need to retain most of the traffic control device design and application standards that are presently contained in the current MUTCD; (2) there is a need for a few new traffic control devices; and (3) there is a need to provide users with the new guidance information presented in the public information packages (Notices 1 through 4) and in the advance notice of proposed rulemaking (Notice 5). Most of the comments received to all the notices offered minor editorial corrections and text enhancements.

Most commenters to Notice No. 6 echoed the above conclusions, and encouraged the FHWA to amend the standards and to publish part VI: (1) As a stand alone document; (2) in the same format as the 1988 Edition of the MUTCD; and (3) as soon as possible.

All comments regarding standards and/or guidance materials received in response to all six previous Notices were considered and have been accommodated to the extent practical. In response to these comments the FHWA has developed a final rule.

The following is a summary of the comments to Notice No. 6 of this docket concerning the part VI revisions.

Changed Standards

In section 6C–6, Transit Considerations for Temporary Traffic Control Elements, a "Shall" condition was changed to a "Should" condition. The third sentence was changed to read as follows: "The TCP should provide for features such as temporary bus stops, pull-outs, and satisfactory waiting areas for transit patrons." This was changed because there may be solutions that will not require the TCP to include these features.

In section 6F–8c, Temporary Traffic Signals, a "May" condition was changed to a "Shall" condition. The third paragraph, second sentence was changed to read as follows: "Traffic signals shall be either hard wired or controlled by radio signals." This requirement assures that traffic signals are interconnected when controlling a one-lane two-way operation.

New Devices

The Strategic Highway Research Program (SHRP) has developed two new traffic control devices (the Opposing Lane Divider and the Flashing Stop/Slow paddle) that will be added to section 6E–4 and 6F–8f of part VI.

Section 6F–5i, Other Channelizing Devices, was opposed by two commenters, the American Traffic Safety Services Association and Advocates for Highway and Auto Safety. Their major concern was that allowing the use of other channelizing devices would trigger rapid efforts within the channelizing device industry to undercut competitors' markets by, for example, reducing the size of an otherwise standard device and, in the process, the amount of retroreflective sheeting and/or the target area visible to motorists.

The MUTCD allows the use of other channelizing devices for special applications. Highway agencies currently have contracting procedures in place that allow the use of other channelizing devices for specialized applications. These contracting procedures may be used even if the device is not recognized as a standard in accordance with part VI of the MUTCD. This final rule recognizes the existence of specialized applications to encourage the continued development of and experimentation with such devices.

New Word Message Signs

Part VI will include several new standard word message signs:

1. "Shoulder Drop Off (W8–9a)," which should be used when a shoulder drop-off exceeds 3 inches in height and is not protected by a portable barrier;
2. "Uneven Lanes (W8–11)," which should be used during operations that create a difference in elevation between adjacent lanes;
3. "Turn Off Two-Way Radios and Cellular Telephones (W22–2)," which should follow the "Blasting Zone Ahead" sign and is placed at least 1,000 feet before the beginning of the blasting zone;
4. "No Center Line Stripe (W8–12)," which should be used when the work obliterates the center stripe. The sign should be placed at the beginning of the zone and repeated at 2-mile intervals in long zones to remind the motorist. It should also be used at major connections, traffic generators, and/or at appropriate intervals as determined by the engineer, to advise motorists entering within the zone. Most commenters agreed with the addition of the new signs.

Arrow Panel Displays

Previously arrow panel display specifications were written for bulb-type panels. The specifications in section 6F–3 have been modified to allow a matrix of elements. This modification will allow Portable Changeable Message Signs (PCMS's) to be used as arrow panel displays.

Volume of Guidance Material

The city of Phoenix, Arizona, had the following concerns:

Comment: "The proposed part VI should not be published to substitute for the existing part VI of the MUTCD until and when it is substantially thinned out, and until and when good judgment is used to sort out only those factors that deserve to be 'national standards.'"

Response: Comments on the voluminous nature of the revised part VI and the validity of the standards was solicited in Notice No. 5 issued on January 10, 1992, advance notice of proposed amendments to the MUTCD. Comments on the validity of the standards was solicited again in Notice No. 6, issued on January 5, 1993. The FHWA, the National Committee on Uniform Traffic Control Devices, and the commenters offered no substantive suggestions on how to thin out part VI or on the "good judgment" of the standards that are in the revised part VI.

Comment: The City of Phoenix also expressed concern over what it perceived as an increase in the use of the mandatory term "Shall" in the latest version of part VI.

Response: With the addition of the new sections: Utility and Emergency Traffic Control, Pedestrian and Worker Safety, and Portable Changeable Message Signs, the use of Shall was increased simply because there are more sections in part VI. In addition, the number of Typical Application Diagrams has increased significantly. Many of the Shalls found in the text of part VI are simply repeated in the explanation of these Typical Application Diagrams. Therefore, no significant increase in regulatory requirements has occurred.

Comment: Phoenix also stated that several cities had expressed strong opposition to the FHWA's statements in earlier notices that the revised part VI will not have a significant economic impact on a substantial number of small entities.

Response: Many of the MUTCD requirements cited by these cities are requirements of the 1988 and earlier editions of the MUTCD that have been carried forward to the proposed text, and, therefore, are not attributable to the current regulatory action. The majority of the commenters did not feel that the revised part VI will have a significant economic impact. Based upon its evaluation of the matter, including the comments received in response to the earlier notices, the FHWA has determined that the present regulatory action will not have a significant economic impact on small entities.

Phoenix commented on several other technical issues. Each issue has been specifically addressed by appropriate text modifications.

There were 53 other commenters that provided comments to the docket that were substantially similar to the Phoenix letter.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. As previously discussed in the above sections on "Changed Standards" and "New Devices," this revision of part VI adds some new, alternate traffic control devices, and only a very limited number of new or changed requirements. Most of the changes included in this version of part VI are expanded guidance materials, including many new Typical Application Diagrams. The FHWA expects that application uniformity will improve at virtually no additional expense to public agencies or the motoring public. Therefore, based on this analysis a full regulatory evaluation is not required.

Regulatory Filexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities. As already discussed, this revision of part VI adds some new, alternate traffic control devices, and only a very limited number of new or changed requirements. Most of changes brought about by this version of part VI are expanded guidance materials, including many new typical application diagrams. Based on this evaluation, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The MUTCD is incorporated by reference in 23 CFR part 655, subpart F, which requires that changes to the National Standards issued by the FHWA shall be adopted by the States or other Federal agencies within 2 years of issuance. This amendment is in keeping with the Secretary of Transportation's authority under 23 U.S.C. 109(d) and 315 to promulgate uniform guidelines to promote the safe and efficient use of the highways. Therefore, nothing in the rule preempts any State laws, regulations, or requirements.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirements for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The FHWA has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 655

Design standards, Grant programs-transportation, Highways and roads, Signs, Traffic regulations, Incorporation by reference.

The FHWA hereby amends chapter I of title 23, Code of Federal Regulations, part 655, as set forth below.

PART 655—TRAFFIC OPERATIONS

1. The authority citation for part 655 continues to read as follows:

AUTHORITY: 23 U.S.C. 101(a), 104, 105, 109(d), 114(a), 135, 217, 307, 315, and 402(a); 23 CFR 1.32 and 1204.4; and 49 CFR 1.48(b).

Subpart F [Amended]

2. In § 655.601, paragraph (a) is revised to read as follows:

§ 655.601 Purpose.

* * * * *

(a) Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD), FHWA, 1988, including Revision No. 1 dated January 17, 1990, Revision No. 2 dated March 17, 1992, and Revision No. 3 dated September 3, 1993. This publication is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 and is on file at the Office of the Federal Register in Washington, DC. The 1988 MUTCD may be purchased from the Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, DC 20402 and has Stock No. 050–001–00308–2. The amendments to the MUTCD, titled "1988 MUTCD Revision 1," dated January 17, 1990, "1988 MUTCD Revision 2," dated March 17, 1992, and "1988 MUTCD Revision 3," dated September 3, 1993, are available from the Federal Highway Administration, Office of Highway Safety, HHS–21, 400 Seventh Street SW., Washington, DC 20590. These documents are available for inspection and copying as prescribed in 49 CFR part 7, appendix D.

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Issued on: December 3, 1993.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 93–30209 Filed 12–9–93; 8:45 am]

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Friday
December 10, 1993

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants: Coastal California Gnatcatcher; Rule and Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB56

Endangered and Threatened Wildlife and Plants; Special Rule Concerning Take of the Threatened Coastal California Gnatcatcher

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The implementing regulations for threatened wildlife under the Endangered Species Act of 1973, as amended (Act), generally incorporate the section 9 prohibitions for endangered wildlife, except when a special rule promulgated pursuant to section 4(d) applies. At the time the coastal California gnatcatcher (*Polioptila californica californica*) was listed as threatened, the Fish and Wildlife Service (Service) did not promulgate a section 4(d) special rule and, therefore, all of the section 9 prohibitions, including the "take" prohibition, became applicable to the species. However, in recognition of a State program that will provide for conservation and management of the gnatcatcher's habitat in a manner consistent with the purposes of the Act, the Service hereby defines, pursuant to section 4(d), the conditions under which take of the coastal California gnatcatcher would not be a violation of section 9.

EFFECTIVE DATE: December 10, 1993.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours, at the Carlsbad Field Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008.

FOR FURTHER INFORMATION CONTACT: Peter A. Stine, Acting Field Supervisor, at the address listed above (telephone 619/431–9440).

SUPPLEMENTARY INFORMATION:

Background

The final rule listing the coastal California gnatcatcher (*Polioptila californica californica*) as a threatened species under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), was published in the **Federal Register** on March 30, 1993 (58 FR 16742), and contains a discussion of its status, previous Federal actions on this species, a summary of the comments and recommendations received in response to the Service's proposal to list the gnatcatcher, detailed descriptions of the factors affecting its continued existence, the reasons why critical habitat was not designated, and the conservation measures available to federally listed species. The Service considers the coastal California gnatcatcher, hereinafter referred to as gnatcatcher, likely to become endangered in the foreseeable throughout its historic range in southwestern California and northwestern Baja California, Mexico, due to widespread habitat destruction, degradation, and fragmentation, and the inadequacy of existing regulatory mechanisms to provide for its conservation.

Conservation measures available to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Section 4(d) of the Act provides that whenever a species is listed as a threatened species, the Service shall issue regulations deemed necessary and advisable to provide for the conservation of the species. Section 4(d) also provides that the Service may by regulation prohibit any act prohibited for endangered species under section 9(a) of the Act. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed wildlife species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

The implementing regulations for threatened wildlife (50 CFR 17.31) incorporate, for the most part, the prohibitions for endangered wildlife (50 CFR 17.21), except when a special rule applies (50 CFR 17.31(c)). At the time the gnatcatcher was listed as threatened, the Service did not promulgate a special rule for the species. However, pursuant to section 4(d) of the Act and 50 CFR 17.31(c), the Service proposed to define the conditions under which incidental take of the gnatcatcher resulting from certain land-use activities regulated by State and local government would not violate section 9 of the Act. This was done in recognition of the significant conservation planning efforts undertaken by the State of California and several city and county governments pursuant to the Natural Community Conservation Planning Act of 1991 (NCCP) (California Fish and Game Code sec. 2800 *et seq.*). The NCCP program intends to provide for the conservation of listed and other sensitive species at a regional or ecosystem scale. The Service finds that implementation of the NCCP program and the special rule will provide for conservation and management of the gnatcatcher's habitat in a manner consistent with the purposes of the Act.

Under the special rule, incidental take of the gnatcatcher by land-use activities addressed in an approved NCCP plan will not be considered a violation of section 9 of the Act, provided the Service determines that such a plan meets the issuance criteria for an "incidental take" permit pursuant to section 10(a)(2)(B) of the Act and 50 CFR 17.32(b)(2). Under the special rule, a limited amount of incidental take of the gnatcatcher within subregions actively engaged in preparing a NCCP plan will also not be considered a violation of section 9 of the Act, provided the activities resulting in such take are conducted in accordance with the NCCP Conservation Guidelines and Process Guidelines, which were finalized by the California Department of Fish and Game (CDFG) in November 1993. The final rule has been modified to withdraw the requirement that the guidelines specifically adhere to the standards set forth under 50 CFR 17.32(b)(2). This was done in part because the NCCP Conservation Guidelines and Process Guidelines contain the essence of the standards delineated in 50 CFR 17.32(b)(2). The Service, as a partner in the NCCP program, also is encouraging long-term NCCP efforts leading to the completion and implementation of regional conservation plans. The Service deems the level of habitat loss contemplated under the interim procedures of the guidelines insignificant in view of the proposed long-term conservation efforts and short-term mitigation components of the NCCP program. In addition, this strategy was envisioned by the State's Scientific Review Panel (SRP) and is consistent with the SRP's recommended interim strategy in the guidelines. The modification of the special rule affects only the interim planning period. The requirement of the special rule that final NCCP plans meet the standards set forth under 50 CFR 17.32(b)(2) has not been changed.

Summary of Comments and Recommendations

In the March 30, 1993, proposed special rule (58 FR 16758) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate elected officials (including 28 congressional representatives), 3 State agencies, 4 county and 50 city governments, 7 Federal agencies, and 50 landowners and other potentially affected or interested parties were contacted and requested to comment. A legal notice announcing this proposed action and inviting general public comment on the proposal was published in the Orange County Register, Riverside Press-Enterprise, and the San Diego Union-Tribune on April 5, 1993.

The Service held three public hearings on the proposed special rule. A notification of the hearings, reopening of the public comment period, and availability of a draft Environmental Assessment (EA), draft NCCP Conservation Guidelines, and draft NCCP Process Guidelines was published in the **Federal Register** on July 20, 1993 (58 FR 38736). A legal notice announcing the hearings and inviting general public comment on the proposal and the draft documents cited above was published in the Orange County Register on July 12, 1993; the Riverside Press-Enterprise on July 13, 1993; and the San Diego Union-Tribune on July 14, 1993. The draft EA, NCCP Conservation Guidelines, and NCCP Process Guidelines were distributed on August 2, 1993, to 256 parties, including the Governor's Office, 2 State Senators, 3 Federal and 3 State agencies, 15 city governments, and other interested parties. Public hearings were conducted in San Diego, California, on August 9, 1993; in Irvine, California, on August 11, 1993; and in Riverside, California, on August 13, 1993. About 300 people attended these hearings.

A total of 198 comments was received during two comment periods that encompassed almost 4 months. Multiple comments, whether written or oral from the same party on the same date, are regarded as one comment. Of these, 43 (22 percent) supported the special rule, 64 (32 percent) opposed the special rule, and 91 (46 percent) neither supported nor opposed the special rule.

Several conservation groups and many individuals expressed support for the special rule. A variety of public agencies, private organizations and groups, and individuals opposed the special rule. The majority of commenters neither supported nor opposed the special rule; many of these respondents expressed various concerns and recommendations for modifying the rule and associated documents prior to their finalization.

The Service has reviewed all of the written and oral comments discussed above. Based on this review, 24 relevant issues have been identified and are discussed below. These issues are representative of the comments questioning or opposing the proposed special rule.

Issue 1: The special rule should be more explicit with respect to the criteria the Service will use to evaluate the adequacy of a NCCP plan.

Service Response: As discussed under the "Proposed Regulations Promulgation" section of the proposed special rule, the evaluation standards to be used by the Service are those set forth in 50 CFR 17.32(b)(2), which defines the issuance criteria for obtaining a permit to incidentally take listed wildlife species under section 10(a)(1)(B) of the Act. These criteria are sixfold.

1. The taking will be incidental to otherwise lawful activities and not the purpose of such activities. In other words, any taking allowed under the plan would have to occur inadvertently during normal development activities; it could not be deliberate and purposeful. In order to define what taking would be allowed under the program, the plan must carefully describe and delineate the following parameters: the conservation plan boundaries; currently proposed activities and all future actions reasonably certain to occur in the planning area that may result in incidental take; all extant biological information regarding the distribution, abundance, and ecology of the gnatcatcher, any other federally listed species, and possibly other species of concern (proposed, candidate, State-listed species) occurring within the planning area; and what impacts the taking would have on the gnatcatcher and other affected species, as appropriate. The plan must also include an analysis of alternatives that would not result in take and an explanation of why these are not being utilized. If existing biological data are nonexistent, vague, or of poor quality, additional studies (such as those recommended by the SRP under the NCCP Conservation Guidelines) may be needed to support the conservation and other land-use decisions proposed under the plan. During the plan preparation phase, the Service will provide technical assistance for determining the adequacy of the biological database, as well as provide recommendations on additional studies that may be needed to provide an adequate data baseline from which to develop a plan. In general, biological data made available must be adequate to evaluate fully the likely impacts of proposed activities on all affected species being addressed within the plan. Typically, biological data need to be comensurate with the magnitude of proposed activities.

2. The plan will, to the maximum extent practicable, minimize and mitigate the impacts of the proposed incidental take. Compliance with this standard involves a planning strategy that emphasizes avoidance of impacts to the gnatcatcher (and potentially other sensitive species that may become listed), provides measures to minimize potential impacts by modifying proposed activities (e.g., clustering urban development or siting such activities in low quality habitat), and details compensation measures needed to offset unavoidable impacts. In general, mitigation measures will be commensurate with the magnitude of proposed impacts under the plan.

3. The plan must be adequately funded and contain provisions to deal with unforeseen circumstances. Compliance with this standard requires, first, a detailed description of the funding that will be made available over the life of the plan to implement the proposed mitigation program and other conservation measures. If full funding is not provided at the time the plan is approved but is intended to be generated on a continuing basis, the plan must establish programs and legally-binding mechanisms to generate sufficient funds for its implementation. The plan should detail the collection, management, and auditing of all funds, including penalties for failure to meet funding obligations by signatory members. Second, because circumstances and information may change over time and may result in unforeseen circumstances, the plan must detail the procedures to deal with such circumstances and, if necessary, to modify the plan. Consequently, the plan should provide for an amendment procedure and any other necessary measures or assurances to deal with such circumstances (e.g., if funding is not generated at the predicted rate).

4. The taking allowed under the plan will not appreciably reduce the likelihood of survival and recovery of the gnatcatcher in the wild. This criterion is equivalent to the regulatory definition of "jeopardy" under section 7(a)(2) of the Act and means to engage in an action that reasonably would be expected, directly or indirectly, to

reduce appreciably the likelihood of both the survival and recovery of the gnatcatcher (or any other listed species) in the wild by reducing its reproduction, numbers, or distribution. In effect, this criterion requires a "non-jeopardy" finding as a condition for issuance of any incidental take permit.

5. The plan will ensure that other measures that the Director of the Service may require as being necessary or appropriate will be provided. Such measures, as needed, should become apparent during plan development through coordination between the Service, the State, and plan participants and signatories and will likely include terms and conditions for monitoring implementation of the plan to ensure that its requirements and the requirements of the Act are met.

6. The Director of the Service is assured that the plan will be implemented. The Service anticipates that this requirement will be satisfied through execution of an Implementing Agreement (as discussed in detail in the NCCP Process Guidelines), which legally binds all participants and signatories to implement the plan as approved. The Service recognizes, however, that the Implementing Agreement cannot alter or usurp the existing authority of local government agencies. Rather, the agreement will, among other things, detail the manner in which the local agencies will exercise their existing authorities to effect land-use in the manner set forth in the plan. Consequently, local government agencies will continue to exercise their duly constituted planning, zoning, and permitting powers under the plan. However, any actions that violate the Implementing Agreement could invoke remedies for such violations provided under the agreement itself, and could also be a basis for revocation of the Service's concurrence under subparagraph (b)(2)(ii) of the special rule.

Issue 2: Mitigation requirements under the NCCP Conservation and Process Guidelines may not meet a "constitutionally required nexus."

Service Response: The mitigation guidelines established by each subregional planning body will include a range of potential mitigation measures appropriate for the subregion. The appropriate level and nature of mitigation that may be required for a particular activity will be determined by the authorizing jurisdiction on a project-by-project basis in conformance with the mitigation guidelines. The Service expects and intends that mitigation requirements will be reasonably related to the effects of the particular activity on coastal sage scrub habitat and the gnatcatcher.

Issue 3: The special rule and the NCCP Conservation and Process Guidelines will effect a taking of private property.

Service Response: Issuance of the special rule by the Secretary, and CDFG's finalization of the NCCP Conservation and Process Guidelines, will not constitute a taking of private property. Neither the rule nor the NCCP Conservation or Process Guidelines make a determination about the uses that can be made of private property. Under the special rule, procedures are available by which property owners can obtain case-by-case determinations of application of the rule and the NCCP Conservation and Process Guidelines to their individual properties. Further, participation under the special rule is voluntary. A private entity seeking to develop private property in a manner that may result in the incidental take of the gnatcatcher in the course of an otherwise legal activity may proceed under section 7 of the Act if there is Federal agency action involved, apply for an incidental take permit under section 10(a)(1)(B) of the Act, or, if the private property involved is within a jurisdiction enrolled and actively engaged in the preparation of a NCCP plan, utilize the special rule.

Issue 4: The NCCP maps and coastal sage scrub habitat acreages presented in the NCCP Conservation Guidelines and the draft EA are inaccurate and are vaguely represented to the public and participating organizations.

Service Response: The NCCP planning area encompasses portions of five counties and about 3.8 million acres. As described in the draft EA, the data used to estimate existing habitat conditions in the NCCP planning area were provided by various local government entities. Data for San Diego County were developed by several different local government agencies and provided to the Service by the San Diego Association of Governments. Data for Riverside County were developed for the county in the course of previous conservation planning efforts. The data developed for Orange County are still being refined and compiled. However, a preliminary acreage estimate of extant coastal sage scrub habitat for Orange County has been provided to the Service by the county. Relatively little coastal sage scrub habitat remains in San Bernardino and Los Angeles Counties. Currently, there are no large-scale data on the distribution and abundance of this habitat type in these counties.

These data represent the best available information on current habitat conditions. Nevertheless, it should be recognized that, because of the large area covered by this mapping effort, the resulting maps have a relatively large minimum mapping unit (approximately 2 to 5 acres) and the source data (primarily aerial photography) are fairly small in scale (1:24,000). The NCCP maps depicting the distribution of coastal sage scrub vegetation are meant to provide an overview and a biogeographic perspective of large regions for planning purposes. Comparisons with other mapping efforts of a similar nature are likely to show some differences due to mapping techniques and the experience and ability of those doing the work. The Service finds that the data used in these analyses represent the best information available from local entities currently engaged in conservation planning and are adequate to serve the regional planning purposes of the NCCP program.

Issue 5: The relationship between sections 4(d), 7, and 10 of the Endangered Species Act should be discussed with respect to the loss of coastal sage scrub habitat during the NCCP planning period.

Service Response: Under the special rule, incidental take of the gnatcatcher within subregions actively engaged in preparing a NCCP plan will not be considered a violation of section 9 of the Act, provided that activities resulting in such take are conducted in accordance with the NCCP Conservation and Process Guidelines. These guidelines provide for a maximum 5 percent loss of primarily "low quality" coastal sage scrub in the interim period during which subregional NCCP plans are being prepared, provided long-term conservation planning options are not foreclosed and certain other conditions are met as set forth in the guidelines. The baseline against which this loss is measured is the digital (i.e., computerized) vegetation data provided by the local jurisdictions, updated as appropriate to the date of the listing of the coastal California gnatcatcher on March 25, 1993.

As coastal sage scrub habitat is lost within a NCCP subregion during the planning period by any means, including activities subject to section 7 or section 10(a) of the Act, it will be tallied in relation to the 5 percent limit. Once the 5 percent limit is reached in any subregion, the provisions of the special rule concerning take of the gnatcatcher would cease to apply for that subregion until a NCCP plan has been adopted for the subregion and accepted by the Service under the special rule. Additional losses of coastal

sage scrub habitat that result from activities that may affect or result in the take of the gnatcatcher would be evaluated on a case-by-case basis through normal regulatory procedures under section 7 or section 10(a) of the Act as appropriate. Habitat losses greater than 5 percent could potentially occur through section 7 or section 10(a) processes, depending on the results of the normal regulatory review process, provided the activity meets the standards set forth in section 7 or section 10(a). The NCCP Conservation Guidelines and supporting documentation represent the best available information on the biology of the gnatcatcher. The Service intends to rely on the NCCP Conservation Guidelines and the supporting documentation to the maximum extent permitted by law in reviewing activities under section 7 and section 10(a) of the Act to ensure consistency with completed or ongoing subregional NCCP planning efforts and to prevent the foreclosure of long-term planning options.

Issue 6: More clearly explain the relationship of the special rule to the section 10(a) and section 7 processes under the Endangered Species Act for obtaining authorization to incidentally take the gnatcatcher.

Service Response: As a full cooperator in the NCCP program, the Service is committed to accomplishing the objectives of the program. All activities that the Service evaluates under its existing authorities will be analyzed to determine how they interact with and affect the NCCP program. The Service will support activities contributing to the completion of subregional NCCP plans prepared in accordance with the NCCP Conservation and Process Guidelines in so far as is legally allowable under the Service's mandates under the Endangered Species Act.

Section 7 and section 10(a) of the Act provide regulatory mechanisms for obtaining authorization to incidentally take listed species. The provisions of these sections of the Act, and their implementing regulations, apply to the gnatcatcher. With the promulgation of the special rule, another regulatory mechanism is provided to allow take of the gnatcatcher incidental to otherwise lawful activity. Under the special rule, incidental take of the gnatcatcher within enrolled jurisdictions actively engaged in the preparation of a NCCP plan will not be considered a violation of section 9 of the Act, provided such take occurs in accordance with the NCCP Conservation and Process Guidelines, until the 5 percent coastal sage scrub habitat loss limit is reached. At that point, and until a NCCP plan is approved by the State and enrolled jurisdictions and accepted by the Service, the incidental take of gnatcatchers would be subject to the prohibitions under section 9 of the Act. Section 7 and section 10(a) remain in place as options for reconciling actions involving take of the gnatcatcher with the prohibitions against take contained in section 9 of the Act. As stated in the response to Issue 5, the Service considers the NCCP Conservation Guidelines and supporting documentation to represent the best available information concerning the biological needs of the gnatcatcher and intends to rely on the NCCP Conservation Guidelines and supporting documentation to the maximum extent permitted by law in reviewing activities under section 10(a) and section 7 of the Act.

Issue 7: Identify/elaborate on what constitutes adequate mitigation during the NCCP subregional planning period.

Service Response: The NCCP Process Guidelines, prepared by CDFG to describe how the NCCP planning process will be implemented, have incorporated specific guidance for securing interim habitat loss approval. These guidelines include the following elements that address the issue of what constitutes adequate mitigation.

Each NCCP subregional lead or coordinating agency is required to establish interim habitat loss mitigation guidelines appropriate for the subregion in order to authorize any loss of coastal sage scrub habitat. These guidelines must meet the minimum standards identified in the NCCP Process Guidelines and must be concurred with by CDFG and the Service prior to implementation. The mitigation standards include minimizing project impacts and mitigating those impacts with off-site acquisition of habitat, dedication of land on-site, restoration and enhancement of coastal sage scrub habitat, management agreements, transfer of development rights, or other mitigation approved by the Service and CDFG. Mitigation may be concurred with on a case-by-case basis prior to adoption of the subregional guidelines. As stated in the NCCP Conservation Guidelines, full mitigation of interim habitat losses may be incorporated, in part, through completion and implementation of the subregional NCCP plans. The subregional NCCP plans are intended to (1) promote the conservation of biodiversity; (2) provide for high likelihood of persistence of target species, including the gnatcatcher; and (3) provide for no net loss of habitat value from present conditions.

Issue 8: There is insufficient information contained in the EA and the potential impacts are too great to justify interim take of the gnatcatcher. Therefore, an Environmental Impact Statement (EIS) is required.

Service Response: The Service finds that the EA contains sufficient information to evaluate the potential impacts to the gnatcatcher from the proposed special rule. The Service also finds that those impacts will not be significant for the reasons outlined below.

Estimates of the acreage and location of potentially affected coastal sage scrub habitat and gnatcatcher pairs, based on existing vegetation data provided by local jurisdictions and known locations of gnatcatchers, are described in detail in the EA. Under the provisions of the NCCP Conservation Guidelines, up to 5 percent of existing coastal sage scrub habitat could be lost, and an estimated 66 to 116 pairs of gnatcatchers could be incidentally taken under the provisions of the special rule during the planning period. The 5 percent loss of existing coastal sage scrub habitat represents about 20,000 acres of slightly more than 400,000 acres of coastal sage scrub found within the entire NCCP planning area. Under the NCCP Conservation Guidelines, loss of coastal sage scrub habitat will occur largely in areas of lower potential conservation value within a subregion. These areas are largely small fragments of habitat that occur on the fringes of existing urban or agricultural development. The NCCP Conservation Guidelines conservatively estimate that enhancement and restoration of existing coastal sage scrub habitat can compensate for a loss of up to 5 percent of coastal sage scrub habitat during this period without compromising the conservation of the gnatcatcher or other coastal sage scrub species. No loss of habitat would occur during the planning period that would foreclose options for long-term conservation planning and implementation, and mitigation for these losses must be provided in accordance with the NCCP Conservation and Process Guidelines.

The estimated maximum of 66 to 116 pairs of gnatcatchers potentially affected by activities during the interim planning period represent about 3 to 5 percent of the United States population. These pairs will be from areas of relatively low conservation value, as defined by the NCCP Conservation Guidelines, and the impacts to these pairs will be mitigated in accordance with the NCCP Conservation and Process Guidelines.

The Service has conducted an internal consultation under section 7 of the Act to evaluate the effects of the proposed special rule on the gnatcatcher during the interim planning period and has concluded that the rule is not likely to jeopardize the continued existence of this species.

Additional loss of coastal sage scrub habitat and incidental take of the gnatcatcher could occur under an approved subregional NCCP plan, but only if the Service concurs that the plan meets the issuance criteria under 50 CFR 17.32(b)(2). Impacts to the gnatcatcher resulting from the approval of a NCCP plan will be addressed under separate National Environmental Policy Act review and section 7 consultation procedures.

Based on its independent review of the NCCP Conservation and Process Guidelines and the analysis presented in the EA, the Service finds that the environmental impacts of the proposed special rule will not be significant and, therefore, preparation of an EIS is not required. The Service additionally finds that the rule is not likely to jeopardize the continued existence of the gnatcatcher. Long-term conservation opportunities will not be compromised by losses of coastal sage scrub during the NCCP subregional planning period; they should in fact be enhanced.

Issue 9: Certain activities, such as public works projects, agricultural activities, or loss of coastal sage scrub on parcels less than 5 acres in size, should be exempt from the take prohibitions under section 9 of the Act, as well as from the requirements of the NCCP program.

Service Response: These suggested changes were not made because such exemptions are inconsistent with the objectives of the Act and its implementing regulations, and are inconsistent with the NCCP Conservation and Process Guidelines.

Issue 10: Public utility-related activities often occur in linear project areas that should be treated separately in the special rule and under a separate regional plan that is consistent with the NCCP program.

Service Response: The Service recognizes the unique circumstances associated with utility and other types of linear projects. The Service also recognizes that circumstances may occur in which a proposed public utility project may cross a jurisdiction that has declined to enroll within the NCCP program. Therefore, in these unique cases, the Service recognizes the flexibility in the section 4(d) and NCCP processes to allow utilities to be treated as subregions for planning purposes. The Service recognizes also that every linear project proponent cannot be treated as a subregion and will allow this planning method on a case-by-case basis for regional entities such as electrical, gas, and water utilities. Linear projects that are located within a subregion or cross into adjacent subregions must be included within the plans for those subregions. Any habitat destroyed within a subregion or subarea during the interim planning phase will be tallied against that subregion's or subarea's 5 percent interim habitat loss allocation.

Issue 11: Some of the identified mitigation options listed in the NCCP Conservation Guidelines are either untried or unavailable. One commenter stated that all parties need to acknowledge the highly experimental nature of restoration efforts in coastal sage scrub habitat and that successful restoration criteria should be established and successfully demonstrated before any further significant losses of habitat occur. Because of the speculative nature of enhancement/restoration, it should not be regarded at this time as an adequate means for compensating the loss of moderate or high value coastal sage scrub habitat.

Service Response: The enhancement/restoration of coastal sage scrub habitat is experimental. However, in spite of the uncertainty of success of enhancement/restoration, its use as a mitigation measure in the interim process is appropriate based on the limited habitat impact that may occur during the interim process (5 percent) and the potential application value of these restoration/enhancement efforts in preparing and implementing NCCP plans. Based on the results of initial restoration efforts, the Service (in cooperation with CDFG and restoration specialists) will establish specific restoration success criteria that will be incorporated into NCCP plans.

Issue 12: The research agenda outlined by the SRP in the NCCP Conservation Guidelines should be mandatory and should be prioritized.

Service Response: Additional scientific information is needed to guide regional conservation planning efforts such as the NCCP program. However, the degree to which these data will be needed during the planning period will generally be commensurate with the magnitude of impacts proposed under a NCCP plan.

Of the six research tasks recommended by the SRP, as discussed in the NCCP Conservation Guidelines, one (biogeography and inventory of coastal sage scrub) will be required to support any subregional plan, and two others (trends in biodiversity and genetic studies) will be necessary to evaluate the success of NCCP plans. Some of the research recommended by the SRP is already under way: the Marine Corps is funding an ecological study of the gnatcatcher and cactus wren (*Campylorhynchus brunneicapillus couesi*) at Camp Pendleton in northern San Diego County; Southern California Edison is funding a similar type of research project in the San Joaquin Hills of Orange County and at the Palos Verdes Peninsula in Los Angeles County; and the Metropolitan Water District of Southern California is funding long-term research on the gnatcatcher in western Riverside County. In addition, both the Service and CDFG are seeking additional funding to implement, in part, the SRP's research agenda. Additional research funds should be provided by subregional and subarea planning efforts.

The Service and CDFG will also be establishing a committee (as recommended by the SRP) to develop more explicit research protocols for the general research tasks outlined in the NCCP Conservation Guidelines. In general, these protocols will vary from subregion to subregion, and will be determined by the size and types of data gaps, scale of the planning effort, and a combination of priority and funding considerations. Actual research schedules will be tailored to the scope and timing of subregional planning activities.

Issue 13: Existing local land-use regulations must be modified to implement the NCCP program.

Service Response: The Service agrees. As discussed previously under the response to Issue 1, local regulatory agencies are expected to commit formally to NCCP plan implementation through the execution of an Implementing Agreement (as discussed in detail in the NCCP Process Guidelines), which legally binds all participants and signatories to implement the plan as approved. The Service recognizes, however, that the Implementing Agreement must be consistent with State law governing local agency authority and must be legally enforceable. The Implementing Agreement should detail the manner in which the local agencies will exercise their existing authorities to effect land-use in the manner set forth in the plan.

Issue 14: The SRP or an equivalent advisory committee should be established to further guide the regional conservation planning efforts under the NCCP program.

Service Response: The Service agrees. CDFG and the Service are discussing various options, including reconstituting the SRP, establishing a coastal sage scrub "recovery" team, and organizing technical teams to focus on various aspects of coastal sage scrub conservation.

Issue 15: The affects of the NCCP program on non-participating landowners within enrolled jurisdictions should be explained.

Service Response: Landowners are subject to local land-use regulations whether or not they are actively participating in the NCCP program. If property lies within a NCCP-enrolled jurisdiction and is subject to a discretionary action by that jurisdiction, the landowner will be subject to any NCCP-related requirements established by the local agency under its existing authorities to effect land-use and will also have the benefits of the special rule during the planning period. Once a NCCP plan has been approved, all property within the plan boundaries will be subject to the terms and conditions of the approved plan.

Issue 16: Both the NCCP program and the special rule need to adequately address the economic impacts of these actions on potentially affected parties.

Service Response: The Service agrees that the economic impacts of the NCCP program and special rule must be addressed. The NCCP program will be implemented through preparation of subregional NCCP plans, prepared pursuant to and consistent with the NCCP Conservation and Process Guidelines. Each NCCP plan is intended to identify and provide for protection of habitat and wildlife diversity, while allowing compatible and appropriate land development in the subregion. Each NCCP plan will identify permanent habitat preserve areas and sites with low conservation value that would be more appropriate for land development purposes. An analysis of the economic impacts of such designations within a NCCP plan will be required in the joint Federal/State environmental document that will be prepared for each plan, as discussed in the "National Environmental Policy Act" section of this rule.

The socio-economic effects that would be expected to occur in the interim planning period (while a NCCP plan is being prepared) were addressed by the Service in the EA for the proposed special rule. In the EA, the Service found that the population growth forecasted for the five-county NCCP planning area would place increasing demands for residential and other associated development on local communities. The prohibitions, pursuant to section 9 of the Act, on take of the gnatcatcher could result in adverse socio-economic impacts, due to constraints on development in areas that are occupied or used by gnatcatchers. Under the provisions of the special rule, a limited amount of incidental take of the gnatcatcher within subregions actively engaged in preparing a NCCP plan would not be considered a violation of section 9 of the Act, provided the activities resulting in such take are conducted in accordance with the NCCP Process and Conservation Guidelines. For this reason, the Service found that the interim provisions of the special rule could result in alleviating some of the existing Endangered Species Act-related constraints on development, while encouraging communities to proceed with the NCCP planning process. The EA found that significant socio-economic impacts would not be expected to result from the special rule.

The Service has also reviewed the special rule within the context of Executive Order 12866. The Service has determined that the special rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act.

Issue 17: The technical documentation used by the SRP in preparing the NCCP Conservation Guidelines was not available for public review during the comment period.

Service Response: The SRP used scientific and technical information that was available as of March 1993 in developing its recommended conservation strategy, which was incorporated into CDFG's NCCP Conservation Guidelines. The information used by the SRP was generally available in the published scientific literature and is described in "Scientific Review Panel Conservation Guidelines and Documentation," which is available from CDFG. This document includes unpublished analyses developed by SRP members and CDFG staff during the preparation of the NCCP Conservation Guidelines, and a summary and review of published and unpublished data regarding the biology of the coastal sage scrub community. Although the technical documentation used by the SRP was not fully compiled into the single document referenced above until October 1993, most of the information had been previously released by CDFG to the public during 1992 as NCCP documents (e.g., "The Coastal Sage Scrub Community Conservation Planning Region," "Sensitive Species Associated with Coastal Sage Scrub," and "Subregionalization for Natural Communities Conservation Planning"), and the scientific publications cited therein are available in technical libraries.

Issue 18: Adequate NCCP plans for conserving the coastal sage scrub community cannot be based solely on three "target" species.

Service Response: The SRP determined that conservation efforts that plan for these three "target" species would form the basis for maintaining the viability of the remaining coastal sage scrub ecosystem because of their broad distribution throughout much of the coastal sage scrub community within the NCCP planning area. Target species are only part of the conservation strategy under the NCCP program, which emphasizes a habitat and community-based approach. The target species are only one measure of community conservation. The Service anticipates that information on other species will be gathered in conjunction with NCCP-related research activities.

For purposes of subregional planning, the target species may need to be supplemented by other species of concern. The inclusion of other species will be determined by consideration of the planning needs for the subregion, the degree to which unusual habitat requirements for the species make habitat-based or target species-based planning unreliable as conservation tools, and the anticipated regulatory status of the species.

Other species are addressed in the NCCP Process Guidelines. As discussed in the NCCP Process Guidelines, a subregional NCCP must meet Federal Endangered Species Act section 10(a) criteria for it to be accepted as equivalent to a Habitat Conservation Plan for incidental take of federally listed species. A NCCP plan may also cover additional species provided section 10(a) criteria are met. If such species are subsequently listed as threatened or endangered under the Act, the plan would support the issuance of a section 10(a) incidental take permit for those species barring significant new information or unforeseen circumstances.

Issue 19: The scientific basis for the 5 percent interim habitat loss limit under the NCCP program should be provided.

Service Response: The 5 percent interim coastal sage scrub loss figure represents a conservative estimate of the amount of habitat that could be lost in each subregion without foreclosing conservation planning options. In the opinion of the SRP, the 5 percent limit would result in a level of habitat loss that can be compensated for by long-

term management of coastal sage scrub habitat. As explained in the NCCP Conservation Guidelines and EA, loss of 5 percent of coastal sage scrub habitat can be sustained with no net loss of habitat value based on reasonable projections of long-term habitat enhancement and restoration opportunities provided for by the NCCP program.

The 5 percent figure is not intended to be a NCCP standard for conservation of the coastal sage scrub community. In some subregions, more than a 5 percent interim habitat loss may be possible without significantly foreclosing planning options. However, the acceptability of greater than a 5 percent interim loss must be demonstrated by the results of additional research, restoration, and management activities.

Issue 20: The Service should explain why it is allowing for a 20 percent loss of habitat for the Federal endangered Stephens' kangaroo rat (*Dipodomys stephensi*) and only a 5 percent loss of coastal sage scrub under the NCCP program and the special rule.

Service Response: In the case of the Stephens' kangaroo rat, the 20 percent loss of habitat (authorized under an incidental take permit pursuant to section 10(a)(1)(B) of the Act for certain portions of its range in western Riverside County) reflects an analysis of the best available scientific information on the status and ecology of this species. This determination was made more than 2 years after the listing of this species and after the preparation of an interim Habitat Conservation Plan. On the basis of this analysis, the Service found that the Stephens' kangaroo rat can sustain a 20 percent habitat loss in these areas and still remain viable, provided that the Habitat Conservation Plan approved with the issuance of the "take" permit is fully implemented.

In a similar manner, an analysis of the best available scientific information on the status and ecology of the coastal sage scrub community was recently completed by the SRP for the NCCP program.

On the basis of this analysis, the SRP concluded that a 5 percent loss of relatively low value coastal sage scrub habitat would not foreclose long-term conservation planning options under the NCCP program. Additional losses of coastal sage scrub habitat may occur under approved NCCP plans provided they are consistent with the NCCP Conservation Guidelines prepared by CDFG and provided they meet the issuance criteria under 50 CFR 17.32(b)(2).

Issue 21: Clearly define agency procedures for suspending or withdrawing the provisions of the special rule, and provide for public participation in this process.

Service Response: Procedures for suspending or withdrawing the provisions of the special rule must be included in the Implementing Agreement prepared for each NCCP plan, as required by the NCCP Process Guidelines. The Implementing Agreement prepared by the plan proponent must be approved by the Service and CDFG and must be signed by the NCCP plan participants and the Service prior to incidental take of listed species.

To ensure that activities that occur during the interim planning period are consistent with the NCCP Conservation and Process Guidelines, the final rule has been modified to include Service review and monitoring of the implementation of the guidelines. Every 6 months during the interim planning period, the Service will review the NCCP Conservation Guidelines and Process Guidelines and their application to ensure that activities are being carried out in accordance with the guidelines and that regional and subregional conservation objectives are being met. If the Service determines that implementation efforts are not conforming to the guidelines, the Service will consult with CDFG to seek appropriate modification of the guidelines or their application as defined therein. If appropriate modification of the guidelines or their application, as defined therein, during the interim planning period does not occur, the Service may revoke the interim take provisions of this special rule on a subregional or subarea basis. The Service will publish the revocation findings in the **Federal Register** and provide for a 30-day public comment period prior to the effective date for revoking the provisions of the special rule in a particular area.

The Service emphasizes that the local governments under the NCCP program have the primary responsibility for ensuring compliance with the guidelines during this interim period. The Service intends that its semiannual evaluation of compliance with the guidelines and the regional and subregional conservation objectives will not duplicate local enforcement on a parcel-by-parcel basis.

Issue 22: Funding requirements and sources must be identified for NCCP research, program implementation, and preserve acquisition.

Service Response: Each NCCP plan presented to the Service will require an appropriate funding mechanism that ensures the plan will be fully implemented. The sources and extent of funding provided for in a particular plan will depend on the specific provisions of the plan. The responsibility to identify and ensure funding commensurate with the conservation measures provided in the plan rests with the plan proponent. The Service will carefully review each plan to ensure that the funding provided is adequate to cover all aspects of plan implementation. Potential components of a plan that will require funding include preserve acquisition, preserve management, and habitat and species monitoring. Funding for research may also be provided. The Service and CDFG intend to support some research efforts as well, particularly those kinds of research that are regional in scope.

The Service does not propose to dictate the types of funding mechanisms plan proponents may choose or direct how the funds must be used to implement the plan. The Service is interested in maintaining maximum flexibility in the process and will address the adequacy of funding mechanisms in the context of the particular plan presented to the Service. Regional plans will ultimately have to comply with 50 CFR 17.32(b)(2), which includes a demonstration of adequate funding mechanisms for the program.

Issue 23: The special rule inappropriately extends legal protection to coastal sage scrub habitats that are not used by the gnatcatcher.

Service Response: The special rule defines the conditions under which activities involving take of the gnatcatcher will not be considered a violation of section 9 of the Act; that is the extent of its legal authority. The intent of the special rule is to assist local jurisdictions in conserving coastal sage scrub and the variety of species that inhabit this community through their participation in the NCCP program. While participation in the NCCP program is voluntary, the special rule provides incentives for participation by eliminating the necessity and costs of procuring incidental take permits under section 10(a) of the Act on an individual project basis and facilitating comprehensive planning for the conservation of the gnatcatcher and other coastal sage scrub species on a regionwide basis. Such regional planning is expected to afford significant protection for the gnatcatcher and the entire coastal sage scrub ecosystem, thus reducing threats to other coastal sage scrub species and providing a significant measure of certainty for future development in the region.

Issue 24: The planning timelines and phases for NCCP plans should be clarified, including what is expected at the subregional and subarea levels.

Service Response: The Service anticipates that the planning timelines for subregional NCCP plans will vary according to the specific conditions within the local jurisdiction or subregion. As stated in the NCCP Process Guidelines, the NCCP program is intended to give flexibility to each subregional effort to reflect local conditions, while still maintaining a regional conservation perspective. Planning may proceed on a subarea basis prior to the development of a subregional NCCP plan, provided the subarea NCCP plan contains a section that describes in detail how the subarea plan integrates its preserve areas and management across subarea and subregional boundaries. The subregional lead or coordinating agency must confirm that any subarea plan either is consistent with the subregional plan or does not preclude long-term conservation planning options within the subregion.

The NCCP Process Guidelines intend for local jurisdictions to adapt the NCCP process to their existing administrative processes relating to plan preparation, public review, and environmental review. Each NCCP plan must undergo environmental review, pursuant to the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA). As noted in the Process Guidelines and in the NEPA section of this special rule, a joint State/Federal environmental document will be prepared. In terms of a planning timeline, the Service anticipates that most NCCP plans will be prepared concurrent with the environmental documentation. In general, this process, including draft NCCP plan preparation, environmental documentation, and public review, is estimated to take at least 1 year to complete.

Once a final draft NCCP plan and the accompanying joint Environmental Impact Report (EIR)/EA or Environmental Impact Statement (EIS), whichever is applicable, are prepared and submitted to the Service for final review and approval, the Service will allow for a maximum 120-day period to review draft NCCP plans. This timeline assumes that the Service is involved early in the NCCP planning process, as recommended in the NCCP Conservation and Process Guidelines. Problems should be identified and resolved early in the process, resulting in a final NCCP plan that is acceptable to all parties and is approved within the above timeframe. Once the NCCP plan and joint environmental document are approved, the Service will publish a Finding of No Significant Impact (FONSI) or Record of Decision (ROD), as applicable, in the **Federal Register**, which signifies the completion of the NEPA process. The FONSI or ROD will be published as close to the close of the 120-day review period as possible. An internal section 7 consultation must be conducted by the Service for each NCCP plan. The results of the internal section 7 consultation are usually included in the final joint EIR/EA or EIR/EIS and are always noted in the FONSI or ROD. The 120-day review period assumes that the internal section 7 consultation will be performed within this timeframe.

The draft NCCP plan and environmental documentation submitted to the Service should also be accompanied by a draft Implementing Agreement. An Implementing Agreement is a legally binding document that outlines the responsibilities of all parties in implementing the conservation measures outlined in the NCCP plan. The signature of the Service indicates the Service's final approval of the NCCP plan. Only after the Implementing Agreement is signed by all parties, including the Service, can take of the gnatcatcher occur in accordance with the provisions of the NCCP plan. The Service will attempt to review and resolve any problems with the Implementing Agreement within the 120-day review period. However, given the legal, often extremely detailed nature of Implementing Agreements, the Service cannot guarantee that it can review and finalize the Implementing Agreement within this timeframe. The Service will make every attempt to resolve Implementing Agreement issues as quickly as possible.

As provided by 5 U.S.C. 553(d)(3), the Service has determined that good cause exists to make this rule effective on the date of publication. Delay in implementation of the effective date would hinder conservation efforts for the gnatcatcher and its habitat.

National Environmental Policy Act

The Service has completed an EA pursuant to the National Environmental Policy Act of 1969. The EA analyzes the environmental effects of activities conducted under the provisions of the special rule that involve the incidental take of the gnatcatcher during the NCCP planning period. The Service has determined that the special rule will not result in a significant impact to the environment and therefore does not require the preparation of an EIS.

The Service will continue to comply with NEPA in implementing the provisions of the special rule. Pursuant to the NCCP Process Guidelines, a joint State/Federal environmental document that satisfies the requirements of NEPA and CEQA will be prepared for each NCCP plan.

Regulatory Flexibility Act and Executive Order 12866

This special rule has been reviewed under Executive Order 12866. The Department of the Interior has determined that the special rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Based upon information discussed in this rule and in the EA, it is not expected that significant economic impacts will result from implementing the provisions of the special rule. Also, no direct costs, enforcement costs, or information collection or recordkeeping requirements are imposed on small entities by this rule. This action does not impose any recordkeeping requirements as defined by the Paperwork Reduction Act of 1980.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1543; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

§ 17.11(h) [Amended]

2. Amend § 17.11(h), in the entry in the table under BIRDS for "Gnatcatcher, coastal California", in the lost column "Special rules", by revising "NA" to read "17.41(b)".

3. Amend § 17.41 by adding paragraph (b) to read as follows:

§ 17.41 Special rules—birds.

* * * * *

(b) Coastal California gnatcatcher (*Polioptila californica californica*). (1) Except as noted in paragraphs (b)(2) and (3) of this section, all prohibitions of § 17.31 (a) and (b) shall apply to the coastal California gnatcatcher.

(2) Incidental take of the coastal California gnatcatcher will not be considered a violation of section 9 of the Endangered Species Act of 1973, as amended (Act), if it results from activities conducted pursuant to the State of California's Natural Community Conservation Planning Act of 1991 (NCCP), and in accordance with a NCCP plan for the protection of coastal sage scrub habitat, prepared consistent with the State's NCCP Conservation and Process Guidelines, *provided that*:

(i) The NCCP plan has been prepared, approved, and implemented pursuant to California Fish and Game Code sections 2800–2840; and

(ii) The Fish and Wildlife Service (Service) has issued written concurrence that the NCCP plan meets the standards set forth in 50 CFR 17.32(b)(2). The Service shall issue its concurrence pursuant to the provisions of the Memorandum of Understanding (MOU), dated December 4, 1991, between the California Department of Fish and Game and the Service regarding coastal sage scrub natural community conservation planning in southern California. (Copies of the State's NCCP Conservation and Process Guidelines and the MOU are available from the U.S. Fish and Wildlife Service, Carlsbad Field Office, 2730 Loker Avenue West, Carlsbad, CA 92008.) The Service shall monitor the implementation of the NCCP plan and may revoke its concurrence under this paragraph (b)(2)(ii) if the NCCP plan, as implemented, fails to adhere to the standards set forth in 50 CFR 17.32(b)(2).

(3) During the period that a NCCP plan referred to in paragraph (b)(2) of this section is being prepared, incidental take of the coastal California gnatcatcher will not be a violation of section 9 of the Act if such take occurs within an area under the jurisdiction of a local government agency that is enrolled and actively engaged in the preparation of such a plan and such take results from activities conducted in accordance with the NCCP Conservation Guidelines and Process Guidelines.

(4) The Service will monitor the implementation of the NCCP Conservation and Process Guidelines as a whole, and will conduct a review every 6 months to determine whether the guidelines, as implemented, are effective in progressing toward or meeting regional and subregional conservation objectives during the interim planning period. If the Service determines that the guidelines are not effecting adequate progress toward or meeting regional and subregional conservation objectives, the Service will consult with the California Department of Fish and Game pursuant to the MOU to seek appropriate modification of the guidelines or their application as defined therein. If appropriate modification of the guidelines or their application as defined therein does not occur, the Service may revoke the interim take provisions of this special rule on a subregional or subarea basis. The Service will publish the findings for revocation in the **Federal Register** and provide for a 30-day public comment period prior to the effective date for revoking the provisions of the special rule in a particular area. Revocation would result in the reinstatement of the take prohibitions set forth under 50 CFR 17.31(a) and (b) in the affected NCCP area.

Dated: November 23, 1993.

George T. Frampton Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 93–30235 Filed 12–9–93; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Availability of a Final Environmental Assessment and Finding of No Significant Impact for the Proposed Special Rule To Allow Incidental Take of the Threatened Coastal California Gnatcatcher

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The Fish and Wildlife Service (Service) published a proposed special rule on March 30, 1993 (58 FR 16758), pursuant to section 4(d) of the Endangered Species Act of 1973, as amended (Act), to define the conditions under which incidental take of the threatened coastal California gnatcatcher (*Polioptila californica californica*) resulting from land-use regulated by State and local governments would not violate section 9 of the Act. The proposed action would result in the loss of a maximum of 5 percent of the existing coastal sage scrub habitat, estimated to be approximately 20,920 acres, and up to 116 pairs of gnatcatchers would be taken. The Service has prepared a final Environmental Assessment (EA) and a Finding of No Significant Impact (FONSI) for the proposed special rule. The Service has determined that the issuance of a special rule is not a Federal action that would significantly alter the quality of the human environment within the meaning of section 102(2)(c) of the National Environmental Policy Act of 1969. Accordingly the preparation of an Environmental Impact Statement on the proposed action is not required. This notice is provided pursuant to National Environmental Policy Act regulations (40 CFR 1506.6).

ADDRESSES: Requests for copies of and inquiries regarding the EA and FONSI should be addressed to Mr. Peter A. Stine, Acting Field Supervisor, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008.

FOR FURTHER INFORMATION CONTACT: Ms. Tara V. Wood, U.S. Fish and Wildlife Service, Sacramento Field Station, 2800 Cottage Way, Room E–1803, Sacramento, California, 95825 (916/978–4866), or Mr. Peter A. Stine (see ADDRESSES section) (telephone 619/431–9440).

SUPPLEMENTARY INFORMATION: On March 30, 1993, the Fish and Wildlife Service (Service) published a proposed special rule (58 FR 16758), pursuant to section 4(d) of the Endangered Species Act of 1973, as amended (Act), to define the conditions under which incidental take of the threatened coastal California gnatcatcher (*Polioptila californica californica*) resulting from land-use regulated by State and local governments would not violate section 9 of the Act. The Service has prepared a final Environmental Assessment (EA) and a Finding of No Significant Impact (FONSI) for the proposed special rule. The EA evaluates the potential effects of the special rule on the gnatcatcher and its habitat.

The special rule was proposed in recognition of the significant efforts undertaken by the State of California pursuant to the State's Natural Community Conservation Planning Act of 1991 (NCCP) and other ongoing local government multi-species conservation planning efforts currently being implemented that intend to apply Federal Endangered Species Act standards to activities affecting the coastal California gnatcatcher. Under the special rule, a limited amount of incidental take of the gnatcatcher within subregions actively engaged in preparing a NCCP plan would not be considered a violation of section 9 of the Act, provided that the activities resulting in such take are conducted in accordance with the State's NCCP Conservation and Process Guidelines.

The alternatives considered included the Proposed Special Rule, the Proposed Special Rule But with No Interim Take Process, and the No Action Alternative. The Proposed Special Rule Alternative would result in the loss of a maximum of 5 percent of the existing coastal sage scrub habitat, estimated to be approximately 20,920 acres of coastal sage scrub, and up to 116 pairs of gnatcatchers would be taken. However, such loss could only occur if long-term conservation planning efforts were undertaken that would result in the completion and implementation of NCCP plans. Mitigation for the loss of coastal sage scrub and gnatcatchers would be defined by local agencies or subregional mitigation guidelines developed according to standards identified in the NCCP Process Guidelines and consistent with the Conservation Guidelines and the standards imposed under the California Environmental Quality Act. An internal Endangered Species Act section 7 consultation was completed by the Service; it is the opinion of the Service that the Proposed Action is not likely to jeopardize the continued existence of the coastal California gnatcatcher.

The Proposed Special Rule But with No Interim Take Process and the No Action Alternatives were not selected because they would diffuse regional conservation planning efforts and concentrate activity on individual project needs. Also, these alternatives could result in adverse impacts to the social environment.

Dated: November 23, 1993.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93–30236 Filed 12–9–93; 8:45 am]

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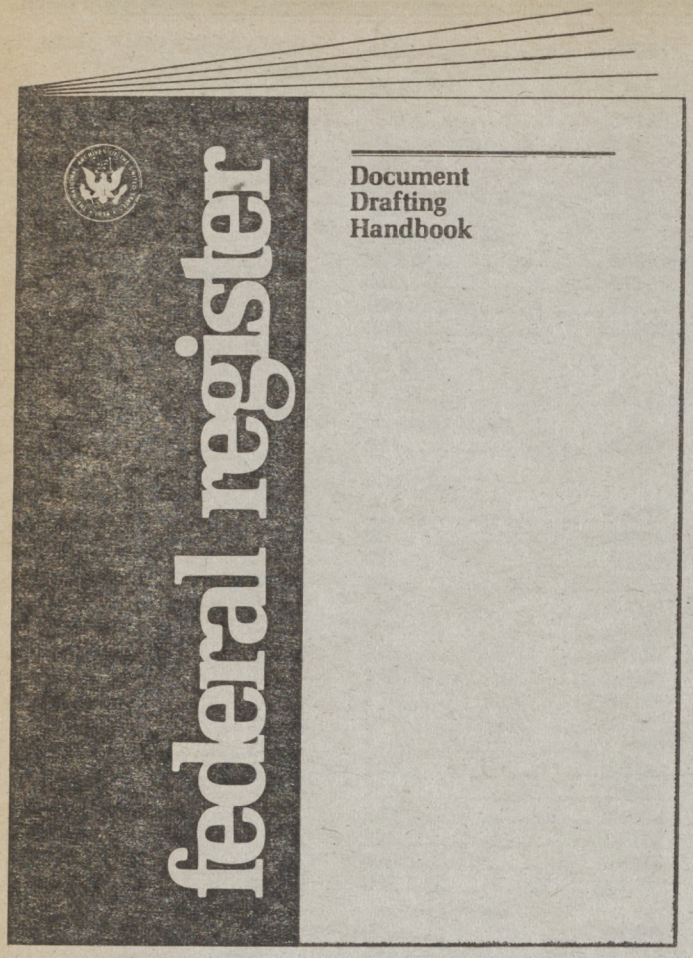

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