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WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: March 5 at 9:00 a.m.

WHERE: Office of the Federal Register, 7th Floor Conference Room, 800 North Capitol Street NW, Washington, DC

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1097 and 1099

[DA-92-35]

Milk in the Memphis, TN, and Paducah, KY, Marketing Areas; Reinstatement of the Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; suspension.

SUMMARY: This action suspends the order issued October 20, 1992, and reinstates the orders regulating the handling of milk in the Memphis, Tennessee, and Paducah, Kentucky, marketing areas. This action is being taken to comply with a temporary restraining order issued by the United States District Court for the Western District of Tennessee on December 31, 1992.

EFFECTIVE DATE: December 1, 1992.

FOR FURTHER INFORMATION CONTACT: Clayton H. Plumb, Chief, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 720-6274.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding: Order Terminating the Orders: Issued October 20, 1992; published October 26, 1992 (57 FR 48449).

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), an order terminating the orders regulating the handling of milk in the Memphis, Tennessee, and Paducah, Kentucky, marketing areas was issued on October 20, 1992. Specifically §§ 1097.2–1097.95 of part 1097 were removed and §§ 1099.2–1099.86 of part 1099 were removed, effective December 1, 1992 (57 FR 48449).

The termination order removing all sections except §§ 1097.1 and 1099.1 of parts 1097 and 1099 are hereby suspended and such sections of parts 1097 and 1099 are hereby reinstated indefinitely to comply with a temporary restraining order issued by the United States District Court for the Western District of Tennessee on December 31, 1992.

List of Subjects in 7 CFR Parts 1097 and 1099

Milk marketing orders.

1. The authority citation for 7 CFR parts 1097 and 1099 continues to read as follows:

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

PART 1097—MILK IN THE MEMPHIS, TENNESSEE MARKETING AREA

2. Part 1097 is amended by reinstating §§ 1097.2 through 1097.95 and their undesignated center headings to read as follows:

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1097.3 Route disposition.
1097.7 Fluid milk plant.
1097.8 Nonfluid milk plant.
1097.9 Handler.
1097.10 Producer-handler.
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Uniform Prices

1097.60 Handler's value of milk for computing uniform price.
1097.61 Computation of uniform price for each handler (including weighted average price and uniform price for base milk and excess milk).
1097.62 Announcement of uniform prices for each handler and butterfat differential.

Payments for Milk

1097.71 Payments to market administrator.
1097.72 Rate of partial payments.
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1097.74 Butterfat differential.
1097.75 Plant location adjustments for producers.
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Administrative Assessment and Marketing Service Deduction

1097.85 Assessment for order administration.
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Definitions

§ 1097.2 Memphis, Tennessee marketing area.

Memphis, Tennessee, marketing area means all the territory, including incorporated municipalities and military reservations, within the Tennessee counties of Fayette, Hardeman (except Civil Districts 5 and 6), Haywood, Lauderdale, Madison (except Civil Districts 4 and 9), Shelby and Tipton; the Mississippi counties of De Soto, Tate, Panola (except the village of Crowder), Tunica, Lafayette, and Marshall (exclusive of Beat 5); and the townships of Mississippi and Proctor in Crittenden County, Arkansas.

§ 1097.3 Route disposition.

Route disposition means a delivery (including disposition from a plant store or from a distribution point and distribution by a vendor or vending machine) of any fluid milk product classified as Class I milk to a retail or

wholesale outlet other than a delivery to a milk or filled milk plant. A delivery through a distribution plant shall be attributed to the plant from which the Class I milk is moved through a distribution point to wholesale or retail outlets, without intermediate movement to another milk or filled milk plant.

§ 1097.7 Fluid milk plant.

Except as provided in paragraph (c) of this section, *fluid milk plant* means:

(a) Any milk processing or packaging plant from which a volume of Class I milk, except filled milk, equal to an average of 1,000 pounds or more per day, or not less than 5.0 percent of the Class I milk, except filled milk, of such plant, is disposed of during the month as route disposition in the marketing area.

(b) [Reserved]

(c) The term *fluid milk plant* shall not apply to the following plants:

(1) A producer-handler plant;

(2) A plant qualified pursuant to paragraph (a) or (b) of this section which would be fully regulated pursuant to the provisions of another order issued pursuant to the Act and from which the market administrator determines that a greater volume of fluid milk products, except filled milk, was disposed of during the month from such plant as route disposition in the marketing area regulated by the other order and as fluid milk products transferred as Class I milk to plants fully regulated by such other order than as route disposition in the Memphis, Tenn., marketing area and as fluid milk products transferred as Class I milk to other fluid milk plants: Provided, That a plant which was a fluid milk plant pursuant to paragraph (a) or (b) of this section in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of fluid milk products, except filled milk, is disposed of as route disposition in such other marketing area or to plants fully subject to such other order, unless the other order requires regulation of the plant without regard to its qualifying as a fluid milk plant for regulation under this order subject to the proviso of this subparagraph; and

(3) A plant qualified pursuant to paragraph (a) or (b) of this section which meets the requirements for fully regulated plants under another Federal order and from which the market administrator determines a greater volume of fluid milk products, except filled milk, is disposed of during the month as route disposition in the Memphis, Tenn., marketing area and as fluid milk products transferred as Class I milk to other fluid milk plants than as route disposition in the other marketing area and fluid milk products transferred as Class I milk to plants fully regulated by such other order, and such other order which fully regulates the plant does not contain provision to exempt the plant from regulation under the particular circumstances described herein of having greater route disposition under the Memphis, Tenn., order.

§ 1097.8 Nonfluid milk plant.

Nonfluid milk plant means any milk or filled milk manufacturing, processing, or packaging plant other than a fluid milk plant. The following categories of nonfluid milk plants are further defined as follows:

(a) Other order plant means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) Producer-handler plant means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) Partially regulated distributing plant means a nonfluid milk plant that is neither another order plant nor a producer-handler plant, from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) Unregulated supply plant means a nonfluid milk plant from which fluid milk products are moved during the month to a fluid milk plant and which is not another order plant nor a producer-handler plant.

§ 1097.9 Handler.

Handler means:

(a) Any person in his capacity as the operator of one or more fluid milk plants;

(b) Any cooperative association with respect to milk of its member producers diverted by it pursuant to § 1097.12 for the account of such cooperative association;

(c) Any cooperative association with respect to the milk of its member-producers which it causes to be delivered directly from the farm to the fluid milk plant(s) of another handler in a bulk tank truck owned and operated by, or under contract to, or under control of such cooperative, if the cooperative association notifies the market administrator and the handler to whom the milk is delivered, in writing, that it wishes to become the handler for such milk. The cooperative association shall be considered the handler for such bulk tank milk, effective the first day of the month following receipt of such notice, and shall account for the actual receipts from each producer as determined at the farm at prices applicable to receipts from producers at plants to which the cooperative association delivers the milk. The cooperative association, once it becomes the handler for such bulk tank milk, shall remain the handler for such bulk tank milk from month to month until the cooperative association notifies the market administrator and handler that such status is to be discontinued, effective the first day of the month following receipt of such notice;

(d) Any person who operates a partially regulated distributing plant;

(e) A producer-handler;

(f) Any person who operates an other order plant described in § 1097.7(c); and

(g) Any person in his capacity as the operator of an unregulated supply plant.

§ 1097.10 Producer-handler.

Producer-handler means any person who operates an approved plant from which Class I milk is disposed of in the marketing area but who receives no milk from other dairy farmers.

§ 1097.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk in compliance with Grade A inspection requirements of a duly constituted health authority which milk is:

(1) Received at a fluid milk plant; or

(2) Diverted from a fluid milk plant;

to a nonfluid milk plant that is not a producer-handler plant for the account of the handler. Milk so diverted shall be deemed to have been received by the diverting handler at the location of the plant from which it was diverted.

(b) *Producer* shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a fluid milk plant from another order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1097.44(a)(8)(iii) and the corresponding step of § 1097.44(b); and

(3) Any person with respect to milk produced by him which is reported as diverted to another order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order.

§ 1097.13 Producer milk.

Producer milk means only that skim milk and butterfat contained in milk from producers (in an amount

determined by weights and measurements for individual producers, as taken at the farm in the case of milk moved from the farm in a bulk tank truck) which is:

(a) Received directly from producers at a fluid milk plant;

(b) Diverted pursuant to § 1097.12; or

(c) Received by a handler described in § 1097.9(c).

§ 1097.14 Other source milk.

Other source milk means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1097.40(b)(1) from any source other than producers, handlers described in § 1097.9(c), or fluid milk plants;

(b) Receipts in packaged form from other plants of products specified in § 1097.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1097.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1097.40(b)(1)) for which the handler fails to establish a disposition.

§ 1097.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, *fluid milk product* means any of the following products in fluid or frozen form: Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted.

(b) The term *fluid milk product* shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1097.16 Fluid cream product.

Fluid cream product means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1097.17 Filled milk.

Filled milk means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1097.18 Cooperative association.

Cooperative association means any cooperative marketing association which the Secretary determines, after application by the association:

(a) To be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales of or marketing milk or its products for its members.

§ 1097.19 [Reserved]

§ 1097.20 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1097.51a:

(a) Butter price. *Butter price* means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday, except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(b) Cheddar cheese price. *Cheddar cheese price* means the simple average, for the first 15 days of the month, of the daily prices per pound of cheddar cheese in 40-pound blocks. The prices used shall be those of the National Cheese Exchange (Green Bay, WI), as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(c) Nonfat dry milk price. *Nonfat dry milk price* means the simple average, for the first 15 days of the month, of the daily prices per pound of nonfat dry milk, which average shall be computed by the Director of the Dairy Division as follows:

(1) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat and Grade A nonfat dry milk, respectively, for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service.

(2) For each week, determine the simple average of the prices reported for the three types of nonfat dry milk. Such average shall be the daily price for the day that such prices are reported and for each preceding work-day until the day such prices were previously reported. A work-day is each Monday through Friday except national holidays.

(3) Add the prices determined in paragraph (c)(2) of this section for the first 15 days of the month and divide by the number of days for which there is a daily price.

(d) Edible whey price. *Edible whey price* means the simple average, for the first 15 days of the month, of the daily prices per pound of edible whey powder (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each preceding work-day until the day such price was previously reported. A work-day is each Monday through Friday except national holidays.

Handler Reports

§ 1097.30 Reports of receipts and utilization.

By mailing on or before the sixth day after the end of each month or by

delivery not later than the eighth day after the end of such month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his fluid milk plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the fluid milk plant to other plants;

(2) Receipts of milk from handlers described in § 1097.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other fluid milk plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1097.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk.

(c) Each handler described in § 1097.9 (b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1097.31 Payroll reports.

(a) By mailing on or before the sixth day after the end of the month, or by delivery not later than the eighth day after the end of such month, each handler described in § 1097.9 (a), (b), and (c) shall report to the market administrator, in the detail prescribed by the market administrator, the following information showing for each producer:

(1) His name and address;

(2) The number of days on which milk was received from such producer;

(3) The total pounds of milk received from such producers;

(4) The average butterfat content of such milk;

(5) The location at which such milk was received; and

(6) The amount of any deductions authorized in writing by the producer to be made in making payments to such producer.

(b) On or before the 21st day of each month, each handler described in § 1097.9 (a), (b), and (c) shall report to the market administrator, in detail and on forms prescribed by him, the name and address or appropriate identification of each producer from whom milk was received during the first 15 days of such month, the total pounds of milk received from each producer, the location at which such milk was received, the amount of any deductions authorized in writing by producers from whom such handler received milk, the total pounds of milk received from each handler described in § 1097.9(c), and the name and address of each such cooperative association.

§ 1097.32 Other reports.

(a) Each handler operating a partially regulated distributing plant shall report on or before the seventh day after the end of the month, the respective amounts of skim milk and butterfat in route disposition in the marketing area.

(b) [Reserved]

(c) In addition to the reports required pursuant to §§ 1097.30 and 1097.31 and paragraph (a) of this section, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

(d) On or before the second day prior to the reporting dates specified in § 1097.31, each cooperative association that operates a fluid milk plant from which bulk fluid milk products were transferred to fluid milk plants of other handlers within the time periods described in § 1097.31 shall report to each such fluid milk plant operator and to the market administrator the name and location of the transferor plant and the total pounds and butterfat content of the bulk fluid milk products transferred from the plant.

Classification of Milk

§ 1097.40 Classes of utilization.

Except as provided in § 1097.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1097.30 shall be classified as follows:

(a) Class I milk. Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) Class II milk. Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form other than that specified in paragraph (c)(1)(iv) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(c) Class III milk. Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section;

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of

this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1097.15; and

(6) In shrinkage assigned pursuant to § 1097.41(a) to the receipts specified in § 1097.41(a)(2) and in shrinkage specified in § 1079.41 (b) and (c).

§ 1097.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1097.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each fluid milk plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraphs (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraphs (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1097.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other fluid milk plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraphs (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1097.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1097.42 Classification of transfers and diversions.

(a) Transfers to fluid milk plants. Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a fluid milk plant to another fluid milk plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers shall be subject to the conditions set forth in paragraphs (a) (1), (2), and (3) of this section. For purposes of this paragraph, skim milk and butterfat transferred as bulk milk to the fluid milk plant of another handler by a handler described in § 1097.9(c) shall be considered a receipt of producer milk in the transferee plant.

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1097.44(a)(12) and the corresponding step of § 1097.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1097.44(a)(7) or the corresponding step of § 1097.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1097.44(a) (11) or (12) or the corresponding steps of § 1097.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) Transfers and diversions to other order plants. Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a fluid milk plant to another order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the fluid milk plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purposes of establishing classification under this

paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1097.40.

(c) Transfers to producer-handlers. Skim milk or butterfat transferred in the following forms from a fluid milk plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) Transfers and diversions to other nonfluid milk plants. Skim milk or butterfat transferred or diverted in the following forms from a fluid milk plant to a nonfluid milk plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraphs (d)(2)(i) (*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonfluid milk plant's utilization to its receipts as set forth in paragraphs (d)(2) (ii) through (viii) of this section:

(*a*) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1097.30 for the month within which such transaction occurred; and

(*b*) The nonfluid milk plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator:

(ii) Route disposition in the marketing area of each Federal milk order from the nonfluid milk plant and transfers of packaged fluid milk products from such nonfluid milk plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonfluid milk plant from fluid milk plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonfluid milk plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonfluid milk plant from fluid milk plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonfluid milk plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonfluid milk plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonfluid milk plant from fluid milk plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonfluid milk plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonfluid milk plant from fluid milk plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonfluid milk plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonfluid milk plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonfluid milk plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonfluid milk plant; and

(*b*) To such nonfluid milk plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonfluid milk plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonfluid milk plant from fluid milk plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to class III utilization, and then to Class II utilization at such nonfluid milk plant;

(vii) Receipts of bulk fluid cream products at the nonfluid milk plant from fluid milk plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonfluid milk plant; and

(viii) In determining the nonfluid milk plant's utilization for purposes of this subparagraph, and fluid milk products and bulk fluid cream products transferred from such nonfluid milk plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

§ 1097.43 General classification rules.

In determining the classification of producer milk pursuant to § 1097.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1097.30 and shall compute separately for each fluid milk plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1097.9 (b) or (c) the pounds of skim and butterfat, respectively, in each class in accordance with §§ 1097.40, 1097.41, and 1097.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1097.9 (b) or (c) shall be determined separately from the operations of any fluid milk plant operated by such cooperative association.

§ 1097.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1097.9(a) for each of his fluid milk plants separately and

of each handler described in § 1097.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1097.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from another order plant, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1097.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1097.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1097.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraphs (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1097.40(b)(1) that was not subtracted pursuant to paragraphs (a)(4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order; and

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2) and (7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraphs (a)(8)(ii) (*a*) through (*c*) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other fluid milk plant of the handler, and then at each successively more distant fluid milk plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other fluid milk plants shall be adjusted in the reverse direction by a like amount:

(*a*) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all fluid milk plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between fluid milk plants of the handler);

(*b*) Subtract from the above result the sum of the pounds of skim milk in receipts at all fluid milk plants of the handler of producer milk, milk from a handler described in § 1097.9(c), fluid milk products from fluid milk plants of other handlers, and bulk fluid milk products from other order plants; and

(*c*) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this fluid milk plant is of all such receipts remaining at this allocation step at all fluid milk plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1097.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraphs (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraphs (a)(11) (i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all fluid milk plants of the handler (excluding any duplication of utilization in each class resulting from transfers between fluid milk plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2), (7)(v), and (8) (i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this subparagraph exceed the pounds of skim milk

remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other fluid milk plant of the handler, and then at each successively more distant fluid milk plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other fluid milk plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this paragraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other fluid milk plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(12) Subject to the provisions of paragraphs (a)(12) (i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all fluid milk plants of the handler (excluding any duplication of utilization in each class resulting from transfers between fluid milk plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that were not subtracted pursuant to paragraph (a)(8)(iii) of this section and that were not offset by transfers or diversions of bulk fluid milk products to the same other order plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this paragraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other fluid milk plant of the handler, and then at each successively more distant fluid milk plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other fluid milk plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this paragraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other fluid milk plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another fluid milk plant according to the classification of such products pursuant to § 1097.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

§ 1097.45 Market administrator's reports concerning classification.

The market administrator shall make the following reports concerning classification:

(a) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1097.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(b) Furnish to each handler operating a fluid milk plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(c) On or before the 11th day after the end of each month, report to each cooperative association which so requests, the percentage of milk delivered by such association or by its members which was allocated to each class by each handler receiving such milk.

Class Prices

§ 1097.50 Class prices.

Subject to the provisions of § 1097.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) Class I price. From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $2.77.

(b) Class II price. The Class II price shall be computed by the Director of the Diary Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1097.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to § 1097.51 and add 10 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1097.51a.

(c) Class III price. The Class III price shall be the basic formula price for the month.

§ 1097.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential pursuant to § 1097.74 shall be used.

§ 1097.51a Basic Class II formula price.

The "basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1097.51 for the second preceding month plus or minus the amount computed pursuant to paragraphs (a) through (d) of this section:

(a) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1097.20 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(1) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(ii) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(iii) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(2) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(ii) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(b) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(c) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b) of this section by determining the relative proportion that the data included in each of the following subparagraphs is of the total of the data represented in paragraphs (c) (1) and (2) of this section:

(1) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

(2) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

Note: The computation of the basic Class II formula price is affected by a determination document published on September 6, 1984, 49 FR 35078.

(d) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (c) of this section.

§ 1097.52 Plant location adjustments for handlers.

(a) For milk received at a fluid milk plant from producers or a handler described in § 1097.9(c) and which is classified as Class I milk without movement to another fluid milk plant, the price specified in § 1097/50(a) shall be adjusted by the amount or at the rate specified in paragraphs (a) (1) through (4) of this section for the location of such plant.

(1) For a plant located in the State of Tennessee and more than 50 miles from the City Hall in Memphis, Tennessee, the adjustment shall be minus 25 cents.

(2) For a plant located in the State of Mississippi, the adjustment shall be as follows:

(i) In the Mississippi counties of Itawamba, Lafayette, Lee, Panola, Pontotoc, Prentiss, Tate, Tunica or Union, the adjustment shall be plus 13 cents; and (ii) In any Mississippi county not specified in paragraph (a)(2)(i) of this section and more than 50 miles from the City Hall in Memphis, Tennessee, the adjustment shall be plus 2.1 cents for each 10 miles or fraction thereof (rounded to the nearest cent) that such plant is located from the City Hall in Memphis, Tennessee. (3) For a plant located in the State of Arkansas, the adjustment shall be as follows:

(i) In the Arkansas counties of Arkansas, Clark, Cleburne, Cleveland, Conway, Crawford, Crittenden, Cross, Dallas, Desha, Faulkner, Franklin, Garland, Grant, Hot Spring, Howard, Jefferson, Johnson, Lee, Lincoln, Logan, Lonoke, Monroe, Montgomery, Perry, Phillips, Pike, Polk, Pope, Prairie, Pulaski, Saline, Scott, St. Francis, Sebastian, Sevier, Van Buren, White, Woodruff or Yell, no adjustment shall apply;

(ii) In any Arkansas county lying north of any county specified in paragraph (a)(3)(i) of this section, the adjustment shall be minus 22 cents; and

(iii) In any Arkansas county lying south of any county specified in paragraph (a)(3)(i) of this section, the adjustment shall be plus 31 cents.

(4) For a plant located outside the areas described in paragraphs (a) (1), (2) and (3) of this section, the adjustment shall be minus 2.1 cents for each 10 miles or fraction thereof (rounded to the nearest cent) that such plant is located from the City Hall in Memphis, Tennessee.

(b) For fluid milk products transferred in bulk between fluid milk plants and classified as Class I milk, such location adjustments shall be assigned to the Class I disposition at the transferee-plant in excess of the sum of receipts at such plant from producers and from handlers described in § 1097.9(c) times 1.05, and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made in sequence beginning with the transferor plant with the highest Class I price.

§ 1097.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1097.50(b).

§ 1097.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be

equivalent to the price or pricing constituent that is required.

Uniform Prices

§ 1097.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1097.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1097.44(a)(14) and the corresponding step of § 1097.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1097.74, that are applicable at the location of the fluid milk plant;

(c) Add the following:

(1) The amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the fluid milk plant for the current month by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1097.44(a)(9) and the corresponding step of § 1097.44(b); and

(2) The amount obtained from multiplying the difference between the Class III price for the preceding month and the Class II price for the current month by the lesser of:

(i) The hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1097.44(a)(9) and the corresponding step of § 1097.44(b) for the current month; or

(ii) The hundredweight of skim milk and butterfat remaining in Class III (exclusive of shrinkage) after the computations pursuant to § 1097.44(a)(11) and the corresponding step of § 1097.44(b) for the preceding month, less the hundredweight of skim milk and butterfat specified in paragraph (c)(1) of this section;

(d) Add or subtract, as the case may be, an amount necessary to correct errors discovered by the market administrator in the verification of reports of such handler of his receipts and utilization of skim milk and butterfat for previous months; and

(e) In computing, for the purposes of § 1097.61, the value of milk of a handler described in § 1097.9(c), the value of milk received by fluid milk plants of other handlers shall be the sum of the amounts assigned pursuant to § 1097.61(a)(2) with respect to such milk as adjusted pursuant to § 1097.75 for the location of the fluid milk plant to which delivered.

§ 1097.61 Computation of uniform price for each handler (including weighted average price and uniform price for base milk and excess milk).

(a) The market administrator shall compute for each handler a "weighted average price" for each month and for each of the months of August through February a "uniform price" per hundredweight for milk of 3.5 percent butterfat content received from producers as follows:

(1) Adjust the amount computed pursuant to § 1097.60 by adding or subtracting, as the case may be, the total of the location adjustments applicable pursuant to § 1097.75;

(2) For each handler operating a fluid milk plant receiving milk from a handler described in § 1097.9(c), prorate the resulting amount between such milk and producer milk;

(3) Add the amount represented by any deductions made for eliminating fractions of a cent in computing the uniform prices for the preceding month;

(4) Divide the resulting amount by the total hundredweight of producer milk received by the handler and deduct any fraction of a cent per hundredweight. The result shall be the "weighted average price."

(5) For each of the months of August through February, the weighted average price shall be such handler's "uniform price" for milk received from producers.

(b) For each of the months of March through July, the market administrator shall compute for each handler with respect to producer milk, a uniform price for base milk and for excess milk, each of 3.5 percent butterfat content, as follows:

(1) Follow the computations and adjustments provided in paragraphs (a)(1) through (3) of this section;

(2) Compute the value of excess milk received by such handler as producer milk and bulk milk from a handler described in § 1097.9(c) as follows:

(i) Multiply the quantity of such milk, not in excess of the total Class III milk included in these computations, by the Class III price;

(ii) Multiply the remaining quantity of such milk, not in excess of the total Class II milk included in these computations, by the Class II price;

(iii) Multiply the remaining quantity of excess milk by the Class I price; and

(iv) Add together the resulting amounts;

(3) Divide the total value of excess milk obtained in paragraph (b)(2) of this section by the total hundredweight of such excess milk and reduce to the nearest cent. The resulting figure shall be the uniform price for such handler for excess milk;

(4) Subtract, for each handler, the total value of such handler's excess milk obtained in paragraph (b)(2)(iv) of this section from the value of all milk obtained for such handler pursuant to paragraph (b)(1) of this section; and

(5) Divide the amount obtained in paragraph (b)(4) of this section by the total hundredweight of base milk received by such handler and deduct any fraction of a cent per hundredweight. The result, shall be the uniform price for such handler for base milk.

§ 1097.62 Announcement of uniform prices for each handler and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 11th day after the end of each month the applicable uniform prices for each handler pursuant to § 1097.61 for such month.

Payments for Milk

§ 1097.71 Payments to market administrator.

(a) Subject to paragraphs (d) and (e) of this section, each handler shall pay to the market administrator on or before the 2nd day prior to the last day of each month an amount determined by multiplying the handler's receipts during the first 15 days of such month of producer milk (excluding the milk of any producer who had discontinued shipping milk to such handler before the 25th of the month and, in the case of a handler described in § 1097.9(c), producer milk delivered to fluid milk plant) and milk from a handler described in § 1097.9(c) by the applicable partial payment rate less proper deductions authorized in writing by producers from whom the handler received milk, provided that the amount deducted for each producer does not exceed the value of the milk received from the producers during the partial payment period and the handler has paid such deductions to assignees by the date payment is otherwise due the producer.

(b) Subject to paragraphs (d) and (e) of this section, each handler shall pay to the market administrator on or before the 14th day after the end of each month an amount equal to such handler's value of milk for such month determined pursuant to § 1097.60(a), as adjusted by the butterfat differential specified in

§ 1097.74 and pursuant to § 1097.60 (b), (c) and (d), less:

(1) Payments made by the handler pursuant to paragraph (a) of this section for such month; and

(2) Proper deductions that were authorized in writing by producers from whom the handler received milk, provided that the amount deducted for each producer does not exceed the value of the milk received during the final payment period and provided that the handler has paid such deductions to assignees by the date payment is otherwise due the producer;

(c) Each handler who received bulk fluid milk and bulk fluid cream products from a fluid milk plant operated by a cooperative association shall pay the following amounts for such products to the market administrator, who in turn shall transmit such money to the cooperative association.

(1) On or before the 2nd day prior to the last day of each month, an amount determined by multiplying such receipts during the first 15 days of the month by the applicable partial payment rate. If the handler so elects, such prices may be adjusted by the butterfat differential specified in § 1097.74 for the preceding month.

(2) On or before the 14th day after the end of each month, an amount determined by multiplying the quantity of such receipts during the month that was classified in each class pursuant to § 1097.42(a) by the applicable class price, as adjusted by the butterfat differential specified in § 1097.74, plus the applicable administrative assessment, less any payments made by the handler pursuant to paragraph (c)(1) of this section. For the purpose of such computation, the applicable Class I price shall be the Class I price applicable at the transferee plant plus the applicable administrative assessment rate.

(d) The following conditions shall apply with respect to the payments prescribed in paragraphs (a), (b) and (c) of this section:

(1) Payment to the market administrator shall be deemed not to have been made until such payments have been received by the market administrator; and

(2) If the date by which payments must be received by the market administrator falls on a Saturday or Sunday or anyday that is a national holiday, payments shall not be due until the next day on which the market administrator's office is open for public business.

(e) Payments due the market administrator from a cooperative association handler may be offset by payments determined by the market administrator to be due the cooperative association pursuant to § 1097.73(c).

§ 1097.72 Rate of partial payments.

Partial payment rates shall be computed as follows:

(a) During the months of March through July, the previous month's Class III price.

(b) for the months of August through February, the previous month's Class III price plus $1.00, and further adjusted by the zone or location adjustment applicable at the receiving plant.

§ 1097.73 Payments to producers and to cooperative associations.

(a) Subject to paragraphs (c) through (e) of this section, the market administrator shall pay each producer on or before the last day of each month for milk which was received during the first 15 days of each month; provided, payment pursuant to § 1097.71 (a) has been received by the market administrator. Such payment shall be uniform to all suppliers of each plant at a rate per hundredweight equal to that received by the market administrator less the deductions authorized by each producer pursuant to § 1097.71 (a).

(b) Subject to paragraphs (c) through (e) of this section, the market administrator shall pay each producer on or before the 16th day after the end of each month for milk for which payment pursuant to § 1097.71 (b) has been received by the market administrator. Such payment shall be at the uniform price(s) computed pursuant to § 1097.61 for the month, subject to the following adjustments:

(1) Any applicable adjustments pursuant to §§ 1097.74 and 1097.75;

(2) Less the payment described in paragraph (a) of this section;

(3) Less deductions for marketing services pursuant to § 1097.86;

(4) Less the authorized deductions specified in § 1097.71 (a) and (b)(2); and

(5) Any adjustments for errors in calculating payments to an individual producer for past months.

(c) In making payments to producers pursuant to paragraphs (a) and (b) of this section, the market administrator, on or before the day prior to the dates specified in such paragraphs, shall pay to each cooperative association that so requests with respect to those producers for whom it markets milk and who are certified to the market administrator by the cooperative association as having authorized the cooperative association to receive such payment an amount equal to the sum of the individual payments otherwise due such producers pursuant to paragraphs (a) and (b) of this section.

(d) The following conditions shall apply with respect to the payments prescribed in paragraphs (a) through (c) of this section:

(1) If the date by which such payments are to be made falls on a Saturday, or Sunday or on any day that is a national holiday, such payments need not be made until the next day on which the market administrator's office is open for public business; and

(2) If the application of § 1097.71(c)(2) or paragraph (e)(1) of this section results in a delay in the partial or final payments by handlers to the market administrator, the corresponding partial or final payments prescribed in paragraphs (a) through (c) of this section may be delayed by the same number of days.

(e) If the market administrator does not receive the full payment required of a handler pursuant to § 1097.71 he shall reduce uniformly per hundredweight the payments due producers and cooperative associations for their milk received by such handler by a total amount not in excess of the amount due from such handler. The market administrator shall complete such payments on or before the next date for making payment pursuant to this section following the date on which the remaining payment is received from such handler.

§ 1097.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform prices shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the butter price less 0.0028 times the average price per hundredweight, at test, for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month. The butter price means the simple average for the month of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following day until the next price is reported.

§ 1097.75 Plant location adjustments for producers.

In making payment pursuant to § 1097.73, the applicable uniform prices for all milk received shall be adjusted according to the location of the fluid milk plant where such milk was received at the rate provided pursuant to § 1097.52.

§ 1097.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses errors resulting in money due the market administrator from such handler, or due such handler from the market administrator, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments set forth in the provisions under which such error occurred.

§ 1097.78 Charges on overdue accounts.

(a) Any unpaid obligation of a handler pursuant to §§ 1097.71, 1097.73, 1097.77, and 1097.85 shall be increased one percent beginning on the first day after the due date, and on each date of subsequent months following the day on which such type of obligation is normally due, subject to the following conditions:

(1) The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation, which shall include any unpaid overdue charges previously computed pursuant to this section; and

(2) For the purpose of this section, any obligation that was determined at a date later than that prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due.

(b) All charges on overdue accounts shall be paid to the administrative assessment fund maintained by the market administrator.

Administrative Assessment and Marketing Service Deduction

§ 1097.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month six cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to:

(a) Receipts of milk at fluid milk plants from producers (including receipts from a handler described in § 1097.9(c) and such handler's own production);

(b) Other source milk allocated to Class I pursuant to § 1097.44(a)(7) and (11) and the corresponding steps of § 1097.44(b);

(c) Receipts of milk by a handler described in § 1097.9(c) in excess of that specified in paragraph (a) of this section; and

(d) Receipts of milk by a handler described in § 1097.9(b).

§ 1097.86 Deduction for marketing services.

(a) The market administrator in making payments to producers pursuant to § 1097.73 shall:

(1) Deduct 7 cents per hundredweight or such amount not exceeding 7 cents per hundredweight as may be prescribed by the Secretary, with respect to milk (other than milk of a handler's own production) of those producers for whom the marketing services set forth in paragraph (b) of this section are not being performed by a cooperative association; or

(2) If so requested in writing by a cooperative association, deduct such amount as may be authorized by the member producers of such association from the payment to be made to such producers for whom the cooperative is performing the services specified in paragraph (b) of this section and pay such amounts to the cooperative association on or before the date for making payment to producers.

(b) The monies received by the market administrator pursuant to paragraph (a)(1) of this section shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of their milk for producers who are not receiving such service from a cooperative association.

Base-Excess Plan

§ 1097.90 Base milk.

Base milk means milk received by a handler from a producer during any of the months of March through July, which is not in excess of such producer's base computed pursuant to § 1097.93, except that for the months of March 1985 through July 1985 base milk shall be determined by the producer's base multiplied by the number of days in the month times the percentage of the producer's production pooled pursuant to § 1097.13.

§ 1097.91 Excess milk.

Excess milk means milk received by a handler from a producer during any of the months of March through July, which is in excess of the base milk of such producer for such month, and shall include all milk from a producer for whom no base can be computed pursuant to § 1097.93.

§ 1097.92 Computation of daily average base for each producer.

The daily average base for each producer shall be determined by the market administrator as follows: Divide the total pounds of milk received from such producer by handlers fully regulated under the terms of the respective orders regulating the handling of milk in the Memphis, Tenn.; Fort Smith, Ark.; and Central Arkansas marketing areas (this Part 1097 and Parts 1102 and 1108, respectively, of this chapter) during the immediately preceding period of September through January, by the total number of days in such period beginning with the first day on which milk is received from such producer by a handler regulated under any one of the aforesaid orders, but not less than 120. In the case of producers delivering milk to a handler's plant which first became a fluid milk plant during or after the end of the base-forming period, the daily average base for each producer shall be that which would have been calculated for such producer for the entire base-forming period if the handler's plant had been a fluid milk plant during such period. For producer bases to be calculated on or before February 25, 1985, and subject to § 1097.94, the base to be calculated for each producer shall be an amount obtained by dividing the total pounds of his producer milk (as defined under the respective orders) received from the producer by all handlers fully regulated under the terms of the respective orders regulating the handling of milk in the Georgia; Tennessee Valley; Louisville-Lexington-Evansville; Alabama-West Florida; Memphis, Tennessee, Nashville, Tennessee; Fort Smith, Arkansas; and Central Arkansas marketing areas (parts 1007, 1011, 1046, 1093, 1097, 1098, 1102, and 1108, respectively, of this chapter) during the immediately preceding months of September 1984 through January 1985 by the total number of days in such period beginning with the first day on which milk is received from such producer by a handler regulated under any one of the aforesaid orders, but not less than 120. In the case of producers delivering milk to a handler's plant which first became a fluid milk plant or a pool plant under any of the above orders during or after the end of the base-forming period, the daily average base for each producer shall be that which would have been calculated for

such producer for the entire base-forming period if the handler's plant had been a fluid milk plant or a pool plant during such period.

§ 1097.93 Determination of monthly base for each producer.

Subject to the rules set forth in § 1097.94, the market administrator shall calculate a monthly base for each producer for each of the months of March through July, as follows:

(a) If milk is received by a handler as producer milk during the month, multiply such producer's daily average base computed pursuant to § 1097.92 by the number of days in such month.

(b) If milk is received as producer milk from the same farm by more than one handler and/or by handlers fully regulated under the terms of the Central Arkansas (part 1108 of this chapter) or Fort Smith, Ark. (part 1102 of this chapter), orders during the month, multiply such producer's daily average base computed pursuant to § 1097.92 by the number of days in such month and multiply the result by the percentages of the total pounds of milk received from such producer by handlers fully regulated under the terms of the three orders specified in § 1097.92 which were received by each handler to determine the amount of base milk received from such producer by each handler.

§ 1097.94 Base rules.

The following rules shall apply in connection with the establishment of bases for each producer computed pursuant to § 1097.92:

(a) An entire base or share of a joint holder shall be transferred from a person holding such base to other persons as of the end of the month during which an application for the transfer of such base is received by the market administrator, such application to be on forms approved by the market administrator and signed by the base holder(s) or by the heirs and by the person to whom such base is to be transferred subject to the following conditions:

(1) If a base is held jointly and such joint holding is terminated, the entire base may be transferred to one of the joint holders;

(2) The share of a joint base holder may be transferred to a person other than a joint holder of the base only if all shares of the entire base are at the same time transferred to the same or other persons; and

(3) If one of more bases are transferred to a producer already holding a base, a new base shall be computed by adding together the total eligible deliveries during the period of September through January of all persons in whose names such bases were earned and dividing the total by the total number of days in such period beginning with the first day on which milk was received during the months of September through January from any of such persons but not less than 120 days.

§ 1097.95 Announcement of established bases.

On or before February 25 of each year, the market administrator shall notify each producer of the daily average base established by such producer, or shall notify the cooperative association of which such producer is a member of such daily average base.

PART 1099—MILK IN PADUCAH, KENTUCKY MARKETING AREA

3. Part 1099 is amended by reinstating §§ 1099.2 through 1099.86 to read as follows:

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1099.5 Distributing plant.
1099.6 Supply plant.
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1099.70 Producer-settlement fund.
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Administrative Assessment and Marketing Service Deduction

1099.85 Assessment for order administration.
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Definitions

§ 1099.2 Paducah, Kentucky marketing area.

The *Paducah, Ky. marketing area,* hereinafter called the *marketing area,* means all the territory within the counties listed below (except that portion of any of these counties contained in the Fort Campbell military reservation):

Kentucky Counties

Ballard, Caldwell, Calloway, Carlisle, Christian, Fulton, Graves, Hickman, Livingston, Lyon, Marshall, McCracken, Todd, Trigg.

Missouri Counties

Mississippi, New Madrid, Pemiscot, Scott.

§ 1099.3 Route disposition.

Route disposition means a delivery (including disposition from a plant store or from a distribution point and distribution by a vendor or vending machine) of any fluid milk product classified as Class I milk to a retail or wholesale outlet other than a milk or filled milk plant. A delivery through a distribution point shall be attributed to the plant from which the Class I milk is moved through a distribution point to wholesale or retail outlets.

§ 1099.5 Distributing plant.

Distributing plant means a plant in which milk is processed and packaged and from which there is route disposition during the month in the marketing area.

§ 1099.6 Supply plant.

Supply plant means a plant (except a distributing plant) which is qualified as

a pool plant pursuant to the proviso in § 1099.7(b) or a plant from which milk or skim milk which may be distributed in the marketing area under a Grade A label is supplied during the month to a plant qualified pursuant to § 1099.7(a).

§ 1099.7 Pool plant.

Except as provided in paragraph (c) of this section, pool plant means:

(a) A distributing plant from which there is total route disposition, except filled milk, in an amount equal to 45 percent or more of its receipts of milk from dairy farmers producing milk under a Grade A dairy farm permit or rating issued by a duly constituted health authority (including milk of such dairy farmer diverted by the plant operator), from handlers described in § 1099.9(c), and fluid milk products, except filled milk, from other plants during the month and from which there is route disposition, except filled milk, in the marketing area in an amount equal to a daily average of 3,000 pounds or more per day, or 10 percent or more of such receipts, whichever is less: *Provided*, That a plant which qualifies as a pool plant by complying with the foregoing requirements during any month shall be a pool plant during the following month.

(b) A distributing plant or supply plant from which the volume of milk and skim milk shipped to pool plants qualified pursuant to paragraph (a) of this section, or disposed of as route disposition (excluding filled milk) is equal to not less than 50 percent of the receipts of milk from dairy farmers producing milk under a Grade A dairy farm permit or rating issued by a duly constituted health authority (including milk of such dairy farmers diverted by the plant operator), from handlers described in § 1099.9(c), and fluid milk products, except filled milk, received from other plants: *Provided*, That if a supply plant ships to pool plants qualified pursuant to paragraph (a) of this section, milk and skim milk equal to at least 75 percent of its receipts of milk from such dairy farmers and handlers described in § 1099.9(c) in October and November and 35 percent of such milk in three additional months during the period from August through January, such plant shall, upon written application to the market administrator on or before the end of such period, be designated as a pool plant until the end of any month during the succeeding August through January period in which the milk of such plant is disposed of in such a way that it becomes impossible for the plant to reestablish its qualification under the term of this proviso, And provided further, That in the case of a supply plant operated by a cooperative association which supplies to other pool plants at least two-thirds of the producer milk of its producer members (including both the milk delivered directly from the farms of member producers and that delivered from the plant of the association) delivered to all plants during the current month or during the immediately preceding 12-month period, the milk which such association causes to be delivered to the pool plants of other handlers in its capacity as a handler described in § 1099.9(c), shall be considered as having been received first at the plant of such cooperative association for the purpose of qualifying such plant as a pool plant pursuant to this paragraph.

(c) The term *pool plant* shall not apply to the following plants:

(1) A producer-handler plant;

(2) A distributing plant qualified pursuant to paragraph (a) or (b) of this section which meets the requirements of a fully regulated plant pursuant to the provisions of another order issued pursuant to the Act and from which a greater quantity of fluid milk products, except filled milk, is disposed of during the month from such plant as route disposition in the marketing area regulated by the other order than in the Paducah, KY, marketing area: *Provided*, That such a distributing plant which was a pool plant under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of such route disposition is made in such other marketing area, unless the other order requires regulation of the plant without regard to its qualifying as a pool plant under this order subject to the proviso of this subparagraph: *And provided further*, on the basis of a written application made either by the plant operator or by the cooperative association supplying milk to such operator's plant, at least 15 days prior to the date for which a determination of the Secretary is to be effective, the Secretary may determine that the route dispositions in the respective marketing areas to be used for purposes of this subparagraph shall exclude (for a specified period of time) route disposition made under limited-term contracts to governmental bases and institutions;

(3) A distributing plant qualified pursuant to paragraph (a) or (b) of this section which meets the requirements of a fully regulated plant pursuant to the provisions of another Federal order and from which a greater quantity of Class I milk, except filled milk, is disposed of during the month as route disposition in the Paducah marketing area than in the other marketing area, and such other order which fully regulates the plant does not contain provisions to exempt the plant from regulation even though such plant has greater route disposition in the marketing area of the Paducah, KY, order; and

(4) Any supply plant which would be subject to the classification and pricing provisions of another order issued pursuant to the Act unless such plant qualified as a pool plant pursuant to the proviso of paragraph (b) of this section during the preceding August through January period.

§ 1099.8 Nonpool plant.

Nonpool plant means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) *Other order plant* means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) *Producer-handler plant* means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) *Partially regulated distributing plant* means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) *Unregulated supply plant* means a nonpool plant (other than a producer-handler plant or an other order plant) from which fluid milk products are shipped to a pool plant.

§ 1099.9 Handler.

Handler means:

(a) Any person in his capacity as the operator of a pool plant;

(b) A cooperative association qualified pursuant to § 1099.18 with respect to milk of producers diverted pursuant to § 1099.13 for the account of such association;

(c) A cooperative association which chooses to report as a handler with respect to milk which is delivered from the farm to a pool plant(s) of another handler in a tank truck owned or operated by, or under contract to, such cooperative association for the account of such cooperative association. The milk so delivered shall be considered to have been received by such cooperative association at a pool plant at the location of the pool plant to which it is delivered;

(d) Any person who operates a partially regulated distributing plant;

(e) A producer-handler; or

(f) Any person who operates an other order plant described in § 1099.7(c).

§ 1099.10 Producer-handler.

Producer-handler means any person who operates a dairy farm and a distributing plant, from which there is route disposition within the marketing area but which receives no other source milk or milk from other dairy farmers.

§ 1099.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk under a Grade A dairy farm permit or rating issued by a duly constituted health authority, which milk is received at a pool plant or by a handler described in § 1099.9(c).

(b) *Producer* shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from another order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1099.44(a)(8)(iii) and the corresponding step of § 1099.44(b); and

(3) Any person with respect to milk produced by him which is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order.

§ 1099.13 Producer milk.

Producer milk means all skim milk and butterfat contained in milk produced by a producer which is:

(a) Received during the month at a pool plant from producers or from a handler described in § 1099.9(c);

(b) Received by a handler described in § 1099.9(c) but which is not delivered to a pool plant of another handler and constitutes shrinkage pursuant to § 1099.41(c) or Class I shrinkage; or

(c) Diverted by the operator of a pool pant or by a handler described in § 1099.9(b) to a nonpool plant that is not a producer-handler plant, subject to the following conditions:

(1) Not less than 5 days' production of any producer whose milk is diverted is physically received at a pool plant;

(2) If diverted by a cooperative association for its account as milk of its members to nonpool plants which does not exceed 33 percent of the milk physically received from member producers of such cooperative association at pool plants during the month in any of the months of April through August and December and 25 percent in other months, except that if milk of members is diverted by the cooperative association in excess of the specified percentages, no milk diverted by the cooperative association during the month shall be producer milk unless the cooperative association designates the dairy farmers whose milk is not producer milk;

(3) If diverted by a handler in his capacity as the operator of a pool plant, as milk of a producer who is not a member of a cooperative association diverting milk pursuant to paragraph (c)(2) of this section, which does not exceed 33 percent of the aggregate quantity of milk received at such plant from such nonmember producers during the month in any of the months of April through August and December and 25 percent in other months, except that if milk of nonmember producers is diverted by the handler in excess of the specified percentages, no milk diverted by the handler during the month shall be producer milk unless the handler designates the dairy farmers whose milk is not producer milk; and

(4) Such milk shall be accounted for as received by the diverting handler at the location of the nonpool plant to which diverted.

Effective Date Note: At 53 FR 44854, Nov. 7, 1988, in § 1099.13, the provisions of paragraphs (c)(2) were suspended and in paragraph (c)(3) the words "in his capacity as the operator of a pool plant", "milk of a", "who is not a member of a cooperative association diverting", "pursuant to paragraph (c)(2) of this section", "at such plant", "such nonmember", "in any of the months of April through August and December and 25 percent in other months" and "nonmember" are suspended indefinitely, pending a hearing to amend the order.

§ 1099.14 Other source milk.

Other source milk means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1099.40(b)(1) from any source other than producers, handlers described in § 1099.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1099.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1099.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1099.40(b)(1)) for which the handler fails to establish a disposition.

§ 1099.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, *fluid milk product* means any of the following products in fluid or frozen form: Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted.

(b) The term *fluid milk product* shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1099.16 Fluid cream product.

Fluid cream product means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1099.17 Filled milk.

Filled milk means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid product, and contains less than 6 percent nonmilk fat (or oil).

§ 1099.18 Cooperative association.

Cooperative association means any cooperative marketing association which the Secretary determines, after application by the association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales of or

marketing milk or its products for its members.

§ 1099.19 [Reserved]

§ 1099.20 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1099.51a:

(a) Butter price. *Butter price* means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday, except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(b) Cheddar cheese price. *Cheddar cheese price* means the simple average, for the first 15 days of the month, of the daily prices per pound of cheddar cheese in 40-pound blocks. The prices used shall be those of the National Cheese Exchange (Green Bay, WI), as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday, except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(c) Nonfat dry milk price. *Nonfat dry milk price* means the simple average, for the first 15 days of the month, of the daily prices per pound of nonfat dry milk, which average shall be computed by the Director of the Dairy Division as follows:

(1) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat and Grade A nonfat dry milk, respectively, for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service.

(2) For each week, determine the simple average of the prices reported for the three types of nonfat dry milk. Such average shall be the daily price for the day that such prices are reported and for each preceding work-day until the day such prices were previously reported. A work-day is each Monday through Friday except national holidays.

(3) Add the prices determined in paragraph (c)(2) of this section for the first 15 days of the month and divide the number of days for which there is a daily price.

(d) Edible whey price. *Edible whey price* means the simple average, for the first 15 days of the month, of the daily prices per pound of edible whey powder (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each preceding work-day until the day such price was previously reported. A work-day is each Monday through Friday, except national holidays.

Handler Reports

§ 1099.30 Reports of receipts and utilization.

On or before the 6th day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1099.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1099.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1099.9 (b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1099.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1099.9 (a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1099.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1099.32 Other reports.

(a) On or before the 6th day after the end of each month, each handler shall report to the market administrator, in the detail and on forms prescribed by the market administrator, as follows:

(1) The name and address of each producer from whom milk was not received during the previous months and the date on which milk was first received from such producer; and

(2) The name and address of each producer who discontinues deliveries of milk and the date on which milk was last received from such producer.

(b) In addition to the reports required pursuant to paragraph (a) of this section and §§ 1099.30 and 1099.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

Classification of Milk

§ 1099.40 Classes of utilization.

Except as provided in § 1099.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1099.30 shall be classified as follows:

(a) Class I milk. Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) Class II milk. Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form other than that specified in paragraph (c)(1)(iv) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(c) Class III milk. Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section;

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1099.15; and

(6) In shrinkage assigned pursuant to § 1099.41(a) to the receipts specified in § 1099.41(a)(2) and in shrinkage specified in § 1099.41 (b) and (c).

§ 1099.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1099.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraphs (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraphs (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant and milk received from a handler described in § 1099.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1099.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quality for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraphs (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1099.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1099.42 Classification of transfers and diversions.

(a) Transfers to pool plants. Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants

request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1099.44(a)(12) and the corresponding step of § 1099.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1099.44(a)(7) or the corresponding step of § 1099.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1099.44(a) (11) or (12) or the corresponding steps of § 1099.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) Transfers and diversions to other order plants. Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order:

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1099.40.

(c) Transfers to producer-handlers. Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) Transfers and diversions to other nonpool plants. Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraphs (d)(2)(i) (*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraphs (d)(2) (ii) through (viii) of this section:

(*a*) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1099.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence;

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order

which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

§ 1099.43 General classification rules.

In determining the classification of producer milk pursuant to § 1099.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1099.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1099.9(b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1099.40, 1099.41, and 1099.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1099.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1099.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1099.9(a) for each of his pool plants separately and of each handler described in § 1099.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1099.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from another order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1099.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1099.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1099.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1099.40(b)(1) that was not subtracted pursuant to paragraphs (a)(4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2) and (7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraphs (a)(8)(ii) (*a*) through (*c*) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be

subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(*a*) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(*b*) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

(*c*) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in Class III the pounds of skim milk in fluid milk products and products specified in § 1099.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraphs (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of milk subtracted pursuant to paragraph (a)(1) of this section:

(11) Subject to the provisions of paragraphs (a)(11)(i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2), (7)(v), and (8)(i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this subparagraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available.

(12) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from another order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraphs (a)(7)(vi) and (8)(iii) of this section:

(i) Subject to the provisions of paragraphs (a)(12) (ii), (iii), and (iv) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1099.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler);

(ii) Should the proration pursuant to paragraph (a)(12)(i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the

handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to § 1099.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

§ 1099.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1099.44(a)(12) and the corresponding step of § 1099.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1099.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) Upon request, report, on or before the 25th day after the end of each month, to each cooperative association described in § 1099.86(b) the percentage of milk which was caused to be delivered by such association or by its members and which was used in each class by each handler receiving any such milk. For the purpose of this report the milk so received shall be prorated to each class in the proportion that the total receipts of milk from producers by such handler were used in each class.

Class Prices

§ 1099.50 Class prices.

Subject to the provisions of § 1099.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) Class I price. From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $2.39.

(b) Class II price. The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1099.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to § 1099.51 and add 10 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1099.51a.

(c) Class III price. The Class III price shall be the basic formula price for the month.

§ 1099.51 Basic formula price.

The *basic formula price* shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential pursuant to § 1099.74 shall be used.

§ 1099.51a Basic Class II formula price.

The *basic Class II formula price* for the month shall be the basic formula price determined pursuant to § 1099.51 for the second preceding month plus or minus the amount computed pursuant to paragraphs (a) through (d) of this section:

(a) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1099.20 and yield factors in effect under the Diary Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(1) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(ii) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(iii) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor under the Price Support Program for edible whey.

(2) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(ii) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(b) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(c) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b) of this section by determining the relative

proportion that the data included in each of the following subparagraphs is of the total of the data represented in paragraphs (c) (1) and (2) of this section:

(1) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

(2) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

Note: The computation of the basic Class II formula price is affected by a determination document published on September 6, 1984, 49 FR 35078.

(d) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (c) of this section.

§ 1099.52 Plant location adjustments for handlers.

(a) For milk received from producers at a plant located outside the State of Kentucky and north of an east-west line running through the southern boundary of the State of Kentucky and more than 40 miles by shortest highway distance as measured by the market administrator, from the nearest County Courthouse in any of the counties included in the marketing area and disposed of as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, the price computed pursuant to § 1099.50(a) shall be reduced by 12.5 cents, plus 2.5 cents for each 10 miles or fraction thereof that such distance exceeds 50 miles.

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned Class I disposition at the transferee-plant, in excess of the sum of 95 percent of the receipts at such plant from producers and handlers described in § 1099.9(c), and the volume assigned as Class I to receipts from other order plants (and unregulated supply plants) such assignment to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

(c) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1099.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1099.50(b).

Uniform Price

§ 1099.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1099.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1099.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1099.44(a)(14) and the corresponding step of § 1099.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1099.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1099.44(a)(9) and the corresponding step of § 1099.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1099.44(a)(7) (i) through (iv) and the corresponding step of § 1099.44(b), excluding receipts of bulk fluid cream products from another order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1099.44(a)(7) (v) and (vi) and the corresponding step of § 1099.44(b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1099.44(a)(11) and the corresponding step of § 1099.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

(g) With respect to milk marketed on and after the effective date hereof, through February 1985, subtract the amount obtained by multiplying the pounds of bulk fluid milk products that were transferred to the handler's pool plant from another order plant and allocated to Class I milk, by a rate equal to 3.3 cents per hundredweight for each 10 miles or fraction thereof, less any difference (positive only) between the Class I differential applicable at the receiving plant less the Class I differential applicable at the shipping plant.

§ 1099.61 Computation of uniform price (including weighted average price).

For each month, the market administrator shall compute the uniform price per hundredweight of milk of 3.5 percent butterfat content, f.o.b. market, received from producers as follows:

(a) Combine into one total the values computed pursuant to § 1099.60 for all handlers who filed the reports prescribed by § 1099.30 for the month and who made the payments pursuant to §§ 1099.71 and 1099.73 for the preceding month;

(b) Add an amount equivalent to the sum of the net deductions (reductions less increases) for location adjustments to be made from producer payments pursuant to § 1099.75;

(c) Add an amount equivalent to one-half the unobligated balance in the producer-settlement fund;

(d) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1099.60(f);

(e) Subtract not less than 4 cents nor more than 5 cents from the amount computed pursuant to paragraph (d) of this section. The resulting figure shall be the "weighted average price," and, the "uniform price" for milk received from producers.

§ 1099.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 10th day after the end of each month the uniform price for such month.

Payments for Milk

§ 1099.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund, known as the "producer-settlement fund", which shall function as follows:

(a) All payments made by handlers, pursuant to §§ 1099.71 1099.76, and 1099.77 shall be deposited in this fund, and all payments made pursuant to §§ 1099.72 and 1099.77 shall be made from this fund: Provided, That payments due to any handler shall be offset by payments due from such handler.

§ 1099.71 Payments to the producer-settlement fund.

(a) On or before the 12th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1099.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1099.75, of such handler's receipts of producer milk; and

(ii) The value at the weighted average price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1099.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more marketwide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

§ 1099.72 Payments from the producer-settlement fund.

On or before the 13th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1099.71(a)(2) exceeds the amount computed pursuant to § 1099.71(a)(1). If at such time the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the appropriate funds are available.

§ 1099.73 Payments to producers and to cooperative associations.

(a) Except as provided in paragraph (b) of this section, each handler operating a pool plant shall make payment to each producer from whom milk is received during the month as follows:

(1) On or before the last day of each month to each such producer who did not discontinue shipping milk to such handler before the 25th day of the month, an amount equal to not less than the Class III price for the preceding month multiplied by the hundredweight of milk received from such producer during the first 15 days of the month, less proper deductions authorized by such producer to be made from payments due pursuant to this subparagraph;

(2) On or before the 17th day of the following month, an amount equal to not less than the uniform price, as adjusted pursuant to §§ 1099.74 and 1099.75, multiplied by the hundredweight of milk received from such producer during the month, subject to the following adjustments: (i) Less payments made to such producer pursuant to paragraph (a)(1) of this section, (ii) less deductions for marketing services made pursuant to § 1099.86, (iii) plus or minus adjustments for errors made in previous payments made to such producer, and (iv) less proper deductions authorized in writing by such producer: *Provided,* That if by such date such handler has not received full payment pursuant to § 1099.72 from the market administrator for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payments to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after the receipt of the balance due from the market administrator;

(b) In the case of a cooperative association qualified pursuant to § 1099.18 which has so requested any handler in writing, such handler shall on or before the third day prior to the date on which payments are due individual producers pursuant to paragraph (a) of this section pay the cooperative association for milk received during the month from the producer members of such association an amount equal to not less than the amount due such producer members pursuant to paragraph (a) of this section: *Provided,* That the proper deductions referred to in paragraphs (a)(1) and (2)(iv) of this section shall be valid in the case of cooperative members only if authorized in writing by such cooperative;

(c) Each handler shall also make payment to a cooperative association delivering milk to such handler pursuant to § 1099.9(c) for milk so delivered as follows:

(1) On or before the 25th day of the month an amount equal to not less than the Class III price for the preceding month multiplied by the hundredweight of milk so received from such cooperative association during the first 15 days of the month, less proper deductions authorized in writing by the cooperative association;

(2) On or before the 14th day of the following month not less than the uniform price, as adjusted pursuant to §§ 1099.74 and 1099.75, multiplied by the hundredweight of milk so received from the cooperative association during the month, subject to the following adjustments: (i) Less payments made to such cooperative association pursuant to paragraph (c)(1) of this section, and (ii) Less proper deductions authorized in writing by such cooperative association: *Provided,* That if by such date the handler has not received full payment pursuant to § 1099.72 from the

market administrator for such month, he may reduce pro rata his payments on such milk as in the case of payments to producers pursuant to paragraph (a) of this section, and payments hereunder shall be completed not later than the date for making payments pursuant to this subparagraph next following the receipt of the balance due from the market administrator;

(d) On or before the 14th day of the following month each handler shall pay to a cooperative association, with respect to such milk as was received from the association in its capacity as a handler operating a pool plant during the month not less than the value of such milk at the class prices, as adjusted by the butterfat differential specified in § 1099.74, that are applicable at the location of the handler's pool plant; and

(e) Each handler who receives producer milk for which payment is to be made to a cooperative association pursuant to paragraph (b) of this section shall report to such cooperative association with respect to each such producer as follows:

(1) On or before the 28th day of the month, the total pounds of milk received during the first 15 days of such month; and

(2) On or before the 7th day of the following month (i) the pounds of milk received each day and the total for the month together with the butterfat content of such milk, (ii) the amount or rate and nature of any deductions, and (iii) the amount and nature of payments due pursuant to § 1099.77.

§ 1099.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the butter price less 0.0028 times the average price per hundredweight, at test, for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month. The butter price means the simple average for the month of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following day until the next price is reported.

§ 1099.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price for producer milk shall be reduced according to the location of the plant at which the milk was physically received, at the rate set forth in § 1099.52; and

(b) For purposes of computations pursuant to §§ 1099.71 and 1099.72 the weighted average price shall be adjusted at the rates set forth in § 1099.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted weighted average price shall not be less than the Class III price.

§ 1099.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1099.30(b) and 1099.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the weighted average price, both prices to be applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1099.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1099.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1099.60 for such handler shall include, in lieu of the value of other source milk specified in § 1099.60(f) less the value of such other source milk specified in § 1099.71(a)(2)(ii), a value of milk determined pursuant to § 1099.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially

regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1099.7(b), subject to the following conditions:

(a) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1099.30(b) and 1099.31(b) similar reports for each such nonpool supply plant;

(b) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(c) The value of milk determined pursuant to § 1099.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1099.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1099.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

§ 1099.77 Adjustment of accounts.

Whenever verification by the market administrator of payments by any handler discloses errors made in payments to the producer-settlement fund, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 15 days, make payment to the market administrator of the amount so billed. Whenever verification discloses that payment is due from the market administrator to any handler, the market administrator shall, within 15 days, make such payment to such handler. Whenever verification by the market administrator of the payment by a handler to any producer or cooperative association for milk received by such handler discloses payment of less than is required by § 1099.73, the handler shall make up the difference of such payment not later than the next time for making payments as set forth in the provisions relating to payments which were in error.

Administrative Assessment and Marketing Service Deduction

§ 1099.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month five cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk (including such handler's own production) and milk received from a handler described in § 1099.9(c);

(b) Other source milk allocated to Class I pursuant to § 1099.44(a) (7) and (11) and the corresponding steps of § 1099.44(b), except such other source milk that is excluded from the computations pursuant to § 1099.60 (d) and (f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1099.76(a)(2).

§ 1099.86 Deduction for marketing services.

(a) Deductions for marketing services. Except as set forth in paragraph (b) of this section, each handler in making payments to producers pursuant to § 1099.73 with respect to milk received from producers (excluding such handler's own farm production), shall deduct 6 cents per hundredweight, or such lesser amount as the Secretary may prescribe; and, on or before the 20th day after the end of the month, shall pay such deductions to the market administrator. Such moneys shall be expended by the market administrator to verify weights, samples, and tests of the milk of such producers and to provide such producers with market information. Such services shall be performed in whole or in part by the market administrator or by an agent engaged by and responsible to him.

(b) Cooperative associations. In the case of producers who are members of a cooperative association, which the Secretary has determined is actually performing the services set forth in paragraph (a) of this section and which is not receiving payment for its producer members, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions from the payments to be made to such producers pursuant to § 1099.73(b) as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers, and on or before the 20th day after the end of each month, pay over such deductions to the association rendering such services.

Dated: January 19, 1993.

Jo Ann R. Smith,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–1755 Filed 2–1–93; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91–NM–158–AD; Amdt. 39–8478; AD 93–01–24]

Airworthiness Directives; Airbus Industrie Model A300 B2, B4–100, and B4–200 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 A300 series airplanes, that requires supplemental structural inspections to detect fatigue cracking, and repair or replacement, if necessary; or the installation of specific modifications. This amendment is prompted by a structural reevaluation, which identified certain significant structural components to inspect for fatigue cracks as these airplanes approach and exceed the manufacturer's original fatigue design life goal. The actions specified by this AD are intended to prevent reduced structural integrity of these airplanes.

DATES: March 9, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 9, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700

Blagnac, 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: Mr. Greg Holt, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2140; 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 A300 series airplanes was published in the **Federal Register** on May 28, 1992 (57 FR 22443). That action proposed to require supplemental structural inspections to detect fatigue cracking, and repair or replacement, if necessary; or the installation of specific modifications.

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.

One commenter, Airbus Industrie, requests that the applicability of the AD be revised to include Model A300 C4 and A300 F4 series airplanes. The commenter provides no justification for this request. The FAA does not concur. The FAA has not issued type certificates for Model A300 C4 or A300 F4 series airplanes. The FAA cannot issue AD's applicable to airplane models for which U.S. type certificates have not been issued.

Airbus Industrie also requests that the risk ratios identified in paragraphs (d) and (e) of the proposed rule not be identified as percents. The commenter suggests that these sentences be revised to read, "* * * a certain value of 'Risk Ratio' (RR) equal to 100," rather than the proposed phrasing, which reads, "* * * a certain value of 'Risk Ratio' (RR) equal to 100 percent * * *" The FAA concurs with the commenter's suggestion, since the revised phrasing is more accurate. The final rule has been revised accordingly.

One commenter requests that the reporting requirements specified in the proposed rule be extended. The commenter notes that the proposed AD would require reporting requirements that correspond with those specified in chapters 5 and 7 of the Airbus Industrie A300 Supplemental Structural Inspection Document (SSID). The commenter asks that the FAA require submittal of reports of initial findings within 7 days and complete reports of inspection results on a quarterly basis. The commenter justifies this request by noting that its program administration is not available at night or on weekends; consequently, the reporting requirement in the proposed AD does not allow sufficient time to prepare and submit a report.

The FAA concurs partially. The reporting requirements of chapters 5 and 7 of the SSID apply only to those airplanes selected for the Fleet Leader Program (FLP). The level of safety of airplanes that are not part of the FLP is ensured by the accomplishment of inspections on airplanes that are part of the FLP. Therefore, it is essential that initial inspection findings and complete inspection reports for those airplanes that are part of the FLP be submitted within the time period identified in the SSID so that appropriate action can be taken in a timely manner with regard to the remainder of the fleet. Consequently, the FAA has changed paragraph (h) of the final rule to clarify that only those airplanes that are part of the FLP are subject to the reporting requirements of that paragraph. In addition, a new paragraph (i) has been included in the final rule to state that, for all airplanes that are not part of the FLP, the inspection results must be reported in accordance with instructions provided in the applicable service bulletins identified in Chapter 6 of the SSID.

The wording of paragraphs (g) and (h) of the final rule has been clarified to highlight the fact that Chapter 5 of the SSID identifies those airplanes selected for the FLP.

Paragraph (k) of the final rule [designated as paragraph (j) of the proposed AD] has been revised to clarify the procedure for requesting alternative methods of compliance with this AD.

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

The FAA estimates that 52 airplanes of U.S. registry will be affected by this AD, that it will take approximately 564 work hours per airplane (including estimated work hours for access, inspection, and close-up) to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,613,040, or $31,020 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

93–01–24. Airbus Industrie: Amendment 39–8478. Docket 91–NM–158–AD.

Applicability: All Model A300 B2, B4–100, and B4–200 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent

reduced structural integrity of these airplanes, accomplish the following:

(a) Within one year after the effective date of this AD, incorporate a revision into the FAA-approved maintenance inspection program that provides for supplemental maintenance, inspections, modifications, repair, or replacement of the significant structural details (SSD) and significant structural items (SSI) specified in Airbus Industrie A300 Supplemental Structural Inspection Document (SSID), dated September 1989 (hereafter referred to as "the SSID").

(b) Cracked structure detected during the inspections required by paragraph (a) of this AD must be repaired or replaced, prior to further flight, in accordance with the service bulletins listed in Chapter 6 of the A300 SSID, or in accordance with other data meeting the certification basis of the airplane which is approved by the FAA or by the Direction Generale de l'Aviation Civile (DGAC).

(c) For airplanes identified in Chapter 5, Fleet Leader Program (FLP), of the SSID: Inspect according to the instructions and intervals specified in Chapter 4, paragraph 4.4, and Chapter 9 of the A300 SSID for each SSD.

(d) For Model A300–B2 series airplanes: For any SSD that has exceeded a certain value of "Risk Ratio" (RR) equal to 100, or equal to the values of the threshold specified in Chapter 9 of the SSID when the RR curves are not provided, inspect within 2,000 landings after the effective date of this AD.

(e) For Model A300–B4 series airplanes: For any SSD that has exceeded a certain value of RR equal to 100, or equal to the values of the threshold specified in Chapter 9 of the SSID when the RR curves are not provided, inspect within 1,500 landings after the effective date of this AD.

(f) For the FLP airplanes (identified in Chapter 5 of the SSID): Within one year after the effective date of this AD, set up a procedure that ensures monitoring of each SSD in accordance with the calculation method of RR described in Chapter 4 of the SSID.

(g) For the FLP airplanes (identified in Chapter 5 of the SSID) that are listed in Chapter 7, SSI List, of the SSID: Inspect at intervals not to exceed the interval for each SSI, in accordance with the values given in Chapter 7 of the SSID after adjustment according to the method described in Chapter 4, paragraph 4.4, of the SSID.

(h) For the FLP airplanes (identified in Chapter 5 of the SSID): All inspection results, positive or negative, must be reported to Airbus Industrie in accordance with the instructions in Chapter 5, paragraph 5.2, and Chapter 7, paragraph 7.1, of the SSID. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) and have been assigned OMB Control Number 2120–0056.

(i) For all airplanes that are not part of the FLP (those not identified in Chapter 5 of the SSID): All inspection results, positive or negative, must be reported to Airbus Industrie in accordance with the instructions in the applicable service bulletins identified in Chapter 6 of the SSID. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) and have been assigned OMB Control Number 2120–0056.

(j) Accomplishment of the requirements of this AD constitutes terminating action for the requirements of the following AD's:

89–25–07	89–26–03	90–02–20
90–02–21	90–03–01	90–03–14
90–06–01	90–06–05	90–06–08
90–06–11	90–06–15	90–06–17
90–07–03	90–08–19	

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

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

(l) 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.

(m) The maintenance, inspections, modifications, repair, and replacement shall be done in accordance with Airbus Industrie A300 Supplemental Structural Inspection Document (SSID), dated September 1989. 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, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, 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.

(n) This amendment becomes effective on March 9, 1993.

Issued in Renton, Washington, on January 15, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–2277 Filed 2–1–93; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 92–NM–81–AD; Amendment 39–8481; AD 93–01–27]

Airworthiness Directives; Boeing Model 737–100, –200, –300, and –400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737–100, –200, –300, and –400 series airplanes, that requires replacement of plastic flight control cable guards with aluminum cable guards, relocation of previously-installed cable guards, and verification that grommets are properly installed. This amendment is prompted by a report of locked elevator controls and horizontal stabilizer trim caused by cable guards that had melted onto the control cables. The actions specified by this AD are intended to prevent the loss of primary and secondary pitch control.

DATES: Effective March 9, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 9, 1993.

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

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Rodriguez, Aerospace Engineer, Seattle Aircraft Certification Office, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2779; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Boeing Model 737–100, –200, –300, and –400 series airplanes was published in the Federal Register on August 27, 1992 (57 FR 38784). That action proposed to require replacement of plastic flight control cable guards with aluminum cable guards, relocation of previously-installed cable guards, and verification that grommets are properly installed.

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 that the proposed compliance time for replacement of the cable guards be increased from 18 to 48 months after the effective date of the AD. One ATA member expresses concern that the proposed compliance time does not allow sufficient lead time to obtain required parts. Another ATA member that operates a large fleet of these airplanes requests the compliance time extension so that the retrofit can be accomplished during a scheduled "D" check, rather than special scheduling the modification at considerable expense.

Another commenter requests that a statement be added to the proposal indicating that operators of airplanes on which aluminum cable guards have been installed in accordance with the service bulletin cited in the notice may delay installation of grommets until the next layover check, regardless of the 18-month compliance time. This commenter has installed aluminum cable guards, but has not installed grommets. The commenter believes that the amount of airplane down time required to accomplish the grommet installation within the proposed 18-month compliance time would have an adverse affect on its operation.

In light of these considerations, the FAA concurs that an extension of the proposed compliance time to 48 months is warranted. Paragraphs (a) and (b) of the final rule have been revised accordingly. The FAA has determined that such extension will not adversely impact safety.

One commenter requests that the proposed rule be withdrawn. Based on the unique series of events that transpired to cause the addressed service difficulty, the commenter believes this incident should be considered an isolated occurrence. The commenter also indicates that sufficient methods exist (i.e., an overheat light and a pre-flight controls check) to ensure early detection of the problem, the probability of a similar incident occurring in the future is extremely low, and the majority of the Model 737 fleet will be retrofitted with aluminum cable guards within a reasonable time. If the rule is not withdrawn, the commenter requests that the compliance time be significantly increased to provide sufficient lead time for the modification kits to be ordered and shipped and to provide an opportunity for kit installation to be integrated into operators' scheduled maintenance plans.

The FAA does not concur with this commenter's request to withdraw the proposed rule. The FAA has determined that sufficient data exist to demonstrate that locked elevator controls and horizontal stabilizer trim could recur if plastic cable guards were to melt onto the control cables. This condition is considered unsafe since it could result in the loss of primary and secondary pitch control. The FAA has determined that replacement of plastic cable guards with aluminum cable guards, relocation of previously-installed cable guards, and verification that grommets are installed properly, as required by this AD action, will positively address the unsafe condition. Therefore, the FAA will not withdraw the proposed rule. However, the FAA does concur with the commenter's request to increase the proposed compliance time, as reflected in the FAA's response to the comments discussed previously.

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

There are approximately 1,851 Boeing Model 737 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 636 airplanes of U.S. registry will be affected by this AD, that it will take approximately 21 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 $1,753 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,849,488, or $2,908 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

93-01-27. Boeing: Amendment 39-8481. Docket 92-NM-91-AD.

Applicability: Model 737-100, -200, -300, and -400 series airplanes, through line number 1869; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the loss of primary and secondary pitch control, accomplish the following:

(a) Within 48 months after the effective date of this AD, replace plastic flight control cable guards with aluminum cable guards, in accordance with Boeing Service Bulletin 737-27A1164, Revision 1, dated November 14, 1991.

(b) Within 48 months after the effective date of this AD, remove any previously-installed aluminum cable guards located at right buttock line (RBL) 6.60, between body stations (BS) 947.5 and 967, and relocate the aluminum cable guards to RBL 14.75, between BS 947.5 and 967; and verify that grommets are properly installed at all locations; in accordance with Boeing Service Bulletin 737-27A1164, Revision 1, dated November 14, 1991.

(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, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

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

(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 replacement, relocation, and verification shall be done in accordance with Boeing Service Bulletin 737–27A1164, Revision 1, dated November 14, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW, Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on March 9, 1993.

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

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–2278 Filed 2–1–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 92–NM–247–AD; Amendment 39–8482; AD 93–01–28]

Airworthiness Directives; McDonnell Douglas Model DC–10 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–10 series airplanes. This action requires inspections to detect cracks in the left and right wing-to-fuselage titanium attach tees and repair, if necessary. This amendment is prompted by a report of a fatigue crack in the wing-to-fuselage titanium attach tee. The actions specified in this AD are intended to prevent failure of the wing-to-fuselage titanium attach tee and subsequent reduced structural integrity of the fuselage.

DATES: Effective February 17, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 17, 1993.

Comments for inclusion in the Rules Docket must be received on or before April 5, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM- 103, Attention: Rules Docket No. 92–NM–247–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846–1771, Attention: Business Unit Manager, Technical Publications - Technical Administrative Support, C1–L5B. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Maureen A. Moreland, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5238; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: Recently, an operator of McDonnell Douglas Model DC–10 series airplanes reported that a 31-inch fatigue crack was found in the wing-to-fuselage titanium attach tee. The crack generally followed the fillet radius of the undercut pocket in the lower end of the attach tee upper leg. The crack was found on a Model DC–10 series airplane that had accumulated 59,419 flight hours and 24,606 landings.

Inspection of the wing-to-fuselage titanium attach tee is required by AD 92–02–08, Amendment 39–8144 (57 FR 3931, February 3, 1992). That AD requires inspection of various Principal Structural Elements (PSE's), including the tee, in accordance with McDonnell Douglas Report No. L26–012, "DC–10 Supplemental Inspection Document (SID)." The tee is designated as PSE number 53.10.047 (left side) and 53.10.048 (right side).

For all of the Model DC–10–10 and –15 series airplanes, inspection of this PSE (the tee) follows the 100 percent inspection criteria with a fatigue life threshold (N_{th}) of 38,484 landings. The 100 percent inspection criteria requires that all airplanes in the population be inspected before reaching N_{th}.

For Model DC–10–30 and –40 series airplanes, inspections of this PSE (the tee) follows the fleet leader sampling criteria with an N_{th} of 31,897 landings. The fleet leader sampling criteria requires sampling inspection of airplanes in the sampling population after they have exceeded $N_{th/2}$ (15,948 landings). Sampling inspection of this PSE for the population of Model DC–10–30 and –40 series airplanes began in September 1989 for those airplanes that had exceeded 15,948 landings.

Subsequent to the recent finding of a fatigue crack in this PSE (the tee), the manufacturer evaluated the fatigue and damage tolerance characteristics for this PSE. The evaluation indicated that the fatigue life of the wing-to-fuselage titanium attach tee installed on airplanes having fuselage numbers 1 through 83 is shorter than that initially predicted by the SID. Fatigue life improvements for the wing-to-fuselage tee were incorporated in production for airplanes having fuselage numbers 84 and subsequent. Because these fatigue life improvements were not incorporated on airplanes having fuselage numbers 1 through 83, these earlier Model DC–10 series airplanes are susceptible to fatigue cracking prior to the fatigue life threshold that is indicated for this PSE (the tee) in the SID.

Since fatigue cracking has been detected on an airplane that had not yet reached the fatigue life threshold for this PSE (the tee), and since the manufacturer's evaluation indicated that such cracking could occur on other Model DC–10 series airplanes having fuselage numbers 1 through 83, the FAA has determined that inspection of this area is warranted on all Model DC–10 series airplanes having fuselage numbers 1 through 83.

Cracking and eventual failure of the wing-to-fuselage titanium attach tee, if not detected and corrected, could result in reduced structural integrity of the fuselage.

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin A53–164, dated December 16, 1992, that describes procedures for a visible dye penetrant inspection to detect cracking in the left and right wing-to-fuselage titanium attach tees.

Since an unsafe condition has been identified that is likely to exist or develop on other McDonnell Douglas Model DC–10 series airplanes of the same type design, this AD is being

issued to prevent failure of the wing-to-fuselage titanium attach tee and subsequent reduced structural integrity of the fuselage. This AD requires visible dye penetrant inspections to detect cracks in the left and right wing-to-fuselage titanium attach tees. The actions are required to be accomplished in accordance with the service bulletin described previously. This AD also requires repair of cracked wing-to-fuselage titanium attach tees.

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

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-247-AD." The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

93-01-28. McDonnell Douglas: Amendment 39-8482. Docket 92-NM-247-AD.

Applicability: Model DC-10 series airplanes, manufacturer's fuselage numbers 1 through 83, inclusive, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the wing-to-fuselage titanium attach tee and subsequent reduced structural integrity of the fuselage, accomplish the following:

(a) Within 45 days after the effective date of this AD, unless accomplished within the last 2,190 landings prior to the effective date of this AD, perform a visible dye penetrant inspection to detect cracks in the right and left wing-to-fuselage titanium attach tees, in accordance with McDonnell Douglas Alert Service Bulletin A53-164, dated December 16, 1992.

Note: Inspections of Principal Structural Elements 53.10.047 and 53.10.048 performed in accordance with McDonnell Douglas Report No. L26-012, "DC-10 Supplemental Inspection Document (SID)," Volume II, Revision 1, dated May 1990; or Revision 2, dated April 1992; constitute compliance with this paragraph.

(1) If no crack is found, repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 2,190 landings.

(2) If any crack is found, prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

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

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

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

(d) The inspections shall be done in accordance with McDonnell Douglas Alert Service Bulletin A53-164, dated December 16, 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 McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846-1771, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1-L5B. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on February 17, 1993.

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

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–2083 Filed 2–1–93; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 71

[Airspace Docket No. 91–ACE–4]

Alteration of Transition Area; Ames, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the final rule published on December 7, 1992. This final rule altered the 700-foot transition area at Ames, Iowa, to provide controlled airspace for aircraft executing a new instrument approach procedure at the Ames, Iowa, Municipal Airport utilizing a localizer located on the airport.

EFFECTIVE DATE: 0901 u.t.c., February 4, 1993.

FOR FURTHER INFORMATION CONTACT: Dale Carnine, Airspace Specialist, System Management Branch, Air Traffic Division, ACE–530, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426–3408.

SUPPLEMENTARY INFORMATION: On December 7, 1992, the Federal Aviation Administration (FAA) published a final rule that amended part 71 of the Federal Aviation Regulations to alter the transition area at Ames, Iowa (57 FR 57662). The longitude of the Ames Municipal Airport, Iowa, was the same as that given for the Ames NDB.

Correction of Final Rule

Accordingly, pursuant to the authority delegated to me, the publication on December 7, 1992, FR Doc. No. 92–29584, and the description in FAA Order 7400.7A, which is incorporated by reference in 14 CFR 71.1, are corrected as follows:

§71.1 [Corrected]

On page 57662, in the second column, the description for "ACE IA TA Ames Municipal Airport, Iowa" is corrected by removing "Longitude 93°37'37" W" and inserting in its place "Longitude 93°37'18" W"

Billy G. Peacock,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 93–2055 Filed 2–1–93; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 27115; Amdt. No. 1529]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

For Examination—

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

For Purchase—

Individual SIAP copies may be obtained from:

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

By Subscription—

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

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

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

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

The Rule

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

conditions existing at the affected airports.

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

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

Conclusion

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

List of Subjects in 14 CFR Part 97

Approaches, Standard Instrument, Incorporation by reference.

Issued in Washington, DC on January 15, 1993.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

2. Part 97 is amended to read as follows:

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

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

NFDC TRANSMITTAL LETTER

Effective	State	City	Airport	FDC No.	SIAP
01/04/93	TX	Houston	Houston-Southwest	FDC 3/0016	NDB Rwy 9, Amdt 4A.
01/05/93	CA	Merced	Merced Muni-Macready Field	FDC 3/0037	LOC BC Rwy 12, Amdt 8.
01/06/93	MO	Charleston	Mississippi County	FDC 3/0061	NDB Rwy 36, Amdt 2.
01/07/93	NC	North Wilkesboro	Wilkes County	FDC 3/0082	NDB Rwy 1, Amdt 1.
01/07/93	NC	Roxboro	Person County	FDC 3/0085	NDB Rwy 6, Amdt 1.
01/07/93	NY	Potsdam	Potsdam Muni (Damon Field)	FDC 3/0100	NDB Rwy 24, Amdt 3.
01/08/93	MA	Bedford	Laurence G. Hanscom Field	FDC 3/0110	NDB Rwy 11, Amdt 19A.
01/08/93	ND	Pembina	Pembina Muni	FDC 3/0122	VOR Rwy 33, Amdt 6.
01/11/93	WA	Moses Lake	Grant County	FDC 3/0151	ILS Rwy 32R, Amdt 17.
01/11/93	WA	Moses Lake	Grant County	FDC 3/0152	NDB Rwy 32R, Amdt 15.
01/11/93	WA	Moses Lake	Grant County	FDC 3/0153	VOR Rwy 32R, Amdt 18.
01/11/93	WA	Moses Lake	Grant County	FDC 3/0154	VOR Rwy 21, Amdt 3.
01/11/93	WA	Moses Lake	Grant County	FDC 3/0155	RNAV Rwy 21, Amdt 6.
01/11/93	WA	Moses Lake	Grant County	FDC 3/0157	VOR Rwy 3, Amdt 4.
01/11/93	WA	Moses Lake	Grant County	FDC 3/0158	VOR Rwy 14L, Amdt 10.
01/12/93	IL	Sparta	Sparta Community-Hunter Field	FDC 3/0163	NDB Rwy 18, Orig.
01/12/93	NY	Poughkeepsie	Dutchess County	FDC 3/0168	VOR/DME Rwy 6, Amdt 5.
01/13/93	GA	Rome	Richard B. Russell	FDC 3/0183	VOR/DME Rwy 1, Amdt 8.
11/30/92	TX	Nocogdoches	A L Mangham Jr Regional	FDC 2/7147	LOC Rwy 36, Orig.
12/22/92	MA	Boston	General Edward Lawrence Logan Intl	FDC 2/7626	ILS Rwy 4R (Cat II), Amdt 7A.
12/30/92	TX	Houston	Houston-Southwest	FDC 2/7743	RNAV Rwy 9, Amdt 1A.
12/30/92	TX	Houston	Houston-Southwest	FDC 2/7744	RNAV Rwy 27, Amdt 2A.
12/30/92	TX	Houston	Houston-Southwest	FDC 2/7745	NDB Rwy 27, Amdt 3A.
12/30/92	TX	Houston	Houston-Southwest	FDC 2/7746	LOC/DME Rwy 9, Amdt 2A.
12/31/92	MO	Aurora	Aurora Memorial Muni	FDC 2/7755	VOR/DME–A, Amdt 2.

NFDC Transmittal Letter Attachment

Rome

Richard B. Russell
Georgia
VOR/DME RWY 1, AMDT 8 . . .
Effective: 01/13/93
FDC 3/0183/RMG/ FI/P Richard B. Russell, Rome, GA. VOR/DME RWY 1, AMDT 8 . . . S–1 VIS 1 ¼ CAT C, add note . . . inoperative table does not apply to CAT C. This becomes VOR/DME RWY 1, AMDT 8A.

Merced

Merced Muni-MacReady Field
California
LOC BC RWY 12 AMDT 8. . .
Effective: 01/05/93
FDC 3/0037/MCE/ FI/P Merced Muni-Macready Field, Merced, CA. LOC BC RWY 12 AMDT 8 . . . add profile note . . . disregard glide slope indications. This becomes LOC BC RWY 12 AMDT 8A.

Sparta

Sparta Community-Hunter Field
Illinois
NDB RWY 18 Orig. . .
Effective: 01/12/93
FDC 3/0163/SAR/ FI/P Sparta Community—Hunter Field, Sparta, IL. NDB RWY 18 ORIG . . . terminal routes . . . delete feeders FAM VORTAC to SAR NDB, TOY VORTAC to SAR NDB, ENL VORTAC to SAR NDB. This is NDB RWY 18 ORIG–A.

Boston

General Edward Lawrence Logan Intl
Massachusetts
ILS RWY 4R (CAT II) AMDT 7A. . .
Effective: 12/22/92
FDC 2/7626/BOS/ FI/P General Edward Lawrence Logan Intl, Boston, MA. ILS RWY 4R (CAT II) AMDT 7A . . . delete—approach minima when control tower reports tall vessels in approach area and inoperative table does not apply. Add note—when control tower reports tall vessels in approach area, PROC NA. ILS RWY 4R (CAT III) AMDT 7A . . . add note—when control tower reports tall vessels in approach area, PROC NA. This is ILS RWY 4R AMDT 7B.

Bedford

Laurence G. Hanscom Field
Massachusetts
NDB RWY 11 AMDT 19A. . .
Effective: 01/08/93
FDC 3/0110/BED/ FI/P Laurence G. Hanscom Field, Bedford, MA. NDB RWY 11 AMDT 19A . . . circling CAT C MDA 720/ HAA 587. This is NDB RWY 11 AMDT 19B.

Aurora

Aurora Memorial Muni
Missouri
VOR/DME–A AMDT 2. . .
Effective: 12/31/92
FDC 2/7755/2H2/ FI/P Aurora Memorial Muni, Aurora, MO. VOR/DME–A AMDT 2 . . . MSA 200–020 2900'. This is VOR/ DME–A AMDT 2A.

Charleston

Mississippi County
Missouri
NDB RWY 36 AMDT 2. . .
Effective: 01/06/93
FDC 3/0061/CHQ FI/P Mississippi County, Charleston, MO. NDB RWY 36 AMDT 2 . . . TRML RTE . . . MAW VORTAC to CHQ NDB 2000. This is NDB RWY 36 AMDT 2A

North Wilkesboro

Wilkes County
North Carolina
NDB RWY 1 AMDT 1 . . .
Effective: 01/07/93
FDC 3/0082/UKF FI/P Wilkes County, North Wilkesboro, NC. NDB RWY 1 AMDT 1 . . . terminal route . . . PUMMP INT/ RADAR (IAF) to UK LOM (NOPT) 005/8.3. This becomes NDB RWY 1 AMDT 1A.

Roxboro

Person County
North Carolina
NDB RWY 6 AMDT 1 . . .
Effective: 01/07/93
FDC 3/0085/TDF/ FI/P Person County, Roxboro, NC. NDB RWY 6 AMDT 1 . . . terminal route DAN VOR to HUR NDB. Chg min alt to 2700. Delete Raleigh-Durham altimeter setting minimums. Change note . . . if local altimeter not received use Raleigh-Durham setting and increase all MDA's 100 ft. This becomes NDB RWY 6 AMDT 1A.

Pembina

Pembina Muni
North Dakota
VOR RWY 33 AMDT 6. . .
Effective: 01/08/93
FDC 3/0122/PMB/ FI/P Pembina Muni, Pembina, ND. VOR RWY 33 AMDT 6 . . . add note . . . chart . . . Princeton radio 122.1R. This is VOR RWY 33 AMDT 6A.

Potsdam

Potsdam Muni (Damon Field)
New York
NDB RWY 24 AMDT 3. . .
Effective: 01/07/93
FDC 3/0100/PTD/ FI/P Potsdam Muni (Damon Field), Potsdam, NY. NDB RWY 24 AMDT 3 . . . DLT . . . CAT D MINS; DLT note . . . activate MIRL . . . thru . . . CTAF. This is NDB RWY 24 AMDT 3A.

Poughkeepsie

Dutchess County
New York
VOR/DME RWY 6 AMDT 5. . .
Effective: 01/12/93
FDC 3/0168/POU/ FI/P Dutchess County, Poughkeepsie, NY. VOR/DME RWY 6 AMDT 5 . . . S–6 CATS A/B VIS 1. Add note . . . INOP table does not apply to CATS A/B. This is VOR/DME RWY 6 AMDT 5A.

Nocogdoches

A L Mangham Jr Regional
Texas
LOC RWY 36 ORIG. . .
Effective: 11/10/92
FDC 2/7147/OCH/ FI/P A L Mangham Jr Regional, Nocogdoches, TX. LOC RWY 36 ORIG. . . S–36/circling category D NA; DME MINS. . . S–36/circling CAT D NA. ALTN MINS NA. This is LOC RWY 36 ORIG A.

Houston

Houston-Southwest
Texas
RNAV RWY 9 AMDT 1A. . .
Effective: 12/30/92
FDC 2/7743/AXH/ FI/P Houston-Southwest, Houston, TX. RNAV RWY 9 AMDT 1A. . . S–9 MDA/HAT ALL CATS 540/472, VIS CAT C 1 1/4, circling MDA/ HAA ALL CATS 580/512. This is RNAV RWY 9 AMDT 1B

Houston

Houston-Southwest
Texas
RNAV RWY 279 AMDT 2A. . .
Effective: 12/30/92
FDC 2/7744/AXH/ FI/P Houston-Southwest, Houston, TX. RNAV RWY 27 AMDT 2A. . . S–27 MDA/HAT ALL CATS 540/473, VIS CAT C 1 1/4, circling MDA/ HAA ALL CATS 580/512. This is RNAV RWY 27 AMDT 2B.

Houston

Houston-Southwest
Texas
NDB RWY 27 AMDT 3A. . .
Effective: 12/30/92
FDC 2/7745/AXH/ FI/P Houston-Southwest, Houston, TX. NDB RWY 27 AMDT 3A. . . S–27 MDA/HAT ALL CATS 700/633, VIS CAT C 1 3/4, circling MDA/ HAA ALL CATS 700/632, VIS CAT C 1 3/4. This is NDB RWY 27 AMDT 3B.

Houston

Houston-Southwest
Texas
LOC/DME RWY 9 AMDT 2A. . .
Effective: 12/30/92
FDC 2/7746/AXH/ FI/P Houston-Southwest, Houston, TX. LOC/DME RWY 9 AMDT 2A. . .circling MDA/HAA ALL CATS 580/512. This is LOC/DME RWY 9 AMDT 2B.

Houston

Houston-Southwest
Texas
NDB RWY 9 AMDT 4A. . .
Effective: 01/04/93
FDC 3/0016/AXH/ FI/P Houston-Southwest, Houston, TX NDB RWY 9 AMDT 4A. . .S–9 MDA 580/HAT 512 ALL CATS. VIS CAT C 1–1/2. Circling MDA 580/HAA 513 ALL CATS. This is NDB RWY 9 AMDT 4B.

Moses Lake

Grant County
Washington
ILS RWY 32R, AMDT 17. . .
Effective: 01/11/93
FDC 3/0151/MWH/ FI/P Grant County, Moses Lake, WA. ILS RWY 32R, AMDT 17. . .delete light activation note. . .activate MALSR RWY 32R—CTAF. This becomes ILS RWY 32R, AMDT 17A.

Moses Lake

Grant County
Washington
NDB RWY 32R, AMDT 15. . .
Effective: 01/11/93
FDC 3/0152/MWH/ FI/P Grant County, Moses Lake, WA. NDB RWY 32R, AMDT 15. . .delete light activation note. . .activate MALSR RWY 32R—CTAF. This becomes NDB RWY 32R, AMDT 15A.

Moses Lake

Grant County
Washington
VOR RWY 32R, AMDT 18. . .
Effective: 01/11/93
FDC 3/0153/MWH/ FI/P Grant County, Moses Lake, WA. VOR RWY 32R, AMDT 18. . .delete light activation note. . .activate MALSR RWY 32R—CTAF. This becomes VOR RWY 32R, AMDT 18A.

Moses Lake

Grant County
Washington
VOR RWY 21, AMDT 3. . .
Effective: 01/11/93
FDC 3/0154/MWH/ FI/P Grant County, Moses Lake, WA. VOR RWY 21R, AMDT 3. . .delete light activation note. . .activate MALSR RWY 32R—CTAF. This becomes VOR RWY 21, AMDT 3A.

Moses Lake

Grant County
Washington
RNAV RWY 21, AMDT 6. . .
Effective: 01/11/93
FDC 3/0155/MWH/ FI/P Grant County, Moses Lake, WA. RNAV RWY 21, AMDT 6. . .delete light activation note. . .activate MALSR RWY 32R—CTAF. This becomes RNAV RWY 21, AMDT 6A.

Moses Lake

Grant County
Washington
VOR RWY 3, AMDT 4. . .
Effective: 01/11/93
FDC 3/0157/MWH/ FI/P Grant County, Moses Lake, WA. VOR RWY 3, AMDT 4. . .delete light activation note. . .activate MALSR RWY 32R—CTAF. This becomes ILS RWY 3, AMDT 4A.

Moses Lake

Grant County
Washington
VOR RWY 14L, AMDT 10. . .
Effective: 01/11/93
FDC 3/0158/MWH/ FI/P Grant County, Moses Lake, WA. VOR RWY 14L, AMDT 10. . .add 'NOPT' to each 10 DME initial arc segment. Delete light activation note. . .activate MALSR RWY 32R—CTAF. This becomes VOR RWY 14L, AMDT 10A.

[FR Doc. 93–2050 Filed 2–1–93; 8:45 am]
BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 27114; Amdt. No. 1528]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

EFFECTIVE DATE: An effective date for each SIAP is specified in the amendatory provisions.

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

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

For Examination—

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

For Purchase—

Individual SIAP copies may be obtained from:

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

By Subscription—

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

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

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

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

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

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

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally

current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

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

Issued in Washington, DC, on January 15, 1993.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

2. Part 97 is amended to read as follows:

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

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

** * * Effective April 1, 1993*

Jackson, CA, Westover Field Amador County, VOR/DME RWY 1, Orig.
Windsor Locks, CT, Bradley International, VOR or TACAN RWY 6, Orig.
Windsor Locks, CT, Bradley International, VOR/DME RWY 6, Orig. A, Cancelled
Windsor Locks, CT, Bradley International, VOR or TACAN RWY 15, Amdt. 2
Windsor Locks, CT, Bradley International, VOR or TACAN RWY 24, Amdt. 1
Windsor Locks, CT, Bradley International, VOR or TACAN RWY 33, Orig.
Windsor Locks, CT, Bradley International, NDB RWY 6, Amdt. 26
Windsor Locks, CT, Bradley International, ILS RWY 24, Amdt. 6
Windsor Locks, CT, Bradley International, ILS RWY 33, Amdt. 4
Destin, FL, Destin-Fort Walton Beach, RADAR–1, Amdt. 7
Colby, KS, Shaltz Field, NDB RWY 17, Amdt. 3, Cancelled
Colby, KS, Shaltz Field, NDB RWY 17, Orig.
Richmond, KY, Madison, VOR/DME RNAV RWY 36, Amdt. 6
De Ridder, LA, Beauregard Parish, RADAR–1, Orig.
Grand Rapids, MI, Kent County Intl, ILS RWY 8R, Amdt. 4
Columbus, OH, Ohio State University, VOR/DME RNAV RWY 27L, Amdt. 6
Willard, OH, Willard, VOR–A, Amdt. 5, Cancelled
Willard, OH, Willard, VOR/DME–A, Orig.
Lewisburg, TN, Ellington, NDB RWY 20, Amdt. 4
Dallas-Fort Worth, TX, Dallas/Fort Worth International, ILS RWY 17L, Amdt. 5
Dallas-Fort Worth, TX, Dallas/Fort Worth International, ILS RWY 18R, Amdt. 4

** * * Effective March 4, 1993*

Baltimore, MD, Baltimore-Washington Intl, ILS RWY 33L, Amdt. 6
Baltimore, MD, Baltimore-Washington Intl, ILS/DME RWY 33R, Amdt. 2
Muskegon, MI, Muskegon County, ILS RWY 24, Amdt. 3
Grain Valley, MO, East Kansas City, VOR RWY 23, Amdt. 2
Grain Valley, MO, East Kansas City, VOR/DME RNAV RWY 27, Amdt. 1
Beatrice, NE, Beatrice Municipal, VOR RWY 13, Amdt. 15
Whitefield, NH, Mount Washington Regional, LOC RWY 10, Amdt. 3
Whitefield, NH, Mount Washington Regional, NDB RWY 10, Amdt. 6
Toms River, NJ, Robert J. Miller Air Park, ILS RWY 6, Amdt. 1
Chambersburg, PA, Chambersburg Muni, VOR–B, Amdt. 1, Cancelled
Chambersburg, PA, Chambersburg Muni, VOR/DME–B, Orig.
Doylestown, PA, Doylestown, VOR RWY 23, Amdt. 6
Doylestown, PA, Doylestown, NDB RWY 23, Amdt. 2
Pittsburgh, PA, Allegheny County, VOR/DME RNAV RWY 10, Amdt. 6
Shamokin, PA, Northumberland County, VOR RWY 8, Amdt. 3
Washington, PA, Washington Co., NDB RWY 27, Orig.
Point Pleasant, WV, Mason County, VOR/DME–A, Amdt. 4
Beckley, WV, Raleigh County Memorial, VOR/DME RWY 1, Amdt. 3
Beckley, WV, Raleigh County Memorial, VOR RWY 10, Amdt. 12
Beckley, WV, Raleigh County Memorial, VOR RWY 19, Amdt. 3
Beckley, WV, Raleigh County Memorial, ILS RWY 19, Amdt. 3

** * * Effective February 4, 1993*

Marshall, MO, Marshall Mem'l Muni, NDB RWY 36, Orig.
Myerstown, PA, Deck Airport, VOR/DME–A, Orig.

** * * Effective January 4, 1993*

Fairview, OK, Fairview Muni, NDB RWY 17, Amdt. 3

[FR Doc. 93–2051 Filed 2–1–93; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

23 CFR Part 140

[FHWA Docket No. 92–7]

RIN 2125–AC96

Reimbursement; Temporary Matching Fund Waiver

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is issuing the final regulations establishing procedures for a temporary waiver of State matching fund requirements as mandated by section 1054 of the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991. Section 1054 of the ISTEA authorizes a State to request an increase in the Federal share (normally 75 to 90 percent) of the construction costs of a qualifying Federal-aid highway project based upon a certification by the Governor of the State that sufficient funds are not available to pay the cost of the non-Federal share of the project. The provisions permit a State to receive up to 100 percent Federal funds on a project for a period through September 30, 1993. The State is required to repay the amount of funds received above the regular Federal share by March 30, 1994. If the State does not make the repayment, 50 percent of the amount will be deducted from the State's apportionments in fiscal year 1995 and the remaining 50 percent in fiscal year 1996.

EFFECTIVE DATE: February 2, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Max I. Inman, Chief, Federal/States Financial Management Branch, (202) 366–2853; or Mr. Steven M. Rochlis, Office of the Chief Counsel, (202) 366–0761, 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 Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991, Pub. L. 102–240, 105 Stat. 1914 (1991), was signed by the President on December 18, 1991. Section 1054 of the ISTEA provides that a State may request a

waiver of its normal share of the construction cost of a qualifying Federal-aid highway project provided the Governor of the State certifies that sufficient funds are not available to pay the cost of the non-Federal share of the project. The non-Federal share of a project normally ranges from 10 percent to 25 percent. This statute allows a State to claim Federal funds up to 100 percent of project costs until September 30, 1993. This regulation prescribes procedures for administering section 1054 of the ISTEA.

The amount claimed by the State in excess of the regular Federal share must be repaid by March 30, 1994. The State may choose not to make repayment which will result in a deduction from the State's apportionments in fiscal years 1995 and 1996. One-half of the amount to be repaid by the State will be deducted in each of the fiscal years.

Any amounts deducted from apportionments will be reapportioned to States which did not use the waiver and to States which made the repayment.

The statute establishes the requirements for a project to qualify for a temporary matching fund waiver. The project must receive Federal approval under title 23, United States Code, after December 18, 1991, the effective date of the ISTEA, and be subject to the Governor's certification that funds are not available to pay the cost of the non-Federal share of the project.

Discussion of Comments

A notice of proposed rulemaking was published in the **Federal Register** on July 16, 1992, requesting comments on the proposed rule. Two comments were received.

The first comment was from the U.S. Small Business Administration requesting a more complete explanation of the effect the rule will have on small entities. An explanation is included under the statement on the Regulatory Flexibility Act.

The second comment was received from a county transportation agency which recommended that the waiver of a local match be automatically provided regardless of the availability of State funds to pay for the non-Federal share of the project costs. The law specifically states that a waiver can be granted only when the State certifies that sufficient funds are not available to pay the cost of the non-Federal share of the project. Therefore, no change is made to the proposed rule.

A question was raised within FHWA regarding § 140.311, paragraph (e), which states that appropriate adjustments will be made to each State's obligation limitation. The provision suggests that obligation limitation will be deducted from the waiver States and distributed to the other States, which is misleading. Each State will receive obligation limitation based on its normal share of apportionments. Apportionments will then be adjusted to reflect the payback of the waivers. States receiving additional apportionments will also receive a proportional amount of obligation limitation from the allocation reserve. Subsection 140.311(e) is deleted from the final rule to avoid confusion.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not major within the meaning of Executive order 12291 or significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking will be minimal; therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act (Explanation and Analysis)

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, 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.

This rule is directed toward State governments, and it is anticipated that fewer than 15 States will qualify for temporary matching fund waivers. In some of these States, qualifying projects may be built in small local government jurisdictions and could result in a reduction of local government funds needed for the non-Federal share of project costs. However, no significant economic impact is expected on a substantial number of small entities because the matching fund waiver is temporary and the number of projects involving small entities is expected to be small.

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 do not 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 140

Accounting, Grant program-transportation, Highways and roads.

Issued on: January 15, 1993.

T.D. Larson,

Administrator.

In consideration of the foregoing, the FHWA hereby amends 23 CFR part 140 to read as follows:

PART 140—REIMBURSEMENT

1. The authority citation for 23 CFR part 140 is revised to read as follows:

Authority: 23 U.S.C. 101(e), 114(a), 120, 120 note, 121, 122 and 315; and 49 CFR 1.48(b).

2. Part 140 is amended by adding a new subpart C to read as follows:

Subpart C—Temporary Matching Fund Waiver

Sec.

140.301 Purpose.
140.303 Applicability.
140.305 Definitions.
140.307 Submission of certification by Governor.

Sec.
140.309 Request and approval of increase in Federal share.
140.311 Repayment of the increased Federal share.

Subpart C—Temporary Matching Fund Waiver

§ 140.301 Purpose.

The purpose of this regulation is to prescribe procedures for administering section 1054 of the Intermodal Surface Transportation Efficiency Act of 1991, providing for a temporary waiver of State matching fund requirements.

§ 140.303 Applicability.

The provisions of this subpart are applicable to qualifying projects as defined in § 140.305 during the period beginning October 1, 1991, and ending September 30, 1993.

§ 140.305 Definitions.

As used in this subpart:

Governor means the Governor of any one of the fifty States, or Puerto Rico, and includes the Mayor of the District of Columbia.

Increased Federal share means the portion of the approved Federal share which is in excess of the regular Federal share that would have been approved if a matching fund waiver had not been requested.

Qualifying project means a project approved after December 18, 1991, under 23 U.S.C. 106(a), or a project for which the United States becomes obligated to pay after December 18, 1991, under 23 U.S.C. 117 or 23 U.S.C. 133(e), for which the Governor has submitted a certification described in § 140.307.

§ 140.307 Submission of certification by Governor.

The Governor of the State shall submit a certification in writing to the Federal Highway Administration (FHWA) Division Administrator certifying that sufficient funds are not available to pay the cost of the non-Federal share of a qualifying project, taking into account all State and local funds that are available for obligation on Federal-aid highway projects. Funds encumbered or committed to other existing programs are considered unavailable for matching purposes.

§ 140.309 Request and approval of increase in Federal share.

(a) The State may submit a request in writing to the FHWA Division Administrator for an increase in the Federal share of a qualifying project up to and including 100 percent at the time the State submits a request for project approval or obligation. The request shall specify the Federal pro rata share, the amount of regular Federal funds and the amount of the increased Federal share desired.

(b) To maximize the obligation of Federal funds, the amount obligated for the increased Federal share may be based on the estimated costs to be incurred by the State before September 30, 1993, instead of the total estimated project costs.

(c) When submitting the project agreement, Form PR–2, pursuant to § 630.304 of this title, the State shall include in the agreement the following provision:

> The Federal-aid participation is increased to _____ percent for reimbursement claims paid on or before September 30, 1993, in accordance with Pub. L. 102–240, section 1054. The additional Federal funds requested total $_____. Claims paid after September 30, 1993, shall be at the regular Federal pro rata share of _____ percent.

(d) The State may claim reimbursement for the increased Federal share as a part of its normal billing procedures. Participating costs incurred by the State on qualifying projects shall be charged on a pro rata basis to the regular Federal share, increased Federal share, and non-Federal share, if any.

§ 140.311 Repayment of the increased Federal share.

(a) The State shall repay the amount of the increased Federal share made pursuant to this subpart on or before March 30, 1994. If such repayment is not made by the State, the FHWA shall make the deductions as provided in paragraph (c) of this section.

(b) The FHWA shall deposit all repayments made by a State under paragraph (a) of this section to the Highway Trust Fund and shall credit the repayments to the appropriate apportionment accounts of the State.

(c) If the total amount of the increased Federal share is not repaid on or before March 30, 1994, deductions shall be made from the State's fiscal year 1995 and fiscal year 1996 apportionments. The total amount deducted shall be the amount reimbursed to the State on the increased Federal share of all qualifying projects. In each of the fiscal years, one-half of the total deduction shall be made from the following categories on a pro rata basis: National Highway System, Surface Transportation Program, Interstate Construction, Interstate Substitute, Interstate Maintenance Program, Bridge Program, and Congestion Mitigation and Air Quality Improvement Program.

(d) The total amount deducted in accordance with paragraph (c) of this section shall be reapportioned to those States which did not receive an increased Federal share under this subpart and to those States which have made repayment under this section. These reapportioned funds shall be credited to the same categories of funds on which the deductions occurred.

[FR Doc. 93–1834 Filed 2–1–93; 8:45 am]
BILLING CODE 4910–22–M

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Parts 592 through 606, 608, 612 and 616

Removal of Rules

AGENCY: Office of the Assistant Secretary of the Army (Research, Development and Acquisition), DOD.

ACTION: Removal of rule.

SUMMARY: The purpose of this document is to remove 32 CFR parts 592 through 606, 608, 612 and 616, subchapter G. The reason for this removal is that this part is outdated and no longer valid. The purpose of this subchapter was to implement Department of Defense publications, pursuant to 1.108 of this title and to establish for the Department of the Army uniform policies and procedures relating to the procurement of supplies and services.

EFFECTIVE DATE: February 15, 1993.

FOR FURTHER INFORMATION CONTACT: Mrs. Esther Morse or Mr. Curtis Stevenson, Office of the Assistant Secretary of the Army (RDA), Washington, D.C. 20310–0103, (703) 756–7577 or (703) 697–0723.

SUPPLEMENTARY INFORMATION:

a. List of Subjects in 32 CFR Parts 592 through 606, 608, 612 and 616.

Procurement by Formal Advertising, Procurement by Negotiation, Special Types and Methods of Procurement, Interdepartmental and Coordinated Procurement, Foreign Purchases, Contract Clauses, Termination of Contracts, Patents, Data, and Copyrights, Bonds, Insurance, and Indemnification, Taxes, Labor, Government Property, Procurement Quality Assurance, Contract Cost Principles and Procedures, Procurement Forms, Procurement of Construction and Contracting for Architect-Engineer Services, Service Contracts, Appendixes to Army Procurement Procedure.

Regulatory Flexibility Act.

The removal does not have a significant economic impact on a substantial number of small entities

within the meaning of the Regulatory Flexibility Act, 5 U.S. Code 601 et seq., because it eliminates language which is no longer applicable.

Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply as the language being eliminated is no longer applicable.

PARTS 592–606, 608, 612, 616 [REMOVED]

Accordingly, pursuant to 44 U.S.C. 15, 32 CFR Parts 592 through 606, 608, 612 and 616 are removed.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93–2342 Filed 2–1–93; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 3

[CGD 92–051]

Realignment of Marine Inspection Zones and Captain of the Port Zones for Houston and Galveston, TX

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This final rule realigns the Marine Inspection Zones and Captain of the Port Zones for the Coast Guard Marine Safety Offices in Houston and Galveston, Texas. These changes are being made to improve the Coast Guard's command and control of marine safety around Clear Lake, Texas. They will not impair any services to the public supplied by the Coast Guard.

EFFECTIVE DATE: February 2, 1993.

FOR FURTHER INFORMATION CONTACT: Lieutenant John P. Sifling, Project Manager, Office of Marine Safety, Security, and Environmental Protection (G–MPS–3), (202) 267–0491, between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Lieutenant John P. Sifling, Project Manager, Office of Marine Safety, Security, and Environmental Protection, and Mr. Patrick J. Murray, Project Counsel, Office of the Chief Counsel.

Background and Purpose

No notice of proposed rulemaking was prepared for this final rule, which covers "agency organization" and is therefore exempt from the requirements of 5 U.S.C. 553(b) for notice and comment. Because the rule has no substantive effect, good cause exists under 5 U.S.C. 553(d) to give it effect less than 30 days after publication. The rule merely realigns two Marine Inspection Zones and Captain of the Port Zones to reduce the administrative burden and to simplify the current alignment. It will work no adverse impact on the public, since Marine Safety units in Houston and Galveston, Texas, will continue to perform all functions affecting the public that they previously performed.

Discussion

The boundaries of the Marine Inspection Zones and Captain of the Port Zones for Coast Guard Marine Safety Offices, Houston and Galveston, Texas, are being adjusted for more efficient internal management and to enhance performance of missions. In particular, they are being adjusted to eliminate a split of responsibility for a single body of water: Clear Lake, Texas. This adjustment will not impair any services to the public supplied by the Coast Guard.

Regulatory Evaluation

This final rule is exempt from the provisions of Executive Order 12291 because it pertains to matters of "agency organization" as provided for in section 1(a)(3) of the Order. It is "nonsignificant" under DOT regulatory policies and procedures [44 FR 11040 (February 26, 1979)]. Its economic impact will be so minimal that further evaluation is unnecessary. It places no new requirements on any sector of the public. It will not impair any services to the public supplied by the Coast Guard. It streamlines and enhances internal logistics and support. As its impact is minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule contains no collection-of-information requirements under the Paperwork Reduction Act [44 U.S.C. 3510 *et seq.*].

Federalism

The Coast Guard has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that the rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment. This organizational realignment has no preemptive effect; it leaves duties and powers of State and local governments as they are.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, the rule is categorically excluded from further environmental documentation. The rule is an administrative matter within the meaning of subsection 2.B.2.1. of Commandant Instruction M16475.1B that clearly has no environmental impact.

List of Subjects in 33 CFR Part 3

Organization and functions (Government agencies).

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 3 as follows:

PART 3—COAST GUARD AREAS, DISTRICTS, MARINE INSPECTION ZONES, AND CAPTAIN OF THE PORT ZONES

1. The authority citation for part 3 continues to read as follows:

Authority: 14 U.S.C. 633; 49 CFR 1.45, 1.46.

2. Section 3.40–25, paragraph (b), is revised to read as follows:

§ 3.40–25 Houston Marine Inspection Zone and Captain of the Port Zone.

* * * * *

(b) The boundary of the Houston Marine Inspection Zone and Captain of the Port Zone starts at the junction of the east bank of the Trinity River and 30° N. latitude; thence northerly along the east bank of the Trinity River; thence northwesterly along the eastern shore of Lake Livingston; thence northwesterly along the east bank of the Trinity River to the southern boundary of Dallas County, Texas; thence westerly along the southern boundary of Dallas County, Texas to 97° W. longitude; thence north along 97° W. longitude to the Texas-Oklahoma boundary; thence northwesterly along the Texas-Oklahoma boundary; thence north along the New Mexico-Oklahoma boundary; thence west along the New Mexico-Colorado boundary; thence south along the New Mexico-Arizona boundary; thence easterly along the southern boundary of New Mexico to the southeast corner of New Mexico at 32° N. latitude; thence southeasterly to 29°18′ N. latitude, 96°07′ W. longitude; thence northeasterly to 29°31.1′ N. latitude, 95°11.5′ W. longitude, in Friendswood, Texas; thence east along the north edge of Farm-to-Market Road

(FM) 518 to the junction of Texas Highway 146 in Kemah, Texas; thence northeasterly to 29°35′ N. latitude, 94°55′ W. longitude; thence north along 94°55′ W. longitude to 30° N. latitude; thence east along 30° N. latitude to the east bank of the Trinity River.

3. Section 3.40–30, paragraph (b), is revised to read as follows:

§ 3.40–30 Galveston Marine Inspection Zone and Captain of the Port Zone.

* * * * *

(b) The boundary of the Galveston Marine Inspection Zone and Captain of the Port Zone starts at the junction of the sea and 94°23′ W. longitude; thence north along 94°23′ W. longitude to 30° N. latitude; thence west along 30° N. latitude to 94°55′ W. longitude; thence south to 29°35′ N. latitude, 94°55′ W. longitude; thence southwesterly to the junction of Texas Highway 146 and Farm-to-Market Road (FM) 518 in Kemah, Texas; thence west along the north edge of FM 518 to 29°31.1′ N. latitude, 95°11.5′ W. longitude in Friendswood, Texas; thence southwesterly to the east bank of the Colorado River at 29°18′ N. latitude, 96°07′ W. longitude; thence southerly along the east bank of the Colorado River to the sea.

Dated: January 25, 1993.

A.E. Henn,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 93–2425 Filed 2–1–93; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD7–92–89]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, From St. Marys River to Key Largo

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Mayor of Sea Ranch Lakes, the Coast Guard is changing the regulations governing the operation of the Commercial Boulevard Drawbridge (Northeast 50th Street/State Road 870), mile 1059.0, at Lauderdale-by-the-Sea, Broward County, Florida. This change is being made as a result of complaints about the highway traffic delays. This action should accommodate current needs of highway traffic while still meeting the reasonable needs of navigation. Public vessels of the United States, tugs with tows, and vessels in a situation where a delay would endanger life or property will continue to be passed at any time.

EFFECTIVE DATE: March 4, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Brodie Rich, Project Manager, Bridge Section, at (305) 536–4103.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Brodie Rich, Project Manager, and LT, J.M. Losego, Project Attorney, Seventh District Legal Office.

Regulatory History

On September 22, 1992, the Coast Guard published a notice of proposed rulemaking entitled Drawbridge Operation Regulations, Atlantic Intracoastal Waterway, from St. Marys River to Key Largo, in the **Federal Register** (57 FR 43647). The Coast Guard received one letter commenting on the proposal. A public hearing was not requested and one was not held.

Background and Purpose

This drawbridge presently opens on signal except that, from November 1 through May 15 from 8 a.m. to 6 p.m., the draw need open only on the hour, quarter-hour, half-hour and three-quarter hour. The Mayor of Sea Ranch Lakes has requested the bridge be opened only on the hour and half-hour to reduce highway traffic congestion.

The Coast Guard analysis of bridge openings, highway traffic levels of service, and waterway holding conditions has determined this bridge averages only 2 openings per hour on weekdays with no apparent increases in commuter traffic levels during morning and afternoon rush hours. On weekends there is a reduction in highway traffic levels; however, during the winter season the number of drawbridge openings increases due to heavy boating activities on the Intracoastal Waterway. In order to reduce highway traffic delays, the Coast Guard is implementing a 20-minute opening schedule on weekends during the seasonal period.

Discussion of Comments and Changes

The Coast Guard received one letter commenting on the proposal. This letter recommended that weekend and weekday operating schedules should be similar to avoid confusion for mariners and highway traffic. Additional restrictions are only warranted on weekends during the season due to increased bridge openings and highway traffic. Therefore, the existing 15-minute schedule will continue to be maintained on weekdays during the season. The final rule is unchanged from the proposed rule.

Regulatory Evaluation

These regulations are not considered to be major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this final rule to be so minimal that a Regulatory Evaluation is unnecessary. We conclude this because the rule exempts tugs with tows.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard has considered whether this change would have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Since tugs with tows are exempt from this change, the economic impact is expected to be minimal. Therefore, the Coast Guard certifies under section 605(b) that this final rule will not have a significant impact on a substantial number of small entities.

Collection of Information

This final rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this change in accordance with the principles and criteria contained in Executive Order 12612, and has determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that, under section 2.B.2.g.(5) of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.261 is amended by revising paragraph (ee) to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo.

* * * * *

(ee) *Commercial Boulevard bridge (SR 870), mile 1059.0, at Lauderdale-by-the-Sea.* The draws shall open on signal; except that, from November 1 through May 15 from 8 a.m. to 6 p.m., Monday through Friday, the draw need open only on the hour, quarter-hour, half-hour, and three-quarter hour, and from 8 a.m. to 6 p.m. on Saturdays, Sundays, and federal holidays, the draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour.

* * * * *

Dated: January 6, 1993.

K.M. Ballantyne,

Captain, U.S. Coast Guard, Commander, Seventh Coast Guard District Acting.

[FR Doc. 93–2424 Filed 2–1–93; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 334

Restricted Areas in the West Arm of Behm Canal near Ketchikan, Alaska

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Correcting amendment.

SUMMARY: The Corps of Engineers is amending the regulations in 33 CFR 334.1275 to correct minor errors in the coordinates which establish a restricted area in the waters of the West Arm of Behm Canal near Ketchikan. The regulations were promulgated by the Corps of Engineers on 25 January 1990. The errors were revealed by the National Ocean Service while updating nautical charts of the area.

EFFECTIVE DATE: March 4, 1993.

ADDRESSES: Any written comments concerning these rules should be addressed to: HQUSACE, ATTN: CECW–OR, Washington, D.C. 20314–1000.

FOR FURTHER INFORMATION CONTACT: Ms. Valerie Payne at (907) 753–2724 or Mr. Ralph Eppard at (202) 272–1783.

SUPPLEMENTARY INFORMATION: On 25 January 1990, the Corps of Engineers published final rules in the **Federal Register** (55 FR 2586–2587) establishing five restricted areas in the waters of the West Arm of the Behm Canal, north of Ketchikan, Alaska. A correction to these rules was published on 20 March 1990 (55 FR 10237). The purpose of the restricted areas is to regulate vessel activities which could interfere with naval testing activities in those areas and to protect Government owned equipment and instrumentation. According to the National Ocean Service, the coordinates which define the boundaries of Area #5, do not accurately reflect the location of the actual area. However, the corrected coordinates will not greatly enlarge the restricted area.

List of Subjects in 33 CFR Part 334

Navigation (water), Transportation, Danger zones.

In consideration of the above, part 334 of title 33 is corrected by making the following correcting amendments:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266; (33 U.S.C. 1) and 40 Stat. 892; (33 U.S.C. 3).

§ 334.1275 [Amended]

2. In § 334.1275 (a) *The areas,* Area No. 5, revise "55°33.4′ N latitude" to read "55°33.3′ N latitude"; revise "131°43.6′ W longitude" to read "131°43.62′ W longitude"; revise "216 °T" to read "218 °T"; and revise "55°31.52′ N latitude" to read "55°31.55′ N latitude".

Approved

John R. Brown,

Colonel, Corps of Engineers, Executive Director of Civil Works.

[FR Doc. 93–2311 Filed 2–1–93; 8:45 am]

BILLING CODE 3710–92–M

33 CFR Part 334

Restricted Area for Gulf Coast Homeports at Ingleside, TX; Mobile, AL and Pascagoula, MS; Correction

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Correction to final regulations.

SUMMARY: The U.S. Army Corps of Engineers published final rules in the **Federal Register** on October 8, 1992, (57 FR 46303–46304) establishing naval restricted areas in the waters of the Gulf of Mexico at the Naval Homeports located at Ingleside, Texas; Mobile, Alabama; and Pascagoula, Mississippi. Minor errors were found in the coordinates which establish the limits of the naval restricted area located at Ingleside, Texas. Accordingly, the Corps is publishing corrections to the coordinates found in 33 CFR 334.802 (a).

EFFECTIVE DATE: February 2, 1993.

FOR FURTHER INFORMATION CONTACT: Ms. Cynthia J. Wood at (409) 766–3980 or Mr. Ralph Eppard at (202) 272–1783.

SUPPLEMENTARY INFORMATION: In the final regulations that are the subject of this correction, the Corps established restricted areas at each of the Navy Gulf Coast Homeports located at Ingleside, Texas; Mobile, Alabama; and Pascagoula, Mississippi.

The restricted areas encompass the waters surrounding the Naval Stations and piers where extensive Naval operations take place. The restricted areas are used extensively by U.S. Naval ships and commercial vessels under contract to the Navy, in daily operations around the pier. The piers are used to provide fuel, maintenance, and other services for these vessels. The restricted areas are essential to protect persons and property from the dangers associated with these operations and safeguard the area from accidents, sabotage, and other subversive acts. According to the National Ocean Service, the coordinates which establish the boundaries of the restricted area at Ingleside, Texas, contain errors in positions A and E; another position (F), is needed, and the direction from position C to position D should read "west-northwesterly" instead of "north-northeasterly". The Navy has agreed to these changes. Accordingly, the publication on October 8, 1992, of the final regulations in 57 FR 46303–46304, is corrected as follows:

On page 46303, in the third column, in § 334.802, paragraph (a), the area, is corrected to read:

§ 334.802 Ingleside Naval Station, Ingleside, Texas; restricted area.

(a) *The area.* The waters of Corpus Christi Bay beginning at a point at latitude 27°49′15.0″ N, longitude 97°12′6.0″ W, thence southerly to latitude 27°49′7.3″ N, longitude 97°12′5.4″ W, thence south-southwesterly to latitude 27°49′01″ N, longitude 97°12′39.4″ W, thence west-northwesterly to latitude 27°49′02.4″ N, longitude 97°12′48.3″ W, thence north-northeasterly to latitude 27°49′16.5″ N, longitude 97°12′41.5″, thence easterly to latitude 27°49′17.0″ N, longitude

97°12'27.5" W, thence easterly along the shoreline to the point of beginning.

* * * * *

Approved:

John R. Brown,

Colonel, U.S. Army, Executive Director of Civil Works.

[FR Doc. 93–2313 Filed 2–1–93; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6956

[ID–943–4210–06; IDI–15798–01]

Partial Revocation of Geological Survey Order Dated July 26, 1948, Which Established Powersite Classification No. 390; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a Geological Survey order insofar as it affects 22.50 acres of public lands withdrawn for Bureau of Land Management's Powersite Classification No. 390. The lands are no longer needed for the purpose for which they were withdrawn. This action will open 22.50 acres to surface entry and will permit the sale of the lands to resolve an agricultural trespass. The 22.50 acres have been open to mining under the provisions of the Mining Claims Restoration Act of 1955, and these provisions are no longer required. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: March 4, 1993.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, BLM Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, 208–384–3166.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. The Geological Survey Order dated July 26, 1948, which established Powersite Classification No. 390, is hereby revoked insofar as it affects the following described land:

Boise Meridian

T. 8 S., R. 14 E.,
Sec. 7, N½NE¼SW¼NE¼, N½SE¼NE¼SW¼NE¼, and N½NW¼SW¼NE¼.
T. 8 S., R. 13 E.,
Sec. 12, N½NE¼NE¼NE¼, N½SW¼NE¼NE¼NE¼, SE¼NE¼NE¼NE¼, and NE¼NW¼NE¼NE¼.

The areas described aggregate 22.50 acres in Twin Falls County.

2. At 9 a.m. on March 4, 1993, the lands will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on March 4, 1993, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. The State of Idaho has waived its right of selection in accordance with the provisions of section 24 of the Federal Power Act of June 10, 1920, 16 U.S.C. 818, as amended

Dated: January 14, 1993.

Dave O'Neal

Assistant Secretary of the Interior.

[FR Doc. 93–2307 Filed 2–1–93; 8:45 am]

BILLING CODE 4310–GG–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 9

[OST Docket No. 48043]

RIN 2105–AB56

Testimony of Employees of the Department and Production of Records in Legal Proceedings

AGENCY: Office of the Secretary; Department of Transportation.

ACTION: Final rule.

SUMMARY: The Department of Transportation (DOT or Department) is establishing procedures that must be followed when a Department employee, former employee or DOT contractor is requested or subpoenaed to provide testimony or produce records concerning information acquired in the course of performing official duties or because of the official status of that person. These procedures are necessary to ensure more efficient use of Department resources (Department attorneys and employees currently spend a considerable amount of time responding to litigants' requests for documents or testimony), to minimize the possibility of involving the Department in controversial issues not related to its mission, to maintain the impartiality of the Department among private litigants, to protect sensitive, confidential information and the deliberative processes of the Department, and to enhance the Department's ability to respond to such requests.

EFFECTIVE DATE: March 4, 1993.

FOR FURTHER INFORMATION CONTACT: Paul M. Geier, Assistant General Counsel for Litigation, or Alexander J. Milard, Office of the Assistant General Counsel for Litigation, U.S. Department of Transportation, 400 Seventh Street SW., room 4102, Washington, DC 20590, (202) 366–9279.

SUPPLEMENTARY INFORMATION:

Background

On March 17, 1992, the Department of Transportation published a notice of proposed rulemaking (NPRM) (57 FR 9224, March 17, 1992) to modify and broaden its regulations at 49 CFR part 9 governing the Department's policies and procedures with respect to testimony by its employees as witnesses in legal proceedings, the acceptance of service of legal process and pleadings in legal proceedings involving the Department, and the production of records of the Department pursuant to subpoenas.

Currently, the Department's regulations at 49 CFR part 9 do not contain any procedural requirements that private parties must meet in order to obtain departmental records or testimony of DOT employees for use in legal proceedings between private litigants.The existing regulations require only that the General Counsel or other appropriate counsel determine whether the employee is required to comply with a subpoena, and impose certain restrictions on the employee's testimony. In addition, the regulations now in effect extend only to current DOT employees. Former DOT employees, and contractors (past and present), are not covered.

As the Department noted in its NPRM, private litigants are requesting or serving subpoenas for testimony, documents, or both, from DOT agencies and their personnel in a large number of cases. The Department is a large executive agency that is composed of nine operating administrations plus the Office of the Secretary. The Department further observed in its NPRM that many of the requests that are filed with it for documents and testimony involve transportation accidents. These accidents can generate numerous private lawsuits and other proceedings, in which private litigants may seek testimony and documents from DOT investigative personnel. Responding to these requests for documents and for testimony can be burdensome and time consuming. When employees are required to testify in depositions, hearings or trials that are brought for

private purposes, employees are taken away from their official duties and responsibilities. Moreover, these requests for testimony are often made on very short notice.

The Department proposed to establish new procedural requirements that private litigants must meet before the Department would produce documents or make an employee available to testify in a private legal or administrative proceeding. These procedures were not proposed to inflict an unnecessary burden on private litigants. Rather, the Department's objectives were to conserve DOT resources, to minimize the possibility of involving the Department in controversial issues not related to its mission, to maintain the Department's impartiality among private litigants, to protect the confidentiality of the Department's deliberative processes, and to enhance the Department's ability to respond more efficiently to requests for testimony and documents. The Department also proposed adopting new procedures governing the testimony of its employees in legal proceedings in which the United States is a party.

DOT's new rules would include the Maritime Administration and the Research and Special Programs Administration in the definition of "Department" because the current regulation became effective before those operating administrations were part of DOT. In addition, to preclude having to revise this part for a similar reason in the future, the new rule would include within the definition of "Department" any operating administration established after the effective date of a final rule. The new rule also would clarify the definition of "Legal proceeding between private litigants" to mean those proceedings in which neither DOT (or one of its operating administrations), nor the United States (including any federal agency or officer of the United States in his or her official capacity) is a party. The definition of "Employee" would also be expanded to include former employees of the Department, retired or former officers and enlisted members of the Coast Guard, and individuals or (other entities) who are or have been under contract with the Department, whose testimony is sought about official duties or functions of the Department. The new rule would more specifically define "Testimony" to mean any written or oral statements given in a legal proceeding, including depositions, affidavits, declarations, answers to interrogatories, and statements at a hearing or trial.

A definition for "Agency counsel" would also be added. Under the proposed definition, the term "Agency counsel" would include the General Counsel, the Chief Counsels of the operating administrations, and any person to whom the General Counsel or a Chief Counsel has delegated authority under this part. This would make it clear that, for a decision on how to respond to a demand or a request for testimony, an employee must contact the agency counsel in that employee's operating administration. The definition also would include any person, such as a Department of Justice attorney, who is authorized to represent the Department in a specific legal proceeding.

Agency counsel, under certain circumstances, would be permitted to grant an exception from any requirement in the proposed rule. For example, agency counsel may grant an exception from a requirement of part 9 if he or she believes that to do so would be in the best interests of the Department. The Department's Inspector General would also be permitted to grant an exception from any requirement concerning Office of Inspector General employees and documents.

Sections 9.13 and 9.15 of the Department's new rule provide that the proper method for obtaining testimony or records from an employee is to submit a request to agency counsel, not to serve a subpoena, order or other demand (collectively referred to as demands) on the employee. The new rule would also require employees to notify agency counsel if they are served with demands, or otherwise receive requests, to testify or produce documents, and would prohibit employees from honoring such demands or requests absent explicit approval from the agency counsel. Agency counsel would have discretion to grant demands for records or testimony of an employee and to determine the manner in which documents are disclosed or testimony is given in particular cases or types of cases.

If the party fails to follow the Department's procedures or does not withdraw a demand when requested to do so by agency counsel, the Department may move to quash the demand. If that motion is denied, the agency counsel would then instruct the employee whether to testify or produce documents pursuant to the demand. If a response to a demand is required before the court rules on the motion to quash and the court fails to stay the demand, the employee would appear with agency counsel at the time and place stated in the demand, produce a copy of these regulations, and respectfully decline to testify or produce any documents. If the court orders his or her testimony, agency counsel may permit an exception under § 9.1(c), or, consistent with longstanding case law, direct the employee not to testify. For example, the agency counsel might permit the employee to give factual testimony if permission would have been granted had the party seeking the testimony followed the procedures set forth in this part. This would prevent a miscarriage of justice by not subjecting the employee to a contempt charge. In appropriate circumstances, agency counsel could still appeal the denial of the motion to quash.

The Department's new rule also stipulates that private litigants who wish to obtain documents from the Department must follow the procedures specified at 49 CFR part 7 concerning Freedom of Information Act (FOIA) requests. Private litigants who do not follow those procedures would be required to submit a statement setting forth the relevancy of the records to the proceeding. The rule would also require private litigants to submit requests for records before submitting any request for testimony. If these parties desire additional documents, they would have to indicate how the new request differs from previous record requests.

The Department's new rule also describes when and to what extent an employee of the Department would be allowed to testify in legal proceedings in which the United States is a party and those in which it is not. Department employees generally would not be permitted to testify as an expert or opinion witness at a hearing or trial in legal proceedings between private litigants; and would only be allowed to testify as to facts within their personal knowledge in these proceedings under limited circumstances. More specifically, the Department's new rule provides that, in legal proceedings between private litigants, an employee may not testify to facts in a report unless the employee receives permission from the agency counsel. The reason for restricting this testimony is to ensure that agency findings and conclusions expressed in reports are appropriately protected. The use of Department employees as expert or opinion witnesses would impose a serious administrative burden on the Department and compromise its impartiality toward private litigants. Moreover, the Accident Reports Act and other statutes prohibit the admission into evidence of certain accident and investigative reports. However, agency counsel would be permitted to grant an exception under § 9.1(c) in a civil proceeding in which the testimony

might be vital to the case and would not unduly harm the Department.

The Department's new rule would also require that private litigants seeking the testimony of an employee of the Department submit a request for that testimony to the agency counsel 30 days before the testimony is scheduled to be taken or received. In addition, a party seeking employee testimony would be required to furnish the agency counsel with certain facts about the proceeding together with a written summary of the information sought and its relevance to the proceeding. A party seeking testimony would also be required to certify that the information sought is not reasonably available from other sources.

With respect to testimony at a hearing or trial in legal proceeding involving the United States, under the Department's new rule, an employee would only be permitted to testify as an expert or opinion witness for the United States. Additionally, an employee would be permitted to testify only as to facts within that employee's personal knowledge with regard to matters arising out of that employee's official duties. For example, in a proceeding arising from an accident, an employee could testify only to personally known facts, not reasonably available from other sources, uncovered during the employee's investigation of the accident, or observed by the employee even the employee did not investigate the accident. Thus, an employee who inspected a facility before an accident occurred could testify concerning the employee's observations.

The Department's new rule does not apply to situations in which an employee, although on official duty, observes facts regarding matters that do not arise out of his or her official duties.

The Department's new rule also explains the Department's policy on fees for obtaining records, and costs of processing and responding to requests for witness testimony by private parties. Finally, the Department's new rule would alter the Department's procedures relating to the service of subpoenas and other demands. Specifically, the Department's new rule states that this service is not to be inconsistent with, and does not waive, the requirements of Rules 4(d)(4) and 4(d)(5) of the Federal Rules of Civil Procedure.

Discussion of Comments

Comments in response to the Department's NPRM were filed by the Air Transport Association of America on behalf of its member carriers, the Section of Administrative Law and Regulatory Practice of the American Bar Association, the Cessna Aircraft Company, and a DOT employee in his capacity as a private citizen. These comments are discussed below. For ease of discussion, these comments are discussed jointly since, to a large degree, they raise similar issues and concerns.

Several commenters questioned the need and authority for the proposed revisions to the Department's witness regulations. Generally, these commenters asserted that the Department has failed to provide sufficient justification for its proposed action. The Department does not concur with this assertion. As the Department noted in its NPRM, the Department of Transportation—which is composed of nine operating administrations and the Office of the Secretary—frequently receives requests for testimony in private litigation and other proceedings. These requests are often received on extremely short notice, based upon a local subpoena that is easily and routinely obtained by private counsel. As a result, DOT employees must expend a considerable amount of public time testifying to routine matters that are usually susceptible to proof by alternative methods. This practice interferes with DOT employees' public duties and usually is at the public's expense. This problem is further aggravated when employees must travel to provide such testimony. Moreover, many times DOT does not have sufficient time or ability to quash, or otherwise resist, a subpoena. Even if DOT is successful in resisting a subpoena or other demand, there is still likely to be a significant drain on DOT resources. This situation has been further exacerbated by the recent explosion in private litigation. The Department has every reason to believe that this problem is likely to persist in the future and possibly intensify. The adoption of these regulations will assist the agency in the management of its resources and in ensuring that its employees' time and energies are not devoted to private litigation at public expense.

Some commenters also suggested that statistics cited in the NPRM on the number of subpoenas and other demands that the Department has been receiving for testimony and documents were inadequate and dated. These data were developed by the U.S. Coast Guard for the 1988 calendar year. They clearly show the scope of the problem. Indeed, in that year alone, the U.S. Coast Guard received nearly 350 subpoenas. This level of activity, in just one of the Department's nine operating administrations, clearly illustrates a significant problem; and, in the Department's view, provides ample justification for the Department's new rule. DOT has every reason to believe that this situation has continued unabated since 1988, and in as much as the commenters have provided no data or information to indicate why these numbers would not have continued, the Department does not believe that it should expend DOT's limited resources to develop more current statistics.

The view was also expressed that the Department's new rule would exceed both statutory and judicial case law authority. However, as the Department stated in its NPRM, many federal courts, including the U.S. Supreme Court, have upheld the right of agencies to promulgate regulations, pursuant to 5 U.S.C. 301 and other statutory authority, restricting the right of private litigants to require testimony of, or production of documents from, employees of federal agencies. The cited statutory authority, 5 U.S.C. 301, confers upon the head of executive departments broad authority to "prescribe regulations for the government of his department, the conduct of its employees, the distribution and performance of its business, and the custody, use and preservation of its records, papers and property."

Moreover, as the Department noted in its NPRM, the Supreme Court in *United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951), held that a Department of Justice (DOJ) official, acting on order of the Attorney General, could not be held in contempt for declining to produce records in response to a *subpoena duces tecum*. It reasoned that the variety of information contained in the files of any government agency and the possibilities of harm from unrestricted disclosure in court necessitate centralizing determinations as to whether to obey or challenge a *subpoena duces tecum*. The Court stated that it was, therefore, appropriate for the Attorney General to prescribe regulations for the preservation of records of the Department of Justice. The Department is satisfied that its new regulations comport fully with both the statutory and decisional authority that permits the head of an executive department, within certain constraints, to run an agency in a manner best benefiting it, and thus the United States.

The Department believes that its new rule complies fully with other laws making information and documents available to the public. DOT records and information will, of course, continue to be available under 49 CFR part 7, the Department's Freedom of Information Act regulations. As the Department

noted in its NPRM, these avenues should be used to the extent possible to reduce the need for actual employee testimony. The Department's new rule recognizes that this may not be possible in all cases, and that actual employee testimony may be necessary on occasion under some circumstances. The Department's new rule accordingly confers upon agency counsel for each of its operating administrations, as well as the Office of the Secretary, flexibility in processing requests for information from private litigants and determining the best warranted and most economical reply, given the actual and varied needs of each of these operating administrations and the Office of the Secretary.

To sum up, the Department believes that there is a demonstrable need for the changes it has proposed to its employee testimony rules, and that the modifications to its rules the Department is hereby adopting comport fully with the applicable underlying statutory authority and well established judicial case law. Frequently employee testimony adds nothing to information that DOT can more conveniently provide through documents. However, DOT continues, at the request of private counsel, to be subjected to the additional burden and unwarranted cost of employee testimony to confirm that information. To gain some semblance of control over this problem, DOT, therefore, feels its new rule is necessary, and is in accord with the spirit and intent of 5 U.S.C. 301, and other applicable law. Similar rules restricting testimony, limiting testimony to factual matters, and compelling employees to refuse to testify have passed judicial muster as a valid exercise of executive power in the public interest. The Department's new rule, based on DOT's analysis of the applicable law and similar rules already promulgated, does not infringe upon the prerogatives of the other branches of the federal government, and is permissible as an agency housekeeping regulation.

Several commenters addressed the various limitations on "employee" testimony in the Department's new rule. Some suggested that the guidelines established for "employee" testimony contravened the free speech rights conferred by the First Amendment of the U.S. Constitution, as well as the due process rights of potential litigants to procure testimony under the Fifth Amendment. However, after considering those comments, and again reviewing the applicable case law discussed in the NPRM, the Department does not believe that these concerns are warranted. An individual employee's First Amendment rights are not changed by this rule. DOT, however, has the obligation to ensure that employee testimony, sought because an individual is a DOT employee, properly and fairly reflects official DOT views and does not disclose the nature of the Department's deliberations or otherwise disclose confidential information.

Comments were also received on the proposal to broaden the definition of "employee" in § 9.3 of the Department's new rule. The Air Transport Association, in its comments, for example, questioned the authority of the Department to extend the scope of its witness regulations to include former DOT employees and contractors. The Department, however, believes that it possesses ample authority under the broad language of 5 U.S.C. 301 to enlarge the definition of Department employees in its regulations. Any construction that the Department lacks this authority obviously could have very deleterious consequences throughout the entire government. The mere fact that an individual is no longer employed by an agency, or that a contractor is not a regular employee of an agency, does not in any way lessen an agency's concerns about protecting the propriety of information that individual or entity may have had access to while associated with that agency. The departure of an employee from the Department does not confer upon the employee the right to disregard the confidential or proprietary nature of the information that employee has received as an employee and to disclose it to the general public. The disclosure of sensitive, confidential information by a former employee, of course, can be just as detrimental to an agency's deliberative processes as would the disclosure of such information by a current employee. Additionally, 5 U.S.C. 301 does not exclude former employees or contractors from the realm of its coverage.

The Department, moreover, based on the experience of one of its operating administrations, the Maritime Administration (Marad), has decided that the definition of employee in § 9.3 needs to be clarified to make it clear that corporate contractors, as well as their employees and independent subcontractors, are included within this definition. Marad has expended considerable resources in responding to witness requests involving corporate contractors and subcontractors acting as DOT agents in connection with its maintenance of the National Defense Reserve Fleet pursuant to 46 App. U.S.C. 1744. Accordingly, the Department has decided to change the last phrase of the definition of employee in § 9.3 so as to delete the word "individual", and substitute the phrase "person (including any corporation or other entity) and any employee of such person who is a subcontractor of such person." The Department views this modification as being minor and fully consistent with the concerns and objectives the Department discussed in its NPRM.

A good portion of the comments focused on §§ 9.7 and 9.9 of the Department's new rules. Section 9.7 governs testimony by DOT employees in proceedings before the Department or in legal proceedings in which the United States is a party. Section 9.9, on the other hand, concerns testimony by DOT employees in legal proceedings between private litigants.

Several commenters took exception to the general prescription in both §§ 9.7 and 9.9 against DOT employees providing expert or opinion testimony on behalf of private litigants. This restriction, however, as well as the underlying rationale for it, is longstanding. Indeed, such testimony is already prohibited under the Department's current employee testimony rule (see 49 CFR 9.5(a) and 9.7). It is not a DOT function, nor is it a proper use of public resources, to provide government employees as experts for private litigants. The Department's rule conserves agency time and resources by forcing private litigants, whether or not the United States is involved in the concerned proceeding, to retain their own experts whenever possible. Having retained such experts, these litigants are free to utilize them as they deem fit. On the other hand, it is not the United States' role to provide witnesses for private litigants at the expense of the taxpaying public. The Department believes that the public interest is best served by allowing official, job-related testimony to be determined by the United States rather than by private litigants, who may be adversaries to the United States in the proceeding in question.

Some commenters perceived the prohibition in § 9.7(b) on DOT employees testifying as expert or opinion witnesses for a party other than the United States as precluding litigants from cross-examining these witnesses as to the basis for any expert or opinion testimony they may have provided for the United States. The rule does not do this. Nor did the Department's former part 9 rule do this. Once a DOT employee testifies as an expert or opinion witness for the United States, the Department's employee testimony

rules do not preclude or restrict him or her from being appropriately cross-examined. Having testified, a witness is usually subject to additional inquiry within the scope of that initial testimony. Such inquiry is not governed by this rule, but rather by whatever rules, procedures and laws, such as the Federal Rules of Civil Procedure, may be applicable to that specific proceeding. Accordingly, the Department's rules are not intended to bar, or limit, any appropriate cross-examination or further questioning of DOT employees who testify as expert or opinion witnesses under the Department's rule.

The Air Transport Association is concerned that the limitation in 9.7(b) on DOT employees testifying as expert or opinion witnesses conflicts with the rules the Federal Aviation Administration has promulgated at 14 CFR part 13 governing expert or opinion testimony by FAA personnel in FAA civil penalty procedings (see 14 CFR 13.227). The Department does not agree that these two provisions are necessarily in conflict. However, in any event, it has not been the purpose of this rulemaking to either alter or modify the rules the FAA has promulgated at 14 CFR part 13. Those rules did not fall within the ambit of this rulemaking and remain fully intact. Accordingly, any expert or opinion testimony that is given by FAA employees in FAA civil penalty procedings that are conducted under 14 CFR part 13 will continue to be governed by that more specific regulation.

Some of the commenters also objected to the requirements in §§ 9.7(b) and 9.9(b) of the Department's new rules which state that DOT employees may testify only as to facts within their personal knowledge. The Air Transport Association, for example, is concerned that this limitation could preclude the admissibility of hearsay testimony, which it notes the FAA specifically permits to be admitted into evidence in its civil penalty proceedings pursuant to 14 CFR 13.222(c). Again, the purpose of this limitation was not to inflict any unnecessary burdens on private litigants, or to alter whatever evidentiary or procedural rules that may be applicable to the proceeding at issue. Rather, the Department's objective in revising its employee testimony rules is to conserve the Department's limited resources and to ensure that Department employees are not needlessly diverted from their public responsibilities. The Department recognizes, however, that this requirement, standing alone, could be construed as being inconsistent with the rights the FAA has afforded in its civil penalty proceedings. Accordingly, the Department wishes to reiterate that it is not by this rulemaking modifying any of the provisions in the rules the FAA has promulgated at 14 CFR part 13 to govern its civil penalty proceedings. Section 222(c) of that part thus will continue to be in effect.

Various commenters also questioned the Department's authority to charge fees and costs as set out in § 9.19 of the Department's proposed rule. As the Department noted in its NPRM, it is DOT's position that it has the authority to charge such costs. DOT continues to believe that it possesses this authority. No comment provided any authority to the contrary. Moreover, it is only fair that such costs should be borne by private litigants engaged in their private proceedings rather than the general public. However, at this time, the Department has decided to delete this provision inasmuch as it is not integral to the overall objectives of the Department's new regulation. Litigants and other requesters will, of course, continue to be subject to any applicable fees specified in the Department's Freedom of Information Act regulations, 49 CFR part 7, as well as any fees that may apply under the rules governing the underlying proceeding.

Lastly, various commenters suggested: (1) That the Department's rule should emulate the simpler, less restrictive rules of other agencies outside DOT; (2) that too much discretion was given in the rule to agency counsel; and (3) that the rule would encourage unnecessary disputes and is contrary to recent efforts to reduce litigation. DOT disagrees with these views. Agencies have varying needs and responsibilities. Agencies thus have promulgated various housekeeping rules, some less, some more, restrictive than this rule. DOT believes that it has crafted a rule that best suits its particular needs. Moreover, since agencies within DOT have varying needs and programmatic responsibilities, the rule grants DOT's various operating administrations, as well as the Office of the Secretary, within general guidelines, the discretion and latitude to determine how best to comply with, or resist, individual witness requests by private litigants. Further, each of these operating administrations, and the Office of the Secretary, are being granted authority to determine the nature and extent of permitted agency employee testimony in any proceeding except for congressional proceedings, which are specifically exempted from the rule. Additional guidelines are not necessary. It is also anticipated that agency implementation of the rule in a reasonable manner will lead to a decrease in depositions of employees, a decrease in time responding to requests from private litigants, and a decrease in public expenditures for private litigation. The Department believes that often alternative methods, such as affidavits or written interrogatories, can suffice in lieu of more time consuming and onerous depositions on trial appearances. The rule should not foster additional private litigation. Rather, it should minimize the adverse impact of such litigation upon DOT and the public by placing the primary burden for conducting such litigation on the private litigants where it reasonably belongs. As a corollary, the rule should eliminate the necessity for DOT to institute litigation to protect DOT employees from unnecessary and burdensome requests for testimony and documents.

Finally, DOT would like to direct the public's attention to a final rule that was recently promulgated by the Office of Government Ethics (OGE) (57 FR 35006, August 7, 1992). Section 2635.805 of that rule (see 57 FR 35063) sets forth various restrictions on government employees testifying as expert witnesses. The Department views that regulation as being restrictive, as opposed to permissive. Accordingly, the Department does not construe the OGE rule as allowing any employee testimony to take place that would otherwise not be permissible under the Department's rule. Rather, to the contrary, the Department is of the view that any employee testimony that may be allowable under its new rule must also comport with the OGE regulation, as well.

Executive Order 12291, DOT Regulatory Policies and Procedures, and Regulatory Flexibility Act

The Department has considered the impact of this rule and has determined that this rule is neither a "major" rule under Executive Order 12291, nor a "significant" rule under the Department's Regulatory Policies and Procedures. The Department believes that the economic impact of the rule would be so minimal that further regulatory evaluation is unnecessary. The Department has also considered the impact of this rule under the Regulatory Flexibility Act. The Department certifies that this rule would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980.

Federalism

This action has been reviewed under Executive Order 12612, "Federalism," and the Department has determined that this action does not have implications for principles of federalism that warrant the preparation of a federalism assessment. This rule would not limit the policymaking and administrative discretion of the states, nor would it affect the states' abilities to discharge traditional state governmental functions or otherwise affect any aspect of state sovereignty.

List of Subjects in 49 CFR Part 9

Administrative practice and procedure, Courts, and Government employees.

In consideration of the foregoing, the Department of Transportation revises part 9 of its regulations (49 CFR part 9) as follows:

PART 9—TESTIMONY OF EMPLOYEES OF THE DEPARTMENT AND PRODUCTION OF RECORDS IN LEGAL PROCEEDINGS

Sec.

9.1 Purpose.
9.2 Applicability.
9.3 Definitions.
9.5 General prohibition of production or disclosure in legal proceedings.
9.7 Testimony by employees before the Department or in other legal proceedings in which the United States is a party.
9.9 Legal proceedings between private litigants: General rules.
9.11 Legal proceedings between private litigants: Demands.
9.13 Legal proceedings between private litigants: Procedures to request records.
9.15 Legal proceedings between private litigants: Procedures to request testimony.
9.17 Legal proceedings between private litigants: Procedures for taking testimony.
9.19 Acceptance of service on behalf of Secretary.

Authority: 5 U.S.C. 301; 45 U.S.C. 41–42; 49 U.S.C. 322; 49 U.S.C. 504(f); 23 U.S.C. 409.

§ 9.1 Purpose.

(a) This part sets forth procedures governing the testimony of an employee in legal proceedings in which the United States is a party. It also sets forth procedures to be followed when an employee is issued a subpoena, order or other demand (collectively referred to in this part as a "demand") by a court or other competent authority, or is requested by a private litigant, to provide testimony or produce records concerning information acquired in the course of performing official duties or because of the employee's official status. It also prescribes the policies and procedures of the Department with respect to the acceptance of service of legal process and pleadings in legal proceedings involving the Department.

(b) The purposes of this part are to:

(1) Conserve the time of employees for conducting official business;

(2) Minimize the possibility of involving the Department in controversial issues not related to its mission;

(3) Maintain the impartiality of the Department among private litigants;

(4) Avoid spending the time and money of the United States for private purposes; and

(5) To protect confidential, sensitive information and the deliberative processes of the Department.

(c) Agency counsel, in his or her discretion, may permit an exception from any requirement in this part. The exception may be granted only when the deviation will not interfere with matters of operational or military necessity, and when agency counsel determines that:

(1) It is necessary to prevent a miscarriage of justice;

(2) The Department has an interest in the decision that may be rendered in the legal proceeding; or

(3) The exception is in the best interest of the Department or the United States.

For Office of Inspector General employees and documents, the Inspector General, in conjunction with the General Counsel of the Department, may permit an exception from any requirement of this part if the Inspector General determines, based on the Inspector General Act of 1978, as amended, that application of the requirement would be inappropriate.

§ 9.2 Applicability.

This part applies to the testimony of an employee in legal proceedings in which the United States is a party. It also applies in legal proceedings between private litigants to requests or demands for testimony or records concerning information acquired in the course of an employee performing official duties or because of the employee's official status. This part does not apply to any legal proceeding in which an employee is to testify as to facts or events that are in no way related to the employee's official duties or the functions of the Department. Nor does it apply to Congressional demands for testimony or documents.

§ 9.3 Definitions.

For purposes of this part:

Department means the Department of Transportation (DOT), including the Office of the Secretary (which encompasses the Office of the Inspector General) and the following operating administrations while they are part of DOT:

(a) The U.S. Coast Guard.

(b) The Federal Aviation Administration.

(c) The Federal Highway Administration.

(d) The Federal Railroad Administration.

(e) The Federal Transit Administration.

(f) The St. Lawrence Seaway Development Corporation.

(g) The National Highway Traffic Safety Administration.

(h) The Maritime Administration.

(i) The Research and Special Programs Administration.

(j) Any DOT operating administration established after the effective date of this part.

Legal proceeding means any case or controversy pending before any federal, state, or local court (including grand jury proceedings), any administrative proceeding pending before any federal, state, or local agency, or any legislative proceeding pending before any state or local agency.

Legal proceeding between private litigants means any legal proceeding in which neither the Department of Transportation nor the United States (including any federal agency or officer of the United States in his or her official capacity) is a party.

Employee of the Department or *Employee* means any current or former officer or employee of the Department; any active duty, retired, or former officer or enlisted member of the Coast Guard; or any current or former contractor (including any corporation or other entity and any employee or subcontractor).

Agency counsel means the General Counsel of the Department or the Chief Counsel of any operating administration of the Department concerned, any person to whom the General Counsel or Chief Counsel has delegated authority, or any person who is authorized to represent the Department in a specific legal proceeding.

Testimony means any written or oral statement by a witness, including depositions, answers to interrogatories, affidavits, declarations, and statements at a hearing or trial.

§ 9.5 General prohibition of production or disclosure in legal proceedings.

No employee of the Department may provide testimony or produce any material contained in the files of the Department, or disclose any information

relating to, or based upon, material contained in the files of the Department, or disclose any information or produce any material acquired as part of the performance of that employee's official duties or because of that employee's official status unless authorized in accordance with this part, or by other applicable law.

§ 9.7 Testimony by employees before the Department or in other legal proceedings in which the United States is a party.

In any legal proceeding before the Department or in which the United States (including any federal agency or officer of the United States) is a party:

(a) Agency counsel shall arrange for an employee to testify as a witness for the United States whenever the attorney representing the United States requests it.

(b) An employee may testify for the United States both as to facts within the employee's personal knowledge and as an expert or opinion witness. Except as provided in paragraph (c) of this section, an employee may not testify as an expert or opinion witness, with regard to any matter arising out of the employee's official duties or the functions of the Department, for any party other than the United States in any legal proceeding in which the United States is a party. An employee who receives a demand to testify on behalf of a party other than the United States may testify as to facts within the employee's personal knowledge, provided that the testimony be subject to the prior approval of agency counsel and to the Federal Rules of Civil Procedure and any applicable claims of privilege.

(c) An employee may testify as an expert or opinion witness on behalf of an officer or enlisted member of the Coast Guard in any legal proceeding conducted by the Coast Guard.

§ 9.9 Legal proceedings between private litigants: General rules.

In legal proceedings between private litigants:

(a) The proper method for obtaining testimony or records from an employee is to submit a request to agency counsel as provided in §§ 9.13 and 9.15 of this part, not to serve a demand on the employee. Whenever, in a legal proceeding between private litigants, an employee is served with a demand, or receives a request, to testify in that employee's official capacity or produce records, the employee shall immediately notify agency counsel.

(b) If authorized to testify pursuant to these rules, an employee may testify only as to facts within that employee's personal knowledge with regard to matters arising out of his or her official duties.

(1) When the proceeding arises from an accident, an employee may testify only as to personally known facts, not reasonably available from other sources, observed by the employee or uncovered during the employee's investigation of the accident or observed by the employee even if he or she did not investigate the accident. The employee shall decline to testify regarding facts beyond the scope of his or her official duties.

(2) The employee shall not testify to facts that are contained in a report, or any part of a report, unless the employee has obtained permission from agency counsel to disclose the information.

(3) The employee shall not disclose confidential or privileged information unless the employee has obtained permission from agency counsel to disclose the information.

(4) The employee shall not testify as to facts when agency counsel determines that the testimony would not be in the best interest of the Department or the United States if disclosed.

(c) An employee shall not testify as an expert or opinion witness with regard to any matter arising out of the employee's official duties or the functions of the Department. An employee who is asked questions that call for expert or opinion testimony shall decline to answer on the grounds that it is forbidden by this part. Agency counsel shall advise the employee on how to proceed if the presiding officer directs the employee to provide expert or opinion testimony.

(d) An employee shall not provide testimony at a trial or hearing. An employee's testimony shall be limited to a single deposition, affidavit, or set of interrogatories, concerning the circumstances (e.g. an accident) from which the proceeding arose. Where multiple legal proceedings concerning those circumstances are pending, or can occur, it shall be the duty of the private litigant seeking the testimony to ascertain, to the extent feasible, the identities of all parties, or potential parties, to those proceedings and notify them that a deposition has been granted and that they have the opportunity to participate. The private litigant shall submit an affidavit or certification describing the extent of the search for parties and potential parties and listing the names of the parties and potential parties notified.

(e) Where an employee has already provided testimony, any party wishing to obtain further testimony from that employee concerning the same matter or occurrence, whether in the same or a different private legal proceeding, may submit a request to agency counsel to waive the restrictions of paragraph (d) of this section. The request shall, in addition to meeting the requirements of § 9.15 of this part, state why the requester should be permitted to gather additional information despite not having previously requested the information when it had an opportunity to do so, and why the additional testimony is now required and the prior testimony or previously supplied documents are insufficient.

§ 9.11 Legal proceedings between private litigants: Demands.

(a) If an employee receives a demand that has not been validly issued or served, agency counsel may instruct the employee not to comply with the demand.

(b) If an employee receives a demand (validly issued and served) to testify or produce records, agency counsel, in his or her discretion, may grant the employee permission to testify or produce records only if the purposes of this part are met or agency counsel determines that an exception is appropriate.

(c) If a demand is issued to an employee, agency counsel shall contact the requester of the demand, inform that person of the requirements of this part, and may, in agency counsel's discretion, ask that the demand be withdrawn.

(d) If the requester of the demand refuses to have it withdrawn or fails to comply with this part, the Department may seek to quash the demand.

(e) If the court or other competent authority declines to grant the Department's motion to quash, agency counsel shall instruct the employee whether to testify or produce documents pursuant to the demand. Agency counsel may permit the testimony under § 9.1(c) of this part. If response to a demand is required before the court or other competent authority rules on the motion to quash and the court fails to stay the demand, the employee must appear at the stated time and place, produce a copy of this part, and respectfully refuse to provide any testimony or produce any documents. Agency counsel shall take steps to arrange for legal representation for the employee. Agency counsel shall advise the employee how to respond, including not to testify, if the court or other competent authority rules that the demand must be complied with irrespective of these regulations.

§ 9.13 Legal proceedings between private litigants: Procedures to request records.

(a) In a legal proceeding between private litigants, a party who wishes to obtain records from the Department shall submit to agency counsel a request for the records. The request will ordinarily be handled in accordance with the Department's procedures concerning requests for records found at 49 CFR part 7. If the party does not follow the procedures specified in that part, the request must be accompanied by a statement setting forth the relevance of the records to the proceeding. The request should be resolved before any request for testimony under § 9.15 is submitted. Where a request for testimony includes a request for additional records, it shall indicate precisely how this new request differs in scope from any previous request in order to avoid agency duplication of effort. Agency counsel shall notify the requester of the approval or denial of the request.

§ 9.15 Legal proceedings between private litigants: Procedures to request testimony.

(a) Any party seeking the testimony of an employee in a legal proceeding between private litigants, concerning facts within the employee's personal knowledge with regard to matters arising out of the employee's official duties, shall, rather than serving a demand for the testimony, request the testimony at least 30 days before it is intended to be taken or received. The request must be submitted to agency counsel and must include:

(1) The title of the case, docket number, and the court, or otherwise clearly identify the legal proceeding involved;

(2) A statement setting forth the basic facts in the proceeding, such as the type, date, and location of an accident;

(3) A summary of the unresolved issues applicable to the testimony sought;

(4) A summary of the testimony sought and its relevant to the proceeding;

(5) A certification with support, that the information desired is not reasonably available from other sources, including Departmental documents;

(6) Pursuant to § 9.9(d) of this part, an affidavit or certification describing the extent of a search of parties and potential parties and listing the names of the parties and potential parties notified; and

(7) A declaration that the party will not seek expert or opinion testimony from the witness or seek the testimony of the witness at a hearing or trial in the proceeding.

The request shall specify which form of testimony (deposition, affidavit, declaration, or answers to interrogatories) is desired and the date by which it is desired; however, only one form, the one least burdensome to the Department that will provide the needed information, will be permitted for each witness.

(b) The party seeking the testimony shall include with its request for testimony a copy of any prior request(s) made by the same requester to the Department or other agency of the United States for records pertaining to the matter being litigated and of the response (not including the records themselves) to the request(s). The party seeking the testimony shall also comply with any agency counsel request that copies of the records previously disclosed by the Department, or a list of those records, be furnished.

(c) In accordance with the requirement of this section and the general provisions of this part, agency counsel shall notify the requester of the approval or denial of the request. Agency counsel may attach special conditions to its approval.

§ 9.17 Legal proceedings between private litigants: Procedures for taking testimony.

(a) Testimony of an employee of the Department may be taken only at the office to which the employee is assigned, or any other place designated by agency counsel. Additional conditions may be specified under § 9.15(c) of this part. The time shall be reasonably fixed to avoid substantial interference with the performance of the employee's or agency counsel's official duties.

(b) Upon completion of the testimony of an employee of the Department, a copy of the transcript of the testimony shall be furnished, at the expense of the party requesting the testimony, to agency counsel for the Department's files.

§ 9.19 Acceptance of service on behalf of Secretary.

In any legal proceeding, at the option of the server, process or pleadings may be served on agency counsel, with the same effect as if served upon the Secretary or the head of the operating administration concerned, as the case may be. The official accepting service under this section shall acknowledge the service and take appropriate action. This section does not in any way abrogate or modify the requirements of Rule 4(d)(4) and 4(d)(5) of the Federal Rules of Civil Procedure regarding service of summons and complaint.

Issued in Washington, DC, on January 19, 1993.

Andrew H. Card, Jr.,

Secretary of Transportation.

[FR Doc. 93–1773 Filed 2–1–93; 8:45 am]

BILLING CODE 4910–62–M

Federal Highway Administration

49 CFR Parts 390 and 394

[FHWA Docket Nos. MC–90–2 and MC–92–12]

RIN 2125–AC48

Notification and Reporting of Accidents

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is amending Part 390, General Applicability and Definitions, and is removing Part 394, Notification and Reporting of Accidents, of the Federal Motor Carrier Safety Regulations (FMCSRs). This final rule eliminates the requirements that motor carriers submit accident reports to the FHWA and notify the agency of fatal accidents as currently required by 49 CFR part 394. Instead of submitting reports, carriers will now be required to maintain an accident register of accidents meeting the definition of an accident for a period of one year after an accident occurs. The actions included in this final rule capitalize on an automated State accident reporting system being implemented nationwide under the Motor Carrier Safety Assistance Program (MCSAP), thereby justifying the elimination of the requirement for individual motor carrier submission of similar information. This action will reduce paperwork burdens on the motor carrier industry.

EFFECTIVE DATE: March 4, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey J. Van Ness, Office of Motor Carrier Standards, (202) 366–2981, or Mrs. Allison Smith, Office of the Chief Counsel, (202) 366–0834, 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 October 15, 1990, the FHWA published a notice of proposed rulemaking (NPRM), Docket MC–90–2 in the **Federal Register** (55 FR 41705) proposing to change the "$4,400

property damage" accident reporting criterion in § 394.3(a)(3) to a "towaway" criterion. The FHWA proposed that an accident be reportable if it results in (1) the death of a person, (2) bodily injury to a person, who, as a result of the accident, immediately receives medical treatment away from the scene of the accident, or (3) one or more motor vehicles incurring disabling damage as a result of the accident and requiring a vehicle to be transported from the scene of the accident by a tow truck or other vehicle.

The FHWA received thirty comments to this docket. Sixteen of the commenters supported the proposed change, thirteen voiced opposition to the proposed change, and one offered no position on the proposed change.

In response to the President's announcement of a moratorium and review of regulations, the DOT published a request for comments on February 7, 1992. That publication requested public comments on which Departmental regulations substantially impede economic growth, may no longer be necessary, are unnecessarily burdensome, or impose needless costs or red tape (See 57 FR 4744). One hundred commenters recommended changes to the accident reporting regulations. A discussion of these and the earlier comments was included in a supplemental notice of proposed rulemaking (SNPRM) published on July 30, 1992 (57 FR 33712).

The July 30, 1992, SNPRM included a reaffirmation of the FHWA's intent to eliminate the $4,400 property damage accident reporting criterion. Although the FHWA originally proposed to adopt a "towaway" definition as a criterion to replace the $4,400 property damage criterion in the NPRM, the SNPRM instead proposed to adopt a "disabling damage" definition as a criterion, in accordance with the recommendations of the National Governors Association (NGA). Additionally, the FHWA proposed to eliminate the requirement that motor carriers submit accident reports to the FHWA and/or immediately notify the agency of fatal accidents.

Comments Submitted to the Docket

The FHWA received twenty-one comments to the SNPRM. The commenters included nine motor carrier industry associations, seven motor carriers, four State agencies, and one motor carrier safety consultant.

Several commenters expressed concern that the proposed NGA data elements would exclude vital information about the vehicle(s) and driver(s) involved in the accidents reported. Two industry associations and one motor carrier safety consultant contended that additional data elements depicting the "who, what, why, where, and how" are necessary for this accident reporting program to meet its full potential. All three recommended specific changes to the proposed form. These changes included adding data elements that would focus on the vehicle(s) and driver(s).

The FHWA has adopted the data elements contained in the NGA proposal. Although one State law enforcement agency stated the NGA elements are not compatible with data they currently collect, twenty-one States currently use this reporting format. While additional data elements and definitions could have been added, the FHWA believes that the agreed upon data elements appearing in the SNPRM represent the best combination of elements to meet the needs of the State and Federal agencies involved.

Other issues of concern included the cost of training law enforcement officers, implementing the new form into existing data bases, processing costs of the new forms, and the proposed implementation dates. Commenters expressed concern that the States will be unable to implement this program before the proposed date of January 1, 1994. Further, they were concerned that the cost of implementing this program, along with the cost of training law enforcement officers, was too great for the States to bear. Under the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102–240, 105 Stat. 1914), Federal funding is available through the MCSAP to assist States in training personnel and in implementing the accident reporting program. These funds are also available to States not participating in the basic MCSAP. This should help alleviate some of the cost burdens associated with implementation and training. The FHWA believes that the benefits to be derived from a uniform and reliable accident reporting program will justify the additional expense incurred.

Commenters expressed concern about the discontinuance of the use of the MCS 50–T and MCS 50–B accident report forms one year before the implementation of the State generated program. The FHWA believes that the reporting requirement may be rescinded without decreasing program effectiveness. Motor carriers will be required to maintain an accident register, as proposed in the SNPRM. The FHWA believes that any loss in data continuity will be negligible in light of its intention to shift to an alternate and improved data source.

One motor carrier expressed concern that it would be held responsible for and have to rely on the States for accurate and timely reporting of accidents and fatalities. Motor carriers will not be responsible for State-generated accident reports. Motor carriers must maintain a register of accidents meeting the definition of an accident. For each accident listed, the record shall include the date, city nearest the accident site, State in which the accident occurred, driver's name, number of persons injured, number of fatalities, and whether hazardous materials were released (other than fuel spilled from the fuel tanks of vehicles involved in the accident). Motor carriers must retain copies of accident reports required to be filed by the various States, other governmental authorities, or insurers for a period of 365 days after the date of the accident and make these documents available on demand of a Federal or State official with jurisdiction over the carrier.

One State agency and one association stated that farm-to-market accidents should be included. They reasoned that all accidents meeting the reporting criteria should be reported and that it would be extremely difficult to train enforcement officers to distinguish between farm-to-market operations and other transportation. Once investigated, accidents occurring in farm-to-market operations will be reported to SAFETYNET. The FHWA, however, believes that since farmers have previously been exempted from preparing and maintaining MCS 50–T accident reports, they should be exempted from maintaining an accident register.

One association expressed concern about the definition of the term "disabling damage." It stated that many accidents involving only property damage would go unreported. The FHWA believes that using the term "disabling damage" has three distinct advantages over a property damage definition. First, a law enforcement official is generally on the scene before a vehicle is towed; second, the removal of the vehicle is a definite triggering event; third, there is no need to rely on cost estimates of damages that may be untimely, inaccurate, geographically inconsistent and subject to inflationary adjustments.

One State expressed support for the proposed accident reporting program, but stated that it has no law or regulation requiring an accident to be reported to the State or any other government agency. Additionally, the State has no law or regulation requiring an accident to be investigated once it is

reported. This rulemaking does not alter or change State law, nor does it impose any legal obligation upon States to report accidents. As a condition for continued MCSAP funding, States will be required to report accidents to SAFETYNET instead of having motor carriers complete this task.

Fourteen commenters expressed support for the SNPRM reasoning that the FHWA will now collect more accurate, uniform, and reliable accident data. They also voiced strong support for the substantial reduction in paperwork and recordkeeping requirements.

Discussion of Final Rule

The SNPRM also noted that accident reports are currently being electronically submitted from 21 States to the FHWA. As a condition of MCSAP funding, States are required to participate in the FHWA's SAFETYNET program, a shared database of driver and vehicle inspection and accident data, by January 1, 1994. This deadline was mandated in section 4002 of the Motor Carrier Act of 1991, which reauthorized the MCSAP through FY 1997. 49 U.S.C. app. 2302(b)(1)(K). Currently, all but two States participate in and receive basic grants in the MCSAP. Through MCSAP, however, these States are eligible to receive special grants to assist them in adopting, collecting, and uploading the accident data into SAFETYNET. Accordingly, the FHWA will have a much more reliable and uniform source of accident information available for planning and regulatory purposes. Notwithstanding State reporting, motor carriers are required to maintain an accident register for all accidents meeting the new definition. This requirement will aid motor carriers in further developing accident countermeasure programs, aid the FHWA personnel in making recommendations to motor carriers, assist the FHWA personnel in their motor carrier investigations, and provide data with which the success of the accident reporting program can be measured.

For the purposes of this rulemaking, disabling damage means damage which precludes departure of a motor vehicle from the scene of an accident in its usual manner in daylight after simple repairs. Included in this would be vehicles that could have been driven, but would have been further damaged if so driven. Excluded from this would be damage that can be remedied temporarily at the scene of the accident without special tools or parts, tire disablement without other damage (even if no spare tire is available), headlamp or taillight damage, or damage to turn signals, horn, or windshield wipers which makes them inoperative. The FHWA believes that this definition provides sufficient guidance to properly trained law enforcement officials to ensure more accurate and reliable reporting of accidents over that of a monetary or towaway threshold.

A definition of "fatality" has been added to section 390.5. This definition will assist motor carriers in characterizing an accident's status.

Rulemaking Analyses and Notices

Executive Order 12291(Federal Regulation) and DOT Regulatory Policies and Procedures

Based on the comments received to dockets MC–90–2 and MC–92–12, the FHWA is adopting the proposals presented in docket MC–92–12 as final.

The action being taken by the FHWA in this document eliminates the requirement for motor carriers to submit accident reports to the FHWA and notify the agency immediately of any fatalities. The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the DOT. This rule is consistent with the objectives outlined in the President's memorandum of January 28, 1992, to Federal agencies on the subject of reducing unnecessary burdens of government regulations. A preliminary evaluation conducted pursuant to the President's memorandum estimated that removing this reporting requirement would result in a total cost savings to industry of about $750,000 annually and a similar cost savings to governments of $750,000. The FHWA estimated that this latter cost savings would accrue to both State and Federal governments, because we anticipated that State accident reports will be made electronically through SAFETYNET, at minimal additional costs to the States. Some States have commented that they believe their costs will be increased as a result of this proposal. The FHWA believes that any short term increase in costs (*e.g.* to train law enforcement personnel) will be offset by available Federal funds (*i.e.*, MCSAP), long term savings, and the benefits associated with an improved commercial motor vehicle accident database. Nevertheless, the FHWA has not quantified these longer term savings to State governments, nor has the FHWA quantified the cost savings it anticipates from receiving these reports electronically from States rather than in paper form from motor carriers. For purposes of this rulemaking, however, the FHWA believes that the $750,000 annual cost savings to industry adequately supports taking this action.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612) the agency has evaluated the effects of this final rule on small entities and has determined that, since this action reduces the accident reporting requirements imposed upon the industry, it will not have a significant economic impact on a substantial number of small entities. Small motor carrier operations are involved in statistically fewer reportable accidents and thus spend less time completing accident reports. Accordingly, the FHWA hereby certifies that removing the requirement that motor carriers submit accident reports to the FHWA will have no 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. Some commenters to this rulemaking are concerned that the cost of implementing this provision, including the cost of training law enforcement officers, may be too great for some States to bear. Under the ISTEA, however, Federal funding is available through the MCSAP to assist States in training personnel and implementing the accident reporting program. These funds are also available to States not participating in the basic MCSAP. Accordingly, it is certified that the policies contained in this document have been assessed under Executive Order 12612 and it has been determined that they do not have sufficient federalism implications to warrant the preparation of a full Federalism Assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This final rule would reduce the amount of paperwork and other collection of information requirements under the Paperwork Reduction Act of

1980 (44 U.S.C. 3501–3520) by about 35,000 two-page documents per year. This figure represents the approximate number of accidents reported to the FHWA in 1990.

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 published 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 49 CFR Parts 390 and 394

Highway safety, Motor carriers, Reporting and recordkeeping requirements.

Issued on: January 19, 1993.

T.D. Larson,

Administrator.

In consideration of the foregoing, under the authority of 49 CFR 1.48 and 23 U.S.C. 315, the FHWA amends subchapter B of chapter III of title 49, Code of Federal Regulations, as set forth below:

PART 390—[AMENDED]

1. The authority citation for part 390 continues to read as follows:

Authority: 49 U.S.C. App. 2503 and 2505; 49 U.S.C. 3102 and 3104; 49 CFR 1.48.

2. Section 390.5 is amended by revising the introductory text of the section and by adding three definitions, placing them in alphabetical order, as follows:

§ 390.5 Definitions.

Unless specifically defined elsewhere, in this subchapter: *Accident* means—

(1) Except as provided in paragraph (2) of this definition, an occurrence involving a commercial motor vehicle operating on a public road which results in:

(i) A fatality;

(ii) Bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or

(iii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the vehicle to be transported away from the scene by a tow truck or other vehicle.

(2) The term *accident* does not include:

(i) An occurrence involving only boarding and alighting from a stationary motor vehicle; or

(ii) An occurrence involving only the loading or unloading of cargo; or

(iii) An occurrence in the course of the operation of a passenger car or a multipurpose passenger vehicle (as defined in § 571.3 of this title) by a motor carrier and is not transporting passengers for hire or hazardous materials of a type and quantity that require the motor vehicle to be marked or placarded in accordance with § 177.823 of this title.

* * * * *

Disabling damage means damage which precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs.

(1) *Inclusions.* Damage to motor vehicles that could have been driven, but would have been further damaged if so driven.

(2) *Exclusions.*

(i) Damage which can be remedied temporarily at the scene of the accident without special tools or parts.

(ii) Tire disablement without other damage even if no spare tire is available.

(iii) Headlamp or taillight damage.

(iv) Damage to turn signals, horn, or windshield wipers which makes them inoperative.

* * * * *

Fatality means any injury which results in the death of a person at the time of the motor vehicle accident or within 30 days of the accident.

* * * * *

3. Part 390 is amended by adding § 390.15 to read as follows:

§ 390.15 Assistance in investigations and special studies.

(a) A motor carrier shall make all records and information pertaining to an accident available to an authorized representative or special agent of the Federal Highway Administration upon request or as part of any inquiry within such time as the request or inquiry may specify. A motor carrier shall give an authorized representative of the Federal Highway Administration all reasonable assistance in the investigation of any accident including providing a full, true and correct answer to any question of the inquiry.

(b) Motor carriers shall maintain for a period of one year after an accident occurs, an accident register containing at least the following information:

(1) A list of accidents containing for each accident:

(i) Date of accident,

(ii) City or town in which or most near where the accident occurred and the State in which the accident occurred,

(iii) Driver name,

(iv) Number of injuries,

(v) Number of fatalities, and

(vi) Whether hazardous materials, other than fuel spilled from the fuel tanks of vehicles involved in the accident, were released.

(2) Copies of all accident reports required by State or other governmental entities or insurers.

PART 394 [REMOVED AND RESERVED]

4. Part 394 is removed and reserved.

[FR Doc. 93–1830 Filed 2–1–93; 8:45 am]

BILLING CODE 4910–22–M

Proposed Rules

Federal Register
Vol. 58, No. 20
Tuesday, February 2, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 40, 50, 70, and 72

RIN 3150–AE22

Procedures and Criteria for On-Site Storage of Low-Level Radioactive Waste

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission proposes to amend its regulations for reactor, material, fuel cycle, and independent spent fuel storage licensees. The proposed rule would establish a regulatory framework containing the procedures and criteria that would apply to on-site storage of low-level radioactive waste (LLW), beyond January 1, 1996. The Commission has determined, under the authority of the Atomic Energy Act of 1954, as amended, that these changes are appropriate because of potential health and safety concerns associated with the increased reliance upon on-site storage of LLW. The proposed rule is intended to support the goals that have been established by the Low-Level Radioactive Waste Policy Amendments Act of 1985 (Act) and is consistent with the June 19, 1992, United States Supreme Court (Supreme Court) decision, in *New York* v. *United States*. Comments are requested on this proposed rule and on strategies and options that the Commission might pursue, in addition to this proposed rulemaking, that would encourage the States and compacts to move forward with development of LLW disposal facilities.

DATES: Comment period expires on April 5, 1993. Comments received after that date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Submit written comments to: The Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Hand-deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. Federal workdays.

Copies of the regulatory analysis, environmental assessment and finding of no significant impact, and the comments received on the rule may be examined and copied, for a fee, at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC, telephone (202) 634–3273.

FOR FURTHER INFORMATION CONTACT: Robert Nelson, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504–2004.

SUPPLEMENTARY INFORMATION: The Low-Level Radioactive Waste Policy Amendments Act of 1985 (Act) (Pub. L. 99–240) establishes a series of milestones, penalties, and incentives to ensure that regional compacts and States make adequate progress toward being able to manage their LLW, by 1993. Section 5(a) of the Act requires the sited States of Nevada, South Carolina, and Washington to make disposal capacity available to LLW generators until December 31, 1992, subject to: The States and compacts meeting the other milestones of the Act, the sites remaining operational, and received waste being within site-specific volume limitations.

To help ensure that the States make adequate progress toward developing new LLW disposal facilities, the Act established six milestones by which the States should make decisions and commit to certain actions. The majority of the States met the requirements of the three milestone dates that had passed, by January 1990. Only the Central, Central-Midwest, and Southwestern Compact States met the January 1, 1992, milestone requirement, because their host States, Nebraska, Illinois, and California, respectively, submitted a facility license application to their State regulatory authorities before that date. The State of Texas conformed to this milestone on March 2, 1992. The remaining milestones of the Act, as it was enacted, are:

- January 1, 1993—If a State or compact cannot provide for disposal of its LLW after January 1, 1993, generators can request the State to take title to, and possession of, the generated waste. The State also becomes liable for damages as a consequence of failure to take possession of the waste. In 1993, States may avoid taking title and possession of the waste and assuming liability, but will forfeit the surcharge rebates established by the Act.
- January 1, 1996—If a State or compact cannot provide for disposal of its LLW after January 1, 1996, the States, upon proper notice by the generator or owner, shall take title to, and be obligated to take possession of, LLW. The State will also be liable for all damages directly or indirectly incurred by the generator or owner if it fails to take possession as soon after January 1, 1996, as the generator or owner notifies the State that the waste is available for shipment.

The section of the Act requiring the States to take title to, and possession of, the generated waste by January 1, 1996 (often referred to as the "take-title" provision), was held to be unconstitutional, by the Supreme Court on June 19, 1992, in a lawsuit brought by the State or New York (a non-compact State) and two of its counties. The constitutionality of the take-title provision, as applied to compact States, was not before the Supreme Court. Even though the take-title provision was held unconstitutional, clearly a goal of the LLRWPAA is the development of new LLW disposal facilities by January 1, 1993, and in no case later than January 1, 1996.

Because no new LLW disposal facilities were operational on January 1, 1993, and the compact commissions that control the existing LLW disposal sites either closed their site or set restrictions or conditions on receiving LLW from outside their regional compacts effective January 1, 1993, some licensees who generate LLW may be forced to store their LLW on-site, until disposal capacity is available, unless other arrangements for storage or disposal can be made. Nearly all the Governors' Certifications submitted to meet the 1990 milestone of the Act indicated that the State planned on interim storage by waste generators from 1993 through 1996. However, many States do expect to have access to the Barnwell LLW disposal facility from January 1, 1993 through June 30, 1994.

Early in 1990, the Commission directed the NRC staff to provide the Commission with information on the issues concerning the waste title-transfer and possession provisions set forth in the Act, so that the Commission might determine what role, if any, the NRC should play with regard to these provisions. The Commission was also interested in the adequacy of its existing regulatory framework for implementing the title-transfer provision. On September 12, 1990, the NRC staff sent the Commission an analysis of the issues associated with the waste title-transfer and possession provisions of the Act (SECY–90–318). Major issues related to these provisions included States taking possession of commercial LLW after 1993 or 1996, and licensing of this possession by the NRC and Agreement States.

The Commission discussed the issues associated with the waste title-transfer and possession provisions of the Act and the recommendations presented in SECY–90–318, in a public meeting, on October 29, 1990. In response to a request from the Low-Level Radioactive Waste Forum, the Commission decided to solicit public and State comments on the NRC staff's recommendations provided in SECY–90–318 and on eight questions addressing the title-transfer provision of the Act. The Commission requested that the NRC staff provide the Commission with an analysis of the comments received in response to the letter dated November 28, 1990, from Samuel J. Chilk, Secretary of the Commission, to Mr. Jerry Griepentrog, Convenor, Low-Level Radioactive Waste Forum, and from the **Federal Register** notice soliciting public comments.

The Commission solicited public comment on the NRC staff's recommendations provided in SECY–90–318 and the eight questions in the **Federal Register** notice published December 4, 1990 (55 FR 50064). The comment period expired on March 2, 1991. Seventy-four individuals or organizations responded.

The commenters raised many specified issues. Most can be grouped under the single, broad issue of NRC's role in implementing the Act. The eight questions, a comment summary, an analysis of those comments, and conclusions are provided as appendix A to this proposed rule. In response, the Commission directed the NRC staff to develop a proposed rulemaking that would establish a regulatory framework containing the procedures and criteria applicable to on-site storage of LLW after January 1, 1996.

Although LLW can be safely stored, NRC believes that the protection of the public health and safety and the environment is enhanced by disposal, rather than by long term, indefinite storage of waste. Disposal of waste in a limited number of facilities, licensed under the requirements of 10 CFR Part 61 or compatible Agreement State regulations, will provide better protection of the public health and safety and the environment than long-term storage at hundreds or thousands of sites around the country. Stored waste packages need to maintain sufficient integrity to prevent dispersal of the waste during storage, transport, and handling, up to and including emplacement for disposal. Because of the variability of certain storage environments, waste packages may suffer degradation over the extended storage period. Among the ways in which a storage environment can cause waste package degradation are temperature fluctuations (in heated facilities in areas with cold winters) and corrosive atmospheres (e.g., industrial and marine atmospheres as well as acid deposition). Other waste package concerns during storage include external and internal corrosion, radiolytic generation of gases (predominantly hydrogen) and corrosive substances, radiation induced embrittlement of polyethylene containers, and biodegradation of institutional wastes. These processes may accelerate internal corrosion and failure of common storage containers, even if the waste is stabilized prior to storage. Waste form degradation could result in spills or releases during handling for disposal, if the degradation goes undetected. In addition, waste package deterioration prior to disposal will require repackaging of the LLW and cleanup of any spills. As a result, workers will be potentially exposed to additional doses of radiation. The NRC contractor document, "Extended Storage of Low-Level Radioactive Waste: Potential Problem Areas," NUREG/CR–4062, provides a detailed discussion of these concerns.[1]

Storage also involves a number of activities that could increase radiation doses to the public. First, storage of LLW will result in potential increased worker exposures, from unloading the waste from storage, for disposal. Second, waste forms may need to be repackaged or otherwise processed, again, as a result of waste form failure or to meet waste acceptance criteria for a new disposal facility, once one becomes available. This additional handling by workers will also cause increased exposures. The site-specific conditions at a new disposal facility may necessitate these new waste form criteria and these criteria may not be known when LLW is placed into storage. Third, radiation surveys and inspections of LLW in storage will result in potential additional doses to those involved in performing these activities. For these reasons and to support the goals of the Act, the NRC is proposing this rulemaking, which makes storage of LLW an option of last resort. The Commission specifically invites comment on the above public health and safety rationale, as well as on the comparative risk of potential releases as a result of an event or accident at numerous LLW storage sites around the country, as opposed to the potential release from a limited number of disposal sites designed to meet the siting and design requirements in 10 CFR part 61 or compatible Agreement State regulations.

The proposed rule, as it was originally drafted and set to the Agreement States for comment, included a requirement for the licensee to request that the State take title to, and possession of, the waste, pursuant to section 5(d)(2)(C) (the "take-title" provision) of the Act, before LLW could be stored on-site after January 1, 1996. The text of the rule has been revised to delete the requirement for the generator to request the State to take title to, and possession of, the generator's LLW. In view of the recent Supreme Court decision in *New York* v. *United States*, the Commission will not require this action as a prerequisite for storing LLW on-site after January 1, 1996.

Coordination With NRC Agreement States

The NRC Agreement States were informed of the NRC's intent to issue a proposed rule and were provided the draft regulatory text, by letter dated February 7, 1992. The letter explained that the Commission is taking this action in view of the potential health and safety concerns associated with an increased reliance upon on-site storage and in light of the framework that has been established by the Act. This initial notification reiterated the Commission's position that it will not look favorably on generator on-site storage of LLW, after January 1, 1996. Supplementary information, which included a summary of the related provisions of the Act and

[1] Copies of NUREG documents may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for inspection and/or copying at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

a discussion of the proposed revisions, was forwarded to the Agreement States on February 14, 1992. The Agreement States were asked to provide comments by March 14, 1992.

The Agreement States of Arizona, Arkansas, California, Colorado, Illinois, Kansas, Kentucky, Nevada, New York, North Carolina, Oregon, South Carolina, Texas, and Washington, and the Midwest Interstate Low-Level Radioactive Waste Commission responded to the NRC staff's request for comments. One State supported the proposed rulemaking, and three States opposed it. Two States, although not opposing any provisions of the rule, stated that the rulemaking should not proceed until the Supreme Court decides on the constitutionality of the Act and the title-transfer provision. Three States and the one commission provided comments and questions without taking a position on the proposed rulemaking. One State reserved comment and four States had no comments. Fifteen Agreement States did not respond.

Response to NRC Agreement State Comments

Comment. The revisions do not appear to be based on protection of public health and safety or any technical arguments.

Response. As previously discussed, the potential risk to the public health and safety, from on-site storage of LLW, is greater than for disposal, because storage involves a number of conditions and activities that could increase radiation doses to the public. Although LLW can be safely stored, the NRC believes that the protection of the public health and safety and the environment will be enhanced by disposal.

Comment. There appears to be no substantive rationale for prohibition of on-site storage after January 1, 1996.

Response. The proposed rule would prohibit on-site storage after January 1, 1996, only if the generator had not exhausted other waste management options. As discussed in response to the previous comment, disposal is preferred over storage, to enhance the protection of the public health and safety and the environment. Therefore, generators should exhaust all disposal options before storing their LLW on-site.

Comment. The proposed revisions would improperly establish NRC as the enforcer of the "take-title" provisions, contrary to the Act.

Comment. It is inappropriate for NRC to require, as a condition for on-site storage, that licensees request the State in which they are located to take title to, and possession of, the waste, pursuant to section 5(d)(2)(C) of the Act, because the Act gives licensees the option not to request the State to take possession.

Comment. One State has a different law regarding title: "Title to any LLW shall at all times remain in the generator of such waste * * *." The proposed rule conflicts with State law.

Response. The text of the rule, which had been provided to the Agreement States for comment, has been revised to delete the requirement for the generator to request the State to take title to, and possession of, the generator's LLW. In view of the recent Supreme Court decision in *New York* versus *United States,* the Commission will not require this action as a prerequisite for storing LLW on-site after January 1, 1996.

Comment. What legal authority does the Commission have to impose the prohibition of possession of LLW, by the State, at a generator's facility?

Comment. How can "the prohibition" of State possession of LLW, at the generator's facility, be reconciled with the language of the Compact Act, which authorizes "* * * management of waste on the site where it is generated if such is otherwise lawful?"

Response. It is not envisioned that a State would take possession of LLW at a generator's facility.

Comment. It is inappropriate for NRC to require, as a condition for on-site storage, that licensees exhaust the contract option of section 5(e)(1)(F) of the Act as a condition for on-site storage. This section of the Act applies to States, not licensees.

Response. The NRC agrees that section 5(e)(1)(F) of the Act applies to States but not licensees. The text of the rule, which was provided to the Agreement States for comment, has been revised to eliminate the reference to this section of the Act.

Comment. The rule is silent with regard to financial surety aspects of extended storage, and "totally ignores" the requirements that would be placed on States that take title to, and/or possession of, LLW, after January 1, 1996.

Response. Financial assurance requirements for the affected licenses are contained in 10 CFR 30.35, 40.36, 50.75, 70.25, and 72.30. Financial assurance guidance for fuel cycle and materials licensees is provided in Information Notice 90–09, "Extended Interim Storage of Low-Level Radioactive Waste by Fuel Cycle and Materials Licensees."

Comment. If NRC continues to pursue the "no on-site storage" option past January 1, 1996, as the NRC staff proposes, it will be NRC's responsibility to provide for emergency access to operating LLW disposal facilities for the LLW it prohibits from on-site storage.

Response. The NRC is not pursuing a "no on-site storage" option. The NRC recognizes that some generators will have to store LLW on-site. The NRC seeks to minimize the amount of LLW placed in storage, by requiring generators to exhaust all other reasonable waste management options. The guidance governing implementation of the emergency-access provision, of the Act, contained in Information Notice 91–65, "Emergency Access to Low-Level Radioactive Waste Disposal Facilities," will remain in effect. The NRC does not anticipate any situation where the provisions of this rule, in addition to a lack of access, would create a serious and immediate threat to the public health and safety or common defense and security, thereby requiring emergency access.

Comment. A more immediate concern, directly related to the storage of waste, is the authority of a generator to accept its processed waste after this waste has been sent off-site for treatment.

Response. The NRC has amended its regulations governing the condition of licenses for production and utilization facilities to allow a reactor licensee to receive back byproduct and special nuclear material that is produced by operating the reactor after the material has been sent off-site for processing, such as compaction or incineration. The final rule was published on October 21, 1992 (57 FR 47978). The rule became effective on November 20, 1992.

Comment. Any rulemaking on this issue must incorporate maximum flexibility, consistent with the protection of the public health and safety and the environment.

Response. Maximum flexibility has been considered. The proposed rulemaking does not preclude on-site LLW storage, as long as other waste management options are exhausted.

Comment. NRC's guidance would be expected to be consistent and compatible with NRC actions taken with respect to indefinite storage of high-level radioactive waste (HLW).

Response. The LLW situation is significantly different from that of HLW. Under the Nuclear Waste Policy Act of 1982, as amended, the Federal government is developing a facility for disposal of HLW. In the LLW program, it is the Commission's judgment that the NRC's regulations will encourage disposal by requiring generators to seek available disposal options. Furthermore, unlike HLW, commercial LLW disposal sites are currently operational, and development of new LLW disposal

facilities continues, with two new facilities schedule to be operational by January 1, 1996. The risk to public health and safety from hundreds or thousands of temporary storage facilities is greater than that from a limited number of well-controlled disposal sites in the country.

Comment. There should be a definition that describes when radioactive material becomes waste.

Response. The term "waste" is defined in 10 CFR 61.2. Waste is considered to be any material or component for which the licensee foresees no further use. The NRC continues to believe that the licensee is in the best position to determine the continued utility, of radioactively contaminated material and components, to its operations. The NRC will continue to rely on the licensee to determine when material and components become waste and will periodically review the licensee's conclusions, to determine if they are reasonable and appropriate.

Comment. Does any provision of the Act prohibit a State from exercising its powers of eminent domain, and thereby moving to condemn existing licensee facilities, to establish a LLW management program for generators at the site.

Response. Although the NRC knows of no such provision, any exercise of a State's power of eminent domain would have to comply with applicable law.

Comment. There should be a maximum time limit, for "short-term," that would apply equally to all forms, including decay-in-storage. This commenter recommends a maximum storage time of one year. This commenter also states that this will allow sufficient time for isotopes with short half-lives to decay sufficiently for disposal in a sanitary landfill.

Response. Generally, for non-medical LLW, radioactive material with a half-life of less than 65 days can be held in storage before disposal as non-radioactive material. If allowed by the license, LLW disposed of in this manner must be held for decay a minimum of 10 half-lives. Decay in storage for medical waste is governed by 10 CFR 35.92. The proposed rule would not affect this practice.

Comment. To whom does the revision apply? As the State is required by the Amended Act to take possession, is the proposed language intended to cover that time interval between the licensee requesting the State to take possession and the State actually taking possession?

Response. The proposed rule would apply to all LLW generators licensed under 10 CFR parts 30, 40, 50, 70, and 72. As discussed in reponse to an earlier comment, the text of the rule, which had been provided to the Agreement States for comment, has been revised to delete the requirement for the generator to request the State to take title to, and possession of, the generator's LLW.

Comment. Will NRC licensees be required or encouraged to ship all wastes before January 1, 1993, that will reach five years in storage, between January 1, 1993, and January 1, 1996?

Response. Guidance on storage, which is optional, in Generic Letters 81–38 and 85–14, and Information Notices 89–13 and 90–09, includes consideration of keeping storage to limited periods of time (i.e., five years or less) and emphasizes shipment of LLW for final disposal. It is the NRC's policy that licensees should continue to ship LLW, for disposal, to the maximum extent practicable. Although the NRC has not set specific dates or deadlines for LLW shipments, Generic Letter 81–38 states that a part 30 license should be obtained if the time in storage exceeds five years.

Issue of Compatibility With Agreement States

Opinion varied among the 14 Agreement States that responded, on the issue of compatibility. Two States commented that this rulemaking should not be a matter of compatibility; one State recommended Division 1 (regulation must be adopted verbatim); two States recommended Division 2 (language identical to that in NRC rules is not necessary, provided that the underlying principles are the same); one State recommended Division 3 (States are encouraged to adopt the regulatory approach taken by the NRC, but are not required to do so); and eight States did not comment on compatibility.

The NRC considers the proposed implementation of these amendments to its licensing conditions to be directly related to the basic regulatory function of protecting the public health and safety and the environment. Unless the proposed rule is made a matter of compatibility, the waste management practices in both Agreement States and non-Agreement States could be inconsistent, and the Commission's goal to encourage disposal would be frustrated. Therefore, the amendments contained in this proposed rule would be a matter of compatibility for NRC Agreement States. The additional license conditions for LLW on-site storage, after January 1, 1996, in 10 CFR 30.34, 40.41, and 70.32, are considered to be Division 2 categories of compatibility. Although Agreement States must adopt Division 2 rules in their regulations, the use of language identical to that in NRC rules is not necessary, provided that the underlying principles are the same. The Agreement States may adopt more restrictive requirements.

The Commission is currently considering a re-evaluation of its compatibility policy and may decide to revise its general requirements regarding compatibility for the Agreement States. The Commission's compatibility determination, on this proposed rule, may be re-examined in light of any change to the general policy.

Discussion of Proposed Revisions

The proposed rule would establish procedures and criteria, for on-site storage of LLW, that would apply to all categories of LLW generators. On-site storage of LLW would not be permitted after January 1, 1996 (other than reasonable short-term storage necessary for decay, or for collection or consolidation for shipment off-site, in the case where the licensee has access to an operating LLW disposal facility), unless the licensee can document that it has exhausted other reasonable waste management options. The NRC's proposed regulations would require that the licensee attempt to contract, either directly or through the State, for the disposal of its waste. In addition, reactor licensees would have to document that on-site storage activities would be consistent with, and not compromise, the safe operation of the licensee's activities, and would not decrease the level of safety provided by applicable regulatory requirements. In view of the recent Supreme Court decision in *New York* versus *United States*, the Commission will not require the generator to request that the State take title to, and possession of, the waste, as a prerequisite for storing LLW on-site after January 1, 1996. Even though the take-title provision was held unconstitutional, clearly a goal of the LLRWPAA is the development of new LLW disposal facilities by January 1, 1993, and in no case later than January 1, 1996. To support the goals of the LLRWPAA and its legislated preference for disposal over storage of LLW, the NRC has concluded that action is necessary to require licensees to exhaust other reasonable management options before on-site storage of LLW will be permitted after January 1, 1996.

The exemption for collection or consolidation for shipment off-site is limited to those licensees that have access to an operating LLW disposal facility. Without this limitation, licensees not having access to a disposal facility could avoid or delay the actions required by the proposed rule, by

"collecting or consolidating for shipment off-site," when disposal facility access becomes available.

The proposed rule would make these requirements standard license conditions for every license issued for reactor, materials, fuel cycle, and independent spent fuel storage licensees. The rulemaking would amend 10 CFR 30.34, 40.41, 50.54, 70.32, and 72.44. These sections of the regulations identify standard conditions for reactor, materials, fuel cycle, and independent spent fuel storage licenses. The licensee would not be required to make a formal submittal to the NRC, to show compliance with these conditions. The proposed rule would require that all relevant documentation of the steps taken to satisfy the requirements of this rulemaking be maintained by the licensee, and be made available to the NRC, for inspection.

To show compliance with this proposed rule, the NRC would expect the licensee to make an annual request for access to each operating commercial LLW disposal facility, for disposal of the licensee's LLW. Adequate documentation of the licensee's efforts to exhaust other reasonable waste management options would consist of copies of all correspondence to LLW disposal facility operators and responses to these requests. This documentation shall be retained for at least three years. The NRC will verify compliance, by reviewing this documentation, during periodic inspections, and at other times, as may be necessary, to determine whether additional inspections or other regulatory attention is required. Absent a willful act, any non-repetitive violation of these requirements would normally be considered a Severity Level IV violation under the Commission's Enforcement Policy, contained in Appendix C to 10 CFR part 2.

On-site storage of LLW resulting from reactor operations can be undertaken pursuant to the existing authorities and procedures, such as 10 CFR 50.59, and all relevant licensing and regulatory requirements applicable to on-site storage. Material, fuel cycle, and independent spent fuel storage licensees may store LLW on-site if storage: (1) Is authorized under the existing license conditions; and (2) is consistent with existing authorities and procedures, and all relevant licensing and regulatory requirements applicable to on-site storage.

The Commission continues to hold the position that it will not look favorably on generator on-site storage of LLW, after January 1, 1996. It considers the on-site storage of LLW to be a last-resort measure. The Commission's preference is that LLW be permanently disposed of as soon after it is generated as possible.

This proposed rule would supplement, but not supersede, the existing regulations and guidance applicable to storage of LLW. The conditions in themselves would not authorize on-site storage. The existing regulatory and licensing framework will continue to be applicable. The following seven documents, in conjunction with the regulations in 10 CFR parts 20, 30, 40, 50, 70, and 72, provide this framework for LLW storage. However, note that the generic letters and information notices are informational and not binding. These documents are available, for inspection and copying, for a fee, at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

APPLICABLE LICENSING—FRAMEWORK DOCUMENTS FOR ON-SITE LLW STORAGE

Type	Number	Title
Generic Letter	81–38	"Interim Storage of Utility Licensee-Generated Low-Level Radioactive Waste at Reactor Sites".
Generic Letter	85–14	"Commercial Storage at Power Reactor Sites of Low-Level Radioactive Waste Not Generated by the Utility".
Information Notice	89–13	"Alternative Waste Management Procedures in Case of Denial of Access to Low-Level Waste Disposal Sites".
Information Notice	90–09	"Extended Interim Storage of Low-Level Radioactive Waste by Fuel Cycle and Materials Licensees".
Regulatory Guide	1.143	"Design Guidance for Radioactive Waste Management Systems, Structures, and Components Installed in Light-Water-Cooled Nuclear Power Plants".
Standard Review Plan (NUREG–0800).	Sec. 11.4	"Solid Waste Management Systems".
Inspection and Enforcement Circular.	80–18	"10 CFR 50.59 Evaluations for Changes to Radioactive Waste Management Systems".

Finding of No Significant Environmental Impact: Availability

The Commission has determined, under the National Environmental Policy Act of 1969, as amended, and the Commission regulations in subpart A of 10 CFR part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. This proposed rulemaking would supplement, but not supersede, the existing regulatory framework applicable to the storage of LLW. The additional conditions of this rulemaking, in themselves, would not authorize on-site storage. These amendments would add administrative and verification requirements to existing regulations governing the licensing of byproduct material, source material, production and utilization facilities, special nuclear material, and independent spent fuel storage. The proposed rule would encourage disposal as opposed to storage, and this should have beneficial environmental effects. The proposed rule would not result in any increase in radiation exposure from transportation of LLW, compared to that expected from the ultimate disposal of LLW envisioned by the Act. Any environmental impact of operating an on-site LLW storage facility will be addressed, as required, as part of the licensing action for that facility, under previously established regulatory requirements. The environmental assessment and finding of no significant impact, on which this determination is based, may be examined and copied, for a fee, at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC, telephone (202) 634–3273.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This rulemaking has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

The public reporting burden for this collection of information is estimated to average 12 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this

collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (MNBB–714), U.S. Nuclear Regulatory Commission, Washington, DC 20555; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–3109 (3150–0017, 3150–0020, 3150–0011, 3150–0009, and 3150–0132), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The Commission has prepared a draft regulatory analysis on these proposed amendments. The analysis examines the costs and benefits of the alternatives considered by the Commission. The draft analysis may be examined and copied, for a fee, at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC, telephone (202) 634–3273.

The Commission requests public comment on the draft regulatory analysis. Comments on the draft analysis may be submitted to the NRC, as indicated under the "ADDRESSES" heading.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. The proposed rule affects approximately 6200 NRC licenses under 10 CFR parts 30, 40, 50, 70, and 72. Of this total, approximately 2000 are small entities. The proposed rule will require licensees planning to store LLW beyond January 1, 1996 (except for other than reasonable short-term storage necessary for decay or for collection or consolidation for shipment off-site in the case where the licensee has access to an operating LLW disposal facility) to document that other reasonable waste management options have been exhausted. The required documentation and maintenance of these records will require minimal administrative resources. Licensees will need to prepare and mail letters to appropriate LLW management authorities, retain all relevant documentation, and make these records available for NRC inspection. The annual recordkeeping burden imposed by the proposed rule is estimated to be 12 hours for the average licensee. The NRC does not believe that this burden will have a significant economic impact on small entities.

Backfit Analysis

The proposed rule does not constitute "* * * the modification of or addition to systems, structures, components, or design of a facility; or the design approval or manufacturing license for a facility; or the procedures or organization required to design, construct or operate a facility. * * *" Therefore, the proposed action is not a backfit, as defined in 10 CFR 50.109. The proposed rule primarily addresses the off-site disposal of low-level radioactive waste, generated as a result of reactor operation. The existing regulatory framework, applicable to assuring the safety of on-site storage of low-level radioactive waste, generated by reactor operations, remains unchanged. The NRC is seeking public comment on the backfit analysis. Comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attn: Docketing and Service Branch.

List of Subject Terms

10 CFR Part 30

Byproduct material, Criminal penalty, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 40

Criminal penalty, Government contracts, Hazardous materials—transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 50

Antitrust, Classified information, Criminal penalty, Fire prevention, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 70

Criminal penalty, Hazardous materials—transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 72

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

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR parts 30, 40, 50, 70 and 72.

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

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

Authority: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244; 1246 (42 U.S.C. 5841, 5842, 5846).

Section 30.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.34(j) also issued under Pub. L. 99–240, sec. 102, 99 Stat. 1842 (42 U.S.C. 2021). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 30.3, 30.10, 30.34 (b), (c), (f), (g), (i), and (j), 30.41 (a) and (c), and 30.53 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); § 30.10 is issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 30.6, 30.9, 30.34 (g) and (j), 30.36, 30.50, 30.51, 30.52, 30.55, and 30.56 (b) and (c) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 30.34, paragraph (j) is added to read as follows:

§ 30.34 Terms and conditions of licenses.

* * * * *

(j) The following conditions are contained in every license issued under the regulations in this part.

(1) Low-level radioactive waste (LLW) may be stored on-site, provided it is authorized under existing conditions of the license, and storage is consistent with existing authorities and procedures, and all relevant licensing and regulatory requirements applicable to on-site storage. LLW may not be stored on-site by the generator beyond January 1, 1996, except as specified in paragraph (j)(2) of this section.

(2) For on-site storage of LLW beyond January 1, 1996 (other than reasonable short-term storage necessary for decay or for collection or consolidation for shipment off-site, in the case where the licensee has access to an operating LLW disposal facility), the licensee shall document that it has exhausted other

reasonable waste management options which would include taking all reasonable steps to contract, either directly or through the State, for disposal of LLW.

(3) The licensee shall retain all relevant documentation regarding the actions taken pursuant to paragraph (j)(2) of this section, for at least three years, and shall make the documentation available for NRC inspection.

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

3. The authority citation for part 40 is revised to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95–604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97–415, 96 Stat. 2067 (42 U.S.C. 2022).

Section 40.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec.122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.41(h) also issued under Pub. L. 99–240, sec. 102, 99 Stat. 1842 (42 U.S.C. 2021). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 40.3, 40.25(d)(1)-(3), 40.35 (a)-(d) and (f), 40.41 (b), (c), and (h), 40.46 40.51, (a) and (c), and 40.63 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); § 40.10 is issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 40.5, 40.9, 40.25 (c), (d)(3), and (4), 40.26(c)(2), 40.35(e), 40.41(h), 40.42, 40.61, 40.62, 40.64, and 40.65 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

4. In § 40.8, paragraphs (a) and (b) are revised as follows:

§ 40.8 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). OMB has approved the information collection requirements contained in this part under control number 3150–0020.

(b) The approved information collection requirements contained in this part appear in §§ 40.25, 40.26, 40.31, 40.35, 40.36, 40.41, 40.42, 40.43, 40.44, 40.60, 40.61, 40.64, 40.65, and Appendix A.

* * * * *

5. In § 40.41, paragraph (h) is added to read as follows:

§ 40.41 Terms and conditions of licenses.

* * * * *

(h) The following conditions are contained in every license issued under the regulations in this part.

(1) Low-level radioactive waste (LLW) may be stored on-site, provided it is authorized under existing conditions of the license, and storage is consistent with existing authorities and procedures, and all relevant licensing and regulatory requirements applicable to on-site storage. LLW may not be stored on-site by the generator beyond January 1, 1996, except as specified in paragraph (h)(2) of this section.

(2) For on-site storage of LLW beyond January 1, 1996 (other than reasonable short-term storage necessary for decay or for collection or consolidation for shipment off-site, in the case where the licensee has access to an operating LLW disposal facility), the licensee shall document that it has exhausted other reasonable waste management options which would include taking all reasonable steps to contract, either directly or through the State, for disposal of LLW.

(3) The licensee shall retain all relevant documentation regarding the actions taken pursuant to paragraph (h)(2) of this section, for at least three years, and shall make the documentation available for NRC inspection.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

6. The authority citation for part 50 is revised to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246, (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955 as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13 and 50.54(dd) also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a, and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Section 50.54(ff) also issued under Pub. L. 99–240, sec. 102, 99 Stat. 1842 (42 U.S.C. 2021). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 50.5, 50.46 (a) and (b), and 50.54 (c) and (ff) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.5, 50.7(a), 50.10(a)–(c), 50.34 (a) and (e), 50.44(a)–(c), 50.46 (a) and (b), 50.47(b), 50.48 (a), (c), (d), and (e), 50.49(a), 50.54(a)(i), (i)(1), (l)–(n), (p), (q), (t), (v), and (y), 50.55(f), 50.55a (a), (c)–(e), (g), and (h), 50.59(c), 50.60(a), 50.62(b), 50.64(b), 50.65, and 50.80 (a) and (b) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.49 (d), (h), and (j), 50.54 (w), (z), (bb), (cc), (dd), and (ff), 50.55(e), 50.59(b), 50.61(b), 50.62(b), 50.70(a), 50.71 (a)–(c) and (e), 50.72(a), 50.73 (a) and (b), 50.74, 50.78, and 50.90 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

7. In § 50.54, paragraph (ff) is added to read as follows:

§ 50.54 Conditions of licenses.

* * * * *

(ff) (1) On-site storage of low-level radioactive waste (LLW) may be undertaken pursuant to existing authorities and procedures (such as 10 CFR 50.59) and all relevant licensing and regulatory requirements applicable to on-site storage. LLW may not be stored on-site by the generator beyond January 1, 1996, except as specified in paragraph (ff)(2) of this section.

(2) For on-site storage of LLW beyond January 1, 1996 (other than reasonable short-term storage necessary for decay or for collection or consolidation for shipment off-site, in the case where the licensee has access to an operating LLW disposal facility), the licensee shall document that—

(i) The licensee has exhausted other reasonable waste management options which would include taking all reasonable steps to contract, either directly or through the State, for the disposal of LLW; and

(ii) On-site storage activities will be consistent with, and not compromise, safe operation of the licensee's activities, nor decrease the level of safety provided by applicable regulatory requirements.

(3) The licensee shall retain all relevant documentation regarding the actions taken pursuant to paragraphs

(ff)(2)(i) and (ii) of this section, for at least three years, and shall make the documentation available for NRC inspection.

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

8. The authority citation for part 70 is revised to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C 2077). Section 70.32(1) also issued under Pub. L. 99–240, sec. 102, 99 Stat. 1842 (42 U.S.C. 2021). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 70.3, 70.10, 70.19(c), 70.21(c), 70.22(a), (b), (d)–(k), 70.24(a) and (b), 70.32(a)(3), (5) and (6), (d), (i), and (l), 70.36, 70.39(b) and (c), 70.41(a), 70.42(a) and (c), 70.56, 70.57(b), (c), and (d), 70.58(a)–(g)(3), and (h)–(j) are issued under sec. 161b, 68 Stat. 948 as amended (42 U.S.C. 2201(b)); §§ 70.7, 70.10, 70.20a(a) and (d), 70.20b(c) and (e), 70.21(c), 70.24(b), 70.32(a)(b), (c), (d), (e), and (g), 70.36, 70.51(c)–(g), 70.56, 70.57(b) and (d), and 70.58(a)–(g)(3) and (h)–(j) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 70.5, 70.9, 70.20b(d) and (e), 70.32(l), 70.38, 70.50, 70.51(b) and (i), 70.52, 70.53, 70.54, 70.55, 70.58(g)(4), (k) and (l), 70.59, and 70.60(b) and (c) are issued under sec. 161o, 68 Stat 950, as amended (42 U.S.C. 2201(o)).

9. In § 70.32, paragraph (l) is added to read as follows:

§ 70.32 Conditions of licenses.

* * * * *

(l) The following conditions are contained in every license issued under the regulations in this part:

(1) Low-level radioactive waste (LLW) may be stored on-site, provided it is authorized under existing conditions of the license, and storage is consistent with existing authorities and procedures, and all relevant licensing and regulatory requirements applicable to on-site storage. LLW may not be stored on-site by the generator beyond January 1, 1996, except as specified in paragraph (l)(2) of this section.

(2) For on-site storage of LLW beyond January 1, 1996 (other than reasonable short-term storage necessary for decay or for collection or consolidation for shipment off-site, in the case where the licensee has access to an operating LLW disposal facility), the licensee shall document that it has exhausted other reasonable waste management options which would include taking all reasonable steps to contract, either directly or through the State, for disposal of LLW.

(3) The licensee shall retain all relevant documentation regarding the actions taken pursuant to paragraph (l)(2) of this section, for at least three years, and shall make the documentation available for NRC inspection.

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

10. The authority citation for part 72 is revised to read as follows:

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

Section 72.44(g) also issued under secs. 142(b) and 148 (c), (d), Public Law 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.44(h) also issued under Public Law 99–240, sec. 102, 99 Stat. 1842 (42 U.S.C. 2021). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Public Law 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Public Law 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Public Law 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 72.6, 72.12, 72.22, 72.24, 72.26, 72.28(d), 72.30, 72.32, 72.44(a), (b)(1), (4), (5), (c), (d)(1), (2), (e), (f), (h), 72.48(a), 72.50(a), 72.52(b), 72.72(b), (c), 72.74(a), (b), 72.76, 72.78, 72.104, 72.106, 72.120, 72.122, 72.124, 72.126, 72.128, 72.130, 72.140(b), (c), 72.148, 72.154, 72.156, 72.160, 72.166, 72.168, 72.170, 72.172, 72.176, 72.180, 72.184, 72.186 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 72.10(a), (e), 72.12, 72.22, 72.24, 72.26, 72.28, 72.30, 72.32, 72.44(a), (b)(1), (4), (5), (c), (d)(1), (2), (e), (f), 72.48 (a), 72.50(a), 72.52(b), 72.90(a)–(d), (f), 72.92, 72.94, 72.98, 72.100, 72.102(c), (d), (f), 72.104, 72.106, 72.120, 72.122, 72.124, 72.126, 72.128, 72.130, 72.140(b), (c), 72.142, 72.144, 72.146, 72.148, 72.150, 72.152, 72.154, 72.156, 72.158, 72.160, 72.162, 72.164, 72.166, 72.168, 72.170, 72.172, 72.176, 72.180, 72.182, 72.184, 72.186, 72.190, 72.192, 72.194 are issued under sec. 161i, 68 Stat 949, as amended (42 U.S.C. 2201(i)); and §§ 72.10(e), 72.11, 72.16, 72.22, 72.24, 72.26, 72.28, 72.30, 72.32, 72.44(b)(3), (c)(5), (d)(3), (e), (f), (h), 72.48(b), (c), 72.50(b), 72.54(a), (b), (c), 72.56, 72.70, 72.72, 72.74(a), (b), 72.76(a), 72.78(a), 72.80, 72.82, 72.92(b), 72.94(b), 72.140(b), (c), (d), 72.144(a), 72.146, 72.148, 72.150, 72.152, 72.154(a), (b), 72.156, 72.160, 72.162, 72.168, 72.170, 72.172, 72.174, 72.176, 72.180, 72.184, 72.186, 72.192, 72.212(b), 72.216, 72.218, 72.230, 72.234(e) and (g) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

11. In § 72.44, paragraph (h) is added to read as follows:

§ 72.44 License conditions.

* * * * *

(h) The following conditions are contained in every license issued under the regulations in this part:

(1) Low-level radioactive waste (LLW) may be stored on-site, provided it is authorized under existing conditions of the license, and storage is consistent with existing authorities and procedures, and all relevant licensing and regulatory requirements applicable to on-site storage. LLW may not be stored on-site by the generator beyond January 1, 1996, except as specified in paragraph (h)(2) of this section.

(2) For on-site storage of LLW beyond January 1, 1996 (other than reasonable short-term storage necessary for decay or for collection or consolidation for shipment off-site, in the case where the licensee has access to an operating LLW disposal facility), the licensee shall document that it has exhausted other reasonable waste management options which would include taking all reasonable steps to contract, either directly or through the State, for disposal of the LLW.

(3) The licensee shall retain all relevant documentation regarding the actions taken pursuant to paragraph (h)(2) of this section, for at least three years, and shall make the documentation available for NRC inspection.

Dated at Rockville, Maryland, this 26th day of January, 1993.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

Appendix A—Summary and Analysis of Comments in Response to the Federal Register Notice of December 4, 1990 (55 FR 50064)

Summary, Analysis, and Conclusions of Responses to Eight Questions Concerning the Low-Level Radioactive Waste Policy Amendments Act of 1985

Introduction

During a public meeting of the Commission on October 29, 1990, the Commission decided to solicit the views of the public on the staff recommendations in SECY–90–318, "Low-Level Radioactive Waste Policy Amendments Act Title Transfer and Possession Provisions," dated September 12, 1990. Public comment was solicited in a **Federal Register** notice (FRN) published on December 4, 1990 (55 FR 50064). This notice also requested responses to eight related questions. A summary and an analysis of the responses to this FRN are provided below. Because of the U.S. Supreme Court's decision in *New York* v. *United States*, the summary and analysis related to the take-title provision of the Low-Level Radioactive Waste Policy Amendments Act of 1985 (LLRWPAA) were rendered moot and consequently have been omitted.

Question 1. What factors should the Commission consider in deciding whether to authorize on-site storage of low-level waste (other than storage for a few months to accommodate operational needs such as consolidating shipments or holding for treatment or decay) beyond 1996?

Summary of Comments

The principal issue raised by the commenters was whether NRC can and should consider ultimate disposal as a factor in its storage authorizations. Some commenters believe that NRC should consider only protection of the public health and safety, without any preference for disposal over storage in its licensing decisions. In this role, NRC would simply carry out its normal licensing and inspection functions for either the storage or disposal option. Others suggested that NRC consider not just public health and safety, but also evidence of progress in developing a disposal facility as a condition for issuing a storage license. Commenters characterized this role for NRC as the "enforcer" of the LLRWPAA. Others agreed with the staff's approach in SECY–90–318 which stated that the Commission "does not look favorably upon long-term on-site storage after 1996," but which acknowledged that at least some short-term storage will likely be required after 1996. In this role, NRC would "encourage" disposal (or not look favorably on storage), but would not make disposal plans an explicit condition for authorizing storage.

Many specific technical or administrative issues, such as waste container degradation and NRC resources to perform storage license reviews, were also mentioned in response to this question. Commenters also suggested that miscellaneous factors, such as the efforts of individual generators in cooperating with the States, the time needed to "do the job right", and time for development of new waste disposal technology, be considered in any Commission storage authorizations.

The only significant trend in the comments was that individuals and public interest groups tended to favor on-site storage beyond 1996. Many of these commenters also believe that waste generation activities should be stopped until disposal capacity is available. Their favoring of on-site storage at a generator's facility was an outgrowth of the belief that States should not be responsible for LLW management. States, compacts, utilities, and other generators showed no clear preference for any NRC role.

Analysis

With respect to whether NRC has the authority to "enforce" the provisions of the LLRWPAA, NRC could take actions to encourage disposal. NRC has broad authority under the Atomic Energy Act of 1954, as amended (AEA), for rules and orders as it "may deem necessary or desirable to * * * protect health or to minimize danger to life and property." The public health and safety is enhanced by disposal, rather than by long-term, indefinite storage of wastes. Disposal of wastes in facilities licensed under the requirements of part 61 or its equivalent will provide better protection of the public health and safety and environment than long-term storage at perhaps hundreds or even thousands of sites throughout the country. Further, a nexus was established between disposal and public health and safety and environment and long-term storage with the passage of the LLRWPAA. Thus, NRC has the broad authority to encourage disposal over storage, if it feels that specific measures would be beneficial.

To date, the need for extended storage of low-level waste has been small to almost non-existent because low-level waste has been shipped to the existing waste disposal sites in operation. As a result, industry experience and staff reviews and guidance have not addressed longer-term storage. Many of the commenters on this question pointed out specific hazards and technical considerations that need to be addressed if long-term storage is to be used. For example, container degradation from storage in humid environments, and gas generation from radiolysis were two concerns that were highlighted and which would need to be addressed. Addressing all of these concerns with indefinite long-term storage could require safety measures analogous to those for permanent disposal. An above ground vault meeting the performance requirements of part 61 is an example of the type of facility that could be justified if a licensee were to need explicit authorization for long-term storage. Guidance for acceptable low-level waste storage practices for periods significantly beyond 5-years may need to be reviewed and assessed as noted in SECY–90–318, to assure safety.

Given that the NRC has authority to encourage disposal but at the same time believes that LLW could be safely stored, the question becomes "What actions could the NRC take and what would these accomplish?" The options range from taking no new actions, to encouraging disposal as we have in the past, to formally considering disposal plans and progress in the licensing of storage facilities (See responses to Question 7 for a discussion of these additional assurances for disposal).

Other factors for storage licensing suggested by commenters go beyond the considerations that normally apply to licensing. Included in these are forecasting the availability and benefits of new technology for waste disposal and consideration of generators cooperating with States in developing disposal capacity.

With respect to the suggestion that the Commission consider suspending any waste producing activities if disposal capacity is not available, storage could be safely accomplished until disposal capacity becomes available. There is no public health and safety reason for stopping waste producing activities.

In summary, the principal factor in the Commission's decision to authorize on-site storage is what consideration needs to be given to ultimate disposal plans. Question 7 (assurances NRC should require for disposal) discusses what actions the Commission can take if it chose to consider disposal plans.

Question 2. What are the potential health and safety and environmental impacts of increased reliance on on-site storage of low-level waste?

Summary of Comments

Although some commenters believe there would be neither health and safety nor environmental effects from storage of LLW, other commenters believe that risk or exposures to workers would increase. Various concerns were raised by some commenters regarding the risk associated with multiple storage sites, with fire hazards, and with enhanced corrosion of waste packages. Others pointed out that occupational exposures would be increased by maintenance and surveillance activities, and the possible repackaging of waste for disposal.

Several commenters believe that a risk assessment should be performed to better define the risks associated with storage. The risk assessment should include a comparison of centralized storage vs. on-site storage by generators. Finally, several commenters pointed out that storage on-site would eliminate any risk from transportation hazards and would take advantage of already contaminated sites. These commenters favored long-term, indefinite, on-site storage over near surface disposal.

Analysis

NRC agrees with commenters who believe that the public health and safety and the environment could be adequately protected with on-site storage of LLW. Although the safety measures for long-term storage facilities will be greater than those employed now for short-term storage, measures can be undertaken to prevent or mitigate the effects of the various internal and external hazards at a storage facility. However, potential exposures to workers will be reduced if

disposal is accomplished. Permanent disposal of LLW has always been the preferred option for managing wastes. The LLRWPAA reflects this preference. The design features of a disposal facility, including the natural features of the site, protect against a wide range of events and phenomena over a long period of time. In contrast, and as a number of commenters noted, storage would involve increased worker exposure from unloading the waste from storage for disposal, possible waste from processing (such as solidification or repackaging) to meet the waste acceptance criteria of a disposal facility when one became available, and radiation surveys during storage.

In order to adequately protect public health and safety, existing storage facilities may need to be substantially improved to store wastes safely for long periods of time. Actual storage conditions in use now range from sheet steel buildings on a concrete pad to rooms in hospitals and universities to several foot thick concrete modules. These structures may or may not have humidity and temperature control systems and could be subject to changing environmental conditions. The possibility for degradation of the waste containers will exist and will be a function of the materials used and the environment in which they are located. As a bounding condition, a storage facility with an indefinite period of storage for its design could need controls similar to those in part 61 for a disposal facility, because the design life would be the same.

Increased waste form requirements may be particularly important for Class A waste which normally is not stabilized prior to shipment for disposal, and for any stable waste forms which degrade as a result of the storage environment. This waste may contain quantities of absorbed liquid which, when alone or in the presence of radiation and organic materials, may produce organic acids and/or other species. These species may accelerate internal corrosion and failure of common storage containers.

Several commenters pointed out the need for risk assessments of storage options. NRC is unaware of any quantitative comparisons of the risks and exposures associated with storage vs. disposal and on-site storage vs. centralized storage. NRC will have available information from other programs on storage (such as the NY State storage study and DOE studies) and will use this information in its planning. Additional NRC work may be needed in this area depending on developments between now and 1996.

Question 3. Would low-level waste storage for other than operational needs beyond January 1, 1966, have an adverse impact on the incentive for timely development of permanent disposal capacity?

Summary of Comments

Comments in response to this question can be put into the following categories:

Yes, there would be an adverse impact—somewhat less than half of those who gave a yes or no answer believe that storage would adversely affect timely development of disposal capacity. Generally these responses were provided by host States, a compact or industry.

No, there would not be an adverse impact. Many individual commenters or public interest groups believe that storage was the preferred option over disposal and stated that there would be no adverse impact. They believe that current disposal technology is not adequate for protecting public health and safety. Several others believe that allowing for storage would help in achieving disposal capacity by allowing time for contracting among States, thereby reducing the number of sites that are needed in the country. They also believe that storage would provide the time needed to do the job right. The question is moot. A few commenters pointed out that the reality of the national waste disposal situation is that storage beyond 1996 will be necessary and therefore the question is moot. Several recognized that storage will be necessary, but at the same time encouraged the NRC to permit storage only when necessary. Another commenter pointed out that the LLRWPAA contains ample incentives to promote disposal without needing to consider the effect of NRC's storage policy. Commenters cited the cost to generators or States for storage, the resources (space and personnel) which would need to be devoted to on-site storage at a generator site, the possible loss of jobs in a State if companies move to areas which have disposal capacity, and the political impact in a State if LLW must be stored in increasingly larger quantities at numerous sites throughout a State.

The NRC should not consider any adverse impacts of storage. As noted in the response to the first question on factors the NRC should consider in authorizing storage, a number of commenters believe that NRC's role is one of only licensing and overseeing storage or disposal facilities, without having a preference for one or the other. These same commenters therefore believe that it was inappropriate for NRC to ask this question.

Analysis

Commenters who stated that storage would have an adverse impact provided little or no bases for their position. This is not surprising given that the question calls for prediction of the future which often must be based on judgment rather than hard data and scientific formulae.

Commenters who believe that there would be no adverse impact on disposal pointed to the incentives that will remain for a State to develop disposal capacity, irrespective of the relief provided by storage. In particular, there are costs (to the State and/or generators); the possible loss of jobs if a generator moves to a State with disposal availability; and, if generator storage is common, the political impact of a large number of LLW sites with ever growing amounts of LLW.

At the same time, NRC agrees with some commenters that short-term storage may be necessary in some States, especially those which have made a good faith effort and continue to do so into the future. Nevertheless, on balance, the NRC believes that an NRC policy which placed no disincentives on extended or inadequate storage would likely tend to discourage disposal.

Question 4. What specific administrative, technical and legal issues are raised by the requirements for transfer of title?

Summary of Comments

The comments in response to this question addressed the take-title provisions of the LLRWPAA. Because of the U.S. Supreme Court decision in *New York* v. *United States* and the revision to the proposed rule, these comments and the associated analysis are moot and consequently are not included.

Question 5. What are the advantages and disadvantages of transfer of title and possession as separate steps?

Because of the U.S. Supreme Court decision in *New York* v. *United States* and the revision to the proposed rule, the question is moot and consequently the summary and analysis associated with this question are not included.

Question 6. Could any state or local laws interfere or preclude transfer of title or possession of LLW?

Because of the U.S. Supreme Court decision in *New York* v. *United States* and the revision to the proposed rule, the question is moot and consequently the summary and analysis associated with this question are not included.

Question 7. What assurances of the availability of safe and sufficient disposal capacity for low-level waste should the Commission require and when should it require them? What additional conditions, if any, should the Commission consider in reviewing such assurances?

Summary of Comments

No assurances were needed according to seven of the 27 commenters on this question. The NRC lacks the authority and its role is limited to facility licensing of either disposal or storage, in their view. Other commenters indicated that if NRC believes that such assurances are needed, it should seek an amendment to the LLRWPAA or initiate a rulemaking similar to the one for spent fuel storage in 10 CFR part 51 in which the Commission made a finding that there was confidence that ultimate disposal of spent fuel would be achieved at a future date.

For those commenters who believe that assurances were appropriate, the kinds of assurances varied. One recommended that storage beyond 5 years should require a State or compact plan on how the State or compact intends to dispose of the waste so that storage is not *de facto* disposal. The commenters also believe that, while a State lacks disposal capacity, there should be no licensing between now and January 1, 1996 of any facility that may generate significant amounts of waste after that date. Others believe that the generator should project waste volumes accurately and that demonstrated progress towards issuance of a license to operate a regional disposal facility would be sufficient.

One commenter suggested that a governor's certification be required that would be similar to those already submitted as part of the LLRWPAA milestone compliance of January 1, 1990. The requirements of the certification should be simple and available to licensees to submit with the license to store or with the application to amend the

possession limit. In addition, they believe that the NRC should require that the governor's certification include estimates of the costs for disposal capacity for waste management decision making.

With regard to when the Commission should require the assurances, two commenters addressed the timing issue and focused on the 5-year storage time frame. The other commenters presumably believe that the assurances should apply at any time the licensee would apply for a storage license. Another recommended action by NRC "in the next few years."

Analysis

Like Question 1 (concerning the factors the Commission could consider in authorizing storage), this question also addresses the role of the NRC in implementing the LLRWPAA. It presumes that the NRC has both the authority and the willingness to seek additional assurances for ultimate disposal. Because commenters often did not agree with this premise, as noted in the analyses of earlier questions, they also believe that this was not an appropriate question for the NRC to ask. However, the NRC, under the AEA, does have broad authority to promulgate rules and regulations to protect the public health and safety and minimize danger to the public.

A number of commenters gave examples of the types of assurances that could be furnished by the States. Examples would include a "plan" for disposal or a governor's certification, both of which would be meant to demonstrate that a State has an active, viable program for the development of disposal capability.

With respect to the question of whether the NRC has assurance that LLW disposal capacity will be available in the future, such assurance is available, as indicated in the analysis section of Questions 1 and 2, and does not require a formal rulemaking, as was suggested by several commenters and performed for HLW. Unlike the HLW program, where no repository has yet been in operation, disposal sites have been in operation and safely isolating waste for decades at Barnwell, SC, Hanford, WA, and Beatty, NV. Additional disposal capacity is expected soon. Some States may have their facilities in operation before 1966. There continued to be other options, including storage until a disposal site is located, or contracting with another State, or continuing to pursue development of a site within the State or compact. Thus, the question is not whether LLW will be safely disposed of, but exactly where and when it will take place.

Question 8. Are there any other specific issues that would complicate the transfer of title and possession, as well as on-site storage, of low-level waste and mixed (radioactive and chemical hazardous) waste?

Summary of Comments

A wide variety of comments was provided in response to this question. A number of them were discussed in connection with previous questions. Comments strictly addressing transfer of title and possession are not included because they are moot. Remaining issues include the following:

1. Some commenters mentioned NRC storage policy and whether or not it will be a matter of compatibility with Agreement States was mentioned by some commenters. If not, Agreement States will license storage in accordance with their own storage policies and procedures.

2. The failure of some States to resolve legal, economic, and/or political issues will cause additional delays.

3. Accidents that generate large amounts of waste not previously planned for could cause a significant disposal problem.

4. NRC and Agreement State resources, as well as personnel trained in storage licensing, need to be in place.

5. Orphan waste and naturally-occurring and accelerator-produced radioactive materials (NARM) waste need to be addressed.

Analysis

NRC has not attempted to resolve each of these issues in connection with this analysis of public comments. Many go beyond the scope of the NRC's responsibilities and will need to be resolved by States and generators as they proceed. Others require a decision on the role of the NRC in encouraging disposal and others will need to be followed up at a later time.

Two of the above comments deserve attention here, however. The first is that Agreement States, which will perform much of the licensing for storage, should adopt the same or similar storage policy as NRC. License conditions for storage beyond 1996 are not currently compatibility requirements.

The second issue concerns the scope of the waste for which the State is responsible. Wastes falling within State responsibility include some Federal waste and any decommissioning waste or waste from contaminated sites that is removed in order to allow sites to meet the unrestricted use criterion in decommissioning.

Conclusions

The following conclusions can be reached as a result of the foregoing analyses:

1. Although LLW can be safely stored, disposal would enhance the protection of the public health and safety and the environment;

2. The LLRWPAA has established the preference for disposal over storage and established national goals for achieving adequate disposal capacity;

3. The NRC has broad authority under the Atomic Energy Act to advance the goal of disposal pursuant to the LLRWPAA.

4. On-site storage by many LLW generators will likely be necessary due to the lack of progress by States and compacts in developing sufficient disposal capacity.

The NRC has concluded that a rulemaking should be initiated to ensure that LLW generators exhaust all other reasonable management options before onsite storage will be permitted beyond January 1, 1996. One such option is to pursue a contract for disposing of waste. This action will reinforce the Commission's position that it will not look favorably on on-site storage by generators, after January 1, 1996, and the action actively supports the goals set forth in the LLRWPAA.

[FR Doc. 93–2321 Filed 2–1–93; 8:45 am]
BILLING CODE 7590–01–W

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–NM–201–AD]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 767 series airplanes. This proposal would require dye penetrant inspection and proof pressure testing to detect cracks or ruptures of the crossover pneumatic ducts, and repair or replacement, as necessary. This proposal would also require stress relieving of the crossover duct assemblies. This proposal is prompted by several reports of ruptured engine bleed air crossover ducts. The actions specified by the proposed AD are intended to prevent failure of the engine bleed air crossover ducts, which could result in loss of pneumatics and damage to adjacent structure.

DATES: Comments must be received by March 29, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–201–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Timothy Dulin, Aerospace Engineer, Seattle Aircraft Certification Office, ANM–130S; FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2675; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–201–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–201–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

There have been several reported incidents of ruptured engine bleed air crossover ducts on certain Boeing Model 767 series airplanes. The duct ruptures have resulted in a loss of cabin pressure, loss of bleed air to the air driven hydraulic pump, loss of wing thermal anti-ice capabilities, and damage to the air conditioning panels. These duct ruptures were caused by cracking, which started and progressed around the circumferential welds. The FAA has been advised that these cracks formed in the heat affected zones of the duct welds, because of hydrogen oxide (hydride) concentration. The hydrides have an embrittling effect on the duct material, which may initiate the cracking. This condition, if not corrected, could result in loss of pneumatics for cabin pressurization, air conditioning, air driven hydraulic pump, wing thermal anti-ice, hydraulic reservoir pressurization, engine cross starting ability, and cargo heating, and could also damage air conditioning panels.

The FAA has reviewed and approved Boeing Alert Service Bulletin 767–36A0041, dated July 2, 1992, that describes procedures for conducting dye penetrant inspections and proof pressure tests of the crossover pneumatic ducts. This service bulletin also describes procedures for repairing or replacing these ducts, and stress relieving these ducts. Stress relieving these ducts will eliminate the residual stress and local stress concentration. A dye penetrant inspection, proof pressure test, and stress relieving will reduce the possibility of engine bleed air crossover duct rupture caused by cracking due to hydride formation.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require dye penetrant inspection and proof pressure testing to detect cracks or ruptures of the crossover pneumatic ducts, and repair or replacement, as necessary. This proposal would also require stress relieving of the crossover duct assemblies. The actions would be required to be accomplished in accordance with the service bulletin described previously.

This proposal also provides for an optional terminating action. This terminating action entails replacement of all crossover pneumatic ducts with stress relieved ducts.

There are approximately 307 Boeing Model 767 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 115 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 64 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $404,800, or $3,520 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 92–NM–201–AD.

Applicability: Model 767 series airplanes, line position 001 through 307, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the engine bleed air crossover ducts, which could result in loss of pneumatics and damage to adjacent structure, accomplish the following:

(a) Within 6 months after the effective date of this AD, or prior to the accumulation of 7,000 total flight cycles, whichever occurs later, conduct a dye penetrant inspection and proof pressure test of the crossover pneumatic ducts, in accordance with Boeing Alert Service Bulletin 767–36A0041, dated July 2, 1992.

(1) If cracks or ruptures are detected, prior to further flight, repair or replace the crossover pneumatic ducts in accordance with the service bulletin.

(2) Stress relieving of the ducts, in accordance with the service bulletin, may be accomplished in conjunction with the initial dye penetrant inspection and proof pressure test required by this paragraph. Such action

constitutes terminating action for the requirements of paragraph (b) of this AD.

(b) Within 3,000 flight cycles after accomplishing the initial dye penetrant inspection and proof pressure test required by paragraph (a) of this AD, conduct an additional dye penetrant inspection and proof pressure test of the crossover pneumatic ducts, and stress relieve the crossover pneumatic duct assemblies, in accordance with Boeing Alert Service Bulletin 767–36A0041, dated July 2, 1992. If cracks or ruptures are detected, prior to further flight, repair or replace the crossover pneumatic ducts in accordance with the service bulletin.

(c) Replacement of all crossover pneumatic ducts with stress relieved ducts in accordance with Boeing Alert Service Bulletin 767–36A0041, dated July 2, 1992, constitutes terminating action for the requirements of paragraph (a) and (b) of this AD.

(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, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

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

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

Issued in Renton, Washington, on January 25, 1993.

Ronald T. Wojnar,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–2143 Filed 2–1–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 92–NM–219–AD]

Airworthiness Directives; Dassault Aviation Model Mystere-Falcon 900 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Dassault Aviation Model Mystere-Falcon 900 series airplanes. This proposal would require modification of the upper part of frame 30 in the stiffener area between stringers 7 and 8. This proposal is prompted by the results of fatigue tests, which revealed cracking in the upper part of frame 30. The actions specified by the proposed AD are intended to prevent fatigue cracking, which could lead to reduced structural integrity of the fuselage.

DATES: Comments must be received by March 29, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–219–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Falcon Jet Corporation, Customer Support Department, Teterboro Airport, Teterboro, New Jersey 07608. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2140; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–219–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–219–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Dassault Aviation Model Mystere-Falcon 900 series airplanes. The DGAC advises that during fatigue testing on a Dassault Aviation Model Mystere-Falcon 900 series airplane, cracks were found on frame 30 in the stiffener area, between stringers 7 and 8 on the right-hand and left-hand sides. These cracks were due to the deformation of the structural elements within this area. Fatigue cracking in this area, if not detected and corrected, could lead to reduced structural integrity of the fuselage.

Dassault Aviation has issued Service Bulletin F900–53–14 (F900–93) and Appendix 1 to that service bulletin, both dated July 8, 1992, which describe procedures for accomplishing Modification F900 M299. This modification entails modifying a stiffener, adding a doubler, and adding a rivet on the edge of frame 30, at the lower part of stringer 8. Accomplishing this modification would reduce frame 30 deformations by reinforcing its connection with the stiffener. The DGAC classified this service bulletin as mandatory and issued French Airworthiness Directive 92–140–012(B), dated July 8, 1992, in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require modification of the upper part of frame 30 in the stiffener area between stringers 7 and 8. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 7 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 29 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would be provided at no cost to operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $11,165, or $1,595 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Dassault Aviation: Docket 92–NM–219–AD.

Applicability: Model Mystere-Falcon 900 series airplanes; serial numbers 1 through 14, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the fuselage, accomplish the following:

(a) For airplane serial number 1: Prior to the accumulation of 3,750 total landings, or within 6 months after the effective date of this AD, whichever occurs later, modify the upper part of frame 30 in the stiffener area between stringers 7 and 8, in accordance with Dassault Aviation Service Bulletin F900–53–14 (F900–93) and Appendix 1 to that service bulletin, both dated July 8, 1992.

(b) For airplanes having serial numbers 2 through 14, inclusive: Modify the upper part of frame 30 in the stiffener area between stringers 7 and 8, in accordance with Dassault Aviation Service Bulletin F900–53–14 (F900–93) and Appendix 1 to that service bulletin, both dated July 8, 1992; and at the later of the times specified in paragraphs (b)(1) and (b)(2) of this AD.

(1) Prior to the accumulation of 3,750 total landings, or within 6 years since date of manufacture, whichever occurs first.

(2) Within 6 months after the effective date of this AD.

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

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

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

Issued in Renton, Washington, on January 25, 1993.

Ronald T. Wojnar,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–2144 Filed 2–1–93; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 92–NM–191–AD]

Airworthiness Directives; Fokker Model F27 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Fokker Model F27 series airplanes. This proposal would require a one-time inspection to detect cracks in the lower skin near the ribs at certain wing stations, and repair, if necessary. This proposal is prompted by reports of fatigue cracks found in the lower skin at the runout of stringers 2 and 10 near wing station 6490 on two of these airplanes. The actions specified by the proposed AD are intended to prevent reduced structural capability of the wings.

DATES: Comments must be received by March 24, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–191–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2145; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be

considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–191–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–191–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for The Netherlands, recently notified the FAA that an unsafe condition may exist on certain Fokker Model F27 series airplanes. The RLD advises that fatigue cracks measuring 95 mm and 60 mm in length have been found in the lower skin at the runout of stringers 2 and 10 near wing station 6490 on two Model F27 series airplanes. These cracks were found on Model F27 series airplanes in post-Service Bulletin F27/57–9 configurations. These airplanes had accumulated 34,721 and 37,936 landings, respectively. This condition, if not corrected, could result in reduced structural capability of the wings.

Fokker has issued Service Bulletin F27/57–69, dated April 6, 1992, which describes procedures for a one-time inspection to detect cracks in the lower skin at the runout of stringers 2 and 10 near wing stations 6490, 5330, and 6100. The RLD classified this service bulletin as mandatory and issued Netherlands Airworthiness Directive BLA No. 92–055, dated April 21, 1992, in order to assure the continued airworthiness of these airplanes in The Netherlands.

The service bulletin indicates that, dependent on the findings of the inspection discussed previously, Fokker may consider a reduced initial inspection threshold and corresponding repetitive inspection intervals, which would be addressed in a revision to the Fokker Structural Integrity Program (SIP) document, if necessary. At that time, the FAA may consider further rulemaking to address these issues.

[Note: The Fokker Model F27 SIP is required currently by AD 92–19–07, Amendment 39–8365 (57 FR 42693, September 16, 1992).]

This airplane model is manufactured in The Netherlands and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a one-time inspection to detect cracks in the lower skin at the runout of stringers 2 and 10 near wing stations 6490, 5330, and 6100, and repair, if necessary. Operators would also be required to report positive findings of cracks to Fokker. The inspection would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 58 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $9,570, or $165 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Fokker: Docket 92–NM–191–AD.

Applicability: Model F27 series airplanes in post-Fokker Service Bulletin F27/57–9 configuration; serial numbers 10115, 10126 through 10684, inclusive, 10686, 10687, and 10689 through 10692, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural capability of the wings, accomplish the following:

(a) Inspect the lower skin at the runout of stringers 2 and 10 near wing stations 6490, 5330, and 6100 to detect cracks, in accordance with Fokker Service Bulletin F27/57–69, dated April 6, 1992, at the time specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD, as applicable:

(1) For airplanes that have accumulated less than 20,000 landings as of the effective date of this AD: Prior to the accumulation of 20,000 landings, or within 1 year after the effective date of this AD, whichever occurs later.

(2) For airplanes that have accumulated 20,000 or more landings, but less than 30,000 landings, as of the effective date of this AD:

Prior to the accumulation of 30,000 landings, or within 5 months after the effective date of this AD, whichever occurs later.

(3) For airplanes that have accumulated 30,000 or more landings as of the effective date of this AD: Within 2 months after the effective date of this AD.

(b) If any crack is found as a result of the inspection required by paragraph (a) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(c) Within 10 days after accomplishing the inspection required by paragraph (a) of this AD, report positive findings of cracks to Fokker, in accordance with Fokker Service Bulletin F27/57–69, dated April 6, 1992. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(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, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch.

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

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

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

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–2076 Filed 2–1–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 92–NM–196–AD]

Airworthiness Directives; Fokker Model F27 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Fokker Model F27 series airplanes. This proposal would require an inspection of the noise filter capacitors mounted on the rotary flap actuator to detect damage and to determine the manufacturer and part number; and replacement, if necessary. This proposal is prompted by a recent report of damage to the aileron cable on a Model F27 series airplane, which occurred when one of two noise filter capacitors on the flap actuators became detached from its bracket, causing damage to the lower aileron cable due to electrical arcing between the capacitor and the aileron cable. The actions specified by the proposed AD are intended to prevent reduced aileron roll control authority.

DATES: Comments must be received by March 24, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–196–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2145; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–196–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–196–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for The Netherlands, recently notified the FAA that an unsafe condition may exist on all Fokker Model F27 series airplanes. The RLD advises that it has received a recent report of damage to the aileron cable on a Model F27 series airplane, which occurred when one of two noise filter capacitors on the flap actuators became detached from its bracket.

The noise filters on the flap actuators eliminate electrical distortions generated during operation of the flaps. Each noise filter consists of two capacitors that are mounted on a bracket on the flap actuator. A capacitor can become detached from its bracket when its mounting ears break away from the bracket completely or separate and suspend via the terminal lead. Whenever the actuator motor operates, an electrical arc may occur between a capacitor and metal components or structure. In the incident discussed previously, the detached capacitor caused damage to the lower aileron cable due to electrical arcing between the capacitor and the aileron cable. Failure of an aileron control cable, if not corrected, could result in reduced aileron roll control authority.

Fokker has issued Service Bulletin F27/27–135, dated June 1, 1992, which describes procedures for an inspection of the noise filter capacitors mounted on the rotary flap actuator to detect damage, and to determine the manufacturer and part number of the capacitors; and, if necessary, the replacement of discrepant capacitors with certain other capacitors whose in-service history has proven that they are unlikely to fail and become detached from the capacitor brackets. (The Fokker service bulletin references Lucas Aerospace Service Bulletin D7–9–27–

01, dated May 15, 1992, for additional information.) The RLD classified the Fokker service bulletin as mandatory and issued Netherlands Airworthiness Directive BLA No. 92–076, dated July 10, 1992, in order to assure the continued airworthiness of these airplanes in The Netherlands.

This airplane model is manufactured in The Netherlands and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require an inspection of the noise filter capacitors mounted on the rotary flap actuator to detect damage and to determine the manufacturer and part number of the capacitor. If a damaged capacitor is detected or if a certain discrepant capacitor is installed, operators would be required to replace the capacitor with specific capacitors whose in-service history has proven that they are unlikely to fail and become detached from the capacitor brackets. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 25 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,375, or $55 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Fokker: Docket 92–NM–196–AD.

Applicability: All Model F27 series airplanes; excluding Model F27 Mark 050 series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent failure of an aileron control cable and subsequent reduced aileron roll control authority, accomplish the following:

(a) Within 500 hours time-in-service or 2 months after the effective date of this AD, whichever occurs first, inspect the noise filter capacitors mounted on the rotary flap actuator to detect damage and to determine the manufacturer and part number, in accordance with Fokker Service Bulletin F27/27–135, dated June 1, 1992.

(1) If no damaged capacitor is found, and if no capacitor manufactured by John E. Fast Company and having part number A–16446 is installed, no further action is required by this AD.

(2) If any damaged capacitor is found, or if any capacitor manufactured by John E. Fast Company and having part number A–16446 is found, prior to further flight, replace that capacitor with either a capacitor manufactured by P.R. Mallory Company and having part number CA275X, or a capacitor manufactured by Potter Company and having part number 1136–5004, in accordance with the service bulletin.

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

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

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

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

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–2077 Filed 2–1–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 91–CE–49–AD]

Airworthiness Directives; de Havilland DHC–6 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 73–19–06, which currently requires repetitively inspecting the overhead console control quadrants for cracks on certain de Havilland DHC–6 series airplanes, and replacing any cracked part. The Federal Aviation Administration's policy on aging commuter-class aircraft is to eliminate, or in certain instances, reduce certain repetitive short-interval inspections when improved parts or modifications are available. The proposed action would require modifying the overhead console control quadrants as terminating action for the repetitive inspections that are currently required by AD 73–19–06. The actions specified in the proposed AD are intended to prevent failure of the overhead control console, which could result in loss of control of the airplane.

DATES: Comments must be received on or before April 16, 1993.

ADDRESSES: Submit comments on the proposal in triplicate to the Federal

Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–CE–49–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from de Havilland, Inc., 123 Garratt Boulevard, Downsview, Ontario, Canada, M3K 1Y5. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Jon Hjelm, Aerospace Engineer, FAA, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; Telephone (516) 791–6220.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 91–CE–49–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–CE–49–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has determined that reliance on critical repetitive inspections on aging commuter-class airplanes carries an unnecessary safety risk when a design change exists that could eliminate or, in certain instances, reduce the number of repetitions of those critical inspections. In determining what inspections are critical, the FAA considers (1) the safety consequences of the airplane if the known problem is not detected by the inspection; (2) the reliability of the inspection such as the probability of not detecting the known problem; (3) whether the inspection area is difficult to access; and (4) the possibility of an adjacent structure being damaged as a result of the problem.

These factors have led the FAA to establish an aging commuter-class aircraft policy that requires incorporating a known design change when it could replace or, in certain instances, reduce the number of repetitions of a critical inspection. With this policy in mind, the FAA recently conducted a review of existing ADs that apply to de Havilland DHC–6 series airplanes. Assisting the FAA in this review were (1) Transport Canada, which is the airworthiness authority for Canada; (2) de Havilland, Inc.; (3) the Regional Airlines Association (RAA); and (4) several U.S. and foreign operators of the affected airplanes.

From this review, the FAA has identified AD 73–19–06, Amendment 39–1800, as one that should be superseded with a new AD that would require a modification that could eliminate the need for short-interval and critical repetitive inspections. AD 73–19–06 currently requires repetitively inspecting the overhead control quadrants for cracks on certain de Havilland DHC–6 series airplanes, and replacing any cracked part in accordance with de Havilland Service Bulletin (SB) No. 6/298, dated April 18, 1973.

De Havilland has revised SB No. 6/298, which now consists of the following pages:

Pages	Revision	Date
3, 4, 5, and 6	A	Nov. 30, 1973.
1 and 2	B	Nov. 30, 1973.
7 and 8	C	May 2, 1975.

This service bulletin revision specifies procedures for inspecting and installing improved overhead control quadrants on certain de Havilland DHC–6 series airplanes. This installation is referred to as Modification No. 6/1467. As a result of the previously discussed AD review, Transport Canada considers Modification 6/1467 as mandatory and has issued Transport Canada AD CF–73–06R1 in order to assure the continued airworthiness of these airplanes in Canada.

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada has kept the FAA informed of the situation described above.

Based on its aging commuter-class aircraft policy and after reviewing all available information including that received from Transport Canada, the FAA has determined that AD action should be taken to eliminate the short-interval and critical inspections required by AD 73–19–06 and to prevent failure of the overhead control console, which could result in loss of control of the airplane.

Since an unsafe condition has been identified that is likely to exist or develop in other de Havilland DHC–6 series airplanes of the same type design, the proposed AD would supersede AD 73–19–06 with a new AD that would (1) retain the repetitive inspections of the overhead control quadrants required by the current AD and replacement of any cracked part; and (2) require installing new improved overhead control quadrants as terminating action for the repetitive inspections. The actions would be required to be accomplished in accordance with de Havilland SB 6/298.

The FAA estimates that 144 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 30 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $500 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $309,600.

The intent of the FAA's aging commuter airplane program is to ensure safe operation of commuter-class airplanes that are in commercial service without adversely impacting private operators. Of the approximately 144 airplanes in the U.S. registry that would be affected by the proposed AD, the FAA has determined that approximately 50 percent are operated in scheduled passenger service by 14 different operators. A significant number of the remaining 50 percent are operated in

other forms of air transportation such as air cargo and air taxi.

The proposed AD allows 2,400 hours time-in-service (TIS) before mandatory accomplishment of the design modification. The average utilization of the fleet for those airplanes in commercial commuter service is approximately 25 to 50 hours TIS per week. Based on these figures, operators of commuter-class airplanes involved in commercial operation would have to accomplish the proposed modification within 12 to 24 calendar months after the proposed AD would become effective. For private owners, who typically operate between 100 to 200 hours TIS per year, this would allow 12 to 24 calendar years before the proposed modification would be mandatory.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 73–19–06, Amendment 39–1800, and adding the following new AD:

de Havilland: Docket No. 91–CE–49–AD. Supersedes AD 73–19–06, Amendment 39–1800.

Applicability: Models DHC–6–1, DHC–6–100, DHC–6–200, and DHC–6–300 airplanes (serial numbers 1 through 420), certificated in any category.

Compliance: Required as indicated, unless already accomplished.

To prevent failure of the overhead control console, which could result in loss of control of the airplane, accomplish the following:

(a) Within the next 25 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished within the last 175 hours TIS, visually inspect the overhead console control quadrants for cracks in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of de Havilland Service Bulletin (SB) 6/298, which consists of the following:

Pages	Revision	Date
3, 4, 5, and 6	A	Nov. 30, 1973.
1 and 2	B	Nov. 30, 1973.
7 and 8	C	May 2, 1975.

(1) If cracks are found that meet or exceed the requirements specified in paragraph 3.1 of the ACCOMPLISHMENT INSTRUCTIONS section of de Havilland SB No. 6/298, prior to further flight, replace the overhead control console quadrants, part number (P/N) C6–CE–1010, with P/N C6CE1421–27 in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of de Havilland SB No. 6/298.

(2) If cracks are found that meet or exceed the requirements specified in paragraph 3.2 of the ACCOMPLISHMENT INSTRUCTIONS section of de Havilland SB No. 6/298, within the next 200 hours TIS, replace the overhead control console quadrants, P/N C6–CE–1010, with P/N C6CE1421–27 in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of de Havilland SB No. 6/298.

(3) If cracks are found that are less than that specified in paragraph 3.2 of the ACCOMPLISHMENT INSTRUCTIONS section of de Havilland SB No. 6/298, reinspect at intervals not to exceed 100 hours TIS until the modification specified in paragraph (b) of this AD is accomplished.

(4) If no cracks are found, reinspect at intervals not to exceed 200 hours TIS until the modification specified in paragraph (b) of this AD is accomplished.

(b) Within the next 2,400 hours TIS after the effective date of this AD, unless already accomplished as specified in paragraph (a)(1) or (a)(2) of this AD, replace the overhead control console quadrants, P/N C6–CE–1010, with P/N C6CE1421–27 in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of de Havilland SB No. 6/298.

(c) The installation of new overhead control console quadrants (Modification No. 6/1467) as specified in paragraphs (a)(1), (a)(2), and (b) of this AD is considered terminating action for the repetitive inspection requirement of this AD.

(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) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, New York Aircraft Certification Office, 181 Franklin Avenue, Room 202, Valley Stream, New York 11581. The request shall be forwarded through an FAA Maintenance Inspector, who may add comments and then send it to the Manager, New York Aircraft Certification Office.

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

(f) All persons affected by this directive may obtain copies of the documents referred to herein upon request to de Havilland, Inc., 123 Garratt Boulevard, Downsview, Ontario Canada, M3K 1Y5; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(g) This amendment supersedes AD 73–19–06, Amendment 39–1800.

Issued in Kansas City, Missouri, on January 21, 1993.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–2145 Filed 2–1–93; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 3, 10 and 145

Registration of Floor Traders; Mandatory Ethics Training for Registrants; Suspension of Registrants Charged With Felonies

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: The Futures Trading Practices Act of 1992 (1992 Act), amended the Commodity Exchange Act (CEAct or Act) in several respects, including imposition of a requirement for registration of floor traders (FTs) for the first time. The Commission is proposing amendments to its registration rules to implement this requirement. These rules include a rule that would provide temporary "no-action" relief so that existing FTs who meet the criteria for registration can be registered without unnecessarily disrupting their ongoing business. However, any person seeking to act as an FT who is not granted

trading privileges by a contract market until after the effective date of final rules would be treated like any other applicant for registration and would have to be granted registration or a temporary license (TL) before commencing such activity. The Commission is also proposing to permit TLs for floor brokers (FBs) to act as FTs and to adopt several technical changes to its registration rules.

Another provision of the 1992 Act requires ethics training for registrants. The 1992 Act provides that such training shall be conducted within six months of registration for a new registrant and otherwise periodically. The Commission is proposing that periodic training be conducted every three years.

The Commission is also proposing a new rule to implement authority granted in the 1992 Act that permits the suspension or modification of the registration of a registrant charged with a felony.

DATES: Comments must be received by March 4, 1993.

ADDRESSES: Comments should be sent to the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581 and should refer to "Registration of Floor Traders—Mandatory Ethics Training for Registrants—Suspension of Registrants Charged with Felonies."

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

SUPPLEMENTARY INFORMATION:

I. Registration of Floor Traders

A. Introduction

Historically, the CEAct required registration of FBs but not of FTs. In passing the 1992 Act, however, it was noted that "[t]he central goal of requiring registration of floor traders is to assure that these individuals are subject to the same background fitness checks as other Commission registrants and to allow the Commission to act with respect to the person's registration in appropriate cases."[1] Accordingly, the Commission is proposing to incorporate FTs within the existing framework of registration rules applicable to other categories of registrant.

The 1992 Act, which was enacted on October 28, 1992, amended the CEAct in several respects. Section 207 of the 1992 Act amended section 4e of the CEAct (7 U.S.C. 6e (1988)) to require registration of FTs and that the Commission issue rules necessary to implement that requirement no later than 180 days after the date of enactment of the 1992 Act (which will be April 26, 1993). An FT is defined as "any person who, in or surrounding any pit, ring, post, or other place provided by a contract market for the meeting of persons similarly engaged, purchases or sells solely for such person's own account, any commodity for future delivery on or subject to the rules of any contract market." The definition of FB is similar except that an FB purchases or sells for any other person rather than solely for his own account. See section 404(a) of the 1992 Act, to be codified at section 1a (9) and (8) of the CEAct, respectively (7 U.S.C. 2). The Commission's definitions of FB and FT parallel these statutory definitions, and in addition include any person required to register as an FB or FT under the Act by virtue of part 33 of the Commission's rules, which would cover an FB or FT who handles only domestic exchange-traded commodity option transactions. See 17 CFR 1.3(n) (1992) (definition of FB) and proposed amendment to 17 CFR 1.3(x) set forth below (definition of FT). The definition of FT would include any person who executes or is authorized to execute futures or commodity option transactions on an exchange floor or trading system, without regard to whether such person owns an exchange membership or the limited nature of such person's trading privileges. Thus, a person who trades solely for his own account via computer terminal through the Chicago Mercantile Exchange/ Chicago Board of Trade GLOBEX system, through the New York Mercantile Exchange ACCESS program or any other electronic trading mechanism of a contract market would be required to register as an FT under section 4e of the CEAct. Similarly, lessees or holders of membership rights which carry floor trading privileges would be required to register as FTs.

However, the Commission specifically requests comment as to whether persons who hold trading privileges but do not exercise such privileges should be required to register as FTs and, if not, what mechanisms are currently in place or can be established at contract markets to prevent such persons from trading for their own account on a contract market floor or through a contract market electronic system without registration as an FT. For example, some persons may have leased their seats to others or may be holding the seat for investment purposes only. Separately, the Commission recognizes that there may be persons who are listed as principals of futures commission merchants, for example, and who have a contract market membership listed in their own name which they have assigned to the firm. Where such persons do not trade for their own account on the floor of or through an electronic system operated by a contract market, such persons would not be required to register as FTs. However, there may be other persons who hold contract market trading privileges but have chosen not to exercise such privileges and are not registered or listed as principals of a registrant. The Commission requests comment as to the appropriate treatment of such persons with respect to application of registration requirements.

B. Temporary No-Action Positions

The Commission recognizes that there are numerous persons currently operating as FTs.[2] These FTs will be required to register under the Act since there is no provision in the 1992 Act that provides a basis for "grandfathering" the status of such individuals such that they may continue to act as FTs without satisfying the requirements for registration. The Commission has endeavored to develop transitional registration procedures to apply to persons currently holding FT status that recognize these persons' interests in continuing to conduct business while fulfilling the Congressional mandate to integrate FTs into the registration framework of the CEAct applicable to all other registrant categories. The Commission therefore has determined that it would be appropriate to adopt temporary "no-action" positions that would permit, subject to the procedures set forth herein and subject to adverse actions being taken by the Commission under its part 3 rules, existing FTs to remain in business while their registration applications are processed by the National Futures Association (NFA).

Proposed Rule 1.62–T would provide for two temporary "no-action" positions. The first no-action position would be applicable to those FTs whose trading privileges were granted on or before February 2, 1993 and the second no-action position would be applicable to those FTs whose privileges are granted after that date but on or before the effective date of final rules, which is intended to be April 26, 1993.[3] FTs

[1] H.R. Rep. No. 978, 102d Cong., 2d Sess. 59 (1992).

[2] Commission staff estimates that approximately 4,000 persons who are not otherwise registered currently have floor trading privileges on contract markets.

[3] This date is 180 days from the date of enactment of the 1992 Act.

whose trading privileges are granted after that date would be required to comply with the normal application procedures set forth in amendments to Commission Rule 3.11.

1. First No-Action Position

The first no-action position, set forth in paragraph (a) of proposed Rule 1.62–T, would permit an FT who was granted contract market trading privileges on or before February 2, 1993 and whose trading privileges remain in effect as of April 26, 1993 to remain in business pending a final determination of his fitness for registration, unless an Administrative Law Judge (ALJ) issues an interim order suspending the no-action position as to the FT in accordance with paragraph (c) of Rule 1.62–T.[4]

In order for FTs to qualify for relief under proposed Rule 1.62–T(a), each contract market must submit to NFA by April 26, 1993 a list of FTs who were granted trading privileges on that contract market on or before February 2, 1993 whose trading privileges continue in effect, and who are not then registered as FBs.[5] The Commission recommends that contract markets start preparing their lists immediately since the time between adoption of final rules and their effective date is expected to be brief. Such lists must include the name, date of birth and social security number of the FTs, as well as any information known by the contract market regarding such FTs relative to matters which are set forth as statutory disqualifications in section 8a(2) of the CEAct,[6] and must be signed by the chief operating officer of the contract market as specified in the rule.

For an FT that is otherwise eligible for relief but is statutorily disqualified by section 8a(2), the FT's contract market must file a supplemental statement signed by the chief operating officer of the contract market stating that in light of the Congressional mandate requiring registration of FTs under the Act, the contract market understands its responsibility to take affirmative action to conduct appropriate surveillance of such FT.[7] If no supplemental statement is filed with regard to such a statutorily disqualified FT, the FT must cease exercising FT privileges as of April 26, 1993 pending the determination of his application for registration under proposed Rule 1.62–T. A single statement can be filed on behalf of all such potentially disqualified FTs who the contract market believes should be permitted to retain trading privileges during the registration process. The Commission believes that requiring such a supplemental statement to qualify for no-action relief is appropriate because Congress recognized, in enacting the FT registration requirement, that FTs may collude with FBs to violate the Act or Commission regulations and therefore should be subject to the same fitness checks and regulatory sanctions as FBs and others who deal directly with the public.[8]

The purpose of the contract market list for the first no-action position is to allow NFA to identify the persons who were acting as FTs on the relevant cut off date to facilitate monitoring filing of registration applications, and to assist the Commission in its registration determination. The lists should include all FTs at the contract market, even if the FT also is an FT at another contract market. This procedure is intended to assure that all eligible FTs can take advantage of the relief proposed under Rule 1.62–T(a) and avoid confusion as to which contract market should be responsible for listing the FT.

The information to be included on the contract market list regarding section 8a(2) statutory disqualifications is similar to the information which contract markets are currently required to submit regarding FBs under Rule 1.62(b). By requiring this information on the FT list, the Commission hopes to be able to expedite determinations as to registration fitness of FTs with such statutory disqualifications. FTs could also assist in expediting the determination as to their registration fitness by filing a Form 8–R as soon as possible, and by including therein full explanations as to any "yes" answers to the questions pertaining to statutory disqualifications. See Commission Rule 3.60(b)(2)(ii), 57 FR 23136, 23152–53 (June 2, 1992).

If a contract market submits its FT list and supplemental statement as to any section 8a(2) disqualified FTs to NFA in a timely manner, i.e., by April 26, 1993, the Commission will not commence an enforcement proceeding against an FT on that list based solely upon the FT's failure to register under section 4f of the Act and Commission Rule 3.11, nor will the Commission commence an enforcement proceeding against the contract market under Commission Rule 1.62 based solely upon its failure to bar the FT from operating as such.[9] Contract markets that have granted trading privileges to section 8a(2) disqualified FTs must file the supplemental statement referred to above; otherwise, such FTs will be ineligible for the relief provided under proposed Rule 1.62–T(a) and therefore barred from exercising their FT privileges as of April 26, 1993 unless or until they are notified that their applications for registration have been granted.

The second step in the process would require an FT whose name appears on a contract market list referred to above to submit an application for registration as an FT (or as an FB) to NFA in accordance with Commission Rule 3.11 no later than 30 days after the effective date of final rules. If the no-action position is not perfected by filing an application by May 26, 1993 the no-action as to such person would expire. FTs are encouraged to make the required submissions as soon as possible and should not wait until the last day to file. The earlier a completed registration application is submitted the earlier the person's registration status can be resolved. Rule 3.11 will require the FT to submit a Form 8–R and a fingerprint card to NFA. If those submissions are made on a timely basis, i.e., by May 26, 1993, the no-action positions with respect to the FT and the contract market would be extended

[4] The procedure in proposed Rule 1.62–T(c) is modeled on Commission Rule 3.55, which permits registration of a section 8a(2) disqualified registrant to be suspended by *pendente lite* order upon notice and hearing. See also section 227 of the 1992 Act and proposed Rule 3.56 set forth below which would provide that the registration of any person charged with certain violations of the Act or other federal or state laws may be suspended upon notice and hearing.

[5] A registered FB need not also register as an FT in order to engage in activity as an FT. However, an FT registered in some other capacity such as commodity trading advisor must, as of April 26, 1993, file a Form 8–R to indicate that he also wishes to be registered as an FT. See proposed amendment to Commission Rule 3.4(a) *infra*.

[6] Such disqualifications include, among other things, a prior revocation or denial of registration, and felony convictions within the preceding ten years, and injunctions, relating to futures or securities activity, embezzlement, theft, extortion or fraud.

[7] See, generally Rule 1.51 which provides, *inter alia*, that each contract market must use due diligence in maintaining a continuing affirmative action program to secure compliance with specified provisions of the Act as well as all of the contract market's bylaws, rules, regulations and resolutions which such contract market is required by the Act to enforce. The affirmative action program required by Rule 1.51 includes, among other things, surveillance of trading practices on the floor of such contract market, examination of books and records kept by contract market members, investigation of customer complaints, investigation of alleged or apparent rule violations, and "[s]uch other surveillance, record examination and investigation as is necessary to enforce such bylaws, rules regulations and resolutions."

[8] S. Rep. No. 191, 101st Cong., 1st Sess. 47–48 (1989).

[9] As discussed more fully below, the Commission is proposing to amend Rule 1.62 to provide generally that contract markets must enforce rules to prevent persons from acting as an FB or FT on their markets unless registered or temporarily licensed as such.

until the FT is granted or denied registration under the Act, unless, as noted above, an ALJ issues an interim order under Rule 1.62–T(c) suspending the no-action status of the FT. Determinations as to whether to initiate a proceeding under proposed Rule 1.62–T(c) would be made within the Commission's discretion on a case-by-case basis. If an FT does not make the required submissions within the time allowed, the no-action position will terminate as to that FT and the contract market will be notified by the Commission that such person cannot act as an FT.

FTs who would be eligible for relief under proposed Rule 1.62–T(a) should pay particular attention to the disciplinary history questions on Form 8–R.[10] The Commission notes that false statements on the Form 8–R are a separate ground for denying registration [11] and that a "yes" answer to a disciplinary history question may not necessarily result in denial of registration depending upon the nature and circumstances of the particular matter involved. For example, the Commission may exercise discretion so that settlements of previous Commission enforcement actions which permitted persons to continue trading for their own account would not be the sole basis for denial of FT registration. The Commission may delegate authority to its staff to permit registration in such circumstances.

The no-action position as to the FT will continue unless and until the FT fails to file a Form 8–R by the date required or an ALJ issues an interim order under proposed Rule 1.62–T(c) suspending the no-action status of the FT. If a Rule 3.60 registration proceeding were initiated without the accompanying suspension of no-action status, denial of registration would not become final and the person could continue acting as an FT until the FT has had an opportunity for a hearing and all appeal rights are exhausted. Thus, in general the Commission would treat such persons in a manner similar to that accorded registrants under the Act and a proceeding against them as if it were a proceeding to revoke the registration of a registrant.[12]

The Commission further notes that all registrants and applicants for registration, including FTs eligible for no-action relief as discussed herein, have an obligation under Commission Rule 3.31 to report promptly, by means of a Form 3–R, any deficiency, inaccuracy or change in the registration information previously provided to NFA on the original Form 8–R or a previously-filed Form 3–R. If information is disclosed on a Form 3–R or is discovered in the course of fitness checks that constitutes a statutory disqualification under section 8a(2) of the Act prior to granting registration to an FT eligible for relief in accordance with the first no-action position, such FT may be subject to the procedure relating to suspension of no-action relief under proposed Rule 1.62–T(c).

The Commission intends to authorize NFA to perform the registration processing function for FTs as it has previously authorized NFA to perform that function for other registrant categories. However, as is the case for FBs, any adverse action against FT would be instituted by the Commission. NFA will review the applications for registration from FTs and if such applications are deficient, NFA will so notify the FT. Such a notice will specify a time period for response and failure to respond may be deemed a request to withdraw a registration application.

The Commission is proposing that the transition phase necessary to permit those persons granted trading privileges prior to February 2, 1993 to file registration applications would end May 26, 1993, i.e., 30 days after the effective date of final rules in this area. The Commission notes, however, that no-action relief for any particular FT who qualifies for it would be allowed to continue beyond May 26, 1993 until his registration status is resolved in accordance with the proposed no-action position discussed above.

2. Second No-Action Position

The second no-action position would be set forth under paragraph (b) of proposed Rule 1.62–T. This would apply to persons granted contract market trading privileges after February 2, 1993 (and are thus ineligible to be included on a contract market list in accordance with proposed Rule 1.62–T(a)) but on or before April 26, 1993. This proposed second no-action position would presumably affect fewer persons than the first.

This second no-action position would require the FT to file a Form 8–R and fingerprint card and proof of contract market trading privileges with NFA on or before April 26, 1993 that would indicate an FT could qualify for a TL, i.e., there could be no "yes" answers to the disciplinary history questions. The second no-action position would basically be intended to cover the brief period of time between the filing of the Form 8–R and the issuance of a TL by NFA. Since the no-action position also applies to the contract market granting trading privileges, the person eligible for the second no-action position should file a copy of his Form 8–R with the contract market so that, if there are no "yes" answers to the disciplinary history questions, the person can continue trading. In order for FTs to be eligible for TLs, the contract market granting trading privileges must have filed with NFA the certification referred to in Rule 3.40(c), discussed below.

Any person who is granted trading privileges after February 2, 1993 cannot trade after April 26, 1993 if he must answer "yes" to any of the disciplinary history questions. The Commission believes it is appropriate to treat these persons as applicants for registration and thus make them subject to the standards applicable for TLs generally. After publication of this release, contract markets and prospective FTs are on notice as to the Commission's proposals for implementing the Congressional mandate referred to above. The Commission is not imposing new standards for registration eligibility, but simply incorporating a new registrant category into the existing system which sets forth explicit standards. The Commission is proposing to establish the date of publication of the proposed rules as the demarcation point after which new entrants into the affected category of futures professionals should be treated as applicants for registration. This proposal is consistent with the Commission's treatment of other new registrant categories previously added to the CEAct.

[10] The disciplinary history questions generally correspond to the grounds for statutory disqualification set forth in section 8a(2) and 8a(3) of the CEAct. They require disclosure of, among other things, a prior revocation or denial of registration, injunctions relating to futures or securities activity, felony convictions, certain misdemeanor convictions (such as those involving the commodities or securities laws, theft or fraud), a plea of *nolo contendere* to criminal charges of felonious conduct, self-regulatory organization disciplinary actions, and pending charges. A "yes" answer to a disciplinary history question may require furnishing of supplemental documents.

[11] Sections 8a(2)(G) and 8a(3)(G) of the CEAct, 7 U.S.C. 12a(2)(G) and 12a(3)(G), as amended by sections 208(d) and 208(g) of the 1992 Act, provide that registration can be denied if, among other things, an applicant willfully makes any materially false or misleading statement or omits to state any material fact in an application or any update thereto.

[12] See 57 FR 23136 (June 2, 1992) (amending the Commission's Part 3 rules concerning adverse actions to implement the Commission's decision of *In re Kangles and Chamberlain*, [1990–1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶24,855 (June 6, 1990) by providing equal treatment of applicants and registrants who are subject to statutory disqualifications).

C. Normal Application Procedures

An individual applying for registration as an FT who is granted trading privileges after April 26, 1993 or who otherwise is ineligible for the no-action relief discussed above would be subject to normal application procedures. In accordance with Rule 3.11, the applicant must file with NFA a Form 8–R, fingerprint card and proof of contract market trading privileges. The Commission is proposing to amend Rule 3.40 to permit such applicants to be granted TLs on essentially the same basis currently available to applicants for registration as associated persons (APs). The Commission believes that the primary rationale of the TL procedure should apply equally to FT applicants and AP applicants—to enable apparently qualified applicants to begin work as soon as possible prior to completion of a full fitness check.[13] The Commission also notes that currently an applicant for registration as an FB can trade solely for his own account (i.e., act as an FT) while awaiting the granting of registration as an FB.[14]

The key determinant of the availability of a TL is set forth in Rule 3.40(a), which is that the disciplinary history portion of the applicant's Form 8–R contain no "yes" answers indicating that the applicant may be subject to a statutory disqualification under sections 8a(2) and 8a(3) of the CEAct. The Commission is also proposing to require that an FT applicant (and an FB applicant in order to act as an FT as well) would only be eligible for a TL if a certification signed by the chief operating officer of the contract market is on file with NFA. This certification would be modified from that contained in Form 8–R for APs to accommodate FTs and FBs seeking a TL, and would be based upon the contract market's review of an applicant's employment, credit and other history in connection with the granting of trading privileges. A contract market could submit a single statement on behalf of all FT (and FB) applicants with respect to the reviews undertaken in connection with the granting of trading privileges.

Under the TL procedure proposed for FT applicants, as is the case for AP applicants, an FT applicant would be required to wait until receiving a TL before beginning to engage in activity as an FT on the floor of a contract market or through an electronic trading system. If the applicant is eligible for a TL, it should be issued promptly. However, an incomplete application could delay issuance of a TL. The Commission also notes that if the applicant is ineligible for a TL because of a "yes" answer to a disciplinary history question, the FT applicant cannot commence acting as an FT unless and until registration is granted.

D. Matters Related to Registered FTs

Once a person is registered as an FT, he would remain registered indefinitely as long as he continuously maintains trading privileges at a contract market. However, an FT whose registration is suspended, or whose trading privileges at all contract markets where he had such privileges were suspended, would be prohibited from engaging in FT activities during the period of suspension. See proposed amendment to Rule 3.11(b). If an FT were to lose trading privileges at all contract markets where he had such privileges, he would be eligible to receive a TL to act as an FT if he were granted trading privileges at any contract market and he submitted a new Form 8–R and fingerprint card to NFA within sixty days of termination of the former trading privileges. In order to be eligible to receive a TL, the person's registration as an FT could not be suspended or revoked, he could not be subject to a pending adjudicatory proceeding under the Act or have been permitted to withdraw a registration application after institution of a proceeding under Rule 3.51 within the preceding year, he could not have any new "yes" answers to the disciplinary history questions on Form 8–R and the contract market that had granted trading privileges has made the certification referred to in Rule 3.40(c). If the person is eligible for a TL, the TL would be effective upon mailing of the Form 8–R and fingerprint card but the person would be subject to new fitness checks.[15]

If an FT were to lose trading privileges at all contract markets where he had such privileges and wanted to register as an FB at a contract market, the same procedures could apply only if that person had never answered "yes" to any of the disciplinary history questions on the registration application form. If such person had ever answered "yes" to such a question, even if he was previously registered as an FT despite the "yes" answer, he must apply for FB registration as if he were a new applicant. The Commission is proposing this so that such a person would be subject to reconsideration of his entire fitness history. This difference in procedures for FTs and FBs is intended to reflect the fact that the former are not permitted to deal with customers directly.[16] Accordingly, a person previously registered as an FT with a "yes" answer to a disciplinary history question at any time would be re-evaluated even as to previously disclosed matters before being granted FB registration. The Commission's reconsideration of any issue raised by such an answer would take into account that the person had previously answered "yes" and that such answer had been previously passed upon in a prior fitness inquiry. See proposed Rule 3.11(c)(1)(ii)(E).[17]

An FT who maintains trading privileges continuously at any contract market could be registered as an FB upon mailing of a Form 3–R to NFA only if he never had answered "yes" to any of the disciplinary history questions. If the Form 3–R procedure is applicable, no new fitness checks would be performed, but any conditions or restrictions applicable to the FT registration would remain applicable to the FB registration. For the reasons discussed above, if an FT wanted to become an FB at the same contract market but had never answered "yes" to disciplinary history questions, he would have to apply for such FB registration, like any new applicant, by filing a new Form 8–R and fingerprint card. The proposal would, however, allow a transfer in the opposite direction, i.e., from FB to FT, by means of a Form 3–R, so long as there is no break in the continuity of trading privileges (i.e., an FB has privileges only at Exchange A and desires to leave Exchange A at the close of Friday's trading session and start trading as an FT at Exchange B the following trading session).[18] A Form 3–R could also be used by an FT in the following situations: (1) To report the granting of trading privileges at an additional contract market; and (2) to move from one contract market to

[13] 49 FR 8208, 8210 (March 5, 1984).

[14] After the rules for registration of FTs become effective, an applicant for registration as an FB would be eligible to receive a TL that would permit him to act as an FT pending a determination of his application for registration as an FB.

[15] An FB losing all trading privileges could be eligible for a TL to act as an FT at any contract market under similar conditions, as discussed *infra*.

[16] Gradations in fitness standards are not uncommon. For example, certain persons can retain registration yet be disqualified from service on self-regulatory organization governing boards or committees. See Commission Rule 1.63, 17 CFR 1.63.

[17] The procedures are similar to those now in place for an AP transferring to a new sponsoring firm. See Commission Rule 3.12(d), 17 CFR 3.12(d), *as amended by* 57 FR 23136, 23145–46.

[18] However, if there is any break in trading privileges, even for one day, a new Form 8–R and fingerprint card would be required.

another as an FT with no break in the continuity of trading privileges.

The Commission is also proposing to amend Rule 3.31 to include FTs, applicants for registration as FTs and those operating as FTs pursuant to no-action relief under Rule 1.62–T. Rule 3.31 requires deficiencies, inaccuracies and changes to information on Form 8–R or a supplemental statement thereto to be promptly reported to NFA on Form 3–R. An FT will not, however, be required to review on a biennial basis the information pertaining to him in NFA's registration database, as is the case for an FB.[19] In this regard, the Commission is proposing that FTs be subject to a registration update procedure comparable to that for FBs (See Commission Rule 3.11(d) *as amended by* 57 FR 23136, 23140 and as proposed to be further amended below) but that the update cycle be every three years. The Commission, however, is requesting comment in view of the changes in procedure proposed herein whether it would be less burdensome for the update cycle to be the same as for FBs. Contract markets would in either case have an obligation under proposed amendments to Rule 1.62(b) to notify the Commission about section 8a(2) statutory disqualifications regarding FTs within ten business days of the date upon which the contract market first knows of such facts (unless such facts concern a Commission initiated enforcement action) and of terminations of FT privileges for cause under Commission Rule 9.11(c). See also Commission Rule 3.31(d).

The Commission is proposing technical, conforming changes to certain other rules to include references to FTs where there are references to FBs, including: Rule 3.4 (which provides that registration in one capacity, such as FT, does not include registration in any other capacity, such as FB, but that an FB need not also register as an FT to act as such); Rule 3.21 (fingerprint exemptions); Rule 3.33 (withdrawal from registration);[20] Appendix A to part 3 (interpretative statement with respect to fitness determinations); Rule 10.1 (Commission Rules of Practice) and Rule 145.6 (public availability of registration records).

The Commission further notes that FTs and those considering applying for registration as FTs should familiarize themselves generally with the Commission's part 3 registration rules. Even though some part 3 provisions do not appear in this release because amendment thereof is unnecessary, those provisions may nevertheless be applicable to FTs. The Commission notes particularly Rules 3.1 (definitions), 3.2 (registration processing by NFA; notification of registration), 3.22 (supplemental filings), and 3.30 (current address for purpose of delivery of communications from the Commission or NFA). The Commission further notes that although only certain portions of subparts B and C of part 3, which deal with TLs and denial, suspension or revocation of registration, respectively, are being amended, FTs and potential applicants should familiarize themselves with all of the provisions of these subparts, such as termination of a TL and the procedural aspects of an adverse registration action. Those provisions of the Commission's rules that do not appear in this release may be found at title 17 of the Code of Federal Regulations, as amended by 57 FR 23136 (June 2, 1992).

The Commission also wishes to note that it is proposing amendments to recently adopted Rules 3.60 and 3.64 to incorporate FTs and applicants for registration as FTs into the Commission's procedures for adverse registration actions and for lifting or modifying conditions or restrictions on registration.[21] As indicated above, FTs and potential FT applicants should familiarize themselves with those rules, among others. One aspect of the proposed amendments to Rules 3.60 and 3.64 would also affect FBs and FB applicants. Currently, an FB subject to conditions or restrictions on his registration can be supervised by another FB who meets certain criteria set forth in the rule.[22] Sponsors of conditionally registered APs or FBs usually are the registrant's employer. FTs, however, trade for their own accounts, and the ordinary supervisory relationships present for APs and FBs do not exist. In the absence of such routine supervisory relationships, the Commission has considered what other entities may be appropriate supervisors for conditional registration purposes. The contract market which has granted the FT trading privileges or the clearing member who handles the FT's account have existing relationships with the FT. The proposed amendments to Rule 3.60 would permit a conditioned or restricted FT to be supervised by the contract market that has granted trading privileges itself or by an officer of the FT's clearing member if such officer is registered or listed as a principal of a registrant under the Act, although a conditioned or restricted FB could continue to be supervised by another FB. A person barred from service on self-regulatory organization governing boards or committees under Rule 1.63 would also be barred from acting as a supervisor under the proposed amendments to Rule 3.60, as is currently the case for a supervisory FB. The Commission specifically requests comment as to how a program for supervision of a conditioned or restricted FT should be structured and whether other persons should be permitted to act to act as a supervisor of a conditioned or restricted FT.

The Commission is also proposing to add a new paragraph (1) to Rule 3.60 to provide that in addition to any action with respect to the undertaking itself, the failure of a supervisor to fulfill its obligations with respect to supervision or monitoring of *any* conditioned or restricted registrant as agreed to in the Supplemental Sponsor Certification Statement may be deemed a violation of that rule. This rule would apply to sponsors of conditioned or restricted APs.

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[19] The Conference Committee Report states that: [W]hile current Commission rules require that floor brokers must renew their registration every two years, such frequent renewals are not needed to fulfill the purposes underlying the registration of floor traders. The central goal of requiring registration of floor traders is to assure that these individuals are subject to the same background fitness checks as other Commission registrants and to allow the Commission to act with respect to the person's registration in appropriate cases. The Conferees encourage the Commission to develop means of maintaining the up-to-date status of floor trader registrations that are less frequent than the system of two-year renewals required of floor brokers who execute purchases and sales for customer accounts.

See H.R. Rep. No. 978, 102d Cong., 2d Sess. 59 (1992).

[20] The Commission is proposing that FTs be permitted to request withdrawal from registration using a new Form 8–W. The current withdrawal form, Form 7–W, would remain applicable to firms requesting withdrawal, but any FT or FB requesting withdrawal would be required to use Form 8–W. The use of different forms for firm and individual withdrawal requests would be more appropriate and would parallel Form 7–R used by firms and Form 8–R used by individuals when applying for registration. This applies only to voluntary withdrawals and FTs or FBs will be required to file a copy of Form 8–W with each contract market where the FT has trading privileges. Where the contract market terminates trading privileges, notice of such termination is required to be provided to NFA within twenty days under Rule 3.31(d).

[21] 57 FR 23136, 23152–23155.

[22] The criteria for a supervisor in the proposed rule amendments are that such person not be subject to a pending adjudicatory proceeding pursuant to the provisions of sections 6(c), 6(d), 6c, 6d, 8a or 9 of the CEAct and not be barred from service on SRO boards or committees based on disciplinary history. See proposed amendments to Rule 3.60(b)(2)(i) (A) and (C). These proposed amendments are technical and conforming in nature, and the amendment to Rule 3.60(b)(2)(i) (A) is necessitated by section 209(a)(1) of the 1992 Act redesignating subsections (a) through (d) of section 6 of the CEAct as subsections (b) through (e), respectively. That 1992 Act provision also necessitates the amendments to Rules 1.10(j)(2)(ii), 3.12(d)(1)(iv) and 3.12(i)(1)(iv) proposed herein.

II. Matters Related to FBs

In addition to the ability to transfer from FB to FT status by means of a Form 3–R where there is no break in the continuity of trading privileges and the proposal to require FBs requesting withdrawal from registration to use Form 8–W instead of 7–W referred to above, the Commission is proposing certain other rule amendments applicable to FBs. Rule 3.40 would be amended to permit applicants for registration as an FB to receive a TL to act as an FT on essentially the same basis as an AP can receive a TL. Generally, TLs have not been available to FB applicants. The Commission's Division of Trading and Markets has previously granted no-action relief to a limited category of FB applicants who would trade only for the proprietary account of their employers pending the grant of registration, where the employer is not engaged in any public customer business, is not a vehicle for public participation in securities or commodity interests and does not sell partnership interests or other interests to the public.[23] The Commission recognizes that such relief is only available to a limited number of persons and believes that, in light of its experience in administering and overseeing registration of FBs, the fact that, as noted above, current FB applicants can act as FTs pending a decision on their FB registration, and the proposal to allow TLs for FTs, FB applicants should be eligible for TLs at least to act as FTs.[24]

In light of the proposal to permit TLs for FB applicants to act as FTs, the Commission is proposing to amend the special registration procedures under Rule 3.11(c) applicable when an FB's registration has terminated within the preceding sixty days and he seeks to register again as an FB. Currently, so long as the FB's registration has not been revoked or suspended, he would be granted registration upon mailing of a new Form 8–R and fingerprint card to NFA. An AP in somewhat similar circumstances under Commission Rule 3.12(d) only obtains a TL upon mailing of a new Form 8–R and fingerprint card. Since there have been no TLs for FB applicants, there has been no method to give an FB in these circumstances a TL and he was given a new registration, a more favorable result than for a similarly situated AP. Since the Commission is now proposing TLs for FB applicants to act as FTs, the Commission believes that an FB seeking re-registration as an FB within sixty days of termination of his previous registration should be treated similarly to an AP and eligible for a TL to act as an FT only upon mailing of a new Form 8–R and fingerprint card. In addition, even to be eligible for a TL to act as an FT, such an FB would have to meet standards similar to those of an AP under Rule 3.12(d):

(1) The person's registration as an FB could not be suspended or revoked;

(2) He could not be subject to a pending adjudicatory proceeding under the Act or have been permitted to withdraw a registration application after institution of a proceeding under Rule 3.51 within the preceding year;

(3) He could not have any new "yes" answers to the disciplinary history questions on Form 8–R; and

(4) The contract market that had granted trading privileges has made the certification necessary for a TL under Rule 3.40(c).

The Commission is also proposing to amend recently-adopted Rule 3.11(d) with respect to the biennial review of FB registration information.[25] The Commission has reviewed this new rule with a view toward minimizing any unnecessary costs and burdens entailed in compliance with the rule. Based upon this review, the Commission has determined to propose an amendment to Rule 3.11(d). The proposal states that NFA shall provide each FB with a printout of current data in NFA's registration database on a biennial basis and require that an FB make a filing with NFA only if the printed information is incorrect. In the case of incorrect information, the FB should indicate in writing what corrections need to be made. If no corrections are necessary, no further action by the FB would be required. Therefore, if an FB does not return the printout provided by NFA, the FB's registration would continue in effect and he would be deemed to have certified the current information as correct and not be deemed to have requested a withdrawal from registration unless NFA takes some further action.

The Commission also wishes to point out that all registrants and applicants for registration, including FBs, have an obligation under Rule 3.31 to report promptly, by means of a Form 3–R, any deficiency, inaccuracy or change in the registration information previously provided to NFA. This will continue to be the primary means used to maintain an accurate and current registration database for the benefit of all users.

III. Role of Contract Markets

As noted above, contract markets will have a key role in obtaining no-action relief for FTs with trading privileges as of on or before April 26, 1993 under Proposed Rule 1.62–T(a). The contract market will be required to submit a list of such persons to NFA, including name, date of birth, social security number and known statutory disqualifications under section 8a(2) of the CEAct, signed by the chief operating officer of the contract market, as well as a supplemental statement referred to above regarding persons subject to section 8a(2) statutory disqualifications by the effective date of final rules with respect to the first no-action procedure. We reiterate that these lists should *not* include registered FBs, but should include all FTs with trading privileges as of February 2, 1993, even if such FTs also have trading privileges at another contract market. This process is important to the contract market itself, because the no-action position would also affect the contract market. Under proposed amendments to Rule 1.62, a contract market will generally be required to bar from acting as an FT any person not registered or temporarily licensed as such. Thus, a person whose name is not included on the list referred to herein would be required to be barred from acting as an FT or the contract market would be subject to enforcement action. Commission staff will check trade register data against these lists to confirm compliance.

The Commission also notes, as stated above, that persons on the list who do not file a Form 8–R and fingerprint card within the time allotted will lose their no-action status and would then be required to be barred from acting as an FT by the contract market. Further, no-action status will terminate as to a person on the list if an interim order is issued by an ALJ under Proposed Rule 1.62–T(c) suspending the no-action position as to the FT.

The Commission is also proposing that in order for FTs and FBs to be eligible for TLs, the contract market that has granted trading privileges must file with NFA the certification under Rule 3.40(c) discussed above.

The Commission anticipates that beyond merely fulfilling their obligations under the rules, contract markets may provide valuable assistance to FTs and FT applicants in meeting their new registration obligations. Assistance in "getting it right the first time" should prove

[23] CFTC Advisory No. 92–1, [Current Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,334 (July 10, 1992).

[24] The Commission is also proposing certain amendments to Rules 3.42 and 3.46 so that the bases for terminations of TLs for APs, FBs, FTs and guaranteed introducing brokers will be consistent and so that the Commission's rules and NFA's rules in this area will be consistent.

[25] 57 FR 23136, 23145.

beneficial to all parties concerned and minimize the time and cost involved.

The Commission is also proposing an amendment to Rule 1.62 to require each contract market to have in effect and enforce rules which require ethics training of FBs and FTs, as discussed more fully below.

IV. Role of NFA

As noted above, the Commission intends to authorize NFA to assume the responsibility to process applications for registration as an FT and, where appropriate, grant TLs and registration as an FT in accordance with the standards established by the CEAct and Commission rules promulgated thereunder. The Commission expects to issue a delegation order authorizing NFA to perform certain registration functions for FTs when it adopts final rules in this area. The Commission does not intend, however, to authorize NFA to deny, condition, suspend, restrict or revoke FT registration. NFA's authority with respect to FTs, then, will be similar to that currently in effect with respect to FBs, other than the authority with respect to TLs.[26]

The effect of a Commission order authorizing NFA to perform registration processing functions with respect to FTs would be that FT applicants and FTs would file all of their registration materials (Form 8–R, fingerprint card, proof of contract market trading privileges, supplemental information concerning disciplinary history, and Form 3–R) with NFA. Where it is appropriate for NFA to grant a TL or registration, it will do so.[27] However, if derogatory information is disclosed by the FT or applicant for registration as an FT, or if derogatory information is uncovered during the fitness checks, such information will be forwarded to the Commission. It would be the Commission's responsibility to review such information and, where appropriate, institute adverse actions that could lead to denying, conditioning, suspending, restricting or revoking FT registration. The Commission may provide guidance to NFA in the review of such information.

The Commission envisions that NFA, like the contract markets, would serve as a resource for FTs and FT applicants in meeting their new registration obligations. The NFA prepares the necessary forms referred to above as well as booklets regarding the registration process. These can be obtained through NFA's Information Center, which can be reached at 800–621–3570 (outside Illinois), 800–572–9400 (inside Illinois), or 312–781–1410. Information Center personnel are also available to answer individual questions.

The Commission's staff has discussed with NFA the need to make conforming changes in registration forms and processing procedures.[28] The Commission expects NFA to proceed expeditiously to adopt conforming amendments to its registration rules to take account of final Commission rules in this regard.

V. Ethics Training for Registrants

Section 210 of the 1992 Act adds a new paragraph (b) to section 4p of the CEAct mandating ethics training for registrants.[29] That provision states that the Commission shall issue regulations to require new registrants, within 6 months after receiving such registration, to attend a training session, and all other registrants to attend periodic training sessions, to ensure that registrants understand their responsibilities to the public under [the CEAct], including responsibilities to observe just and equitable principles of trade, any rule or regulation of the Commission, any rule of any appropriate contract market, registered futures association, or other self-regulatory organization, or any other applicable Federal or State law, rule or regulation.

To implement this provision, the Commission is proposing new Rule 3.34. That rule would provide that any individual registered as a futures commission merchant (FCM), introducing broker (IB), commodity trading advisor (CTA), commodity pool operator (CPO), leverage transaction merchant (LTM), AP, FB or FT must attend ethics training directed towards the responsibilities described in section 210 of the 1992 Act.[30] Some further guidance as to the types of issues which should be addressed are contained in the list of the International Conduct of Business Principles[31] developed by Working Party No. 8 of the Technical Committee of the International Organization of Securities Commissions, which was adopted in June, 1990. Training also should be designed to focus on those functions performed by the category of registrant receiving instruction. The Commission is also proposing that an individual's initial training be at least four hours in duration and that periodic training thereafter be at least a one-hour session every three years. The training must be provided by a self-regulatory organization as defined in Commission Rule 1.3(ee), an entity that meets the criteria set forth in section 501(c)(3) of the Internal Revenue Code (such as the Futures Industry Institute,[32] an entity accredited to conduct continuing education programs by a state professional licensing authority in the fields of law, finance, accounting or economics, or a trade association or

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[26] 51 FR 34490 (September 29, 1986). If the Commission adopts TL procedures for FBs as proposed, it would also authorize NFA to grant TLs to applicants for registration as FBs to act as FTs and to terminate such TLs pending a registration determination where appropriate.

[27] In order to grant TLs to applicants for registration as FTs or FBs, NFA must have on file from the contract market that has granted trading privileges a certification as to its review of an applicant's employment, credit and other history in connection with the granting of trading privileges, as discussed *supra*.

[28] The basic changes necessary to Form 8–R are to include a reference to FTs. For the time being, applicants for FT registration could use existing forms and mark at the top thereof "Floor Trader Application."

[29] Section 210 of the 1992 Act identified the class of persons subject to the ethics training requirement as "registrants." The Conference Committee Report also refers to "registrants" in its discussion of the ethics training requirement. See H.R. Rep. No. 978, 102 Cong., 2d Sess. 60 (1992).

Commission registrants include both natural persons and firms. The Commission is interpreting the term "registrant" as used in Section 210 to mean natural persons including APs and principals of firms to the extent that such principals are required to be registered as APs pursuant to the Commission's interpretive statement concerning the scope of the registration requirement of Section 4k of the Act as it applies to all individuals in the line of supervisory authority with respect to persons required to register as APs under the Act. See Interpretative Statement Regarding the Scope of the Term "Supervision" in the Associated Person Registration Requirement, 45 FR 54032 (August 14, 1980).

[30] These responsibilities are to observe just and equitable principles of trade, any rule or regulation of the Commission, any rule of any appropriate contract market, registered futures association, or other self-regulatory organization, or any other applicable federal or state law, rule or regulation. In this connection, reference to Commission interpretations and decisions with respect to specific fact situations may be helpful.

[31] These principles are: To act honestly and fairly and with due skill, care and diligence in the best interests of customers and the integrity of the market; to have and employ effectively the resources and procedures which are needed for the proper performance of business activities; to know your customer's financial situation and investment experience; to disclose relevant material information in dealings with customers; and to avoid conflicts of interests.

[32] These criteria include: an entity organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, or to foster national or international amateur sports competition (subject to certain conditions), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation, and which does not attempt to participate or intervene in political campaigns.

other person approved by the Commission who offers a program for this purpose. The Commission is, however, requesting comment on whether additional criteria for vendors should be developed, or whether vendors' programs should be subject to audit.

The Commission recognizes that it may be difficult for registrants located substantial distances from major metropolitan areas to attend in-person training sessions offered by appropriate vendors without incurring significant expense or business disruption. It would be acceptable for such registrants to fulfill their ethics training obligation through a computerized "self-training" program, the viewing of videotapes or other materials provided by appropriate vendors designed to facilitate ethics training for which completion can be substantiated without undue burdens on registrants. Such substantiation contemplates, for example, an interactive computerized training program that requires the registrant's participation and return of such computer disk to the vendor for verification of such participation and the issuance of a certificate so signifying by the vendor to the registrant. The registrant would have to maintain that certificate as a record subject to audit as discussed below. The Commission also proposes to recognize training programs offered on an in-house basis by registered firms if such programs are offered pursuant to a plan of instruction developed by a self-regulatory organization, 501(c)(3) institution or other entity specified in the rule.

As to the time period within which such training must be taken, the Commission is proposing a general framework of six months following registration, as mandated by the 1992 Act, and thereafter every three years. However, several exceptions to these requirements would be provided. If a person is registered when Rule 3.34 becomes effective, or if a person becomes registered after Rule 3.34 becomes effective and has been registered at any time during the two-year period immediately preceding the date such individual's most recent application for registration was received by NFA,[33] the person would not be considered a "new" registrant and, accordingly, would be subject only to the periodic three-year training requirement.

Any person who would be considered a new registrant generally would be required to attend ethics training within six months after receiving such registration. However, the Commission is proposing that if a new registrant attended ethics training within six months prior to applying for registration, the requirement for training within six months after being granted registration would be considered satisfied. The Commission is making this proposal for the following reasons. The preparation for the Series 3 test and the items to be covered by ethics training will tend to overlap to some degree. Preparation for that test will occur shortly before registration is granted in most cases and the Commission believes if such preparation and ethics training are taken on a fairly contemporaneous basis, attending ethics training within what would probably be about one year's time would ordinarily be unnecessary. The Commission anticipates that providers of Series 3 test preparation may also wish to offer ethics training and that it may be convenient to attend both training classes at about the same time. This is especially true for those who may be required to travel a substantial distance to attend these training sessions who could thus fulfill the ethics training requirement without making an additional trip.[34]

The Commission is also proposing to require maintenance of evidence of attendance at ethics training in accordance with Commission Rule 1.31. An individual registered as an FCM, IB, CTA, CPO, or LTM would have to maintain the evidence himself. In the case of an AP, each of the AP's sponsors would have to maintain such evidence. In the case of an FB or FT, each contract market that has granted trading privileges to the FB or FT would be required to maintain such evidence itself. Evidence of attendance could consist of a certificate of attendance for the requisite number of hours from an appropriate vendor. Where a firm decides that it would be more efficient and economical to use materials from an appropriate vendor in-house rather than having its APs attend the training at the vendor's site, the firm must retain evidence it has obtained the necessary program materials from an appropriate vendor and taken steps to conduct in-house training on the basis of these materials as required by Rule 3.34. The evidence of ethics training would be subject to inspection during audits of firms required to be conducted by NFA and other self-regulatory organizations (SROs) and during reviews of contract market operations. It would be part of a firm's supervisory obligation to assure that training has been attended by APs and failure of an AP to attend as required could subject both the AP and his sponsors to enforcement action. Similarly, a contract market has an affirmative obligation under proposed amendments to Rule 1.62 to assure its FBs and FTs receive appropriate ethics training and failure of an FB or FT to do so could result in enforcement action against the FB or FT and the contract market.

Although the Commission is only proposing that evidence of ethics training be maintained subject to inspection as discussed above, the Commission specifically requests comment concerning a requirement that, in addition to the recordkeeping requirement, evidence of ethics training be filed with the Commission and/or, as appropriate, SRO.

In connection with the ethics training requirement, the Commission specifically requests comment as to whether firms should be permitted to provide their own in-house training program for APs in lieu of being required to use materials of an approved vendor and, if so, as to what minimum standards should apply to in-house programs. The Commission is also requesting comment as to whether further guidance should be provided as to other ethics training programs to assure compliance with the statutory mandate of the 1992 Act.

VI. Suspension of Registrants Charged With Felonies

Section 227 of the 1992 Act creates a new section 8a(11) of the CEAct, which authorizes the Commission to adopt rules permitting the Commission to suspend or modify the registration of any registrant under the CEAct who is charged with the commission of or participation in a felony involving a violation of the CEAct or of any other provision of Federal or state law that would reflect on the honesty or the fitness of the registrant to act as a fiduciary, if the Commission also determines that continued registration of the person may pose a threat to the public interest or may threaten to impair public confidence in any market regulated by the Commission. The 1992 Act provides that the Commission shall have the burden of showing that the continued registration of the person may pose a threat to the public interest or may threaten to impair public

[33] This two-year "window" corresponds to the time parameters set by NFA requiring re-passing of the National Commodity Futures Examination (Series 3 test) in order to be granted registration. NFA Registration Rule 401.

[34] The Commission is thus interpreting the six month requirement of the Act to permit training within six months prior to applying for registration or six months after registration is granted.

confidence in any market regulated by the Commission. Such a requirement differs from the burden associated with statutory disqualifications under sections 8a(2) and 8a(3) of the CEAct which, if shown, shift the burden to the applicant or registrant to demonstrate why his registration would not pose a substantial risk to the public. Unlike other suspensions of registration, which are limited to six months, a suspension or modification of registration under new section 8a(11) of the CEAct shall remain in effect until the information, indictment or complaint forming the basis for the suspension or modification is disposed of or until the suspension or modification is terminated by the Commission.

The Commission is proposing new Rule 3.56 to implement this authority. The rule would provide for a hearing chiefly on written submissions, although the Administrative Law Judge (ALJ) shall grant an oral hearing upon the written request of the registrant unless the Division of Enforcement can demonstrate that there is no genuine issue of material fact to be determined. As part of the written submissions, a registrant charged with a felony could present a Supplemental Sponsor Certification Statement signed by an appropriate sponsor, floor broker or, in the case of an FT, supervising registrant or contract market in support of having his registration modified rather than suspended. The proposed Rule 3.56 is modeled on certain portions of Rules 3.55 and 3.60 as well as section 227 of the 1992 Act, with notice to the registrant, an opportunity for response by the registrant, and an opportunity for reply by the Division of Enforcement to the registrant's response. The Commission envisages a streamlined procedure and is proposing that an ALJ make his determination on such a matter within thirty days after the last written submission or oral hearing.

The Commission reminds all registrants that, if they are indicted, they are required to update their registration applications by means of a Form 3–R in accordance with Commission Rule 3.31 to note that they have a "yes" answer in response to Question 13 on Form 7–R or Question 16 on Form 8–R. Appropriate supplemental documentation should be supplied.

VII. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–611 (1988), requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The rules discussed herein will affect IBs, FCMs, APs, FBs, FTs, CTAs, CPOs and LTMs. The Commission has already established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such small entities in accordance with the RFA.[35] FCMs, registered CPOs and LTMs have been determined not to be small entities under the RFA. With respect to the other registrant categories that may be affected by these rules, the Commission is carrying out Congressional mandates by proposing these rules. The Commission is proposing to incorporate registration of FTs into the existing registration structure applicable to other registrants. By proposing the temporary no-action positions referred to herein, as well as TLs, without biennial review of information,[36] the Commission is attempting to accomplish registration of FTs in the manner that is least disruptive to ongoing businesses and most efficient and expeditious, consistent with the public interest.

Ethics training is also being proposed pursuant to Congressional mandate. The Commission believes its proposed schedule for periodic training and the ability to obtain training materials from an appropriate vendor in lieu of attendance at the vendor's site should reduce the potential impact of compliance with the ethics training requirement on small entities.

Suspension of registrants charged with felonies is another proposal put forth in response to Congressional mandate. The burden is on the Commission to demonstrate that continued registration of such person does, or is likely to, pose a threat to the public interest or threaten to impair public confidence in any market regulated by the Commission, so the rule being proposed under this Congressional authority should not impose an undue burden on small entities.

Therefore, the Acting Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the rules proposed herein will not have a significant economic impact on a substantial number of small entities. The Commission nonetheless invites comments from any person or entity which believes that these proposed rules and rule amendments would have a significant impact on its operations.

[35] 47 FR 18618–18621 (April 30, 1982).

[36] See H.R. Rep. No. 978, 102 Cong., 2d Sess. 59 (1992).

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1990 (PRA), 44 U.S.C. 3501–3512 (1988), imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission has submitted these proposed rules and rule amendments and their associated information collection requirements to the Office of Management and Budget. The burden associated with this entire collection, including these proposed rules and rule amendments, is as follows:

Average Burden Hours per Response—0.80.

Number of Respondents—5,980.

Frequency of Response—On Occasion and Triennially.

The burden associated with these specific rules, as proposed to be amended, is as follows:

Average Burden Hours Per Response—0.10.

Number of Respondents—5,800.

Frequency of Response—On Occasion and Triennially.

Persons wishing to comment on the information which would be required by these rules as amended should contact Gary Waxman, Office of Management and Budget, room 3220, NEOB, Washington, DC 20503, (202) 395–7340. Copies of the information collection submission to OMB are available from Joe F. Mink, CFTC Clearance Officer, 2033 K Street NW., Washington, DC 20581, (202) 254–9735.

List of Subjects

17 CFR Part 1

Brokers, Commodity futures.

17 CFR Part 3

Brokers, Registration.

17 CFR Part 10

Administrative practice and procedure.

17 CFR Part 145

Freedom of information.

Accordingly, the Commission, pursuant to the authority contained in the Commodity Exchange Act and, in particular, Sections 1a, 4c, 4e, 4f, 4g, 4p, 6d, 8a and 17 thereof (7 U.S.C. 2, 6c, 6e, 6f, 6g, 6p, 13a–2, 12a and 21), as amended by the Futures Trading Practices Act of 1992, Public Law 102–546, hereby proposes to amend parts 1, 3, 10 and 145 of title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

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

2. Section 1.3 is proposed to be amended by revising paragraph (x) to read as follows:

§ 1.3 Definitions.

* * * * *

(x) *Floor trader.* This term means any person who, in or surrounding any pit, ring, post, or other place provided by a contract market for the meeting of persons similarly engaged, purchases or sells solely for such person's own account, or has been authorized by a contract market to purchase or sell for such person's own account, any commodity for future delivery on or subject to the rules of any contract market and shall include any person required to register as a floor trader under the Act by virtue of part 33 of this chapter.

* * * * *

3. Section 1.10 is proposed to be amended by revising paragraph (j)(2)(ii) to read as follows:

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

* * * * *

(j) * * *

(2) * * *

(ii) There is filed against the futures commission merchant an adjudicatory proceeding brought by or before the Commission pursuant to the provisions of sections 6(c), 6(d), 6c, 6d, 8a or 9 of the Act or §§ 3.55, 3.56 or 3.60 of this chapter.

* * * * *

4. Section 1.62 is proposed to be revised to read as follows:

§ 1.62 Contract market requirement for floor broker and floor trader registration.

(a)(1) Each contract market shall adopt, maintain in effect, and enforce rules which have become effective pursuant to section 5a(12) of the Act and § 1.41 and which provide that no person in or surrounding any pit, ring, post, or other place provided by such contract market for the meeting of persons similarly engaged:

(i) Shall purchase or sell for any other person any commodity for future delivery, or any commodity option, on or subject to the rules of that contract market, unless such person is registered as a floor broker; or

(ii) Shall purchase or sell solely for such person's own account, any commodity for future delivery, or any commodity option, on or subject to the rules of that contract market, unless such person is registered or has been granted a temporary license as a floor trader, or has been granted a temporary license as a floor broker to act as a floor trader, in accordance with section 4f of the Act and § 3.11 or § 3.40 of this chapter, and such registration has neither been revoked nor withdrawn: *Provided, however,* That such rules must provide that a floor broker or floor trader will be prohibited from engaging in activities requiring registration under the Act or from representing such floor broker or floor trader is a registrant under the Act or the representative or agent of any registrant during the pendency of any suspension of such person's registration.

(2) Each contract market shall also adopt, maintain in effect and enforce rules which have become effective pursuant to section 5a(12) of the Act and § 1.41 which provide for requests for withdrawal of floor broker or floor trader registration using Form 8–W in accordance with § 3.33 of this chapter, which require training of floor brokers and floor traders in accordance with § 3.34 of this chapter and which require review of registration information by floor brokers every two years and by floor traders every three years in accordance with § 3.11(d) of this chapter.

(b) Each contract market must notify the Commission of any facts regarding a floor broker or floor trader or an applicant for registration as a floor broker or floor trader, or a floor trader whose name appears on a list submitted in accordance with § 1.62–T(a) in order to qualify for a temporary no-action position thereunder, who has been granted trading privileges at the contract market, which are set forth as statutory disqualifications in section 8a(2) of the Act (unless such facts result from an enforcement action filed by the Commission) or which are terminations of floor trading privileges for cause under § 9.11(c) of this chapter within ten business days of the date upon which the contract market first knows of such facts. Notice to the Commission shall be sufficient if the contract market gives notice to the Director of the Division of Trading and Markets or the Director's designee by telephone and confirms such notice in writing by certified or registered mail or equivalent means to the Commission at its Washington, DC office (Attn: Chief Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581).

5. Section 1.62–T is proposed to be added to read as follows:

§ 1.62–T No-action positions with respect to floor traders.

(a) Notwithstanding any other provision of law, if a contract market submits to the National Futures Association by April 26, 1993 a list of floor traders who were granted trading privileges on that contract market on or before February 2, 1993, and whose floor trading privileges remain in effect, which includes the name, date of birth and social security number of such floor traders, as well as facts regarding such floor traders which are set forth as statutory disqualifications in section 8a(2) of the Act if the contract market knows of such facts, and such list is signed by the chief operating officer of the contract market, the Commission will not commence an enforcement proceeding against a floor trader on that list based solely upon the floor trader's failure to register under section 4f of the Act and § 3.11 of this chapter, nor will the Commission commence an enforcement proceeding against the contract market under § 1.62 for failing to bar such floor trader from operating as such: *Provided, however,* that for those floor traders listed as to whom the contract market knows of facts set forth as statutory disqualifications in section 8a(2) of the Act, the no-action position contained in paragraph (a) of this section will only apply if the contract market submits a supplemental statement signed by the chief operating officer of the contract market stating that, in light of the Congressional mandate requiring registration of floor traders under the Act, the contract market understands its responsibility to take affirmative action to conduct appropriate surveillance of such floor traders. These no-action positions shall expire upon the floor's trader being granted or denied registration under the Act, or on May 26, 1993, whichever comes earliest: *Provided, however,* that if the floor trader files an application for registration in accordance with § 3.11 of this chapter with the National Futures Association by May 26, 1993, the no-action positions for the floor trader and the contract market as to such floor trader will be extended until the floor trader is granted or denied registration under the Act, unless an Administrative Law Judge issues an interim order suspending the no-action position as to

such floor trader in accordance with paragraph (c) of this section.

(b) Notwithstanding any other provision of law, if a floor trader who was granted trading privileges on a contract market after February 2, 1993 but on or before April 26, 1993, files an application for registration as a floor trader in accordance with § 3.11 of this chapter with the National Futures Association on or before April 26, 1993 demonstrating that the floor trader would qualify to receive a temporary license under § 3.40 of this chapter, and the contract market granting trading privileges has filed with the National Futures Association the certification referred to in § 3.40(c) of this chapter, the Commission will not commence an enforcement proceeding against such a floor trader based solely upon the floor trader's failure to register under section 4f of the Act and § 3.11 of this chapter, nor will the Commission commence an enforcement proceeding against the contract market under § 1.62 of this part for failing to bar such floor trader from so operating. These no-action positions for the floor trader and the contract market shall expire upon the floor trader's being granted a temporary license under the Act.

(c) *Suspension of no-action position under paragraph (a) of this section pursuant to section 8a(2) of the Act.*— (1) *Notice.* On the basis of information obtained by the Commission, the Commission may at any time serve notice upon a floor trader whose name appears on a list submitted in accordance with paragraph (a) of this section that:

(i) The Commission alleges and is prepared to prove that such floor trader is subject to one or more of the statutory disqualifications set forth in section 8a(2) of the Act;

(ii) An Administrative Law Judge shall make a determination, based upon written evidence, as to whether the floor trader is subject to such statutory disqualification; and

(iii) If the floor trader is found to be subject to a statutory disqualification, the no-action status of the floor trader under paragraph (a) of this section may be suspended and the floor trader ordered to show cause why registration should not be denied.

(2) *Written submission.* If the floor trader wishes to challenge the accuracy of the allegations set forth in the notice, the floor trader may submit written evidence limited to the type described in § 3.60(b)(1) of this chapter. Such written submission must be served upon the Division of Enforcement and filed with the Hearing Clerk within twenty days of the date of service of notice to the floor trader.

(3) *Reply.* Within ten days of receipt of any written submission filed by the floor trader, the Division of Enforcement may serve upon the floor trader and file with the Hearing Clerk a reply.

(4) *Determination by Administrative Law Judge.* A determination by the Administrative Law Judge as to whether the floor trader is subject to a statutory disqualification must be based upon the evidence of the statutory disqualification, notice with proof of service, the written submission, if any, filed by the floor trader in response thereto, any written reply submitted by the Division of Enforcement and such other papers as the Administrative Law Judge may require or permit.

(5) *Suspension and order to show cause.* (i) If the floor trader is found to be subject to a statutory disqualification, the Administrative Law Judge, within thirty days after receipt of the floor trader's written submission, if any, and any reply thereto, shall issue an interim order suspending the no-action status of the floor trader under paragraph (a) of this section and requiring the floor trader to show cause within twenty days of the date of the order why, notwithstanding the existence of the statutory disqualification, the registration of the floor trader should not be denied. The no-action status of the floor trader shall be suspended, effective five days after the order to show cause is served upon the floor trader in accordance with § 3.50(a) of this chapter, until a final order with respect to the order to show cause has been issued; *Provided, That* if the sole basis upon which the floor trader is subject to statutory disqualification is the existence of a temporary order, judgment or decree of the type described in section 8a(2)(C) of the Act, the order to show cause shall not be issued and the floor trader shall be suspended until such time as the temporary order, judgment or decree shall have expired: *Provided, however,* That in no event shall the floor trader's no-action status be suspended for a period to exceed six months.

(ii) If the floor trader is found not to be subject to a statutory disqualification, the Administrative Law Judge shall issue an order to that effect and the Hearing Clerk shall promptly serve a copy of such order on the floor trader, the Division of Trading and Markets and the Division of Enforcement. Such order shall be effective as a final order of the Commission fifteen days after the date it is served upon the floor trader in accordance with the provisions of § 3.50(a) of this chapter unless a timely application for review is filed in accordance with § 10.102 of this chapter. The appellate procedures set forth in §§ 10.102, 10.103, 10.104, 10.106, 10.107 and 10.109 of this chapter shall apply to any appeal brought under paragraph (d) of this section.

(6) *Further proceedings.* If an order to show cause is issued pursuant to paragraph (c)(5)(i) of this section, further proceedings on such order shall be conducted in accordance with the provisions of § 3.60(b) through (j) of this chapter.

PART 3—REGISTRATION

6. The authority citation for part 3 is proposed to be revised to read as follows:

Authority: 7 U.S.C. 1a, 2, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6l, 6m, 6n, 6o, 6p, 8, 9, 9a, 12, 12a, 13b, 18, 19, 21 and 23.

7. The authority citations at the end of each section and at the beginning of each subpart and Appendix A are proposed to be removed.

Subpart A—Registration

8. Section 3.4 is proposed to be amended by revising paragraph (a) to read as follows:

§ 3.4 Registration in one capacity not included in registration in any other capacity.

(a) Except as may be otherwise provided in the Act or in any rule, regulation, or order of the Commission, each futures commission merchant, floor broker, floor trader, associated person, commodity trading advisor, commodity pool operator, introducing broker and leverage transaction merchant must register as such under the Act. Registration in one capacity under the Act shall not include registration in any other capacity: *Provided, however,* that a registered floor broker need not also register as a floor trader in order to engage in activity as a floor trader.

* * * * *

9. Section 3.11 is proposed to be revised to read as follows:

§ 3.11 Registration of floor brokers and floor traders.

(a) *Application for registration.* (1) Application for registration as a floor broker or floor trader must be on Form 8–R, completed and filed with the National Futures Association in accordance with the instructions thereto. Each Form 8–R filed in accordance with paragraph (a) of this section must be accompanied by the fingerprints of the applicant on a

fingerprint card provided for that purpose by the National Futures Association, except that a fingerprint card need not be filed by any applicant who has a current Form 8–R on file with the Commission or the National Futures Association.

(2) An applicant for registration as a floor broker or floor trader will not be registered as a floor broker or floor trader, respectively, or granted a temporary license to act as a floor trader, unless the applicant has been granted trading privileges by a board of trade designated as a contract market by the Commission.

(3) When the Commission or the National Futures Association determines that an applicant for registration as a floor broker or floor trader is not disqualified from such registration or temporary license, the National Futures Association will provide notification in writing to the applicant and to any contract market that has granted the applicant trading privileges that the applicant's registration as a floor broker or floor trader, respectively, or temporary license to act as a floor trader, is granted.

(b) *Duration of registration.* A person registered as a floor broker or floor trader in accordance with paragraphs (a) or (c) of this section, and whose registration has neither been revoked nor withdrawn, will continue to be so registered unless such person's trading privileges on all contract markets have ceased. Such person will be prohibited from engaging in activities requiring registration under the Act or from representing himself to be a registrant under the Act or the representative or agent of any registrant during the pendency of any suspension of such registration or of all such trading privileges. In accordance with § 3.31(d), each contract market that has granted trading privileges to a person who is registered, or has applied for registration, as a floor broker or floor trader, must notify the National Futures Association within twenty days after such person's trading privileges on such contract market have ceased.

(c) *Special registration for certain persons where there is a break in continuity of trading privileges.* (1)(i) *Floor broker.* Any person whose registration as a floor broker has terminated within the preceding sixty days and who is granted trading privileges by any contract market will be granted a temporary license to act in the capacity of a floor trader upon mailing to the National Futures Association of a Form 8–R completed and filed in accordance with the instructions thereto, accompanied by the fingerprints of the floor broker on a fingerprint card provided by the National Futures Association for that purpose and, if applicable, a Supplemental Sponsor Certification Statement signed by the new sponsor (who must meet the requirements set forth in § 3.60(b)(2)(i) (A) and (C)) that contains conditions identical to those agreed to by the previous sponsor, provided that:

(A) Such person's registration as a floor broker is not suspended or revoked;

(B) There is no pending adjudicatory proceeding against such person under sections 6(c), 6(d), 6c, 6d, 8a or 9 of the Act or §§ 3.55 or 3.60 and, within the preceding twelve months, the Commission has not permitted the withdrawal of an application for registration in any capacity after initiating the procedures provided in § 3.51;

(C) The Disciplinary History questions (items 14–18) of such person's registration application contain no "yes" answers, or none except those arising from a matter which already has been disclosed in connection with a previous application for registration in any capacity if such registration was granted, or which was disclosed more than thirty days previously in an amendment to such application; and

(D) The contract market that has granted trading privileges has made the certification required under § 3.40(c).

(ii) *Floor trader.* Any person whose registration as a floor trader has terminated within the preceding sixty days and who is granted trading privileges by any contract market will be granted a temporary license to act in the capacity of a floor trader upon mailing to the National Futures Association of a Form 8–R completed and filed in accordance with the instructions thereto, accompanied by the fingerprints of the floor trader on a fingerprint card provided by the National Futures Association for that purpose and, if applicable, a Supplemental Sponsor Certification Statement signed by the new sponsor (who must meet the requirements set forth in § 3.60(b)(2)(i) (A) and (C) that contains conditions identical to those agreed to by the previous sponsor, provided that:

(A) Such person's registration as a floor trader is not suspended or revoked;

(B) There in no pending adjudicatory proceeding against such person under sections 6(c), 6(d), 6c, 6d, 8a or 9 of the Act or §§ 3.55 or 3.60 and, within the preceding twelve months, the Commission has not permitted the withdrawal of an application for registration in any capacity after initiating the procedures provided in § 3.51;

(C) The Disciplinary History questions (items 14–18) of such person's registration application contain no "yes" answers, or none except those arising from a matter which already has been disclosed in connection with a previous application for registration in any capacity if such registration was granted, or which was disclosed more than thirty days previously in an amendment to such application; and

(D) The contract market that has granted trading privileges has made the certification required under § 3.40(c) of this part.

(E) If such person is seeking registration as a floor broker, he will be granted a temporary license to act in the capacity of floor trader under the same conditions set forth in paragraph (c)(1)(ii) introductory text and paragraphs (c)(1)(ii) (A)–(D) of this section, except that, in lieu of the condition set forth in paragraph (c)(1)(ii)(C) of this section, such person's previously filed Form 8–R and Forms 3–R, if any, must contain no "Yes" answers to the Disciplinary History questions (items 14–18) and his new Form 8–R also must contain no "Yes" answers to the Disciplinary History questions (items 14–18).

(F) A temporary license received in accordance with paragraph (c)(1) of this section shall be subject to the provisions of §§ 3.41, 3.42 and 3.43.

(2) *Transfer of registration category where there is no break in continuity of trading privileges.* (i) Any person registered as a floor broker who continuously maintains trading privileges at any contract market that has made the certification required under § 3.40 will be registered as, and in the capacity of, a floor trader upon mailing to the National Futures Association of a Form 3–R completed and filed in accordance with the instructions thereto indicating the intention to change registration category, accompanied by evidence of the granting of trading privileges at the new contract market, if applicable. Any person changing registration categories in accordance with this paragraph shall remain subject to any conditions or restrictions applicable to the previous registration.

(ii) Any person registered as a floor trader who continuously maintains trading privileges at any contract market that has made the certification required under § 3.40 of this part will be registered as, and in the capacity of, a floor broker upon mailing to the

National Futures Association of a Form 3–R completed and filed in accordance with the instructions thereto indicating the intention to change registration category, provided his previously filed Form 8–R and any Forms 3–R, as well as the Form 3–R indicating the intention to change registration category, contain no "Yes" answers to the Disciplinary History questions (items 14–18), accompanied by evidence of the granting of trading privileges at the new contract market, if applicable. Any person changing registration categories in accordance with this paragraph shall remain subject to any conditions or restrictions applicable to the previous registration.

(d) *Review of floor broker or floor trader registration information.* Every two years in the case of a floor broker and every three years in the case of a floor trader, the National Futures Association shall provide each such registrant with a printout of information contained in the National Futures Association's registration database regarding such registrant. This printout shall be promptly reviewed by the floor broker or floor trader. If the information contained therein is correct, the floor broker or floor trader need not take any further action. If the information contained therein is incorrect, the floor broker or floor trader must indicate what changes are necessary and return the printout promptly to the National Futures Association with appropriate changes. The failure of a registrant to return the printout will be deemed to constitute recertification of the registration information contained therein.

10. Section 3.12 is proposed to be amended by revising paragraphs (d)(1)(iv) and (i)(1)(iv) to read as follows:

§ 3.12 Registration of associated persons of futures commission merchants, introducing brokers, commodity trading advisors, commodity pool operators and leverage transaction merchants.

* * * * *

(d) * * *

(1) * * *

(iv) Whether there is a pending adjudicatory proceeding under sections 6(c), 6(d), 6c, 6d, 8a or 9 of the Act or §§ 3.55, 3.56 or 3.60 or if, within the preceding twelve months, the Commission has permitted the withdrawal of an application for registration in any capacity after instituting the procedures provided in § 3.51 and, if so, that the sponsor has been given a copy of the notice of the institution of a proceeding in connection therewith;

* * * * *

(i) * * *

(1) * * *

(iv) Whether there is a pending adjudicatory proceeding under sections 6(c), 6(d), 6c, 6d, 8a or 9 of the Act or §§ 3.55, 3.56 or 3.60 of if, within the preceding twelve months, the Commission has permitted the withdrawal of an application for registration in any capacity after instituting the procedures provided in § 3.51 and, if so, that the sponsor has been given a copy of the notice of the institution of a proceeding in connection therewith;

* * * * *

11. Section 3.21 is proposed to be amended by revising paragraph (b)(2) to read as follows:

§ 3.21 Exemptions from fingerprinting requirements in certain cases.

* * * * *

(b) * * *

(2) *With respect to fingerprints of a floor broker or floor trader.* The applicant for registration; or

* * * * *

12. Section 3.31 is proposed to be amended by revising the first sentence of paragraph (a), and paragraphs (b) and (d) to read as follows:

§ 3.31 Deficiencies, inaccuracies, and changes, to be reported.

(a) Each applicant or registrant as a futures commission merchant, commodity trading advisor, commodity pool operator, introducing broker, or leverage transaction merchant must, in accordance with the instructions thereto, promptly correct any deficiency or inaccuracy in Form 7–R or Schedule D of Form 7–R which no longer renders accurate and current the information contained therein. * * *

(b) Each applicant or registrant as a floor broker, floor trader or associated person, each person who qualifies for the temporary no-action positions under § 1.62–T of this chapter, and each principal of a futures commission merchant, commodity trading advisor, commodity pool operator, introducing broker, or leverage transaction merchant must, in accordance with the instructions thereto, promptly correct any deficiency or inaccuracy in the Form 8–R or supplemental statement thereto which no longer renders accurate and current the information contained in the Form 8–R or supplemental statement. Each such correction must be made on Form 3–R and must be prepared and filed in accordance with the instructions thereto.

* * * * *

(d) Each contract market that has granted trading privileges to a person who is registered, has received a temporary license, or has applied for registration as a floor broker or floor trader, or whose name appears on a list of floor traders submitted in accordance with § 1.62–T(a) of this chapter or who has submitted an application for registration under § 1.62–T(b) of this chapter in order to qualify for temporary no-action positions thereunder, must notify the National Futures Association within twenty days after such person has ceased having trading privileges on such contract market.

* * * * *

13. Section 3.33 is proposed to be amended by revising paragraph (a) introductory text, the first sentence of paragraph (b) introductory text, paragraph (e) and paragraph (f) introductory text to read as follows:

§ 3.33 Withdrawal from registration.

(a) A futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, leverage transaction merchant, floor broker or floor trader may request that its registration be withdrawn in accordance with the requirements of this section if:

* * * * *

(b) A request for withdrawal from registration as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, or leverage transaction merchant must be made on Form 7–W, and a request for withdrawal from registration as a floor broker or floor trader must be made on Form 8–W, completed and filed with National Futures Association in accordance with the instructions thereto. * * *

* * * * *

(e) A request for withdrawal from registration as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, leverage transaction merchant on Form 7–W, and a request for withdrawal from registration as a floor broker or floor trader on Form 8–W, must be sent to the National Futures Association, Registration Office, 200 West Madison Street, Chicago, Illinois 60606 and a copy of such request must be sent by the National Futures Association within three business days of the receipt of such withdrawal request to the Commodity Futures Trading Commission, Division of Trading and Markets, Registration Unit,

2033 K Street, NW., Washington, DC 20581. In addition, any floor broker or floor trader requesting withdrawal from registration must file a copy of his Form 8–W with each contract market that has granted him trading privileges. Within three business days of any determination by the National Futures Association under § 3.10(d) of this part to treat the failure by a registrant to file an annual Form 7–R as a request for withdrawal, the National Futures Association shall send the Commission notice of that determination.

(f) Except as otherwise provided in § 3.10(d), a request for withdrawal from registration will become effective on the thirtieth day after receipt of such request by the National Futures Association, or earlier upon written notice from the National Futures Association (with the written concurrence of the Commission) of the granting of such request, unless prior to the effective date:

* * * * *

14. Section 3.34 is proposed to be added to read as follows:

§ 3.34 Mandatory ethics training for registrants.

(a) Any individual registered as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, leverage transaction merchant, associated person, floor broker or floor trader under the Act must attend ethics training to ensure that he understands his responsibilities to the public under the Act, including responsibilities:

(1) To observe just and equitable principles of trade, any rule or regulation of the Commission, any rule of any appropriate contract market, registered futures association, or other self-regulatory organization, or any other applicable federal or state law, rule or regulation;

(2) To act honestly and fairly and with due skill, care and diligence in the best interests of his customers and the integrity of the market;

(3) To have and employ effectively the resources and procedures which are needed for the proper performance of his business activities;

(4) To know the financial situation and investment experience of his customers;

(5) To disclose material information in dealings with his customers; and

(6) To avoid conflicts of interest.

(b) The training required by this section must:

(1) Be at least four hours in duration for an individual's initial session and one hour in duration for subsequent periodic sessions;

(2) Provide a description of the requirements of the Act and rules promulgated thereunder concerning treatment of customer orders and handling of customer business;

(3) Cover the subject matter referred to in paragraph (a) of this section, as it pertains to the registration category in which the person is registered or seeking registration; and

(4) Be provided by or pursuant to a program of training (including videotape or electronic presentation) sponsored by a self-regulatory organization, an entity that meets the criteria set forth in section 501(c)(3) of the Internal Revenue Code, an entity accredited to conduct continuing education programs by a state professional licensing authority in the fields of law, finance, accounting or economics, or a trade association or other person the program of which is approved by the Commission for this purpose.

(c) Any individual granted registration as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, leverage transaction merchant, associated person or floor broker under the Act after the effective date of this section who has not been duly registered under the Act at any time during the two-year period immediately preceding the date such individual's application for registration was received by the National Futures Association, must attend training referred to in this section within six months after being granted registration, and thereafter every three years. Any individual registered as a floor trader under the Act after the effective date of this section who has not been duly registered under the Act during the two-year period immediately preceding the date such individual's application for registration was received by the National Futures Association, and whose name did not appear on a list submitted by a contract market to the National Futures Association in accordance with § 1.62–T(a) of this chapter or who did not file his registration application in accordance with § 1.62–T(b) of this chapter must attend training within six months after being granted registration, and thereafter every three years. All other individual registrants must attend the training referred to in this section every three years. The requirement that new registrants attend ethics training within six months of being granted registration can be satisfied if such training is taken within six months prior to the registrant having filed his application for registration.

(d) Evidence of attendance at ethics training, including evidence of completion of videotape or electronic training, must be maintained in accordance with § 1.31 of this chapter by:

(1) An individual registered as a futures commission merchant, introducing broker, commodity trading advisory, commodity pool operator, or leverage transaction merchant;

(2) In the case of an associated person, by each sponsor of the associated person; and

(3) In the case of a floor broker or floor trader, by each contract market that has granted trading privileges to the floor broker or floor trader.

Subpart B—Temporary Licenses

15. Section 3.40 is proposed to be amended by revising the section heading, the introductory text of the section and paragraph (c) to read as follows:

§ 3.40 Temporary licensing of applicants for associated person, floor broker or floor trader registration.

Notwithstanding any other provision of these regulations and pursuant to the terms and conditions of this subpart, the National Futures Association may grant a temporary license to any applicant for registration as an associated person, floor broker (to act in the capacity of a floor trader) or floor trader upon the contemporaneous filing with the National Futures Association of:

* * * * *

(c) If the applicant is applying for registration as an associated person, the sponsor's certification required by § 3.12(c), and if the applicant is applying for registration as a floor broker or floor trader, evidence that the applicant has been granted trading privileges by a contract market that has filed with the National Futures Association a certification signed by its chief operating officer with respect to the review of an applicant's employment, credit and other history in connection with the granting of trading privileges.

* * * * *

16. Section 3.41 is proposed to be amended by revising paragraph (a) to read as follows:

§ 3.41 Restrictions upon activities.

(a) Subject to the provisions of § 3.42 of this part and all of the obligations imposed on such registrants under the Act (in particular, section 14 thereof) and the rules, regulations and orders thereunder, an applicant for registration as an associated person who has

received written notification that a temporary license has been granted may act in the capacity of an associated person, and an applicant for registration as a floor broker or floor trader who has received written notification that a temporary license has been granted may act in the capacity of a floor trader.

* * * * *

17. Section 3.42 is proposed to be amended by revising paragraphs (a)(2), (a)(4), (a)(5), and (a)(6), by adding paragraphs (a)(7) and (a)(8), and by revising paragraph (b) to read as follows:

§ 3.42 Termination.

(a) * * *

(2) Immediately upon termination of the association of the applicant for registration as an associated person with the registrant which filed the sponsorship certification, or immediately upon loss of trading privileges on all contract markets on which such trading privileges are held by an applicant for registration as a floor broker or floor trader as described in § 3.40(c);

* * * * *

(4) Immediately upon failure to comply with an order to pay a civil monetary penalty within the time permitted under sections 6(e), 6b or 6c(d) of the Act;

(5) Immediately upon failure to pay the full amount of a reparation order within the time permitted under section 14(f) of the Act;

(6) Immediately upon failure to comply with an award in an arbitration proceeding conducted pursuant to part 180 of this chapter within the time permitted for such compliance as specified in section 10(g) of National Futures Association's Code of Arbitration or the comparable time period specified in the rules of a contract market or other appropriate arbitration forum;

(7) Immediately upon the revocation or withdrawal of the registration of the applicant's sponsor; or

(8) Immediately upon notice to the applicant and the applicant's sponsor or the contract market that has granted the applicant trading privileges that:

(i) The applicant failed to disclose relevant disciplinary history information in response to items 14 through 18 on the applicant's Form 8–R; or

(ii) An event has occurred leading to an affirmative response to any of items 14 through 18 on the applicant's Form 8–R.

(b) Upon termination, the applicant may not engage in any activity which requires registration with the Commission as an associated person, floor broker or floor trader.

18. Section 3.43 is proposed to be amended by revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 3.43 Relationship to registration.

* * * * *

(b) * * *

(1) A determination by the National Futures Association that the applicant is qualified for registration as an associated person, floor broker or floor trader; or

(2) The expiration of six months from the date of issuance unless a notice has been issued under § 3.60 of the initiation of a proceeding to deny registration under section 8a(2) or 8a(3) of the Act.

19. Section 3.46 is proposed to be amended by revising paragraph (a) to read as follows:

§ 3.46 Termination.

(a) A temporary license shall terminate:

(1) Five days after service upon the applicant of a notice by the National Futures Association that the applicant for registration may be found subject to a statutory disqualification from registration;

(2) Immediately upon termination of the applicant's guarantee agreement in accordance with § 1.10 (j)(4)(ii) or (j)(5) of this chapter, unless a new guarantee agreement is filed in accordance with § 3.45(b) of this subpart;

(3) Immediately upon the failure of an applicant to respond to a written request by the Commission or the National Futures Association for clarification of information set forth in the application of the applicant or any principal (including any branch office manager) thereof or for the resubmission of a fingerprint card pursuant to § 3.44(c) of this subpart in accordance with such request;

(4) Immediately upon the revocation or withdrawal of the guarantor futures commission merchant's registration.

(5) Immediately upon the withdrawal of the registration application pursuant to § 3.44(c) of this subpart;

(6) Immediately upon failure to comply with an order to pay a civil monetary penalty within the time permitted under sections 6(e), 6b or 6c(d) of the Act;

(7) Immediately upon failure to pay the full amount of a reparation order within the time permitted under section 14(f) of the Act;

(8) Immediately upon failure to comply with an award in an arbitration proceeding conducted pursuant to part 180 of this chapter within the time permitted for such compliance as specified in section 10(g) of National Futures Association's Code of Arbitration or the comparable time period specified in the rules of a contract market or other appropriate arbitration forum;

(9) Whenever a person not listed as a principal on the applicant's initial registration application becomes a principal under § 3.1(a); or

(10) Immediately upon notice to the applicant and the guarantor futures commission merchant that:

(i) The applicant or any principal (including any branch officer manager) failed to disclose relevant disciplinary history information in response to items 11 through 15 on the applicant's Form 7–R or items 14 through 18 on a principal's Form 8–R; or

(ii) An event has occurred leading to an affirmative response to any of items 11 through 15 on the applicant's Form 7–R or items 14 through 18 on a principal's Form 8–R.

* * * * *

20. Section 3.47 is proposed to be amended by revising paragraph (b)(2) to read as follows:

§ 3.47 Relationship to registration.

* * * * *

(b) * * *

(2) The expiration of six months from the date of issuance unless a notice has been issued under § 3.60 of the initiation of a proceeding to deny registration under sections 8a(2) or 8a(3) of the Act.

Subpart C—Denial, Suspension or Revocation of Registration

21. Section 3.55 is proposed to be amended by revising paragraph (e)(1) to read as follows:

§ 3.55 Suspension and revocation of registration pursuant to section 8a(2) of the Act.

* * * * *

(e) *Suspension and order to show cause.* (1) If the registrant is found to be subject to a statutory disqualification, the Administrative Law Judge, within thirty days after receipt of the registrant's written submission, if any, and any reply thereto, shall issue an interim order suspending the registration of the registrant and requiring the registrant to show cause within twenty days of the date of the order why, notwithstanding the existence of the statutory disqualification, the registration of the registrant should not be revoked. The registration of the registrant shall be suspended, effective five days after the order to show cause is served upon the

registrant in accordance with § 3.50(a), until a final order with respect to the order to show cause has been issued: *Provided,* That if the sole basis upon which the registrant is subject to statutory disqualification is the existence of a temporary order, judgment or decree of the type described in section 8a(2)(C) of the Act, the order to show cause shall not be issued and the registrant shall be suspended until such time as the temporary order, judgment or decree shall have expired: *Provided, however,* That in no event shall the registrant be suspended for a period to exceed six months.

* * * * *

22. Section 3.56 is proposed to be added to read as follows:

§ 3.56 Suspension or modification of registration pursuant to section 8a(11) of the Act.

(a) *Notice.* (1) On the basis of information obtained by the Commission, the Commission may at any time serve written notice upon a registrant in any capacity under the Act that:

(i) The Commission alleges and is prepared to prove, by reference to an information, indictment or complaint authorized by a United States Attorney or an appropriate official of any State that the registrant is charged with the commission of or participation in a crime involving a violation of the Act or a violation of any other provision of federal or state law that would reflect on the honesty or the fitness of the person to act as a fiduciary that is punishable by imprisonment for a term exceeding one year, and that continued registration of the person may pose a threat to the public interest or may threaten to impair public confidence in any market regulated by the Commission;

(ii) An Administrative Law Judge shall make a determination, based upon written evidence and any oral hearing granted, as to whether the registrant is charged with the commission of or participation in such a crime and whether the continued registration of the person may pose a threat to the public interest or may threaten to impair public confidence in any market regulated by the Commission; and

(iii) If the registrant is found to be charged with the commission of or participation in such a crime and it is found that the continued registration of the person may pose a threat to the public interest or may threaten to impair public confidence in any market regulated by the Commission, the registration of the registrant shall be suspended or modified.

(2) The notice referred to in paragraph (a) of this section shall include a short and plain statement that the continued registration of the registrant may pose a threat to the public interest or may threaten to impair public confidence in any market regulated by the Commission.

(b) *Response.* (1) If the registrant wishes to challenge the accuracy of the allegations in the notice, the registrant may submit written evidence as to:

(i) The registrant's identify;

(ii) The existence of a clerical error in any record documenting the information, indictment or complaint;

(iii) The nature of the information, indictment or complaint; or

(iv) The statement accompanying the notice referred to in paragraph (a)(2) of this section and, in an effort to have his registration modified rather than suspended, the Supplemental Sponsor Certification Statement signed by a sponsor, supervising floor broker or, in the case of a floor trader, a supervising registrant or contract market, as appropriate for the registrant in accordance with § 3.60(b)(2)(i) of this subpart and who meets the standards set forth in § 3.60(b)(2)(i) (A) and (C) of this subpart.

(2) The registrant may also request an oral hearing, which shall include a statement of the issues to be addressed, a list of any witnesses to be called and copies of any documents to be introduced. A request for an oral hearing shall be granted unless the Division of Enforcement can demonstrate that there is no genuine issue of material fact to be determined.

(3) Such written submissions must be served upon the Division of Enforcement and filed with the Hearing Clerk within twenty days of the date of service of notice to the registrant under paragraph (a) of this section.

(c) *Reply.* Within ten days of receipt of any written submission filed by the registrant, the Division of Enforcement may serve upon the registrant and file with the Hearing Clerk a reply.

(d) *Oral hearing.* An oral hearing shall be conducted pursuant to such sections of the Commission's Rules of Practice, 17 CFR part 10, as the Administrative Law Judge deems necessary and in a manner which shall ensure that the proceeding is resolved expeditiously.

(e) *Determination by Administrative Law Judge.* (1) A determination by the Administrative Law Judge as to whether the Division of Enforcement has shown by a preponderance of the evidence that the registrant is charged with the commission of or participation in a crime as set forth in the notice and that the continued registration of the registrant may pose a threat to the public interest or may threaten to impair public confidence in any market regulated by the Commission must be based upon the evidence of service, the response, if any, filed by the registrant, any written reply submitted by the Division of Enforcement and such other papers as the Administrative Law Judge may require or permit, and the oral hearing, if any. If the Division of Enforcement has made the required showings, the Administrative Law Judge, within thirty days after the last written submission or the oral hearing, shall issue an order suspending or modifying the registration of the registrant. If the Division of Enforcement has not made the required showings, the Administrative Law Judge, within thirty days after the last written submission or the oral hearing, shall issue an order to that effect.

(2) The Hearing Clerk shall promptly serve a copy of such order on the registrant, the Division of Trading and Markets and the Division of Enforcement. Such order shall be effective as a final order of the Commission fifteen days after the date it is served upon the registrant in accordance with the provisions of § 3.50(a) of this part unless a timely application for review is filed in accordance with § 10.102 of this chapter. The appellate procedures set forth in §§ 10.102, 10.103, 10.104, 10.106, 10.107 and 10.109 of this chapter shall apply to any appeal brought under paragraph (e)(2) of this section.

(f) Any order of suspension or modification issued under this section shall remain in effect until such information, indictment, or complaint is disposed of or until terminated by the Commission.

(g) On disposition of such information, indictment, or complaint, the Commission may issue and serve on such registrant a notice under § 3.55 or § 3.60 of this subpart to suspend, restrict, or revoke the registration of such person.

(h) A finding of not guilty or other disposition of the charge shall not preclude the Commission from thereafter instituting any other proceedings under the Act or its rules.

(i) A person aggrieved by an order issued under this section may obtain review of such order in the same manner and on the same terms and conditions as are provided in section 6(c) of the Act.

23. Section 3.60 is proposed to be amended by revising paragraphs (b)(2)(i) introductory text, (b)(2)(i)(A),

(b)(2)(i)(C), (b)(2)(ii)(C) and (f)(3) and by adding paragraph (1) to read as follows:

§ 3.60 Procedure to deny, condition, suspend, revoke or place restrictions upon registration pursuant to sections 8a(2), 8a(3) and 8a(4) of the Act.

* * * * *

(b) * * *

(2)(i) In the response, if the person is not an associated person, a floor broker or a floor trader or an applicant for registration in any of those capacities, the applicant or registrant shall also state whether he intends to show that registration would not pose a substantial risk to the public despite the existence of the disqualification set forth in the notice. If the person is an associated person, a floor broker or a floor trader or an applicant for registration in any of those capacities, the applicant or registrant shall also state whether he intends to show that full, conditioned or restricted registration would not pose a substantial risk to the public despite the existence of the disqualification set forth in the notice. If the applicant or registrant is an associated person, a floor broker or a floor trader or an applicant for registration in any of those capacities and intends to make such a showing, he must also submit a letter signed by an officer or general partner authorized to bind the sponsor or, in the case of a floor broker or applicant for registration as a floor broker, another floor broker, or in the case of a floor trader, or applicant for registration as a floor trader, an officer of the floor trader's clearing member, if such officer is a registrant or a principal of a registrant, or all contract markets that have granted trading privileges, whereby the sponsor, floor broker or appropriate registrant, principal or contract market agrees to sign a Supplemental Sponsor Certification Statement and supervise compliance with any conditions or restrictions that may be imposed on the applicant or registrant as a result of a statutory disqualification proceeding under this section: *Provided, That,* with respect to such sponsor or supervising floor broker or supervising registrant or principal:

(A) An adjudicatory proceeding pursuant to the provisions of sections 6(c), 6(d), 6c, 6d, 8a or 9 of the Act is not pending; and

* * * * *

(C) Such person is not barred from service on self-regulatory organization governing boards or committees based on disciplinary history in accordance with § 1.63 of this chapter.

(ii) * * *

(C) If the person is an associated person, floor broker or floor trader or an applicant for registration in any of those capacities, evidence that the applicant's or registrant's registration on a conditioned or restricted basis would be subject to supervisory controls likely both to detect future wrongdoing by the applicant or registrant and protect the public from any harm arising from the applicant's or registrant's future wrongdoing, including proposed conditions or restrictions.

* * * * *

(f) * * *

(3) If the person is an associated person, a floor broker or a floor trader or an applicant for registration in any of those capacities, evidence that the applicant's or registrant's registration on a conditioned or restricted basis would be subject to supervisory controls likely both to detect future wrongdoing by the applicant or registrant and protect the public from any harm arising from future wrongdoing by the applicant or registrant. Any decision providing for a conditioned or restricted registration shall take into consideration the applicant's or registrant's statutory disqualification and the time period remaining on such statutory disqualification, and shall fix a time period after which the registrant and his sponsor, supervisory floor broker or supervisory registrant or contract market may petition to lift or modify the conditions or restrictions in accordance with § 3.64 of this part.

* * * * *

(1) The failure of any sponsor, supervisory floor broker or supervisory registrant, principal or contract market to fulfill its obligations with respect to supervision or monitoring of a conditioned or restricted registrant as agreed to in the Supplemental Sponsor Certification Statement shall be deemed a violation of this rule under the Act.

24. Section 3.61 is proposed to be amended by revising the section heading and paragraph (a) to read as follows:

§ 3.61 Extensions of time for proceedings brought under § 3.55, § 3.56 and § 3.60.

(a) *In general.* Except as otherwise provided by law or by these rules, for good cause shown, the Commission or an Administrative Law Judge before whom a proceeding brought under § 3.55, § 3.56 or § 3.60 is then pending, on their own motion or the motion of a party, may at any time extend or shorten the time limit prescribed by those rules for filing any document. In any instance in which a time limit is not prescribed for an action to be taken concerning any matter, the Commission or the Administrative Law Judge may set a time limit for that action.

* * * * *

25. Section 3.64 is proposed to be amended by revising paragraphs (a)(2) and (d) to read as follows:

§ 3.64 Procedure to lift or modify conditions or restrictions.

(a) * * *

(2) In the petition, the registrant and his sponsor, supervising floor broker or supervising registrant, principal or contract market shall be limited to a showing, by affidavit, that the conditions or restrictions have been satisfied pursuant to the order which imposed them. A sponsor's, supervising floor broker's or supervising registrant's, principal's or contract market's affidavit must be sworn to by a person with actual knowledge of registrant's activities on behalf of the sponsor, supervising floor broker or supervising registrant, principal or contract market

* * * * *

(d) *Effect of the Administrative Law Judge's Determination.* The Administrative Law Judge's written determination shall become the final decision of the Commission thirty days following the date the Hearing Clerk serves the determination on the registrant, the registrant's sponsor, supervising floor broker or supervising floor trader, and the Division of Enforcement unless one or more of the parties files a timely notice of appeal in accordance with § 10.102 of this chapter.

* * * * *

26. Appendix A to part 3 is proposed to be amended by revising the fourth paragraph following the heading "Section 8a(2) (C) and (E)" to read as follows:

Appendix A to Part 3—Interpretative Statement With Respect to Section 8a(2) (C) and (E) and Section 8a(3) (J) and (M) of the Commodity Exchange Act

* * * * *

if such person is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction * * *, including an order entered pursuant to an agreement of settlement to which the Commission or any Federal or State agency or other governmental body is a party, from (i) acting as a futures commission merchant, introducing broker, floor broker, floor trader, commodity trading advisor, commodity pool operator, associated person of any registrant under the Act, securities broker, securities dealer, municipal securities broker, municipal securities dealer, transfer agent, clearing agency, securities information processor, investment advisor, investment company, or affiliated person or employee of any of the foregoing or (ii) engaging in or

continuing any activity involving any transaction in or advice concerning contracts of sale of a commodity for future delivery, concerning matters subject to Commission regulation under section 4c or 19 of the Act, or concerning securities;

* * * * *

PART 10—RULES OF PRACTICE

27. The authority citation for part 10 is proposed to continue to read as follows:

Authority: Pub. L. 93–463, sec. 101(a)(11), 88 Stat. 1391, 7 U.S.C. 4a(j), unless otherwise noted.

Subpart A—General Provisions

28. In section 10.1 paragraph (a) is proposed to be revised to read as follows:

§ 10.1 Scope and applicability of rules of practice.

* * * * *

(a) Denial, suspension, revocation, conditioning, restricting or modifying of registration as a futures commission merchant, introducing broker, or associated person, floor broker, floor trader, commodity pool operator, commodity trading advisor or leverage transaction merchant pursuant to sections 6(c), 8a(2), 8a(3), 8a(4) and 8a(11) of the Act, 7 U.S.C. 9, 12a(2), 12a(3), 12a(4) and 12(a)(11), or denial, suspension, or revocation of designation as a contract market pursuant to sections 6(a) and 6(b) of the Act, 7 U.S.C. 8;

* * * * *

PART 145—COMMISSION RECORDS AND INFORMATION

29. The authority citation for part 145 is proposed to continue to read as follows:

Authority: Pub. L. 89–554, 80 Stat. 383, Pub. L. 90–23, 81 Stat. 54, Pub. L. 93–502, 88 Stat. 1561–1564 (5 U.S.C. 552); Sec. 101(a), Pub. L. 93–463, 88 Stat. 1389 (5 U.S.C. 4a(j)); Pub. L. 99–570, unless otherwise noted.

30. Section 145.6 is proposed to be amended by revising paragraph (b) to read as follows:

§ 145.6 Commission offices to contact for assistance; registration records available.

* * * * *

(b)(1) The publicly available portions of Form 7–R (application for registration as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant), Form 8–R (application for registration as an associated person, floor broker, floor trader and biographical supplement to application on Form 7–R), Form 3–R (changes and corrections; multiple associations) Form 8–S (certificate of special registration), Form 8–T (notice of termination), Form 7–W (withdrawal from firm registration) and Form 8–W (withdrawal from floor broker or floor trader registration) will be available for public inspection and copying. Such registration forms will be available in the offices of the National Futures Association, 200 West Madison Street, Chicago, Illinois 60606. Telephone: (312) 781–1300.

(2) The fingerprint card and any supplementary attachments filed in response to items 6–9 and 14–21 on Form 8–R, to item 3 on Form 8–S, to items 3–5 and 9–11 on Form 8–T, to items 9–10 on Form 7–R, to item 7 on Form 7–W or to item 7 on Form 8–W generally will not be available for public inspection and copying unless such disclosure is required under the Freedom of Information Act. Changes or corrections to those items reported on Form 3–R will be treated similarly. When such fingerprint cards or supplementary attachments are on file, the FOI, Privacy and Sunshine Acts compliance staff will decide any request for access in accordance with the procedures set forth in §§ 145.7 and 145.9.

Issued in Washington, DC on January 26, 1993 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93–2280 Filed 2–1–93; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD5–92–099]

RIN 2115–AE31

Drawbridge Operation Regulations; Potomac River, District of Columbia

AGENCY: Coast Guard, DOT.

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: The Coast Guard is considering whether an amendment to the regulations concerning the operation schedule of the Woodrow Wilson Memorial Bridge, mile 103.8, to require 24 hour advance notice by owners and operators of commercial vessels of a requested opening is practical. Pursuant to a provision in the Coast Guard Authorization Act this advance notice of proposed rulemaking (ANPRM) is being published to solicit comments from the public.

DATES: Comments must be received on or before April 5, 1993.

ADDRESSES: Comments may be mailed to Commander (ob), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, VA 23704–5004. Comments may be hand delivered to this address room 507, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The comments and other materials referenced in this notice will be available for inspection and copying at this address between 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at 804–398–6222.

SUPPLEMENTARY INFORMATION:

Request for Comments

Interested persons may participate in this solicitation of comments by submitting written data, views, or arguments. Each letter should include the name and address of the person submitting the comments and a reference to the docket number (CGD5 92–099), and give the reasons for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received by the close of the comment period before it acts further on this matter.

Background

The Woodrow Wilson Bridge operated under several temporary deviations from the existing permanent regulations, and an interim final rule, from August of 1990 until November 17, 1992.

During this period a notice of proposed rulemaking (NPRM) to establish new permanent operating regulations was published in the **Federal Register** (December 20, 1991, 56 FR 66326). The Coast Guard Authorization Act of 1992 (Public Law 102–587, 106 Stat. 5039) imposed operating schedule regulations for the bridge, removing the need to complete the notice and comment rulemaking (NPRM) and it was withdrawn by a notice published in the **Federal Register** on November 17, 1992 (57 FR 54202). Furthermore, a final rule amending § 117.255 (57 FR 54178), published the same date, replaced the interim final rule which was in effect at the time.

Under the existing operating schedule commercial vessels are not allowed passage through the bridge during rush hours, and other peak schedule traffic

hours, but may arrange passage at other times by providing at least 12 hours advance notice, with a 4 hour confirmation. Pursuant to a provision in the act cited above, the Coast Guard is publishing this advance notice of proposed rulemaking (ANPRM) to solicit public comment on whether there are practical ways to encourage owners and operators of commercial vessels to make every reasonable effort to notify the bridge tender of the time a vessel will arrive at the Woodrow Wilson Memorial Bridge by at least 24 hours before that arrival.

Drafting Information

The drafters of this notice are Ann B. Deaton, Project Officer, and CAPT M.K. Cain, Project Attorney.

Questions

The Coast Guard solicits input from the public in general, as well as those parties specifically impacted regarding the following issues:

Is it practical for owners and operators of commercial vessels to notify the bridge tender of the time a vessel will need the drawspan raised at the Woodrow Wilson Memorial Bridge as much as 24 hours before its arrival?

What specific problems with this length of advance notice, if any, might be anticipated? What benefits?

Dated: December 14, 1992.

W.T. Leland,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 93–2426 Filed 2–1–93; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD7–92–113]

Drawbridge Operation Regulations; Grand Canal, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the Tortoise Island Homeowners Association and the Lansing Island Development Corporation, the Coast Guard proposes to change the regulations governing the operation of the Tortoise Island Drawbridge, at mile 2.6, and the Lansing Island Drawbridge at mile 0.7 at Satellite Beach, Brevard County, Florida, by increasing the advance notification time now required for an opening of the draws during certain periods. This proposal is being made because of infrequent requests to open the draws during the nightime hours. This action would relieve the bridgeowners of the burden of having a person constantly available to open the draw while still providing for the reasonable needs of navigation.

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

ADDRESSES: Comments may be mailed to Commander (oan), Seventh Coast Guard District, 909 SE 1st Avenue, Miami, Florida 33131–3050, or may be delivered to room 406 at the above address between 7:30 a.m. and 4 p.m., Monday through Friday, except federal holidays. The telephone number is 305–536–4103. The Commander, Seventh Coast Guard District maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: Walter Paskowsky, Project Manager, Bridge Section at (305) 536–4103.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking [CGD7–92–113] and the specific section of this proposal to which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying. If not practical, a second copy of any bound material is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Mr. Walter Paskowsky at the address under **"ADDRESSES."** The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Drafting Information

The principal persons involved in drafting this document are Walter Paskowsky, Project Manager, and LT. J.M. Losego, Project Counsel.

Background and Purpose

The drawbridges presently open on signal, except that during the evening hours from 10 p.m. to 6 a.m. from Sunday evening until Friday morning, except on evenings preceding a federal holiday, the draws open on signal if at least 15 minutes advance notice is given. The owners of the Tortoise Island bridge and the Lansing Island Bridge have requested relief from the requirement to maintain full time drawtender service due to the lack of openings during evening hours. The Coast Guard proposes to change the 15 minute advance notice to 2 hours during weekdays from 10 p.m. to 6 a.m. This should reduce the owners operating costs while still meeting the needs of navigation.

Discussion of Proposed Amendment

A Coast Guard analysis of 833 vessels logged through the Tortoise Island bridge between January 1 and August 23, 1992 shows that only 13 were passed between the hours of 10 p.m. and 6 a.m. Of these 13, all but 2 passed on weekends when a tender would continue to be present. Only two vessels were required to give the 15 minutes advance notification. A similar 2 hours advance notice for the nearby Mathers Bridge which has been in effect since 1984 has generated no complaints from waterway users.

The proposal would also change the name of the waterway from Great Canal to Grand Canal which is the name designated by the Department of the Interior, U.S. Geological Survey.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary. We conclude this because there is no commercial traffic on the waterway.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Since the proposed rule effects no commercial

users, the economic impact is expected to be so minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.)

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612, and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2.g.(5) of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. § 117.285 is revised to read as follows:

§ 117.285 Grand canal.

(a) The draw of the Lansing Island bridge, mile 0.7 shall open on signal, except that during the evening hours from 10 p.m. to 6 a.m. from Sunday evening until Friday morning, except on evenings preceding a federal holiday, the draw shall open on signal if at least 2 hours notice is given.

(b) The draw of the Tortoise Island bridge, mile 2.6, shall open on signal, except that during the evening hours from 10 p.m. to 6 a.m. from Sunday evening until Friday morning, except on evenings preceding a federal holiday, the draw shall open on signal if at least 2 hours notice is given.

Dated: January 15, 1993.

W.P. Leahy,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 93–2427 Filed 2–1–93; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 334

Restricted Area In the Kuluk Bay Near Adak, AK

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Proposed rule.

SUMMARY: The Corps of Engineers proposes to amend the regulations in 33 CFR 334.1320 because the regulations contain errors in the coordinates which establish a restricted area in the waters of the Kuluk Bay, Adak, Alaska. The area encompassed by the coordinates in 33 CFR 334.1320 does not exactly agree with the location of submarine cables the area was designed to protect. The regulations presently prohibit anchoring and the dragging of anchors within the restricted area, except in great emergency. Due to the possibility of damage to the existing submarine cables, we also propose that fishing and trawling are prohibited within the restricted area. Accordingly, the Corps is proposing to amend the regulations to correct the coordinates and add the prohibition on fishing and trawling in the area. The changes to the coordinates will cause an overall expansion of the restricted area.

DATES: Written comments must be received on or before March 4, 1993.

ADDRESSES: All written comments concerning these proposed rules should be addressed to: HQUSACE, ATTN: CECW–OR, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Weger at (907) 753–2716 or Mr. Ralph Eppard at (202) 272–1783.

SUPPLEMENTARY INFORMATION: The Commander, U.S. Navy Undersea Surveillance, U.S. Pacific Fleet, Pearl Harbor, Hawaii, has requested that the Corps of Engineers amend the regulations in 33 CFR 334.1320, which establish a naval restricted area in Kuluk Bay, near Adak, Alaska, (NOAA Nautical Chart No. 16475). The purpose of the amendment is to correct the coordinates which define the restricted area boundaries. The corrections will expand the area approximately 1.3 nautical miles east, and the northern boundary approximately ½ nautical mile north. Furthermore, it is proposed to amend the regulations of the naval restricted area to include placing a restriction on fishing and trawling activities, in addition to anchoring and dragging of anchors, as currently stated in the regulations. The naval restricted area regulations in 33 CFR 334.1320 were established in 1963 and last amended in 1977. Kuluk Bay, on the northeast side of Adak Island, Alaska, is about 4 miles long and 4 miles wide, and is one of the best natural harbors in the Aleutians. It is entered between Zeto Point on the north and Thunder Point on the south, and includes Kuluk Bay proper, Clam Lagoon, Sweeper Cove, Finger Bay, and Scabbard Bay. Tidal currents in the bay are weak and the flow appears to depend mainly upon the winds. It should be noted that it will be necessary to disestablish an explosives anchorage area, which would be within the expanded boundary of the restricted area. Changes to the regulations (if any) which establish the explosives anchorage area is solely the responsibility of the U.S. Coast Guard. We have been informed that the Coast Guard has no objection to the elimination of the explosives anchorage area within the boundaries of the expanded naval restricted area. If the regulations in 33 CFR 334.1320 are amended as proposed, we will formally request that the Coast Guard take appropriate action to disestablish the explosives anchorage area.

Economic Assessment and Certification

This proposed rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12291 do not apply. These proposed rules have been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354), which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small businesses (i.e., small businesses and small government jurisdictions.) It has been determined that this rule will not have a significant economic impact on a substantial number of small entities and that preparation of a regulatory flexibility analysis is not warranted.

List of Subjects in 33 CFR Part 334

Navigation (water), Transportation, Danger zones.

In consideration of the above, the Corps of Engineers proposes to amend part 334 of title 33 to read as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266; (33 U.S.C. 1) and 40 Stat. 892; (33 U.S.C. 3).

2. Section 334.1320 is revised to read as follows:

§ 334.1320 Kuluk Bay, Adak, Alaska; naval restricted area.

(a) *The area.* The northwest portion of Kuluk Bay bounded as follows: Beginning on shore at latitude 51° 55′ 00″ N, longitude 176° 33′ 09″ W; thence due east to latitude 51° 55′ 00″ N, longitude 176° 31′ 09″ W; thence due south to latitude 51° 51′ 55″ N longitude 176° 31′ 09″ W; thence due west to the shore at latitude 51° 51′ 55″ N, longitude 176° 37′ 43″ W; thence along the shoreline to the point of beginning.

(b) *The regulations.* (1) Except in great emergency, no vessel shall anchor in the restricted area described above.

(2) The dragging of anchors in or across the restricted area is prohibited and no object attached to a vessel shall be placed on or near the bottom.

(3) Fishing and trawling activities in the restricted area are prohibited.

(4) The regulation of this restricted area shall be enforced by the Commander, Patrol Wing, U.S. Pacific Fleet, Naval Air Station Moffett Field, California, and such agencies as he/she may designate.

John R. Brown,

Colonel, Corps of Engineers, Executive Director of Civil Works.

[FR Doc. 93–2312 Filed 2–1–93; 8:45 am]

BILLING CODE 3710–92–M

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM93–1, Order No. 959]

Complexity in Rates Inquiry

AGENCY: Postal Rate Commission.

ACTION: Extension of time for comments, and notice and opportunity to respond to motion.

SUMMARY: On December 3, 1992, the Commission published an advance notice of proposed rulemaking in the **Federal Register** (57 FR 57124-25) soliciting suggestions from interested persons regarding the consideration which should be given to complexity when examining rate and classification schedules. A number of mailer groups have requested the Commission to either suspend or defer the proceeding. The Commission is giving interested parties an opportunity to respond to that request, and extending the time for comments until after the Commission rules on the request.

DATES: Any responses to the request to suspend or defer are due February 16, 1993. If the Commission decides to proceed after consideration of the request and any responses, a new date for comments responding to the December 3, 1992, advance notice of proposed rulemaking will be set in the order addressing that request.

ADDRESSES: Comments and correspondence should be sent to Charles L. Clapp, Secretary of the Commission, 1333 H Street, NW., suite 300, Washington, DC 20268–0001 (telephone: 202/789-6840). All documents submitted in this proceeding are available at the Commission's Docket Office at this address.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, Acting Legal Advisor, Postal Rate Commission, 1333 H Street, NW., suite 300, Washington, DC 20268–0001 (telephone: 202/789–6820).

SUPPLEMENTARY INFORMATION: The Commission began this proceeding by publishing a **Federal Register** notice on December 3, 1992, stating that it might be profitable to focus on the topic of the appropriate amount of complexity in rates and classifications outside the confines of a case proposing specific changes. The Commission anticipated providing a forum for the exchange of ideas on whether it is possible to simplify the existing rate and classification schedules while continuing to reflect the other necessary considerations. Three possible outcomes of the proceeding were mentioned in the December 3, 1992, notice: (1) Changes in the Commission's filing rules, (2) publication of a compilation of the comments received, and (3) initiation of one or more classification cases.

The Commission has received three comments to date. Two are from mailers who have participated in previous Commission rate proceedings. The third comment was submitted by the former Vice Chairman of the Commission.

On January 15, 1993, representatives of ten mailer groups filed a joint motion requesting that the Commission abandon the proceeding or defer the time for filing comments until August 1, 1993. The joint motion asserts that consideration of possible simplification of rates and classifications could be done more efficiently if specific proposals were before the Commission. The joint motion mentions ongoing discussions within the Postal Service, as well as talks between the Postal Service and mailer groups. Those who signed the joint motion are concerned that this rulemaking might impede progress being made elsewhere.

We are setting February 16, 1993 as the date for responses to the January 15, 1993, joint motion. If the Commission decides to proceed after considering the joint motion and any responses, a new date for submission of comments will be set.

By the Commission.

Charles L. Clapp,

Secretary.

[FR Doc. 93–2360 Filed 2–1–93; 8:45 am]

BILLING CODE 7710–FW–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 15

[ET Docket No. 93–1; FCC 93–1]

Radio Scanners That Receive Cellular Telephone Transmissions

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This Notice of Proposed Rule Making proposes to deny equipment authorization to radio scanners capable of receiving transmissions in the Domestic Public Cellular Radio Telecommunications Service. This action is taken in response to the Telephone Disclosure and Dispute Resolution Act (Pub. L. 102–556). The intended effect of this action is to help ensure the privacy of cellular telephone conversations.

DATES: Comments must be submitted on or before February 22, 1993, and reply comments on or before March 8, 1993.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: David Wilson, Office of Engineering and Technology, (202) 653–8138.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making in ET Docket No. 93–1, FCC 93–1, adopted January 4, 1993, and released January 13, 1993. The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Downtown Copy Center, at (202) 659–8657 or 1990 M Street, NW., suite 640, Washington, DC 20036.

Paperwork Reduction

The following collection of information contained in this proposed rule has been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3504(h)). Copies of this submission may be purchased from the Commission's duplicating contractor, Downtown Copy Center, at (202) 659–8657 or 1990 M Street, NW., suite 640, Washington, DC 20036. Persons wishing to comment on this collection of information should direct their comments to Mr. Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20554, (202) 395–4814. A copy of any comments filed with the Office of Management and Budget should also be sent to the following address at the Federal Communications Commission: Federal Communications Commission, Office of the Managing Director, Paperwork Reduction Project, Washington, DC 20554. For further information contact Ms. Judy Boley, (202) 632–7513.

OMB Number: None.

Title: Scanning Receiver Compliance Exhibit.

Respondents: Businesses or other for profit, small businesses or organizations.

Action: New collection.

Frequency of Response: On occasion reporting.

Estimated Annual Burden:

Number of respondents: 40.

Annual hours per respondent: 0.25.

Total annual burden: 10.

Needs and Uses: An exhibit accompanying a Form 731 Application for Equipment Authorization will determine compliance of applicants requesting authorization to market scanning receivers and frequency converters with Congressionally mandated regulations. The regulations prohibit the marketing of radio scanners capable of intercepting, or being modified to intercept, cellular telephone conversations.

Summary of the Notice of Proposed Rule Making

1. By this action, the Commission proposes to amend 47 CFR parts 2 and 15 to prohibit the manufacture or importation of radio scanners capable of receiving frequencies allocated to the Domestic Public Cellular Radio Telecommunications Service. This action is in response to the Telephone Disclosure and Dispute Resolution Act (Act), Pub. L. 102–556.

2. The Domestic Public Cellular Radio Telecommunications Service ("Cellular Radio Service") provides telephone service to mobile customers. Cellular telephones use frequencies in the bands 824–849 MHz and 869–894 MHz to connect their users to other cellular system users and to the Public Switched Telephone Network.

3. As defined in 47 CFR part 15 scanning receivers, or "scanners," are radio receivers that automatically switch between four or more frequencies anywhere within the 30–960 MHz band. In order to control their potential to cause harmful interference to authorized radio communications, the rules require that scanners receive an equipment authorization (certification) from the Commission prior to marketing.

4. In the past five years, 22 different models of scanning receivers capable of receiving cellular telephone transmissions have been issued grants of equipment authorization. During this same period, ten other models capable of tuning frequencies between 806 and 900 MHz except for the cellular bands have also been authorized. Several publications currently on the market describe relatively simple modifications that users can make to many of the latter scanning receivers to enable that equipment to receive cellular telephone transmissions.

5. The Telephone Disclosure and Dispute Resolution Act requires that the Commission, by April 26, 1993, prescribe and make effective regulations denying equipment authorization for any scanning receiver capable of:

- Receiving transmissions in the frequencies allocated to the domestic cellular radio service,
- Readily being altered by the user to receive transmissions in such frequencies, or
- Being equipped with decoders that convert digital cellular transmissions to analog voice audio.

The Act also stipulates that, beginning one year after the effective date of the regulations adopted to satisfy the above requirements, no receiver having the above capabilities shall be manufactured in the United States or imported for use in the United States.

6. In accordance with the Act, we are proposing to deny equipment authorization to scanning receivers that tune frequencies used by cellular telephones. We are also proposing to require applicants for the authorization of scanning receivers to include in their applications a statement declaring that their receivers cannot be tuned to receive cellular telephone transmissions.

7. Also in accordance with the Act, we are proposing to require that scanning receivers be incapable of being readily altered by the user to operate within the cellular bands. To assist us in determining whether a scanner complies with this requirement, we propose to require applicants for scanning receiver equipment authorization to include in their applications a statement pledging that their receivers cannot be readily altered to receive cellular telephone transmissions. We also propose to prohibit the authorization of any scanning receiver for which cellular coverage can be readily restored by the user. We solicit comment on this proposed reporting requirement and on the definition of "readily altered." We also seek comment on whether additional information, such as why the receiver cannot be readily altered, should be required.

8. In further compliance with the Act, we propose to deny equipment authorization to any scanning receiver that can be equipped with decoders that convert digital cellular transmissions to analog voice audio. We invite comment on the potential impact of this requirement on existing models of scanning receivers.

9. There currently are a number of frequency converters on the market that can be used in conjunction with scanners that receive frequencies below 800 MHz to enable the reception of cellular telephone transmissions. We are proposing to deny equipment authorization to converters that tune, or can be readily altered by the user to tune, cellular telephone frequencies. We will require that applicants for FCC equipment authorization of frequency converters used with scanners include in their applications a statement pledging that the converters cannot be easily altered to enable a scanner to receive cellular transmissions. We seek comment on whether this statement should also include evidence indicating why the converter cannot be easily modified.

10. The Initial Regulatory Flexibility Analysis is contained in the text of the Notice.

11. Comment Dates

Pursuant to applicable procedures set forth in 47 CFR 1.415 and 1.419, interested parties may file comments on or before February 22, 1993, and reply comments on or before March 8, 1993. In order to comply with the requirement of the Telephone Disclosure and Dispute Resolution Act that FCC rules be promulgated within 180 days of enactment, we will proceed with this Notice without furnishing a prior text as provided by Article 607 of the United

States-Canada Free-Trade Implementation Act of 1988 (Pub. L. 100–499, 102 Stat. 1851). To do so would frustrate achievement of a legitimate domestic objective. In addition, the Commission is not likely to be able to accommodate requests for extension of the comment periods. To file formally in this proceeding, you must file an original and five copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during normal business hours in the Dockets Reference Room of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

12. Ex-Parte Rules—Non-Restricted Proceeding

This is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See generally 47 CFR 1.1202, 1.1203 and 1.1206(a).

13. For further information on this proceeding contact David Wilson, Technical Standards Branch, Office of Engineering and Technology, 202–653–8138.

List of Subjects in 47 CFR Parts 2 and 15

Communications equipment, Wiretapping and electronic surveillance.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Parts 2 and 15 of title 47 of the Code of Federal Regulations are proposed to be amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for part 2 continues to read as follows:

Authority: Secs. 4, 302, 303 and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 154(i), 302, 303, 303(r) and 307.

2. Section 2.975 is amended by adding a new paragraph (a)(8) to read as follows:

§ 2.975 Application for notification.

(a) * * *

(8) Applications for the notification of receivers contained in frequency converters used with scanning receivers shall be accompanied by an exhibit indicating compliance with the provisions of § 15.121 of this chapter.

* * * * *

3. Section 2.1033 is amended by adding a new paragraph (b)(12) to read as follows:

§ 2.1033 Application for certification.

* * * * *

(b) * * *

(12) Applications for the certification of scanning receivers under part 15 shall be accompanied by an exhibit indicating compliance with the provisions of § 15.122 of this chapter.

* * * * *

PART 15—RADIO FREQUENCY DEVICES

1. The authority citation for part 15 continues to read as follows:

Authority: Secs. 4, 302, 303 and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 302, 303 and 307.

2. Section 15.37 is amended by adding a last sentence to paragraph (b), and adding a new paragraph (f), to read as follows:

§ 15.37 Transition provisions for compliance with the rules.

* * * * *

(b) * * * In addition, receivers are subject to the provisions in paragraph (f) of this section.

* * * * *

(f) The manufacture or importation of scanning receivers, and frequency converters used with scanning receivers, that do not comply with the provisions of § 15.121 shall cease on or before April 26, 1994. Effective April 26, 1993, the Commission will not accept applications for equipment authorization for receivers that do not comply with the provisions of § 15.121. This paragraph does not prohibit the sale or use of authorized receivers manufactured in the United States, or imported into the United States, prior to April 26, 1994.

3. Section 15.121 is added to read as follows:

§ 15.121 Scanning receivers and frequency converters used with scanning receivers.

Scanning receivers, and frequency converters used with scanning receivers, must be incapable of operating (tuning), or readily being altered by the user to operate, within the frequency bands allocated to the Domestic Public Cellular Radio Telecommunications Service. Receivers capable of "readily being altered by the user" include, but are not limited to, those for which the ability to receive transmissions in the restricted bands can be added by clipping the leads of, or installing, a diode, resistor and/or jumper wire; or replacing a plug-in semiconductor chip. Scanning receivers, and frequency converters used with scanning receivers, must also be incapable of converting digital cellular transmissions to analog voice audio.

[FR Doc. 93–2241 Filed 2–1–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

Department of the Air Force

48 CFR Chapter 53

RIN 0701–AA39

Air Force Federal Acquisition Regulation Supplement Clause; Contractor Toxicological Testing—Aircraft Accidents

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Proposed rule; withdrawal.

SUMMARY: On May 24, 1991, the Department of the Air Force published (at 56 FR 23829) a proposed rule to amend chapter 53 of title 48 of the Code of Federal Regulations by adding part 5323—Environment, Conservation, Occupational Safety and Drug-Free Workplace, and part 5352.2—Solicitation Provisions and Contract Clauses. After departmental review the Air Force has decided not to finalize this proposed rule at this time. Therefore the proposed rule is withdrawn.

FOR FURTHER INFORMATION CONTACT:

R. Summerour, SAF/AQCF, 1060 Air Force Pentagon, Washington DC 20330–1060, telephone (703) 695–3859.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93–2335 Filed 2–1–93; 8:45 am]

BILLING CODE 3910–01–M

Notices

Federal Register
Vol. 58, No. 20
Tuesday, February 2, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Tepee Area Salvage and Recovery; Kootenai National Forest, Lincoln and Flathead Counties, MT

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Notice is hereby given that the Forest Service, USDA will prepare an environmental impact statement (EIS) for the Tepee Timber Sale. The Forest Service proposes to harvest approximately 892 thousand board feet of dead and dying lodgepole pine timber through application of a variety of harvest methods on approximately 191 acres. The proposal includes site-preparation and regeneration on 115 acres. The salvage and regeneration harvest is intended to increase health, vigor, stocking and species diversity of stands for long term vegetative growth; reduce fuel accumulations to minimize fire danger and protect existing regeneration stands; salvage lodgepole pine before it loses its value; and clear road surfaces and ditches of dead lodgepole pine to enable road maintenance to be accomplished without barriers of down material. The EIS will tier to the final EIS and Forest Plan for the Kootenai National Forest (September 1987).

The proposed activities are located in the Little Wolf drainage. The project analysis area is located approximately 30 miles east of Libby, Montana. The proposed project is scheduled to sell in the summer of 1994. There will be no new road construction as part of this proposal.

The Kootenai National Forest invites written comments and suggestions on the scope of the analysis. The agency also gives notice of the full environmental analysis and decision making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: Comments concerning the scope and implementation of this proposal must be received by February 22, 1993.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Lawrence A. Froberg, District Ranger, Fisher River Ranger District, 12557 Hwy. 37, Libby, Montana, 59923.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed actions and environmental impact statement to Leanne Marten, Interdisciplinary Team Leader, Fisher River Ranger District, 12557 Hwy. 37, Libby, Montana, 59923. (Phone: (406) 293–7773).

SUPPLEMENTARY INFORMATION: The decision area contains approximately 4300 acres within the Kootenai National Forest in Lincoln and Flathead Counties, Montana. All of the project area is within the Little Wolf drainage. The legal description of the decision area is as follows:

Sections 7, 8, 17, 18, and 19 of Township 29 North, Range 25 West, Flathead County, Montana; Sections 1, 2, 3, 4, 5, 10, 11, 12, 13, and 24 of Township 29 North, Range 26 West, Lincoln County, Montana; and Sections 26, 27, 28, 29, 32, 33, 34, 35 and 36 of Township 30 North, Range 26 West, Lincoln County, Montana.

All proposed activities are outside the boundaries of any roadless area or any areas considered for inclusion to the National Wilderness System as recommended by the Kootenai National Forest Plan or by any past or present legislative wilderness proposal.

Mountain pine beetle infestations have killed the majority of merchantable lodgepole pine in the analysis area. In lodgepole pine stands mortality ranges from 50–100%. However, in most of the stands mortality is 90–100%. In mixed conifer stands where lodgepole pine comprises 10–40% of the stand, merchantable lodgepole pine mortality ranges from 80–100%.

These concentrations of dead lodgepole pine create areas of high fuel loadings which increase the potential of wildfire. In addition, deer and elk movement within and through these dense lodgepole stands is difficult. Thus, summer/fall range effectiveness is in a steady rate of decline.

The proposed action includes salvage harvest of dead lodgepole pine resulting from mountain pine beetle attack. A small amount of green lodgepole pine would be removed in understocked areas to facilitate the silvicultural system for regeneration. Approximately 115 acres will resemble a clearcut with reserve trees or patch seedtree. Eight units would be placed adjacent to existing clearcuts which will create three openings greater than 40 acres in size (43, 49 and 95 acre openings). Approximately 61 acres will be salvaged. A fully stocked stand will remain on these acres. Of the 61 acres, 49 are road-side salvage in which all dead lodgepole will be removed from areas 40–80 feet of specified roadsides. Additionally, 15 acres will be a post and pole area. The harvest will resemble a pre-commercial thinning, leaving a fully stocked stand on these acres. The total harvest volume of this proposal would be 892 thousand board feet of timber.

Issues

Tentatively, several issues have been identified through the scoping process. These issues are briefly described below:

1. Concern was expressed over how the proposed action may impact water quality of the streams in the area.
2. Wildlife: Concern was expressed that the proposed action may have an adverse affect on the cover/forage ratio in the area and thus would represent an impact on wildlife.
3. Forest Health: Concern was expressed that no action would result in stands with a very low level of health, vigor and productivity due to poor regeneration and growth.

Public Participation and Scoping

Public participation will be requested at several points during the analysis. The Forest Service will be seeking information, comments, and assistance from Federal, State, local agencies and other individuals or organizations who may be interested in or affected by the proposed projects. This input will be used in preparation of the Draft EIS.

The scoping process includes:

—Identifying potential issues.

—Identifying major issues to analyzed in depth.

—Exploring additional alternatives based on themes which will be derived from issues recognized during scoping activities.

—Identifying potential environmental effects of this project and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).

—Determining potential cooperating agencies and task assignments.

The analysis will consider a range of alternatives. Along with the proposed actions and all reasonable action alternatives, the analysis will consider a "No Action" alternative.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by June 1993. At that time EPA will publish a notice of availability of the draft EIS in the **Federal Register.** The comment period on the draft EIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register.**

The Forest Service believes it is important to give reviewers notice at this early stage of public participation and of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could have been raised at the draft stage may be waived or dismissed by the court if not raised until after completion of the final EIS. City of *Angoon* v. *Hodel,* 803 F.2d. 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338, (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final EIS. To be the most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merit of the alternatives discussed (see Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

The final EIS is scheduled to be completed by September 1993. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal. Lawrence A. Froberg, District Ranger, Fisher River Ranger District, Kootenai National Forest, 12557 Highway 37, Libby, Montana 59923, is the Responsible Official. As the Responsible Official he will decide which, if any, of the proposed projects will be implemented. The Responsible Official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations.

Dated: January 21, 1993.

Lawrence A. Froberg,

District Ranger, Fisher River Ranger District, Kootenai National Forest.

[FR Doc. 93–2305 Filed 2–1–93; 8:45 am]

BILLING CODE 3410–11–M

Berray Mountain Timber Sales and Associated Projects, Kootenai National Forest, Sanders County, MT.

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Notice is hereby given that the Forest Service, USDA will prepare an environmental impact statement (EIS) for two proposed timber sales and associated activities. The EIS will tier to the final EIS and Forest Plan for the Kootenai National Forest.

The Cabinet Ranger District is proposing timber harvest activities and big game habitat improvement for the Berray Mountain project area located on the Kootenai National Forest, Sanders County, Montana. The proposed projects include the North Pine Ridge Timber Sale, and Berray Creek Timber Sale which includes Bighorn Sheep and big game habitat improvement. Approximately 4 MMBF of timber would be removed from approximately 398 acres. Road construction needed to access the proposed areas would consist of approximately 2 miles of new road construction and 5 miles of road re-construction.

The proposed projects are located, wholly or in part, in the Berray Mountain Roadless Area #672 within the Bull River drainage. The legal descriptions are as follows: T28N, R33W, Sec. 2, 11, 22, 23, 27, 28, & 21 and T27N, R33W, Sec. 3, 4, 9, 10, 33, 34.

The proposed sales are scheduled to be sold during FY 1995 and have an expected contract life of 3 years.

Even-aged management would be used in implementing the proposed actions. Seedtree and shelterwood regeneration harvests are general prescriptions that are to be applied. Patch clearcuts are recommended for bighorn sheep habitat improvement. Where timber harvest has occurred for wildlife enhancement, prescribed burning will also occur. Logging systems include tractor and helicopter.

The proposed actions are meant to bring the existing conditions closer to the desired conditions of the Kootenai National Forest Plan. The ID team has identified site specific objectives (purpose and need) for this project which are consistent with the management goals of the Kootenai National Forest Plan.

This proposed action was developed by the ID team in order to accomplish the following objectives: (1) Provide for healthy growing stand conditions resulting in vigorous growth and a sustainable timber harvest on suitable timberlands; (2) manage the area for long-term diversity through maintaining and enhancing big game habitat; (3) maintain ponderosa pine as a seral species.

The Kootenai National Forest invites written comments and suggestions on the scope of the analysis in addition to comments already received as a result of local public participation activities. The agency also gives notice of the full environmental analysis and decision making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: Comments concerning the scope and implementation of this proposal must be received by February 19, 1993.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to James I. Mershon, District Ranger, Cabinet Ranger District, 2693 Hwy. 200, Trout Creek, Montana, 59874.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed actions and environmental impact statement to David Clay, Project Coordinator, Cabinet Ranger District, 2693 Hwy. 200, Trout Creek, Montana, 59874. [Phone: (406) 827–3533].

SUPPLEMENTARY INFORMATION: The proposed actions include the following:

Area	MA	Acres	Harvest method	Volume estimate	Logging system
N. Pine Ridge	11	70	ST/SW	.77 MBF	Tractor 100%.
Berray Mtn	10	60	ST/SW	.66 MBF	Tractor 32%.
	11	62	ST/SW	.68 MBF	Heli 68%.
	12	101	ST/SW	1.1 MBF	
	19	41	ST/SW	.45 MBF	
Bighorn Sheep	10	64	Patch clearcut	.70	Heli 100%.

The Berray Mountain analysis area contains approximately 16,842 acres. The EIS will tier to the Final EIS and Kootenai Forest Plan (September 1987). The Forest Plan provides goals and objectives, forest-wide standards and guidelines, management area standards and guidelines, and management area prescriptions for the various lands on the Forest. This direction provides for management practices that will be utilized during the implementation of the Forest Plan.

Management Area Allocations include the following:

MA 2 comprises 3 percent of the area. This area is to be managed as roadless recreation.

MA 8 comprises 13 percent of the area. This area has been recommended by the Kootenai National Forest for congressional designation as Wilderness.

MA 10 comprises 31 percent of the area. This area is to be managed for big game winter range.

MA 11 comprises 11 percent of the area. This area is to be managed for big game winter range while producing a programmed yield of timber and maintaining the viewing resource in areas of high visual significance.

MA 12 comprises 19 percent of the area. This area is to be managed to maintain or enhance nonwinter big game habitat and produce a programmed yield of timber.

MA 13 comprises 4 percent of the area. This area is to be managed to provide the special habitat necessary for old-growth dependent wildlife.

MA 14 comprises 13 percent of the area. This area is to be managed for grizzly bear habitat, while reducing grizzly/human conflicts, assist in the recovery of the grizzly bear and realize a programmed level of timber production.

MA 19 comprises 5 percent of the area. This area occurs on steep slopes and breaklands over 60 percent. The management objective of this area is to ensure soil stability and water quality by maintaining the vegetation in a healthy condition and by minimizing surface disturbance.

MA 21 comprises .3 percent of the area. This area is to be managed as a botanical area of special interest.

The analysis will consider a range of alternatives. Along with the proposed actions and all reasonable action alternatives the analysis will consider a "No Action" alternative for each proposed timber sale.

Public participation will be requested at several points during the analysis. The Forest Service will be seeking information, comments, and assistance from Federal, State, local agencies and other individuals or organizations who may be interested in or affected by the proposed projects. This input will be used in preparation of the Draft and Final EIS.

The scoping process includes:

- Identifying potential issues.
- Identifying major issues to be analyzed in depth.
- Exploring additional alternatives based on themes which will be derived from issues recognized during scoping activities.
- Identifying potential environmental effects of this project and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).
- Determining potential cooperating agencies and task assignments.

Public participation to this point involved the presentation of the project at a public open house at the Noxon School and personal contacts with local residents by the Project Coordinator. Future public participation will include continued public meetings, personal contacts, and contact through the media and written material. The following potential issues have been identified through the scoping efforts that have occurred to date:

- What are the cumulative effects, including all of the Champion International clearcuts north of Berray Mountain?
- What are the effects of sediment from logging activities on the fisheries within Berray Creek and the Bull River?
- Will the proposed action effect the wild and scenic classification of the Bull River?
- What effect will the proposed action have on the grizzly bear travel corridor that was recently purchased by the USFS?
- What effect would the proposal have on the soils of the area?
- What effect would the proposal have on wildlife?
- Can wildlife security be maintained?
- Can the cover/forage of the area be improved?
- What effect would the proposal have on the roadless character of Berray Mountain Roadless Area #672?
- Could we maintain/improve the biodiversity of the area?
- What effect would the proposal have on the watersheds of the area?
- What effect would the project have on air quality?
- What would be the effects on the visual quality objectives for the area?
- Are there any sensitive, threatened, or endangered plant or animal species in the area? How would this project affect them if they are present?
- What would be the effect to private land and private uses of federal lands in the area?

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by June, 1993. At that time EPA will publish a notice of availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of public participation and of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could have been raised at the draft stage may be waived or dismissed by the court if not raised until after completion of the final EIS. *City of Angoon* v. *Hodel*, 803 F.2d. 1016, 1022 (9th Cir. 1986 and *Wisconsin Hertiages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980).

Because of these court rulings it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final EIS.

To be the most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merit of the alternatives discussed (see Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

The final EIS is scheduled to be completed by September 1993. In the final EIS the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal.

James I. Mershon, District Ranger, Cabinet Ranger District, Kootenai National Forest, 2693 Hwy. 200, Trout Creek, Montana, 59874, is the Responsible Official. As the Responsible Official he will decide which, if any, of the proposed projects will be implemented. The Responsible Official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations.

Dated: January 21, 1993.

James I. Mershon,

District Ranger, Cabinet Ranger District.

[FR Doc. 93–2306 Filed 2–1–93; 8:45 am]

BILLING CODE 3410–11–M

Rural Electrification Administration

Central Virginia Electric Cooperative; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA) has made a Finding of No Significant Impact (FONSI) with respect to the potential environmental impact resulting from a proposal by Central Virginia Electric Cooperative (CVEC) to construct the New Martin's Store Electric Generating Station in Nelson County, Virginia. The FONSI is based on the Borrower's Environmental Report (BER) prepared for CVEC by Mr. Gary Gilpin of Gilpin Group Environmental Consulting and Planning. REA conducted an independent evaluation of the report and concurs with its scope and content. In accordance with REA Environmental Policies and Procedures, 7 CFR 1794.61, REA has adopted the CVEC's BER as the environmental assessment for the project.

FOR FURTHER INFORMATION CONTACT: Jennifer A. Corwin, Environmental Protection Specialist, Environmental Compliance Branch, Electric Staff Division, room 1246, South Agriculture Building, Rural Electrification Administration, Washington, DC 20250, telephone (202) 720–1784.

SUPPLEMENTARY INFORMATION: The New Martin's Store Electric Generating Station is located in northern Nelson County, Virginia. The proposed electric generating facilities will consist of either two 1,500 kilowatt (KW) or three 1,250 KW diesel electric generating units which will be housed in a one-story metal building 36 by 60 feet and 20 feet in height, a 10,000 gallon aboveground tank or two 5,000 gallon aboveground tanks, a 500 foot 24.9 kilovolt (kV) underground distribution line and a 600 foot construction/maintenance access road composed of four inch thick crushed stone. CVEC will construct the facilities on 3 acres of land which is adjacent to the existing Martin's Store Substation.

Alternatives examined for the proposed project included no action, conservation, alternative generating technologies, and constructing the proposed facilities at alternative sites.

Based on an independent analysis of the adopted BER, REA has concluded that the construction of the proposed generating facilities will have no significant impact on air quality, water quality, wetlands, the 100-year floodplain, existing land uses, prime farmland, historic properties, federally-listed threatened and endangered species, or designated critical habitat or species proposed for listing or proposed critical habitat.

No other potential significant impact resulting from the construction and use of the proposed project has been identified. Copies of the environmental assessment and FONSI are available for review at, or can be obtained from, REA at the address provided herein or from Central Virginia Electric Cooperative, P.O. Box 247, Front Street, Lovingston, Virginia 22949.

Dated: January 22, 1993.

George E. Pratt,

Deputy Administrator, Program Operations, Rural Electrification Administration, U.S. Department of Agriculture.

[FR Doc. 93–2357 Filed 2–1–93; 8:45 am]

BILLING CODE 3410–15–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

National Defense Stockpile Market Impact Committee Request for Public Comments

AGENCY: Office of Industrial Resource Administration, Bureau of Export Administration, U.S. Department of Commerce.

ACTION: Notice of request for public comments on the market impact of proposed disposals of excess commodities currently held in National Defense Stockpile.

SUMMARY: This notice is to advise the public that the National Defense Stockpile Market Impact Committee (co-chaired by the Departments of Commerce and State) is seeking public comment on the market impact of proposed disposals of excess materials currently held in the National Defense Stockpile. Comments should be received by March 4, 1993.

ADDRESSES: Send all comments to Edward L. Levy; Co-Chair, Stockpile Market Impact Committee; Office of Industrial Resource Administration; room 3878; U.S. Department of Commerce; 14th Street and Constitution Avenue NW.; Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Edward L. Levy, Office of Industrial Resource Administration; U.S. Department of Commerce; (202) 482–3795 or Milt Drucker, Office of International Commodities, U.S. Department of State; (202) 647–2871 (co-chairs of the Stockpile Market Impact Committee).

SUPPLEMENTARY INFORMATION: Under authority of the Strategic and Critical Materials Stockpiling Act of 1949, as amended, (50 U.S.C. 98 *et seq.*), the Department of Defense (as National Defense Stockpile Manager) maintains a stockpile of strategic and critical materials to supply the military, industrial, and essential civilian needs of the United States for national defense. In making disposals and acquisitions of Stockpile materials, Defense is required by law to refrain from causing undue market disruption, while at the same time protecting the government against avoidable loss.

Section 3314 of the FY 1993 National Defense Authorization Act (NDAA) formally established a Market Impact Committee (the Committee) to "advise the National Defense Stockpile Manager on the projected domestic and foreign economic efforts of all acquisitions and disposals of materials from the National Defense Stockpile." The Committee includes representatives from the Departments of Commerce, State, Agriculture, Defense, Energy, Interior, Treasury and the Federal Emergency Management Agency. The FY 1993 NDAA directs the Committee to "consult from time to time with representatives of producers, processors and consumers of the types of materials stored in the stockpile."

With this in mind, it is the Defense National Stockpile Center's (DNSC) intention to become a dependable, long-term source of materials that will be sold as close to market prices as the conditions of sale permit (e.g. consideration will be given for the certifiable quality of the materials being sold, and any appropriate transportation differential). In order to protect the government against avoidable loss, the DNSC intends to exercise restraint regarding the quantities and timing of any offers of excess materials for sale.

The Committee will soon begin its consideration of Defense's FY 1994 Annual Materials Plan (AMP) of proposed disposals and acquisitions of Stockpile materials. In order for the Committee to obtain sufficient information to prepare its recommendations to Defense, the Committee hereby requests that interested parties provide comment on the potential market impact of the commodities identified below as candidates for sales in FY 1994.

Although comments in response to this notice must be received by (30 days after publication) for the Committee to consider them in its evaluation of the FY 1994 AMP, the Committee would welcome further comments as the sales proceed.

The FY 1994 AMP has not yet been prepared in final form, but the following are the materials for which Defense has been granted disposal authority by Congress, and which therefore *may* be included in the FY 1994 AMP. Interested parties are requested to provide any comments that would be useful to the Committee in reviewing proposed schedules and quantities of Stockpile sales.

Commotidies Which May Be Included In FY 1994 AMP

Aluminum Oxide, Abrasive
Aluminum Oxide, Fused, Crude
Antimony
Asbestos (all types)
Bauxite, Metal Grade, Jamaica Type
Bauxite, Metal Grade, Surinam Type
Bauxite, Refractory
Beryl Ore
Bismuth
Cadmium
Celestite
Chromite, Chemical Grade
Chromite, Metallurgical Grade
Chromite, Refractory Grade
Chromium, Ferro, High Carbon
Cobalt
Copper
Diamond, Industrial, Crushing Bort
Diamond, Stones
Fluorspar, Acid Grade
Fluorspar, Metallurgical Grade
Germanium
Graphite, Natural, Malagasy
Graphite, Natural, Other than Ceylon and Malagasy
Iodine
Jewel Bearings NSG
Kyanite
Lead
Manganese, Chemical Grade
Manganese, Battery Grade, Natural Ore
Manganese, Battery Grade, Synthetic Dioxide
Manganese, Metallurgical Grade
Manganese, Ferro, High Carbon
Mercury
Mica, Muscovite Block
Mica, Muscovite Film
Mica, Muscovite Splitting
Mica, Phlogopite Splitting
Nickel
Quartz Crystals, Natural
Rutile
Sapphire and Ruby
Sebacic Acid
Silicon Carbide
Silver (coinage use only)
Talc
Tin
Thorium Nitrate
Vegetable Tannin Extract, Chestnut
Vegetable Tannin Extract, Quebracho
Vegetable Tannin Extract, Wattle
Zinc

Interested parties are invited to submit written comments, opinions, data, information, or advice relevant to this request. All materials should be submitted with 10 copies. Public information will be made available at the Department of Commerce for public inspection and copying. Material that is national security classified information or business confidential information will be exempted from public disclosure to the extent permitted by law and regulation. Anyone submitting business confidential information should clearly identify the business confidential portion of the submission and also provide a non-confidential submission that can be placed in the public file. Communications from agencies of the United States Government will not be made available for public inspection.

The public record concerning this investigation will be maintained in the Bureau of Export Administration's Records Inspection Facility, room 4525, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone (202) 482–5653. The records in this facility may be inspected and copied in accordance with the regulations published in part 4 of title 15 of the Code of Federal Regulations (15 CFR 4.1 *et. seq.).*

Information about the inspection and copying of records at the facility may be obtained from Ms. Margaret Cornejo, the Bureau of Export Administration's Freedom of Information Officer, at the above address and telephone number.

Dated: January 27, 1993.

John A. Richards,

Deputy Assistant Secretary for Industrial Resource Administration.

[FR Doc. 93–2345 Filed 2–1–93; 8:45 am]

BILLING CODE 3510–DT–M

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: To give firms an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

Firm name	Address	Date petition accepted	Product
Custom Products of Litchfield, Inc.	1715 S. Sibley Avenue, Litchfield, MN 55355	11/12/92	Cab enclosures of metal and glass, rollover bars of steel and fabricated enclosures, steel panels.
Sea Sky USA aka SPCL EFX, Unlimited.	680 Kakio Street #5 & #6, Honolulu, HI 96819 ...	11/12/92	Apparel—tee shirts.

Firm name	Address	Date petition accepted	Product
Excellon Automation Company ..	24751 Crenshaw Boulevard, Torrance, CA 90505.	12/21/92	Spindle drilling machine and parts for spindle drilling machine.
Monroe Fluid Technology, Inc	36 Draffin Road, Box 810, Hilton, NY 14468	12/22/92	Metal working fluids.
Aerolite	425 West Rider, Suite B8, Perris, CA 92571	12/22/92	Paragliders.
Remarque Mfg. Corp	110 Field Street, West Babylon, NY 11704	12/29/92	Manufacturer of assemblies and components.
Island Spring, Inc	18846 103rd Avenue Southwest, Vashon, WA 98070.	12/29/92	Food & bevg.—soybean products.
Republic Technology, Inc	1745 Broadway Street, Charlottesville, VA 22902.	12/29/92	Electronics—Fabricated circuit boards and wire harnesses.
Snobird Aircraft, Inc	13007 122nd Avenue KPN, Gig Harbor, WA 98329.	12/29/92	Misc.—Aircraft kits.
Gainey Ceramics, Inc	1200 Arrow Highway, Laverne, CA 91750–5293	12/30/92	Misc.—Ceramic containers.
Reimers Engineering, Inc	6314 Gravel Avenue, Alexandria, VA 22301	12/30/92	Transportable recompression chambers and multiplace hyperbaric facilities designed and assembled.
Ascot Tag & Label Co., Inc	577 North 3rd Street, Newark, NJ 07107	12/30/92	Misc.—Labels and decals.
Apex Industrial Equipment, Inc ..	P.O. Drawer 1049, Salem, VA 24153	12/30/92	Industrial equipment for the tire manufacturing industry.
Allen Company (The)	712 East Main Street, Blanchester, OH 45107 ...	1/4/93	Misc. mugs and artwork.
Blackhawk Foundries	323 S. Clark Street, Davenport, IA 52808	1/4/93	Metal Products—Hydraulic pump housing and diesel engine components cast of iron.
Sun Metal Products, Inc	2156 N. Detroit Street, Box 1508, Warsaw, IN 46581–1508.	1/4/93	Golf, wheelchair, motorcycle and exercise wheels and aluminum rims and rolled aluminum.
Bogue Electric Manufacturing Company.	100 Pennsylvania Avenue, Paterson, NJ 07509	1/4/93	Mach. & equip.—Rotors, stators, exciters, generators and/or motors, and static systems.
Anionics, Inc	300 Hangar Road, Oriskany, NY 13424	1/5/93	Mach. & equip.—vacuum sealing fuel systems and electron beam welding.
Kewaunee Engineering Corp	North Main Street, Kewaunee, WI 54216	1/6/93	Components of construction equipment, hoist, lifts, cranes, and ships of iron and steel.
Taylor Forge Engineered Systems, Inc.	First & Iron Streets, Paola, KS 66071	1/6/93	Mach. & equip.—pressure vessels and skid mounted gas processing equipment.
Bryce D. Jewett Machine Manufacturing Co., Inc.	2901 Maury Street, Richmond, VA 23229	1/8/93	Metal products—precision machine parts—castings of carbon steel & stainless steel.
Besly Products Corporation	100 Dearborn Avenue, South Beloit, IL 61080 ...	1/11/93	Metal products—steel cutting tool to be mounted on a tapping machine.
Huther Brothers, Inc	1290 University Avenue, Rochester, NY 14607 .	1/11/93	Mach. & equip.—machine knifes that cut paper and metal.
Centennial Shipping Products Company Inc.	302 Northern Pacific Avenue, Fargo, ND 58102	1/11/93	Wood products—wood shipping and construction related products, i.e. pallets, crates and stakes.
Modern Industries, Incorporated	3229 East Washington Street, Phoenix, AZ 85034–1607.	1/12/93	Mach. & equip.—turbine engine parts for military & commercial aircraft blades, starters, etc.
Dec International, Inc	1919 S. Stoughton Road, Madison, WI 53708 ...	1/14/93	Mach. & equip.—dairy farm equipment, food processing equipment and dispensing control systems.

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Trade Adjustment Assistance Division, Room 7023, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: January 25, 1993.

Craig M. Smith,

Deputy Director for Program Operations.

[FR Doc. 93–2293 Filed 2–1–93; 8:45 am]

BILLING CODE 3510–24–M

International Trade Administration

[A–588–807]

Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From Japan; Court of International Trade Decision

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Court of International Trade Decision.

SUMMARY: On March 5, 1992, the United States Court of International Trade (CIT) held that cash deposits should not have been collected before the date of publication in the **Federal Register** of the International Trade Commission's (ITC) final determination concerning industrial belts from Japan which occurred on June 7, 1989. Therefore, pursuant to the CIT's order, the Department will issue instructions to the U.S. Custom Service to release or refund any bonds or deposits of estimated dumping duties on imports of industrial belts entered from Japan during the period of February 1, 1989 through June 6, 1989.

EFFECTIVE DATE: February 2, 1993.

FOR FURTHER INFORMATION CONTACT: Charles Vannatta in the Office of Agreements Compliance; International Trade Administration; U.S. Department of Commerce; Washington, DC 20230; telephone number (202) 482–3793.

SUPPLEMENTARY INFORMATION:

Background

On July 26, 1990, the Department initiated an administrative review (55 FR 30490) of the antidumping duty order on industrial belts from Japan (54 FR 25314, June 14, 1989; amended 54 FR 32104, August 4, 1989). On November 12, 1991, the Department published the preliminary results of that review (56 FR 57513). The review covered sales of the subject merchandise in the United States during the period of February 1, 1989 through May 31, 1990. Before the review was initiated Mitsuboshi Belting Limited (MBL) and

its U.S. affiliate, a respondent in the review, filed suit in the CIT challenging the antidumping duty order (MBL (USA) and Mitsuboshi Belting Limited, 89–07–00403, Complaint, July 7, 1989 (Complaint)). MBL claimed the order was not in accordance with Section 736(b)(2) of the Tariff Act of 1930, as amended (Tariff Act) (19 USC 1673e(b)(2)), because it did not require the release of any bond or refund any cash deposit made against estimated antidumping duties for entries of industrial belts from Japan during the period of February 1, 1989 through June 6, 1989 (Complaint at 5).

On March 5, 1992, the CIT held that as a result of a negative ITC "but for" vote (threat of material injury found, but would not find material injury itself but for suspension of liquidation of entries) and three negative votes, cash deposits should not have been collected before the date of publication of the ITC's final affirmative determination in the **Federal Register** (Investigation Nos. 731–TA–412 through 419 (Final Determination), 54 FR 24430, June 7, 1989). *MBL (USA) Corp. and Mitsuboshi Belting Ltd.* v. *United States*, 787 F. Supp. 202 (CIT, March 5, 1992). The CIT ordered the Department to "release or refund or cause to be released or refunded any bonds or deposits of estimated antidumping duties on imports of power-transmission belts from Japan," in accordance with section 736(b)(2) of the Tariff Act (Order, 89–07–00403, March 5, 1992). Therefore as a result of the CIT order, there are no longer any suspended entries from February 1, 1989 through June 6, 1989.

Notice of CIT Order

Pursuant to the CIT order, the Department will issue instruction directly to the U.S. Customs Service to release or refund any bonds or cash deposits of estimated antidumping duties on imports of industrial belts from Japan entered during the period of February 1, 1989 through June 6, 1989. Accordingly, the Department's final results of administrative review will cover sales of subject merchandise in the United States during the period of June 7, 1989 through May 31, 1990. The final results will be published subsequently.

Dated: January 19, 1993.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 93–2437 Filed 2–1–93; 8:45 am]

BILLING CODE 3510–DS–M

[C–201–003]

Court Decision and Suspension of Liquidation: Ceramic Tile From Mexico

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

EFFECTIVE DATE: January 17, 1993.

SUMMARY: On January 7, 1993, in *Ceramica Regiomontana, S.A. et al.* v. *United States*, Court No. 88–05–00394, a lawsuit challenging the Department of Commerce's (the "Department") final results of countervailing duty administrative review of the countervailing duty order on ceramic tile from Mexico, the Court of International Trade ("CIT") affirmed the Department's second results of redetermination on remand. As a result, the final countervailing duty rate for all firms without specified individual rates (the "all others" rate) has decreased from 3.16% *ad valorem* to 2.63% *ad valorem* for 1984, and from 4.17% *ad valorem* to 3.60% *ad valorem* for 1985. Consistent with the decision of the Court of Appeals for the Federal Circuit ("CAFC") in *Timken Co.* v *United States*, 893 F.2d 337 (Fed. Cir. 1990), Commerce will not order the liquidation of the subject merchandise entered or withdrawn from warehouse for consumption prior to a "conclusive" decision in this case.

FOR FURTHER INFORMATION CONTACT: Gayle Longest, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, Telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On April 27, 1988, the Department published notice of its final results of countervailing duty administrative review in connection with the countervailing duty order on ceramic tile from Mexico. Ceramic Tile from Mexico; Final Results of Countervailing Duty Administrative Review, 53 FR 15090. In that determination, the Department set forth its finding of the total bounty or grant being given on the subject merchandise during the period or review, July 1, 1984 through December 31, 1985. This determination included a finding, *inter alia*, of an "all other" rate of 3.16% *ad valorem* for the period of July 1, 1984 through December 31, 1984, and of 4.17% *ad valorem* for the period of January 1, 1985 through December 31, 1985.

Subsequent to the Department's determination, respondents filed a lawsuit with the CIT challenging this determination. Thereafter, the CIT issued an order and Slip Opinion 92–71 dated May 15, 1992, in *Ceramica Regiomontana, S.A., et al.* v. *United States*, Court No. 88–05–00394 remanding the Department's determination so that the Department could recalculate the all other rate based on a weighted average of all companies investigated, including those with *de minimis* or zero individual rates. On July 20, 1992, the Department filed its required remand results with the CIT. On October 1, 1992 the CIT ordered a second remand because the Department had only applied the newly recalculated "all other" rate to those firms which had filed suit, rather than to all firms investigated without a specified individual rate. On December 17, 1992, the Department filed its second remand results with the CIT. On January 7, 1993, the CIT affirmed the Department's second remand results in their entirety and dismissed the case. *Ceramica Regiomontana, S.A., et al.* v. *United States*, Court No. 88–05–00394, Slip Op. 93–1. As a result the "all other" rate for ceramic tile from Mexico has decreased from 3.16% to 2.63% *ad valorem* for 1984, and from 4.17% to 3.60% *ad valorem* for 1985.

Suspension of Liquidation

In its decision in *Timken*, the CAFC held that Commerce must publish notice of a decision of the CIT or the CAFC which is not "in harmony" with Commerce's determination. Publication of this notice fulfills this obligation. The CAFC also held that in such a case, the Department must suspend liquidation until there is a "conclusive" decision in the action. The option of appealing this decision is being weighed, and a "conclusive" decision can not be reached until the opportunity to appeal expires, or any appeal is decided by the CAFC. Therefore, the Department will continue to suspend liquidation pending the expiration of the period to appeal or pending a final decision of the CAFC if *Ceramica Regiomontana*, Slip Op. 93–1, is appealed.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–2438 Filed 2–1–93; 8:45 am]

BILLING CODE 3510–DS–M

[C–351–037]

Cotton Yarn From Brazil; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On December 10, 1992, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on cotton yarn from Brazil (57 FR 58458). We have now completed that review and determine the net subsidy to be 0.19 percent *ad valorem* for all firms during the period January 1, 1991 through December 31, 1991. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*.

EFFECTIVE DATE: February 2, 1993.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Kelly Parkhill, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On December 10, 1992, the Department of Commerce (the Department) published in the **Federal Register** (57 FR 58458) the preliminary results of its administrative review of the countervailing duty order on cotton yarn from Brazil (42 FR 14089; March 15, 1977). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of Review

Imports covered by this review are shipments of Brazilian yarn carded but not combed, wholly of cotton. During the review period, such merchandise was classifiable under item numbers 5205.11.10, 5205.11.20, 5205.12.10, 5205.12.20, 5205.13.10, 5205.13.20, 5205.14.10, 5205.14.20, 5205.15.10, 5205.15.20, 5205.31.00, 5205.32.00, 5205.33.00, 5205.34.00, and 5205.35.00 of the Harmonized Tariff Schedule (HTS). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1991 through December 31, 1991, ten companies and six programs: (1) Income Tax Exemption for Export Earnings; (2) Reductions of Taxes and Import Duties through BEFIEX; (3) SUDENE Regional Tax Exemption; (4) CACEX Preferential Export Financing under CIC–OPCRE of the Banco do Brasil; and (6) Preferential Financing for Industrial Enterprises by the Banco do Brasil (FST and EGF loans).

Calculation Methodology for Assessment and Cash Deposit Purposes

In calculating the benefits received during the review period, we followed the methodology described in the preamble to 19 CFR 355.20(d) (53 FR 52325; December 27, 1988). First, we calculated a country-wide rate, weight-averaging the subsidy rates of the ten companies subject to review to determine the overall subsidy from all countervailing programs benefitting exports of the subject merchandise to the United States. Because the overall weighted-average country-wide rate was *de minimis*, as defined by 19 CFR 355.7, we did not proceed any further in our analysis.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received no comments.

Final Results of Review

As a result of our review, we determine the net subsidy to be 0.19 percent *ad valorem* for all firms during the period January 1, 1991 through December 31, 1991. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*.

Therefore, the Department will instruct the Customs Service to liquidate, without regard to countervailing duties, all shipments of this merchandise exported on or after January 1, 1991 and on or before December 31, 1991.

The Department will instruct the Customs Service to continue to suspend liquidation on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. Because the net subsidy is *de minimis*, however, the cash deposit on such shipments will be zero. These instructions shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: January 26, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–2439 Filed 2–1–93; 8:45 am]

BILLING CODE 3510–DS–M

U.S. Automotive Parts Advisory Committee; Closed Meeting

AGENCY: International Trade Administration, Commerce.

ACTION: Closed meeting of U.S. Automotive Parts Advisory Committee.

SUMMARY: The U.S. Automotive Parts Advisory Committee (the "Committee") advises U.S. Government officials on matters relating to the implementation of the Fair Trade in Auto Parts Act of 1988. The Committee: (1) Reports annually to the Secretary of Commerce on barriers to sales of U.S.-made auto parts and accessories in Japanese markets; (2) assists the Secretary in reporting to the Congress on the progress of sales of U.S.-made parts in Japanese markets, including the formation of long-term supplier relationships; (3) reviews and considers data collected on sales of U.S.-made auto parts to Japanese markets; (4) advises the Secretary during consultations with the Government of Japan on these issues; and (5) assists in establishing priorities for the Department's initiatives to increase U.S.-made auto parts sales to Japanese markets, and otherwise provide assistance and direction to the Secretary in carrying out these initiatives. At the meeting, committee members will receive briefings on the status of ongoing consultations with the Government of Japan and will discuss specific trade and sales expansion programs related to U.S.–Japan automotive parts policy.

DATE AND LOCATION: The meeting will be held on Friday, February 26, 1993 from 10 a.m. to 5 p.m. at the Department of Commerce in Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Stuart Keitz, Office of Automotive Affairs, Trade Development, Main Commerce, room 4036, Washington, DC 20230, telephone: (202) 482–0669.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel formally determined on June 24, 1991, pursuant to Section 10(d) of the Federal Advisory Act, as amended, that the series of meetings or portions of meetings of the Committee and of any subcommittee thereof, dealing with privileged or confidential commercial information may be exempt from the

provisions of the Act relating to open meeting and public participation therein because these items are concerned with matters that are within the purview of 5 U.S.C. 552b (c)(4) and (9)(B). A copy of the Notice of Determination is available for public inspection and copying in the Department of Commerce Records Inspection Facility, Room 6020, Main Commerce.

Dated: January 25, 1993.

Henry P. Misisco,

Director, Office of Automotive Affairs.

[FR Doc. 93–2340 Filed 2–1–93; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF DEFENSE

Department of the Army

Military Personal Property Claims Symposium

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice of open meeting.

Announcement is made of meeting of the Military Personal Property Claims Symposium. This meeting will be held on 25 February 1993, at the Best Western Old Colony Inn, Alexandria, Virginia, and will convene at 0830 and adjourn at approximately 1500 hours.

PROPOSED AGENDA: The purpose of the symposium is to provide an open discussion and the free exchange of ideas with the public on procedural changes to the Personal Property Traffic Management Regulation, DOD 4500.34R, and the handling of other matters of mutual interest concerning the Department of Defense Personal Property Shipment and Storage Program.

All interested persons desiring to submit topics to be discussed should contact the Commander, Military Traffic Management Command, ATTN: MTPP–M, 5611 Columbia Pike, Falls Church, VA 22041–5050, (703) 756–1600, between 0800–1530 hours. Topics to be discussed should be received on or before 5 February 1993.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93–2341 Filed 2–1–93; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 17–18 February 1993.

Time of Meeting: 0800–1700, each day, Army Research Laboratory, Ft. Monmouth, NJ, Bell Laboratories, Communications, and Electronics Command.

Place: Pentagon.

Agenda: The Army Science Board's Ad Hoc Subgroup on "Evaluating and Selecting Proposals" will meet to review concerns about unsolicited proposals. This meeting will be closed to the public in accordance with section 552b. (c) of title 5, U.S.C., specifically subparagraph (4) thereof and title 5, U.S.C. appendix 2, subsection 10(d). The proprietary and non-proprietary information to be discussed will be so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 93–2348 Filed 2–1–93; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Secretary of the Navy's Advisory Committee on Naval History; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is given that the Secretary of the Navy's Advisory Committee on Naval History will meet on February 18-19, 1993, from 8 a.m. to 4 p.m., in the Dudley Knox Center for Naval History Conference Room, second floor, building 57, Washington Navy Yard, Washington, DC 20374-5060. The purpose of the meeting is to elicit the advice of the committee concerning various aspects of the Navy's historical programs.

For further information concerning this meeting contact: Dr. William S. Dudley, Naval Historical Center, Washington Navy Yard, Washington, DC 20374-5060, telephone (202) 433-7230.

Dated: January 22, 1993.

Michael P. Rummel

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93–2310 Filed 2–1–93; 8:45 am]

BILLING CODE 3810–AE–F

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10375–003–UT]

Weber Basin Water Conservancy District; Surrender of Conduit Exemption

January 27, 1993.

Take notice that Weber Basin Water Conservancy District (District), exemptee for the Drought Relief Pipeline Project No. 10375, has requested that its exemption be terminated. The conduit exemption for Project No. 10375 was issued June 8, 1989, and would have been located in Weber County, Utah. No construction has been done at the site.

The exemption for Project No. 10375 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the exemption shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 93–2432 Filed 2–1–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD93–03002T; Colorado–55]

State of Colorado; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

January 27, 1993.

Take notice that on January 14, 1993, the Oil and Gas Conservation Commission of the State of Colorado (Colorado), submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the "J" Sand Formation underlying certain lands in Adams County, Colorado, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The area of application is described as all of Section 6, Township 2 South, Range 62 West.

The notice of determination also contains Colorado's findings that the referenced portion of the "J" Sand Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18

CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–2429 Filed 2–1–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD93–03305T; Texas–97]

State of Texas; Corrected NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

January 27, 1993.

Take notice that on January 21, 1993, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Marble Falls Formation (Momma Bear Field) underlying Erath and Palo Pinto Counties, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area is more fully described in the attached appendix.

The notice of determination also contains Texas' findings that the referenced portion of the Marble Falls Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

Appendix

The recommended portion of the Marble Falls Formation (Momma Bear Field) is located in Earth and Palo Pinto Counties, Texas, within Railroad Commission District 7B and includes all or a portion of the following surveys:

Erath County

Thos. Toby, A–789
S. Romick, A–1419
Burnett, A–123
Geo. W. Treighen, A–758
S. Jordan, A–444
James McCoy, A–562
James McCoy, A–563
Geo. Lamon, A–931
M. Hagwood, A–414
John Davis, A–215
John Davis, A–216
John Davis, A–217
B.B.B. & C. R.R., A–114
Thomas Stubblefield, A–684
S.P.R.R., A–1312, A–1351
Josiah Bishop, A–47
Oliver Smith, A–725
T.C. Ray, A–1161

Palo Pinto County

J.H. Bond, A–43
T.C. Ray, A–1753
E.V. Landreph S.M. Fyffe, A–2055
E.V. Landreph S.M. Fyffe, A–2021
Hood County School Land, A–220
J.R. Jennings, A–263
G. Treighen, A–1937
T. & N.O. R R., A–695
C.N. Deaton, A–2189

[FR Doc. 93–2430 Filed 2–1–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD93–03306T; Texas–98]

State of Texas NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

January 27, 1993.

Take notice that on January 21, 1993, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Upper Cretaceous Second San Miguel Sand Formation underlying Dimmit and Maverick Counties, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area is more fully described in the attached appendix.

The notice of determination also contains Texas' findings that the referenced portion of the Upper Cretaceous Second San Miguel Sand Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

Appendix

The recommended portion of the Upper Cretaceous Second San Miguel Sand Formation consists of approximately 47,472 acres in Dimmit and Maverick Counties, Texas, within Railroad Commission District 1 and includes all or a portion of the following surveys:

Survey name	Block No.	Abstract No.
Dimmit County:		
J. Bowers	586	24
G. Denton	27½	1548
I & GN RR	4	293
I & GN RR	5	294
I & GN RR	6	295
I & GN RR	7	296
I & GN RR	8	297
I & GN RR	9	298
I & GN RR	10	299
I & GN RR	11	300
I & GN RR	12	301
I & GN RR	26	417
I & GN RR	27	418
I & GN RR	28	419
I & GN RR	29	420
I & GN RR	33	322
I & GN RR	34	323
I & GN RR	35	324
I & GN RR	37	326
I & GN RR	40	329
F. Lombrano	.....	1360
Maverick County:		
F. Lombrano	.....	731

[FR Doc. 93–2431 Filed 2–1–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–67–000]

Columbia Gas Transmission Corp.; Petition To Establish a Restricted Investment Arrangement Account

January 27, 1993.

Take notice that on January 21, 1993, Columbia Gas Transmission Corporation (Columbia) pursuant to Rule 207 of the Commission's rules of practice and procedure, 18 CFR 385.207, petitioned the Commission to issue an order directing that all supplier refunds related to overcharges for service rendered prior to July 31, 1991, be made to Columbia and deposited by Columbia into a Restricted Investment Arrangement (RIA) account, consistent with the provisions of a January 6, 1993 order in Columbia's bankruptcy proceedings authorizing the establishment of such RIA account.

Columbia states that due to the uncertainties surrounding the disposition of supplier refunds owed to Columbia, prior to July 31, 1991, the date of its bankruptcy petition, certain of Columbia's pipeline suppliers have been hesitant to make such refunds to Columbia. Columbia states that to remove the uncertainties, Columbia, on December 9, 1992, filed a motion with the bankruptcy court for authorization to establish an RIA for all pre-petition supplier refunds for refunds received prior to July 31, 1991, refunds received subsequent to that date, and interest earned by Columbia's RIA, and to invest

such funds in compliance with the investment guidelines approved by the bankruptcy court. Columbia states that on January 6, 1993, the bankruptcy court issued an unopposed order authorizing Columbia to establish its RIA arrangement.

Columbia requests that the Commission issue an order directing that (1) all of Columbia's suppliers regulated by this Commission make such pre-petition refunds to Columbia pursuant to the Commission's order and regulations; and (2) Columbia deposit such refunds into its RIA account, consistent with the bankruptcy court's January 6, 1993 order.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before February 3, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–2433 Filed 2–1–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–66–000]

Columbia Gas Transmission Corp.; Joint Complaint and Request for Emergency Action

January 27, 1993.

Take notice that on January 21, 1992, the Public Service Commission of the Commonwealth of Kentucky (Kentucky) and the Public Service Commission of the State of New York (New York) filed a Joint Complaint and Request for Emergency Action. Kentucky and New York request that the Commission take action effective no later than April 1, 1993 to eliminate an alleged "tying arrangement" in Columbia Gas Transmission Corporation's (Columbia) WS tariff which forces WS customers to purchase gas for injection into storage solely from Columbia, in violation of Order No. 636. Kentucky and New York state that unless the Commission promptly takes such action, Columbia will, in effect, delay the restructuring of the unbundled WS Service until April 1, 1994.

Kentucky and New York request that the Commission eliminate, as of April 1, 1993, the restriction in the WS tariff which forces customers to purchase gas from Columbia.

Any person desiring to be heard or to protest said complaint 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 Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214, 385.211. All such motions or protests should be filed on or before February 26, 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. Answers to this complaint shall be due on or before February 26, 1993.

Lois D. Cashell,

Secretary.

[FR Doc. 93–2434 Filed 2–1–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–65–000]

Public Service Electric and Gas Co. v. Texas Eastern Transmission Corp; Complaint

January 27, 1993.

Take notice that on January 21, 1993, Public Service Electric and Gas Company (PSE&G) file an "emergency complaint" against Texas Eastern Transmission Corporation (Texas Eastern), and requested the Commission to issue an order directing Texas Eastern to implement a December 3, 1992 request of PSE&G to convert a portion of its firm sales entitlements on Texas Eastern to an equivalent volume of firm transportation to be effective February 1, 1993.

PSE&G argues that Texas Eastern's refusal to grant PSE&G's conversion request is in direct violation of the Commission's order issued in Docket Nos. RP85–177–097, *et al.* on November 25, 1992,[1] and constitutes an unlawful denial of PSE&G's substantive rights under § 284.10 of the Commission's regulations and the NGA, as promulgated by the Commission pursuant to Order Nos. 436/500.

PSE&G argues that Texas Eastern is attempting to deny PSE&G its Order Nos. 436/500 conversion rights, while simultaneously increasing the cost of sales service to PSE&G just as the period of sustained cold weather has begun in PSE&G's service territory PSE&G asserts that its conversion request is substantively identical to Elizabethtown Gas Company's conversion request, which the Commission's November 25 order specifically directed Texas Eastern to grant.

PSE&G states that the Commission should take immediate action and also direct Texas Eastern to grant PSE&G's conversion request, effective February 1, 1993, given that the Commission has already decided the fundamental legal issues in its November 25 order.

Any person desiring to be heard or to protest said complaint 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 Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214, 385.211. All such motions or protests should be filed on or before February 26, 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. Answers to this complaint shall be due on or before February 26, 1993.

Lois D. Cashell,

Secretary.

[FR Doc. 93–2435 Filed 2–1–93; 8:45 am]

BILLING CODE 6717–01–M

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[1] 61 FERC ¶61,271 (1992).

Federal Energy Regulatory Commission

[Docket No. RP93–68–000]

Tennessee Gas Pipeline Co.; Tariff Filing

January 27, 1993.

Take notice that on January 22, 1993, Tennessee Gas Pipeline Company ("Tennessee") tendered for filing an original and ten copies of the following tariff sheets to be effective on March 1, 1993:

Fourth Revised Volume No. 1

Original Sheet Nos. 20B, 20C, 21B, 21C, 23A, 24B, 24C, 25B, 25C, 26B, 26C, 28C, 28D, 29B and 29C.

Original Volume No. 2

Original Sheet Nos. 5B, 5C, 6B, 6C, 7B, 7C, 8B, 8C, 9B, 9C, 10B and 10C.

Tennessee states that the purpose of these tariff sheets is to implement an optional, immediate commodity rate reduction for those customers who elect to pay the reduced commodity rates in lieu of the commodity rates currently in effect in Docket No. RP91–203. Tennessee proposes that the rates reflected on the revised tariff sheets remain in effect through the earlier of October 1, 1993 or the day prior to the day Tennessee's Order No. 636 compliance filing (in Docket No. RS92–23) becomes effective (Termination Date).

Tennessee further states that the optional, reduced commodity rates are based upon the level of variable costs and throughput utilized in Tennessee's general rate filing in Docket No. RP91–203. Tennessee states that, upon the Commission's determination of the just and reasonable rates, Tennessee will make refunds to each customer of any net overcollections for the period February 1, 1992 (when the RP91–203 rates became effective subject to refund) through the Termination Date (Refund Period). Tennessee asserts that it will not surcharge any customer from whom it undercollected for the Refund Period, although customers opting for the reduced rates must sign an agreement governing refunds.

Any person desiring to be heard or to protest this filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before February 3, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–2436 Filed 2–1–93; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Notice of Cases Filed During the Week of November 27 Through December 4, 1992

During the Week of November 27 through December 4, 1992, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: January 27, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Nov. 27 through Dec. 4, 1992]

Date	Name and location of applicant	Case No.	Type of submission
Nov. 30, 1992	Chuck Hansen, Sunnyvale, CA	LFA–0251	Appeal of an information denial. If granted: Chuck Hansen would receive access to a history of U.S. nuclear testing written by William E. Ogle.
Do	Home Oil Company, Inc., Ashford, AL	LEE–0046	Exception to the reporting requirements. If granted: Home Oil Company, Inc., would not be required to file Form EIA–782B, "Resellers/Retailers Monthly Petroleum Products Sales Report."
Do	Williams, Youle & Koenigs, P.C., Denver, CO	LFA–0252	Appeal of an information request denial. If granted: The November 16, 1992 Freedom of Information Request Denial issued by the Albuquerque Field Office of the Department of Energy would be rescinded, and Williams, Youle & Koenigs, P.C., would receive access to material relating to the payment of production bonuses to Rockwell International.
Dec. 4, 1992	Shell/Parkway Shell, East Orange, NJ	RR315–4	Request for modification/rescission in the Shell Refund proceeding. If granted: The November 24, 1992 Decision and Order (Case No. RF315–7304) issued to Parkway Shell regarding the firm's Application for Refund submitted in the Shell refund proceeding would be modified.

REFUND APPLICATIONS RECEIVED

[Week of Nov 27 through Dec. 4, 1992]

Date received	Name of refund proceeding/name of refund applicant	Case No.
11/30/92	Weslaco I.S.D.	RF272–93978.
11/30/92	Eunice Canal	RF346–13.
11/30/92	Turner Cty Bd of Commissioners.	RC272–166.
12/02/92	Roffers Construction Co.	RF272–93979.
12/07/92	West Mifflin Area Sch Dist.	RC272–167.
11/27/92 thru 12/04/92	Texaco Oil Refund applications received.	RF321–19478 thru RF321–19487.

REFUND APPLICATIONS RECEIVED—Continued

[Week of Nov. 27 through Dec. 4, 1992]

Date received	Name of refund proceeding/name of refund applicant	Case No.
11/27/92 thru 12/04/92.	Gulf Oil Refund applications received.	RF300–20734 thru RF300–20746.
11/27/92 thru 12/04/92	Atlantic Richfield refund applications received.	RF304–13415 thru RF304–13425.

[FR Doc. 93–2396 Filed 2–1–93; 8:45 am]

BILLING CODE 6450–01–M

Cases Filed During the Week of January 1 Through January 8, 1993

During the Week of January 1 through January 8, 1993, the applications for relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of

the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: January 27, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of January 1 through January 8, 1993]

Date	Name and location of applicant	Case No.	Type of submission
1/7/93	Gulf/Danny R. Holton, Cordova, Tennessee	RR300–220	Request for Modification/Rescission in the Gulf Refund Proceeding. *If granted:* The April 3, 1992 Dismissal Letter (Case No. RF300–19558) issued to Danny R. Holton would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
1/7/93	Gulf/Knight's Gulf, Cordova, Tennessee	RR300–219	Request for Modification/Rescission in the Gulf Refund Proceeding. *If granted:* The March 20, 1991 Dismissal Letter (Case No. RF300–11608) issued to Knight's Gulf would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
1/7/93	Gulf/Roberts Oil Company, Cordova, Tennessee	RR300–221	Request for Modification/Rescission in the Gulf Refund Proceeding. *If granted:* The July 1, 1991 Dismissal Letter (Case No. RF300–16779 issued to Roberts Oil Company would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.

REFUND APPLICATIONS RECEIVED

[Week of Jan. 1 through Jan. 8, 1993]

Date received	Name of refund proceeding/name of refund applicant	Case No.
1/4/93	Don's Texaco	RF321–19542.
1/4/93	Bill's Texaco Service Station.	RF321–19543.
1/4/93	Sink's Texaco	RF321–19544.
1/4/93	Mid Continent Coal & Coke.	RF321–19545.
1/4/93	Wheeling Steel Corporation.	RF321–19546.
1/4/93	Sanborn's Texaco	RF321–19547.
1/4/93	Ivan Ryder	RF321–19548.
1/4/93	Republic Steel Corporation.	RF321–19549.
1/4/93	Jones & Laughlin Steel Corp.	RF321–19550.
1/4/93	Yongstown Sheet & Tube Corp.	RF321–19551.
1/1/93 thru 1/8/93.	Atlantic Richfield Applications Received.	RF304–13490 thru RF304–13508.
1/1/93 thru 1/8/93.	Gulf Oil Refund Applications Received.	RF300–20807 thru RF300–20822.
1/1/93 thru 1/8/93.	Crude Oil Refund Applications Received.	RF272–94022 thru RF272–94036.

[FR Doc. 93–2397 Filed 2–1–93; 8:45 am]

BILLING CODE 6450–01–M

Issuance of Decisions and Orders During the Week of December 7 Through December 11, 1992

During the week of December 7 through December 11, 1992, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Remedial Order

Dane Energy Company, Economic Regulatory Administration, 12/10/92, HRO–0124, LRZ–0015

Dane Energy Company filed a Statement of Objections to a Proposed Remedial Order (PRO) issued to it by the Economic Regulatory Administration (ERA) on January 7, 1983. In the PRO, the ERA alleged that during the audit period, November 1978 through December 1980, Dane violated the layering regulation codified at 10 CFR 212.186, the certification regulation at 10 CFR 12.131(b)(1), the anti-circumvention regulation set forth at 10 CFR 205.202, and the normal business practices rule contained in 10 CFR 219,62(c).

In considering the Dane objections, the DOE found that Dane's crude oil resales violated the layering rule. The DOE dismissed Dane's general objections to the regulations underlying the PRO that had been considered and rejected in many other similar proceedings. The DOE also rejected the argument that Dane had provided at least one historical and traditional crude oil reseller service or function in every sale, finding instead that Dane failed to provide any substantive evidence of the alleged services. In finding that Dane violated the certification regulations, the DOE dismissed Dane's argument that it did not violate the regulation because it engaged in a balancing system of inventory. The DOE noted that it and the Temporary Emergency Court of Appeals had previously required a tracking of the certification for each gallon of crude oil sold, thereby repudiating the balancing system. Further, Dane argued that it did not violate the normal business practices and the anti-curcumvention rules, because those rules do not apply to crude oil sales. However, the DOE noted that in this case, Dane had misread the regulation in question.

In the PRO, the ERA had established Dane's liability on the basis of its total overcharges. ERA acknowledged that the overcharges received by Dane were in excess of the actual gross profits realized by Dane during the audit period and, therefore, Dane's overcharge liability might be also computed on the basis of Dane's gross profits in the transactions in question. This methodology reduces the overcharges assessed because losses are offset against gains. Both ERA and Dane made this calculation, with the ERA reaching a slightly higher-figure. In view of the minor difference and the need for administrative finality, the DOE accepted Dane's figure, establishing overcharge liability as $8,361,227.88, plus interest. In addition, the DOE determined that any refunds recovered from Dane shall be distributed in accordance with the procedures set forth in 10 CFR part 205, subpart V.

The other matter disposed of in this Remedial Order was a Motion to Modify filed by the ERA. The Motion requests that the PRO be modified so that interest will continue to accrue on Dane's overcharge liability until it has been paid. As the PRO was issued, interest could arguably cease accruing 20 days after the issuance of the Remedial Order. The DOE granted ERA's Motion because good cause exists and there has been no undue prejudice to Dane. Accordingly, the DOE issued the PRO, as modified, as a final Remedial Order.

Refund Applications

Texaco Inc./State of Connecticut, 12/8/92, *RF321–15303*

The DOE issued a Decision and Order granting in part an Application for Refund filed by the State of Connecticut in the Texaco Inc. subpart V special refund proceeding. In its Application, Connecticut claimed that it had purchased 62,873,640 gallons of fuel oil from Texaco during the March 1973 through June 1976 refund period for that product. However, Connecticut could neither document its claim that it purchased Texaco fuel oil nor the volume of any such purchases. Instead, the State had (1) assumed that it had purchased fuel oil from Texaco because Texaco marketed in Connecticut and (2) estimated these assumed purchases by applying Texaco's 1979–1981 percentage market share in the State to Connecticut's total volume of fuel oil purchases during the refund period. In the absence of any documentation, the DOE rejected the assumed estimated purchases as a basis for a refund. However, records supplied to the DOE by Texaco did show that the State had purchased 18,352 gallons of naphthas/gas oils and on this bases a refund of $27, including $7 of accrued interest was granted.

Vickers Energy Corporation/Kansas, 12/10/92, *RQ1–585*

The DOE issued a Decision and Order granting a second-stage refund Application filed by the State of Kansas in the Vickers special refund proceeding. Kansas requested permission to use $463,379 of its allocated Vickers monies to establish a central video teleconconferencing facility at the state capitol complex for use by state agencies and educational institutions. The DOE found that this program, as part of Kansas' overall balanced restitutionary program, would provide restitution to injured consumers of refined petroleum products by reducing the amount of necessary business travel for state employees. Accordingly, the State's second-stage refund Application was granted.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/Bahu's Arco #2 et al.	RF304–11221	12/08/92
Atlantic Richfield Company/Fair Oil Company, Inc.	RR304–47	12/09/92
Atlantic Richfield Company/Petroleum Products Corporation.	RR304–28	12/09/92
Atlantic Richfield Company/Simmons Arco et al.	RF304–13269	12/08/92
Beacon Oil Company/Seiberts' Oil Company, Inc.	RF238–34	12/09/92
A & S Service	RF238–35	.....
City of Devils Lake.	RF272–83523	12/08/92
Village of Westmont.	RF272–83542	.....
City of San Marcos.	RF272–83580	.....
City of O'Fallen .	RF272–83344	12/08/92
City of Bisbee	RF272–83394	.....
City of Lower Burrell.	RF272–83421	.....
Town of Milton .	RF272–83585	.....
Farmington School District et al.	RF272–79001	12/10/92
Gulf Oil Corporation/H.E. Sanson & Sons, Inc.	RF300–13176	12/10/92
Henry Sanson & Sons, Inc.	RF300–15057	.....
Gulf Oil Corporation/John J. Pisano et al.	RF300–17548	12/10/92
Gulf Oil Corporation/Onyx Corporation.	RF300–9675	12/08/92
Kenilworth Equities, Ltd.	RF272–66824	12/09/92
Mark S. Prosser	RF272–26270	12/10/92
Carl N. Becker ...	RF272–26378	.....
Vyrl Fegel	RF272–29163	.....
Gerald A. Sothers.	RF272–29449	.....
Peters Truck Lines, Inc. et al.	RF272–65652	12/10/92
S.A.D. #23—Carmel et al.	RF272–87500	12/08/92
Shell Oil Company/Lakeland Shell et al.	RF315–8706	12/11/92
Texaco Inc./Bray's Texaco et al.	RF321–15281	12/09/92
Texaco Inc./David Martin, Jr. Texaco.	RF321–19479	12/08/92
Texaco Inc./Doherty's Texaco.	RF321–14062	12/11/92
Texaco Inc./Industrial Lubricants Co. et al.	RF321–16015	12/10/92
Texaco Inc./Inter City Texaco.	RF321–19481	12/10/92
Texaco Inc./Port Malabar Texaco et al.	RR321–87	12/11/92
Texaco Inc./Robben Oil Company, Inc. et al.	RF321–16020	12/10/92
Texaco Inc./Spring Hope Grocery Company et al.	RF321–15719	12/09/92
Texaco Inc./Steere's Texaco & Food Store.	RF321–2890	12/08/92
Apex Management.	RF321–12885	

Dismissals

The following submissions were dismissed:

Name	Case No.
Admiral Cruises, Inc	RF272–15947.
Admiral Cruises, Inc	RD272–15947.
B&B Automotive	RF300–16648.
Bobby King Grocery	RF300–16688.
Bud's Service Station	RF300–16686.
Coastal Fruit Company	RF300–17826.
Don Morrow Gulf	RF300–16507.
Ernest Barwick	RF321–12600.
Frank Martinez Gulf #2	RF300–17360.
Goofy's	RF300–16694.
Hawthorne Gulf	RF300–16679.
Ingalls Shipbuilding, Inc	RF272–18693.
Ingalls Shipbuilding, Inc	RD272–18693.
Kennebuck Gulf	RF300–16638.
Morgan Brothers	RF300–17483.
Morgan Oil Company	RF300–5418.
Nash County School District	RF272–79478.
Norwegian Caribbean Lines	RD272–23818.
Norwegian Caribbean Lines	RF272–23818.
Pangles Store	RF300–16636.
Patrons Oil Co	RF326–196.
Syroco Inc	RF272–27736.
Tony's Truck Stop	RF300–16696.
Walker Oil Co., Inc	RF304–13289.
Westburne Drilling, Inc	RF272–15845.
Westburne Drilling, Inc	RD272–15845.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: January 27, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 93–2398 Filed 2–1–93; 8:45 am]

BILLING CODE 6450–01–M

Office of Placement and Administration

Sale of Natural Gas From the Naval Petroleum Reserves in Kern County, California

AGENCY: U.S. Department of Energy.

ACTION: Notice of intent.

SUMMARY: DOE announces that it is considering revising its next solicitation, expected to be issued February 25, 1993, for the sale of natural gas from the Naval Petroleum Reserves in California (NPRC), Kern County,

California. DOE proposes to change its sales solicitations from an unindexed four-month, fixed-price contract to a six-month contract under which a buyer will pay its bid price, adjusted by a monthly price adjustment factor (index).

DATES: Persons who wish to provide comments concerning the revisions to the solicitation for the sale of NPRC natural gas should submit their comments within 15 days of publication of this notice.

ADDRESSES: Interested persons can obtain a copy of the proposed provisions and should provide comments and address any questions to: Mr. James F. Thompson, U.S. Department of Energy, Office of Placement and Administration, PR–322.1, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 634–4410.

Scott Sheffield,

Acting Director, Division B, Office of Placement and Administration.

[FR Doc. 93–2395 Filed 2–1–93; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4557–6]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 4, 1993.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Investigations into Possible Noncompliance of Motor Vehicles with Federal Emission Standards (EPA ICR No. 222.03; OMB No. 2060–0086). This ICR requests renewal of the existing clearance.

Abstract: Owners of vehicles are asked to provide the EPA with their name, address, telephone number, their vehicle make and model year, and the data needed to determine if the vehicle meets certain maintenance and use criteria. Based upon these responses, EPA selects vehicles for testing to ascertain manufacturers' compliance with Federal emission standards. EPA needs these test results for its recall program.

Burden Statement: The public reporting burden for this collection of information is estimated to average 9 minutes per response, including time for reviewing instructions, answering questions, and completing and reviewing the collection of information.

Respondents: Motor vehicle owners and heavy duty truck owners

Estimated Number of Respondents: 20,050.

Estimated Total Annual Burden on Respondents: 3,500 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC, 20460.

and

Troy Hillier, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW.,Washington, DC, 20530.

Dated: January 27, 1993.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 93–2365 Filed 2–1–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4555–4]

Request for Nominations for Essential Use Exemptions for Halons 1211, 1301, and 2402

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Through this notice, EPA requests nominations for exemptions from the production and consumption phase-out under the Montreal Protocol of halons typically used for fire fighting and explosion protection, in accordance with the "essential uses" decision adopted by the Parties to the Montreal Protocol on Substances That Deplete the Ozone Layer at their November 1992 meeting. Nominations for essential use exemptions for other Class I substances will be requested in a future notice.

DATES: Nominations for essential use exemptions for halon that are to be considered at the Fifth Meeting of the Parties should be submitted to the Agency no later than March 2, 1993.

ADDRESSES: Program Manager, Essential Use Exemptions, Mail Stop 6202J, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Karen Metchis, Substitutes Analysis and Review Branch, Stratospheric Protection Division (6202J), Office of Atmospheric Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 233–9193.

SUPPLEMENTARY INFORMATION:

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I. Background—Fourth Meeting of the Parties to the Protocol
II. Purpose of Today's Notice—Essential Use Exemptions for Halons

I. Fourth Meeting of the Parties to the Protocol

At the Fourth Meeting of the Parties to the Montreal Protocol in Copenhagen on November 23–25, 1992, the Parties agreed to accelerate the phase-out schedules for certain controlled substances, including halons. With respect to halons, the Parties agreed to the phase out by January 1, 1994. The Parties also rendered decisions on a variety of other matters, including the adoption of essential use criteria.

II. Essential Use Exemptions for Halons

The Parties to the Montreal Protocol agreed at the 1992 meeting in Copenhagen to allow for an exemption of essential uses of controlled substances from the production and consumption phase out schedule. Language regarding essential uses was added to the Protocol provisions in Article 2 governing the control measures. (See also Decision IV/25 of the Fourth Meeting of the Protocol). The Parties recognized the importance of including such an exemption, especially for halons, because of the accelerated phaseout dates for these chemicals. The Parties will decide on specific essential use exemptions for halons at the Fifth Meeting of the Parties tentatively scheduled for October 1993 and at subsequent meetings, and on essential use exemptions for the remaining substances at the Sixth Meeting of the Parties in approximately September 1994 and at subsequent meetings. Nominations need not be made at this time in cases where companies have essential uses still requiring halon, but where adequate supplies of halons are currently available. Nominations for these uses may be made at a later date

for consideration at subsequent meetings of the Parties.

The Parties set out criteria to apply in identifying essential uses and established a process for the Parties to decide on what uses would qualify under this provision. Decision IV/25 states that a controlled substance should qualify as "essential" only if "it is necessary for the health, safety or is critical for the functioning of society (encompassing cultural and intellectual aspects)" and "there are no available technically and economically feasible alternatives or substitutes that are acceptable from the standpoint of environment and health". In addition, the Parties agreed "that production and consumption, if any, of a controlled substance, for essential uses should be permitted only if: all economically feasible steps have been taken to minimize the essential use and any associated emission of the controlled substance; and the controlled substance is not available in sufficient quantity and quality from the existing stocks of banked or recycled controlled substances."

Any essential use exemptions would also have to comply with the provisions of the Clean Air Act (CAA). Section 604 sets forth specific exemptions from the phaseout schedules contained in the Clean Air Act. To the extent that an accelerated phaseout schedule is adopted under the Montreal Protocol, EPA could provide exemptions beyond those specified in the Act, so long as these exemptions do not exceed amounts allowed in the schedule contained in section 604(a). Since section 604(b) specifies the phaseout date for Class I substances, that section effectively limits the authority of the Agency to provide essential use exemptions for periods after the CAA's termination date, which is the year 2000 for halons.

The exemptions outlined in section 604 are limited in scope, amount and time. Section 604(d)(3) allows exceptions for limited quantities of halons solely for purposes of aviation safety. Exceptions under section 604(d) are limited to annual quantities no greater than 10 percent of the baseline year production of the person receiving the exception. Section 604(f) permits the President to issue exemptions for the production and use of CFC–114 and halons if necessary for national security. (This subsection does not provide such authority to EPA.) Finally, section 604(g) permits the Agency to authorize production of halons for fire suppression and explosion prevention, but expressly provides that the Administrator may not grant such exceptions after 1999. A further exception to that is provided by section 604(g)(3), which provides the authority to grant exceptions through 2004 for halons used on the North Slope of Alaska. In sum, for a use to qualify for an exemption in the United States, the exemption must be consistent with both the Montreal Protocol and the Clean Air Act.

The need for essential use exemptions for halon will largely depend on the success of programs to reallocate those halons stored in existing systems to more necessary applications where other alternatives are suitable. Efforts to initiate such "halon banking" have recently begun, and EPA urges all halon users to act quickly to assess their current use of those compounds and to determine if alternative approaches to fire protection are feasible. If so, the Agency encourages users to contribute any unneeded halon to one of the banking programs currently being established, such as the Halon Recycling Corporation (HRC) recently established by the Halon Alternative Research Corporation. Interested parties may call EPA's Stratospheric Ozone Hotline (1–800–296–1996) for information about halon banking, or HRC may be contacted directly at 1–800–258–1283. If a halon user determines that other alternatives are not feasible and that sources of future supply do not exist, the user should prepare and submit to EPA an essential use application as described below.

In accordance with the essential use decision taken by the Parties to the Montreal Protocol in Copenhagen, governments which are Parties must submit nominations for essential uses to the United National Environment Programme's Secretariat for the Montreal Protocol. For halon essential uses, these nominations must be submitted at least six months before the meeting at which the Parties will take a decision on whether to approve the essential use, e.g., by April 1993 for the Fifth Meeting of the Parties, which may be held as early as October 1993. Thus, the first step in the process to qualify a use as essential is for the user to notify EPA or its candidate use and for EPA to evaluate that use for consistency with the criteria adopted by the Parties in Copenhagen. EPA will review the candidate for exemption and working with other interested federal agencies will determine whether or not it should be submitted to the Ozone Secretariat for further consideration. Nominations submitted to the Ozone Secretariat by Parties will then be directed to UNEP's Montreal Protocol Technology and Economic Assessment Panel which will review such submissions and prepare recommendations to the Parties for exemptions. The Panel will review these nominations to determine whether the eligibility criteria have been satisfied and examine the expected duration of the essential use, emission controls for the essential use application, sources of already produced controlled substances which could be made available to meet the essential use, and the steps necessary to ensure that alternatives and substitutes are available as soon as possible for the proposed essential use. The Parties also instructed the Technical Panel to consider the environmental acceptability, health effects, economic feasibility, availability and regulatory status of alternatives and substitutes.

The Technical Panel must submit its report to the Parties at least three months before the Parties meet to designate essential uses. The Panel is currently working under the assumption that it must submit recommendations for halons by July 1, 1993.

In order to meet these tight deadlines, the Agency must act quickly, and through this Notice requests nominations for the essential use exemptions for halons to be considered at the Fifth Meeting of the Parties. Recommendations for essential use exemptions for halon should be submitted to the Agency no later than (one month after date of publication), to allow EPA time to review the information before the deadline for submitting nominations to the Secretariat.

All nominations should present the following information:

(1) Description of the specific use of the controlled substance, as well as annual projected amount required;

(2) Demonstration that continued use of that substance in that application is necessary for health and safety reasons or is critical to the functioning of society;

(3) Demonstration that no alternatives are technically, economically or legally available;

(4) Description of the steps taken to date to find alternatives;

(5) Description of future steps to be taken to find alternatives;

(6) Demonstration that steps have been taken to secure existing stocks of the chemicals, either from a bank or from recovery sources, and that necessary quantities of appropriate quality are not available for this use;

(7) The expected time period for which this exemption is required; and

(8) Consistency with CAA provisions on essential uses. All nominations should be sent to: Program Manager,

Essential Use Exemptions, Mail Stop 6202J, Environmental Protection Agency, Washington, DC, 20460.

The Agency will work with submitters, other interested federal agencies, and outside experts to review this information and forward nominations to the Protocol's Secretariat for consideration as appropriate and consistent with any CAA limitations.

Dated: January 21, 1993.

Michael H. Shapiro,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 93–2364 Filed 2–1–93; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4559–3]

Notice of Open Meeting on February 23–24, 1993, Industrial Pollution Prevention Project Focus Group of the Technology Innovation and Economics Committee, National Advisory Council for Environmental Policy and Technology (NACEPT)

Under PL 92463 (The Federal Advisory Committee Act), EPA gives notice of the final meeting of the Industrial Pollution Prevention Project Focus Group of the Technology Innovation and Economics (TIE) Committee. The TIE Committee is a standing committee of the National Advisory Council for Environmental Policy and Technology (NACEPT), an advisory committee to the Administrator of the EPA. The meeting will convene from 9 am to 5 pm on February 23, 1993, and from 8:30 am to 1 pm on February 24. It will be located in the Omni Shoreham Hotel, 2500 Calvert St NW., Washington, DC 20008.

The Industrial Pollution Prevention Project Focus Group is examining methods by which industrial pollution prevention can be encouraged, particularly through effluent guidelines. The Focus Group is investigating the possibility that among the most important barriers to the implementation of pollution prevention concepts and programs are disincentives inadvertently built into standard setting processes, including the effluent guidelines. The Focus Group, which includes individuals from industry, academia, environmental groups, all levels of government, and other interested parties, is developing recommendations for EPA about the incorporation of pollution prevention into EPA's Office of Water effluent guidelines process and about EPA's efforts to spread the pollution prevention ethic.

The Focus Group is an "Ongoing Forum" for the Industrial Pollution Prevention Project. At the meeting, the Focus Group will continue to discuss ideas originally presented in previous meetings. The objective of this discussion will be to formulate possible recommendations to EPA.

The February 23–24 meeting will be open to the public. Written comments submitted by February 19 will be received and considered by the Focus Group. Additional information about the meeting may be obtained from Jim Lund by calling 202–260–7811, by writing him at EPA (WH–551), 401 M Street, SW., Washington, DC 20460, or by sending him a fax at 202–260–5394.

Dated: January 26, 1993.

Abby J. Pirnie,

NACEPT Designated Federal Official.

[FR Doc. 93–2366 Filed 2–1–93; 8:45 am]

BILLING CODE 6560–50–M

[EMAP–01–93; FRL–4558–5]

Office of Research and Development; Indicators of Ecosystem Stress

AGENCY: Environmental Protection Agency.

ACTION: Request for applications.

SUMMARY: Natural and managed ecosystems are exposed continually to both natural and anthropogenic stresses, and the condition and extent of these resources are continually changing. To document these dynamics, the U.S. Environmental Protection Agency (USEPA), in conjunction with other Federal agencies, has established the Environmental Monitoring and Assessment Program (EMAP), the programmatic objectives of which are:

1. To estimate with known confidence and on a regional basis the current status, trends, and changes in selected indicators of the condition of the Nation's ecological resources (i.e., agroecosystems, arid lands, estuaries, forests, the Great Lakes, surface waters, and wetlands);

2. To estimate with known confidence the geographic coverage and extent of the Nation's ecological resources;

3. To seek associations between selected indicators of natural and anthropogenic stresses and indicators of the condition of ecological resources; and

4. To provide annual statistical summaries and periodic assessments of the Nation's ecological resources.

As implied by these objectives, the concept of an ecological indicator is a central theme of the EMAP program. As defined by EMAP, an indicator is any expression of the environment that estimates the condition of ecological resources, the magnitude of stress, the exposure of a biological component, or the amount of change in ecosystem health or condition. EMAP has adopted a process to develop indicators to meet these objectives. The first stage in this process is to identify the societal and ecological values that the resource of concern is considered to fulfill. Based on these values, sets of assessment questions are then formulated. Indicators that have well defined conceptual links to the resource's recognized values and that will answer the assessment questions of concern are then identified and evaluated for long-term monitoring and assessment.

I. Scope

The objective of this Request for Application (RFA) is to support the development and evaluation of indicators for estimating the ecological condition of estuarine, forested, and wetland resources as related to the values of biological integrity/biodiversity and ecological sustainability. Indicators developed under the aegis of this RFA will be evaluated by EMAP for their utility in the program's long-term implementation.

For the purpose of this RFA, biological integrity is defined to be a balanced, integrated, and adaptive community of organisms having a species composition, diversity, and functional organization that is representative of natural habitats within a geographic region. Although ecological sustainability has no simple definition, this value does encompass the ability of a resource to maintain: (1) A desired level of biological integrity, (2) intact biotic and abiotic forcing functions, (3) a nominal area of extent, and (4) relevant inter-resource/landscape interactions. Ecological sustainability also includes the ability of a resource to resist change and to recover from natural and anthropogenic stresses. For some resource values such as fishability, i.e., the presence of catchable fish that are safe to eat, it is immediately obvious what indicators should be pursued. For whole system values, like biological integrity and ecological sustainability, however, the best choice of indicators is unclear. To remedy this situation, EMAP assumes that the indicator selection process for such values should be based on conceptual models of the resource's structure and function. These models then are used not only to specify the spectrum of quantifiable attributes of the values of interest, but more

importantly, to identify indicators that might be most appropriate and productive. Applicants responding to this RFA should discuss their conceptual framework as a necessary and integral part of their proposed research.

Because the condition of estuarine, forested, and wetland ecosystems is generally dependent on the resource classes that are physically adjacent to them and on the biological transport of material and energy from distant resources (e.g., transport phenomena associated with migrating fish and wildlife), indicator research proposed in resource classes other than those identified above will be considered by this RFA if their conceptual linkages to the condition of estuarine, forested, and wetlands ecosystems are delineated clearly. For example, to estimate certain dimensions of the ecological sustainability of forests, interactions with surface waters (i.e., lakes, streams, and rivers), grasslands, shrub lands, or agroecosystems may need to be addressed for an integrated resource assessment. Under these circumstances, indicator research in these other resource classes will be considered appropriate for this RFA.

II. The Application

Application forms, instructions, and other pertinent information for assistance programs are available in the EPA Research Grants Application/ Information Kit. Interested investigators should review the materials in this kit before preparing an application for assistance. The kits are available from U.S. Environmental Protection Agency, Grants Operations Branch (PM–216F), 401 M St., SW., Washington, DC 20460, (202) 260–9266.

Each application will consist of the Application for Federal Assistance Form (Standard Forms 424 and 424A) and separate sheets providing the budget breakdown for each year of the project, curriculum vitae for the principal investigator and co-workers, abstract of the proposed project, and a project narrative. All certification forms (drug-free workplace, etc.) must be signed and included with the application.

III. Special Instructions

Proposed projects must be investigative research which advances the state of knowledge in the environmental sciences and technology. Proposals will not be accepted that are routine monitoring, state-of-the-art or market surveys, literature reviews, development or commercialization of proven concepts, or the preparation of materials and documents, including process designs or instruction manuals.

Applications containing proprietary or other types of confidential information will be immediately returned to the applicant without review.

The following special instructions apply to all applicants responding to this solicitation:

- Applications must be identified by printing "EMAP–01–93" in the upper right-hand corner or block 10 of Application Form SF–424. The absence of this identifier from an application may lead to delayed processing or misassignment of the application.
- A one-page abstract must be included with the application.
- The project narrative section of the application must not exceed twenty-five 8½ × 11 inch, consecutively numbered pages of standard type (10–12 characters per inch), including tables, graphs, and figures. For purposes of this limitation, the "project narrative section" of the application consists of the following items in the Application/Information/ Kit:

(1) Description of Project
(2) Objectives
(3) Results or benefits expected
(4) Approach
(5) General Project Information
(6) Quality Assurance (if needed).

Attachments, appendixes, and reference lists for the narrative section may be included, but are within the 25-page limitation.

Items not included under the 25-page limitation are the SF–424 and other forms, the budget, a curriculum vitae, and the abstract.

The curriculum vitae must not exceed two consecutively numbered pages for each principal investigator and should focus on education, positions held, and most recent or related publications.

Itemized budgets, including budget justifications must not exceed five consecutively numbered pages (excluding budget information on the SF–424 forms).

Applications not meeting these requirements will not be forwarded without corrections to reviewers. Applicants will be notified of deficiencies and requisite changes will be requested.

IV. Application Submission/Closing Dates

To be considered, the original and eight copies of the application must be received by EPA's Grants Operation Branch no later than the close of business on April 30, 1993. Fully developed research grant applications, prepared in accordance with instructions in the Application for Federal Assistance Form SF–424, should be sent to the Grants Operation Branch. Informal, incomplete, or unsigned proposals will not be considered. The application must be sent to U.S. Environmental Protection Agency, Grants Operations Branch (PM–216F), 401 M St., SW., Washington, DC 20460.

For overnight express mail, the address is U.S. Environmental Protection Agency, Grants Operation Branch, Fairchild Building, room 801, 499 South Capitol Street, SW., Washington, DC 20460, (202) 260–9266.

Closing date for all applications responding to this solicitation is April 30, 1993.

V. Eligibility

The following eligibility requirements apply to this request for applications.

Academic and nonprofit institutions located in the United States as well as State or local governments are eligible under all existing authorizations. Profit-making firms are eligible only under certain laws, and then under restrictive conditions, including the absence of any profit from the project.

Project applicants who are uncertain of their eligibility should study the restrictive language of the law governing the area of research interest or contact EPA's Grants Operations Branch at (202) 260–9266.

Federal agencies and Federal employees are not eligible to participate in this program.

VI. Review and Selection

All grant applications are initially reviewed by the Agency to determine their legal and administrative acceptability.

Acceptable applications are then reviewed by an appropriate peer review panel. This review is designed to evaluate and rank each proposal according to its scientific merit and utility as a basis for recommending Agency approval or disapproval. Each peer review panel is composed primarily of non-EPA scientists, engineers, and economists who are experts in their respective disciplines.

The panels use the following criteria in their reviews:

- Quality of the research plan (including theoretical and/or experimental design, originality, and creativity);
- Qualifications of the principal investigator and staff including knowledge of relevant subject areas;
- Utility of the research, including potential contribution to scientific knowledge in the environmental area;

• Availability and adequacy of facilities and equipment;

• Budgetary justification—in particular justification and cost requests for equipment will be carefully reviewed.

A summary statement of the scientific review and recommendation of the panel is provided to each applicant. Grants are selected by EPA on the basis of technical merit, program balance, and budget.

VII. Funding Mechanism

For all general and targeted grants, the funding mechanism will consist of a grant agreement between EPA and the recipient.

Federal grant regulation 40 CFR 30.307 requires that all recipients provide a minimum of 5% of the total project cost, which may not be taken from Federal sources. OER will not support a request for a deviation from this requirement for any grant supported by its Research Grants Program.

All budget costs and justifications, particularly requests for equipment, will be carefully reviewed. The maximum project period is three years; shorter periods are encouraged. Subcontractors for research to be conducted under the grant should not exceed approximately 40% of the total direct cost of the grant for each year in which the subcontract is awarded.

Approximately $2 million will be available from fiscal 1993 funds. Each project will be funded for up to three years at an annual level of support up to approximately $150,000.

VIII. References

Hunsacker CT, Carpenter DE (eds.). 1990. Ecological Indicators for the Environmental Monitoring and Assessment Program. (Available from National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. No. PB91141796).

Karr JR. 1981. Assessment of Biotic Integrity Using Fish Communities. Fisheries, 6:21–27.

Karr JR, Fausch DD, Angermeier PL, Yant PR, and Schlosser IJ. 1986. Assessing Biological Integrity in Running Waters: A. Method and its Rationale. Special Publication 5. Illinois Natural History Survey. Champaign, IL 61820.

Thornton KW. 1988. The Lake and Reservoir Restoration Guidance Manual (First Edition). (Available from National Technical Information Service. No. PB88230719).

IX. Contacts

Applicants may telephone for further information on schedules and review processes. The number is (202) 260–7474. Applicants with additional questions of a technical nature may contact Clyde Bishop, Science Review Administrator, on (202) 260–5727. The address is: U.S. Environmental Protection Agency, Office of Exploratory Research (RD–675), 401 M St., SW., Washington, DC 20460.

Dated: January 22, 1993.

Robert A. Papetti,

Director, Research Grants Staff.

[FR Doc. 93–2272 Filed 2–1–93; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[PR Docket No. 92–267; DA 93–49]

Private Land Mobile Radio Services; Montana Public Safety Plan

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Chief, Private Radio Bureau and the Chief Engineer released this Order accepting the Public Safety Radio Plan for Montana (Region 25). As a result of accepting the Plan for Region 25, licensing of the 821–824/866–869 MHz band in that region may begin immediately.

EFFECTIVE DATE: January 25, 1993.

FOR FURTHER INFORMATION CONTACT: Betty Woolford, Private Radio Bureau, Policy and Planning Branch, (202) 632–6497.

SUPPLEMENTARY INFORMATION:

Order

Adopted: January 12, 1993.
Released: January 25, 1993.

By the Chief, Private Radio Bureau and the Chief Engineer.

1. On June 22, 1992, Region 25 (Montana) submitted its Public Safety Plan to the Commission for review. The Plan sets forth the guidelines to be followed in allotting spectrum to meet current and future mobile communications requirements of the public safety and special emergency entities operating in Montana.

2. The Montana Plan was placed on Public Notice for comments on November 9, 1992, 57 FR 54234 (November 17, 1992). The Commission received no comments in this proceeding.

3. We have reviewed the Plan submitted for Montana and find that it conforms with the National Public Safety Plan. The plan includes all the necessary elements specified in the Report and Order in Gen. Docket No. 87–112, 3 FCC Rcd 905 (1987), and satisfactorily provides for the current and projected mobile communications requirements of the public safety and special emergency entities in Montana.

4. Therefore, we accept the Montana Public Safety Radio Plan. Furthermore, licensing of the 821–824/866–869 MHz band in Montana may commence immediately.

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

[FR Doc. 93–2315 Filed 2–1–93; 8:45 am]

BILLING CODE 6712–01–M

[PR Docket No. 92–268; DA 93–50]

Private Land Mobile Radio Services; Nevada Public Safety Plan

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Chief, Private Radio Bureau and the Chief Engineer released this Order accepting the Public Safety Radio Plan for Nevada (Region 27). As a result of accepting the Plan for Region 27, licensing of the 821–824/866–869 MHz band in that region may begin immediately.

EFFECTIVE DATE: January 25, 1993.

FOR FURTHER INFORMATION CONTACT: Betty Woolford, Private Radio Bureau, Policy and Planning Branch, (202) 632–6497.

SUPPLEMENTARY INFORMATION:

Order

Adopted: January 12, 1993.
Released: January 25, 1993.

By the Chief, Private Radio Bureau and the Chief Engineer.

1. On April 19, 1990, Region 27 (Nevada) submitted its Public Safety Plan to the Commission for review. The Plan sets forth the guidelines to be followed in allotting spectrum to meet current and future mobile communications requirements of the public safety and special emergency entities operating in Nevada. On May 31, 1990, the Commission sent a letter to the region pointing out certain deficiencies in the Plan. Revisions to the Plan were filed on May 15, 1992.

2. The Nevada Plan was placed on Public Notice for comments on November 9, 1992, 57 FR 54234 (November 17, 1992). The Commission received no comments in this proceeding.

3. We have reviewed the Plan submitted for Nevada and find that it conforms with the National Public Safety Plan. The plan includes all the necessary elements specified in the Report and Order in Gen. Docket No. 87–112, 3 FCC Rcd 905 (1987), and satisfactorily provides for the current

and projected mobile communications requirements of the public safety and special emergency entities in Nevada.

4. Therefore, we accept the Nevada Public Safety Radio Plan. Furthermore, licensing of the 821–824/866–869 MHz band in Nevada may commence immediately.

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

[FR Doc. 93–2314 Filed 2–1–93; 8:45 am]

BILLING CODE 6712–01–M

[PR Docket No. 92–269; DA 93–51]

Private Land Mobile Radio Services; Oregon Public Safety Plan

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Chief, Private Radio Bureau and the Chief Engineer released this Order accepting the Public Safety Radio Plan for Oregon (Region 35). As a result of accepting the Plan for Region 35, licensing of the 821–824/866–869 MHz band in that region may begin immediately.

EFFECTIVE DATE: January 25, 1993.

FOR FURTHER INFORMATION CONTACT: Betty Woolford, Private Radio Bureau, Policy and Planning Branch, (202) 632–6497.

SUPPLEMENTARY INFORMATION:

Order

Adopted: January 12, 1993.

Released: January 25, 1993.

By the Chief, Private Radio Bureau and the Chief Engineer.

1. On June 12, 1992, Region 35 (Oregon) submitted its Public Safety Plan to the Commission for review. The Plan sets forth the guidelines to be followed in allotting spectrum to meet current and future mobile communications requirements of the public safety and special emergency entities operating in Oregon.

2. The Oregon Plan was placed on Public Notice for comments on November 9, 1992, 57 FR 54234 (November 17, 1992). The Commission received no comments in this proceeding.

3. We have reviewed the Plan submitted for Oregon and find that it conforms with the National Public Safety Plan. The plan includes all the necessary elements specified in the Report and Order in Gen. Docket No. 87–112, 3 FCC Rcd 905 (1987), and satisfactorily provides for the current and projected mobile communications requirements of the public safety and special emergency entities in Oregon.

4. Therefore, we accept the Oregon Public Safety Radio Plan. Furthermore, licensing of the 821–824/866–869 MHz band in Oregon may commence immediately.

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

[FR Doc. 93–2316 Filed 2–1–93; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 010493 AND 011593

Name of Acquiring Person, Name of Acquired Person, Name of Acquired Entity	PMN No.	Date Terminated
Insituform of North America, Inc., Naylor Industries, Inc., Naylor Industries, Inc	93–0301	01/04/93
Apache Corporation, Apache Corporation, APC Operating Partnership, L.P	93–0466	01/04/93
Pacific Telesis Group, Craig O. McCaw, Midwest Cellular Telephone Company	93–0479	01/04/93
Healthsource, Inc., Physicians' Health Systems, Inc., Physicians' Health Systems, Inc	93–0389	01/06/93
Seagate Technology, Inc., SunDisk Corporation, SunDisk Corporation	93–0415	01/06/93
UNUM Corporation, Gayle O. Averyt, Colonial Companies, Inc	93–0477	01/06/93
Burlington Resources, Inc., Unocal Corporation, Union Oil Company of California	93–0486	01/06/93
General Electric Company, Exergy, Inc., Exergy, Inc	93–0451	01/07/93
The Dial Corporation, Anne Murchison, United Exposition Services Co., Inc	93–0460	01/07/93
National Auto/Truckstops Holdings Corporation, Unocal Corporation, Unocal Corporation	93–0471	01/11/93
Bergen Brunswig Corporation, W. Michael Keiser, Healthcare Distributors of Indiana, Inc	93–0487	01/11/93
OHM Corporation, Waste Management, Inc., Brand Environmental Services, Inc	93–0490	01/11/93
American Industrial Partners Capital Fund, L.P., Lear Siegler Holdings, Corp., Lear Siegler Truck Products Corp	93–0493	01/11/93
I.I.S. Intelligent Information Systems Limited, Onset Corporation, Decision Data Inc	93–0495	01/11/93
AOC Limited Partnership, Peter Munk, CMAT, Inc	93–0498	01/11/93
Crop Production Services, Inc., Unocal Corporation, PureGro Company	93–0501	01/11/93
Georg von Holtzbrinck GmbH & Co., Worth Publishers, Inc., Worth Publishers, Inc	93–0476	01/12/93
Harry Lebensfeld, Barnes Group Inc., Barnes Group Inc	93–0436	01/13/93
United HealthCare Corporation, Western Ohio Health Care Corporation, Western Ohio Health Care Corporation	93–0458	01/13/93
BOC Group plc, E.I. du Pont de Nemours & Company, Inc., The Du Pont Merck Pharmaceutical Company	93–0447	01/15/93
BOC Group plc, Merck & Co., Inc., The Du Pont Merck Pharmaceutical Company	93–0448	01/15/93
Peter K. Williams, 3Com Corporation, 3Com Corporation	93–0454	01/15/93
3Com Corporation, Thomas H. Williams, Star-Tek, Inc	93–0455	01/15/93
O'Sullivan Corporation, Capitol Plastics of Ohio, Inc., Capitol Plastics of Ohio, Inc	93–0492	01/15/93
Dr. Francesco Caporossi, Equity Holdings Limited, Signet Armorlite, Inc	93–0494	01/15/93
Sonat Inc., W.R. Grace & Co., Grace Petroleum Corporation	93–0500	01/15/93
Charles Schusterman, W.R. Grace & Co., Grace Petroleum Corporation	93–0504	01/15/93
Mannesmann AG, Crown Cork & Seal Company, Inc., Van Dorn Company	93–0506	01/15/93
Occidental Petroleum Corp., Sirgo Production Company, Inc., Sirgo Production Company, Inc	93–0512	01/15/93

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 010493 AND 011593—Continued

Name of Acquiring Person, Name of Acquired Person, Name of Acquired Entity	PMN No.	Date Terminated
Takeshi Sekiguchi, Yuichiro Inomata (a Japanese person), TAT Los Angeles Co., Limited	93-0516	01/15/93
Patrick Ngiam (a/k/a Ngiam Mia Je), Robert Diwan, Austin Computer Systems, Inc	93-0517	01/15/93
Benjamin Ngiam (a/k/a Ngiam Mia Kiat), Robert Diwan, Austin Computer Systems, Inc	93-0518	01/15/93
Cirrus Logic, Inc., Pacific Communication Sciences, Inc., Pacific Communication Sciences, Inc	93-0527	01/15/93

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, room 303, Washington, DC 20580, (202) 326-3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 93-2384 Filed 2-1-93; 8:45 am]

BILLING CODE 6750-01-M

[File No. 901 0172]

B & J School Bus Service, Inc., et al.; Proposed Consent Agreement with Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, three school bus transportation companies (B & J, Ryder, and Mayflower) that provide bus service in the Kansas City, Missouri School District from entering into agreements with each other or with any other school bus transportation provider or potential provider—with respect to school bus transportation services in the Kansas City area—to submit jointly determined bids; to refrain from bidding; to allocate or divide jobs, markets, customers, contracts, or territories; or to set prices or other terms and conditions. In addition, the agreement would prohibit the companies, for three years, from communicating to each other or to past, present or likely future providers of bus service to the Kansas City school district their plans to bid, or not to bid, for those services.

DATES: Comments must be received on or before April 5, 1993.

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: Thomas Russell or Catherine Fuller, Chicago Regional Office, Federal Trade Commission, 55 East Monroe St., suite 1437, Chicago, IL 60603. (312) 353-8156.

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

In the Matter of B & J School Bus Service, Inc., a corporation, Ryder Student Transportation Services, Inc., a corporation, and Mayflower Contract Services, Inc., a corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices by B & J School Bus Service, Inc., Ryder Student Transportation Services, Inc., and Mayflower Contract Services, Inc., corporations, hereinafter sometimes referred to as "B & J," "Ryder," and "Mayflower," respectively, or as "proposed respondents," collectively, and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from engaging in the acts and practices being investigated.

It is hereby agreed by and between proposed respondents, by their duly authorized officers, and counsel for the Federal Trade Commission that:

1. B & J is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its offices and principal place of business located at 3707 Beacon, Kansas City, Missouri 64129.

2. Ryder is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its offices and principal place of business located at 3600 NW. 82nd Avenue, Miami, Florida 33166.

3. Mayflower is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Indiana, with its offices and principal place of business located at 5360 College Boulevard, Overland Park, Kansas 66211.

4. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

5. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

6. 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 of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondents, 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.

7. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint here attached.

8. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here

attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public with 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 respondents' addresses as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

9. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I.

For purposes of this order, the following definitions shall apply:

(A) "B & J" means B & J School Bus Service, Inc., and its successors and assigns, partnerships, joint ventures, subsidiaries, divisions, groups and affiliates that B & J School Bus Service, Inc. controls, directly or indirectly, and their respective directors, officers, employees, agents and representatives, that B & J School Bus Service, Inc. controls, directly or indirectly, and their respective successors and assigns.

(B) "Ryder" means (1) Ryder Student Transportation Services, Inc.; (2) its successors and assigns, partnerships, joint ventures, subsidiaries, divisions, groups and affiliates and related companies engaged in school bus transportation services, now or in the future; (3) all companies or entitles created in the future by any of the parent companies of Ryder Student Transportation Services, Inc., which companies or entities are engaged in school bus transportation services; and (4) the respective directors, officers, employees, agents and representatives of any of the entities described in subparagraphs (1), (2) and (3) above.

(C) "Mayflower" means Mayflower Contract Services, Inc., its parent, Mayflower Group, Inc., and their predecessors, including, but not limited to, R. W. Harmon and Sons, Inc., and PACE School Bus Service, Inc., successors and assigns, partnerships, joint ventures, subsidiaries, divisions, groups and affiliates involved in school bus transportation services now or in the future, and their respective directors, officers, employees, agents and representatives, successors and assigns.

(D) "Respondents" means B & J, Ryder and Mayflower.

(E) "Kansas City Area" means Clay, Platte and Jackson counties in the State of Missouri.

II.

It is ordered, That respondents cease and desist from, directly, indirectly, or through any corporate or other device, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, entering into, attempting to enter into, organizing or attempting to organize, implementing or attempting to implement, continuing or attempting to continue, or soliciting any combination, agreement, or understanding, either express or implied, with any other respondent or other provider or potential provider of school bus transportation services in the Kansas City Area:

1. To submit jointly determined bids or refrain from bidding for school bus transportation services in the Kansas City Area;

2. With respect to price or other terms and conditions relating to school bus transportation services in the Kansas City Area; or

3. To allocate or divide jobs, markets, customers, contracts, or territories for school bus transportation services in the Kansas City Area.

III.

It is further ordered, That for a period of three (3) years after the date this order becomes final respondents cease and desist from directly, indirectly, or through any corporate or other device, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, communicating to:

1. Any other respondent,

2. Any entity that has at any time since 1982 provided school bus transportation services in the Kansas City Area,

3. Any entity that is providing school bus transportation services in the Kansas City Area,

4. Any entity that is known or reasonably should be known to have been requested to provide school bus transportation services in the Kansas City Area, or

5. Any entity that has publicly announced an intention to provide school bus transportation services in the Kansas City Area,

any intentions, decisions, or plans to bid or to refrain from bidding for school bus transportation services for the Kansas City, Missouri School District.

Provided, however, that paragraph III shall not apply to communications to KCMSD, potential purchasers of substantially all of any respondent's stock or assets, suppliers, vendors, lenders, creditors, landlords, tenants or subcontractors that are limited to the context of the relationship.

IV.

It is further ordered, That nothing in this order shall prohibit any respondent from:

1. Forming, facilitating the formation of, or participating in any joint venture that is lawful under the antitrust laws; or

2. Subcontracting, preparing joint bids, allocating markets, communicating with respect to price or other terms and conditions, or otherwise jointly undertaking with other providers of school bus transportation services to provide such services where requested to do so in writing by any potential purchaser of those services.

V.

It is further ordered, That each respondent shall:

A. Within thirty (30) days after the date on which this order becomes final, distribute a copy of the complaint and order to each of its directors, to each officer of any of its related companies engaged in school bus transportation services, and to each of its managers responsible for supervising employees involved in the provision of school bus transportation services in the Kansas City Area;

B. For a period of three (3) years after the date on which this order becomes final, furnish a copy of the complaint and order to each of its new directors, to each officer of any of its related companies engaged in school bus transportation services, and to each of its managers responsible for supervising employees involved in the provision of school bus transportation services in the Kansas City Area at the time they are elected, hired, or promoted;

C. Within sixty (60) days after the date on which this order becomes final, and annually thereafter for a period of three (3) years on the anniversary date this order becomes final, and at any time the Commission, by written notice, may require, file a verified written report with the Commission setting forth in detail the manner and form in which the respondent has complied and is complying with this order;

D. For a period of five (5) years after the date on which this order becomes final, notify the Commission at least thirty (30) days prior to any proposed change in respondent affecting the provision of school bus transportation services in the Kansas City Area, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries, or any other change that may affect its compliance obligations arising out of this order, so far as those obligations relate to the provision of school bus transportation services in the Kansas City Area;

E. For a period of five (5) years after the date on which this order becomes final, notify the Commission within thirty (30) days after the respondent forms or participates in the formation of, or joins any joint venture for the provision of school bus transportation services in the Kansas City Area.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order, subject to final approval, from B & J School Bus Service, Inc., Ryder Student Transportation Services, Inc., and Mayflower Contract Services, Inc.

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 decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Complaint

The complaint prepared for issuance along with the proposed order alleges that the proposed respondents have violated Section 5 of the Federal Trade Commission Act by combining or conspiring with each other to allocate the market for school bus transportation services in the Kansas City Missouri School District ("KCMSD") among themselves and otherwise to restrain price competition among school bus transportation companies servicing the KCMSD.

All of the proposed respondents are, or have been, engaged in the business of owning or operating school bus transportation companies within the Kansas City, Missouri area. Except to the extent that competition has been restrained as alleged in the complaint, the respondents have been and are now in competition among themselves and with other providers of school bus transportation services in the KCMSD.

School bus transportation companies supply transportation for students to and from school. Absent restraints on competition, school bus transportation companies compete among themselves to provide transportation for students in various markets and at prices school district's prefer.

The complaint alleges that in the years prior to the 1984/1985 school year, four school bus transportation companies supplied most of the school bus transportation services to the Kansas City, Missouri School District ("KCMSD"). These four companies were B & J, two companies that were purchased in 1984 and 1985, respectively, by a predecessor of Mayflower—R. W. Harmon & Sons, Inc. ("Harmon") and Pace School Bus Service ("Pace")—and a fourth company, KAL Leasing, Inc. ("KAL"), the assets of which were purchased in 1986 by a predecessor of Ryder. These four companies had provided school bus transportation services for many years to discrete areas within the KCMSD pursuant to privately and individually negotiated contracts with the KCMSD.

The complaint alleges that for the 1984/1985 school year the KCMSD decided to purchase school bus transportation services pursuant to a competitive bidding process. The KCMSD expected that by increasing the ability of school bus transportation companies to compete with one another to provide service to portions of the KCMSD the school district would be able to receive lower rates. The KCMSD sent out a request for bids for a single contract covering the 1984/1985, 1985/1986 and 1986/1987 school years. The request sought bids for six separate areas of the school district and for three special services. Bidders were requested to bid for any or all of the areas and services.

The complaint alleges that, in response to KCMSD's request for bids, Harmon and Pace (which were subsequently acquired by a predecessor of Mayflower), KAL (the assets of which were subsequently acquired by a predecessor of Ryder) and B & J agreed not to compete with each other with respect to whether, and on what terms, they would submit bids to KCMSD for providing school bus transportation services. In lieu of competing with one another, the four companies agreed to submit a joint bid for all of the KCMSD's service areas and special services, and to then allocate among themselves the portions of the KCMSD to which each company would provide transportation services. The four companies would, thereby, be able to continue to serve schools located in areas of the KCMSD that they had served in the past.

The complaint further alleges that B & J, Harmon, Pace and KAL implemented their agreement by forming Kansas City School Transportation ("KCST"). Although they called KCST a joint venture, B & J, Harmon, Pace and KAL did not integrate their operations in any substantial manner, and did not make any substantial contributions of capital to KCST. Any financial risk that they faced for losses that might occur from KCST's operation was not substantial. KCST and its members did not provide significantly new or more efficient services. The principal function of KCST was to provide a vehicle for reaching collective decisions on market areas to be served.

The complaint alleges that pursuant to their agreement, B & J, Harmon, Pace and KAL submitted a single, joint bid as KCST to the KCMSD covering all of the areas and services for which bids were sought. With these four firms submitting a joint bid, and with few bids received from outside firms, the KCMSD had little choice but to accept the joint bid from the four companies. KCST was awarded the contract for five of the six areas for which KCMSD had solicited bids.

The complaint also alleges that the proposed Respondents' conspiracy to eliminate competition among the school bus transportation companies servicing the KCMSD has had the purpose or effect or the tendency to restrain competition unreasonably and to injure consumers in the following ways, among others:

A. By allocating the market for school bus transportation services in the KCMSD;

B. By restraining trade unreasonably and thereby hindering price competition among school bus transportation companies servicing the KCMSD;

C. By depriving the KCMSD of the benefits of competition among school bus transportation companies.

The Proposed Consent Order

The proposed order would prohibit each proposed respondent from entering

into, attempting to enter into, organizing, adhering to or maintaining any agreement, understanding, or program with any other respondent or other provider or potential provider of school bus transportation services in the Kansas City area:

1. To submit jointly determined bids or refrain from bidding for school bus transportation services in the Kansas City area;

2. With respect to price or other terms and conditions relating to school bus transportation services in the Kansas City area; or

3. To allocate or divide jobs, markets, customers, contracts, or territories for school bus transportation services in the Kansas City area.

The proposed order also prohibits, for a period of three (3) years after the date the order becomes final, the proposed respondents from directly, indirectly, or through any corporate or other device, in or affecting commerce, communicating to any other respondent, any entity that has at any time since 1982 provided school bus transportation services in the Kansas City area, any entity that is providing school bus transportation services in the Kansas City area, any entity that is known or reasonably should be known to have been requested to provide school bus transportation services in the Kansas City area, or any entity that has publicly announced an intention to provide school bus transportation services in the Kansas City area any intentions, decisions, or plans to bid or to refrain from bidding for school bus transportation services for the Kansas City Missouri School District. This prohibition would not apply to communications to KCMSD, potential purchasers of substantially all of any respondent's stock or assets, suppliers, vendors, lenders, creditors, landlords, tenants or subcontractors that are limited to the context of the relationship.

The proposed order, however, should not be construed to prohibit any of the proposed respondents from:

1. Forming, facilitating the formation of, or participating in any joint venture that is lawful under the antitrust laws; or

2. Subcontracting, preparing joint bids, allocating markets, communicating with respect to price or other terms and conditions, or otherwise jointly undertaking with other providers of school bus transportation services to provide such services where requested to do so in writing by any potential purchaser of those services.

The order also requires each respondent to distribute a copy of the complaint and order to each respondent's directors, to each officer of its related companies engaged in school bus transportation services, and to each of its managers responsible for supervising employees involved in the provision of school bus transportation services in the Kansas City area. The obligation to provide copies of the complaint and order extends for three (3) years for each new director, each new officer of its related companies engaged in school bus transportation services, and each new manager responsible for supervising employees involved in the provision of school bus transportation services in the Kansas City area at the time they are elected, hired, or promoted.

The order also requires each respondent to file a compliance report within sixty (60) days after the order becomes final, and annually thereafter for a period of three (3) years and at any time the Commission, by written notice, may require. Each respondent would also be required to notify the Commission at least thirty (30) days prior to any proposed change in itself such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the respondent that may affect its compliance obligations arising out of this order, so far as those obligations relate to the provision of school bus transportation services in the Kansas City area.

The order also requires each respondent for a period of five (5) years to notify the commission within thirty (30) days after the respondent forms or participates in the formation of, or joins any joint venture for the provision of school bus transportation services in the Kansas City area.

The purpose of this analysis is to facilitate public comment on the proposed order, and is not intended to constitute an official interpretation of the agreement and proposed order or to modify its terms in any way.

The proposed consent order has been entered into for settlement purposes only and does not constitute an admission by the proposed respondents that the law has been violated as alleged in the complaint.

Donald S. Clark,

Secretary.

Statement of Commissioner Mary L. Azcuenaga

I concur in the Commission decision to issue a complaint against B & J School Bus Service, Inc. ("B & J"), Ryder Student Transportation Services, Inc. ("Ryder"), and Mayflower Contract Services, Inc. ("Mayflower") for allegedly participating in a conspiracy to allocate the market for school bus services provided to the Kansas City, Missouri School District. Like price fixing conspiracies, agreements among competitors to rig bids and allocate markets are *per se* unlawful. *Addyston Pipe and Steel Co.* v. *United States*, 175 U.S. 211 (1899). The *per se* prohibition against market allocation and bid rigging is not a novel or exotic theory, but has been a central tenet of antitrust law for nearly a century.

I dissent from the decision to limit the effectiveness of the core prohibitions of the accompanying consent order ("Order") to a small three-county area of Missouri, termed the "Kansas City Area" in the Order. Section II of the Order prohibits the respondents from conspiring to submit joint bids, to fix prices, or to allocate the market for school bus transportation services only in the Kansas City Area. The Order does nothing to prohibit price fixing, bid rigging, or market allocation outside this small geographic area.

Ryder Student Transportation Services, Inc. is an affiliate of Ryder Systems, Inc., and Mayflower Contract Services, Inc. is an affiliate of Mayflower Group, Inc. Complaint, ¶¶ 2, 3. B & J is a local concern. *Id.* ¶ 1. The Order's geographic limitation means that a repeat conspiracy violation by the two national companies outside the three Missouri counties would not violate the Order. In that event, the Commission could not seek civil penalties, and the only remedy would be to seek another prospective order. Indeed, if Mayflower or Ryder exits this tiny geographic market, the Order will impose no restriction on its conduct.

The conduct alleged in the complaint is plainly unlawful. To secure the benefits of competition, the Kansas City, Missouri School District solicited bids to provide school bus services in six designated areas for three school years, beginning with the 1984/1985 school year. Complaint ¶ 7. Instead of submitting competitive bids, the four local companies that had previously provided school bus service signed an agreement, styled as a joint venture, to submit a joint bid for all service areas and to divide the territory among themselves. Complaint ¶ 8. The so-called joint venture was named Kansas City School Transportation (KCST) and was awarded the contract to provide school bus service for five of the six designated areas. Complaint ¶ 10. As alleged in paragraph nine of the complaint, KCST did not involve any substantial integration of operations, not any substantial pooling of capital, nor any substantial sharing of financial risk. It provided no new or more efficient services. In short, the joint venture can aptly be characterized as a sham or cover for an illegal conspiracy.

Mayflower and Ryder were not parties to the original agreement, but they acquired local bus companies that were participants in the conspiracy. As alleged in paragraph nine of the complaint, Mayflower or an affiliate acquired one of the local bus firms in 1984, the same year that the unlawful agreement was made, and acquired a second one in 1985. Ryder or an affiliate purchased a Kansas City bus company in 1986. Although

the complaint makes no allegation concerning Mayflower's or Ryder's knowledge of or ratification of the original unlawful agreement, the timing of the acquisitions shortly after the formation of KCST raises a reasonable ground for suspicion that the acquiring firms would have acquainted themselves with the activities of KCST. Nonetheless, I need not base my concerns about Ryder's and Mayflower's participation in KCST on mere suspicion because the complaint alleges the KCST continued to supply school bus services to the Kansas City Missouri School district until it was disbanded in May 1989, well after the acquisitions. Complaint ¶ 11. Ryder and Mayflower did not disassociate themselves from the conspiracy, but instead continued to participate in KCST.

Regardless of whether Ryder and Mayflower expressly or implicitly ratified the original three-year agreement, extensions of the same arrangement for the school years 1987/1988 and 1988/1989 were negotiated after Ryder and Mayflower acquired the local bus companies, as alleged in paragraph eleven of the complaint. This allegation tends to confirm Ryder's and Mayflower's involvement in the conspiracy.

It is unusual for the Commission to uncover a flagrant violation of the antitrust laws, and acceptance of a narrowly circumscribed order sends the wrong signal to corporations that may be inclined to ignore these laws. The unlawfulness of conduct, such as market allocation, bid rigging and price fixing, does not depend on the structure and characteristics of a particular geographic market. Although orders in merger cases, for example, are drafted to provide relief in the particular product and geographic market in which competition is affected, the same approach to drafting a remedy does not apply in cases of *per se* illegality, because the conduct is unlawful whenever and wherever it occurs. When the Commission finds bid rigging, market allocation or price fixing, it should take strong action to prohibit the participants from repeating the violation. In a case such as this one, in which there are no special circumstances indicating that the Kansas City Area is uniquely susceptible to market allocation or bid rigging, I see no basis for limiting the Order to this area. This Order, limited to three counties in Missouri, hardly amounts to a slap on the wrist. I hope that it does not signal a new leniency to *per se* violations of the antitrust laws.

[FR Doc. 93–2386 Filed 2–1–93; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3407]

Dentsply International Inc.; 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 Pennsylvania-based manufacturer of professional dental-care products to divest, within nine months of the order, all assets related to the manufacturing and marketing of its U.S. Valiant silver alloy product line to a Commission-approved purchaser. If the divestiture is not completed in the designated time-frame, the respondent is required to agree to a Commission-appointed trustee to divest its interest in the assets related to its Valiant Alloy products. In addition, the order requires a Hold Separate Agreement during any period in which the respondent possesses an ownership interest in the U.S. Valiant assets, and, for a 10-year period, requires the respondent to obtain Commission approval prior to acquiring any silver alloy manufacturer or distributor.

DATES: Complaint and Order issued January 6, 1993.[1]

FOR FURTHER INFORMATION CONTACT: Casey Triggs, FTC/S–2308, Washington, DC 20580. (202) 326–2682.

SUPPLEMENTARY INFORMATION: On Thursday, October 22, 1992, there was published in the **Federal Register**, 57 FR 48228, a proposed consent agreement with analysis In the Matter of Dentsply International 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.

No comments having been received, 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. 93–2381 Filed 2–1–93; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3411]

Site for Sore Eyes, Inc.; 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 act and practices and unfair methods of competition, this consent order requires, among other things, a California chain of retail stores that sell eye-care products and services to have competent and reliable scientific evidence to substantiate any future claim that any lens, shade, coating or other material sold in connection with eyeglasses protects eyes from radiation from any source. In addition, the respondent is required to maintain materials relied upon to substantiate claims covered by the order and to distribute copies of the order to specified individuals and entities.

DATES: Complaint and Order issued January 15, 1993.[1]

FOR FURTHER INFORMATION CONTACT: Linda Badger or Matthew Gold, San Francisco Regional Office, Federal Trade Commission, 901 Market Street, suite 570, San Francisco, CA. 94103. (415) 744–7920.

SUPPLEMENTARY INFORMATION: On Wednesday, November 4, 1992, there was published in the **Federal Register**, 57 FR 52629, a proposed consent agreement with analysis In the Matter of Site for Sore Eyes, 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.

No comments having been received, 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)

Donald S. Clark,

Secretary.

[FR Doc. 93–2383 Filed 2–1–93; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3410]

Southeast Colorado Pharmacal Association; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

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[1] Copies of the Complaint, the Decision and Order, and Commissioners Azcuenaga's and Owen's statements are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue NW., Washington, DC 20580.

[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.

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 Colorado-based association of pharmacies, that dispense prescriptions which are paid for by third-party payers according to predetermined formulas, from entering into or threatening to enter into any agreement with pharmacies to withdraw or refuse to participate in these kinds of reimbursement programs in the future.

DATES: Complaint and Order issued January 15, 1993.[1]

FOR FURTHER INFORMATION CONTACT: Claude Wild, III or Jeff Dahnke, Denver Regional Office, Federal Trade Commission, 1405 Curtis St., suite 2900, Denver, CO. 80202. (303) 844–2271 or 844–2254.

SUPPLEMENTARY INFORMATION: On Wednesday, November 4, 1992, there was published in the **Federal Register,** 57 FR 52631, a proposed consent agreement with analysis In the Matter of Southeast Colorado Pharmacal Association, 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.

No comments having been received, 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)

Donald S. Clark,

Secretary.

[FR Doc. 93–2382 Filed 2–1–93; 8:45 am]

BILLING CODE 6750–01–M

Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures; Order Granting Exemption

In the matter of a Petition for Exemption from the Trade Regulation Rule Entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures" Filed by Porsche Cars of North America, Inc.

AGENCY: Federal Trade Commission.

ACTION: Grant of petition for exemption.

SUMMARY: On March 10, 1992, the Commission published a notice in the **Federal Register** soliciting comments on a petition filed by Porsche Cars of North America, Inc. The Commission now grants the petition and determines that the provisions of 16 CFR part 436 shall not apply to the advertising, offering, licensing, contracting, sale or other promotion of motor vehicle dealerships by Porsche Cars of North America, Inc.

EFFECTIVE DATE: February 2, 1993.

FOR FURTHER INFORMATION CONTACT: Elizabeth Grant, Attorney, PC–H–238, Federal Trade Commission, Washington, DC 20580, (202) 326–3299.

SUPPLEMENTARY INFORMATION:

On March 10, 1992, the Commission published a notice in the **Federal Register** soliciting comments on a petition filed by Porsche Cars of North America, Inc. ("PCNA"). PCNA imports and markets Porsche sports cars and associated parts and services. The petition sought an exemption, pursuant to section 18(g) of the Federal Trade Commission Act, from coverage under the Commission's Trade Regulation Rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures" ("Franchise Rule").

In accordance with section 18(g), the Commission conducted an exemption proceeding under section 553 of the Administrative Procedure Act, 5 U.S.C. 553, and invited public comment during a 60-day period ending May 11, 1992. After reviewing the petition and the comments received, the Commission has concluded that the Petitioner's request should be granted.

The statutory standard for exemption requires the Commission to determine whether application of the Trade Regulation Rule to the person or class of persons seeking exemption is "necessary to prevent the unfair or deceptive act or practice to which the rule relates." If not, an exemption is warranted.

The abuses that the disclosure remedy of the Franchise Rule is designed to prevent are most likely to occur, as the Statement of Basis and Purpose of the Rule notes, in sales where three factors are present:

(1) A potential investor with a relative lack of business experience and sophistication;

(2) Inadequate time for the investor to review and comprehend the unique and often complex terms of the franchise agreement before making a major financial commitment; and

(3) A significant information imbalance in which the franchisee is unable to obtain essential and relevant facts known to the franchisor about the investment.

The pre-sale disclosures required by the Franchise Rule are designed to negate the effect of any deceptive acts or practices where these conditions are present. The Rule provides investors with the material information they need to make an informed investment decision in circumstances where they might otherwise lack the resources, knowledge, or ability to obtain the information, and thus to protect themselves from deception.

Where the conditions that create a potential for deception in the sale of franchises are not present, however, a regulatory remedy designed to prevent deception is unnecessary. Our review of the record in this proceeding persuades us that an exemption is warranted for that reason. The Petitioner has convincingly shown that the conditions that create a potential for a pattern or practice of abuse are absent, and that there is no likelihood of unfair or deceptive acts or practices in the appointment of its automobile dealership franchises for that reason.

The petition demonstrates that potential Porsche dealers are and will continue to be a select group of highly sophisticated and experienced businessmen and women; that they make very significant investments; and that they have more than adequate time to consider the dealership offer and obtain information about it before investing. We note in particular that Porsche has a relatively small number of dealers, approximately 250; that prospective Porsche dealers are generally established dealers for other automobile manufacturers or importers; that investment costs for Porsche dealerships range from $1 million to $10 million; and that applicants participate in an extensive application and approval process, during which time information is exchanged between the parties.

As a practical matter, investments of this size and scope typically involve knowledgeable investors, the use of independent business and legal advisors, and an extended period of negotiation that generates the exchange of information necessary to ensure that investment decisions are the product of an informed assessment of the potential risks and benefits. The Commission has reviewed the potential for unfair or deceptive acts or practices in connection with the licensing of motor vehicle dealership franchises on five prior occasions since 1980, and found no evidence of likelihood of a significant pattern or practice of abuse by any of the Petitioners. If any such

[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.

evidence exists, it has not yet been brought to the Commission's attention in this or any of the prior proceedings. The public comment in this matter does not demonstrate the existence of any of the factors that would lead to deceptive or unfair practices with respect to the offering of Porsche dealerships.

Thus, both the record in this proceeding and all prior experience to date with other Franchise Rule exemptions for automobile dealerships support the conclusion that Petitioner's licensing of new dealers accomplishes what the Rule was intended to ensure. The conditions most likely to lead to abuses are not present in the licensing of dealerships, and the process generates sufficient information to ensure that applicants will be able to make an informed investment decision. For these reasons, the Commission finds that the application of the Franchise Rule to Petitioner's licensing of motor vehicle dealer franchises is not necessary to prevent the unfair or deceptive acts or practices to which the Rule relates.

Accordingly, the Commission has determined that the provisions of 16 CFR part 436 shall not apply to the adverting, offering, licensing, contracting, sale or other promotion of motor vehicle dealerships by Porsche Cars of North America, Inc.

It is so ordered.

By the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 93–2385 Filed 2–1–93; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–977–DR]

Arizona; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Arizona, (FEMA–977–DR), dated January 19, 1993, and related determinations.

EFFECTIVE DATE: January 26, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Arizona dated January 19, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 19, 1993: The counties of Cochise and Santa Cruz for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–2332 Filed 2–1–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–973–DR]

New Jersey; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of New Jersey (FEMA–973–DR), dated December 18, 1992, and related determinations.

EFFECTIVE DATE: January 13, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of New Jersey, dated December 18, 1992, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 18, 1992: The county of Salem for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–2330 Filed 2–1–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–974–DR]

New York; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of New York (FEMA–974–DR), dated December 21, 1992, and related determinations.

EFFECTIVE DATE: January 6, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective December 14, 1992.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–2331 Filed 2–1–93; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Notice of Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Maritz Inc. and Maritz Travel Company, 1375 North Highway Drive, Fenton, St. Louis County, MO 63099
Vessel: CROWN ODYSSEY
Dated: January 27, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 93–2327 Filed 2–1–93; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Bank South Corporation; Application to Engage De Novo In Underwriting and Dealing in Certain Bank-Ineligible Securities on a Limited Basis, and Other Securities-Related Activities

Bank South Corporation, Atlanta, Georgia (Applicant), has applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8) (BHC Act) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), to acquire Bank South Securities, Inc. (Company), through a corporate reorganization and engage *de novo* in various securities and securities

related activities described below. These activities will be conducted on a nationwide basis.

Applicant proposes to engage de novo in the following activities previously authorized by the Board:

(1) Providing discount securities brokerage services and activities related or incidental thereto pursuant to § 225.25(b)(15) of Regulation Y;

(2) Providing financial advisory services to states, their political subdivisions, authorities and agencies pursuant to § 225.25(b)(4)(v) of Regulation Y; and

(3) Underwriting and dealing in government obligations and money market instruments pursuant to § 225.25(b)(16) of Regulation Y.

Applicant also proposes to engage *de novo* in activities which previously have been determined by the Board by Order to be closely related to banking. Applicant proposes to underwrite and deal in revenue obligations of states and their political subdivisions, authorities and agencies ("municipal revenue bonds") that are rated as investment quality by a nationally recognized rating agency. Applicant also proposes to act as a riskless principal in the purchase and sale of revenue obligations of states and their political subdivisions, authorities and agencies on the order of investors. Finally, Applicant proposes to engage, as agent, in the private placement of general and revenue obligations of states, their political subdivisions, authorities and agencies.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be proper incident thereto." This statutory test requires that two separate tests be met for an activity to be permissible for a bank holding company. First, the Board must determine that the activity is, as a general matter, "closely related to banking." Second, the Board must find in a particular case that the performance of the activity by the applicant bank holding company may be reasonably be expected to produce public benefits that outweigh possible adverse effects.

Applicant believes that these proposed activities are "so closely related to banking or managing or controlling banks as to be proper incident thereto." The Board has previously authorized private placement and riskless principal activities, subject to certain prudential limitations which address the potential for conflicts of interest, unsound banking practices, and other adverse effects. *See, e.g., J.P. Morgan & Company Inc.*, 76 Federal Reserve Bulletin 26 (1990); *Bankers Trust New York Corporation*, 75 Federal Reserve Bulletin 829 (1989). The Board has also previously authorized bank holding companies to underwrite and deal in municipal revenue bonds provided that the underwriting subsidiary derives no more than 10 percent of its total gross revenue from underwriting and dealing in the approved securities over any two-year period. *See Citicorp*, 73 Federal Reserve Bulletin 473 (1987) *aff'd sub nom. Securities Industry Association v. Board of Governors of the Federal Reserve System*, 839 F.2d 47 (2d Cir. 1988), *cert. denied*, 108 S.Ct. 2830 (1988), *modified by Order Approving Modifications to Section 20 Orders*, 75 Federal Reserve Bulletin 751 (1989).

In conducting these activities, Applicant will comply with the commitments and prudential limitations established by the Board in previous Orders. Accordingly, Applicant contends that the proposed activities are functionally similar to those currently being conducted by banks and bank holding companies and are therefore closely related to banking.

Applicant takes the position that the proposed activities will benefit the public. Applicant states that the expected benefits to the public include increased efficiency and greater customer convenience resulting from an internal reorganization of Applicant's existing services, as well as increased competition because of a stronger and more unified system for marketing and delivering services.

Any views or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than February 19, 1993. Any request for hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Atlanta.

Board of Governors of the Federal Reserve System, January 27, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–2352 Filed 2–1–93; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Health Education Assistance Loan Program; Maximum Interest Rates for Quarter Ending March 31, 1993

Section 701 of the Public Health Service Act (42 U.S.C. 292) authorizes the Secretary of Health and Human Services to establish a Federal program of student loan insurance for graduate students in health professions schools.

Section 60.13(a)(4) of the program's implementing regulations (42 CFR part 60, previously 45 CFR part 126) provides that the Secretary will announce the interest rate in effect on a quarterly basis.

The Secretary announces that for the period ending March 31, 1993, three interest rates are in effect for loans executed through the Health Education Assistance Loan (HEAL) program.

1. For loans made before January 27, 1981, the variable interest rate is 6¾ percent. Using the regulatory formula (45 CFR 126.13(a)), in effect prior to January 27, 1981, the Secretary would normally compute the variable rate for this quarter by finding the sum of the fixed annual rate (7 percent) and a variable component calculated by subtracting 3.50 percent from the average bond equivalent rate of the 91-day U.S. Treasury bills for the preceding calendar quarter (3.17 percent), and rounding the result (6.67 percent) upward to the nearest ⅛ percent (6¾ percent).

However, the regulatory formula also provides that the annual rate of the variable interest rate for a 3-month period shall be reduced to the highest one-eighth of 1 percent which would result in an average annual rate not in excess of 12 percent for the 12-month period concluded by those 3 months. Because the average rate of the 4 quarters ending March 31, 1993, is not in excess of 12 percent, there is no necessity for reducing the interest rate. For the previous 3 quarters the variable interest at the annual rate was as follows: 7⅝ percent for the quarter ending June 30, 1992; 7⅜ percent for the quarter ending September 30, 1992;

and 6¾ percent for the quarter ending December 31, 1992.

2. For variable rate loans executed during the period of January 27, 1981 through October 21, 1985, the interest rate is 6¾ percent. Using the regulatory formula (42 CFR 60.13(a)) in effect for that time period, the Secretary computes the maximum interest rate at the beginning of each calendar quarter by determining the average bond equivalent rate for the 91-day U.S. Treasury bills during the preceding quarter (3.17 percent); adding 3.50 percent (6.67 percent) and rounding that figure to the next higher one-eight of one percent (6¾ percent).

3. For fixed rate loans executed during the period of January 1, 1993 through March 31, 1993, and for variable rate loans executed on or after October 22, 1985, the interest rate is 6¼ percent. The Health Professions Training Assistance Act of 1985 (Public Law 99–129), enacted October 22, 1985, amended the formula for calculating the interest rate by changing 3.5 percent to 3 percent. Using the regulatory formula (42 CFR 60.13(a)), the Secretary computes the maximum interest rate at the beginning of each calendar quarter by determining the average bond equivalent rate for the 91-day U.S. Treasury bills during the preceding quarter (3.17 percent); adding 3.0 percent (6.17 percent) and rounding that figure to the next higher one-eighth of one percent (6¼ percent).

(Catalog of Federal Domestic Assistance No. 13.108, Health Education Assistance Loans)

Dated: January 25, 1993.

Robert G. Harmon,

Administrator.

[FR Doc. 93–2347 Filed 2–1–93; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Meeting of National Arthritis and Musculoskeletal and Skin Diseases Advisory Council

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council to provide advice to the National Institute of Arthritis and Musculoskeletal and Skin Diseases on February 11 and 12, 1993, Conference Room 6, Building 31, National Institutes of Health, Bethesda, Maryland.

The meeting will be open to the public February 11 from 8:30 a.m. to 9 a.m. to discuss administrative details relating to Council business and special reports. Attendance by the public will be limited to space available.

The meeting of the Advisory Council will be closed to the public on February 11 from 9 a.m. to recess and again on February 12 from 8:30 a.m. to adjournment in accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications. These deliberations could reveal confidential trade secrets or commercial property, such as patentable materials, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Further information concerning the Council meeting and individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Michael Lockshin, Executive Secretary, National Arthritis and Musculoskeletal and Skin Diseases Advisory Council, NIAMS, Building 31, room 4C32, Bethesda, Maryland 20892, (301) 496–0802.

A summary of the meeting and roster of the members may be obtained from the Committee Management Office, NIAMS, Building 31, room 4C32, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–0803.

(Catalog of Federal Domestic Assistance Program No. 93.846, Arthritis, Bone and Skin Diseases, National Institutes of Health)

Dated: January 26, 1993.

Susan K. Feldman,

NIH Committee Management Officer.

[FR Doc. 93–2403 Filed 2–1–93; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Child Health and Human Development; Notice of Meetings

Pursuant to Public Law 92–463, notice is hereby given of meetings of the review committees of the National Institute of Child Health and Human Development for March 1993.

These meetings will be open to the public to discuss items relative to committee activities including announcements by the Director, NICHD, and scientific review administrators, for approximately one hour at the beginning of the first session of the first day of the meeting unless otherwise listed. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below 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. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Mary Plummer, Committee Management Officer, NICHD, 6100 Executive Boulevard, room 5E03, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496–1485, will provide a summary of the meetings and rosters of committee members. If you plan to attend the open session of the meeting and need special disability-related assistance, such as sign language interpretation or other reasonable accommodations, please contact Ms. Plummer.

Other information pertaining to the meetings may be obtained from the Scientific Review Administrator indicated.

Name of Committee: Maternal and Child Health Research Committee.

Scientific Review Administrator: Dr. Gopal Bhatnagar, 6100 Executive Boulevard—rm. 5E03, Telephone: 301–496–1696.

Date of Meeting: March 2–3, 1993.

Place of Meeting: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland, Delaware Room.

Open: March 2, 1993, 8 a.m.–9:30 a.m.

Closed: March 3, 1993, 8 a.m.–adjournment.

Name of Committee: Population Research Committee.

Scientific Review Administrator: Dr. A.T. Gregoire, 6100 Executive Boulevard—rm. 5E03, Telephone: 301–496–1485.

Date of Meeting: March 4–5, 1993.

Place of Meeting: Savoy Suites Georgetown, 2505 Wisconsin Avenue, N.W., Washington, DC 20007, Ballroom A.

Open: March 4, 1993, 8 a.m.–9:30 a.m.

Closed: March 5, 1993, 8 a.m.–adjournment.

Name of Committee: Mental Retardation Research Committee.

Scientific Review Administrator: Dr. Norman Chang, 6100 Executive Boulevard—rm. 5E03, Telephone: 301–496–1485.

Date of Meeting: March 8–10, 1993.

Place of Meeting: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, Maryland, Severn Susquehenna Room.

Open: March 8, 1993, 7 p.m.–10 p.m.
Closed: March 9, 1993, 9:30 a.m.–5 p.m., March 10, 1993, 8 a.m.–adjournment.

(Catalog of Federal Domestic Assistance Program No. 93.864, Population Research and No. 93.865, Research for Mothers and Children, National Institutes of Health)

Dated: January 26, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–2391 Filed 2–1–93; 8:45 am]

BILLING CODE 4140–01–M

National Center for Research Resources; Meeting of the Research Centers in Minority Institutions Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Research Centers in Minority Institutions Review Committee, National Center for Research Resources, National Institutes of Health.

This meeting will be open to the public as listed below for a brief staff presentation on the current status of the Research Centers in Minority Institutions Program and the selection of future meeting dates. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting will be closed to the public as listed below for the review, discussion and evaluation of individual grant applications submitted to the Research Centers in Minority Institutions Program. These applications and the discussion could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Maureen Mylander, Information Officer, National Center for Research Resources, National Institutes of Health, Westwood Building, room 10A15, Bethesda, Maryland 20892, (301) 496–5545, will provide a summary of the meeting and a roster of the Committee members upon request. Other information pertaining to the meeting can be obtained from the Scientific Review Administrator. Individuals who need sign language interpretation or other assistance should contact the Committee Management Office, (301) 496–9567, in advance of the meeting.

Name of Committee: Research Centers in Minority Institutions Review Committee

Scientific Review Administrator: Dr. John Lymangrover, Research Centers in Minority Institutions Review Committee, Office of Review, National Center for Research Resources, National Institutes of Health, 5333 Westbard Avenue, room 10A16, Bethesda, Maryland 20892, Telephone: 301/496–4390.

Date of Meeting: March 9, 1993.

Place of Meeting: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 8, Bethesda, MD 20892.

Open: March 9, 8:30 a.m.–11 a.m.
Agenda: Report and review of administrative details.
Closed: March 9, 11 a.m.–Adjournment.
Closure Reason: To review grant applications.

(Catalog of Federal Domestic Assistance Program No. 93.389, Research Centers in Minority Institutions, National Institutes of Health)

Dated: January 26, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–2390 Filed 2–1–93; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting of Pulmonary Diseases Advisory Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Pulmonary Diseases Advisory Committee, National Heart, Lung, and Blood Institute, February 25–26, 1993, at the National Institutes of Health, Building 31, C Wing, Conference Room 9, 9000 Rockville Pike, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 8:30 a.m. to 5 p.m. on Thursday, February 25 and on Friday, February 26 from 8:30 a.m. to adjournment. The Committee will discuss scientific program needs and develop recommendations for future research directions. Attendance by the public will be limited to space available.

Ms. Terry Long, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, room 4A–21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the Committee members.

Dr. Suzanne S. Hurd, Executive Secretary of the Committee, Westwood Building, room 6A16, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–7208, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 93.838, Lung Diseases Research, National Institutes of Health)

Dated: January 26, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–2387 Filed 2–1–93; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting of the Clinical Applications and Prevention Advisory Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Clinical Applications and Prevention Advisory Committee, National Heart, Lung, and Blood Institute, National Institutes of Health, on February 24–25, 1993. The meeting will be held in the Federal Building, Conference Room B119, 7550 Wisconsin Avenue, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 9 a.m. to recess on February 24 and 8:30 a.m. to adjournment on February 25 to discuss new initiatives, program policies, and issues. Attendance by the public will be limited to space available.

Terry Long, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of committee members upon request.

Dr. Lawrence Friedman, Director, Division of Epidemiology and Clinical Applications, Federal Building, Room 212, Bethesda, Maryland 20892, (301) 496–2533, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 93.837, Heart and Vascular Diseases Research, National Institutes of Health)

Dated: January 26, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–2388 Filed 2–1–93; 8:45 am]

BILLING CODE 4140–01–M

National Center for Research Resources; Meeting of the Biomedical Research Support Advisory Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Biomedical Research Support Advisory Committee, National Center for Research Resources (NCRR), National Institutes of Health, February 25, 1993, Building 31C, Conference Room 2C15, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on February 25, from 9 a.m. to adjournment to discuss program policies, the Minority High School Student Research Apprentice Program, other education-related activities, and the Biomedical Research Support Shared Instrumentation Grant Program. Attendance by the public will be limited to space available.

Ms. Maureen Mylander, Information Officer, NCRR, Westwood Building, room 10A15, National Institutes of Health, 5333 Westbard Avenue, Bethesda, Maryland 20892, (301) 496–5545, will provide a summary of the meeting and a roster of the Committee members upon request.

Dr. Abraham Levy, Executive Secretary, Biomedical Research Support Advisory Committee, (301) 496–6743, will furnish substantive program information upon request, and will receive any comments pertaining to this announcement.

(Catalog of Federal Domestic Assistance Program No. 93.337, Biomedical Research Support, National Institutes of Health)

Dated: January 26, 1993.

Susan K. Feldmen,

Committee Management Officer, NIH.

[FR Doc. 93–2389 Filed 2–1–93; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting of Blood Diseases and Resources Advisory Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Blood Diseases and Resources Advisory Committee, National Heart, Lung, and Blood Institute, April 19–20, 1993, in Conference Room B1–19, Federal Building, 7550 Wisconsin Avenue, Bethesda, Maryland 20892.

The entire meeting will be open to the public on April 19, from 9 a.m. to 5 p.m. and from 9 a.m. to adjournment on April 20, to discuss the status of the Blood Diseases and Resources program needs and opportunities. Attendance by the public will be limited to space available.

Ms. Terry Long, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the Committee members.

Dr. Fann Harding, Assistant to the Director, Division of Blood Diseases and Resources, National Heart, Lung, and Blood Institute, Federal Building, room 5A08, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–1817, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: January 26, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–2399 Filed 2–1–93; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung and Blood Institute; Meeting of the Arteriosclerosis, Hypertension and Lipid Metabolism Advisory Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Arteriosclerosis, Hypertension and Lipid Metabolism Advisory Committee, National Heart, Lung, and Blood Institute, March 4–5, 1993, Federal Building, room B119, 7550 Wisconsin Avenue, Bethesda, Maryland.

The entire meeting will be open to the public from approximately 8:30 a.m. to recess on March 4, and 8:30 a.m. to adjournment on March 5, to evaluate program support in arteriosclerosis, hypertension and lipid metabolism. Attendance by the public will be limited on a space available basis.

Ms. Terry Long, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4237, will provide a summary of the meeting and a roster of the committee members.

Dr. Basil M. Rifkind, Deputy Associate Director, Arteriosclerosis, Hypertension and Lipid Metabolism Program, NHLBI, room 4A14, Federal Building, National Institutes of Health, Bethesda, MD 20892, (301) 496–1681, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 93.837, Heart and Vascular Diseases Research, National Institutes of Health)

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–2400 Filed 2–1–93; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of Meeting of Research Training Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Research Training Review Committee, National Heart, Lung, and Blood Institute, National Institutes of Health, on February 21–23, 1993, at the Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, Maryland 20814.

This meeting will be open to the public on February 21, from 7:30 p.m. to approximately 8:30 p.m., to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public is limited to space available.

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, the meeting will be closed to the public on February 21, from 8:30 p.m. to adjournment on February 23, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Terry Long, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the Committee members.

Dr. Kathryn Ballard, Scientific Review Administrator, NHLBI, Westwood Building, room 550, Bethesda, Maryland 20892, (301) 496–7361, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: January 26, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–2392 Filed 2–1–93; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the following Heart, Lung, and Blood 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, contract proposals, and/or cooperative agreements. These applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Panel: NHLBI SEP on Demonstration and Education Research Grant Applications (R18s) and Small Grant Program Applications (R03s).

Dates of Meeting: February 18–19, 1993.

Time of Meeting: 7: p.m.

Place of Meeting: Seattle Hilton Hotel, Seattle, Washington.

Agenda: To review and evaluate grant applications.

Contact Person: Dr. David Monsees, 5333 Westbard Avenue room 550, Bethesda, MD 20892, (301) 496–7361.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: January 26, 1993.

Susan K. Feldman,

Committee Management Officer, HIH

[FR Doc. 93–2393 Filed 2–1–93; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of the meetings of the following Heart, Lung, and Blood Special Emphasis Panels.

These meetings will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications, contract proposals, and/or cooperative agreements. These applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Panel: NHLBI SEP on Clinical Investigator Development Awards (KO8's) and 1 Institutional National Research Service Award (T32).

Dates of Meeting: February 7–8, 1993

Time of Meeting: 7 p.m.

Place of Meeting: Hyatt Regency Bethesda, Bethesda, Maryland.

Agenda: To review grant applications.

Contact Person: Dr. Lynn M. Amende, (301) 496–8818.

Name of Panel: NHLBI SEP on Demonstration and Education Research Grant Applications and Small Grant Applications Meeting.

Dates of Meeting: February 9–10, 1993.

Time of Meeting: 9 a.m.

Place of Meeting: Stouffer Concourse Hotel, Arlington, Virginia.

Agenda: To review grant applications.

Contact Person: Dr. Louise Corman, (301) 496–7363.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: January 26, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–2402 Filed 2–1–93; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting of the Sickle Cell Disease Advisory Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Sickle Cell Disease Advisory Committee, National Heart, Lung, and Blood Institute, February 12, 1993. The meeting will be held at the National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 7, C-Wing, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 9 a.m. to adjournment, to discuss recommendations on the implementation and evaluation of the Sickle Cell Disease Program. Attendance by the public will be limited to space available.

Ms. Terry Long, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, room 4A21, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Clarice D. Reid, Chief, Sickle Cell Disease Branch, Division of Blood Diseases and Resources, NHLBI, Federal Building, room 508, Bethesda, Maryland 20892, (301) 496–6931, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: January 26, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–2404 Filed 2–1–93; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Health Resources and Services Administration; Title II, Section 224 of the Public Health Services Act; Protect Certain Health Care Professionals From Liability; Delegation of Authority

Notice is hereby given that in furtherance of the delegation of authorities to the Assistant Secretary for Health by the Secretary of Health and Human Services on July 1, 1973, the Assistant Secretary for Health has delegated to the Administrator, Health Resources and Services Administration (HRSA), the authorities under title II, section 224, of the Public Health Service (PHS) Act, as amended, as they pertain to the functions assigned to HRSA. This delegation excluded the authority to promulgate regulations and to submit reports to Congress.

This delegation is effective upon date of signature.

Dated: January 19, 1993.

James O. Mason,

Assistant Secretary for Health.

[FR Doc. 93–2351 Filed 2–1–93; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N–93–3569; FR–3448–N–01]

Mortgagee Review Board Administrative Actions

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

ACTION: Notice.

SUMMARY: In compliance with section 202(c) of the National Housing Act, notice is hereby given of the cause and description of administrative actions taken by HUD's Mortgagee Review Board against HUD-approved mortgagees.

FOR FURTHER INFORMATION CONTACT: William Heyman, Director, Office of Lender Activities and Land Sales registration, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–1824. The Telecommunications

Device for the Deaf (TDD) number is (202) 708–4594. (These are not toll-free numbers).

SUPPLMENTARY INFORMATION: Section 202(c)(5) of the National Housing Act (added by section 142 of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989) requires that HUD "publish in the Federal Register a description of and the cause for administrative action against a HUD-approved mortgagee" by the Department's Mortgagee Review Board. In compliance with the requirements of section 202(c)(5), notice is hereby given of administrative actions that have been taken by the Mortgagee Review Board from September 1, 1992 through December 31, 1992.

1. Empbanque Capital Corporation, Carle Place, New York

Action: Letter of Reprimand and Settlement Agreement that provides for payment to the Department in the amount of $352,000 for claim losses in connection with improperly originated FHA insured mortgages.

Cause: A HUD monitoring review citing violations of HUD–FHA program requirements which included: Failure to verify that a mortgagor had sufficient assets to close; failure to verify or credit earnest money deposits; use of falsified Verification of Deposit to close an insured mortgage; closing loans in violation of the seven unit limitation; failure to assure that mortgagors made the minimum required investment in the property; failure to establish the stability of a mortgagor's self-employment; failure to conduct face-to-face interviews with mortgagors; failure to verify the physical soundness and increased value of a previously rejected property; completing the lender's certification on the form HUD 92900 prior to the borrower's certification; failure to verify the mortgagor's source of funds; and failure to comply with HUD–FHA reporting requirements with respect to the Home Mortgage Disclosure Act (HMDA).

2. Goldpost Mortgage Corporation, Rochester, New York

Action: Proposed withdrawal of HUD mortgagee approval.

Cause: A HUD monitoring review citing a violation of HUD–FHA single family program requirements. The company submitted mortgages for HUD–FHA insurance endorsement which exceeded permissible maximum mortgage amounts.

3. Freedom Mortgage Corporation, Independence, Ohio

Action: Letter of Reprimand.

Cause: A HUD Office of Inspector General audit citing violations of HUD–FHA program requirements that included: Failure to comply with the requirements of the Direct Endorsement Program; failure to maintain an adequate Quality Control Plan; and underwriting deficiencies.

4. DFW Southwestern Mortgage Corporation, Irving, Texas

Action: Withdrawal of HUD mortgagee approval.

Cause: Failure to comply with HUD–FHA requirements for approval as a mortgagee, and a Federal tax lien that was filed against the company for failure to pay payroll taxes.

5. Bridges Mortgage Company, Jackson, Mississippi

Action: Letter of Reprimand.

Cause: A HUD monitoring review which cited the company for failure to comply with HUD–FHA reporting requirements under the Home Mortgage Disclosure Act (HMDA).

6. First Home Mortgage Corporation, Mount Prospect, Illinois

Action: Letter of Reprimand.

Cause: A HUD monitoring review which cited the company for failure to comply with HUD–FHA reporting requirements under the Home Mortgage Disclosure Act (HMDA), and failure to maintain an adequate Quality Control Plan for the origination of HUD–FHA insured mortgages.

7. Pinnacle Financial Corporation, Winter Park, Florida

Action: Letter of Reprimand.

Cause: A HUD monitoring review which cited the company for failure to comply with HUD–FHA reporting requirements under the Home Mortgage Disclosure Act (HMDA), and failure to maintain an adequate Quality Control Plan for the origination of HUD–FHA insured mortgages.

8. Homeowners Mortgage Corporation, Edina, Minnesota

Action: Letter of Reprimand.

Cause: A HUD monitoring review which cited the company for noncompliance with HUD–FHA reporting requirements under the Home Mortgage Disclosure Act (HMDA), and the prohibition against tiered pricing of HUD–FHA insured mortgages.

9. Community Mortgage Services, Inc., Southfield, Michigan

Action: Settlement Agreement that provides for indemnification for HUD's claim loss in connection with an improperly originated mortgage, and corrective action to assure compliance with HUD–FHA requirements.

Cause: A HUD monitoring review citing violations of HUD–FHA program requirements including: Improperly originating an FHA insured mortgage; failure to comply with reporting requirements under the Home Mortgage Disclosure Act (HMDA); and failure to comply with the prohibition against tiered pricing of HUD–FHA insured mortgages.

10. Delta National Mortgage Company, Shaker Heights, Ohio

Action: Letter of Reprimand.

Cause: A HUD monitoring review which cited the company for failure to comply with HUD–FHA reporting requirements under the Home Mortgage Disclosure Act (HMDA).

11. Hallmark Mortgage Services, Inc., Tampa, Florida

Action: Proposed Settlement Agreement.

Cause: A HUD monitoring review citing the company for violation of HUD–FHA program requirements in the origination of a HUD–FHA insured mortgage.

12. Sibley Mortgage Corporation, Rochester, New York

Action: Proposed Settlement Agreement that provides for indemnification to HUD for claim losses in connection with 10 improperly originated mortgages, and indemnification and/or a buydown of overinsured mortgage amounts in connection with four loans.

Cause: A HUD Office of Inspector General audit, and a Monitoring Division review citing violations of HUD–FHA single family program requirements including: Overinsured mortgages; failure to verify mortgagors' downpayments, cash assets and gift letters; permitting mortgagors to sign loan applications after the date of underwriting; overstating the income of a mortgagor; failure to verify the adequacy and source of mortgagors' assets to close; failure to credit earnest money deposits; submitting incomplete HUD–1 Settlement Statements; and underwriting loans when the credit analysis ratios exceeded HUD–FHA standards.

13. Federated Mortgage Associates, Inc., Pembroke Pines, Florida

Action: Withdrawal of HUD mortgagee approval.

Cause: A HUD Office of Inspector General audit citing violations of HUD–

FHA program requirements which included: Failure to adequately verify mortgagors' income; failure to assure that mortgagors made the required minimum investment in the property; misstating mortgagors' income or liabilities; excessive debt ratios; failure to perform appropriate reviews and analyses to support certifications made to HUD–FHA; expired appraisal; conflict of interest; closing proceeds improperly distributed; and inadequate Quality Control Plan.

14. California Financial Corporation, Colton, California

Action: Proposed Settlement Agreement that would include indemnification to HUD for its claim loss in the amount of $122,000 in connection with one improperly originated mortgage, agreement not to submit future claims on 11 improperly originated mortgages, and payment to the Department the sum of $20,000 in lieu of a civil money penalty.

Cause: A HUD monitoring review citing violations of HUD–FHA requirements including: Submission of inaccurate documents and information to HUD–FHA; failure to comply with HUD–FHA requirements under the Home Mortgage Disclosure Act (HMDA); failure to implement an adequate Quality Control Plan; incorrect income computations; and overinsured mortgages.

15. Marion Mortgage, Inc., El Paso, Texas

Action: Settlement Agreement which includes payment to the Department the sum of $10,000 in lieu of a civil money penalty, and corrective action to assure compliance with HUD–FHA requirements.

Cause: A HUD monitoring review which disclosed that the company failed to remit to HUD, or timely remit, One-Time Mortgage Insurance Premiums (OTMIPs).

16. American Mortgages, Inc., Bethesda, Maryland

Action: Proposed Settlement Agreement that would include a corrective plan of action to be implemented by the company to assure compliance with HUD–FHA net worth requirements under the multifamily coinsurance program.

Cause: Noncompliance with HUD–FHA sound capital resources requirements for a multifamily coinsurance mortgagee.

17. Terra Funding, Inc., Denver, Colorado

Action: Proposed Settlement Agreement that would include indemnification to HUD for any claim loss sustained by the Department in connection with an improperly originated mortgage, and corrective action to assure compliance with HUD–FHA requirements.

Cause: A HUD monitoring review which cited violations of HUD–FHA requirements including: Improperly originating a HUD–FHA insured mortgage; failure to maintain an adequate Quality Control Plan for the origination of HUD–FHA insured mortgages; and failure to comply with reporting requirements under the Home Mortgage Disclosure Act (HMDA).

18. Virginia Mortgage Services, Inc., Colonial Heights, Virginia

Action: Proposed Settlement Agreement that would include indemnification to HUD for any claim loss sustained in connection with an improperly originated mortgage, and corrective action to assure compliance with HUD–FHA requirements.

Cause: A HUD monitoring review which disclosed violations of HUD–FHA requirements including: Improperly originating a HUD–FHA insured mortgage; failure to maintain an adequate Quality Control Plan for the origination of HUD–FHA insured mortgages; and failure to comply with reporting requirements under the Home Mortgage Disclosure Act (HMDA).

19. Builders Financial Corporation, Tempe, Arizona

Action: Proposed Settlement Agreement that would include indemnification to HUD for its claim loss of $36,665 in connection with one improperly originated mortgage, agreement not to submit a future claim in connection with one improperly originated mortgage, and corrective action to assure compliance with HUD–FHA requirements.

Cause: A HUD monitoring review which cited violations of HUD–FHA requirements that included: Improperly originating two HUD–FHA insured mortgages; failure to maintain an adequate Quality Control Plan for the origination of HUD–FHA insured mortgages; and failure to comply with the reporting requirements under the Home Mortgage Disclosure Act (HMDA).

20. Intermountain Mortgage Company, Inc., Billings, Montana

Action: Proposed Settlement Agreement that would include indemnification to HUD for one improperly originated mortgage, and corrective action to assure compliance with HUD–FHA requirements.

Cause: A HUD monitoring review which cited the company for improperly originating a HUD–FHA insured mortgage; and failure to comply with HUD–FHA reporting requirements under the Home Mortgage Disclosure Act (HMDA).

21. Pro-Net Financial, Inc., San Diego, California

Action: Letter of Reprimand.

Cause: A HUD monitoring review which cited the company for failure to maintain a Quality Control Plan for the origination of HUD–FHA insured mortgages which complies with HUD–FHA requirements.

22. First Colony Mortgage Corporation, North Port, Florida

Action: Letter of Reprimand.

Cause: A HUD monitoring review which cited violations of HUD–FHA requirements including: Failure to comply with HUD–FHA reporting requirements under the Home Mortgage Disclosure Act (HMDA); and failure to maintain an adequate Quality Control Plan for the origination of HUD–FHA insured mortgages.

23. Empire Mortgage Group, Inc., Margate, Florida

Action: Letter of Reprimand.

Cause: A HUD monitoring review that cited violations of HUD–FHA requirements that included: Failure to comply with reporting requirements under the Home Mortgage Disclosure Act (HMDA); and failure to maintain an adequate Quality Control Plan for the origination of HUD–FHA insured mortgages.

24. Harbor Financial Mortgage Corporation, Houston, Texas

Action: Letter of Reprimand.

Cause: A HUD monitoring review that cited the company for failure to comply with HUD–FHA reporting requirements under the Home Mortgage Disclosure Act (HMDA).

25. Gainesville Mortgage Company, Gainesville, Florida

Action: Letter of Reprimand.

Cause: A HUD monitoring review which cited violations of HUD–FHA requirements including: Failure to comply with HUD–FHA reporting requirements under the Home Mortgage Disclosure Act (HMDA); and failure to maintain an adequate Quality Control Plan for the origination of HUD–FHA insured mortgages.

26. Realty Mortgage Corporation, Jackson, Mississippi

Action: Letter of Reprimand.

Cause: A HUD monitoring review which cited the company for failure to comply with HUD–FHA reporting requirements under the Home Mortgage Disclosure Act (HMDA).

27. Love Funding Corporation, Washington, DC

Action: Proposed Settlement Agreement that would include indemnification to HUD for any claim loss or a buydown of the mortgage amount, for an over-mortgaged HUD–FHA insured multifamily mortgage originated by the company.

Cause: A HUD Office of Inspector General audit which cited violations of HUD–FHA program requirements.

28. Finlay Financial Corporation, Cerritos, California

Action: Proposed Settlement Agreement that would include indemnification to HUD in the amount of $308,000 in connection with six improperly originated mortgages, agreement not to submit future claims on three improperly originated mortgages, and a proposed civil money penalty in the amount of $19,000.

Cause: A HUD monitoring review citing violations of HUD–FHA program requirements that included: Submission of inaccurate information to the Department; false certifications; permitting the use of strawbuyers in connection with HUD–FHA insured transactions; and failure to properly verify mortgagors' financial information.

29. Bancorp Mortgage, Anaheim, California

Action: Withdrawal of HUD mortgagee approval, and a proposed civil money penalty in the amount of $17,000.

Cause: A HUD monitoring review which cited violations of HUD–FHA program requirements that included: Failure to comply with reporting requirements under the Home Mortgage Disclosure Act (HMDA); failure to maintain an adequate Quality Control Plan for the origination of HUD–FHA insured mortgages; submitting false documentation to HUD–FHA; failure to adequately verify mortgagors' assets; using independent contractors to assist in preparing FHA mortgage insurance applications; making prohibited payments to independent contractors; and submitting a defaulted loan for HUD–FHA mortgage insurance.

30. Primary Mortgage Banking Corporation, Happague, New York

Action: Proposed Settlement Agreement that would include indemnification to HUD for any claim losses sustained in connection with 13 improperly originated mortgages, and a civil money penalty in the amount of $12,000.

Cause: A HUD monitoring review which disclosed violations of HUD–FHA program requirements including: Failure to maintain an adequate Quality Control Plan for the origination of HUD–FHA insured mortgages; failure to adequately verify mortgagors' source of funds; submitting inaccurate income information for a mortgagor; and submitting a mortgage for insurance which exceeded the maximum permissible mortgage amount.

31. Community West Mortgage Company, Sacramento, California

Action: Letter of Reprimand.

Cause: A HUD monitoring review which cited the company for noncompliance with the Department's mortgagee approval requirements. The company failed to ensure that employees conduct only the company's business affairs during normal business hours.

32. California Mortgage Service, Santa Ana, California

Action: Letter of Reprimand and a proposed civil money penalty in the amount of $35,000.

Cause: A HUD monitoring review which cited violations of HUD–FHA mortgage servicing requirements that included: Failure to properly dispose of mortgagors' escrow surpluses; failure to segregate mortgagors' escrow funds; failure to comply with the partial payment and partial prepayment rules; failure to refund escrow funds to mortgagors following mortgage payoff; improperly holding mortgagors' funds in suspense following mortgage payoff; and failure to properly remit monthly mortgage insurance premiums to HUD–FHA.

33. Preferred Financial Funding, Inc., Colton, California

Action: Probation and a proposed civil money penalty in the amount of $22,000.

Cause: A HUD monitoring review which cited violations of HUD–FHA Title I program requirements which included: Advising and allowing borrowers to use loan proceeds for ineligible items; falsely advising borrowers that discount points and other charges were set by HUD; allowing borrowers to finance up-front fees in their loan amounts; disbursing loan proceeds to finance property improvements which were started prior to loan approval; failing to ensure that detailed descriptions and copies of proposals or contracts were provided by borrowers; failing to verify funds used by borrowers for their initial payment; on supplemental loans, failing to ensure that the liens to secure the Title I loans had priority over their conventional liens; failing to comply with HUD–FHA reporting requirements under the Home Mortgage Disclosure Act (HMDA); and utilizing misleading advertising that misrepresented the Title I program.

34. Sound Mortgage, Inc., Seattle, Washington

Action: Proposed Settlement Agreement that would include indemnification to HUD in the amount of $48,000 for one improperly originated mortgage, and corrective action to assure compliance with HUD–FHA requirements.

Cause: A HUD monitoring review which cited the company for violations of HUD–FHA program requirements in the origination of one HUD–FHA insured mortgage. The company failed to assure that the mortgagor made the minimum required investment in the property, and failed to conduct a property inspection.

Dated: January 27, 1993.

James E. Schoenberger,

Associate General Deputy, Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 93–2328 Filed 2–1–93; 8:45am]

Billing Code 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–942–00–4730–02; GP3–088]

Filing of Plats of Survey; Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 41 S., R. 4 E., accepted November 24, 1992
T. 3 S., R. 5 E., accepted January 6, 1993
T. 33 S., R. 24 E., accepted December 18, 1992
T. 33 S., R. 25 E., accepted December 18, 1992

T. 16 S., R. 32 E., accepted May 11, 1992
T. 14 S., R. 35 E., accepted January 6, 1993
T. 36 S., R. 4 W., accepted October 22, 1992

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1300 NE. 44th Avenue, Portland, Oregon 97213, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 1300 NE. 44th Avenue, P.O. Box 2965, Portland, Oregon 97208.

Dated: January 21, 1993.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 93–2344 Filed 2–1–93; 8:45 am]

BILLING CODE 4310–33–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 23, 1993. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by February 17, 1993.

Antoinette J. Lee,

Acting Chief of Registration, National Register.

ALABAMA

Etowah County

Gunn, Charles, House, 872 Chestnut St., Gadsden, 93000052

ARKANSAS

Saline County

Clary, J.H. and Ann Lowe, House, 305 N. East St., Benton, 93000053

COLORADO

Teller County

Stratton's Independence Mine and Mill, Jct. of Rangeview Rd. and CO 67, Victor vicinity, 93000054

[FR Doc. 93–2394 Filed 2–1–93; 8:45 am]

BILLING CODE 4136–65–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–55 (Sub-No. 440X)]

CSX Transportation Co., Inc; Abandonment Exemption; In Hamilton County, OH

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903 and 10904, CSX Transportation Company, Inc.'s abandonment of a 0.45-mile segment of track in Hamilton County, OH, subject to the standard labor protective conditions.

DATES: Unless a formal expression of intent to file an offer of financial assistance is received, this exemption will be effective on March 4, 1993. Formal expressions of intent to file an offer[1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by February 12, 1993, petitions to stay must be filed by February 17, 1993, and petitions for reopening must be filed by February March 1, 1993. Requests for a public use condition must be filed by February 22, 1993.

ADDRESSES: Send pleadings referring to Docket No. AB–55 (Sub-No. 440X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423;

(2) Petitioner's representative: Charles M. Rosenberger, Esq., 500 Water Street J150, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927–5610 [TDD for hearing impaired: (202) 927–5721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721].

Decided: January 21, 1993.

By the Commission, Chairman Philbin, Vice Chairman Simmons, Commissioners Phillips, McDonald, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–2371 Filed 2–1–93; 8:45 am]

BILLING CODE 7035–01–M

[1] *See Exemp. of Rail Line Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[Docket No. AB–55 (Sub-No. 443X)]

CSX Transportation, Inc.; Abandonment Exemption; Hillsborough County, FL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission, under 49 U.S.C. 10505, exempts CSX Transportation, Inc. (CSXT), from the prior approval requirements of 49 U.S.C. 10903–10904, to permit CSXT to abandon an approximately 0.64-mile segment of its Yeoman Subdivision, between milepost 844.46 and milepost 845.11, in Hillsborough County, FL, subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer[1] of financial assistance has been received, this exemption will be effective on March 4, 1993. Formal expressions of intent to file an offer[1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by February 12, 1993, petitions to stay must be filed by February 17, 1993, and petitions for reconsideration must be filed by March 1, 1993. Requests for a public use condition must be filed by February 22, 1993.

ADDRESSES: Send pleadings referring to Docket No. AB–55 (Sub-No. 443X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423;

(2) Petitioner's representative: Charles M. Rosenberger, CSX Transportation,

[1] See *Exempt. of Rail Line Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 2d 164 (1987).

Inc., 500 Water Street, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927–5610 [TDD for hearing impaired: (202) 927–5721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 927–5721.)

Decided: January 26, 1993.

By the Commission, Chairman Philbin, Vice Chairman Simmons, Commissioners Phillips, McDonald, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–2370 Filed 2–1–93; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to CERCLA in United States v. The Michael Co., et al.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on January 19, 1993, a proposed Consent Decree in *United States* v. *The Michael Company, et al.*, Civil Action No. 90–70–D–S, was lodged with the United States District Court for the Southern District of Iowa (Davenport Division).

The Complaint in this enforcement action was filed on May 25, 1990, pursuant to section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9607, seeking reimbursement of costs incurred by the United States in responding to the release or threat of release of hazardous substances from four sites (the Bettendorf Site, the Rolff Road Site, the Rockingham Road Site, and the Farragut Road Site) located in the Bettendorf/Davenport area of Iowa. The proposed consent decree has been entered into between the United States and Americold Corporation, Hawkeye Wholesale Grocery Company, Inc., Heatilator, Inc., Geo. A. Hormel & Company, Monsanto Company, Swiss Valley Farms, and Thoms-Proestler Company. Under the terms of the proposed consent decree, Americold Corporation, Hawkeye Wholesale Grocery Company, Inc., Heatilator, Inc., Geo. A. Hormel & Company, Monsanto Company, Swiss Valley Farms, and Thoms-Proestler Company will pay the United States three hundred and twenty five thousand dollars and no cents ($325,000.00) to reimburse the United States for its response costs.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *The Michael Company, et al.* (DOJ # 90–11–3–555).

The proposed Consent Decree may be examined at the office of the United States Attorney, Southern District of Iowa, 115 U.S. Courthouse, East 1st & Walnut Sts., Des Moines, Iowa 50309 and the United States Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101. Copies of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 634–0892. In requesting a copy, please enclose a check in the amount of $5.50 (25 cents per page reproduction costs), payable to the "Consent Decree Library."

John C. Cruden,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–2318 Filed 2–1–93; 8:45 am]

BILLING CODE 4410–01–M

Consent Decree in Action Brought Under the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a consent decree in *United States* v. *Phillips Industries, Inc. et al.*, Civil Action No. 90–0127 E, was lodged with the United States District Court for the District of Idaho on November 20, 1992. This Consent Decree settles an action filed by the United States, pursuant to section 112 of the Clean Air Act, 42 U.S.C. 7412, against Phillips Industries, Inc., H.H. Phillips, and Tom Simko.

The United States Department of Justice brought this action on behalf of the U.S. Environmental Protection Agency, to recover civil penalties from and obtain injunctive relief against the Defendants for alleged violations of the Clean Air Act and the National Emission Standards for Hazardous Air Pollutants for asbestos ("the asbestos NESHAP") promulgated thereunder, during renovation and demolition activities which took place at the Old Ralston Purina Plant in Pocatello, Idaho in 1986 and 1988 to 1989. In this settlement, the Defendants will pay the United States a civil penalty of $66,350.00. Also, any future renovation and demolition operations conducted at the Defendants' facilities will be subject to the provisions set out in the consent decree, as well as to the inspection, notification, and work practice requirements of the asbestos NESHAP.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044 and refer to *United States* v. *Phillips Industries, Inc., et al.*, DOJ number 90–5–2–1–1423.

Copies of the proposed Consent Decree may be examined at the Office of the United States Attorney, District of Idaho, Room 328 Federal Building, 550 West Fort Street, Boise, Idaho 83724, and at the U.S. Environmental Protection Agency, Office of the Regional Counsel, Region X, 1200 Sixth Avenue, Seattle, Washington 98101. Copies of the proposed Consent Decree may also be obtained from the Consent Decree Library, 601 Pennsylvania Avenue, Box 1097, Washington, DC 20004, (202) 347–2072. A copy of the proposed Consent Decree may be obtained by mail or in person from the Consent Decree Library. When requesting a copy of the Consent Decree, please enclose a check in the amount of $5.50 (25 cents per page reproduction costs) payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–2319 Filed 2–1–93; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984; Bell Communications Research, Inc.

Notice is hereby given that, on December 11, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Bell Communications Research, Inc. ("Bellcore") filed a written notification on behalf of Bellcore and Ericsson Cables AB ("Ericsson Cables") simultaneously with the Attorney General and the Federal

Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are Bellcore, Livingston, NJ; and Ericsson Cables, Hudiksvall, Sweden. Bellcore and Ericsson Cables entered into an agreement effective as of November 15, 1992, to engage in cooperative research directed to fiber reliability, including understanding the significance of fiber reliability for exchange and exchange access services and prototype fabrication for experimental demonstration related to such fiber reliability research.

Constance K. Robinson,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 93–2308 Filed 2–1–93; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research Act of 1984; Bell Communications Research, Inc.

Notice is hereby given that, on December 17, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Bell Communications Research, Inc. ("Bellcore") filed written notifications on behalf of Bellcore and NORTEL Federal Systems, Inc. ("NORTEL"), Hughes Aircraft Company ("Hughes"), Rockwell International Corporation ("Rockwell"), United Technologies Corp., ("United Technologies"), and The Trustees of Columbia University in the City of New York ("Columbia") simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are Bell Core, Livingston, NJ; NORTEL, McLean, VA; Hughes, Los Angeles, CA; Rockwell, Thousand Oaks, CA; United Technologies, East Hartford, CT; and Columbia, New York, NY. Bellcore, NORTEL, Hughes, Rockwell, United Technologies and Columbia entered into a collaboration agreement effective on September 24, 1992, to form an Optical Network Technology Consortium to engage in cooperative research in the area of all-optical communications networks to better understand the applications of this technology for exchange and exchange access service networks, including without limitation research prototype fabrication for the experimental demonstration of such technology.

Constance K. Robinson,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 93–2309 Filed 2–1–93; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 12, 1993.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 12, 1993.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 19th day of January, 1993.

Violet Thompson,

Deputy Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
ARCO Alaska, Inc (Co)	Anchorage, AK	01/19/93	12/29/92	28,194	Oil and Gas.
Dover Electronics Co (Co)	Conklin, NY	01/19/93	12/30/92	28,195	Chip Modules.
Grayling Oil, Inc (Co)	Hobart, OK	01/19/93	01/05/93	28,196	Oil and Gas.
Johnson Controls, Inc (AIW)	Watertown, WI	01/19/93	01/05/93	28,197	Transformers and Thermocouples.
Morristown Manufacturing Co (ILGWU)	Talbot TN	01/19/93	01/08/93	28,198	Dresses and Jumpsuits.
North American Directory Corp (Wkrs)	Lowell, MA	01/19/93	01/08/93	28,199	Telephone Books.
Olotsson Corp, Inc (UAW)	Lansing MI	01/19/93	01/05/93	28,200	Turing and Boring Machines.
McDonnell Douglas Corp (UAW)	Long Beach, CA	01/19/93	12/23/92	28,201	Commercial Aircrafts.
McDonnell Douglas Corp (UAW)	Monrovia, CA	01/19/93	12/23/92	28,202	Commercial Aircrafts.
McDonnell Douglas Corp. (UAW)	Huntington Beach, CA	01/19/93	12/23/92	28,203	Commercial Aircrafts.
Mayfair Industries (Co)	New York, NY	01/19/93	12/30/92	28,204	Warehouse and Distribution for Co.
Pioneer Industrial Products (URW)	Willard, OH	01/19/93	01/06/93	28,205	Rubber Gloves.
American National Can Co (USA)	Chicago, IL	01/19/93	01/05/93	28,206	Aeresol Cans.
Tetley Tea, Inc (Wkrs)	Morrisplains, NJ	01/19/93	01/07/93	28,207	Tea.
Schweizer Aircraft Corp (Wkrs)	Elmira, NY	01/19/93	01/06/93	28,208	Military Training Aircraft.
Allied Bendix (UAW)	Green Island, NY	01/19/93	01/05/93	28,209	Brake Linings and Resins.
General Electric Co (Wkrs)	Syracuse, NY	01/19/93	12/02/92	28,210	Sonar and Radar Systems.

APPENDIX—Continued

Petitioner (Union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Capital Creations, Inc (ILGWU)	Hoboken, NJ	01/19/93	01/05/93	28,211	Coats and Jackets.
Gregg Originals, Inc (ILGWU)	Hoboken, NJ	01/19/93	01/05/93	28,212	Ladies Wool Coats.
Nicolette Fashions, Inc (ILGWU)	West New York, NJ	01/19/93	01/05/93	28,213	Coats and Suits.
Wool Fashions (ILGWU)	Hoboken, NJ	01/19/93	01/05/93	28,214	Coats and Suits.
Verona Fashion, Inc (ILGWU)	Hoboken, NJ	01/19/93	01/05/93	28,215	Ladies Coats and Suits.
Cotone, Inc. (ILGWU)	Jersey City, NJ	01/19/93	01/05/93	28,216	Ladies' Coats.
Five Sons Coats (ILGWU)	Jersey City, NJ	01/19/93	01/05/93	28,217	Coats and Suits
H&P Garment (ILGWU)	Hoboken, NJ	01/19/93	01/05/93	28,218	Ladies' Coats and Suits.
Palermo Fashions, Inc (ILGWU)	Hoboken, NJ	01/19/93	01/05/93	28,219	Ladies' Coats.
M.C.M. Coats, Inc (ILGWU)	Hoboken, NJ	01/19/93	01/05/93	28,220	Ladies' Coats and Suits.
Dell Coat Co., Inc (ILGWU)	Union City, NJ	01/19/93	01/05/93	28,221	Ladies' Coats.
Utica Alloys, Inc (Wkrs)	Utica, NY	01/19/93	01/07/93	28,222	High Temperture Alloys.
William Carter Co (The) (Wkrs)	Senatobia, MS	01/19/93	12/02/92	28,223	Girl's & Boys' Underwear.
Sharon Jay Togs, Inc (Wkrs)	New Bedford, MA	01/19/93	01/05/93	28,224	Childrens Sportswear.
Pump Unit Service (Wkrs)	Williston, ND	01/19/93	01/08/93	28,225	Oilfield Services.
Baker Dietzel & Smith, Inc (Wkrs)	Center Point, TX	01/19/93	12/16/92	28,226	Aircraft Parts.
United States Steel Corp (USWA)	Braddock, PA	01/19/93	01/05/93	28,227	Steel and Related Products.
Geneva Steel Co (USWA)	Vineyard, UT	01/19/93	01/05/93	28,228	Carbon Plate and Coil Sheet Products.
Al Tech Specialty Steel (USWA)	Dunkirk, NY	01/19/93	01/07/93	28,229	Steel Bar and Rods.
Al Tech Specialty Steel (USWA)	Watervliet, NY	01/19/93	01/07/93	28,230	Steel Bar and Rods.
Leslie Fay Co, Dress Div. (Wkrs)	Wilkes-Barre, PA	01/19/93	01/05/93	28,231	Ladies Apparel.
Binns Machinery Products (Co)	Cincinnati, OH	01/19/93	01/01/93	28,232	Roll Lathes.
Mayfair Industries (Co)	Hamburg, PA	01/19/93	01/06/93	28,333	Ladies' and Childrens' Sportswear.
Mayfair Industries (Co)	New Haven, CT	01/19/93	01/06/93	28,234	Administrative and Office for Mfg Plants.

[FR Doc. 93–2337 Filed 2–1–93; 8:45 am]
BILLING CODE 4510–30–M

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of January 1993.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–27,787; Praxair, Inc., Linde Div., Tonawanda, NY

TA–W–27,967; Stiles Apparel Team, Inc., Dallas, TX

TA–W–28,000; Garfield Sportswear, Inc., Garfield, NJ

TA–W–27,949; Dyna Turn of Oklahoma, Inc., Elk City, OK

TA–W–28,001; Q&T Coat, Inc., Paterson, NJ

TA–W–27,796; Production Pattern Co., Bedford, OH

TA–W–27,907; Douglas & Lomson Co., Cleveland, MS

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA–W–27,938; Daishowa America Co., Ltd., Airport Road Log Yard, Port Angeles, WA

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–27,997; Texaco Exploration & Production, Inc., Eastern E&P Region, New Orleans, LA

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–27,898; Cambria & Induana Railroad Co., Colver, PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–27,947; Shallow Production, Inc., Evanston, WY

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–27,954 & TA–W–27,955; Intershoe, Inc., DIP, Millersburg, PA and Harrisburg, PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–28,005; Casual Coat Co., Inc., Paterson, NJ

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–28,057; Dante Sportswear, Clifton, NJ

The investigation revealed that criterion (2) and criterion (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

TA–W–27,918; Autologic, Inc., Norcross, GA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–28,139; GTE, Potosi, MO

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–28,015; Nestle Beverage Co., Sunbury, OH

The investigation revealed that criterion (2) and criterion (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Affirmative Determinations

TA–W–27,892; Reynolds Cable Plant, Longview, WA

A certification was issued covering all workers engaged in the production of aluminum redraw rod and bare aluminum conductor separated on or after September 29, 1991.

TA–W–27,962; Evelyn Pearson Div. of Leslie Fay, Brooklyn, NY

A certification was issued covering all workers separated on or after October 22, 1991.

TA–W–27,969 & TA–W–27,969A; Western Atlas Core Laboratories, Aurora, CO & Carrollton, TX

A certification was issued covering all workers separated on or after October 23, 1991.

TA–W–27,988; Country Miss, Inc., Bristol, VA

A certification was issued covering all workers separated on or after November 6, 1991.

TA–W–27,732; JFP Energy, Inc., Houston, TX

A certification was issued covering all workers separated on or after August 19, 1991.

TA–W–27,961; Brown Shoe Co., Salem, IL

A certification was issued covering all workers separated on or after October 19, 1991.

TA–W–27,970; W.R. Grace & Co., Construction Products Div., New Castle, PA

A certification was issued covering all workers separated on or after September 30, 1991.

TA–W–27,993; Rogers Corp Circuit Interconnections Group, Chandler, AZ

A certification was issued covering all workers separated on or after November 6, 1991.

TA–W–27,952; Austin Powder Co., McArthur, OH

A certification was issued covering all workers separated on or after October 21, 1991 and before November 1, 1992.

TA–W–27,958; Engineered Well Services, Inc., Prudhoe Bay, AK

A certification was issued covering all workers separated on or after October 5, 1991.

TA–W–28,033; Exlog, Inc., Houston, TX

A certification was issued covering all workers separated on or after November 2, 1991.

TA–W–27,881; Grant Tensor Geophysical Corp., Houston, TX

A certification was issued covering all workers separated on or after September 21, 1991.

TA–W–27,939; Powerex, Inc., Youngwood, PA

A certification was issued covering all workers separated on or after September 26, 1992.

TA–W–28,003; RCR Sportswear Co., Passaic, NJ

A certification was issued covering all workers separated on or after October 29, 1991.

TA–W–28,042; Shell Oil Co., Administration and E & P, Birmingham, AL & Operating at Various Locations in the Following States: A; AL, B; MS, C; NM

A certification was issued covering all workers separated on or after November 2, 1991.

TA–W–28,043; Shell Oil Co., Shell Western E & P Inc., Birmingham, AL & Operating at Various Locations in the Following States: A; AL, B; MS, C; NM

A certification was issued covering all workers separated on or after November 2, 1991.

TA–W–28,046; Shell Oil Co., Shell Offshore, Inc., Birmingham, AL & Operating at Various Locations in the Following states: A; AL, B; MS

A certification was issued covering all workers separated on or after November 2, 1991.

I hereby certify that the aforementioned determinations were issued during the month of January 1993. Copies of these determinations are available for inspection in room C–4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: January 26, 1993.

Violet Thompson,

Deputy Director, Office of Trade Adjustment Assistance.

[FR Doc. 93–2338 Filed 2–1–93; 8:45 am]

BILLING CODE 4510–30–M

TA–W–27,814

Weyerhaeuser Snoqualmie, WA

Notice of Negative Determination Regarding Application for Reconsideration

By an application dated December 14, 1992, the Western Council of Industrial Workers Local #1845 (WCIW) requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on November 12, 1992 and published in the **Federal Register** on December 3, 1992 (57 FR 57241).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union claims that lumber imports from Canada have adversely affected the workers at Weyerhaeuser while at the same time there was a lumber supply problem in the Northwest. Lumber supply problems would not form a basis for a worker group certification. Further, U.S. imports of softwood lumber from Canada were included in the Department's aggregate U.S. import tables.

The Department's denial was based on the fact that the "contributed importantly" test of the Worker Group Requirements of the Trade Act of 1974 was not met for softwood lumber and wood chips in the period relevant to the worker petition.

The Department's survey of Snoqualmie's major customers shows that they did not purchase imported softwood lumber or wood chips during the survey period. The survey also shows that more than half of their top ten customers were foreign. A decline in export sales would not form a basis for a worker group certification.

Investigation findings show that sales and production at Snoqualmie increased in 1992 compared to 1991. The findings also show that the workers are not separately identifiable by product.

Other findings show that worker separations occurred because of the introduction of labor saving equipment. Automatic lumber sorters with laser readers and computers eliminated several jobs at Weyerhaeuser's Snoqualmie mill. Previously the sorting of lumber in 10 foot, 12 foot lengths and

4 inch, 6 inch and 8 inch widths was done by hand. Technological unemployment would not provide a basis for a worker group certification.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 21st day of January 1993.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 93–2339 Filed 2–1–93; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 93–008]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NAC, Aeronautics Advisory Committee Task Force on General Aviation Transportation.

DATES: February 16, 1993, 8:30 a.m. to 4:30 p.m.; and February 17, 1993, 8:30 a.m. to 3 p.m.

ADDRESSES: National Aeronautics and Space Administration, room 625, Building 10B, 600 Independence Avenue, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Ray Hood, Office of Aeronautics, National Aeronautics and Space Administration, Washington, DC 20546, 202/453–2841.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Discussion of Charter and Schedule

—Review NASA Research Activities

Dated: January 22, 1993.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 93–2349 Filed 2–1–93; 8:45 am]

BILLING CODE 7510–01–M

[Notice 93–007]

NASA Advisory Council, Space Science and Applications Advisory Committee, Life Sciences Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Space Science and Applications Advisory Committee, Life Sciences Subcommittee.

DATES: February 9, 1993, 8:30 a.m. to 5 p.m.; and February 10, 1993, 8:30 a.m. to 12:30 p.m.

ADDRESSES: National Aeronautics and Space Administration, room MIC–3, 300 E Street, SW., Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald J. White, Code SB, National Aeronautics and Space Administration, Washington, DC 20546 (202/358–2147).

SUPPLEMENTARY INFORMATION: The meeting will be closed to the public on Tuesday, February 9, 1993, from 9 a.m. to 10 a.m. and on Wednesday, February 10, 1993, from 8:30 a.m. to 9 a.m. in accordance with 5 U.S.C. 552b(c)(6), to allow for a discussion on qualifications of individuals being considered for membership to the Subcommittee. The remainder of the meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Life Sciences Status

—Russian Cooperation Program

—Strategic Planning and Budgetary Initiatives

—Review of Discipline Working Group Reports

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: January 22, 1993.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 93–2350 Filed 2–1–93; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget (OMB) Review

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of OMB review of information collection.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

1. Type of submission, new, revision, or extension: Extension.

2. Type title of the information collection: NRC Form 241—Report of Proposed Activities in Non-Agreement States.

3. The form number if applicable: NRC Form 241.

4. How often the collection is required: The forms are submitted only as the specified uses occur.

5. Who will be required or asked to report: Any Agreement State licensee who engages in activities (use of radioactive byproduct material) in non-Agreement States under the general license in 10 CFR 150.20.

6. An estimate of the number of responses annually: 200.

7. An estimate of the total number of hours needed annually to complete the requirement or request: 50 (15 minutes per response).

8. An indication of whether section 3504(h), Public Law 96–511 applies: Not applicable.

9. Abstract: NRC Form 241 is required to be filed with NRC by any Agreement State licensee who engages in activities (use of radioactive byproduct material) under the general license in 10 CFR 150.20. This notification permits NRC to schedule inspections of the activities to determine whether the activities are being conducted in accordance with requirements for protection of the public health and safety.

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.

Comments and questions may be directed by mail to the OMB reviewer: Ronald Minsk, Office of Information and Regulatory Affairs (3150–0013), NEOB–3019), Office of Management and Budget, Washington, DC 20503.

Comments may also be communicated by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 25th day of January 1993.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 93–2324 Filed 2–1–93; 8:45 am]

BILLING CODE 7590–01–M

Brunswick Steam Electric Plant, Units 1 and 2, Carolina Power & Light Company, et al.; Environmental Assessment and Finding of No Significant Impact

[Docket Nos. 50–325 and 50–324]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–71 and DPR–62 issued to Carolina Power & Light Company (CP&L or the licensee) for operation of the Brunswick Steam Electric Plant, Units 1 and 2, located in Brunswick County, North Carolina.

Environmental Assessment

Identification of the Proposed Action

The proposed amendments would allow a one-time only revision to the requirements of Section 3.3.3 of Technical Specification 3/4.3.3, Emergency Core Cooling System Actuation Instrumentation when in Operational Condition 4 (Cold Shutdown) to support modifications to upgrade the seismic qualification of instrument racks H21–P009 (Unit 2 only) and H21–P010 (Unit 1 and Unit 2). The amendments would allow the minimum number of operable channels for one reactor steam dome pressure—low instrumentation trip system to be temporarily reduced from two (2) channels to one (1) channel. This would allow, on three separate occasions during this present outage, one reactor steam dome pressure—low (injection permissive) channel to be placed in the condition (tripped) that would satisfy the logic for allowing injection by the associated emergency core cooling system (ECCS) for up to seven (7) days without invoking the associated Action statement requirements.

The proposed amendment is in accordance with CP&L's application dated November 16, 1992.

The Need for the Proposed Action

The proposed change to the Facility Operating Licenses is needed so modifications can be made to upgrade the seismic qualification of the ECCS instrument racks H21–P009 (Unit 2 only) and H21–P010 (Unit 1 and Unit 2) prior to startup from the current outage.

Environmental Impacts of the Proposed Action

The proposed one-time amendment will not alter the function of the emergency core cooling system actuation instrumentation, and the planned compensatory actions will ensure that the consequences of any previously evaluated accident are not increased. Therefore, there will not be a significant increase in the types or amounts of any effluent that may be released offsite and, as such, the proposed amendment does not involve irreversible environmental consequences beyond those already associated with normal operation of the plant.

The staff has determined that the proposed change does not alter any initial conditions assumed for the design basis accidents previously evaluated nor change operation of safety systems utilized to mitigate the design basis accidents.

The proposed change does not increase the probability or consequences of accidents. No changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that proposed action would result in no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed change to the License involves one component in the plant which is located within the restricted area as defined in 10 CFR part 20. It does not affect nonradiological plant effluents and has no other environmental impacts. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendments.

Alternatives to the Proposed Action

Since the Commission has concluded that there are no significant environmental effects that would result from the proposed actions, any alternatives with equal or greater environmental impacts need not be evaluated. The principal alternative would be to deny the licensee's request for amendments. This would not reduce environmental impacts of plant operation.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement (FES) for the Brunswick Steam Electric Plant, Units 1 and 2, dated January 1974.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

Based on the foregoing 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 license amendments.

For further details with respect to this action, see the application for amendment dated November 16, 1992, which is available for public inspection in the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and the local public document room located at the University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Dated at Rockville, Maryland, this 28th day of January 1993.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Director, Project Directorate II–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–2489 Filed 2–1–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 70–36; License No. SNM–33]

Finding of No Significant Impact and Notice of Opportunity for a Hearing Amendment of Special Nuclear Material; Combustion Engineering, Inc.; Hematite, MO

Correction

In FR. Doc. 92–31706, appearing on pages 62392–62394 in the issue of Wednesday, December 30, 1992, three corrections are required:

1. Page 62392, the right column, the third line of the third paragraph reads,

"8,000 kilograms of uranium enriched to * * *" and should read "8,000 kilograms of U–235 contained in uranium enriched up to * * *"

2. Page 62393, right column, third paragraph, the location of the nearest resident reads "east-southeast" and should read "west-northwest."

3. Page 62394, left column, second line under heading Opportunity for a Hearing, the word "renewal" should be "amendment."

Dated at Rockville, Maryland, this 22nd day of January 1993.

For the Nuclear Regulatory Commission.

John Hickey,

Chief, Fuel Cycle Safety Branch Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 93–2373 Filed 2–1–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–295 and 50–304]

Commonwealth Edison Co.; Notice of Issuance of 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 Nos. DPR–39 and DPR–48, issued to Commonwealth Edison Company (the licensee), for operation of the Zion Nuclear Power Station, Units 1 and 2, respectively, located in Lake County, Illinois.

Identification of Proposed Action

The amendment would consist of a change to the Technical Specifications (TS) that would increase the storage capacity of the spent fuel pool to 3012 fuel assemblies, including six (6) defective fuel storage cells.

The amendment to the TS is responsive to the licensee's application dated January 15, 1992, as supplemented by additional correspondence dated October 2 and 16, 1992. The NRC staff has prepared an Environmental Assessment of the proposed action.

Summary of Environmental Assessment

The "Final Generic Environmental Impact Statement (FGEIS) on Handling and Storage of Spent Light Water Power Reactor Fuel" (NUREG–0575), Volumes 1–3 (1979), concluded that the environmental impact of interim storage of spent fuel was negligible and the cost of the various alternatives reflects the advantage of continued generation of nuclear power with the accompanying spent fuel storage. Because of the differences in design, the FGEIS recommended evaluating spent fuel pool expansions on a case-by-case basis.

For Zion Station, Units 1 and 2, the expansion of the storage capacity of the spent fuel pool will not create any significant additional radiological effects or nonradiological environmental impacts beyond those assessed in the Commission's Final Environmental Statement (FES) issued in December 1972 related to the operation of Zion Station, and in the Safety Evaluation Reports issued August 9, 1976, and February 28, 1980, in support of license amendments concerning storage capacity.

The occupational radiation dose for the proposed operation of the expanded spent fuel pool is estimated to be less than three percent of the total annual occupational radiation exposure for this facility.

Finding of No Significant Impact

The staff has reviewed the proposed spent fuel pool expansion to the facility relative to the requirements set forth in 10 CFR part 51. Based on this assessment, the staff concludes that there are no significant radiological or nonradiological impacts associated with the proposed action and that the issuance of the proposed amendment to the license will have no significant impact on the quality of the human environment. Therefore, pursuant to 10 CFR 51.31, no environmental impact statement needs to be prepared for this action.

For further details with respect to this action see (1) the application for amendment dated January 15, 1992, as supplemented by additional correspondence dated October 2 and 16, 1992, (2) the FGEIS on Handling and Storage of Spent Light Water Power Reactor Fuel (NUREG–0575), (3) the FES for Zion Station dated December 1972, and (4) the Environmental Assessment dated January 25, 1993.

These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555 and at the Waukegan Public Library, 128 North County Street, Waukegan, Illinois 60085.

Dated at Rockville, Maryland, this 25th day of January 1993.

Clyde Y. Shiraki,

Senior Project Manager, Project Directorate III–2, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 93–2374 Filed 2–1–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–219]

GPU Nuclear Corp.; Issuance of 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–16, issued to the GPU Nuclear Corporation (the licensee), for operation of the Oyster Creek Nuclear Generating Station, located in Ocean County, New Jersey.

Identification of Proposed Action

The amendment would consist of a change to the Oyster Creek Nuclear Generating Station Facility Operating License No. DPR–16 to extend the expiration date of the operating license from December 15, 2004 to April 9, 2009. These dates represent 40 years from the dates of issuance of the construction permit and the operating license, respectively. The license amendment is in response to the licensee's application dated October 4, 1991, as supplemented December 11 and 24, 1991, May 19, June 3 and 24, and November 5, 1992.

Summary of Environmental Assessment

The NRC staff has reviewed the potential environmental impact of the proposed change in the expiration date of the operating license for the Oyster Creek Nuclear Generating Station. The staff reviewed the Final Environmental Statement Related to Operation of Oyster Creek Nuclear Generating Station, dated December 1974, the Environmental Assessment for the Oyster Creek Full Term Operating License issued April 10, 1986, and Supplement 1 to the Environmental Assessment issued June 19, 1991, and additional information provided by the licensee in its license amendment submittal, as supplemented, to determine if any significant environmental impacts, other than those previously considered, would be associated with the proposed license extension.

With regard to normal plant operation, occupational radiation exposures to personnel have decreased as a result of recent plant improvements. Further reductions in radiation dose rates are expected as a result of the ongoing as low as is reasonably achievable (ALARA) program.

Accordingly, the NRC staff concludes, that as a result of the license extension, the radiological impact on the general public would not increase over that previously evaluated in the FES and the

occupational exposures will be consistent with the industry average and in accordance with 10 CFR part 20.

The NRC staff has in the past concluded that the environmental impacts associated with the uranium fuel cycle are very small when compared with the dose commitments resulting from natural background sources.

The environmental impacts attributable to transportation of fuel and waste to and from the Oyster Creek Nuclear Generating Station, with respect to normal conditions of transport and possible accidents in transport, would be bounded as set forth in Summary Table S–4 of 10 CFR 51.52, and the values in Table S–4 would continue to represent the contribution of transportation to the environmental costs associated with reactor operation.

The NRC staff has concluded that the proposed extension would not cause a significant increase in the nonradiological impact to the environment and would not change any conclusions previously reached by the NRC staff.

Finding of No Significant Impact

The NRC staff has reviewed the proposed change to the expiration date of the operating license for the Oyster Creek Nuclear Generating Station relative to the requirements set forth in 10 CFR part 51. Based upon the environmental assessment, the staff concluded that there are no significant radiological or nonradiological impacts associated with the proposed action and that the proposed license amendment will not have a significant effect on the quality of the human environment. Therefore, the Commission has determined, pursuant to 10 CFR 51.31, not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this action, see: (1) The application for amendment dated October 4, 1991, as supplemented December 11 and 24, 1991, May 19, June 3 and 24, and November 5, 1992; (2) the Final Environmental Statement Related to Operation of the Oyster Creek Nuclear Generating Station issued December 1974; (3) the Environmental Assessment for the Oyster Creek Full-Term Operating License issued April 10, 1984, and Supplement 1 to the Environmental Assessment issued June 19, 1991; and (4) the Environmental Assessment dated January 25, 1993.

These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Ocean County Library Reference Department, 101 Washington Street, Toms River, New Jersey 08753.

Dated at Rockville, Maryland, this 25th day of January 1993.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–2326 Filed 2–1–93; 8:45 am]

BILLING CODE 7590–01–M

Design Basis Threat; Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: Nuclear Utility Management and Resources Committee (NUMARC) requested a meeting to discuss the Nuclear Regulatory Commission's threat program and the process utilized to establish the design basis threat statements contained in 10 CFR 73.1. NUMARC's letter of December 21, 1993 to Mr. Selin, Chairman, U.S. Nuclear Regulatory Commission addressed several regulations that they believe increase costs to licensees without a commensurate safety benefit. NUMARC suggested that the design basis threat be reassessed in order to bring plant security programs in line with today's environment, which they believe has changed significantly since the publication of the threat statements in 1977.

DATES: February 9, 1993, 10 a.m.

ADDRESSES: 11555 Rockville Pike, room IF–19, Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: Mr. Robert F. Burnett, Director, Division of Safeguards and Transportation, Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 504–3365.

Dated at Rockville, Maryland, this 27th day of January, 1993.

For the Nuclear Regulatory Commission.

Robert F. Burnett,

Director, Division of Safeguards and Transportation.

[FR Doc. 93–2372 Filed 2–1–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 030–13027; License No. 12–00722–06; EA 92–162]

Order Imposing Civil Monetary Penalty

In the Matter of Department of the Army, U.S. Army Armament Headquarters, Rock Island, Illinois.

I.

Department of the Army (Licensee) is the holder of Byproduct Material License No. 12–00722–06 issued by the Nuclear Regulatory Commission (NRC or Commission) on September 13, 1977. The license was amended in its entirety on February 25, 1989, and is due to expire on April 30, 1994. The license was most recently amended on May 14, 1992. The license authorizes the Licensee to possess and use sealed tritium sources in glass ampoules, not to exceed 85,000 curies total and 10.2 curies per device, to be used in fire control devices in accordance with the conditions specified therein.

II.

An inspection of the Licensee's activities was conducted on June 5 through August 17, 1992. The results of this inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated October 2, 1992. The Notice states the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations. The Licensee responded to the Notice by two letters dated October 23, 1992. In its response, the Licensee takes exception to the proposed imposition of civil penalty and provides arguments why the proposed penalty is not justified. The Licensee does not take issue with any of the seven violations. The events upon which the violations are based were independently confirmed through investigations performed by the Licensee. However, the Licensee does not agree that the number and scope of the violations represent a significant failure to provide adequate management oversight of licensed activities, and an ineffective training program. Further, the Licensee takes exception to the NRC Staff's application of the civil penalty adjustment factors in the areas of corrective action, licensee performance, and prior opportunity to identify.

III.

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the violations occurred as stated and that the penalty proposed for the violations designated in the Notice should be imposed.

IV.

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *it is hereby ordered that:*

The Licensee pay a civil penalty in the amount of $15,000 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V.

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region III, 799 Roosevelt Road, Glen Ellyn, Illinois 60137.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective and final without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be: Whether, on the basis of the violations admitted by the Licensee, this Order should be sustained.

Dated at Rockville, Maryland this 25th day of January 1993.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support.

Appendix

Evaluations and Conclusions

On October 2, 1992, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during an NRC inspection on June 5 through August 17, 1992. The Department of the Army responded to the Notice in two letters dated October 23, 1992. In its responses, the Licensee does not take issue with any of the seven violations. However, the Licensee does not agree that the number and scope of the violations represent a significant failure to provide adequate management oversight of licensed activities, and an ineffective training program. Further, the Licensee takes exception to the NRC Staff's application of certain civil penalty adjustment factors. The NRC's evaluation and conclusions regarding the Licensee's requests are as follows:

Restatement of Violations

A. Condition 15 of License No. 12–00722–06 requires that the licensee conduct its program in accordance with the statements, representations, and procedures contained in the application and its enclosures dated November 6, 1988.

Enclosure 7 of the November 6, 1988 application states that in the event there is no illumination (of licensed devices), notify the local radiological protection officer.

Contrary to the above, on February 3 and 4, 1992, Fort Bragg, NC artillery, direct support and general support personnel identified a tritium M1A1 collimator as being non-illuminated and failed to notify the local radiological protection officer.

B. Condition 15 of License No. 12–00722–06 requires that the licensee conduct its program in accordance with the statements, representations, and procedures contained in the application and its enclosures dated November 6, 1988.

Enclosure 7 of the November 6, 1988 application states that when radioactively illuminated instruments are defective, these items must be placed in a plastic bag and packaged in the shipping container.

Contrary to the above, from February 3 to May 26, 1992, a defective non-illuminated M1A1 collimator was not placed in a plastic bag by Fort Bragg, NC artillery, direct support or general support personnel. In addition, on June 12 and 13, 1992, Camp Blanding, FL artillery personnel identified that two M1A1 collimators were defective (and non-illuminated) but failed to place the collimators in a plastic bag as required.

C. Condition 15 of License No. 12–00722–06 requires that the licensee conduct its program in accordance with the statements, representations, and procedures contained in the application dated November 6, 1988.

Item 10(b)(3) of the November 6, 1988 application requires that users of devices containing tritium illumination devices are required to utilize and maintain each device in accordance with military regulations and technical manuals issued.

Technical Manual 750–116 issued to Fort Bragg, NC artillery personnel states in Section 4–3 to "Purge the collimator by turning regulator valve clockwise until low pressure gage indicates 5 psi. Maintain pressure for 5 minutes."

Contrary to the above, on February 3, 1992, Fort Bragg, NC artillery personnel used a high pressure regulator which was not calibrated to deliver 5 psi, resulting in two damaged tritium M1A1 collimators. In addition, on June 12 and 13, 1992, Camp Blanding, FL artillery personnel purged two M1A1 collimators to a pressure greater than specified in the Technical Manual. Other examples of overpurging M1A1 collimators were identified on April 22, 1992 at Fort Knox, KY and in May 1992 at Fort McCoy, WI.

D. Condition 15 of License No. 12–00722–06 requires that the licensee conduct its program in accordance with the statements, representations, and procedures contained in the application dated November 6, 1988.

Item 10(b)(3) of the November 6, 1988 application requires that users of devices containing tritium illumination devices are required to utilize and maintain each device in accordance with military regulations and technical manuals issued.

Technical Manual 9–1240–324–34&P, issued to Fort Bragg, NC general support personnel, states in chapter 2, section III(2–9) that repair of an M1A1 collimator is limited to replacing the reticle cell assembly provided the radioactive light source is not broken.

Contrary to the above, Fort Bragg, NC general support maintenance personnel stated that they routinely replaced reticle cell assemblies without regard to the condition of the radioactive light sources. For example, on May 26, 1992, a repairman replaced an M1A1 collimator reticle cell assembly even though the radioactive light source was known to be broken.

E. Condition 15 of License No. 12–0072–06 requires that the licensee conduct its program in accordance with the statements, representations, and procedures contained in the application dated November 6, 1988.

Item 10(b)(3) of the November 6, 1988 application requires that users of devices containing tritium illumination devices are required to utilize and maintain each device in accordance with military regulations and technical manuals issued.

Technical Manual 9–1240–324–34&P, issued to Fort Bragg, NC support personnel, states in the chapter 2, section II troubleshooting guide that if

there is no M1A1 reticle illumination, direct or general support units should send a defective collimator to a depot-level facility. Section IV(2–31)(b)(5) states that collimators should not be stored in inhabited or unventilated buildings.

Contrary to the above, as of May 26, 1992, four non-illuminated tritium M1A1 collimators were in storage in the Fort Bragg, NC Optical Repair Shop, which is not a depot-level facility. The Fire Control Building, in which the shop is located, was occupied.

F. Condition 15 of License No. 12–00722–06 requires that the licensee conduct its program in accordance with the statements, representations, and procedures contained in the application dated November 6, 1988.

Item 10(b)(3) of the November 6, 1988 application requires that users of devices containing tritium illumination devices are required to utilize and maintain each device in accordance with military regulations and technical manuals issued.

Technical Manual 9–1240–324–34&P, issued to Fort Bragg, NC general support personnel, states in chapter 2, section III (2–13) that a strap wrench will be used to unscrew the reticle cell assembly from the optical element cell (collimator) on an M1A1 collimator.

Contrary to the above, as of May 26, 1992, Fort Bragg, NC general support maintenance personnel have routinely, over a number of years, used tools other than strap wrenches to remove reticle cell assemblies from M1A1 collimators. Specifically, propane torches and a large pipe wrench have been used to remove the assemblies.

G. 10 CFR 20.201(b) requires that each licensee make such surveys as may be necessary to comply with the requirements of part 20 and which are reasonable under the circumstances to evaluate the extent of radiation hazards that may be present. As defined in 10 CFR 20.201(a), "survey" means an evaluation of the radiation hazards incident to the production, use, release, disposal, or presence of radioactive materials or other sources of radiation under a specific set of conditions.

Contrary to the above, the Licensee did not make surveys to assure compliance with 10 CFR 20.105(b) which limits radiation levels in unrestricted areas. Specifically, after a tritium M1A1 collimator was damaged on May 26, 1992, in the Fort Bragg, NC Optical Repair Shop, an unrestricted area, surveys were not performed until June 2, 1992.

Summary of Licensee's Request for Mitigation

The Licensee does not agree that the number and scope of the violations represent a significant failure to provide adequate management oversight of licensed activities, and an ineffective training program. The Licensee also takes exception to the NRC Staff's application of the civil penalty adjustment factors in the areas of corrective action, Licensee performance, and prior opportunity to identify.

1. Safety Significance and Scope of the Violations

The Licensee notes that six of the seven violations are for failure to follow License Condition 15 of License No. 12–00722–06. This condition requires that the Army adhere to Army-generated requirements published in technical manuals covering tritium-illuminated devices. The Licensee states that these requirements were generated in order to keep exposures to tritium, as a result of use of these devices, as low as reasonably achievable. The Licensee argues that since that the violations did not result in an unreasonable exposure, the number of violations should not be considered significant. Further, had the Army-generated requirements not existed, it is the Licensee's position that the events that occurred at Ft. Bragg would not represent violations of other specific provisions of title 10 of the Code of Federal Regulations. The Licensee argues that the scope of the violations should not be considered significant since the violations are only cited at a limited number of facilities (Fort Bragg, Fort Knox, and Camp Blanding) and given that: (1) six of the seven violations are for failure to follow Army-generated requirements, and (2) the storage of collimators in uninhabited buildings is recommended but not absolutely required in the Army technical manual.

2. Corrective Actions

The Licensee states that the corrective actions taken and planned in response to the tritium incidents at Fort Bragg and elsewhere have been prompt and extensive. The Licensee acknowledges that the exposure at Fort Bragg occurred on May 26, 1992; the local Radiation Protection Officer and the Licensee's Radiation Safety Officer were notified on June 2, 1992; and the NRC was notified on June 3, 1992, but asserts that these delays were all caused by the single failure to notify the local Radiation Protection Officer of a non-illuminated M1A1 collimator. The Licensee acknowledges that the Radiation Safety Officer did not begin an on-site investigation at Fort Bragg until June 5, 1992. However, the Licensee emphasizes that the local Radiation Protection Officer performed a survey and investigation immediately upon notification.

The Licensee states that: (1) The vast majority of corrective actions that have been taken or planned are directed Army-wide; (2) the Reply to the Notice of Violation describes actions that have benefit and application Army-wide, and (3) the corrective actions that focus on Fort Bragg are included to emphasize that the location where the exposure occurred has training, procedures, and controls in place that minimize the likelihood of a similar exposure.

The Licensee asserts that it does not have the authority to mandate that the 3-day tritium course that is planned be attended by all local Radiation Protection Officers. However, a message will be prepared for signature by the Director of Army Safety announcing the dates and location for the course and strongly encouraging local Radiation Protection Officers to attend.

The Licensee also emphasizes that the majority of corrective actions had been taken or were planned well before receipt of NRC Inspection Report No. 030–13027/92001(DRSS), dated September 11, 1992. The Licensee's position is that the base civil penalty should be mitigated based on the proactive and extensive corrective actions that have been and will be taken.

3. Licensee Performance

The Licensee notes that the proposed $5,000 base civil penalty has been escalated 100 percent based on poor past performance; specifically, because of a tritium contamination incident involving an M1A1 collimator that occurred at Letterkenny Army Depot on April 4, 1988. The Licensee asserts that prior performance, as described in title 10 Code of Federal Regulations, part 2, appendix C, refers to the Licensee's performance normally within the last 2 years of the inspection at issue or the period within the last two inspections, whichever is longer. The Licensee states that the last two inspections occurred September 6–16, 1991, and June 5 through August 17, 1992. Therefore, the Licensee concludes that the longer of the two periods is two years, and since the incident at Letterkenny Army Depot occurred over 4 years ago, escalation based on poor past performance is not justified.

4. Prior Opportunity to Identify

The Licensee notes that the proposed $5,000 base civil penalty has been escalated an additional 100 percent based on the prior opportunity to identify factor. The Licensee asserts that, based on tritium contamination identified at Fort Lewis, Washington, the Licensee sent wipe test kits to six tritium repair facilities at Fort Sill, Schofield Barracks, Fort Drum, Fort Lewis, Fort Ord, and Fort Bragg. The purpose of this action was to proactively assess whether tritium contamination was a systemic problem at tritium repair facilities. Five of the six facilities performed the requested wipe tests, and the results indicated tritium contamination was not a significant problem. Although the Licensee acknowledges that followup with Fort Bragg was not accomplished, there was no reason to suspect that Fort Bragg had a problem based on the other results received.

The Licensee further acknowledges that a 1988 memorandum for the United States Army Europe discussed increased breakage of the M1A1 collimator with resulting high and persistent contamination. However, the Licensee notes that this memorandum was included in the application to renew this license that was submitted to the Nuclear Regulatory Commission and the license was renewed without comment by the Commission.

The Licensee also notes that the United States Army Environmental Hygiene Agency performed a radiation safety audit at Fort Bragg in March 1992. The Optical Repair Shop was not reviewed, simply because the Agency was not advised of its existence. The resulting inspection report, therefore, did not document problems with repair of tritium devices at Fort Bragg. The Licensee argues that since the audit did not identify problems, the audit should not be cited as a factor that gave the Licensee prior opportunity to identify. To the contrary, the Licensee could presume from the favorable inspection report results that Fort Bragg did not have a problem.

NRC Evaluation of Licensee's Request for Mitigation

1. Safety Significance and Scope of the Violations

The Licensee expresses a belief that the prohibition against the storage of collimators in inhabited buildings, as stated in Violation E., is only a recommendation. The Licensee is committed, through Condition 15 of the license, to follow an Army Technical Manual which states, "* * * [C]ollimators should not be stored in inhabited or unventilated buildings." To view this provision as anything less than a requirement would be inconsistent with a reading of the manual as a whole and with sound radiation safety principles. In the case at hand, the storage of damaged collimators that may be leaking tritium in an inhabited building is clearly not consistent with the goal of keeping exposures to tritium as low as reasonably achievable. In any event, Violation E. remains a violation because the defective collimator was not sent to a depot-level facility, and this second requirement was not challenged by the Licensee as being merely "advisory."

The Licensee is incorrect in concluding that the violations are insignificant because they are only violations of license conditions. 10 CFR 30.34(e) states, in part, that the Commission may incorporate, in any license issued pursuant to the regulations in parts 31 through 35 and 39, such additional requirements and conditions with respect to the Licensee's receipt, possession, use and transfer of byproduct material as it deems appropriate or necessary in order to protect health or minimize danger to life or property. License conditions are therefore Commission requirements and are equally as significant as requirements specifically set forth in title 10 of the Code of Federal Regulations.

The NRC Enforcement Policy, Supplement VI.C.7 gives as an example of a Severity Level III violation, a breakdown in the control of licensed activities involving a number of violations that are related that collectively represent a potentially significant lack of attention or carelessness toward licensed responsibilities. The NRC classified the seven violations in the Notice of Violation and Proposed Imposition of Civil Penalty as a Severity Level III problem in accordance with this example. The NRC does not wait for an overexposure to occur before taking escalated enforcement action. The purpose of an escalated action is, in part, to remedy the conditions which may lead to unnecessary contamination or radiation exposures and, therefore, hopefully avoid any overexposures. In this case, the civil penalty is being issued to emphasize the need to assure that required procedures are being followed in order to avoid the potential for a significant contamination or exposure problem.

With regard to the Licensee's argument that since the violations are only cited at a limited number of facilities the scope of the violations should not be considered significant, the NRC emphasizes that, even though these violations may have occurred at a limited number of facilities, taken together, they represent a significant regulatory concern, i.e., a potential for radioactive contamination and personnel exposures at the facilities involved.

2. Corrective Actions

As provided in the NRC Enforcement Policy, the NRC normally mitigates when both the immediate and the long term corrective actions are prompt as well as extensive; and, in weighing this factor, consideration is given to, among other things, the timeliness of the corrective action, degree of licensee initiative, and comprehensiveness of the corrective action. The Licensee's answer and reply to a Notice of Violation provide no new information which changes the conclusion reached in the Notice.

As stated in the Notice, no mitigation was warranted for the corrective action factor in that the NRC had concerns regarding the Licensee's corrective actions. Specifically, the Licensee's immediate corrective actions were not sufficiently prompt in that it took a week to seal off and evacuate the area and to notify the NRC, the local Radiation Protection Officer, and the Radiation Safety Officer. Additionally, the NRC was concerned that the Radiation Safety Officer had not yet begun an investigation as of June 4, 1992. Further, some of the Licensee's longer term corrective actions appeared to be narrowly focused on Fort Bragg and the tritium isotope; for example, procedures were apparently revised at Fort Bragg only.

The Licensee's primary generic corrective action for the program breakdown was to issue a safety-of-use message worldwide; however, the message did not require the local Radiation Protection Officers to audit their facilities for compliance with applicable license conditions and NRC requirements, and to forward the results to the Radiation Safety Office. Furthermore, although the message reiterated a number of requirements and, for example, directed local Radiation Protection Officers to verify that procedures exist which include the requirements outlined in the message, the message did not specify appropriate feedback to the Radiation Safety Office regarding the extent of problems identified during the local Radiation Protection Officers' review of procedures.

Additionally, the NRC is concerned with the Licensee's statement that it does not have the authority to mandate that the three-day tritium course be attended by all local Radiation Protection Officers. The NRC expects the Licensee to obtain through its chain of command whatever authority it deems necessary to ensure that the radiation safety program is fully implemented and that licensed material is used safely.

3. Licensee Performance

The Licensee has incorrectly interpreted the NRC Enforcement Policy regarding Licensee performance. The Policy states that prior performance refers to the Licensee's performance normally (1) within the last two years of the inspection at issue, or (2) the period within the last two inspections, whichever is longer. The Licensee interpreted this to mean the time between the inspection at issue and the previous inspection. However, the correct interpretation is that the period of time goes back two inspections prior to the inspection at issue. The two previous inspections to be considered are the inspection conducted on September 6–16, 1991 (Inspection Report No. 030–13027/91001), and the special inspection conducted on April 22 and 28, 1988 (Special Inspection Report No. 030–13027/88001). The 1988 inspection specifically reviewed the circumstances surrounding the tritium contamination incident at Letterkenny Army Depot. Therefore, the last two inspections encompass the Letterkenny incident and full escalation of the base civil penalty for licensee performance is warranted.

4. Prior Opportunity to Identify

The Licensee argues that it was proactive in sending wipe test kits to six tritium repair facilities, but acknowledges that it did not follow up with Fort Bragg when Fort Bragg failed to perform the requested wipe tests. The Licensee also asserts that there was no reason to suspect a problem at Fort Bragg, based on other results received. Lack of aggressiveness on the part of the Radiation Safety Office is an example of Licensee performance the NRC specifically discourages. The wipe test kits were sent to the six tritium repair facilities specifically in response to a December 1990 radiation survey at Fort Lewis, WA that identified tritium contamination and, therefore, all six wipe tests should have been analyzed.

Regarding the 1988 memorandum for the United States Army Europe which discussed increased breakage of the M1A1 collimator with resulting high and persistent contamination, the failure to comment by the NRC does not relieve the Licensee of its responsibility to conduct licensed activities safely. If anything, the fact that the Army was aware of the potential problem reemphasizes the importance that the Army should have placed on following required procedures that could prevent or mitigate the consequences of the problem.

Finally, the Licensee argues that the United States Army Environmental Hygiene Agency did not audit the Optical Repair Shop, simply because the Agency was not advised of its existence. The NRC's position is that the Army had prior opportunity to perform an adequate audit of the Optical Repair Shop, and thereby identify the potential problem, but failed to do so due to this flaw in the auditing process.

NRC Conclusion

Based on its evaluation of the Licensee's response, the NRC staff concludes that the violations did occur as stated, and that neither an adequate basis for a reduction of the severity level nor for mitigation of the civil penalty has been provided by the Licensee. Accordingly, NRC concludes that a civil monetary penalty of $15,000 should be imposed by order.

[FR Doc. 92–2323 Filed 2–1–93; 8:45 am]
BILLING CODE 7590–01–M

[Docket No. 030–05373 License No. 29–09814–01 EA 92–136]

Eastern Testing and Inspection, Inc., Thorofare, NJ; Order Imposing Civil Monetary Penalty

I

Eastern Testing and Inspection, Inc. (Licensee) is the holder of Byproduct Material License No. 29–09814–01, issued by the Nuclear Regulatory Commission (NRC or Commission), which authorizes the Licensee to use byproduct materials for use in industrial radiography and replacement of sources in accordance with the conditions specified therein. The license was issued on February 2, 1964, was last renewed on February 20, 1987, and remains active under the timely renewal application submitted on February 3, 1992.

II

An inspection of the Licensee's activities was conducted on June 17, and July 7 and 8, 1992. The results of the inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated September 17, 1992. The Notice stated the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations. The Licensee responded to the Notice in two letters, dated October 16 and 26, 1992, respectively. In its responses, the Licensee did not deny the violations, but required full mitigation of the civil penalty.

III

After consideration of the Licensee's responses and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the violations occurred as stated and that the penalty proposed for the violations designated in the Notice should be imposed.

IV

In view of the foregoing, and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *It is hereby ordered that:*

The Licensee pay a civil penalty in the amount of $7,500 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be final and effective without further proceedings. If payment has not been made by that time, the matter may

be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be whether, on the basis of the violations set forth in the Notice, this Order should be sustained.

Dated at Rockville, Maryland this 25th day of January 1993.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

Appendix

Evaluations and Conclusion

On September 17, 1992, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for nine violations identified during an NRC inspection on June 17, and July 7 and 8, 1992, at the Eastern Testing and Inspection, Inc. (Licensee or ETI) facility in Thorofare, New Jersey, and at a field site in Carney's Point, New Jersey. The Licensee responded to the Notice in a reply dated October 16, 1992 and an answer dated October 26, 1992 (collectively "responses"). The Licensee did not deny the violations, but requested full mitigation of the civil penalty. The NRC's evaluations and conclusions regarding the Licensee's requests are as follows:

1. Summary of Licensee Answer

The Licensee, in its answer, requests remission/mitigation of the proposed imposition of penalties, claiming that there are areas where extenuating circumstances played a very relevant part in causing some of the violations. The Licensee states that it has a very good Radiation Safety Program, and has consistently had acceptable NRC inspections over many years. While the Licensee acknowledged the NRC concern over the violations, the Licensee contends that the NRC statement that the RSO and ETI management acted in careless disregard is totally unjustified. The Licensee states that attention to safety has always been extremely important to the RSO and ETI management.

The Licensee also states that it has been licensed since 1964, and has always endeavored to conduct activities in accordance with NRC regulations; does not have a history of disregard for public safety; and does not have a history of not calibrating instruments in a timely manner. The Licensee also claims that the open enforcement conference was extremely damaging to its reputation, in that it had numerous inquires from customers questioning the safety program, and has lost a major customer, coincidentally, who also was concerned about the news releases. The Licensee also states that the NRC's decision to classify the violation in the aggregate at Severity Level III is extreme in that the Licensee does not feel it endangered public health and safety.

2. NRC Evaluation of Licensee Responses

The NRC has evaluated the licensee responses, and based upon that evaluation, the NRC has concluded that (1) some of the violations did occur as a result of careless disregard by the RSO; (2) the violations collectively did constitute a lack of management attention to, and control of, the radiation safety program, and were appropriately classified in the aggregate at Severity Level III; and (3) the licensee did not provide an adequate basis for mitigation of the civil penalty.

With respect to the licensee contention that the violations did not involve careless disregard on the part of the RSO and ETI management, the NRC concluded that the RSO, and not ETI management, acted with careless disregard. As stated in the Notice, the RSO indicated at the enforcement conference that he understood the need for action to comply with the requirements, but just did not get around to completing those actions. Further, the RSO stated, with regard to the violation involving the movement of a radiographic device in an unauthorized container, that he understood the requirement for an authorized container, but believed that the container fabricated for transport was safe enough. Thus, the failures here to ensure that licensed activities were conducted in accordance with NRC requirements, when the RSO was fully aware of the NRC requirements, constitutes careless disregard on the part of the RSO and therefore are considered willful within the context of the NRC Enforcement Policy.

With respect to the licensee contention that the classification of violations at Severity Level III was extreme, and that such classification was inappropriate since they did not endanger the public health and safety, the NRC also disagrees with this licensee contention. A total of nine violations were identified during the inspection. Some of the violations involved multiple examples that existed over an extended duration which were not identified and corrected by management or the RSO. Some of the violations resulted from careless disregard on the part of the RSO, as already described herein. On this basis, the NRC concludes that the violations demonstrated a lack of adequate attention to, and oversight of, the Radiation Safety Program by management and the RSO, and, therefore, were appropriately classified in the aggregate at Severity Level III. This conclusion is consistent with NRC action taken in the past in cases similar to this one. Although there may not have been any actual endangerment of the public resulting from these violations, such violations can create the potential for unnecessary exposures to workers and members of the public.

The licensee contends that the NRC should mitigate the civil penalty on the basis that (1) the Severity Level III classification was inappropriate, and a lower severity level would not result in a civil penalty, and (2) it lost a major customer as a result of the enforcement conference. That NRC arrived at the proposed civil penalty by applying escalation/mitigation factors as required by the NRC Enforcement Policy. The explanation of the bases for the civil penalty was described in the Notice. The licensee's bases for requesting mitigation in no way relate to or impact the application of the escalating/mitigating factors. Therefore, since the NRC maintains that the violations were appropriately classified at Severity Level III, as already described herein, the licensee argument does not provide a basis for mitigation of the civil penalty.

3. NRC Conclusion

The NRC concludes that the licensee has not provided an adequate basis for mitigation of the civil penalty. Consequently, the proposed civil penalty in the amount of $7,500 should be imposed.

[FR Doc. 93–2376 Filed 2–1–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–424 and 50–425]

Georgia Power Co., et al.; Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–68 and NPF–81 issued to Georgia Power Company, et al. (the licensee), for operation of the Vogtle Electric Generating Plant, Units 1 and 2, located in Burke County, Georgia.

The proposed amendments would revise Technical Specification (TS) 5.3.1, "Design Features—Fuel Assemblies," in accordance with NRC Generic Letter (GL) 90–02, "Alternative Requirements for Fuel Assemblies in the Design Features Section of Technical Specifications," as issued February 1, 1990, and supplemented July 31, 1992. Specifically, the amendments would supplement TS 5.3.1 by adding that:

> Limited substitutions of zirconium alloy or stainless steel filler rods for fuel rods, in accordance with NRC-approved applications of fuel rod configurations, may be used. Fuel assemblies shall be limited to those fuel designs that have been analyzed with applicable NRC staff-approved codes and methods, and shown by tests or analyses to comply with all fuel safety design bases. A limited number of lead test assemblies that have not completed representative testing may be placed in non-limiting core regions.

In GL 90–20, the NRC provided guidance for a line-item change to TS 5.3.1. The change provides flexibility in the repair of fuel assemblies containing damaged and leaking fuel rods by reconstituting the assemblies and provides for conditional use of lead test assemblies without prior NRC approval.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change to the Technical Specifications will not involve a significant increase in the probability or consequences of an accident previously evaluated because it will not result in a change to any of the process variables that might initiate an accident. The operating limits will not be changed and the analysis methods to demonstrate operation within the limits will remain in accordance with NRC-approved methodology. Other than the changes to the fuel assemblies, there are no physical changes to the plant associated with this Technical Specification change. The consequences of an accident previously evaluated will not be increased because the safety analyses to be performed for each cycle will continue to demonstrate compliance with all fuel safety design bases. The ability to remove potentially leaking fuel rods should result in a reduction in the radiological consequences of any transients or accidents.

This change to the Technical Specifications will not create the possibility of a new or different kind of accident from any accident previously evaluated because it will only affect the assembly configuration and will be limited to NRC-approved applications of fuel rod configurations. The other aspects of plant design, operation, limitations and responses to events will remain unchanged.

The use of stainless steel or zirconium alloy filler rods in fuel assemblies will not involve a significant reduction in a margin of safety because analyses using NRC-approved methods will be performed for each configuration to demonstrate continued operation within the limits that assure acceptable plant response to accidents and transients. These analyses will be performed using NRC-approved methods that have been approved for application to the fuel configuration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Directives Review Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 3, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available 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 Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to David B. Matthews: Petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Art Domby, Esquire, Troutman Sanders, NationsBank Plaza, suite 5200, 600 Peachtree Street, Atlanta, Georgia, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated November 5, 1992, which 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 Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Dated at Rockville, Maryland, this 26th day of January 1993.

Darl S. Hood,

Project Manager, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–2325 Filed 2–1–93; 8:45 am]

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[Docket No. 50–285]

Omaha Public Power District; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–40 issued to Omaha Public Power District for operation of the Fort Calhoun Station, Unit 1 located in Washington County, Nebraska.

The proposed amendment would allow the fuel rack storage capacity in the Spent Fuel Pool to be increased to provide storage for 1083 assemblies.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not involve significant hazards considerations because operation of the Fort Calhoun Station Unit No. 1 in accordance with these changes would not:

(1) Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

In the course of the analysis, the following potential accident scenarios have been considered:

a. A spent fuel assembly drop in the Spent Fuel Pool (SFP)
b. Loss of SFP cooling system flow
c. A seismic event
d. A spent fuel cask drop
e. A construction accident

Probability of an Accident

The increased storage capacity of the SFP has been analyzed for the existing fuel handling equipment and procedures, SFP cooling system, and seismic events. No cask movement is contemplated as part of this modification. The Auxiliary Building crane will be used to bring the racks into the Auxiliary Building. Thus, the proposed modification does not increase the probability of any of the first four accidents.

With regard to the construction accident, the Technical Specifications prohibit loads heavier than the weight of a single spent fuel assembly plus CEA [Control Element Assembly], and the tool for moving that assembly, from being carried over fuel stored in the SFP. All work in the SFP area will be controlled and performed in strict accordance with specific written procedures and administrative controls to preclude the movement of a rack directly over any fuel. Therefore, the probability of occurrence of a construction accident is not significantly increased as a result of the proposed reracking.

In addition, §§ 5.1.1, 5.1.2 and 5.1.6 of NUREG–0612, entitled "Control of Heavy Loads at Nuclear Power Plants", provide guidance for heavy load handling operations pursuant to a spent fuel storage rack replacement. Section 5.1.2 provides four alternatives for assuring the safe handling of heavy loads during a fuel storage rack replacement. Alternative (1) of Section 5.1.2 provides that the control of heavy loads guidelines can be satisfied by establishing that the potential for a heavy load drop is extremely small.

The Auxiliary Building overhead electric crane with rated load capacity of 75 tons will

be used for the reracking operation. The maximum weight of an individual new rack or existing rack is less than 10 tons. The weight of the lifting fixture is less than 2 tons, which results in a minimum factor of safety of 6.25. In addition, the crane system and the lift rig to be employed in the rerack operation are single-failure proof. Therefore, the potential for crane failure is extremely low and alternative (1) of § 5.1.2 of NUREG–0612 is satisfied.

Accordingly, the proposed modification does not involve a significant increase in the probability of a load drop accident since NUREG–0612 guidelines for defense-in-depth to prevent load drop accidents have been satisfied.

Potential Consequences of an Accident

The consequences of a spent fuel assembly drop in the SFP were evaluated and it was found that the critically acceptance criterion, $k_{eff} \leq 0.95$, is not violated. In addition, it was found that there was no significant change in the radiological consequences of a fuel assembly drop from the previous analyses. The analyses found that the calculated doses are well within 10 CFR part 100 guidelines. The results of an analysis show that a dropped spent fuel assembly on the racks will not distort the racks such that they would not perform their safety function. Thus, the consequences of this type of accident are not significantly changed from the previously evaluated spent fuel assembly drops.

The consequences of a loss of SFP cooling system flow have been evaluated and it was found that sufficient time is available to provide an alternate means for cooling in the event of a complete failure of the cooling system. Thus, consequences of this type accident are not significantly increased from previously evaluated loss-of-cooling system flow accidents.

The consequences of a seismic event have been evaluated. The new racks will be designed and fabricated to meet the requirements of applicable portions of the NRC Regulatory Guides and published standards. The new free-standing racks are designed, as are the existing racks, so that the integrity of the racks and the pool structure is maintained during and after a design basis seismic event. Thus, the consequences of a seismic event are not increased from previously evaluated events.

The consequences of a spent fuel cask drop will not be affected by the replacement of the racks, as no spent fuel cask movement is contemplated as part of this modification. OPPD [Omaha Public Power District] does not presently utilize or own a spent fuel sample cask or spent fuel shipping cask. If such casks were to be utilized the single-failure-proof main hook of the Auxiliary Building Crane would be used to move these casks. In addition, electrical interlocks are installed which preclude travel of the main hook over the spent fuel pool (NUREG–0612). The likelihood of occurrence of a cask drop is greatly reduced through these considerations. Heavy Load paths have been proposed to circumvent carrying a cask over spent fuel. Thus the need for consideration of a radiological release impact of a cask drop accident is obviated. OPPD concludes that an analysis of the radiological consequences of a cask drop accident is not required.

The consequences of a construction accident have been considered. A heavy load will not be carried in the SFP area until all fuel in the pool has decayed for a minimum of two months. This provides sufficient time for decay of gaseous radionuclides in the fuel (gap activity) such that an assumed accidental release of gases from damage to all stored fuel assemblies would result in a potential off-site dose less than 10% of 10 CFR part 100 limits. In addition, load paths were evaluated in accordance with the Criteria contained in NUREG–0612 and found to be acceptable. It is concluded, therefore, that the consequences of a construction accident are not significantly increased from previously evaluated events.

Therefore, it is concluded that the proposed amendment to replace the spent fuel racks in the SFP does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Create the Possibility of a New or Different Kind of Accident From any Accident Previously Evaluated

The proposed modification was evaluated in accordance with the guidance of the NRC Position Paper entitled, "OT Position for Review and Acceptance of Spent Fuel Storage and Handling Applications", appropriate NRC Regulatory guides, appropriate NRC Standard Review Plans, and appropriate industry codes and standards. In addition, several previous NRC Safety Evaluation Reports for rerack applications similar to this proposed modification have been reviewed.

No unproven technology will be utilized either in the construction process or in the analytical techniques necessary to justify the planned fuel storage expansion. In fact, the basic reracking technology in this instance has been developed and demonstrated in over 80 applications for fuel pool capacity increases previously approved by the NRC.

Based upon the foregoing, it is concluded that the proposed reracking does not create the possibility of a new or different type accident from any accident previously evaluated.

(3) Involve a Significant Reduction in a Margin of Safety

Nuclear Criticality Considerations

The established acceptance criterion for criticality is that the neutron multiplication factor in spent fuel pools shall be less than or equal to 0.95, including all uncertainties, under all conditions. This margin of safety has been adhered to in the criticality analysis methods for the new rack design.

The methods used in the criticality analysis conformed to the applicable portions of the appropriate NRC guidance and industry codes, standards, and specifications, as listed in the Licensing Report. In meeting the acceptance criteria for criticality in the SFP, such that k_{eff} is always less than 0.95, including uncertainties at a 95%/95% probability/confidence level, the proposed amendment does not involve a significant reduction in the margin of safety for nuclear criticality.

Thermal-hydraulic Considerations

Conservative methods were used to calculate the maximum fuel cladding temperature and the increase in temperature of the water in the SFP. The thermal-hydraulic evaluation used the methods previously employed for evaluations of the present spent fuel racks to demonstrate that the margins of safety for pool temperatures are maintained. The proposed modification will increase the heat load in the SFP. The evaluation shows that the existing SFP system will maintain the bulk pool water temperature below 140 °F. Thus, a margin of safety exists such that the maximum allowable temperature for bulk boiling is not exceeded for the calculated increase in pool heat load. The evaluation also shows that maximum local water temperature along the hottest fuel assembly is below the nucleate boiling condition value. Thus, there is no significant reduction in the margin of safety for thermal-hydraulic or spent fuel cooling concerns.

Mechanical, Material and Structural Considerations

The main safety function of the spent fuel pool and the racks is to maintain the spent fuel assemblies in a safe configuration through all normal or abnormal loadings. Abnormal loadings which have been considered are the effect of an earthquake, the impact due to a spent fuel cask drop, the drop of a spent fuel assembly, or the drop of any object used in the rerack modification. The mechanical, material, and structural design of the new spent fuel racks is in accordance with applicable portions of "OT Position for Review and Acceptance of Spent Fuel Storage and Handling Applications", dated April 14, 1978, as modified January 18, 1979; Standard Review Plan § 3.8.4; and other applicable NRC guidance and industry codes. The rack materials used are compatible with the SFP and the spent fuel assemblies. The structural considerations of the new racks address margins of safety against tilting and deflection or movement, such that the racks do not impact each other in the cellular region during the postulated seismic events. In addition, the spent fuel assemblies remain intact and no criticality concerns exist. Thus, the margins of safety are not significantly reduced by the proposed rerack.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within thirty (30) days after the date of publication of this notice will be considered in making any final determination. The Commission will

not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Directives Review Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 4, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available 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 W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order. As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John T. Larkins: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to LeBoeuf, Lamb, Leiby, and MacRae, 1875 Connecticut Avenue, NW., Washington, DC 20009–5728, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests

for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

The Commission hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of the NWPA, the Commission, at the request of any party to the proceeding, is authorized to use hybrid hearing procedures with respect to "any matter which the Commission determines to be in controversy among the parties." The hybrid procedures in section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission's rules, and the designation, following argument, of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NWPA are found in 10 CFR part 2, subpart K, "Hybrid Hearing Procedures for Expansion of Spent Nuclear Fuel Storage Capacity at Civilian Nuclear Power Reactors" (published at 50 FR 41662 (October 15, 1985). Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within ten (10) days of an order granting a request for hearing or petition to intervene. (As outlined above, the Commission's rules in 10 CFR part 2, subpart G continue to govern the filing of requests for a hearing or petitions to intervene, as well as the admission of contentions.) The presiding officer shall grant a timely request for oral argument. The presiding officer may grant an untimely request for oral to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application shall be conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in an adjudicatory hearing. If no part to the proceeding requests oral argument, or if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR part 2, subpart G apply.

For further details with respect to this action, see the application for amendment dated December 7, 1992, which 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 W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Dated at Rockville, Maryland, this 27th day of January 1993.

For the Nuclear Regulatory Commission.

George T. Hubbard,

Acting Director, Project Directorate IV–1, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 93–2377 Filed 2–1–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 030–31765; License No. 37–28540–01; EA 93–006]

Order Suspending License (Effective Immediately)

In the Matter of Oncology Services Corporation, Harrisburg, Pennsylvania

I.

Oncology Services Corporation (Licensee) is the holder of Byproduct Material License No. 37–28540–01 (Licensee) issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR parts 30 and 35. The License authorizes possession and use of over 500 curies of iridium-192 as sealed sources for use in brachytherapy remote afterloaders for the treatment of humans at several specified facilities located within the State of Pennsylvania. The License was originally issued on August 3, 1990, and is due to expire on August 31, 1995. The License names Dr. David E. Cunningham as the Radiation Safety Officer (RSO). The duties and responsibilities of the RSO are set forth in the License and in 10 CFR 35.21(b).

II.

On December 1, 1992, the NRC Region I Office was notified of an incident involving the loss of a 3.7 curie iridium-192 source from the Licensee's Indiana, Pa. facility (Indiana Regional Cancer Center) on November 16, 1992. It was subsequently determined that the source, which was connected to the metal drive wire on an Omnitron 2000 High Dose Rate (HDR) remote afterloader machine, had broken off during a patient treatment. The machine directs the source into catheters placed in a patient and retrieves the source at the conclusion of the treatment via the drive wire. When the source became disconnected, it remained in one of the catheters in the patient for approximately 91 hours. During that time period, the patient incurred a radiation dose estimated at greater than one million rads to the wall of the bowel.

When the radiation therapy technologists at the Indiana Regional Cancer Center operated the machine to insert the radioactive source into the last of five patient catheters involved in the treatment, the machine gave numerous "error" messages. The technologists next operated the machine to insert a nonradioactive source wire into the catheter in an attempt to clear any potential constriction. At some time during the time the machine was indicating error messages, the area radiation monitor alarmed with a flashing red light although the source was not then thought to be in use. A technologist informed the attending physician of the difficulties with the treatment and that the alarm had flashed. The physician, who is an authorized user named on the NRC license, went into the room to examine the patient. The physician directed the technologists to terminate the treatment and disconnect the patient from the HDR machine.

License Condition 17 requires that a radiation monitor be mounted on the wall and remain in place as a means of verifying the source location. Further, failure of the radiation monitor requires termination of treatment until the monitor is repaired and no personnel will be permitted to enter the room without a portable survey meter or audible dosimeter. In addition, 10 CFR 20.20(b) requires that the Licensee make such surveys as (1) may be necessary to comply with the regulations in 10 CFR part 20 and (2) are reasonable under the circumstances to evaluate the extent of radiation hazards that may be present. In direct violation of these requirements, and even though a calibrated, operational survey meter has available in the immediate vicinity, neither the physician nor the technologists utilized an audible dosimeter or survey meter upon entering the room, when they apparently believed that the area radiation monitor had malfunctioned and signaled a false alarm. In spite of the obvious difficulty encountered with the treatment, these individuals also did not survey the patient following discontinuation of the treatment to

assure that all sources had been removed from the patient.

In violation of 10 CFR 19.12, the radiation therapy technologists had not been trained in the use of a survey meter and did not know when to use a survey meter or how to interpret the readings of a survey meter to determine the presence of a radioactive source in the patient or in the area.

The patient, whose body still contained the catheter with the radioactive source lodged inside it, was returned to a nearby nursing home. At the nursing home, the catheter containing the source became loose and dislodged itself from the patient's body on November 20, 1992. The catheter, with the source still in it, unknowingly was initially placed in a biological waste bag which was stored with other biomedical waste in a room at the nursing home and was subsequently placed in a storage shed behind the nursing home. On November 25, 1992, the biomedical waste containing the radioactive source was collected by a waste carrier and transported to a disposal facility where the source was detected when a radiation alarm sounded.

The patient expired on November 21, 1992. Regardless of the specific cause of death in this case, the amount of radiation received by the patient was significant. Numerous other individuals including health care workers, visitors, sanitation workers, and other members of the general public, were exposed to unnecessary radiation as a result of this event.

III.

On December 1, 1992, NRC initiated an inspection to review the Licensee's actions. On December 2, 1992 a Confirmatory Action Letter (CAL 1–92–016) was issued to the Licensee to, among other things, confirm its commitment to suspend use of the HDR at the Indiana Regional Cancer Center for patient treatment until specifically authorized by NRC to resume use of the HDR. The CAL stated that its issuance did not preclude issuance of further actions. On December 3, 1992, NRC established an Incident Investigation Team to review this event.

On December 8, 1992, NRC conducted unannounced inspections at two of the Licensee's facilities, the Licensee's Exton Cancer Center, Exton, Pa. (Exton), and the Mahoning Valley Cancer Center, Lehighton, Pa. (Lehighton). These inspections included reviews of the organization and scope of licensed activities, training of personnel, posting, instrumentation, personnel monitoring, HDR afterloader operations, and the Licensee's Quality Management (QM) program. The findings of this inspection included:

A. Dr. Cunningham, who is the RSO named on the License, had not visited the Lehighton facility in the past 6–9 months.

B. Dr. David J. Moylan, Medical Director of the Lehighton facility and an authorized user named on the License, indicated that he had not read the terms and conditions of the License and was not aware that Dr. Cunningham was the RSO named on the License.

C. At the Exton and Lehighton facilities, the Licensee failed to provide training to the radiation therapy technologists in the requirements of the License conditions and of the NRC regulations as required by 10 CFR 19.12. Copies of the documents incorporated into the License by reference were not available to the individuals at the Lehighton facility as required by Condition 17 of the License.

D. Emergency training provided to the radiation therapy technologists at the Exton and Lehighton facilities did not include a "Simulation Emergency" (i.e., "dry run") of the source not retracting at the end of a treatment as required by Condition 17 of the License.

E. At the Exton facility, emergency procedures were not posted at the console of the HDR afterloader as required by the License.

F. At both the Exton and Lehighton facilities, the key to activate the Linear accelerator and the key to activate the HDR unit were not on the same key ring so as to prohibit the simultaneous activation of both units within the same room as required by Condition 17 of the License. Instead, the key to each unit was left in the respective console of that unit.

G. The staff of the Exton facility was not aware of the specifics of the Licensee's Quality Management program.

Additionally, although the physicists at the Exton and Lehighton facilities are key personnel who bear responsibility for avoiding or preventing the recurrence of an event such as the November 16 event described in Section II above, the inspectors determined that these individuals did not learn of the event via an appropriate corporate radiation safety communication, but instead learned about the event through the coverage in the news media.

On December 14, 1992, NRC Region I issued a Confirmatory Action Letter (CAL 1–192–020) to the Licensee's president wherein the Licensee committed to: (1) Have independent audits of the radiation safety program, (2) provide a corrective action plan, (3) clarify the reporting and oversight responsibilities of the corporate RSO, (4) conduct training on radiation safety and routine and emergency operations of the HDR machines, and (5) communicate to its staff management expectations for operating the HDR machines and the specifics and significance of recent failures of these machines. The CAL stated that its issuance did not preclude issuance of further actions.

On December 11, 1992, the Licensee requested that it be allowed to resume patient treatment with the HDR at the Indiana facility. This request was made because patients, whose palliative treatments had been discontinued as a result of the December 2, 1992 CAL, were in need of relief from pain and suffering through treatment with this modality. By letter dated, December 15, 1992, the NRC approved resumption of treatment with a HDR afterloader provided that the Licensee had taken the actions specified in NRC Bulletin 92–03, December 8, 1992.

IV.

Following the NRC inspection at the Exton and Lehighton facilities and the issuance of the December 14, 1992 CAL, the NRC learned that the Licensee's RSO communicated with the medical directors of the Licensee's five satellite facilities by letter dated December 18, 1992. The letter stated, "It is not possible for Corporate Administration to supervise your radiation safety program on a routine basis." In the letter, Dr. Cunningham sought to delegate to the Medical Director/Authorized User at each of the satellite facilities the radiation safety officer responsibilities that are assigned to Dr. Cunningham under the terms and conditions of the License. Dr. Cunningham also stated in the letter that it is appropriate for the Medical Director/Authorized User to further delegate the radiation safety responsibilities of the Medical Director/Authorized User to "the technical support including the physicists and chief technologist."

V.

The facts described above demonstrate a significant corporate management breakdown in the control of licensed activities wherein key Licensee employees at several satellite facilities do not know the requirements of the NRC License, do not have access to the pertinent License documents, and have not been adequately trained in either the pertinent regulatory requirements or the procedures and instrumentation to be employed to protect themselves and others from radiation exposure. This problem is of

the utmost regulatory concern because it contributed to a situation in which a patient was unknowingly exposed to a significant level of radiation, and in which numerous members of the general public received unnecessary radiation exposure.

In addition, the corporate RSO contributed in large part to this problem by not maintaining an adequate physical presence at the satellite facilities; failing to implement appropriate training programs for Licensee employees, which the RSO is required to do under 10 CFR 35.21; and failing to establish and implement a periodic corporate audit program to identify and promptly correct violations to ensure compliance with NRC regulatory requirements. The corporate RSO now seeks to delegate these functions in violation of the License to the managers of the individual facilities where the problems are occurring and suggests that those managers, in turn, delegate the functions further down the chain of command. Therefore, it has been concluded that the Licensee's RSO is not willing to be responsible for its radiation safety program so as to ensure that the radiation safety activities are being performed in accordance with Commission requirements in the daily operation of licensed activities as required by 10 CFR 35.21.

Consequently, while NRC is continuing to investigate the activities of this Licensee, as a result of the information available to date and the incident in which an iridium-192 source was unknowingly left within a patient, I lack the requisite reasonable assurance that the Licensee's current operations can be conducted under License No. 37–28540–01 in compliance with the Commission's requirements and that the health and safety of the public, including the Licensee's employees and patients, will be protected. Therefore, the public health, safety, and interest require that License No. 37–28540–01 be suspended pending the results of the NRC investigations and the institution of appropriate corrective actions on the part of the licensee. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the circumstances described above is such that the public health, safety, and interest require that this Order be immediately effective. This Order supersedes the relief provided in the December 15, 1992 letter.

VI.

Accordingly, pursuant to sections 81, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR parts 30 and 35, *it is hereby ordered, effective immediately, that:*

License No. 37–28540–01 is suspended pending further Order. This suspension precludes the performance of any licensed activity at any of the Licensee's facilities authorized by the License. The Licensee is required to place all licensed material in a locked, stored, and shielded condition. All other requirements of the License continue in force.

The Regional Administrator, Region I, may, in writing, relax or rescind this order upon demonstration by the Licensee of good cause.

VII.

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and set forth the matters of fact and law on which the Licensee or other person adversely affected relies and the reasons as to why this Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, DC 20555. Copies of the hearing request also should be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, and to the Licensee, if the hearing request is by a person other than the Licensee. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), 57 FR 20194 (May 12, 1992), the Licensee, or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, the provisions specified in section VI above shall be final 20 days from the date of this Order without further order or proceedings. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated at Rockville, Maryland this 20th day of January 1993.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

[FR Doc. 93–2322 Filed 2–1–93; 8:45 am]

BILLING CODE 7590–01–M

Atomic Safety and Licensing Board

[Docket Nos. 50–275–OLA–2 and 50–323–OLA–2; ASLBP No. 92–669–03–OLA–2]

Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2): Notice of Hearing; Facility Operating Licenses No. DPR–80 and DPR–82

January 27, 1993.

Before Administrative Judges: Charles Bechhoefer, Chairman, Dr. Jerry R. Kline, Frederick J. Shon.

On July 22, 1992, the Nuclear Regulatory Commission published in the **Federal Register** a notice of opportunity for hearing with respect to proposed operating-license amendments that would extend the operating licenses for the Diablo Canyon Nuclear Power Plant, Units 1 and 2, located in San Luis Obispo County, California, to recover or recapture into the licenses the period of construction of the reactors (57 FR 32571, 32575). The amendments would extend the expiration date of the Unit 1 license from April 23, 2008 to September 21, 2021, and the expiration date of the Unit 2 license from December 9, 2010 to April 26, 2025.

One request for a hearing and petition for leave to intervene, filed by San Luis Obispo Mothers for Peace, was received. On September 10, 1992, an Atomic Safety and Licensing Board was established to rule on this request/petition and to preside over the proceeding in the event that a hearing were ordered. 57 FR 43035 (September

17, 1992). The Licensing Board is comprised of Dr. Jerry R. Kline, Frederick J. Shon, and Charles Bechhoefer, Chairman of the Board.

After holding a prehearing conference in San Luis Obispo, California, the Atomic Safety and Licensing Board issued a Prehearing Conference Order (LBP–93–1) on January 21, 1993, granting the request/petition. San Luis Obispo Mothers for Peace was admitted as a party and, pursuant to its request, the State of California Public Utilities Commission was permitted to participate as an Interested State pursuant to 10 CFR 2.715(c).

Please take notice that a hearing will be conducted in this proceeding. The hearing is authorized by 10 CFR 50.58(b)(2), 50.90 and 50.92. Matters at issue are the two safety issues accepted by the Licensing Board in LBP–93–1.

During the course of the proceeding, the Board may hold further prehearing conferences, pursuant to 10 CFR 2.752, as well as evidentiary hearing sessions, at times and places to be hereafter announced, through notices to be published in the **Federal Register** and/or made available to the public at the Public Document Rooms.

Supplementing the opportunity afforded at the first prehearing conference, during some or all of these sessions, and in accordance with 10 CFR 2.715(a), any person, not a party to the proceeding, will be permitted to make a limited appearance statement either orally or in writing, setting forth his or her position on the issues. These statements do not constitute testimony or evidence but may assist the Board and/or parties in the definition of issues being considered. The number of persons making oral statements and the time allotted for each statement may be limited depending upon the time available at various sessions and whether or not the person seeking to make such a statement previously was permitted to do so. (Normally, oral statements may extend for up to five minutes.) Written statements may be submitted at any time. Persons desiring to make a limited appearance are requested to inform the Office of the Secretary, Docketing and Service Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555. A copy of such statement or request should also be served on the Chairman of the Licensing Board.

Documents related to this proceeding are on file at the Local Public Document Room, located at the California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407, as well as at the Commission's Public Document Room, the Gelman Building, 2120 L St., NW., Washington, DC 20037.

Bethesda, Maryland, January 27, 1993.

For the Atomic Safety and Licensing Board.

Charles Bechhoefer,

Chairman, Administrative Judge.

[FR Doc. 93–2378 Filed 2–1–93; 8:45 am]

BILLING CODE 7590–01–M

Notice of Amendment Receipt and Opportunity for a Hearing; License No. Sub–1010; Sequoyah Fuels Corporation, Gore, OK

[Docket No. 40–8027]

The U.S. Nuclear Regulatory Commission is considering the amendment of Materials License No. SUB–1010 to provide Sequoyah Fuels Corporation (SFC) relief from testing a system while the facility is shut down.

Proposed Action: By amendment request dated January 14, 1993, SFC submitted a request for relief from a license commitment which required that the entire safety interlock system in the fluorine production system be maintained fully operational, and that the process instrumentation, alarms, and interlocks be tested monthly and calibrated each calendar year. Since the fluorine production system is not in operation, SFC is requesting relief from the requirement to conduct monthly tests and annual calibrations until such time as production were to resume. The documents related to the proposed action are available for public inspection and copying at the Commission's Public Document Room at the Gelman Building, 2120 L Street NW., Washington, DC, and the Local Public Document Room at the Stanley Tubbs Memorial Library, 101 E. Cherokee Street, Sallisaw, Oklahoma.

Opportunity for a Hearing

Any person whose interest may be affected by the issuance of this amendment may file a request for a hearing. Any request for hearing must be filed with the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days of the publication of this notice in the **Federal Register;** be served on the NRC staff (Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852) and on the licensee (Sequoyah Fuels Corporation, P.O. Box 610, Gore, Oklahoma 74435); and must comply with the requirements for requesting a hearing set forth in the Commission's regulation, 10 CFR part 2, subpart L, "Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings."

These requirements, which the requestor must address in detail, are:

1. The interest of the requestor in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing;

3. The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for hearing is timely, that is, filed within 30 days of the date of this notice.

In addressing how the requestor's interest may be affected by the proceeding, the request should describe the nature of the requestor's right under the Atomic Energy Act of 1954, as amended, to be made a party to the proceeding; the nature and extent of the requestor's property, financial, or other (i.e., health, safety) interest in the proceeding; and the possible effect of any order that may be entered in the proceeding upon the requestor's interest.

Dated at Rockville, Maryland, this 27th day of January 1993.

For the Nuclear Regulatory Commission.

John W.N. Hickey,

Chief, Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 93–2379 Filed 2–1–93; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Request for Reclearance of SF 2824, SF 2824A, and SF 2824C

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for reclearance of an information collection. Standard Form 2824, Documentation in Support of Disability Retirement Application, SF 2824A, Applicant's Statement of Disability, and SF 2824C, Physician's Statement, are used to collect information from applicants for Civil Service Retirement System disability retirement so that OPM can determine whether to approve a disability retirement.

Approximately 9,000 SF 2824, SF 2824A, and SF 2824C forms are completed annually. The SF 2824A

requires approximately 30 minutes to complete and the SF 2824C requires approximately 60 minutes to complete. The annual burden is 9,500 hours.

For copies of this proposal, contact C. Ronald Trueworthy on (703) 908–8550.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to:

Lorraine E. Dettman, Retirement and Insurance Group, Operations Support Division, U.S. Office of Personnel Management, 1900 E Street, NW., room 3349, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW, room 3002, Washington, DC 20503

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Mary Beth Smith-Toomey, Chief, Administrative Management Branch, (202) 606–0616.

U.S. Office of Personnel Management.

Douglas A. Brook,

Acting Director.

[FR Doc. 93–2320 Filed 2–1–93; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–31763; File No. SR–NASD–91–73]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval of Proposed Rule Change Relating to Suspension or Cancellation of Membership or Registration for Failure To Comply With Arbitration Awards

On November 19, 1992,[1] the National Association of Securities Dealers, Inc. ("NASD" or "Association") submitted a proposed rule change to the Securities and Exchange Commission ("SEC" or "Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[2] and Rule 12b–4 thereunder.[3] The rule change amends Article VI, Section 3 of the NASD By-Laws[4] to permit the NASD to suspend the membership or registration of a party that has failed to comply with a valid arbitration award, when the award is not the subject of a motion to vacate or modify the award or when such a motion has been denied.

Notice of the proposed rule change, as amended, together with its terms of substance was provided by the issuance of a Commission release (Securities Exchange Act Release No. 31609, December 16, 1992) and by publication in the **Federal Register** (57 FR 60828, December 22, 1992). No comments were received on the proposal by the Commission. This order approves the proposed rule change.

As the NASD stated in its original rule filing, the impetus for the rule change approved herein is the NASD's concern regarding the significant number of referrals made to the NASD's District Business Conduct Committee ("DBCCs") for failure to comply with arbitration awards. The NASD believes such referrals have had a negative impact on the DBCCs' complaint dockets. In order to address this problem, and to expedite the processing of such complaints, the NASD is extending its suspension and cancellation procedures (hereinafter referred to jointly as "revocation proceedings") to include situations in which member firms or registered persons fail to comply with arbitration awards.

Currently, the NASD's Code of Arbitration Procedure contains a Resolution of the Board of Governors[5] ("Resolution") which states that failure to pay an arbitration award properly rendered by any one of several arbitration fora may be deemed "conduct inconsistent with just and equitable principles of trade and a violation of Article III, Section 1 of the Rules of Fair Practice" of the NASD. The Resolution contemplates the bringing of a disciplinary action against a member firm or associated person for failure to pay an arbitration award rendered by the NASD, or a self-regulatory organization ("SRO") which administers the Securities Industry Conference on Arbitration's Uniform Code ("Uniform Code"), or by the American Arbitration Association ("AAA").

The NASD states that its Arbitration Department has referred numerous cases to the DBCCs for disciplinary action for failure to pay an arbitration award.[6] The NASD also states that it routinely investigates and brings disciplinary actions for failure to pay arbitration awards whenever such violations are discovered, whether through referrals from other NASD departments, referrals from other SROs, through routine or non-routine investigations or through customer complaints.

In addition to enforcing arbitration awards rendered in NASD arbitrations, the intent of the Resolution is to permit the NASD to enforce awards rendered by other SROs that administer the Uniform Code, as well as by the AAA. The NASD regarded the broad scope of the resolution as necessary and appropriate if the NASD were to recommend arbitration fora other than its own, such as AAA, as appropriate for resolution of disputes. The recommendation of alternative fora by securities industry SROs was encouraged by the Commission to alleviate the perception of unfairness in mandatory securities industry arbitration.

The NASD has determined, however, that bringing formal disciplinary actions for failure to pay an arbitration award rendered by the NASD's arbitration forum may not be the most efficient method of disposing of such matters. The instant rule change allows the NASD, in addition to bringing a formal disciplinary action, to employ its revocation proceedings for a member's or associated person's failure to pay an arbitration award rendered by an NASD arbitration panel. Revocation proceedings are brought under Article VI of the NASD's Code of Procedure.[7] In accordance with Article VI, the NASD must send notice of the commencement of a revocation proceeding to the affected party at least fifteen (15) days prior to the effective date of the suspension or cancellation. Members or associated persons that wish to contest a revocation proceeding may request in writing that the matter be brought before a designated hearing panel. Such a request must be received by the NASD

[1] The NASD amended the proposed rule change three times subsequent to its original filing on December 26, 1991. Amendment No. 1, submitted on May 6, 1992, provided the results of a vote of the NASD membership on the proposed rule change. Amendment No. 2 was filed on July 2, 1992 to add additional descriptive language to the filing. Amendment No. 3 was submitted on November 19, 1992 to conform the language of the filing to that of section 15A(h)(3) of the Act. The amendment provides that suspensions or cancellations will be in accordance with revocation proceedings provided under Article VI of the NASD's Code of Procedure.

[2] 15 U.S.C. 78s(b)(1) (1988).

[3] 17 CFR 240.19b–4 (1992).

[4] NASD Securities Dealers Manual, Article VI, Section 3 of the By-Laws, CCH, ¶ 1173.

[5] NASD Securities Dealers Manual, Code Arbitration Procedure, Resolution of the Board of Governors—Failure to Act Under Provisions of Code of Arbitration Procedure, CCH, ¶ 3744.

[6] In 1991 the Arbitration Department referred 122 cases to the NASD's district offices for investigation of failure to pay an arbitration award rendered in the NASD's arbitration forum. In 1990 the Arbitration Department referred 82 cases for failure to pay arbitration awards.

[7] NASD Securities Dealers Manual, Code of Procedure Revocation Proceedings, CCH, ¶¶ 3063–3067.

before the expiration of the applicable notice period. Thus, with respect to arbitration awards rendered in the NASD's arbitration forum, and which are subject to the NASD's administrative control, the NASD will not be required to initiate a formal disciplinary action against a member or associated person for failure to pay an arbitration award. As with formal disciplinary actions brought pursuant to the Resolution, such revocation proceedings will be available only where a timely motion to vacate or modify the arbitration award has not been filed.

The Resolution also provides that the failure to submit a dispute to arbitration as required by the NASD's Arbitration Code or failure to appear or to produce documents as directed pursuant to the NASD's Arbitration Code may be deemed "conduct inconsistent with just and equitable principles of trade" in violation of Article III, Section 1 of the Rules of Fair Practice. These provisions also contemplate the bringing of a disciplinary action against a firm or associated person for failing to submit a claim to arbitration as required or for failing to appear or produce documents as required. The NASD's Arbitration Department will continue to evaluate cases for referral for disciplinary action where a member or associated person has failed to submit a claim to arbitration as required or where a member or associated person has failed to appear or produce documents as required. Finally, the NASD also will continue to evaluate cases for referral for disciplinary action where it is discovered that a member or associated person has failed to pay an arbitration award validly rendered by an arbitration forum other than the NASD or failed to pay NASD awards entered against it in a timely manner in accordance with section 41(h) of the Code.[8]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, including the requirements of section 15A(b)(6) of the Act.[9] Section 15A(b)(6) requires, in part, that the rules of the NASD be designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest. The proposed rule change is designed to encourage member firms and associated persons to pay duly rendered arbitration awards and to ease the burden on the DBCCs' complaint docket. The payment of arbitration awards and the facilitation of the arbitration process, in general, will assist in the protection of investors and further the public interest.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–2358 Filed 2–1–93; 8:45 am]

BILLING CODE 8010–01–M

[8] NASD Securities Dealers Manual, Code of Arbitration Procedure, Awards, CCH, ¶ 3741.

[9] 15 U.S.C. 78o–3(b)(6) (1988).

[10] 17 CFR 200.30–3(a)(12) (1992).

[Release No. IC–19241; 812–7735]

Goldman Sachs Equity Portfolios, Inc., et al.; Application

January 26, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Goldman Sachs Equity Portfolios, Inc. ("Equity Inc."), Goldman Sachs Trust ("Bond Trust"), Goldman, Sachs & Co. ("Goldman Sachs"), Goldman Sachs Funds Management, L.P. ("Funds Management"), and any future investment company or series thereof (except those subject to an existing exemptive order of the SEC with respect to multiple class or contingent deferred sales charge relief) that is a member of the same group of investment companies by virtue of the fact that it holds itself out to investors as being a related company for purposes of investment and investor services and (a) whose investment adviser is Funds Management, Goldman Sachs Asset Management (a separate operating division of Goldman Sachs) ("GSAM"), or an entity that is under common control with Goldman Sachs, or (b) whose principal underwriter is Goldman Sachs or an entity that is under common control with Goldman Sachs.

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from sections 18(f)(1), 18(g), 18(i), 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act and rule 22c–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to permit the applicant investment companies (a) to issue separate classes of shares representing interests in their various investment portfolios, which classes will be identical in all respects except for differences relating to the offerees, class designations, distribution expenses, service expenses, voting rights, exchange privileges, conversion features, and possibly proxy expenses, and (b) to assess, and under certain circumstances to waive, a contingent deferred sales charge ("CDSC") on certain redemptions of the shares of one of the classes.

FILING DATE: The application was filed on June 7, 1991 and was amended and restated on July 19, 1991, November 27, 1991, March 30, 1992, September 2, 1992, October 26, 1992, November 30, 1992, and January 21, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 22, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, c/o Goldman Sachs Funds Management, 32 Old Slip, New York, NY 10005.

FOR FURTHER INFORMATION CONTACT: Barry A. Mendelson, Senior Attorney, at (202) 504–2284, or Barry D. Miller, Senior Special Counsel, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Equity Inc. is a Maryland corporation and Bond Trust is a Massachusetts business trust. Both entities are registered under the Act as open-end management investment companies. Equity Inc., Bond Trust, and any investment companies formed in the future that are, or will be, subject to this order are sometimes referred to hereafter as "Investment Companies."

2. Equity Inc. currently offers shares representing interests in four investment portfolios: GS Capital Growth Fund, GS International Equity Fund, GS Select Equity Fund, and GS Small Cap Equity

Fund (collectively, the "Equity Funds"). Bond Trust currently offers shares representing interests in five investment portfolios: GS Short-Term Government Agency Fund, GS Global Income Fund ("Income Fund"), GS Adjustable Rate Government Agency Fund, GS Government Agency Portfolio, and GS Short Duration Tax-Free Fund (collectively, the "Bond Funds"). The Equity Funds and the Bond Funds, together with all other series of Equity Inc. and Bond Trust that may subsequently be created or acquired, and any series of future Investment Companies, are referred to herein as the "Funds."

3. Funds Management or GSAM serves as investment adviser to each of the Funds. Goldman Sachs acts as the principal underwriter and transfer agent to each of the Funds.

4. Shares of the Equity Funds and Income Fund ("Load Funds") currently are offered to the public daily at net asset value plus a front-end sales load. Shares of the Bond Funds other than Income Fund ("No-Load Funds") currently are offered daily to the public, but are marketed primarily to institutional investors, at net asset value without a sales or redemption charge. Load Funds currently may be sold without the load to Exempt Investors (as defined in the next paragraph) and other persons that may be specified from time to time in a Fund's prospectus. Also as described in each Fund's prospectus, a sales load may not be applied when an investor acquires shares of a Fund either in exchange for his existing shares of another Fund, or through exercise of a "Reinvestment Privilege." Pursuant to the Reinvestment Privilege, a shareholder of a Load Fund who redeems his shares may use some or all of the redemption proceeds to purchase shares of any Fund at net asset value. The Reinvestment Privilege is subject to the condition that the shares redeemed have been held for at least 30 days and that the reinvestment is effected within 90 days after redemption.

5. "Exempt Investors" are defined as:

(a) Goldman Sachs, its affiliates, and their respective officers, partners, directors, and employees (including retired employees and former partners), any partnership of which Goldman Sachs or an affiliate is a general partner, any board member or officer of the Investment Companies, and designated family members of any of the above individuals;

(b) Qualified retirement plans of Goldman Sachs or its affiliates;

(c) Trustees or directors of investment companies for which Goldman Sachs or an affiliate acts as sponsor;

(d) Any employee or registered representative of an authorized dealer;

(e) Institutional investors, including insurance companies, broker-dealers, discretionary accounts of investment advisers with at least $100 million under management for the last twelve months, and business entities that have either gross assets of at least $100 million or publicly traded securities outstanding;

(f) Banks, trust companies, and other types of depository institutions;

(g) Any state, county, or city, or any instrumentality, department, authority, or agency thereof, that is prohibited by applicable investment laws from paying a sales charge or commission in connection with the purchase of shares of the Funds;

(h) Pension and profit sharing plans, pension funds, and other benefit plans sponsored by state or municipal governments or business entities, provided that any such plan has total assets of at least $25 million under management or is prohibited by law from paying a sales load or commission;

(i) Taft-Hartley plans with a minimum of $25 million under management; and

(j) Qualified non-profit organizations, foundations, and endowments.

6. Each of the Load Funds has adopted a distribution plan pursuant to rule 12b–1 under the Act ("Distribution Plan"). Each Distribution Plan provides for a quarterly fee ("Distribution Fee") equal to, on an annual basis, 0.50% of the average daily net assets of the applicable Fund. The Distribution Fee is intended to compensate Goldman Sachs for the services it provides and expenses it incurs in the distribution of a Fund's shares. Goldman Sachs may in turn pay the entire amount of the Distribution Fee it receives to its registered representatives or selling brokers for providing services in connection with the sale of Fund shares.

7. Applicants propose to establish a multiple class distribution plan (the "Multi-Class Plan") to enable each of the Funds to offer investors the option of purchasing shares that could be subject to (a) a front-end sales load and a Distribution Plan ("Class A Shares"); (b) a CDSC and a Distribution Plan ("CDSC Shares"); (c) no sales load or Distribution Plan ("Institutional Shares"); (d) a front-end sales load and an "Administration Plan" pursuant to which a service charge is paid to certain institutions for the provision of account administration services to their customers ("Administration Shares"), or (e) a front-end sales load and a "Service Plan" pursuant to which a service charge is paid to certain institutions for the provision of certain account administration and shareholder liaison services to their customers ("Service Shares"). (Applicants currently do not intend to impose a front-end sales load on the purchase of Administration and Service Shares, but may wish to do so in the future.)

3. If the Multi-Class Plan is adopted, each existing Fund will be able to designate and issue up to four new classes of shares, and any future Funds will be authorized to designate and issue up to five classes of shares. The outstanding shares of the Load Funds will be designated Class A Shares; the outstanding shares of the No-Load Funds will be designated Institutional Shares. For any given Fund, shares of the various classes will represent interests in the same portfolio of investments, and will be identical in all respects, except as set forth in condition 1 below.

9. The decision to create and issue new classes of shares will be made on a Fund by Fund basis by each Investment Company's board of directors/trustees. (Hereinafter, the term "Directors" will refer to an Investment Company's directors of trustees, as appropriate.) Currently, the Load Funds to not intend to offer Service Shares; the No-Load Funds do not intend to offer Class A Shares; and none of the Funds intends to offer CDSC Shares.

10. After implementation of the Multi-Class Plan, an investor will be able to purchase Class A Shares at net asset value plus a front-end sales load. The Distribution Plan for Class A Shares of a Fund will provide for a Distribution Fee equal to, on an annual basis, up to 0.50% of the average daily net assets of Class A Shares. Class A Shares will be essentially the same as the shares currently available to the shareholders of each Load Fund.

11. CDSC Shares will be subject to a Distribution Fee at an annual rate of up to 0.75% of the average daily net assets of the CDSC Shares and a service fee of up to 0.25% of the average daily net assets of the CDSC Shares. (With respect to the CDSC Shares, any reference to the Distribution Fee hereafter will include the service fee.) An investor's proceeds from a redemption of CDSC Shares made within a specified period after purchase (which could range from one to five years) will be subject to a CDSC payable to Goldman Sachs. The CDSC proceeds and Distribution Fees will be used to pay commissions and other costs accociated with the sale of CDSC Shares incurred by Goldman Sachs, as well as the costs incurred in servicing CDSC shareholder accounts.

12. After six years, CDSC Shares will convert automatically to Class A Shares

and be subject to the lower Distribution Fee imposed under the Class A Distribution Plan. For purposes of conversion to Class A Shares, all CDSC Shares purchased through the reinvestment of dividends and other distributions will be considered to be held in a separate sub-account. Each time any CDSC Shares in the shareholder's Fund account (other than those in the sub-account) convert to Class A Shares, and equal *pro rata* portion of the CDSC Shares in the sub-account also will convert to Class A Shares.

13. Institutional Shares will not be subject to a front-end or deferred sales load or to a distribution, administration, or service fee. Applicants intend to make Institutional Shares available only to certain institutional investors that may be specified from time to time in a Fund's prospectus.

14. Administration Shares and Service Shares will be offered only to or through institutional investors acting on behalf of customers ("Service Organizations"). Under an Administration Plan and/or a Service Plan, a Fund will enter into servicing agreements ("Service Agreements") with Service Organizations concerning the provision of certain services to the customers ("Customers") of the Service Organizations who from time to time beneficially own the Administration and Service Shares. Payments made to a Service Organization for services rendered pursuant to a Service Agreement are referred to as "Service Payments." Service Plans will be subject to rule 12b–1. Administration Plans will be adopted and operated in compliance with certain provisions of rule 12b–1. See condition 4 below.

15. Depending on the terms of its particular Service Agreement, a Service Organization may provide some or all of the following services to its Customers who beneficially own Administration Shares: acting as the sole shareholder of record and nominee for all Customers; maintaining account records for each Customer who beneficially owns Administration shares; answering questions and handling correspondence from Customers about their accounts; processing Customer orders to purchase, redeem, and exchange Administration Shares; handling the transmission of funds representing the purchase price or redemption proceeds; issuing confirmations for transactions in Administration Shares by Customers; and similar account administration functions (collectively, the "Account Administration Services"). The provision of Account Administration Services by a Service Organization will augment (and not be duplicative of) the services to be provided to the Funds by Goldman Sachs.

16. Service Payments paid to a Service Organization pursuant to an Administration Plan will not exceed .50% per annum of the average daily net assets of those Administration Shares beneficially owned by Customers of the Service Organization. A Service Organization may charge fees, in addition to any fees received under the Service Agreement, to its Customers who are the beneficial owners of Administration Shares, in connection with their customer accounts.

17. Depending on the terms of its particular Service Agreement, a Service Organization may provide some or all of the following services to its Customers who beneficially own Service Shares: Account Administration Services (as defined above); providing facilities to answer questions from prospective and existing investors about the Fund; receiving and answering investor correspondence, including requests for prospectuses and statements of additional information; displaying and making prospectuses available on the Service Organization's premises; assisting Customers in completing application forms, selecting dividend and other account options, and opening custody accounts with the Service Organization; and acting as a liaison between Customers and the Fund, including obtaining information from the Fund, working with the Fund to correct errors and resolve problems, and providing statistical and other information to the Fund (collectively, the "Shareholder Liaison Services"). The provision of Shareholder Liaison Services by a Service Organization will augment (and not be duplicative of) the services to be provided to the Funds by Goldman Sachs.

18. Service Payments paid to a Service Organization pursuant to a Service Plan will not exceed .75% per annum of the average daily net assets of those Service Shares beneficially owned by Customers of the Service Organization. A Service Organization may charge fees, in addition to any fees received under the Service Agreement, to its Customers who are the beneficial owners of Service Shares, in connection with their customer accounts.

19. Expenses attributable to an Investment Company but not a particular Fund thereof ("Investment Company Expenses") will be allocated to each Fund based on the relative net assets of such Fund. Investment Company Expenses could include, for example, Directors' fees expenses, unallocated audit and legal fees, insurance premiums, expenses relating to shareholder reports, and printing expenses.

20. Expenses attributable to a particular Fund but not a particular class thereof ("Fund Expenses") will be allocated daily to each class of shares based on the ratio of the net assets of such class to the total net assets of all classes of shares of such Fund. Fund Expenses could include, for example, advisory fees, custodian fees, and fees related to preparation of separate documents of a particular Fund, such as a separate propsectus for such Fund.

21. Expenses attributable to a particular class ("Class Expenses") will consist of (i) Distribution Fee expenses of a Fund, which are allocated to the Class A and CDSC Shares in accordance with the Distribution Plan of each such class; (ii) Administration Plan and Service Plan expenses of a Fund, which are allocated to the Administration and Service Shares, respectively, and (iii) those expenses that relate to a Distribution, Administration, or Service Plan and that can only be directly attributable to a particular class of shares. Currently, the only expenses that fall into category (iii) are the cost of preparing, printing, and mailing proxy materials (if any) relating only to a particular Distribution, Administration, or Service Plan.

22. Shares of a particular class of a Fund will be exchangeable only for shares of that same class of another Fund, provided however, that shares of a Fund may be exchanged for shares of such other Funds that have not adopted the Multi-Class Plan as may be described from time to time in the former Fund's prospectus. In addition, upon implementation of the Multi-Class Plan, existing shareholders of the Load Funds (whose shares have been designated Class A), may during a period of time to be specified by the relevant Investment Company's Directors or officers exchange their shares for Institutional, Administration, or Service Shares (if they are eligible to hold such shares). Similarly, existing shareholders of the No-Load Funds (whose shares have been designated Institutional Shares) may be permitted for a specified period of time to exchange their shares for Administration or Service Shares. After such periods, no exchanges between different classes or shares will be permitted.

23. Each Fund's CDSC schedule (the rate and time period used in calculating the CDSC) may vary, but the CDSC will comply with the applicable NASD sales load limitations. The CDSC will not be imposed on redemptions of CDSC

Shares that were purchased more than a specified period (the "CDSC Period")—generally one to five years—prior to redemption, or on the CDSC Shares obtained from reinvestment of distributions. Furthermore, no CDSC will be imposed on an amount that represents an increase in the value of the shareholder's account resulting from capital appreciation above the amount paid for the CDSC Shares. In determining whether a CDSC is applicable, it will be assumed that a redemption is made: first, of shares derived from reinvestment of distributions or amounts which represent an increase in the value of the shareholder's account resulting from capital appreciation; second, of shares purchased prior to the CDSC Period; and third, of shares purchased during the CDSC Period. In determining the rate of any applicable CDSC, it will be assumed that a redemption is made of CDSC Shares held by the investor for the longest period of time within the CDSC Period. Any CDSC imposed will be imposed on the lesser of the net asset value of the shares redeemed (exclusive of reinvestment of dividends or distributions) at the time of redemption or the net asset value of such shares at the time of purchase.

24. Applicants are requesting authority to waive or reduce the CDSC assessed on redemptions of CDSC Shares in the following circumstances: (a) Redemptions made within one year after a shareholder's death or disability, as defined in section 72(m)(7) of the Internal Revenue Code; (b) in connection with distributions from retirement plans that are not subject to any penalties under the Internal Revenue Code; (C) in connection with redemptions of shares by shareholders with accounts in excess of $50,000, with additional reductions of the CDSC occurring in connection with redemptions of shares by shareholders with accounts in excess of certain additional break-points, exactly the same as those under which the front-end sales load on Class A Shares is reduced pursuant to rule 22d–1 under the Act; (d) in connection with redemptions of shares purchased by Exempt Investors, as defined in paragraph 5 above; (e) in connection with an exercise of the Reinvestment Privilege; [1] (f) pursuant to each Fund's right to liquidate or involuntarily redeem shares in a shareholder's account; (g) pursuant to a systematic withdrawal plan; and (h) in connection with the redemption of shares of any Fund that is combined with another Fund or Investment Company by virtue of merger, acquisition or other similar reorganization transaction. In waiving or reducing a CDSC, the Funds will comply with the requirements of rule 22d–1 under the Act.

25. Applicants will defer the CDSC in connection with an exchange of the CDSC Shares of one Fund for CDSC Shares of another Fund. In such case, the second Fund will "tack" the period during which the shareholder held CDSC Shares of the first Fund onto the holding period of the CDSC Shares acquired in the exchange for purposes of determining what, if any, CDSC is applicable at the time of redemption. An investor redeeming shares acquired through one or more exchanges will be subject to the CDSC of the Fund with the CDSC schedule that results in the greatest CDSC payment.

Applicants' Legal Analysis

1. Applicants are requesting an order pursuant to section 6(c) of the Act exempting them from sections 18(g), 18(f)(1), and 18(i) to the extent the proposed Multi-Class Plan might be deemed (a) to result in a "senior security" within the meaning of section 18(g), the issuance and sale of which is prohibited by section 18(f)(1), and (b) to violate the equal voting provisions of section 18(i).

2. The Multi-Class Plan does not create the potential for the abuses that section 18 was designed to redress. It does not involve borrowing and does not affect the Funds' existing assets or reserves. It will not increase the speculative character of the Funds' shares. No class of shares will have a distribution or liquidation preference with respect to particular assets of a Fund and no class will be protected by any reserve or other account. The concerns that complex capital structures may facilitate control without equity or other investment and may make it difficult for investors to value Fund shares are not present under the proposed Multi-Class Plan. The Funds' capital structures will not enable insiders to manipulate the expenses and profits among the different classes of shares.

3. Applicants believe that the Multi-Class Plan will better enable them to meet the competitive demands of today's financial services industry. It will also benefit investors by enabling the Funds to offer a broader choice regarding the distribution method and level of service appropriate to each investor, without having to organize separate investment portfolios. To the extent the adoption of the Multi-Class Plan increases sales of Fund shares, owners of all classes of shares may benefit since the Fund's fixed costs will be spread over a larger pool of assets.

4. Applicants believe that the proposed allocation of expenses and voting rights relating to the Distribution Plans, Administration Plans, and Service Plans is equitable and will not discriminate against any group of shareholders. Investors purchasing shares offered in connection with the Distribution, Administration, and Service Plans and receiving services provided under those plans will bear the costs associated with such services and will also enjoy exclusive shareholder voting rights (if any) with respect to matters affecting their respective plans.

5. Applicants also are requesting an exemption pursuant to section 6(c) from sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act, and rule 22c–1 thereunder, to the extent necessary to permit the Funds to assess a CDSC on certain redemptions of CDSC Shares and to waive, reduce, or defer the CDSC with respect to certain types of redemptions.

6. Permitting the Funds to offer CDSC Shares benefits investors, applicants contend, because holders of CDSC Shares have the advantage of greater investment dollars working for them from the time of their purchase of CDSC Shares than if a sales load were imposed at the time of purchase. Applicants further contend that the waiver or deferral of the CDSC under the circumstances set forth above will not harm the Funds of their shareholders, or unfairly discriminate among shareholders or purchasers.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. Each class of shares of a Fund will represent interests in the same portfolio of investments, and be identical in all respects, except as set forth below. The only differences among the classes of shares of a Fund will relate solely to:

[1] This Reinvestment Privilege is identical to the Reinvestment Privilege currently in effect for the Load Funds as described in paragraph 4 above, except as follows. If proceeds from a redemption of shares upon which a CDSC was imposed are reinvested in other CDSC Shares within the period specified in a Fund's prospectus, Goldman Sachs (or any of its affiliates other than the Fund) will credit the shareholder's account with the amount of the CDSC previously imposed, and the CDSC Shares acquired through reinvestment will continue to be subject to the CDSC. The holding period of CDSC Shares acquired through reinvestment will include the holding period of the redeemed CDSC Shares.

(a) The impact of the disproportionate payments made under the Distribution Plan, the Service Plan, and the Administration Plan; the cost of preparing, printing, and mailing proxy materials relating only to one class; and any other incremental expenses subsequently identified that should properly be allocated to one class and which shall be approved by the SEC pursuant to an amended order;

(b) The fact that the classes have different voting rights with respect to Distribution Plans, Service Plans, and Administration Plans;

(c) The different exchange privileges of the classes;

(d) The fact that only CDSC Shares will be subject to a conversion feature; and

(e) The designation of each class of shares.

2. The Directors, including a majority of the independent Directors, will approve the Multi-Class Plan. The minutes of the meetings of the Directors regarding their deliberations concerning, and their approval of, the Multi-Class Plan will reflect in detail the reasons for the Directors' determination that the proposed Multi-Class Plan is in the best interests of both the Funds and their respective shareholders.

3. On an ongoing basis, the Directors, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor their respective Funds for the existence of any material conflicts among the interests of the classes of shares. The Directors, including a majority of the independent Directors, will take such action as is reasonably necessary to eliminate any such conflicts that may develop. Goldman Sachs or such affiliates of Goldman Sachs as may be serving as advisers and distributors of the Funds will be responsible for reporting any potential or existing conflicts to the Directors. If a conflict arises, Goldman Sachs or such affiliates of Goldman Sachs as may be serving as advisers and distributors of the Funds, at their own cost, will remedy such conflict up to and including establishing a new registered management investment company.

4. The Administration Plan will be adopted and operated in accordance with the procedures set forth in rule 12b–1 (b) through (f) as if the expenditures made thereunder were subject to rule 12b–1, except that shareholders need not enjoy the voting rights specified in rule 12b–1. In evaluating the Administration Plan, the Directors will specifically consider whether

(a) Such Administration Plan is in the best interest of the applicable classes and their respective shareholders,

(b) The services to be performed pursuant to the Administration Plan are required for the operation of the applicable classes,

(c) The Service Organizations can provide services at least equal, in nature and quality, to those provided by others, including the Funds, providing similar services, and

(d) The fees for such services are fair and reasonable in light of the usual and customary charges made by other entities, especially non-affiliated entities, for services of the same nature and quality.

5. Each Service Agreement entered into pursuant to an Administration Plan will contain a representation by the Service Organization involved that any compensation payable to the Service Organization in connection with the investment of its customers' assets in the Fund

(a) Will be disclosed by it to its customers,

(b) Will be authorized by its customers, and

(c) Will not result in an excessive fee to the Service Organization.

6. Each Service Agreement entered into pursuant to an Administration Plan will provide that, in the event an issue pertaining to such a plan is submitted for shareholder approval, the Service Organization will vote any shares held for its own account in the same proportion as the vote of those shares held for its Customers' accounts.

7. The Directors will receive quarterly and annual statements concerning the amounts expended under each Distribution Plan, Service Plan and Administration Plan complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time, for their respective Funds. In these statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify the Distribution Fees or Service Payments charged to that class. Expenditures not related to the sale or servicing of a specific class of shares will not be presented to the Directors to justify any Distribution Fees or Service Payments charged to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent Directors in the exercise of their fiduciary duties.

8. Dividends paid by a Fund with respect to each class of its shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount, except that Distribution Fees or Service Payments, as the case may be, made by a class under its Distribution Plan or Service or Administration Plan and any Class Expenses will be borne exclusively by the affected class.

9. The methodology and procedures for calculating the net asset value, dividends and distributions of the five classes of shares and the proper allocation of expenses among the five classes have been reviewed by an expert (the "Expert"). The Expert has rendered a report to the applicants, which has been provided to the staff of the SEC, that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Funds that the calculations and allocations are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Expert with respect to such reports, following request by a Fund (which each Fund agrees to provide), will be available for inspection by the SEC staff upon the written request to a Fund for such work papers by a senior member of the Division of Investment Management limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Expert is a "Special Purpose" report on the "Design of a System" and the ongoing reports will be "Special Purpose" reports on the "Design of a System and Certain Compliance Tests" as defined and described in SAS No. 70 of the American Institute of Certified Public Accountants (the "AICPA"), as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

10. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value, dividends and distributions of the five classes of shares and the proper allocation of expenses among the five classes of shares and this representation has been concurred with by the Expert in the initial report referred to in condition (9) above and will be

concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition (9) above. Applicants will take immediate corrective measures if this representation is not concurred in by the Expert or appropriate substitute Expert.

11. The prospectus of each Fund, or if applicable, the prospectus of each class of shares of a Fund, will include a statement to the effect that any person entitled to receive compensation for selling or servicing shares may receive different levels of compensation with respect to one particular class of shares over another in the Fund.

12. Goldman Sachs or such affiliate(s) of Goldman Sachs as may be serving as distributor(s) of the Funds will adopt compliance standards as to when shares may appropriately be sold to particular investors. Applicants will require all persons selling shares of the Funds to conform to such standards.

13. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the Directors with respect to the Multi-Class Plan will be set forth in guidelines which will be furnished to the Directors.

14. Each Fund will disclose in its prospectus the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads and exchange privileges applicable to each class of shares offered through the prospectus. In the event that the shares of each class are offered through separate prospectuses, the prospectuses will each contain cross disclosure describing the foregoing information with respect to each of the other four classes of shares. The shareholder reports of each Fund will disclose the respective expenses and performance data applicable to each class of shares of that Fund. Any advertising material or sales literature which describes the expenses and/or performance data applicable to any class of shares will disclose such information for all classes. Any publication in any newspaper or similar listing of the net asset values or public offering prices of any class of shares will include a separate presentation of such information for all classes of shares.

15. The initial determination of the proxy expenses that will be allocated to a particular class of a Fund and any subsequent changes thereto will be reviewed and approved by a vote of the applicable Investment Company's Directors, including a majority of the Directors who are not interested persons of such Investment Company. Any person authorized to direct the allocation and disposition of monies paid or payable by a Fund to meet proxy expenses shall provide to the Directors, and the Directors shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

16. CDSC Shares will convert into Class A shares on the basis of the relative net asset values of the two classes, without the imposition of any sales load, fee or other charge.

17. Applicants acknowledge that the grant of the exemptive order requested by this application will not imply SEC approval, authorization or acquiescence in any particular level of payments that a Fund may make pursuant to any Distribution Plan, Administration Plan or Service Plan in reliance on the exemptive order.

18. If a Fund implements any amendment to a rule 12b–1 plan (or, if presented to shareholders, adopts or implements any amendment of a non-rule 12b–1 shareholder services plan) that would increase materially the amount that may be borne by the Class A shares under the plan, existing CDSC shares will stop converting into Class A unless the CDSC shareholders, voting separately as a class, approve the proposal. The Directors shall take such action as is necessary to ensure that existing CDSC shares are exchanged or converted into a new class of shares ("New Class A"), identical in all material respects to Class A as it existed prior to implementation of the proposal, no later than the date such CDSC shares previously were scheduled to convert into Class A. If deemed advisable by the Directors to implement the foregoing, such action may include the exchange of all existing CDSC shares for a new class ("New CDSC Class"), identical to existing CDSC shares in all material respects except that New CDSC Class will convert into New Class A. New Class A or New CDSC Class may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in a manner that the Directors reasonably believe will not be subject to federal taxation. In accordance with condition 3, any additional cost associated with the creation, exchange, or conversion of New Class A or New CDSC Class shall be borne solely by the Fund's adviser and distributor. CDSC Class shares sold after the implementation of the proposal may convert into Class A shares subject to the higher maximum payment, provided that the material features of the Class A plan and the relationship of such plan to the CDSC shares are disclosed in an effective registration statement.

19. Applicants will comply with the provisions of proposed Rule 6c–10 under the Act, as such rule is currently proposed and as it may be reproposed, adopted or amended.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–2359 Filed 2–1–93; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

Bureau of Politico Military Affairs

[Public Notice 1758]

Statutory Debarment Under the International Traffic in Arms Regulations

AGENCY: Bureau of Politico Military Affairs, Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of which persons have been statutorily debarred pursuant to § 127.6(c) of the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130).

EFFECTIVE DATE: December 9, 1992.

FOR FURTHER INFORMATION CONTACT: Clyde G. Bryant Jr., Chief, Compliance Analysis Division, Office of Defense Trade Controls, Department of State (703–875–6650).

SUPPLEMENTARY INFORMATION: Section 38 (g)(4)(A) of the Arms Export Control Act (AECA) prohibits the issuance of export licenses to a person, or any party to the export, who has been convicted of violating certain U.S. criminal statutes, including the AECA. The term "person" means a natural person as well as a corporation, business association, partnership, society, trust, or any other entity, organization, or group, including governmental entities. The term "party to the export" means the president, the chief executive officer, and other senior officers of the license applicant; the freight forwarders or designated exporting agent of the license applicant; and any consignee or end user of any item to be exported. The statute permits certain limited exceptions to this prohibition to be made on a case-by-case basis.

Section 127.6 of the ITAR authorizes the Assistant Secretary of State for Politico-Military Affairs to prohibit certain persons convicted of violating or conspiracy to violate the AECA from

participating directly or indirectly in the export of defense articles or in the furnishing of defense services.

Such a prohibition is referred to as a statutory debarment, which may be imposed on the basis of judicial proceedings that resulted in a conviction for violating, or of conspiring to violate, the AECA. See 22 CFR 127.6(c). The period for debarment will normally be three years. The ITAR provides the Assistant Secretary with discretion to determine an alternative period of time for debarment. At the end of the debarment period, licensing privileges may be reinstated at the request of the debarred person following the necessary interagency consultations, after a thorough review of the circumstances surrounding the conviction and a finding that appropriate steps have been taken to mitigate any law enforcement concerns, as required by section 38(g)(4).

Statutory debarment is based solely upon the outcome of a criminal proceeding, conducted by a court of the United States, that established guilt beyond a reasonable doubt in accordance with due process. Thus, those procedures of part 128 of the ITAR that apply to administrative debarment are not applicable in such cases.

During the period of debarment the Department of State will not consider applications for licenses or requests for approvals that involve any person or any party to the export who has been convicted of violating the AECA, or of conspiracy to violate the AECA. Persons who have been statutorily debarred may appeal to the Under Secretary for International Security Affairs for reconsideration of the ineligibility determination. A request for reconsideration must be submitted in writing within 30 days after a person has been informed of the adverse decision.

The Department of State policy permits debarred persons to apply for an exception from the debarment under section 38 (g)(4)(A) of the AECA, one year after the date of the debarment. Debarred persons may seek such an exception from the Director of the Office of Defense Trade Controls, in accordance with section 38(g)(4)(A) and under 22 CFR 127.6. If the exception is granted, the debarment will be suspended. Any decision to grant an exception can be made only after the statutory requirements under section 38(g)(4) have been satisfied.

Pursuant to section 38(g)(4)(A) of the AECA and § 127.6 of the ITAR, the Assistant Secretary for Politico-Military Affairs has debarred eight persons who have been convicted of violating the AECA, or of conspiracy to violate the AECA.

These persons have been debarred for a three year period following their conviction, and have been so notified by a letter from the Office of Defense Trade Controls. Pursuant to § 127.6(c) of the ITAR, the names of these persons (and their offense, date of conviction(s) and court of conviction(s)) are being published in the **Federal Register**. Anyone who requires additional information to determine whether a person has been debarred should contact the Office of Defense Trade Controls.

This notice involves a foreign affairs function of the United States and is thus excluded from the procedures of 5 U.S.C. 553 and 554 and Executive Order 12291 (44 FR 13193). It implements statutory and regulatory requirements that entered into force on December 22, 1987 and April 4, 1988, respectively.

In accordance with these authorities the following persons are debarred for a period of three years following their conviction for violating, or conspiring to violate, the AECA (name/ offense/ date/ court):

1. Luis Fernando Arcila-Giraldo, 18 U.S.C. 371 (conspiracy to violate 22 U.S.C. 2778), and 22 U.S.C. 2778, April 30, 1991, Middle District of Florida.

2. Fu Chin Chung, a/k/a Alfred Chung, 22 U.S.C. 2778, May 20, 1990, Northern District of Georgia.

3. Brian Joseph Fleming, a/k/a Brian Joseph McSulla, 18 U.S.C. 371 (conspiracy to violate 22 U.S.C. 2778), July 3, 1990, Middle District of Alabama.

4. Francisco Ernesto Jerez, 18 U.S.C. 371 (conspiracy to violate 22 U.S.C. 2778), January 29, 1992, Central District of California.

5. Charles Farrell Malone, 18 U.S.C. 371 (conspiracy to violate 22 U.S.C. 2778), June 20, 1990, Middle District of Alabama.

6. Francisco Salvador Martin Panameno, 18 U.S.C. 371(conspiracy to violate 22 U.S.C. 2778), January 29, 1992, Central District of California.

7. Ricardo Benitez Perez, 22 U.S.C. 2778, January 21, 1992, Southern District of Texas, Corpus Cristi Division.

8. Alfredo Antonio Ramos-Tinoco, 18 U.S.C. 371 (conspiracy to violate 22 U.S.C. 2778), and 22 U.S.C. 2778, April 4, 1991, Middle District of Florida.

Dated: January 14, 1993.

William B. Robinson,

Director, Office of Defense Trade Controls, Bureau of Politico Military Affairs, Department of State.

[FR Doc. 93–2343 Filed 2–1–93; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. 48501]

Application of Atlantic Southeast Airlines, Inc. for Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 93–1–34).

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Atlantic Southeast Airlines, Inc., fit, willing, and able, and awarding it a certificate of public convenience and necessity to engage in interstate and overseas scheduled air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than February 8, 1993.

ADDRESSES: Objections and answers to objections should be filed in Docket 48501 and addressed to the Documentary Services Division (C–55, room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Carol A. Woods, Air Carrier Fitness Division (P–56, room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2340.

Dated: January 27, 1993.

Patrick V. Murphy, Jr.,

Acting Assistant Secretary for Policy and International Affairs.

[FR Doc. 93–2380 Filed 2–1–93; 8:45 am]

BILLING CODE 4910–62–M

Coast Guard

[CGD 93–003]

Coast Guard Academy Advisory Committee

ACTION: Open meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. I) notice is hereby given of a meeting of the Coast Guard Academy Advisory Committee to be held in Hamilton Hall at the U.S. Coast Guard Academy, New London, CT, on Monday and Tuesday, March 22 and 23, 1993. The open sessions on Monday will be held from 10 a.m. to 11 a.m. and 1:15 p.m. to 2:15 p.m. Open sessions on Tuesday will be held from

2:30 to 3:15 p.m. The Agenda for the meeting consists of the following items:

1. Recruiting and Admissions
2. Athletics
3. Faculty and Curricula
4. Library

The Coast Guard Academy Advisory Committee was established in 1937 by Public Law 75–38 to advise on the course of instruction at the Academy and to make recommendations as necessary. Attendance is open to the public. With advance notice, members of the public may present oral statements at the meeting. Persons wishing to attend or present oral statements at the meeting should notify the U.S. Coast Guard Academy not later than March 8, 1993.

Any member of the public may present a written statement to the Committee at any time.

FOR FURTHER INFORMATION CONTACT: Dr. William A. Sanders, Dean of Academics, U.S. Coast Guard Academy, New London, CT 06320, phone (203) 444–8275.

Issued in Washington, DC, on January 26, 1993.

J.M. Loy,

Rear Admiral, U.S. Coast Guard, Chief, Office of Personnel and Training.

[FR Doc. 93–2428 Filed 2–1–93; 8:45 am]

BILLING CODE 4910–14–M

National Highway Traffic Safety Administration

Automotive Fuel Economy Program; Report to Congress

The attached document, Automotive Fuel Economy Program, Seventeenth Annual Report to the Congress, has been prepared pursuant to section 502(a)(2) of the Motor Vehicle Information and Cost Savings Act (Pub. L. 92–513), as amended by the Energy Policy and Conservation Act (Pub. L. 94–163) which requires in pertinent part that "each year, beginning in 1977, the Secretary shall transmit to each House of Congress, and publish in the **Federal Register**, a review of average fuel economy standards under this part."

Dated: January 26, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

Automotive Fuel Economy Program, Seventeenth Annual Report to the Congress, January 1993

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Section I: Introduction

This Seventeenth Annual Report to Congress summarizes the activities of the National Highway Traffic Safety Administration (NHTSA) during 1992 regarding implementation of applicable sections of Title V: "Improving Automotive Fuel Efficiency," of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901 *et seq.*), as amended (the Act). Section 502(a)(2) of the Act requires submission of a report each year. Included in this report are sections summarizing rulemaking activities during 1992 and a discussion of the use of advanced automotive technology by the industry as required by section 305, title III, of the Department of Energy Act of 1978 (Pub. L. 95–238).

Title V of the Act requires the Secretary of Transportation to administer a program for regulating the fuel economy of new passenger cars and light trucks in the United States market. The authority to administer the program has been delegated by the Secretary to the Administrator of NHTSA, 49 CFR 1.50(f).

NHTSA's responsibilities in the fuel economy area include:

(1) Establishing and amending average fuel economy standards for manufacturers of passenger cars and light trucks, as necessary;

(2) Promulgating regulations concerning procedures, definitions, and reports necessary to support the fuel economy standards;

(3) Considering petitions for exemption from established fuel economy standards by low volume manufacturers (those producing fewer than 10,000 passenger cars annually worldwide) and establishing alternative standards for them;

(4) Preparing reports to Congress annually on the fuel economy program;

(5) Enforcing fuel economy standards and regulations; and

(6) Responding to petitions concerning domestic production by foreign manufacturers and other matters.

Passenger car fuel economy standards have been established by Congress for Model Year (MY) 1985 and thereafter at a level of 27.5 mpg. NHTSA has authority to amend the standard above or below that level. Standards for light trucks have been established by NHTSA for MYs 1979 through 1994. Most recently, NHTSA published a notice of proposed rulemaking (NPRM) proposing light truck fuel economy standards for MYs 1995–1997. All current standards are listed in Table I–1.

To estimate the potential for vehicle fuel economy improvements over the next decade, NHTSA contracted with the National Academy of Sciences (NAS) to study the extent to which automobile fuel economy could be improved while still meeting environmental and safety needs. The study report was completed in April 1992. While the study concluded that higher levels of fuel economy can be attained in the future, it also discussed the costs of reaching higher levels and problems with the current Corporate Average Fuel Economy (CAFE) regulatory program.

TABLE I–1.—FUEL ECONOMY STANDARDS FOR PASSENGER CARS AND LIGHT TRUCKS MODEL YEARS 1978 THROUGH 1994 (IN MPG)

Model year	Passenger cars	Light trucks [1]		
		Two-wheel drive	Four-wheel drive	Combined [2 3]
1978	[4] 18.0	.....	.....	.....
1979	[4] 19.0	17.2	15.8	.....
1980	[4] 20.0	16.0	14.0	([5])
1981	22.0	[6] 16.7	15.0	([5])
1982	24.0	18.0	16.0	17.5
1983	26.0	19.5	17.5	19.0
1984	27.0	20.3	18.5	20.0
1985	[4] 27.5	[7] 19.7	[7] 18.9	[7] 19.5
1986	[8] 26.0	20.5	19.5	20.0
1987	[9] 26.0	21.0	19.5	20.5
1988	[9] 26.0	21.0	19.5	20.5
1989	[10] 26.5	21.5	19.0	20.5
1990	[4] 27.5	20.5	19.0	20.0
1991	[4] 27.5	20.7	19.1	20.2
1992	[4] 27.5	.....	.....	20.2
1993	[4] 27.5	.....	.....	20.4
1994	[4] 27.5	.....	.....	20.5

[1] Standards for MY 1979 light trucks were established for vehicles with a gross vehicle weight rating (GVWR) of 6,000 lbs. or less. Standards for MY 1980 and beyond are for light trucks with a GVWR of 8,500 lbs. or less.

[2] For MY 1979, light truck manufacturers could comply separately with standards for four-wheel drive, general utility vehicles and all other light trucks, or combine their trucks into a single fleet and comply with the 17.2 mpg standard.

[3] For MYs 1982–1991, manufacturers could comply with the two-wheel and four-wheel drive standards or could combine all light trucks and comply with the combined standard.

[4] Established by Congress in Title V of the Act.

[5] A manufacturer whose light truck fleet was powered exclusively by basic engines which were not also used in passenger cars could meet standards of 14 mpg and 14.5 mpg in MYs 1980 and 1981, respectively.

[6] Revised in June 1979 from 18.0 mpg.

[7] Revised in October 1984 from 21.6 mpg for two-wheel drive, 19.0 mpg for four-wheel drive, and 21.0 mpg for combined.

[8] Revised in October 1985 from 27.5 mpg.

[9] Revised in October 1986 from 27.5 mpg.

[10] Revised in September 1988 from 27.5 mpg.

Consumers continue to choose more spacious and higher performing vehicles in the market place. This choice reflects the continuing availability of gasoline at a relatively low price. As a consequence, the overall passenger car fleet fuel economy average for MY 1992 declined to 27.9 mpg (from 28.3 mpg in MY 1991), and the light truck fleet average declined to 20.7 mpg (from 21.3 mpg in MY 1991). Light trucks represented 32.9 percent of the light truck/passenger car fleet, the highest share ever. The average weight of the MY 1992 passenger car fleet was the highest since MY 1979 and the light

truck average weight is the highest in over eight years. Both fleets reached new levels of performance with the highest horsepower-to-weight ratios in recent years. The import share of the passenger car fleet reached its highest level in MY 1992 at 43.6 percent, but the import share of the light truck fleet was the lowest in 14 years at 17.3 percent.

Section II: Fuel Economy Improvement by Manufacturers

The fuel economy achievements for domestic and foreign manufacturers in MY 1991 have been updated to include final Environmental Protection Agency (EPA) calculations, where available, since the publication of the Sixteenth Annual Report to the Congress. These fuel economy achievements and current data for MY 1992 are listed in Tables II–1 and II–2.

Overall fleet fuel economy for passenger cars was 27.9 mpg in MY 1992, the lowest value since MY 1985, due primarily to increased market demand for heavier and higher performance passenger cars. With continued lower real fuel prices, CAFE values decreased over MY 1991 levels for 14 of 23 passenger car manufacturers' fleets. (See Table II–1.) These 14 companies accounted for about 70 percent of the total MY 1992 production. Manufacturers continued to introduce new technologies and more fuel-efficient models, as well as some larger, less fuel-efficient models. For MY 1992, only one of the three domestic manufacturers raised its passenger car CAFE from MY 1991 levels. Chrysler's CAFE rose 0.3 mpg above the MY 1991 CAFE level.

TABLE II–1.—PASSENGER CAR FUEL ECONOMY PERFORMANCE BY MANUFACTURER[1] MODEL YEARS 1991 AND 1992

Manufacturer	Model year cafe (MPG)	
	1991	1992
Domestic:		
Chrysler	27.5	27.8
Ford	27.6	27.3
GM	27.1	26.8
Sales weighted average (domestic)	27.3	27.0
Imported:		
BMW	23.2	24.0
Chrysler Imports	28.7	29.2
Daihatsu	43.6	41.3
Fiat	23.8	22.4
Ford Imports	33.2	25.3
GM Imports	31.8	31.1
Honda	30.7	30.8
Hyundai	32.9	31.1
Isuzu	34.2	32.5
Mazda	30.5	30.5
Mercedes-Benz	22.3	21.8
Mitsubishi	30.3	28.9
Nissan	29.9	29.4
Peugeot	26.3	24.7
Porsche	21.1	22.4
Sterling	25.2	.....
Subaru	28.4	27.8
Suzuki	43.2	44.7
Toyota	30.9	28.8
Volvo	25.3	25.6
VW	29.9	29.2
Yugo	34.6	.....
Sales weighted average (imported)	30.0	29.0
Total fleet average	28.3	27.9
Fuel economy standards	27.5	27.5

[1] Manufacturers or importers of fewer than 1,000 passenger cars annually are not listed.

NOTE: Some MY 1991 CAFE values differ from those used in the Sixteenth Annual Report to the Congress due to the use of final EPA calculations.

TABLE II–2.—LIGHT TRUCK FUEL ECONOMY PERFORMANCE BY MANUFACTURER MODEL YEARS 1991 AND 1992

Manufacturer	Model year cafe (MPG)			
	2-Wheel drive	4-Wheel drive	Combined[1]	
	1991	1991	1991	1992
Domestic:				
Chrysler	.....	.....	21.1	21.2
Ford	.....	.....	20.4	20.2
GM	.....	.....	21.2	20.2
PAS	.....	17.8	.....	18.6
Sales weighted average (domestic)	.....	17.8	20.9	20.4
Imported:				
Chrysler Imports	.....	.....	20.4	21.4
Daihatsu	.....	26.9	.....	26.7
Isuzu	22.7	19.6	.....	20.8
Mazda	.....	.....	24.0	23.2
Mitsubishi	24.8	20.0	.....	21.9
Nissan	.....	.....	24.8	23.8
Range Rover	.....	16.3	.....	16.3
Subaru	.....	29.1	.....	28.6
Suzuki	.....	.....	29.9	30.1
Toyota	24.3	20.4	.....	21.9
VW	.....	.....	20.7	.....
Sales weighted average (imported)	23.9	20.5	24.5	22.3
Total fleet average	23.9	20.5	21.2	20.7
Fuel economy standard	20.7	19.1	20.2	20.2

[1] In MY 1991, manufacturers could comply with the 2-wheel and 4-wheel drive standards or could combine their 2-wheel and 4-wheel drive trucks and comply with the combined standards.

NOTE: Some MY 1991 CAFE values differ from those used in the *Sixteenth Annual Report to the Congress* due to the use of final EPA calculations.

In MY 1992, the fleet average fuel economy for imported passenger cars decreased by 1 mpg, from the MY 1991 CAFE level. Import CAFE was 29.0 mpg in MY 1992, its lowest level since MY 1979. Twelve of the 20 import car manufactures decreased their CAFE values between MYs 1991 and 1992. And six of the nine Asian importers experienced declining CAFE values. Figure II–1 illustrates the changes in total new passenger car fleet CAFE from MY 1978 to MY 1992. About 3/5 of the total passenger car fleet fuel economy decline can be attributed to the import fleet decline. For MY 1992, domestic manufacturer fleet average fuel economy was the closest it has ever been to import manufacturer CAFE—differing by only 2.0 mpg.

CAFE levels for imported light truck manufacturers decreased by 2.2 mpg using the combined standard. The domestic and total light truck fleet CAFEs decreased by 0.5 mpg each from MY 1991 to MY 1992 for manufacturers using the combined standards. Figure II–2 illustrates the progress in total fleet CAFE from MY 1979 to MY 1992 for light trucks.

A number of passenger car and a few light truck manufacturers are projected to fail to achieve the levels of the MY 1992 CAFE standards. All of the light truck manufacturers in this category are low volume or limited line producers. However, NHTSA is not yet able to determine which of these manufacturers may be liable for civil penalties for noncompliance. Some MY 1992 CAFE values may change when final figures are provided to NHTSA by EPA, in mid-1993. In addition, several manufacturers are not expected to pay civil penalties because the credits they earned by exceeding the fuel economy standards in earlier years offset later shortfalls. Other manufacturers may file carryback plans to demonstrate that they anticipate earning credits in future model years to offset current deficits.

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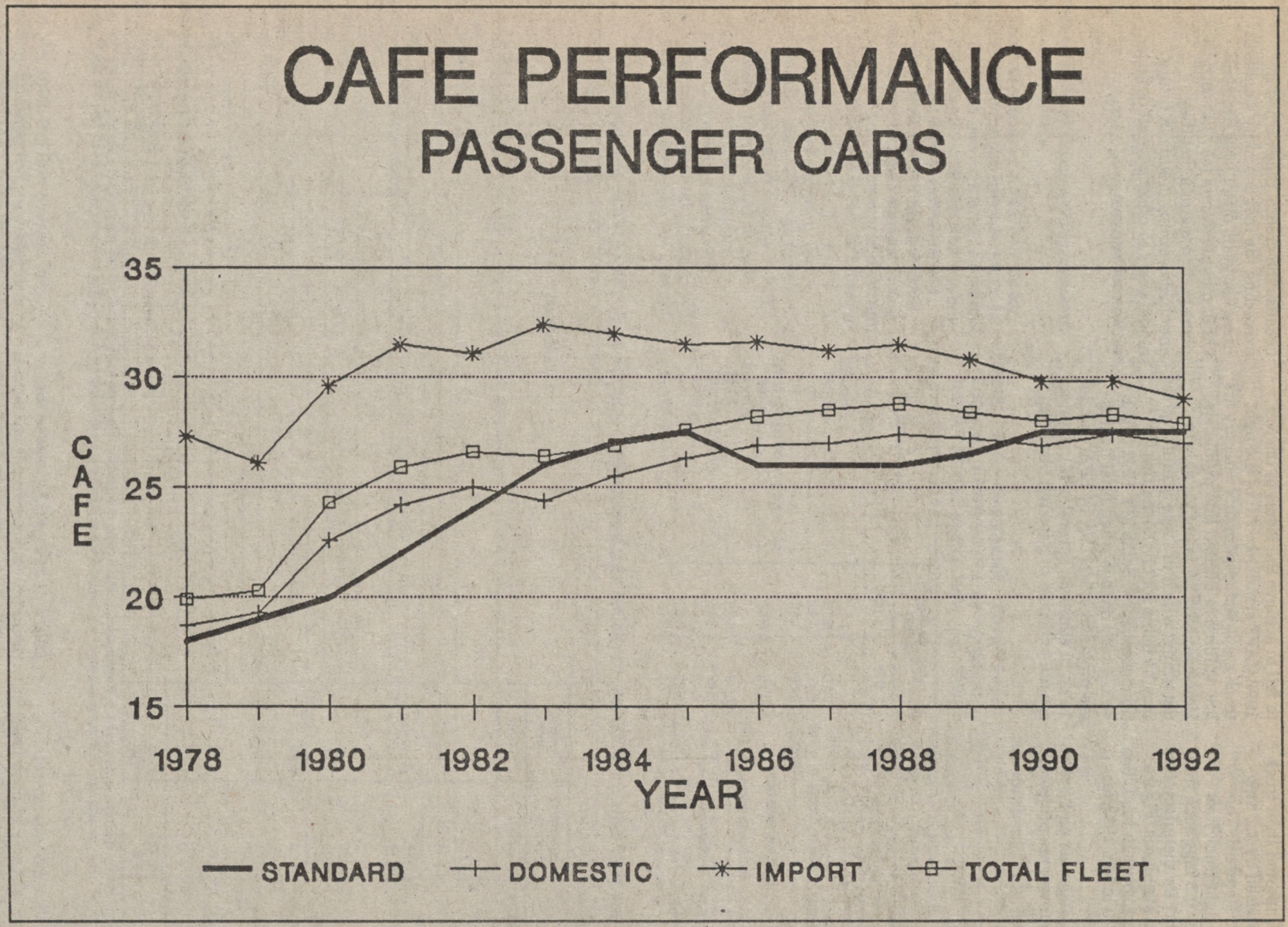
CAFE PERFORMANCE
PASSENGER CARS
35
30
25
20
15
CAFE
1978
1980
1982
1984
1986
1988
1990
1992
YEAR
STANDARD
DOMESTIC
IMPORT
TOTAL FLEET

FIGURE II-1

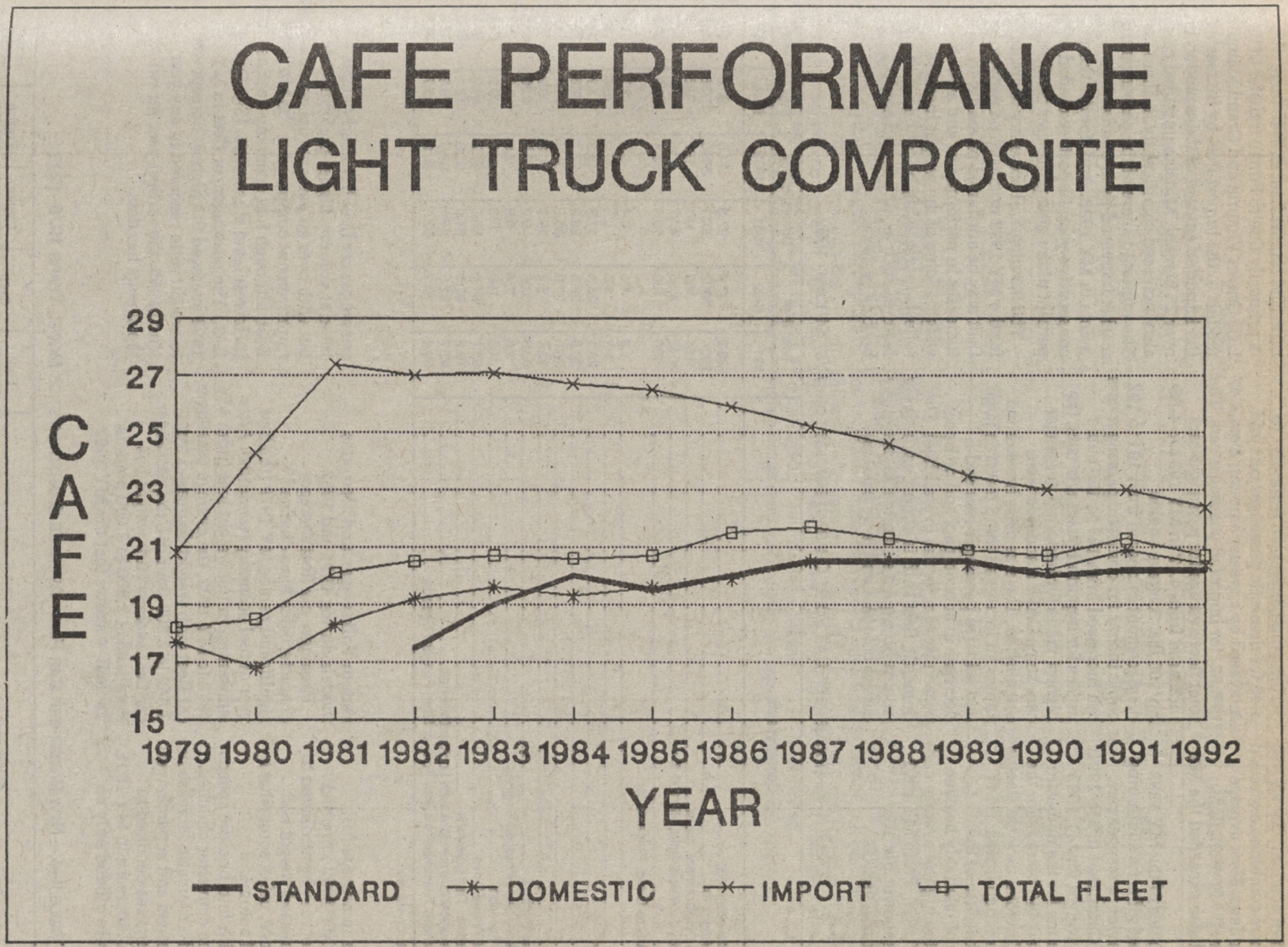

FIGURE II-2

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Fleet average fuel economy for all MY 1992 passenger cars combined exceeded the MY 1992 standard. Fleet average fuel economy for all MY 1992 light trucks combined also exceeded the MY 1992 standards.

The characteristics of the MY 1992 passenger car fleet reflect a continuing trend toward heavier passenger cars. (See Table II–3.) Compared to MY 1991, the average curb weight for MY 1992 increased 29 pounds for the domestic fleet and increased 140 pounds for the imported fleet. The total new car fleet is 73 pounds heavier than it was in MY 1991, primarily because of the significant share of relatively heavier imports. This is the highest average curb weight since MY 1979. From MY 1991 to MY 1992, horsepower per 100 pounds, a measure of vehicle performance, increased from 4.37 to 4.48 for domestic passenger cars and increased by a greater amount, from 4.47 to 4.62, for imported passenger cars. The total fleet average for passenger cars increased from 4.42 in MY 1991 to 4.56 hp/100 lbs. Average engine displacement increased from 191 to 192 cubic inches for domestic passenger cars but increased from 125 to 139 cubic inches for imported passenger cars, the highest value for imported passenger cars since CAFE standards were established. The size class breakdown shows an increased trend towards large and midsize passenger cars and a decrease in subcompact and compact passenger cars for the overall fleet. The domestic fleet shift is almost exclusively from subcompact and midsize passenger cars to compact and large passenger cars. The import fleet shift to large cars is primarily due to Ford's transfer of its LTD Crown Victoria and Grand Marquis models to the import fleet by increasing the imported content of these models to over 25 percent. Midsize imported cars also increased significantly in share. The imported share of the passenger car market increased by 3.4 percentage points in MY 1992. And, for the third consecutive year, imports exceeded 40 percent of the new passenger car fleet.

The 0.3 mpg fuel economy decrease for the MY 1992 domestic passenger car fleet may be attributed primarily to increases in performance and average weight. Some of the weight increase reflects increased applications of safety features such as air bag and antilock braking systems.

TABLE II–3.—PASSENGER CAR FLEET CHARACTERISTICS FOR MYS 1991 AND 1992

Characteristics	Total fleet		Domestic fleet		Imported fleet	
	1991	1992	1991	1992	1991	1992
Fleet Average Fuel Economy, mpg	28.3	27.9	27.3	27.0	30.0	29.0
Fleet Average Curb Weight, lbs	2934	3007	3071	3100	2735	2875
Fleet Average Engine Displacement, cu. in	164	169	191	192	125	139
Fleet Average Horsepower/Weight ratio, HP/100 lbs	4.42	4.56	4.37	4.48	4.47	4.62
Percentage of Fleet	100	100	59.8	56.4	40.2	43.6
Segmentation by EPA Size Class, Percentage:						
Two-Seater	1.8	1.0	0.4	0.4	3.7	1.6
Minicompact	1.2	1.3	0.0	0.0	3.0	3.1
Subcompact*	28.1	25.9	17.2	15.3	43.7	39.6
Compact*	30.8	29.6	26.2	27.7	37.6	32.0
Mid-size*	26.0	27.0	36.3	35.8	11.1	15.6
Large*	12.1	15.2	19.9	20.8	0.9	8.0
Percent Diesel Engines	0.13	0.06	0.0	0.0	0.30	0.15
Percent Turbo or Supercharged Engines	1.6	2.4	0.3	2.9	3.6	5.6
Percent Fuel Injection	100	100	100	100	99.9	99.9
Percent Front-Wheel Drive	83.7	84.4	83.3	87.7	84.3	80.0
Percent Automatic Transmissions	79.6	81.6	91.0	91.8	63.1	68.3
Percent Automatic Transmissions with Lockup Clutches	92.7	92.6	94.1	92.8	89.9	92.3
Percent Automatic Transmissions with Four or More Forward Speeds	69.4	70.2	62.5	60.9	83.7	86.3

*Includes associated station wagons.

The 1 mpg loss in average fuel economy for the MY 1992 imported passenger car fleet may be attributed to the effects of increased weight and higher performance, offset somewhat by the greater use of automatic transmissions with four or more speeds and lockup torque converter clutches.

Both fleets had a dramatic increase in share of turbocharged and supercharged engines. Diesel engines declined in share after a small increase in MY 1991. Diesel engines were offered only on certain Volkswagen and Mercedes models during 1991 and 1992.

Passenger car fleet average characteristics have changed significantly since MY 1978 (the first year of fuel economy standards). After substantial initial weight loss (from MY 1978 to MY 1982, the average passenger car fleet curb weight decreased from 3,349 to 2,808 pounds), the passenger car fleet average curb weight has stabilized at 2,800 to 3,000 pounds. Table II–4 shows that the MY 1992 passenger car fleet has nearly equal interior volume, higher performance, but with over 40 percent fuel economy improvement compared to the MY 1978 fleet, although fuel economy declined to its lowest level since 1985. (See Figure II–3.) The passenger car fleet in MY 1992 averaged the highest horsepower-to-weight ratio recorded in any year since 1955, the earliest year for which the agency has data.

TABLE II–4.—NEW PASSENGER CAR FLEET AVERAGE CHARACTERISTICS MODEL YEARS 1978–1992

Model year	Fuel economy mpg	Curb weight lb.	Interior space cu. ft.	Engine size cu. in.	Horse-power/ weight hp/100 lb.
1978	19.9	3349	112	260	3.68
1979	20.3	3180	110	238	3.72
1980	24.3	2967	105	187	3.51

TABLE II–4.—NEW PASSENGER CAR FLEET AVERAGE CHARACTERISTICS MODEL YEARS 1978–1992—Continued

Model year	Fuel economy mpg	Curb weight lb.	Interior space cu. ft.	Engine size cu. in.	Horse-power/ weight hp/100 lb.
1981	25.9	2883	108	182	3.43
1982	26.6	2808	107	173	3.47
1983	26.4	2908	109	182	3.57
1984	26.9	2878	108	178	3.66
1985	27.6	2867	108	177	3.84
1986	28.2	2821	106	169	3.89
1987	28.5	2805	109	162	3.98
1988	28.8	2831	107	161	4.11
1989	28.4	2879	109	163	4.24
1990	28.0	2908	108	163	4.53
1991	28.3	2934	108	164	4.42
1992	27.9	3007	108	169	4.56

The characteristics of the MY 1992 light truck fleet (see Table II–5) show an average test weight increased of 153 pounds and slightly higher performance as reflected by the increase in the average horsepower-to-weight ratio and the larger average engine size. Increased popularity of large pickups and heavier and higher performance trucks contributed to the 0.6 mpg fleet fuel economy decline for MY 1992, offsetting the increased share of compact vans and the small increase in the use of fuel injection and lockup converter clutches on automatic transmissions. Diesel engine usage remained nearly the same in light trucks for MY 1992 from MY 1991. The import share of the MY 1992 light truck fleet decreased to 17.3 percent, 2.8 percent lower than MY 1991 and the lowest share since light truck fuel economy standards were established.

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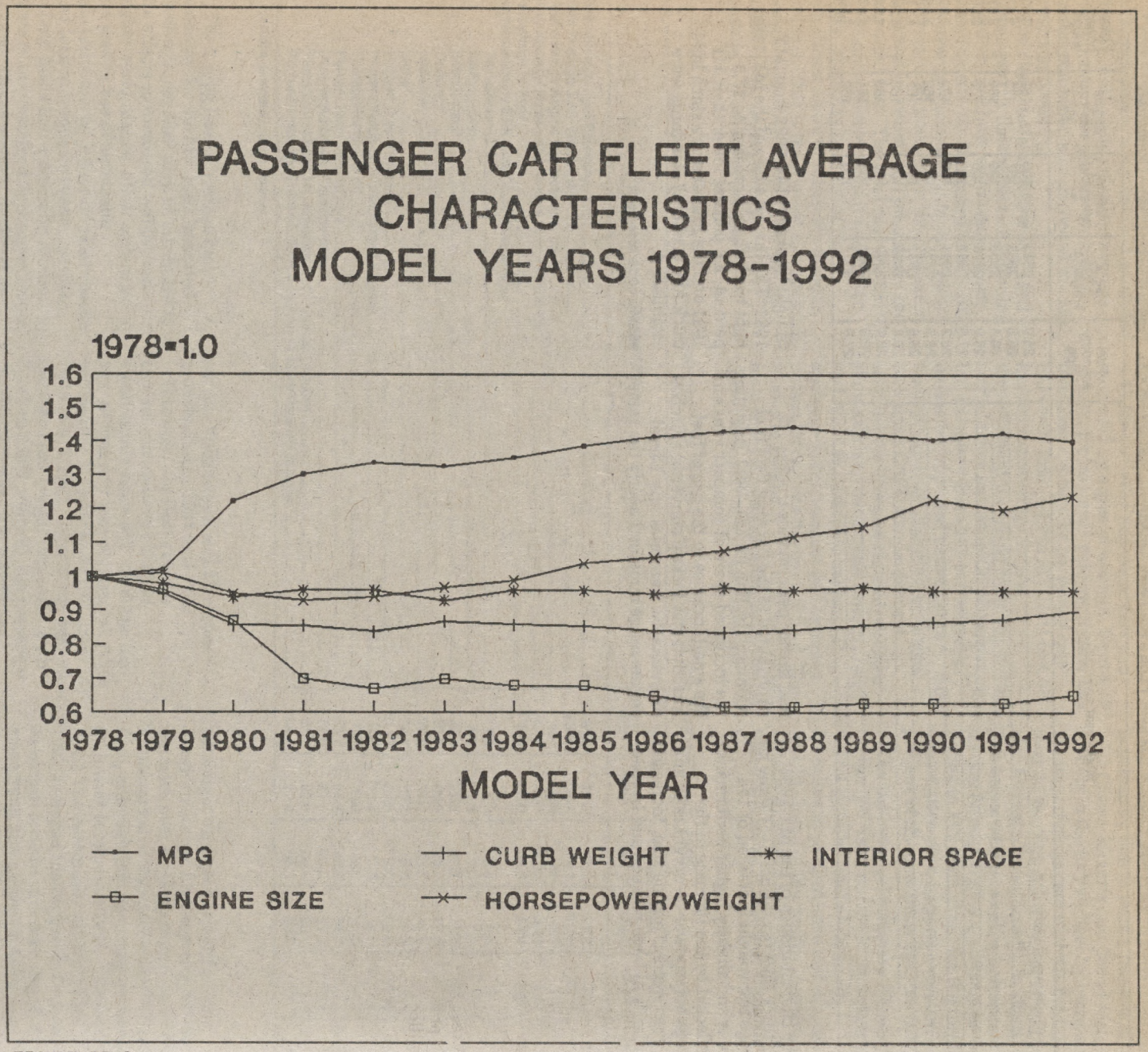

FIGURE II-3

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TABLE II–5.—LIGHT TRUCK FLEET CHARACTERISTICS FOR MYS 1991 AND 1992

Characteristics	Total fleet		Domestic Fleet		Imported fleet	
	1991	1992	1991	1992	1991	1992
Fleet Average Fuel Economy, mpg	21.3	20.7	20.9	20.4	23.0	22.3
Fleet Average Equivalent Test Weight, lbs	4016	4169	4112	4260	3641	3733
Fleet Average Engine Displacement, cu. in	229	235	247	251	158	160
Fleet Average Horsepower/Weight ratio, HP/100 lbs	3.76	3.92	3.83	4.02	3.51	3.46
Percentage of Fleet	100	100	79.9	82.7	20.1	17.3
Segmentation by Type, Percentage:						
Passenger Van:						
Compact	17.5	21.4	17.6	23.1	16.9	12.9
Large	2.0	0.6	2.5	0.7	.....	.....
Cargo Van:						
Compact	1.1	1.7	1.4	2.1	.....	.....
Large	2.9	5.4	3.6	6.5	.....	.....
Small Pickup*	19.9	14.2	19.7	13.8	20.6	16.6
Large Pickup*	28.3	31.3	26.7	30.5	34.5	35.3
Special Purpose	28.4	25.4	28.5	23.4	28.1	35.3
Diesel Engines	0.1	0.1	0.2	0.1	.....	.....
Fuel Injection	98.4	98.9	99.9	100	92.7	93.5
Automatic Transmissions	68.8	72.2	75.6	78.9	41.8	40.3
Automatic Transmissions with Lockup Clutches	97.1	98.1	98.4	98.8	87.9	91.2
Automatic Transmissions with Four Forward Speeds	88.6	88.6	87.8	87.8	94.1	96.5
4-Weel Drive	34.7	32.8	33.2	29.9	48.0	47.1

*Including Cab Chassis.

During MYs 1980 through 1992, CAFE levels for light trucks in the 0–8500 lbs. gross vehicle weight (GVW) class have increased, beginning at 18.5 mpg in MY 1980 and reaching 21.7 mpg in MY 1987 before dropping to lower values in MYs 1988 through MY 1992, as average weight, engine size, and performance increased. During these years, light trucks production has increased from 1.9 million in MY 1980 to 4.1 million in MY 1992. Light trucks comprised nearly a third of the total fleet production in MY 1992, almost double their share in MY 1989.

Fiqure II–4 illustrates that the light duty fleet (passengers cars and light trucks together) average fuel economy steadily increased to MY 1987, but subsequently has been below the MY 1987 level. (See Table II–6.) Light trucks average fuel economy also declined, but the passenger car average fuel economy has remained relatively constant for MYs 1987–1992. Thus, the overall decline illustrates the growing influence of light trucks in the light duty fleet.

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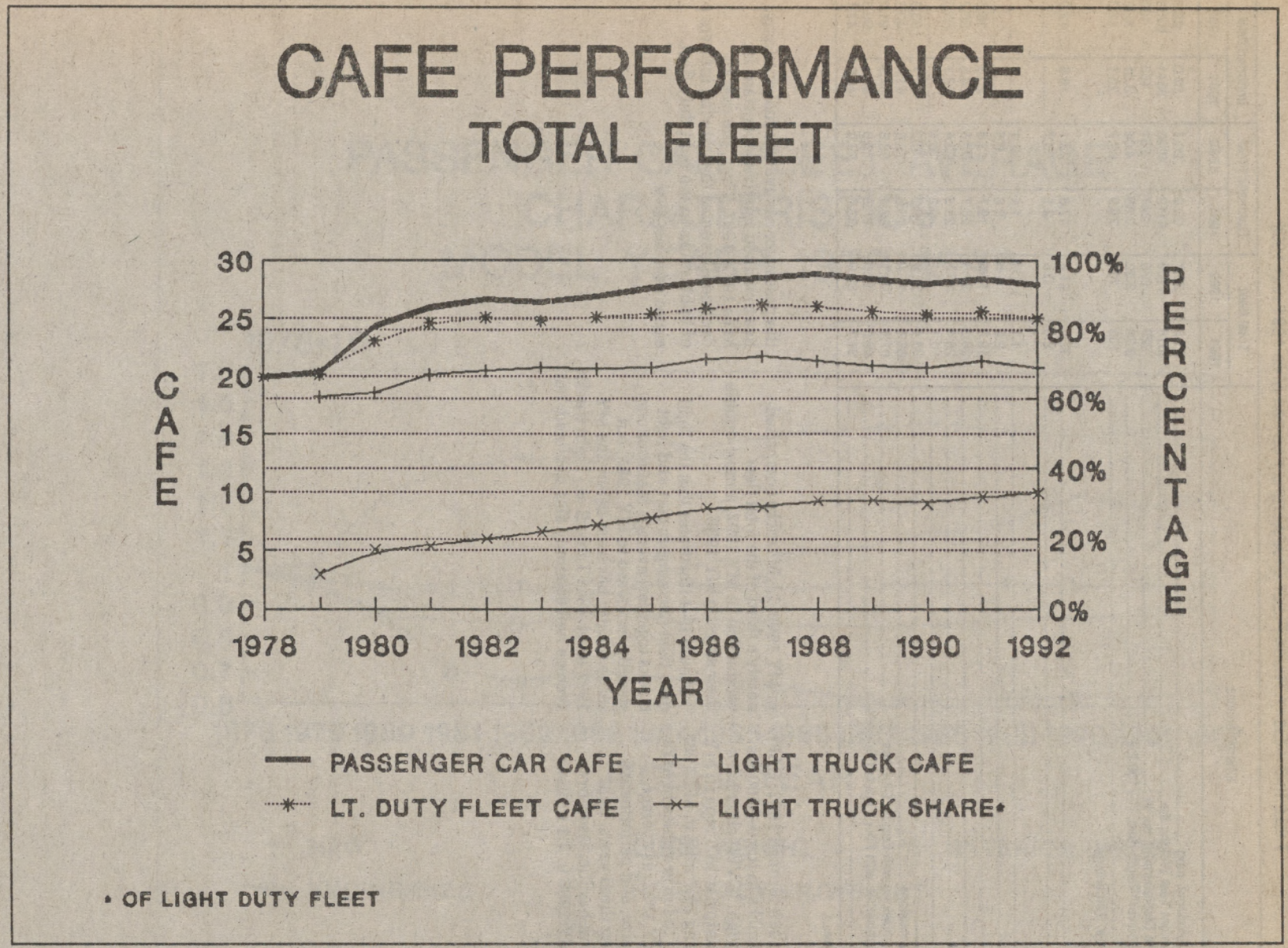

FIGURE II-4

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TABLE II–6.—DOMESTIC AND IMPORTED PASSENGER CAR AND LIGHT TRUCK FUEL ECONOMY AVERAGES FOR MODEL YEARS 1978–1992 (IN MPG)

Model year	Domestic			Imported			Total fleet
	Car	Light truck	Combined	Car	Light truck	Combined	
1978	18.7	.....	.....	27.3	.....	.....	.....
1979	19.3	17.7	19.1	26.1	20.8	25.5	20.1
1980	22.6	16.8	21.4	29.6	24.3	28.6	23.1
1981	24.2	18.3	22.9	31.5	27.4	30.7	24.6
1982	25.0	19.2	23.5	31.1	27.0	30.4	25.0
1983	24.4	19.6	23.0	32.4	27.1	31.5	24.8
1984	25.5	19.3	23.6	32.0	26.7	30.6	25.0
1985	26.3	19.6	24.0	31.5	26.5	30.3	25.4
1986	26.9	20.0	24.4	31.6	25.9	29.8	25.9
1987	27.0	20.5	24.6	31.2	25.2	29.6	26.2
1988	27.4	20.6	24.5	31.5	24.6	30.0	26.0
1989	27.2	20.4	24.2	30.8	23.5	29.2	25.6
1990	26.9	20.3	23.9	29.8	23.0	28.4	25.4
1991	27.3	20.9	24.4	30.0	23.0	28.3	25.6
1992	27.0	20.4	23.8	29.0	22.3	27.7	25.0

Domestic and imported passenger car fleet average fuel economies have both improved since MY 1978. However, in MY 1992 the domestic and import passenger car fleet average fuel economies decreased to 27.0 mpg and 29.0 mpg, respectively. This reflects an increase of 8.3 mpg since MY 1978 for domestic cars. For import cars, the MY 1992 average fuel economy is only 1.7 mpg higher than that of MY 1978 and the lowest level since MY 1979.

Domestic and imported light truck fleet average fuel economies have both improved since MY 1979. The domestic manufacturers continued to dominate the light truck market. Domestic light trucks comprised nearly 83 percent of the total light truck fleet. For MY 1992, the domestic light truck fleet has an average fuel economy only 1.9 mpg lower than the imported light truck fleet, the closest these fleets have ever been in average fuel economy. The imported light truck fleet fuel economy improved rapidly between MYs 1979 and 1981, but has steadily decreased since then. The imported light truck fleet fuel economy decreased to 22.3 mpg from the MY 1990–1991 level of 23.0 mpg, the lowest level it has been since MY 1979.

The gap between the average CAFEs of the import and domestic manufacturers is shrinking as domestic manufacturers maintain relatively stable CAFE values while the import manufacturers move to larger, higher performance vehicles and more 4-wheel drive light trucks.

For MYs 1991 and 1992, the domestic combined passenger car and light truck fleet fuel economy level was the closest it has ever been to the imported combined fleet, with a fuel economy value of 3.9 mpg below the import combined fleet. The import combined fleet average fuel economy is the lowest since MY 1979.

Section III: 1992 Activities

A. Passenger Car CAFE Standards

The following synopsis describes litigation challenging NHTSA actions under the CAFE program, that was decided in 1992.

Competitive Enterprise Institute (CEI) v. *NHTSA*, 956 F.2d 321 (D.C. Cir. 1992).

On February 19, 1992, in a 2–1 decision, the D.C. Circuit held that NHTSA had failed to adequately evaluate the safety consequences of its decision to retain the MY 1990 passenger car CAFE standard of 27.5 mpg rather than proceeding with proposed rulemaking to reduce that model year's standard. The court remanded the matter to NHTSA for further consideration.

NHTSA issued a notice requesting further information on safety issues in connection with its MY 1990 petition denial on October 28, 1992 (57 FR 48777).

B. Light Truck CAFE Standards

In late 1991, NHTSA published a request for comments regarding manufacturer's fuel economy capabilities for light trucks for model years after 1994 (56 FR 50694, October 8, 1991). Based on the information received in response to that questionnaire and other sources, NHTSA published a NPRM for fuel economy standards for MYs 1995–1997 on December 24, 1992 (57 FR 61377). The NPRM proposes ranges of fuel economy standards of 20.5 to 21.0 mpg for MY 1995 and 20.5 to 21.5 mpg for MYs 1996 and 1997. A regulatory impact analysis and an environmental analysis supporting the NPRM were placed in the NHTSA docket when the NPRM was published.

C. Low Volume Petitions

Section 502(c) of the Act provides that a low volume manufacturer of passenger cars may be exempted from the generally applicable passenger car fuel economy standards if these standards are more stringent than the maximum feasible average fuel economy for that manufacturer and if NHTSA establishes an alternative standard for that manufacturer at its maximum feasible level. Under the Act, a low volume manufacturer is one that manufactured fewer than 10,000 passenger cars worldwide, in the model year for which the exemption is sought (the affected model year) and in the second model year preceding that model year.

NHTSA acted on one low volume petition during 1992, which was filed by Maserati. Maserati was denied a low volume exemption since it manufactures more than 10,000 passenger automobiles each year when its contracted production for Innocenti and Fiat is included. Therefore, Maserati's petition for MYs 1992, 1993, 1994, and 1995 was denied (57 FR 2807).

Another petition requesting an alternative standard for Rolls-Royce passenger cars for MYs 1995 and 1996 was received on October 26, 1992. NHTSA will review this petition and issue a proposed decision in early 1993.

D. Carryback Plans

Section 502(l) of the Act allows an automobile manufacturer to earn fuel economy credits during any model year in which the manufacturer's fleet exceeds the established CAFE standard. The amount of credits a manufacturer earns is determined by multiplying the number of tenths of a mile per gallon by

which the average fuel economy of the manufacturer's fleet in the model year exceeds the standard by the total number of vehicles in the manufacturer's fleet for that model year.

Previously earned fuel economy credits are carried forward by NHTSA, (with affected manufacturers given an opportunity to comment on the NHTSA's allocation of credits) and distributed to any of the three succeeding model years in which the manufacturer's fleet falls below the CAFE standard. For example, credits earned in MY 1988 have been used to offset deficiencies in MYs 1989, 1990, and 1991. A manufacturer also may submit to the agency a carryback plan, which demonstrates that it will earn sufficient credits within the following three model years which can be allocated to meet the CAFE standard in the model year(s) involved.

On June 17, 1992, PAS, Inc., submitted a carryback plan for MY 1991 light truck CAFE compliance. On October 19, 1992, the agency approved PAS's carryback plan, which uses credits anticipated to be earned in MY 1993 to offset the penalties of MY 1991. This plan is unique in that it is the first instance of a manufacturer planning to use the fuel economy credits accrued from producing compressed natural gas vehicles (made available by the Alternative Motor Fuels Act of 1988) to offset penalties earned by a gasoline-fueled fleet.

E. Enforcement

Section 508(b)(1) of the Act imposes a civil penalty of five dollars ($5) for each tenth of a mpg by which a manufacturer's CAFE level falls short of the standard, multiplied by the total number of passenger automobiles or light trucks produced by the manufacturer in that model year. Credits that were earned for exceeding the standard in any of the three model years immediately prior to or subsequent to the model years in question can be used to offset the penalty.

With completion by EPA of final CAFE computations for MY 1991 for most passenger car fleets, the agency initiated appropriate enforcement actions for manufacturers that did not meet the CAFE standard. Table III–1 shows those manufacturers which paid CAFE penalties in 1992.

TABLE III–1

Cafe fines paid in 1992

Model year	Manufacturer	Amount fined	Date paid
1990	Callaway	$20,400	01/92
1989	PAS	294,500	02/92
1990	Peugeot	72,500	03/92
1991	BMW	11,249,230	06/92
1991	PAS	187,525	06/92
1987	Fiat	279,350	07/92
1988	Fiat	897,260	07/92
1989	Fiat	670,120	07/92
Total		13,670,885	

The following synopsis describes an administrative adjudication involving NHTSA actions under the CAFE program that was decided in 1992.

Chrysler Corporation, Docket 47414

On January 8, 1992, an Administrative Law Judge issued an initial decision and order recommending that NHTSA's complaint seeking a civil penalty of $1,371,420 for Chrysler's failure to comply with the MY 1984 domestic light truck fuel economy standard be dismissed, without prejudice. He concluded that NHTSA could not interpret the extent to which predecessors or successors are included in the term "manufacturer" without issuing rules pursuant to section 501(8) of the Motor Vehicle Information and Cost Savings Act, but that Chrysler could not claim credits earned by American Motors Corporation except under the terms of a properly adopted rule. Both parties filed Notices of Intention to Appeal the Initial Decision to NHTSA's Administrator. On March 31, 1992, after a meeting to consider settlement proposals, the Administrator set aside the initial decision and terminated the enforcement proceeding, without prejudice, to permit NHTSA to prescribe regulations pursuant to section 501(8) of the Act.

F. Environmental Impact Statement

Under section 102(2)(c) of the National Environmental Protection Act, an Environmental Impact Statement (EIS) is required for all major Federal actions significantly affecting the quality of the human environment. In recent years, NHTSA prepared an environmental assessment each time it has established or amended a CAFE standard for cars or light trucks. Each assessment has led to finding of no significant impact.

The agency previously published a notice of intent to prepare a programmatic EIS covering the CAFE program and held a public scoping meeting with the intention of contracting for the EIS in fiscal year (FY) 1992. However, Congress did not approve the request for funding for the programmatic EIS in FY 1992 or in FY 1993.

G. National Academy of Sciences Study

To support the development of President Bush's National Energy Strategy, in late 1990 NHTSA and the Federal Highway Administration asked the NAS to perform a study estimating fuel economy levels that could practically be achieved for new passenger cars and light trucks in the next decade, while meeting environmental and safety needs. The NAS report entitled, "AUTOMOTIVE FUEL ECONOMY: How Far Should We Go?," was released in April 1992.

In outlining the scope of work for the study, the Department asked NAS to provide estimates of achieveable fuel economy by vehicle class. In determining these fuel economy levels, NAS was asked to consider a number of factors, including recent Clean Air Act amendments and current safety regulations, the availability of technologies to improve fuel economy, the costs and benefits of these technologies (and any barriers to their introduction and widespread use), the financial capabilities and economic health of the auto industry, the impact on consumers, and safety implications.

Among the study's conclusion were that, for the year 2006, fuel economy levels of 34–37 mpg for cars and 26–28 mpg for light trucks are "technically achievable." NAS estimated that the consumer costs to achieve these levels would range between $500 and $2,750 per vehicle. In estimating these fuel economy levels and costs, NAS considered only technologies that are in mass production today somewhere in the world, assumed that these future vehicles would have to meet all applicable safety standards and "Tier 1" emission standards, and assumed that they would need to have acceleration capabilities and interior roominess comparable to those of current vehicles. In their report, NAS emphasized that the above fuel economy levels should *not* be viewed as recommendations on future fuel economy standards. They stated:

> * * * the practically achievable levels—the levels of fuel economy for each size class that achieve an appropriate balance of a broad array of costs and benefits—are likely to be found in the regions between the levels that would be achieved without any government intervention and the "technically achievable" levels. It remains for policy makers to determine the form of any future regulations and the levels of fuel economy—the "practically achievable" levels—that in their judgement provide the appropriate balance of costs and benefits to

consumers, manufacturers, and the nation as a whole.

The study also concluded that the current CAFE regulatory approach has "serious defects." It discussed several alternatives to the CAFE regulatory scheme (such as sized-based standards, increased fuel taxes, and consumer fees and rebates tied to a vehicle's fuel economy level), and it made suggestions for changes in the current regulatory system if it is retained (such as considering allowing manufacturers to trade CAFE credits and eliminating the domestic content provision). The results of the NAS study will be an important consideration in future policy making on automotive fuel efficiency.

Section IV: Use of Advanced Technology

This section fulfills the statutory requirement of section 305 of Title III of the Department of Energy Act of 1978 (Pub. L. 95–238), which directs the Secretary of Transportation to submit an annual report to Congress on the use of advanced technologies by the automotive industry to improve motor vehicle fuel economy. This report focuses on the introduction of new models and new engine technology, the application of materials to save weight, and the advances in electronic technology which improved fuel economy in MY 1992.

A. New Models

The domestic automakers introduced and replaced several cars as well as updating several previous passenger cars. Ford Motor Company gave the Taurus and Sable a major facelift for MY 1992, the biggest change since the car debuted in 1985. Every exterior panel of the Taurus was new, except for the doors. The Taurus and Sable grew in overall length by 3.8 inches to 192 inches. Despite this increase in size, the average fuel economy of these cars improved by about 0.1 mpg due, in part, to slightly improved aerodynamics.

Ford dropped the LTD Crown Victoria and Colony Park station wagons and redesigned the LTD Crown Victoria and Mercury Grand Marquis sedans to be more aerodynamic, and roomier with a new engine and electronically controlled 4-speed automatic transmission, improving the average fuel economy by 1 mpg.

Chrysler introduced the Dodge Viper RT/10, an all-new high performance, limited production sports car with an 8.0L V–10 engine, the largest offered in any passenger car sold in the United States in many years. Despite this large engine, the wide use in this vehicle of aluminum and plastics, as well as other technologies such as a 6-speed manual transmission, enabled the Viper to achieve an average fuel economy of 18.1 mpg. The Plymouth Division offered a redesigned Colt Vista Wagon with both 2- and 4-wheel drive. Similar vehicles were marketed as the Eagle Summit Wagon and Mitsubishi Expo. Due to improved engine efficiency, the average fuel economy of these wagons improved by 0.9 mpg even though they are somewhat heavier and roomier than the MY 1991 counterparts.

Automobile importers also introduced a variety of new passenger cars and updates of their previous models for MY 1992. Honda's Acura Division introduced the Vigor with a 2.5L I-5 engine, a 5-speed manual or 4-speed automatic transmission and an average fuel economy of 25.5 mpg. The Honda Civic was totally redesigned and re-engineered for MY 1992. The new Civic HB VX had a 1.5L I-4 engine mated to a 5-speed manual transmission and an average fuel economy of nearly 60 mpg.

Hyundai introduced the Elantra, an all-new 4-door sedan. The Elantra was powered by a 1.6L DOHC I–4 engine with 113 hp mated to a 5-speed manual transmission and had an average fuel economy of 28.8 mpg.

Mazda introduced an all-new MX–3 model powered by a 1.6L I–4 engine, a 5-speed automatic transmission, and an average fuel economy of 35 mpg. The Mazda 929 was completely redesigned to include a 195-hp 3.0L V–6 engine. Also as an option on this model was the first solar-powered ventilation system. Average fuel economy of this model improved by over 1 mpg.

Mitsubishi introduced an all-new Diamante luxury sedan with 4-speed automatic transmission. The base model Diamante was equipped with a 175-hp 3.0L single-overhead-cam (SOHC) V–6 engine and the LS model had a 202-hp 3.0L DOHC V–6 engine. The base model had a fuel economy average of 24.2 mpg and the upper model had an average fuel economy of 23.8 mpg.

Nissan Motor Corporation introduced an all-new 2-door 240 SX convertible with a 155 hp, 2.4L DOHC I–4 engine mated to a 5-speed automatic transmission with an average fuel economy of 28.3 mpg or a 4-speed automatic with an average of 26.9 mpg.

Porsche replaced the 944 with a new 968 model which came equipped with a 236 hp 3.0L I–4 engine and a 6-speed manual transmission or a 4-speed automatic transmission. The average fuel economy was virtually unchanged by this model replacement, even though the engine output increased by 28 hp.

Saab had a new 9000CD Turbo Griffin Edition which was equipped with traction control and a new system for improved side impact protection and torsion rigidity. This Saab had a 200 hp, 2.3L I–4 engine along with a 4-speed automatic transmission yielding 23.3 mpg or a 5-speed manual with an average fuel economy of 25.2 mpg. Both values are only slightly different than those with the 150 hp naturally aspirated engine and are 0.3 mpg higher than last year's turbocharged 9000.

Toyota introduced the all-new 2 + 2 2-door sporty Paseo with a 1.5L I–4 engine. The Paseo had a low drag coefficient (0.32 C_D), aiding highway fuel economy and helping to give this model an average fuel economy of 34.4 mpg. The Toyota Lexus Division introduced two new models and replaced the ES 250 with an all-new ES 300. The Lexus ES 300 comes equipped with a 3.0L DOHC V–6, 24-valve, engine with 185 hp, computer controlled programmed sequential multipoint fuel ignition system with knock sensors. The two new models were the Lexus SC 300 and the SC 400. The SC 300 is powered by a 3.0L I–6 engine with a 5-speed manual transmission and the SC 400 featured a 4.0L V–8 engine and automatic transmission. The new electronically-controlled hydraulic cooling fan added to the engine's improved efficiency.

It also had a new fuel pump design to reduce electric power loss. The lower drag coefficient (0.31C_D) of these models contributed to their fuel efficiency which averaged 23 mpg, but was still about 1.3 mpg lower than last year's ES 250 average.

Audi had two all-new models, the S4 which replaced the 200 Quattro sedan and the V8 Quattro. The S4 was powered by a more powerful 2.2L turbocharged DOHC, 4-valve per cylinder I–5 engine with 230 hp and achieved an average fuel economy of 23.2 mpg, the same as the MY 1991 200 Quattro. The V8 Quattro was powered by a larger 4.2L V–8 engine that generated 276 hp (compared to 240 hp in 1991 models) and was still listed as a "gas guzzler" with an average fuel economy of 19 mpg.

Volvo introduced the 960 sedan and wagon which joined the 9-series lineup. Both were powered by a new 3.0L engine with an average fuel economy of 25.7 mpg, about the same as the 940 series using the smaller, 2.3L engine.

For MY 1992, the BMW 3-Series achieved a drag coefficient of 0.33 C_D and the coefficient of lift has been reduced by 44 percent at the front and 19 percent at the rear to a value of 0.10 C_L for both front and rear. Average fuel economy for this series declined by 0.6

mpg, however, as the average weight of these models increased by over 250 lbs.

Subaru introduced an all-new SVX sports model with a 230 hp, DOHC 3.3L horizontally opposed 6-cylinder, 4-valve-per-cylinder engine with a 4-speed automatic transmission and an average fuel economy of 23.5 mpg. The new SVX had a low drag coefficient of 0.29 C_D.

Ford's full sized F-Series pickups for MY 1992 has a more aerodynamic front styling with a sloping hood and flush headlamps. Ford trucks also offered completely redesigned Econoline and Club Wagon large vans for the first time in over 15 years. The all-new exterior had a sleeker design with flush side glass resulting in an average fuel economy improvement of about 0.3 mpg on these models.

B. Engine Technology

Many manufacturers are incorporating a 3- or 4-valve per-cylinder configuration to produce higher specific power and better fuel efficiency. There engines typically develop higher power at higher speeds, and, depending on the manufacturer's choice of gearing, may have only small fuel economy benefits. Used differently, e.g., to supplant larger displacement engines of the same power output, the multivalve engine could provide some fuel economy improvement for passenger cars and smaller light trucks where low speed torque is not such a critical factor.

Variable valve actuation for the optimization of engine torque by improving valve-lift timing and valve phasing at both low and high engine speeds is now being developed by some automobile manufacturers to increase engine efficiency. Honda already introduced variable valve timing in the 1989 Civic CRX which evolved from the Honda motorcycle and, since 1990, has offered it in the Acura NSX. Variable cam phasing systems have also been incorporated in some engines by Nissan and Mercedes Benz. These advanced engines with variable valve actuation typically result in improved fuel economy, emissions, and performance.

The Honda uses a 4-valve, lean burn, VTEC–E engine in the MY 1992 49-State Honda Civics. By limiting the opening of one of the intake valves at low speeds, Honda has reduced the swirl of the mixture and extended the lean limit of the air fuel ratio from 18:1 to 25:1. This improvement has resulted in an 8 percent gain in fuel economy for the city cycle and 12 percent for the highway cycle while still meeting the 49-state NO_x standard.

The new Audi 100 series for MY 1992 introduced a new 2.8L 90 degree V6 engine which featured thin-wall engine block casting techniques for reduced weight. The intake manifold had six throttle valves for better power output at higher RPM and to accelerate the intake air at low engine speed. An electronic engine management system, designed in cooperation with Hitachi, monitored the sequential fuel injection, electronic idle control, oxygen, and knock sensors to maximize engine efficiency.

Other engine updates included the replacement of the Chevrolet L98 V–8 engine used on the Corvette since MY 1985. In its place is a second generation small-block engine: The LT1 overhead valve V–8. The new powerplant retained the 5.7L displacement of its predecessor, but contained about 70 percent new components. It delivered 300 hp—50 hp more than the L98 engine. The compression ratio was increased from 10.0:1 to 10.25:1 and the maximum engine speed raised by 700 rpm to 5700 rpm. The factors contributing to the increase in power were: improved engine cooling with a reverse-flow arrangement that cools the head more efficiently, computer controlled ignition timing, free flow cylinder heads, low-restricted exhaust system, higher compression ratio, and new camshaft profile. Despite the increase in power, the car's average fuel economy improved by 1 mpg over last year's model.

Chrysler's 3.0L V–6 engine received multipoint fuel injection for use in the Imperial, LeBaron coupe and convertible, Dodge Dynasty, Dodge Spirit, and Plymouth Acclaim. The Dodge Spirit 2.2L, 16 valve DOHC turbocharged 4-cylinder engine included an intercooler and twin balance shafts. The Plymouth Colt Vista added a 1.8L MPI I–4 16-valve engine, and the Laser offered an optional 2.0L 16-valve I–4 DOHC MPI and turbocharged intercooled engine. The Dodge Ram pickup received new 3.9L V–6 and 5.2 L V–8 Magnum engines which both featured sequential, multipoint, fuel injection. Both engines were lighter and more fuel efficient.

GM's new single-overhead-cam (SOHC) version of the 2.3L DOHC Quad 4, replaced the 2.5L pushrod 4-cylinder as the base engine in GM's MY 1992 N-cars (Buick Skylark, Oldsmobile Achieva, and Pontiac Grand Am). The Buick Park Avenue Ultra, Pontiac Bonneville, and Oldsmobile 98 had a new Roots-type supercharged 3.8L V–6 engine with 205 hp (up from 170 hp in MY 1992), and the Roadmaster used a larger, 180 hp 5.7L V–8 engine and 4-speed automatic transmission.

Mazda introduced the world's smallest displacement production 6-cylinder engine in its new MX–3 coupe. The 1.8L DOHC 60-degree V–6 produced 134 hp at 6,800 rpm and 118 ft.-lbs of torque at an extremely high 5,300 rpm.

The Mercedes limited edition 500E had a 5.0L DOHC V–8 engine with four valves per cylinder and variable valve timing.

The Toyota Paseo for MY 1992 came equipped with an electronically fuel injected, twin cam, 16-valve engine. This engine had a centrally located spark plug, small valve angle, pentroof combustion chamber, and higher cam-lift distance for increased performance and fuel efficiency.

Volkswagen produced a radically designed 15-degree 2.8L V–6 engine, the VR6, for its Corrado, Golf, and Passat cars. The VR6 (R being the German designation for an inline configuration) highlights the fact that the engine embodies traits of both configurations. The cylinders are staggered in the same cast-iron block and share a single aluminum-alloy cylinder-head. The VR6 develops 174 hp at 5,800 rpm. Peak torque is 177 ft.-lbs. (240Nm) at 4,200 rpm. The VR6 is a SOHC 12-valve engine. Valves operate via self-adjusting hydraulic bucket-type tappets.

The GM 4.3L V–6 L–35 light truck engine (used on 50 percent of the GM light truck fleet) was improved in MY 1992 to include a roller camshaft, better intake and exhaust port flow at high engine speeds, and a balance shaft. These improvements enable the engine to meet the California Tier I emissions standards with no loss in fuel economy.

C. Electronics

Applications of electronic components in vehicles continues to rise. Some of the applications include 4-wheel steering, tire-pressure sensing, instrumentation, and in particular, in-car entertainment grouping. However, the main concentration is in engine management, powertrain management, antilock braking systems, air bags, air conditioning and, increasingly, suspension control.

Another important area of automotive electronics is multiplexing, or networking a vehicle's electronic-control devices on a single wire. Mercedes-Benz AG and Robert Bosch GmbH offered for the first time in vehicles, an extremely fast 16-bit data bus, known as a controller area network. It links six controllers in the engine- and powertrain-management systems of Mercedes' V–12 S–Class sedan and coupe via a single data-exchange duct.

D. Materials

Automotive material applications for MY 1992 underwent few changes. The trend in MY 1992 was to larger vehicles which, in most cases, means more steel. Because steel currently is the most easily recycled automotive material, it will still be used extensively in the future. Along with steel, automakers continue to utilize plastics, aluminum, powder metal, and magnesium.

For MY 1992 a number of redesigned cars and trucks contained more steel than their MY 1991 counterparts. These included the Ford Taurus and Mercury Sable, Pontiac Bonneville, Cadillac Eldorado and Seville, and the Chevy and GMC Suburban, as well as the Chevy Blazer and GMC Yukon (Jimmy), and the compact Pontiac Grand Am, Oldsmobile Achieva, and Buick Skylark.

A unique vehicle for MY 1992 was the Dodge Viper. It used one of the largest sheet molding compound (SMC) production parts—the massive hood—and was one of the first passenger cars to use resin-transfer molding (RTM). RTM is a low-volume alternative to SMC and is primarily used in the heavy-duty truck market.

The Buick Roadmaster is one of the latest cars to use a molded plastic fuel tank; and GM's new Northstar V–8 engine bowed early for my 1993 with plastic inlet horns, or tubes, in its induction system. This was the closest thing to a plastic intake manifold ever employed in a North American-built GM car.

Cast-aluminum water pumps were employed in place of iron units on Chrysler's revised 5.2L V–8 engines for MY 1992, and aluminum wheels were featured on a number of cars, including the Chrysler LeBaron coupe and Oldsmobile Achieva.

Magnesium was another lightweight material that found increased application in 1992. Magnesium weighs 33 percent less than an equal volume of aluminum and 70 percent less than zinc. Debuting on the new Cadillac Allante for MY 1993, the Northstar engines used 15 pounds or more of magnesium in the induction system, valve covers, oil filter adapters, and other components. Also, the torque converter in the GM 4T80E automatic transmission used on the Allante is magnesium.

E. Summary

Due to the stabilization of oil prices and oil supply, consumer demand continued to shift to larger, more powerful and roomier passenger cars and light trucks. The auto industry, responding to this shift, increased the proportion of engines with 4-valves-per-cylinder design, increased the horsepower of its engines and shifted the production mix to larger vehicles. Weight also increased somewhat in passenger cars and light trucks due, in part, to additional safety features such as air bags and antilock braking systems. However, the average fuel economy of the new passenger car and light truck fleets continues to exceed applicable CAFE standards.

[FR Doc. 93–2333 Filed 2–1–93; 8:45 am]
BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

January 27, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of the Public Debt

OMB Number: 1535–0113
Form Number: PD F 1849
Type of Review: Extension
Title: Disclaimer and Consent with Respect to United States Bonds/Notes
Description: This form is used to obtain a disclaimer and consent as the result of an error in registration or otherwise the payment, refund or the purchase price, or reissue as requested by one person would appear to affect the right, title or interest of some other person.
Respondents: Individuals or households
Estimated Number of Respondents: 7,000
Estimated Burden Hours Per Response: 6 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 700 hours

OMB Number: 1535–0114
Form Number: PD F 2001
Type of Review: Extension
Title: Release
Description: This form is used by the owner, coowner, or other person entitled to ratify payment of savings bonds/notes and release the United States of America from any liability.
Respondents: Individuals or households
Estimated Number of Respondents: 200
Estimated Burden Hours Per Response: 6 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 20 hours
Clearance Officer: Vicki S. Ott, (304) 420–6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503

Lois K. Holland,
Departmental Reports Management Officer.

[FR Doc. 93–2356 Filed 2–1–93; 8:45 am]
BILLING CODE 4810–40–M

Public Information Collection Requirements Submitted to OMB for Review

January 27, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0922
Form Number: IRS Forms 8329 and 8330
Type of Review: Extension
Title: Lender's Information Return for Mortgage Credit Certificates (MCCs) (Form 8329). Issuer's Quarterly Information Return for Mortgage Credit Certificates (MCCs) (Form 8330)
Description: Form 8329 is used by lending institutions and Form 8330 is used by state and local governments to report on mortgage credit certificates (MCCs) authorized under Internal Revenue Code (IRC) section 25. IRS matches the information supplied by lenders and issuers to ensure that the credit is computed properly.

Respondents: State or local governments, Businesses or other for-profit

Estimated Number of Respondents/Recordkeepers: 10,500

Estimated Burden Hours Per Respondent/Recordkeeper:

	Form 8329	Form 8330
Recordkeeping..	3 hr., 21 min	4 hr., 32 min.
Learning about the law or the form.	35 min	1 hr., 12 min.
Preparing and sending the form to the IRS.	41 min	1 hr., 19 min.

Frequency of Response: Form 8329: Annually, Form 8330: Quarterly

Estimated Total Reporting/Recordkeeping Burden: 60,300 hours

Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 93–2355 Filed 2–1–93; 8:45 am]

BILLING CODE 4830–01–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Scrolls from the Dead Sea: The ancient Library of Qumran and Modern Scholarship" (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Library of Congress, Washington, DC from on or about April 21, 1993 to on or about July 11, 1993 and at the New York Public Library, New York, New York, from on or about October 2, 1993, to on or about January 8, 1994, is in the national interest.

The action of the United States in this matter and the immunity based on the application of the provisions of law involved does not imply any view of the United States concerning the ownership of the exhibit objects. Further, it is not based upon and does not represent any change in the position of the United States regarding the status of Jerusalem or the territories occupied by Israel since 1967. See Letter of September 22, 1978, of President Jimmy Carter, attached to the Camp David Accords, reprinted in 78 Dept. of State Bulletin 11 (October 1978); Statement of September 1, 1982, of President Ronald Reagan, reprinted in 82 Dept. of State Bulletin 23 (September 1982).

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: January 27, 1993.

R. Wallace Stuart,

Acting General Counsel.

[FR Doc. 93–2334 Filed 2–1–93; 8:45 am]

BILLING CODE 8330–01–M

[1] A copy of this list may be obtained by contacting Mr. Paul W. Manning of the Office of the General Counsel of USIA. The telephone number is 202/619–6827, and the address is room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

Sunshine Act Meetings

Federal Register
Vol. 58, No. 20
Tuesday, February 2, 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).

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of February 1, 8, 15, and 22, 1993.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of February 1

Wednesday, February 3

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of February 8—Tentative

Monday, February 8

10:00 a.m.
Briefing by IIT on Loss of Iridium-192 Source and Therapy Misadministration at Indiana Regional Cancer Center, Indiana, PA, November 16, 1992 (Public Meeting)
(Contact: Carl Paperiello, 708–790–5517)
2:00 p.m.
Periodic Briefing on EEO Program (Public Meeting)
(Contact: Jim McDermott, 301–492–4661)

Tuesday, February 9

2:30 p.m.
Periodic Briefing on Operating Reactors and Fuel Facilities (Public Meeting)
(Contact: William Bateman, 301–504–1711)
4:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of February 15—Tentative

Friday, February 19

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)
2:00 p.m.
Briefing on Status of Issues and Approach to GEIS Rulemaking for Part 51 (Public Meeting)
(Contact: Donald Cleary, 301–492–3936)

Week of February 22—Tentative

Monday, February 22

9:00 a.m.
Briefing by Advisory Committee on Medical Uses of Isotopes (Public Meeting)
(Contact: John Glenn, 301–504–3415)

Thursday, February 25

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)
2:00 p.m.
Periodic Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting)
(Contact: Richard Major, 301–492–8109)

ADDITIONAL INFORMATION: By a vote of 5–0 on January 29, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of Letter Requesting Publication of Federal Register Notice Regarding Proposed Issuance of Operating License for Comanche Peak Unit 2" (Public Meeting) be held on January 29 and on less than one week's notice to the public.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meeting Call (Recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504–1661.

Dated: January 29, 1993.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 93–2550 Filed 1–29–93; 2:13 pm]

BILLING CODE 7590–01–M

Corrections

Federal Register
Vol. 58, No. 20
Tuesday, February 2, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 150

Exemption From Speculative Position Limits for Positions Which Have a Common Owner, But Which Are Independently Controlled

Correction

In rule document 92–23223 beginning on page 44490, in the issue of Monday, September 28, 1992, make the following correction:

§ 150.3 [Corrected]

On page 44492, in the third column, amendment number 3 should read "Section 150.3 is amended by revising paragraphs (a)(4) and (b) to read as follows:".

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261 and 271

[FRL–4536–5]

RIN 2050–AC32

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Toxicity Characteristic Revision

Correction

In rule document 92–28320 beginning on page 55114 in the issue of Tuesday, November 24, 1992, make the following corrections:

PART 261—[CORRECTED]

1. On page 55117, in part 261, in appendix II, in the second column, in the last paragraph, in the first line, 84.4.4 should read 8.4.4.

§ 271.1 [Corrected]

2. On the same page, in § 271.1, in Table 1, under Federal Register reference, "publication citation" should be removed.

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS–164–84]

RIN 1545–AG98

Allocation Reflecting Built-In Gain or Loss on Property Contributed to a Partnership

Correction

In proposed rule document 92–31064 beginning on page 61345 in the issue of Thursday, December 24, 1992, make the following corrections:

1. On page 61345, in the third column, under **Introduction**, in the first full paragraph, in the fifth line, "1.704–1(b)(1)(2)(vi)" should read "1.704–1(b)(1)(vi)".

§ 1.704–3 [Corrected]

2. On page 61350, in the third column, in § 1.704–3(c)(4)(ii), in the table, in the second column, in the third line, "350" should read "450".

3. On page 61351, in the third column, in § 1.704–3(d)(2)(iii), the undesignated paragraph should read "(B) *Disposition of property.* * * *".

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[FI–25–92]

RIN 1545–AQ70

Qualified Accelerated Death Benefits Under Life Insurance Contracts

Correction

In proposed rule document 92–29919 beginning on page 59319 in the issue of Tuesday, December 15, 1992, make the following corrections:

§ 1.7702–2 [Corrected]

On page 59322, in the third column, in § 1.7702–2(d)(3), *Example 2*, in the second line from the bottom, remove "not"; and in *Example 3*, in the second line from the bottom, insert "not" after "is".

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 26

[PS–32–90]

RIN 1545–AO89

Generation—Skipping Transfer Tax

Correction

In proposed rule document 92–30945 beginning on page 61353 in the issue of Thursday, December 24, 1992, make the following corrections:

On page 61355:

1. In the first column, under **Special Analyses**, in the last line, insert "major" after "not".

§ 26.2601–1 [Corrected]

2. In the second column, in § 26.2601–1(b)(1)(v)(B)(*2*), in the third line, insert "a" after "in".

3. In the third column, in § 26.2601–1(b)(1)(v)(D), in *Example 7*, in the second line from the bottom, insert "been" after "have".

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[INTL–978–86]

RIN 1545–AJ93

Information Reporting by Passport and Permanent Residence Applicants

Correction

In proposed rule document 92–31062 beginning on page 61373 in the issue of Thursday, December 24, 1992, make the following correction:

§ 301.6039E–1 [Corrected]

On page 61375, in the second column, in § 301.6039E–1(c)(3), in the sixth line, "(1)" should read "(i)".

BILLING CODE 1505–01–D

federal register

Tuesday
February 2, 1993

Part II

Federal Emergency Management Agency

Changes to the Hotel and Motel Fire Safety Act National Master List; Notice

FEDERAL EMERGENCY MANAGEMENT AGENCY

Changes to the Hotel and Motel Fire Safety Act National Master List

AGENCY: United States Fire Administration, FEMA.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA or Agency) gives notice of additions and corrections/changes to, and deletions from, the national master list of places of public accommodations which meet the fire prevention and control guidelines under the Hotel and Motel Fire Safety Act.

EFFECTIVE DATE: March 4, 1993.

ADDRESSES: Comments on the master list or any changes to the master list are invited and may be addressed to the Rules Docket Clerk, Federal Emergency Management Agency, 500 C Street, SW., room 840, Washington, DC 20472, (fax) (202) 646–4536.

FOR FURTHER INFORMATION CONTACT: Larry Maruskin, Office of Fire Prevention and Arson Control, United States Fire Administration, Federal Emergency Management Agency, National Emergency Training Center, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1141.

SUPPLEMENTARY INFORMATION: Acting under the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. 2201 note, the United States Fire Administration has worked with each State to compile a national master list of all of the places of public accommodation affecting commerce located in each State that meet the requirements of the guidelines under the Act. FEMA published the national master list in the **Federal Register** on Tuesday, November 24, 1992, 57 FR 55314, and published changes on December 23, 1992, 57 FR 61234.

Periodically FEMA will update and redistribute the national master list to incorporate additions and corrections/changes to the list, and deletions from the list.

Each update contains or will contain three categories: "Additions;" "Corrections/changes;" and "Deletions." For the purposes of the updates, the three categories mean and include the following:

"Additions" are either names of properties submitted by a State but inadvertently omitted from the initial master list or names of properties submitted by a State after publication of the initial master list;

"Corrections/changes" are corrections to property names, addresses or telephone numbers previously published or changes to previously published information directed by the State, such as changes of address or telephone numbers, or spelling corrections; and

"Deletions" are entries previously submitted by a State and published in the national master list or an update to the national master list, but subsequently removed from the list at the direction of the State.

Copies of the national master list and its updates may be obtained by writing to the Government Printing Office, Superintendent of Documents, Washington, DC 20402–9325. When requesting copies please refer to stock number 069–001–00049–1.

The update to the national master list follows.

Dated: January 19, 1993.

Wallace E. Stickney,

Director.

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST JANUARY 13, 1993 UPDATE

ADDITIONS				
Alaska				
Kenai Princess Lodge	PO Box 676		Cooper Landing, AK 99572	907–595–1425
Denali National Park Hotel		Mile 237 Parks Hwy	Denali Park, AK 99755	907–279–2653
Fairbanks Princess Hotel		4477 Pike's Landing Road	Fairbanks, AK 99709	
Summit Lake Lodge		Mile 195 Richardson Hwy	Glennallen, AK 99588	907–822–3969
Denali Princess Lodge	PO Box 110		McKinley Park, AK 99755	907–683–2282
Fairview Motel		1930 Glen Hwy	Palmer, AK 99645	907–745–1505
Arizona				
Clarion Hotel Tucson Airport		6801 S Tucson Blvd	Tucson, AZ 85706	602–746–3932
California				
Marina Village Inn		3 Pacific Marina	Alameda, CA 94501	510–523–9450
Angels Inn Motel	PO Box 521	600 N Main	Angels Camp, CA 95221	209–736–4192
Best Western Casa Grande Inn		850 Oak Park Road	Arroyo Grande, CA 93420	805–481–7398
E–Z 8 Motels Inc		555 Camino Mercado	Arroyo Grande, CA 93420	805–481–4774
Best Western Inn		2620 Pierce Road	Bakersfield, CA 93308	805–327–9651
Comfort Inn Bakersfield		2514 White Lane	Bakersfield, CA 93304	805–833–8000
Courtyard By Marriott—Bakersfield		3601 Marriott Drive	Bakersfield, CA 93308	805–324–6660
E–Z 8 Motels Inc		5200 Olive Tree Court	Bakersfield, CA 93308	805–392–1511
E–Z 8 Motels Inc		2604 Pierce Road	Bakersfield, CA 93308	805–322–1901
Econo Lodge		2700 White Lane	Bakersfield, CA 93304	805–832–3111
E–Z 8 Motels Inc		900 W Rice Street	Blythe, CA 92225	619–922–9191
Ramada Inn Burbank Airport		2900 N San Fernando Blvd	Burbank, CA 91504	818–843–5955
Days Inn San Fernando Valley		20128 Roscoe Blvd	Canoga Park, CA 91306	818–341–7200
Ramada Inn Suites—Carlsbad		751 Macadamia Drive	Carlsbad, CA 92009	619–438–2285
E–Z 8 Motels Inc		1581 Concord Avenue	Concord, CA 94520	510–674–0888
Sheraton Hotel And Conference Center		45 John Glenn Drive	Concord, CA 94520	510–825–7700
Best Western Corte Madera Inn		1815 Redwood Hwy	Corte Madera, CA 94925	415–924–1502
Red Lion Hotel/Orange County Airport		3050 Bristol Street	Costa Mesa, CA 92626	714–540–7000
Pacific Motor Hotel	PO Box 595	440 Hwy 101 North	Crescent City, CA 95531	707–464–4141
Howard Johnson's Plaza Hotel		5990 Green Valley Circle	Culver City, CA 90230	310–641–7740
Dana Point Hilton		34402 Pacific Coast Hwy	Dana Point, CA 92629	714–661–1100
Embassy Suites Hotel		8425 E Firestone Blvd	Downey, CA 90241	310–861–1900
St. Francis Motel		1368 E Main Street	El Cajon, CA 92021	619–444–8147
E–Z 8 Motels Inc		455 Wake Avenue	El Centro, CA 92243	619–352–6620

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST JANUARY 13, 1993 UPDATE—Continued

E–Z 8 Motels Inc		3331 N Texas Street	Fairfield, CA 94533	707–426–6161
Fresno Hilton		1055 Van Ness	Fresno, CA 93710	209–485–9000
Red Lion Hotel		221 East Glenoaks Blvd Ste 200	Glendale, CA 91207	818–956–5466
Comfort Inn		24997 Mission Blvd	Hayward, CA 94544	510–538–4466
Ramada Inn Hemet		3885 West Florida Avenue	Hemet, CA 92545	909–929–8900
Sunset 8 Motel		6516 Sunset Blvd	Hollywood, CA 90028	213–469–5051
Keefer's Inn		615 Canal Street	King City, CA 93930	408–385–4843
E–Z 8 Motels Inc		7851 Fletcher Parkway	LA Mesa, CA 92042	619–698–9444
Days Inn La Palma		3 Centerpointe Drive	LA Palma, CA 90623	714–670–1400
Saddleback Inn	PO Box 1890	300 S State Hwy 173	Lake Arrowhead, CA 92352	714–336–3571
E–Z 8 Motels Inc		43530 N 17th Street West	Lancaster, CA 93534	805–945–9477
E–Z 8 Motels Inc		7458 Broadway	Lemon Grove, CA 91945	619–462–7022
Holiday Inn Convention World Trade Ctr.		500 East First Street	Long Beach, CA 90802	310–435–8511
Comfort Inn—Eagle Rock		2300 W Colorado Blvd	Los Angeles, CA 90041–1145	213–256–1199
Wilshire Motel		12023 Wilshire Blvd	Los Angeles, CA 90025	310–478–3545
Barnabey's Hotel		3501 Sepulveda Blvd	Manhattan Beach, CA 90266	310–545–8466
Mariposa Lodge	PO Box 733	1052 Hwy 140	Mariposa, CA 95338	209–966–3607
Millwood Inn		1375 El Camino Real	Millbrae, CA 94030	415–583–3935
Ramada Inn Modesto		2001 W Orangeburg Avenue	Modesto, CA 95350	209–521–9000
Red Lion Hotel Modesto		1150 9th Street	Modesto, CA 95354	209–526–6000
Holiday Inn Resort		1000 Aquajito Road	Monterey, CA 93940	408–373–6141
Best Western Image Suites		24840 Elder Avenue	Moreno Valley, CA 92557	714–924–4546
E–Z 8 Motels Inc		607 Roosevelt Avenue	National City, CA 91950	619–474–7502
E–Z 8 Motels Inc		1700 Plaza Blvd	National City, CA 91950	619–474–6491
E–Z 8 Motels Inc		5555 Cedar Street	Newark, CA 94560	510–794–7775
E–Z 8 Motels Inc		2434 W Hillcrest Drive	Newbury Park, CA 91320	805–499–0755
E–Z 8 Motels Inc		8471 Enterprise Way	Oakland, CA 94621	510–562–4888
Country Suites By Carlson		231 N Vineyard Avenue	Ontario, CA 91764	714–983–8484
Holiday Inn Express		74675 Hwy 111	Palm Desert, CA 92260	619–340–4303
Best Western Host Hotel		1633 S Palm Canyon	Palm Springs, CA 92264	619–325–9177
Ramada Hotel Resort		1800 E Palm Canyon Drive	Palm Springs, CA 92264	619–323–1711
E–Z 8 Motels Inc		430 W Palmdale Blvd	Palmdale, CA 93551	805–273–6400
Best Western Black Oak Motor Lodge		1135 24th Street	Paso Robles, CA 93446	805–238–4740
Sheraton Inn Pleasanton		5115 Hopyard Road	Pleasanton, CA 94588	510–460–8800
Days Inn Sunrise		11131 Folsom Blvd	Rancho Cordova, CA 95670	916–635–0666
Red Lion Inns, Sonoma County		1 Red Lion Drive	Rohnert Park, CA 94928	707–584–5466
Best Inn		8714 E Valley Blvd	Rosemead, CA 91770	818–571–6942
Capitol Center Travelodge		1111 H Street	Sacramento, CA 95814	916–444–8880
E–Z 8 Motels Inc		1750 S Waterman Avenue	San Bernardino, CA 92408	714–888–4827
Ramada Inn San Bernardino		2000 Ostrems Way	San Bernardino, CA 92407	714–887–3001
Holiday Inn San Clemente Resort		111 S Avenue De Estrella	San Clemente, CA 92672	714–361–3000
Days Inn Downtown		1449 9th Avenue	San Diego, CA 92101	619–239–9113
E–Z 8 Motels Inc		1010 Outer Road	San Diego, CA 92154	619–575–8808
E–Z 8 Motels Inc		3333 Channel Way	San Diego, CA 92110	619–223–9500
E–Z 8 Motels Inc		4747 Pacific Hwy	San Diego, CA 92110	619–294–2512
E–Z 8 Motels Inc		3325 Midway Drive	San Diego, CA 92110	619–224–3166
E–Z 8 Motels Inc		2484 Hotel Circle Place	San Diego, CA 92108	619–291–8252
Embassy Suites Hotel		4550 La Jolla Village Drive	San Diego, CA 92122	619–453–0400
Hyatt Islandia Hotel		1441 Quivira Road	San Diego, CA 92109–7898	619–224–1234
Red Lion Hotel—San Diego		7450 Hazard Center Drive	San Diego, CA 92108	619–297–5466
San Diego Marriott Hotel And Marina		333 W Harbor Drive	San Diego, CA 92101–7709	619–234–1500
Travelodge Sports Arena		3737 Sports Arena Blvd	San Diego, CA 92110	619–226–3711
Comfort Inn		240 7th Street	San Francisco, CA 94103	415–861–6469
Grant Plaza Hotel		465 Grant Avenue	San Francisco, CA 94108	415–434–3883
The Chancellor Hotel		433 Powell Street	San Francisco, CA 94102	415–362–2004
E–Z 8 Motels Inc		2050 N First Street	San Jose, CA 95131	408–436–0636
E–Z 8 Motels Inc		1550 N First Street	San Jose, CA 95112	408–453–1830
Red Lion Hotel—San Jose		2050 Gateway Place	San Jose, CA 95110	408–453–4000
San Jose Hilton And Towers		300 Alameda Blvd	San Jose, CA 95110	408–287–2100
E–Z 8 Motels Inc		3550 El Camino Real	Santa Clara, CA 95051	408–246–3119
Casa Blanca Motel		101 Main Street	Santa Cruz, CA 95060	408–423–1570
Santa Maria Airport Hilton Hotel		3455 Skyway Drive	Santa Maria, CA 93455	805–928–8000
Best Western Trailside Inn	PO Box 759	2785 Main Street	Susanville, CA 96130	916–257–4123
Circle C		6340 El Rey Avenue	Twenty Nine Palms, CA 92277	619–367–7615
E–Z 8 Motels Inc		4 Mariposa Street	Vallejo, CA 94590	707–554–1840
Marina Motel		3130 Washington Blvd	Venice, CA 90291	310–821–5086
E–Z 8 Motels Inc		15366 La Paz Avenue	Victorville, CA 92392	619–243–2220
E–Z 8 Motels Inc		15401 Park Avenue East	Victorville, CA 92392	619–241–7516
Best Western Westminster Inn		5755 Westminster Blvd	Westminster, CA 92683	714–898–4043
Delaware				
New Devon Inn	PO Box 516	2nd & Market Streets	Lewes, DE 19958	302–645–5973
Newark Travelodge		268 East Main Street	Newark, DE 19711	302–737–5050
Georgia				
Super 8 Motel Albany		2444 North Slappy Blvd	Albany, GA 31702	912–888–8388
Residence Inn Alpharetta		5485 Windward Parkway West	Alpharetta, GA 30201	404–664–0664
Atlanta Hilton And Towers		255 Courtland Street NE	Atlanta, GA 30303	404–659–2000
Doubletree Hotel Atlanta Concourse		7 Concourse Parkway	Atlanta, GA 30328	404–395–3900
Regency Suites Hotel		975 West Peachtree Street NE	Atlanta, GA 30309	404–876–5003

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Residence Inn By Marriott		1901 Savoy Drive	Atlanta, GA 30341	404–455–4446
Sheraton Colony Square Hotel		188 Fourteenth Street NE	Atlanta, GA 30361	404–892–6000
Summerfield Suites Hotel		505 Pharr Road	Atlanta, GA 30305	404–262–7880
Super 8 Motel Atlanta		301 Fulton Industrial Circle	Atlanta, GA 30336	404–696–9713
Days Inn Augusta		3654 Wheeler Road	Augusta, GA 30909	706–868–8610
Super 8 Motel Augusta		2137 Gordon Hwy	Augusta, GA 30906	706–738–5018
Ramada Inn Macon		5009 Harrison Road	Macon, GA 31206	912–474–0871
Madison Travelodge		2091 Eatonton Road	Madison, GA 30650	706–342–7800
Sheraton Inn Atlanta Northwest		1775 Parkway Place	Marietta, GA 30067	404–428–4400
Travelodge N. W. Atlanta		1940 Leland Drive	Marietta, GA 30067	404–952–0052
Atlanta Hilton Northeast		5993 Peachtree Industrial Blvd	Norcross, GA 30092	404–447–4747
Travelodge N.E. Atlanta		6045 Oakbrook Parkway	Norcross, GA 30093	404–449–7322
Travelodge #1052		100 Westview Lane	Perry, GA 31069	912–987–7355
Savannah deSoto Hilton		15 E Liberty Street	Savannah, GA 31401	912–232–9000
Charter House Inn		2710 Osborne Road	St. Mary's, GA 31558	912–882–6250
King & Prince Beach Resort		201 Arnold Road	St. Simon's Island, GA 31522	912–638–3631
Thomson Travelodge		1847 Washington Road	Thomson, GA 30824	706–595–8700
Days Inn Union City		6840 Shannon Parkway South	Union City, GA 30291	404–964–3777
Idaho				
Capri Motel		2600 Fairview Avenue	Boise, ID 83702	
Idanha Hotel		928 Main	Boise, ID 83702	
Rodeway Inn		1115 N Curtis	Boise, ID 83704	
Shilo Inn		4111 Broadway Avenue	Boise, ID 83705	
Airport Inn		409 E Cedar Street	Hailey, ID 83333	
Silver Horn Motor Inn		699 W Cameron	Kellogg, ID 83837	
Riverside Inn		255 Portneuf	Lava Hot Springs, ID 83246	
Evergreen Motel		2125 3rd Avenue N	Lewiston, ID 83501	
Illinois				
Holiday Inn—Alsip		5000 W 127th Street	Alsip, IL 60658	708–371–7300
Super 8 Motel—Alton		1800 Homes Adams Parkway	Alton, IL 62202	618–465–8885
Random House Motel		4205 St Charles Road	Bellwood, IL 60104	708–544–5585
Super 8 Motel—Carbondale		1180 E Main Street	Carbondale, IL 62901	618–457–8822
Budgetel Inn—Champaign		302 W Anthony	Champaign, IL 61821	217–356–8900
Red Roof Inn—Champaign		212 W Anthony Drive	Champaign, IL 61820	217–352–0101
Courtyard By Marriott Chicago Downtown.		30 East Hubbard Street	Chicago, IL 60611	312–329–2500
O'Hare Hilton Hotel		11601 West Touhy Avenue	Chicago, IL 60666	312–686–8000
Stouffer Riviere Hotel		1 West Wacker Drive	Chicago, IL 60601	312–372–7200
Drury Inn—Collinsville		602 North Bluff Road	Collinsville, IL 62234	618–345–7700
Pear Tree Inn		552 Ramada	Collinsville, IL 62234	618–345–9500
Super 8 Motel—Collinsville		#2 Gateway Drive	Collinsville, IL 62234	618–345–8008
Super 8 Motel—East Peoria		725 Taylor Street	East Peoria, IL 61611	309–698–8889
Days Inn—Effingham	PO Box 1168	West Fayette Avenue	Effingham, IL 62401	217–342–9271
Super 8 Motel—Effingham		1400 Thelma Keller Drive	Effingham, IL 62401	217–342–6888
Super 8 Motel—Fairview Heights		#45 Ludwig Drive	Fairview Heights, IL 62208	618–398–8338
Best Western Inn—Lagrange		5631 S Lagrange Road	Lagrange, IL 60525	708–352–2480
Best Western Airport Inn	Box 348–1	Rt 3	Marion, IL 62959	618–993–3222
Super 8 Motel—Marion		2601 W Deyoung Street	Marion, IL 62959	618–993–5577
Super 8 Motel—Mokena		9485 W 191st	Mokena, IL 60448	708–479–7808
Super 8 Motel—Mt. Vernon		401 S 44th Street	Mt. Vernon, IL 62864	618–242–8800
Thrifty Inn—Mt. Vernon		I–57 & I–64	Mt. Vernon, IL 62864	618–244–7750
Super 8 Motel—Mundelein		1950 S Lake Street	Mundelein, IL 60060	708–949–8842
Travelodge—Naperville		1617 Naperville Road	Naperville, IL 60563	708–505–0200
Travelers Inn Motel		1801 E Main Street	Olney, IL 62450	618–393–2186
Red Roof Inn—Peoria		4031 N War Memorial Drive	Peoria, IL 61614	309–685–3911
Super 8 Motel—Peoria		4025 W Memorial Drive	Peoria, IL 61614	309–688–8074
Days Inn—Peru	PO Box 626	I–80 & 251	Peru, IL 61354	815–224–1060
Lighthouse Motel, Inc		3160 N River Road	River Grove, IL 60171	708–456–3600
Mil—Pau Motor Inn		204 N Jackson	Robinson, IL 62454	618–544–2308
Super 8 Motel—Romeoville		1301 Marquette Drive	Romeoville, IL 60441	708–759–8880
Super 8 Motel—Salem	Rt 50 West	I–57	Salem, IL 62881	618–548–5882
Hampton Inn—Chicago South		17355 Tollview Drive	South Holland, IL 60473	708–321–3200
Best Western Lincoln Plaza		101 E Adams	Springfield, IL 62701	217–523–5661
Comfort Inn—Springfield		3442 Freedom Drive	Springfield, IL 62704	217–787–2250
Super 8 Motel—St. Charles		1520 E Main Street	St. Charles, IL 60174	708–377–8388
Best Western Cunningham Place		1907 N Cunningham	Urbana, IL 61801	217–367–8331
Kentucky				
Cincinnati Riverfront Travelodge		222 York Street	Newport, KY 41071	606–291–4434
Louisiana				
Red Roof Inn		102 Constitution Drive	West Monroe, LA 71292	318–388–2420
Massachusetts				
Colonial Inn		48 Monument Square	Concord, MA 01742	508–369–9200

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Maryland				
Thunderbird Apartments		9265 Crain Hwy	Bel Alton, MD 20611	301–932–6255
Lexington Park Super 8 Motel		9290 Three Notch Road	California, MD 20619	301–862–9822
Capitol Heights Super 8 Motel		150 Hampton Park Blvd	Capitol Heights, MD 20743	301–350–8899
Brampton Bed & Breakfast		25227 Chestertown Road	Chestertown, MD 21620	410–778–1860
Havre de Grace Super 8 Motel		929 Pulaski Hwy	Havre De Grace, MD 21078	410–939–1880
Thurmont Super 8 Motel		300 Tippin Drive	Thurmont, MD 21788	301–271–7888
Minnesota				
Brainerd Days Inn		1630 Fairview Drive N	Brainerd, MN 56401	218–829–0391
Minneapolis—St. Paul Airport Hilton		3800 East 80th Street	Minneapolis, MN 55425	612–854–2100
The Minneapolis Hilton And Towers		1001 Marquette Avenue	Minneapolis, MN 55403	612–376–1000
Sunwood Inn Hotel		One Sunwood Plaza	St. Cloud, MN 56301	612–253–0606
Missouri				
Mountain Oak Lodge	PO Box 1106		Branson, MO 65616	417–338–2141
Red Roof Inn #32		13712 E 42nd Ter	Independence, MO 64055	816–373–2800
Capitol Plaza Hotel		415 West McCarty	Jefferson City, MO 65101	314–635–1234
Comfort Inn		1926 Jefferson Street	Jefferson City, MO 65101	314–636–2797
Inn Towne Lodge		2650 NE 43rd Street	Kansas City, MO 64117	816–453–6550
Red Roof Inn 51		3636 Randolph Rd NE	Kansas City, MO 64117	816–452–8585
Knights Court		3501 W Broadway	Sedalia, MO 65301	816–826–8400
Best Western Deerfield Inn		3343 E Battlefield	Springfield, MO 65804	
Days Inn		2700 N Glenstone	Springfield, MO 65803	417–865–5511
Holiday Inn North I–44		2720 North Glenstone	Springfield, MO 65803	417–865–8600
Park Inn International		1772 South Glenstone	Springfield, MO 65804	417–882–1113
Ramada Hawthorne Park		2431 North Glenstone	Springfield, MO 65803	417–831–3131
Best Western Airport Inn		10232 Natural Bridge	St. Louis, MO 63134	314–427–5955
Budget Host Inn/Way—Station Hotel	PO Box 278		West Plains, MO 65775	417–256–4135
Mississippi				
Days Inn—Forest	PO Box 1523	Rt 2	Forest, MS 39074	601–469–2500
Hampton Inn—Briarwood		465 Briarwood Drive	Jackson, MS 39206	601–956–3611
Holiday Inn—North	I–55 North		Jackson, MS 39206	601–366–9411
Holiday Inn—Southwest		2649 US 80 West	Jackson, MS 39204	601–355–3472
Ramada Inn & Convention Center		854 North Gloster Street	Tupelo, MS 38801	601–844–4111
New Jersey				
Marriott's Seaview Golf Resort		401 S York Road	Absecon, NJ 08201	609–652–2307
Best Western Gloucester Inn		Rt 130 & N–S Freeway	Gloucester, NJ 08030–1699	609–456–7400
Red Roof Inn—Princeton North		208 New Road	Monmouth Jct, NJ 08852	908–821–8800
Courtyard By Marriott Mt. Laurel		1000 Century Pkwy	Mt. Laurel, NJ 08054	609–273–4400
Hilton Gateway		Gateway Ctr Raymond Blvd	Newark, NJ 07102	201–622–5000
Embassy Suites Hotel		909 Parsippany Blvd	Parsippany, NJ 07054	201–334–1440
Princeton Marriott		201 Village Blvd	Princeton, NJ 08540	609–452–7900
Days Hotel Secaucus		455 Harmon Meadow Blvd	Secaucus, NJ 07094	201–617–8888
Embassy Suites Secaucus		455 Plaza Drive	Secaucus, NJ 07094	201–864–7300
Somerset Marriott		110 Davidson Avenue	Somerset, NJ 08873	908–560–0500
Glenpointe Marriott Teaneck		100 Frank West Burr Blvd	Teaneck, NJ 07666	201–836–0600
Tinton Falls Courtyard By Marriott		600 Hope Road	Tinton Falls, NJ 07724	908–389–2100
Courtyard By Marriott Hanover	157 Rt 10		Whippany, NJ 07981	201–887–8700
Nevada				
Cal Dan Prtnrs Ltd Prntr. Dba Town Hall Hotel.		4155 Koval Lane	Las Vegas, NV 89109	702–731–2111
Flamingo Hilton Las Vegas		3555 Las Vegas Blvd South	Las Vegas, NV 89109	702–733–3320
Las Vegas Hilton		3000 Paradise Road	Las Vegas, NV 89109	702–732–5111
Ramada Hotel San Remo		115 E Tropicana Avenue	Las Vegas, NV 89109–7304	702–739–9000
El Rey Lodge		430 S Hobson At Hwy 95	Searchlight, NV 89046	702–297–1144
New York				
Maybrook/Montgomery Super 8 Motel		207 Montgomery Road	Montgomery, NY 12549	914–457–3143
Holiday Inn—Schenectady		100 Nott Terrace	Schenectady, NY 12308	518–393–4141
Hilton At Syracuse Square		500 South Warren Street	Syracuse, NY 13202	315–471–7300
Super 8 Motel of Troy		1 Fourth Street	Troy, NY 12180	518–274–6800
South Carolina				
Holley Inn		235 Richland Avenue	Aiken, SC 29801	803–648–4265
Quality Inn		3509 Clemson Blvd	Anderson, SC 29621	803–226–1000
Economy Inns of America		1776 Burning Tree Road	Columbia, SC 29210	803–798–9210
Best Way Motel		1304 Poinsett Hwy	Greenville, SC 29609	803–271–1700
Texas				
Country Suites		1075 Wet N Wild Way	Arlington, TX 76011	817–261–8900
Drury Inn Austin North		6511 IH 35 N	Austin, TX 78752	512–467–9500

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Bay City Inn	PO Box 129	Rt 1	Bay City, TX 77414	409-245-0985
Drury Inn Corpus Christi		2021 N Padre Island	Corpus Christi, TX 78408	512-289-8200
Race Track Inn		6255 I H 37	Corpus Christi, TX 78409-2717	512-289-0991
Drury Inn Dallas North		2421 Walnut Hill Lane	Dallas, TX 75229	214-484-3330
Sheraton Mockingbird Hotel		1893 W Mockingbird Lane	Dallas, TX 75235	214-634-8850
El Paso Airport Hilton		2027 Airway Blvd	El Paso, TX 79925	915-778-4241
The Victorian Condo—Hotel		6300 Seawall Blvd	Galveston, TX 77551	409-740-3555
Hilton Southwest		6780 Southwest Freeway	Houston, TX 77074	713-977-7911
Houston West Hilton Inn		12401 Katy Freeway	Houston, TX 77095	713-496-9090
Nassau Bay Hilton And Marina		3000 Nassau Road One	Houston, TX 77058	713-333-9300
Ramada Inn Houston South/Nasa		1301 Nasa Road 1	Houston, TX 77058	713-488-0220
Westchase Hilton And Towers		9999 Westheimer	Houston, TX 77042	713-974-1000
Drury Inn DFW Airport South		4210 W Airport Freeway	Irving, TX 75062	214-986-1200
Brazosport Hilton Inn		925 Hwy 322 W	Lake Jackson, TX 77566	409-297-1161
Drury Inn McAllen		612 West Exprwy 83	McAllen, TX 78501	512-687-5100
Hampton Inn McAllen		300 West Exprwy 83	McAllen, TX 78501	512-682-4900
McAllen Airport Hilton Inn		2721 S 10th Street	McAllen, TX 78503	210-687-1161
Thrifty Inn McAllen		620 West Exprwy 83	McAllen, TX 78501	512-631-6700
Odessa Hilton		5200 E University	Odessa, TX 79751	915-368-5885
Richardson Hilton		1981 N Central Exprwy	Richardson, TX 75080	214-644-4000
Drury Inn San Antonio East #41		8300 I H 35 N	San Antonio, TX 78239	512-654-1144
Drury Suites San Antonio Airport		8811 Jones Maltsheiger Road	San Antonio, TX 78216	512-308-8100
Vermont				
Ho Hum Motel		1200 Shelburne Road	S Burlington, VT	
Susse Chalet Inn		Sykes Avenue	White River Jct., VT	
Washington				
Nendels Valu Inn		4117 196th Street SW	Lynnwood, WA 98036	206-775-8030
Stouffer Madison Hotel		515 Madison Street	Seattle, WA 98104	206-583-0300
Comfort Inn Valley		N 905 Sullivan Road	Veradale, WA 99037	509-924-3838
CORRECTIONS				
Georgia				
Howard Johnson Athens		2465 West Broad Street	Athens, GA 30606	706-548-1111
Hampton Inn Savannah Stephenson		201 Stephenson Avenue	Savannah, GA 31406	912-355-4100
Howard Johnson Savannah West Boundary.		224 West Boundary Street	Savannah, GA 31401	912-232-4371
Idaho				
Evergreen		635 W Main	Burley, ID 83318	
White Pine Motel		222 Brown Avenue	Orofino, ID 83544	
Massachusetts				
Boston Marriott Copley Place		110 Huntington Avenue	Boston, MA 02116	617-236-5800
Great Vacations	PO Box 1748	2660 Rt 6a	Brewster, MA 02631	508-896-2090
Royal Sonesta Hotel		5 Cambridge Pkwy	Cambridge, MA 02142	617-491-3600
Howard Johnson Lodge		740 Elm Street	Concord, MA 07142	508-369-6100
Sheraton Ocean Park Inn	Rt 6		Eastham, MA 02642	508-255-5000
Ancyent Mariner		9 Mechanic Street	Foxborough, MA 02035	508-543-5564
Comfort Suites Hotel		106 Bank Road	Haverhill, MA 01832	508-374-7755
Orleans Holiday Motel	48 Rt 6A		Orleans, MA 02653	508-255-1514
Pilgrim Sands Motel		150 Warren Avenue Rt 3a	Plymouth, MA 02360	508-747-0900
Provincetown Inn		1 Commerical Street	Provincetown, MA 02657	508-487-9500
White Wind Inn, Inc.		174 Commercial Street	Provincetown, MA 02657	508-487-1526
Ramada Inn		940 Forbes Road	Seekonk, MA 02771	508-336-7300
Moby Dick Motel		767 Rt 28	South Harwich, MA 02661	508-432-1434
Gull Wing Suite Hotel Inc.		822 Main Street	South Yarmouth, MA 02664	508-394-9300
Southboro Motor Lodge		50 Turnpike Road	Southboro, MA 01745	508-481-7061
Swansea Motor Inn		999 G A R Hwy	Swansea, MA 02777	508-675-7700
Westfield Motor Inn		21 Southamton Road	Westfield, MA 01085	413-568-2821
Radisson Hotel		2 Forbes Road	Woburn, MA 01801	617-932-0999
Missouri				
Motel 6 #797		1624 Jefferson Street	Jefferson City, MO 65109	314-634-4220
Veit's Village		1309 Jefferson	Jefferson City, MO 65101	314-636-6167
Courtyard By Marriott Kansas City		500 E 105th Street	Kansas City, MO 64131	816-941-3333
Village Inn Motel	PO Box 6736		Kirksville, MO 63501	816-665-3722
Mansion At Elfindale		1701 South Fort	Springfield, MO 65807	417-831-5400
Residence Inn Westport		1881 Craigshire	St. Louis, MO 63146	314-469-0060
Residence Inn By Marriott		1100 McMorrow	St. Louis, MO 63117	314-862-1900
Ramada Inn		Drawer L	Waynesville, MO 65583	314-336-3121
Texas				
Quality Inn, Ennis		I-45 Hwy 34	Ennis, TX 75119	214-875-9641

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST JANUARY 13, 1993 UPDATE—Continued

Vermont				
Maplewood Motel—Comfort Inn		Berlin Four Corners	Berlin, VT 05602	802–229–5291
Brandon Inn		20 Park Street	Brandon, VT	
Super 8 Motel		Putney Road	Brattleboro, VT	
Groton State Park—Seyon Main Lodge			Groton, VT 05676	802–244–8711
Andrie Rose Inn		13 Pleasant Street	Ludlow, VT	802–228–4846
Longmeadow Farm Bed and Breakfast Tourist.		Rfd #1–Box 5	Ryegate, VT	802–757–2538
Swiss Host Motel House Unit		1272 Williston Road	S Burlington, VT 05403	802–862–5734
Liftline Lodge—Glocken Hoff		Stratton Mountain Road	Stratton Mountain, VT	
Doveberry Inn	Rt 100		W Dover, VT 05356	802–464–5652
P & H Truck Stop	Rt 302 & I91		Wells River, VT 05081	802–429–2141
Crafts Inn—Alonzo's		Main Street	Wilmington, VT	
Deletions				
(None)				

federal register

Tuesday
February 2, 1993

Part III

Department of Transportation

Research and Special Programs Administration

49 CFR Part 171, et al.

Oil Spill Prevention and Response Plans; Interim Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 174, and 176

[Docket No. HM–214; Amendment Nos. 171–119, 172–128, 173–232, 174–71, and 176–32]

RIN 2137–AC31

Oil Spill Prevention and Response Plans

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule is applicable to bulk packagings containing oil, specifically cargo tanks (tank trucks), railroad tank cars, and portable tanks. RSPA is amending the Hazardous Materials Regulations to specify minimum standards for the safe transportation of oil that is currently unregulated, and to require the preparation of plans for preventing and responding to the discharge of oil. This rule also implements requirements of the Federal Water Pollution Control Act, as amended by the Oil Pollution Act of 1990. The preparation of plans for preventing and responding to the discharge of hazardous substances will be addressed in a separate rulemaking. In addition, requirements for pipelines are addressed in a separate rulemaking published under Docket No. PS–130, 58 FR 244 (January 5, 1993).

DATES: The effective date of this interim final rule is February 2, 1993. Persons subject to this rule must comply with its requirements by October 1, 1993, except for the requirements of § 171.5(c) which requires compliance by February 18, 1993. Comments must be received on or before April 5, 1993.

ADDRESSES: Address comments to the Dockets Unit, Research and Special Programs Administration, Department of Transportation, room 8421, 400 Seventh Street, SW., Washington, DC 20590–0001. Comments should identify the docket number and be submitted in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard. The Dockets Unit is located in the Department of Transportation headquarters building (Nassif Building) on the eighth floor. Public dockets may be reviewed between the hours of 8:30 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Thomas Allan, Office of Hazardous Materials Standards, RSPA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, Telephone (202) 366–4488 or Robert A. Monniere, Office of the Chief Counsel, RSPA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, Telephone (202) 366–4400.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, several major oil discharges damaged the marine environment of the United States. In response to those discharges, Congress passed the Oil Pollution Act of 1990 (OPA) (Pub. L. 101–380). OPA includes amendments to the Federal Water Pollution Control Act (FWPCA), 33 U.S.C. 1251 *et seq.* These amendments mandate greater oil spill prevention efforts and oil spill response capability. The OPA is designed "to create a system in which private parties supply the bulk of any equipment and personnel needed for oil spill response in a given area." H.R. Rep. No. 653, 101st Cong., 2d Sess., 101, 148, reprinted in 1990 U.S. Code Cong. & Admin. News 779, 827. In addition to oil, certain requirements of OPA also apply to hazardous substances.

The statute directs the President to issue regulations establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from onshore facilities, and to contain such discharges. 33 U.S.C. 1321(j)(1)(C). In addition, the statute directs the President to issue regulations requiring an owner or operator of an onshore facility that, because of its location, could reasonably be expected to cause substantial harm to the environment by discharging into or on the navigable waters or adjoining shorelines. 33 U.S.C. 1321(j)(5).

On October 18, 1991, the President signed Executive Order (E.O.) 12777 (56 FR 54757, October 22, 1991). Section 2(b)(2) of E.O. 12777 delegates authority to establish procedures, methods, and equipment and other requirements for equipment to prevent and contain discharges of oil and hazardous substances from vessels and transportation-related onshore facilities and deepwater ports * * * to the Secretary of Transportation (the Secretary).

The Secretary re-delegated this OPA authority to the Commandant, United States Coast Guard; the Administrator, Maritime Administration; and the Administrator, Research and Special Programs Administration (RSPA). 57 FR 8581 (March 11, 1992). The Secretary's re-delegation grants the RSPA Administrator authority to establish "procedures, methods, and equipment and other requirements for equipment to prevent discharges from, and to contain oil and hazardous substances in pipelines, motor carriers, and railways." 57 FR 8582.

In a more recent delegation, the RSPA Administrator received authority under section 2(d)(2) of E.O. 12777 to: (1) Issue regulations requiring submission of OPA response plans for pipelines, railroads, and motor carriers, (2) review and approve response plans for pipelines, and (3) authorize pipelines to operate pending approval of response plans. 57 FR 62484 (December 31, 1992). Under that same delegation, the Federal Highway Administrator has authority to review and approve OPA response plans for motor carriers and to authorize them to operate pending approval of response plans. Similarly, the Federal Railroad Administrator has authority to review and approve OPA response plans for railroads and to authorize them to operate pending approval of response plans.

The Coast Guard has response plan authority covering vessels and marine transportation-related (MTR) facilities including motor carriers and railroads, if those facilities are transferring oil or a hazard substance to or from a vessel. The Coast Guard published an advance notice of proposed rulemaking (ANPRM) (56 FR 43534, August 30, 1991) and a notice of proposed rulemaking (NPRM) (57 FR 27514, June 19, 1992) containing proposed regulations implementing the OPA requirements applicable to vessels. The Coast Guard published an ANPRM (57 FR 8708, March 11, 1992) containing proposed regulations implementing the OPA requirements applicable to MTR facilities. In addition, on September 15, 1992, the Coast Guard issued two navigation and vessel inspection circulars (NVIC) that serve as guidelines for preparing response plans for certain vessels and marine transportation-related facilities (NVICs 7–92 and 8–92).

This rulemaking addresses the requirements of the OPA as they apply to motor carriers and railroads. It also addresses similar requirements for portable tanks. As used in this rule, an owner or operator of an onshore facility is the carrier as defined in 49 CFR 171.8.

In accordance with 5 U.S.C. 553(b)(3)(B), this interim final rule is issued without prior notice of proposed rulemaking and opportunity to comment. The Oil Pollution Act of

1990, Public Law 101–380, 104 Stat. 484, (OPA 90) which amends the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq., contains statutory deadlines for the preparation and submission of response plans for onshore facilities (including, but not limited to, motor vehicles and rolling stock). After these deadlines, carriers not in compliance with the Act are prohibited from transporting oil in bulk packagings.

In order to allow the timely implementation of OPA 90, RSPA determined that good cause exists for finding that notice and comment is impracticable and contrary to public interest. RSPA believes that any further delay in issuing these regulations would create an undue hardship on the regulated community and have the potential to disrupt the sale and delivery of oil.

Although an opportunity for public comment has not been provided prior to issuing this interim final rule, RSPA seeks public comment to assure that the rule is feasible and workable. If appropriate, RSPA will amend the provisions of this rule. RSPA will consider holding public hearings to obtain comments at a later date, if needed. As an interim final rule, this regulation is fully in effect and binding upon publication in the **Federal Register.**

Although no further regulatory action by RSPA is essential to implement this rule, RSPA encourages interested persons to participate in this rulemaking by submitting written views, data, or information on this interim final rule. Persons submitting comments should include their names and addresses, identify this rulemaking by the docket number stated in the heading of this rule and the specific section of the rule to which each comment applies, and give the basis for each comment. RSPA will consider all public comments and will make changes to this rule if public comments indicate a change is necessary.

II. Introduction

RSPA is requiring protection of the environment through response plan regulations applicable to the transportation of oil in bulk packagings. "Bulk packaging," as defined in § 171.8 of the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180), includes containers with a maximum capacity greater than 450 liters as a receptacle for a liquid. Therefore, there should be no misunderstanding of the term "bulk packaging" by the transportation industry. Current standards for most hazardous materials use this breakpoint as the determinant to apply detailed requirements for packaging, marking and placarding that are appropriate to the greater threat that bulk quantities pose to life, property and the environment. These regulations are issued under sections of the FWPCA, 33 U.S.C. 1321(j) and the Hazardous Materials Transportation Act (HMTA), 49 U.S.C. app. 1804. Under these requirements, a carrier of oil in bulk packagings is required to have a current, written basic response plan.

The basic plan must describe the manner of response to discharges in transportation, consider the maximum potential discharge, identify those persons to be contacted in the event of a discharge, identify those persons who will respond to a discharge, and be on file at specific locations.

In addition to the basic plan, RSPA is requiring more extensive planning requirements for each carrier of a bulk packaging containing oil in a quantity greater than 1,000 barrels (42,000 U.S. gallons). Any person who transports oil in a bulk packaging in a quantity greater than 1,000 barrels must prepare and file, with a designated DOT official, an extensive response plan meeting the requirements of 33 U.S.C. 1321(j)(5).

Extensive response plans must identify a qualified individual having full authority to implement removal actions, identify the method of immediate communications between that individual and Federal and response personnel, identify and ensure the availability of private personnel and equipment necessary to remove a worst case discharge and to mitigate or prevent a substantial threat of such a discharge, and be consistent with the National Contingency Plan (NCP) and Area Contingency Plans (ACPs).

The NCP is a plan that outlines response actions for Federal agencies, in coordination with state and local agencies, in order to minimize the damage resulting from the discharge of oil or a hazardous substance. An ACP is a plan for a specific geographic area that describes responsibilities of the carrier and Federal, state, and local agencies in removing a worst case discharge, and in mitigating or preventing a substantial threat of such a discharge and the equipment necessary to remove a worst case discharge. ACPs are prepared by Area Committees, composed of Federal, state and local personnel, and under the direction of the Federal On-Scene Coordinator (OSC) for each area. For coastal areas, a Captain of the Port is the Federal OSC and for inland areas, an EPA regional administrator is the Federal OSC.

Because revisions to the NCP were not completed by August 18, 1992, owners and operators may base their response plans on the existing NCP published in 40 CFR part 300. ACPs are in various stages of development and in most areas will not be completed in time for facility owners or operators to consult when developing their response plans. Until the applicable ACP is completed, response plans submitted to meet the February 18, 1993 deadline should be consistent with the ACP or local contingency plan in effect on August 18, 1992. A response plan submitted after February 18, 1993 must be consistent with the applicable ACP or local contingency plan in effect when the response plan is submitted. If the NCP or ACP is revised within six months of the date of submission, the carrier's response plan may conform to the prior NCP or ACP.

III. Pollution Response Plans for Shipments of Oil in Bulk Packagings

RSPA is requiring protection of the environment through pollution response plan regulations applicable to the transportation of oil in bulk packagings. § 171.5 applies certain requirements in the HMR to the transportation of oil, consistent with requirements of the FWPCA. Under § 171.5(b), each carrier of a bulk packaging containing oil in a quantity of 1,000 barrels or less is required, under 33 U.S.C. 1321(j)(1)(C), to have a basic response plan.

In addition to having a basic response plan, under § 171.5(c), each carrier of a bulk packaging containing oil in a quantity greater than 1,000 barrels is required, pursuant to 33 U.S.C. 1321(j)(5), to submit an extensive response plan meeting all the requirements of § 1321(j)(5). This more burdensome requirement is discussed in Section IV below.

In terms of volume carried, most packaged shipments of oil (e.g., gasoline, fuel oil and most crude oil) covered by the FWPCA are already regulated as hazardous materials under the HMR. Therefore, RSPA has decided not to issue a new, self-contained set of rules specifically to implement OPA 90 for transportation of oil in bulk packagings. In order to avoid duplicative regulatory schemes and to carry out the statutory mandates of the FWPCA and the HMTA, RSPA instead is amending the current hazardous materials transportation regulations.

Under these regulations, persons transporting, in intrastate, interstate or foreign commerce, oil in a package with a capacity over 450 liters are required to have a current basic written plan that:

(1) Describes the manner of response to discharges in transportation;

(2) Considers the maximum potential discharge of the contents from the package;

(3) Identifies persons and agencies (and their addresses and phone numbers) to be contacted concerning any discharge;

(4) Identifies who will respond to a discharge; and

(5) For motor carriers, is retained on file at the carrier's principal place of business and locations where dispatching occurs; or, for railroads, is retained on file at the carrier's principal place of business and the dispatcher's office.

In their development of generic response plans which conform with these requirements, carriers are expected to address plausible spill scenarios consistent with actual or potential threats they may experience in day-to-day operations. Thus, plans should reflect a wide range of situations, such as a slow leak from a discharge valve at an enroute location, to a catastrophic failure of a tank and a full release of the contents into a waterway. For each plausible situation, the plan must reflect a reasoned approach to containment and recovery operations by carrier or contractor personnel with the experience and capability to respond in a timely manner.

Carriers of oil are not required to prepare a separate plan for each cargo tank, tank car, and portable tank. Rather, they may develop nationwide, regional, or other types of generic pollution response plans. Plans prepared to meet the requirements of other agencies (e.g., the EPA) may be used or supplemented to meet the requirements of this regulation.

Comments are invited on the 450-liter threshold used in this rule. On the basis of comments on this rule, RSPA could raise or lower that threshold or determine that some other criteria are appropriate for determining who must prepare a response plan.

IV. Additional Requirements for Shipments of a Bulk Packaging Containing Oil in a Quantity Greater Than 1,000 Barrels

Under § 171.5(c), each carrier of a bulk packaging containing oil in a quantity greater than 1,000 barrels must, pursuant to 33 U.S.C. 1321(j)(5), submit an extensive response plan meeting all the requirements of that section. Under 33 U.S.C. 1321(j)(5)(B)(iii) and (D), an owner or operator of an onshore facility that, because of its location, could reasonably be expected to cause "substantial harm" or "significant and substantial harm" to the environment by discharging oil into or on the navigable waters, or adjoining shorelines, must prepare and submit a response plan to the Secretary by February 18, 1993.

The statute does not define "substantial harm," or "significant and substantial harm." Section 1321 defines "onshore facility" as "any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land within the United States other than submerged land." 33 U.S.C. 1321(a)(10).

Although plans for "significant and substantial harm" facilities must be reviewed and approved by the Secretary, plans for "substantial harm" facilities do not require Secretarial review or approval. The response plan must, "to the maximum extent practicable," address both a "worst case discharge" of oil from the facility and "a substantial threat of such a discharge."

Each owner or operator of a non-marine transportation facility (MTR) required to prepare a response plan under section 1321(j)(5) must submit a response plan by February 18, 1993. After this date, an owner or operator must cease handling, storing, or transporting oil until it submits a response plan. In addition, after August 18, 1993, each owner or operator of any of these facilities may handle, store, or transport oil only if they are operating each facility in compliance with a response plan. Moreover, after August 18, 1993, each owner or operator of a "significant and substantial harm" facility may not handle, store, or transport oil at such a facility, unless or until the facility's response plan is approved.

If, however, a response plan has been submitted but not approved, the appropriate DOT modal administrator may authorize the facility to operate for up to two years after submission of the plan provided the owner or operator certifies that it has ensured the availability of private personnel and equipment to respond, to the maximum extent practicable, to a worst case discharge or a substantial threat of such a discharge.

Each extensive response plan prepared under 33 U.S.C. 1321(j)(5)(C) must:

(1) Be consistent with the requirements of the NCP and ACP;

(2) Identify the qualified individual having full authority to implement removal actions;

(3) Require immediate communications between the qualified individual and the appropriate Federal official and those persons providing personnel and equipment for the spill response;

(4) Identify, and ensure by contract or by other means approved by the appropriate DOT modal administrator, the availability of private personnel and equipment necessary to remove to the maximum extent practicable a worst case discharge, including a discharge resulting from a fire or an explosion, and to mitigate or prevent a substantial threat of such a discharge;

(5) Describe the training, equipment testing, periodic unannounced drills, and response actions of persons at the facility, to be carried out under the plan to ensure the safety of the facility and to mitigate or prevent the discharge, or the substantial threat of a discharge;

(6) Be updated periodically; and

(7) Be resubmitted for approval of each significant change.

Because these OPA 90 response plan requirements apply to cargo tanks and railroad tank cars, RSPA worked with the Federal Railroad Administration (FRA) and the Federal Highway Administration (FHWA) to analyze existing regulatory requirements and spill experience and, based thereon, determined an appropriate threshold for applying these extensive response plan requirements.

A. Existing Regulatory Requirements

A comprehensive regulatory regime exists which reduces the likelihood that any individual bulk packaging containing oil, because of its location, could cause substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines. Most oils (e.g., gasoline, fuel oil and most crude oil) are regulated as hazardous materials under the HMR.

The HMR set forth requirements for classification, description, packaging, marking, labeling and placarding of hazardous materials. The HMR also contain requirements for HAZMAT employee training and for reporting of hazardous materials releases. Also, 49 CFR part 172, subpart G of the HMR, entitled Emergency Response Information, prescribes requirements for providing and maintaining emergency response information during transportation and at facilities where hazardous materials are loaded for transportation, stored incidental to transportation or otherwise handled during any phase of transportation. Operators of motor vehicles and trains carrying hazardous materials are required to carry emergency response information on each truck or train, including: A description of the hazardous material, the immediate hazards to health, the risk of fire or

explosion, immediate precautions to take in the event of an accident or incident, immediate methods for handling fires, initial steps to be taken in the event of a spill or leak in the absence of a fire, and immediate first aid actions.

The Federal Motor Carrier Safety Regulations (FMCSR) apply to for-hire and private commercial motor vehicles (CMV) carrying property including vehicles used for the transportation of hazardous materials in interstate commerce and, in certain cases, intrastate commerce. Part 397 of the FMCSR, entitled, Transportation of Hazardous Materials, Driving and Parking Rules, contains regulations governing the attendance and surveillance of motor vehicles, routing guidelines, parking requirements, and other regulations that promote safety and protect the environment.

Rail transportation of most oil is subject to the HMR and other regulations. FRA has extensive regulations, issued under the Federal Railroad Safety Act (FRSA), which promote safety and protect the environment. In addition, FRA and the Federal Emergency Management Agency recently completed work on emergency response planning documents. FRA's Hazardous Materials Emergency Response Plan Guidance Document for Railroads emphasizes the preventive nature of planning and the importance of preparedness to mitigate the effect of an accident, especially one involving hazardous materials.

Transport vehicles (railroad tank cars, motor carrier cargo tanks, and intermodal portable tanks) are most vulnerable to spills during the loading and unloading process. The Coast Guard and EPA are issuing regulations that cover these operations.

B. Spill Data

Over the past decade, the combined domestic movements of petroleum by highway and rail, in any one year, have not exceeded five percent of the total volume of petroleum transported. Existing spill data reflect a small number of oil spills, and these spills from cargo tanks and railroad tank cars generally involve small quantities.

There are 3.6 million commercial motor vehicles with a gross vehicle weight rating over 10,000 lbs. registered in the United States. Approximately 120,000 commercial motor vehicles transport oil and derivatives in bulk cargo tanks. Another 2.5 million commercial motor vehicles transport oil and derivatives in non-bulk packagings.

In 1990, trucks accounted for 29.8 billion ton miles (2.8 percent) of the 1,075.2 billion ton miles of crude and petroleum products transported in the United States. Approximately 42,000 motor carriers may be subject to OPA 90 response plan requirements. Of the annual 66.7 million shipments of gasoline, fuel oil, and home heating oil by cargo tanks, one in 245,000 shipments results in a spill during transportation. Approximately 12 of those 273 spills enter a waterway.

The FRA identified approximately 600 freight railroads which may be affected by OPA 90 response plan requirements. FRA, based on data supplied by the industry, also identified 47 railroads that list a petroleum product as one of their top three transported commodities.

Annually, there are approximately 844,500 shipments of petroleum products. Of those shipments, approximately 60 result in release of the material. Over the last eight years, according to reports filed with RSPA's Hazardous Materials Information System, only one of those spills entered a waterway.

Additional data indicate the low probability of release in rail transportation of those types of materials addressed in this rulemaking. The following data are for combustible liquids, many of which are petroleum oils. They demonstrate that, for combustible liquids transported by rail, less than one-tenth of one percent of the tank cars involved release any cargo during transportation (including loading and unloading):

UNINTENTIONAL RELEASES OF COMBUSTIBLE LIQUIDS TRANSPORTED BY RAILROAD

	1988	1989	1990	1991
Cars originated	66,299	90,636	90,245	114,287
Percent releasing any cargo	.11	.09	.08	.06

The maximum possible spill into water from a single tank car is approximately 42,000 gallons, and the average spill size is about 1,800 gallons.

C. Conclusions

On the basis of the foregoing incident and spill statistics and the regulatory requirements currently applicable to transportation of oil in bulk packagings, RSPA believes there is a low risk of substantial environmental harm resulting from such spills. Therefore, RSPA concludes that shipments of bulk packagings containing oil in a quantity of 1,000 barrels or less could not, based on location, be reasonably expected to cause "substantial harm" to the environment by discharging into or on navigable waters or adjoining shorelines.

In addition, many carriers currently transporting oil, subject to the FWPCA, have already implemented procedures, required by the HMR, that satisfy some of the response plan requirements added by the OPA 90 (training and emergency response information requirements). Furthermore, it is not feasible for every railroad and every cargo tank carrier to prepare detailed plans for combatting discharge of oil in the event of a spill near every riverbank, bridge, culvert or other such location on every route the carriers' vehicles may traverse. These carriers' plans must, of necessity, be somewhat basic and generic.

Section 171.5(b) requires response planning for a far broader spectrum of facilities transporting oil than is required by section 1321(j)(5) of the FWPCA. These requirements, issued under the authority of the Hazardous Materials Transportation Act and 33 U.S.C. 1321(j)(1), apply not only to rail and motor carriers but also to air and water carriers transporting bulk packagings containing oil.

In summary, there are sufficient existing regulations and historical spill data to justify excepting carriers of bulk packagings containing oil in a quantity of 1,000 barrels or less, from the requirements to prepare and file extensive response plans. 33 U.S.C. 1321(j)(5). Those shipments in cargo tanks or tank cars could not reasonably be expected, because of their locations, to cause substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines. While requiring the broad spectrum of carriers to prepare and submit the more extensive section 1321(j)(5) response plans would be an unnecessary burden on both industry and government, RSPA believes that instructions for preparing and submitting the more extensive plans should become part of the HMR to be available for those few carriers that must prepare such response plans. Therefore, RSPA is establishing a 1,000-barrel threshold for rolling stock and motor vehicles.

Any person who transports a bulk packaging containing oil in a quantity greater than 1,000 barrels must file an extensive response plan (§ 171.5(c)) with RSPA's Associate Administrator for Hazardous Materials Safety (for a portable tank), the Federal Highway Administrator (for a cargo tank), and the Federal Railroad Administrator (for a tank car). Plans prepared to meet the

requirements of other agencies (e.g., the Environmental Protection Agency) may be used or supplemented to meet the requirements of this regulation.

Since only a few facilities have the potential to exceed the 1,000-barrel threshold, only a few carriers (possibly none) may be required to file extensive response plans under this rule, and therefore the rule's economic impact is minimal. RSPA is aware of approximately 15 tank cars used to transport oil that have capacities that meet or exceed 1,000 barrels; however, it has not been determined with certainty that they are loaded to their capacities thereby making them subject to the extensive planning requirement.

Comments are specifically requested on whether any bulk packagings are used to transport oil in quantities exceeding 1,000 barrels. Comments also are invited on whether any different or additional criteria should be used to determine which facilities should be required to file the extensive response plans under 33 U.S.C. 1321(j)(5). On the basis of comments on this rule, RSPA could raise or lower that threshold or determine that some other criteria are appropriate for requiring submission of response plans.

V. Review by Section

Section 171.1

This section expands the scope of the HMR to regulate the transportation of oil by intrastate, as well as interstate, carriers.

Section 171.5

This new section applies certain requirements in the HMR to the transportation of oil, consistent with requirements of the FWPCA. Each carrier of oil in a bulk packaging must, under 33 U.S.C. 1321(j)(1)(C), have a basic response plan. In addition to having a basic response plan, each carrier of a bulk packaging containing oil in a quantity greater than 1,000 barrels must, pursuant to 33 U.S.C. 1321(j)(5), submit an extensive response plan meeting all the requirements of section 1321(j)(5).

Section 171.8

The definition of "oil" in the FWPCA, with a slight clarifying modification, is added in this section.

Section 171.11

This section is revised to require, for shipments of oil that are transported in bulk packagings in accordance with the International Civil Aviation Organization's Technical Instructions, conformance with the shipping paper and response planning requirements specified in §§ 171.5 and 172.203(o).

Section 171.12

This section is revised to require, for shipments of oil that are transported in bulk packagings in accordance with the International Maritime Organization's IMDG Code, conformance with the shipping paper and response planning requirements specified in §§ 171.5 and 172.203(o).

Section 171.12a

This section is revised to require, for shipments of oil that are transported in bulk packagings from Canada, conformance with the shipping paper and response planning requirements specified in §§ 171.5 and 172.203(o).

Section 171.15

This section is revised to require immediate reporting of incidents involving oil to the National Response Center. This requirement is necessary to assure that appropriate response organizations receive timely notification of incidents involving oil.

Section 172.101

The Hazardous Materials Table (HMT) is revised by designating as a Class 9 hazardous material, "oils," as defined in § 171.8, which were previously unregulated because they did not meet the criteria for any other hazard class. Those materials offered for transportation or transported in domestic commerce must be described by the proper shipping name "Oil, n.o.s., *with flash point not less than 93°C (200°F),*" as indicated by the letter "D" in column 1. This material is assigned to packing group III, based on the minor degree of danger which it presents during transportation. The Class 9 label is prescribed in column 6 for use with shipments in bulk packagings, other than tank cars and cargo tanks. Column 8A of the HMT refers to the exception in § 173.155 from all requirements of the HMR for Class 9 oil that does not meet the definition of a hazardous waste or hazardous substance and is offered for transportation or transported in a non-bulk packaging. Also, the low-hazard material non-bulk packaging requirements specified in § 173.203 is added to column 8B to provide a packaging reference for waste oil. The low-hazard material bulk packaging requirements specified in § 173.241 is added to column 8C. The letter "A" is added to column 10A to specify that the material may be stowed "on deck" or "under deck" on a cargo vessel and a passenger vessel.

Section 172.203

Paragraph (o) is added to this section to require the word "oil" to be added, in parentheses, when not specifically identified in the proper shipping name of any hazardous material which is an "oil."

Section 173.140

This section is amended to add oil to the definition of Class 9. If oil meets the definition of another hazard class, however, the class of the material must be determined in accordance with § 173.2a. Oil that does not meet the definition of another hazard class must be classified as a Class 9 material and shipped under the proper shipping name of "Oil, n.o.s. *with flash point not less than 93°C (200°F),*" or under another more appropriate proper shipping name for a Class 9 material.

Section 173.150

This section is revised to add oil to the list of other flammable and combustible liquids which must conform to specifically designated requirements of the HMR.

Section 173.155

Paragraph (d) is added to this section to except shipments of oil, other than a hazardous waste or hazardous substance, in a non-bulk packaging from all requirements of the HMR.

Section 174.25

This section is amended to require that the word "oil" appear on switching orders, receipts and tickets in association with shipping descriptions for materials meeting the definition of "oil."

Section 176.70

This section is amended to add "oil" as a material for which specific stowage requirements are prescribed for transportation by vessel.

Federal Preemption Under the HMTA

The HMTA, at 49 U.S.C. app. 1804, preempts any non-Federal (i.e., state, political subdivision, or Indian tribe) law or regulation concerning certain "covered subjects" unless the non-Federal requirement is "substantively the same" as the Federal law or regulation on that subject. The "covered subjects" are:

(i) The designation, description, and classification of hazardous materials;

(ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(iii) The preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements

respecting the number, content, and placement of such documents;

(iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials; or

(v) the design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials.

In a February 28, 1991 final rule (56 FR 8616), RSPA added a new preemption standard to § 107.202 to mirror the requirements of the HMTA. States, political subdivisions, or Indian tribes are allowed to establish, maintain, and enforce laws, regulations, or other requirements concerning the shipment of bulk packagings containing oil only if they are substantively the same as the requirements adopted in Docket HM–214. In a May 13, 1992 final rule (57 FR 20424), RSPA defined the phrase "substantively the same" to mean "that the non-Federal requirement conforms in every significant respect to the Federal requirement. Editorial and other similar *de minimis* changes are permitted."

The HMTA, at 49 U.S.C. (App. 1804(a)(5), provides that if DOT issues a regulation concerning any of the covered subjects after November 16, 1990, DOT must determine and publish in the **Federal Register** the effective date of the Federal preemption. That effective date may not be earlier than the 90th day following the date of issuance and not later than two years after the date of issuance. The date of Federal preemption for this rule is February 2, 1995. Comments are requested as to the effective date of the Federal preemptive effect of this rule.

Regulatory Analyses and Notices

A. Executive Order 12291 and DOT Regulatory Policies and Procedures

This rule does not meet the criteria specified in section 1(b) of Executive Order 12291 and is, therefore, not a major rule, but it is considered a significant rule under the section 5(a)(2)(f) of DOT's Regulatory Policies and Procedures ("the Procedures") (44 FR 11034; February 26, 1979) because of significant public and congressional interest. This rule does not require a Regulatory Impact Analysis, or an environmental assessment or impact statement under the National Environmental Policy Act (42 U.S.C. 4321 et seq.).

In accordance with section 10(e) of the Procedures, RSPA has determined that a draft Regulatory Analysis is not required because these regulations do not meet any of the criteria mandating the preparation of such an analysis. As a result, in accordance with section 10(e), RSPA prepared a draft Regulatory Evaluation, which includes an analysis of the economic consequences of the regulation and an analysis of its anticipated benefits and impacts. The draft Regulatory Evaluation is available for review in the Dockets Unit. Comments are requested on the estimated costs and benefits of this rule.

B. Regulatory Flexibility Act

RSPA certifies 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. This rule will have minimal impact on shippers and carriers of oil, some of whom may be small business entities. Most of those shippers and carriers are already subject to the HMR, thus, for them there are only minimal additional requirements. This rule only slightly expands the response planning requirements applicable to small entities and does not require any of them to file OPA 90 response plans with the DOT.

Based on limited information available concerning the size and nature of entities likely affected by this rule, I certify this regulation will not have a significant economic impact on a substantial number of small entities under criteria of the Regulatory Flexibility Act. This certification is subject to modification as a result of a review of comments received in response to this rule. The rule will have no direct impact on small units of government.

C. Executive Order 12612

This rule has been reviewed in accordance with Executive Order 12612 ("Federalism"). The HMTA contains an express preemption provision (49 U.S.C. app. 1804(a)(4)) that preempts state and local requirements on certain covered subjects (including the designation, description, and classification of hazardous materials) unless the State or local requirement is substantively the same as the Federal requirement on that subject. Thus, RSPA lacks discretion in this area.

However, these regulations have no substantial effects on the States, on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

D. Paperwork Reduction Act

The reporting and recordkeeping requirements associated with this rule are being submitted to the Office of Management and Budget for approval in accordance with 44 U.S.C. chapter 35.

OMB No.—New; *Administration:* Research and Special Programs Administration; *Title:* Preparation of Response Plans for Shipments of Oil; *Need for Information:* The Oil Pollution Act of 1990 requires carriers of bulk packagings containing oil to prepare a plan for responding to a worst case discharge or the threat of such a discharge; *Proposed Use of Information:* This information is designed to eliminate, to the extent possible, uncertainty on the part of carrier personnel regarding their role and responsibility in potential, and actual, spill scenarios; *Burden Estimate:* 1.363 million hours; *Respondents:* 42,000 motor carriers (30,899 cargo tank truck companies, 11,000 trucking companies engaged in the transportation of portable tanks), and approximately 600 freight railroads; *Forms:* None; *Average Burden Hours per Respondent:* 2.6 (20-year average); *Initial Year Burden:* 32 hours.

FOR FURTHER INFORMATION CONTACT: The Information Requirements Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street, SW, Washington, DC 20590. Comments may be provided to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, room 3228, Washington, DC 20503, Attention: Desk Officer for RSPA.

Under 44 U.S.C. chapter 35 and 5 CFR 3121.18, DOT is submitting a request for emergency clearance of the requirements in § 171.5(c) which requires compliance by February 18, 1993, as mandated by 33 U.S.C. 1321(j)(5)(E). In addition, RSPA is submitting a request for other information collections in this rule which will be reviewed under normal clearance procedures. These information collections would become effective on October 1, 1993.

During the interim, it is suggested that persons who have submitted spill prevention and mitigation plans, or will be doing so in response to other OPA 90 requirements, review these plans to determine that they meet the requirements specified in § 171.5(b). A general information collection requirement may be authorized by OMB (after notice and comment) prior to the October 1, 1993 compliance date specified in this rule.

E. Regulation Identifier Number (RIN)

A regulation identifier 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.

F. National Environmental Policy Act

RSPA has evaluated these regulations in accordance with its procedures for ensuring full consideration of the environmental impacts of RSPA actions as required by the National Environmental Policy Act (42 U.S.C. 4321 et seq.), other environmental statutes, executive orders, and DOT Order 5610.1c. These regulations have no significant impact on the quality of the environment, and no environmental impact statement is required. In addition, the regulatory evaluation for this rule contains the costs and benefits to government, industry, and the environment.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Oil, Reporting and record keeping requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labels, Markings, Oil, Packaging and containers, Reporting and record keeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 174

Hazardous materials transportation, Radioactive materials, Railroad safety.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

In consideration of the foregoing, parts 171, 172, 173, 174, and 176 of title 49, Code of Federal Regulations, are amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 is revised to read as follows:

Authority: 49 App. U.S.C. 1802, 1803, 1804, 1805, 1808 and 1818; 33 U.S.C. 1321; 49 CFR part 1.

2. In § 171.1, paragraph (a)(3)(v) is added to read as follows:

§ 171.1 Purpose and scope.

(a) * * *

(3) * * *

(v) Oil.

* * * * *

3. Section 171.5 is added to read as follows:

§ 171.5 Oil.

(a) *General.* The requirements of this section for the transportation of oil implement provisions of section 311(j) of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C. 1321(j)), as amended by section 4202(a)(6) of the Oil Pollution Act of 1990 (Pub. L. 101–380), and of the Hazardous Materials Transportation Act.

(b) *Response plans for shipments of oil in bulk packagings.* After September 30, 1993, no person may transport oil in a bulk packaging unless that person has a current written plan that:

(1) Sets forth the manner of response to discharges that may occur during transportation;

(2) Takes into account the maximum potential discharge of the contents from the packaging;

(3) Identifies who will respond to a discharge;

(4) Identifies the appropriate persons and agencies (including their telephone numbers) to be contacted in regard to such a discharge and its handling, including the National Response Center (see Note following § 171.15); and

(5) For each motor carrier, is retained on file at that person's principal place of business and at each location where dispatching of motor vehicles occurs; and for each railroad, is retained on file at that person's principal place of business and at the dispatcher's office.

(c) *Response plans for shipments of bulk packagings containing oil in a quantity greater than 1,000 barrels (42,000 U.S. gallons).* After February 18, 1993, no person may transport a bulk packaging containing oil in a quantity greater than 1,000 barrels unless that person has a current written plan that:

(1) Conforms with all requirements specified in paragraph (b) of this section;

(2) Is consistent with the requirements of the National Contingency Plan (40 CFR part 300) and Area Contingency Plans;

(3) Identifies the qualified individual having full authority to implement removal actions, and requires immediate communications between that individual and the appropriate Federal official and the persons providing spill response personnel and equipment;

(4) Identifies, and ensures by contract or other means the availability of, private personnel (including address and phone number) and equipment necessary to remove, to the maximum extent practicable, a worst case discharge (including a discharge resulting from fire or explosion) and to mitigate or prevent a substantial threat of such a discharge;

(5) Describes the training, equipment testing, periodic unannounced drills, and response actions of facility personnel, to be carried out under the plan to ensure the safety of the facility and to mitigate or prevent the discharge, or the substantial threat of a discharge; and

(6) Is submitted, and resubmitted in event of any significant change, to the Associate Administrator for Hazardous Materials Safety (for portable tanks), to the Federal Railroad Administrator (for tank cars), or to the Federal Highway Administrator (for cargo tanks).

4. In § 171.8, a definition for "oil" is added in appropriate alphabetical order to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Oil means oil of any kind or in any form, including, but not limited to, petroleum, vegetable oil, animal oil, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

* * * * *

5. In § 171.11, paragraph (d)(14) is added to read as follows:

§ 171.11 Use of ICAO technical instructions.

* * * * *

(d) * * *

(14) When a bulk packaging contains a hazardous material which meets the definition of "Oil" (see § 171.8)—

(i) The shipping description must include the word "Oil", as specified in § 172.203(o) of this subchapter; and

(ii) The requirements of § 171.5 with respect to response plans are applicable.

6. In § 171.12, paragraph (b)(17) is added to read as follows:

§ 171.12 Import and export shipments.

* * * * *

(b) * * *

(17) When a bulk packaging contains a hazardous material which meets the definition of "Oil" (see § 171.8)—

(i) The shipping description must include the word "Oil", as specified in § 172.203(o) of this subchapter; and

(ii) The requirements of § 171.5 with respect to response plans are applicable.

* * * * *

7. In § 171.12a, paragraph (b)(16) is added to read as follows:

§ 171.12a Canadian shipments and packagings.

* * * * *

(b) * * *

(16) When a bulk packaging contains a hazardous material that meets the definition of "Oil" (see § 171.8)—

(i) The shipping description must include the word "Oil", as specified in § 172.203(o) of this subchapter; and

(ii) The requirements of § 171.5 with respect to response plans are applicable.

* * * * *

8. In § 171.15, the Note is revised to read as follows:

§ 171.15 Immediate notice of certain hazardous materials incidents.

* * * * *

Note: 40 CFR parts 117 and 302, and 33 CFR part 153, require persons in charge of facilities (including transport vehicles, vessels, and aircraft) to report any discharge of oil or any release of a hazardous substance in a quantity equal to or greater than its reportable quantity, as soon as that person has knowledge of the release, to the U.S. Coast Guard National Response Center at (toll free) 800–424–8802 or (toll) 202–267–2675.

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION AND TRAINING REQUIREMENTS

9. The authority citation for part 172 is revised to read as follows:

Authority: 49 U.S.C. App. 1803, 1804, 1805, 1808; 33 U.S.C. 1321; 49 CFR part 1, unless otherwise noted.

§ 172.101 [Amended]

10. In the § 172.101 Table, the following entry is added in appropriate alphabetical order:

§ 172.101 Hazardous materials table

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted	Special provisions	(8) Packaging authorizations (§ 173.***) Exceptions	Nonbulk packaging	Bulk packaging	(9) Quantity limitations Passenger aircraft or rail car	Cargo aircraft only	(10) Vessel stowage requirements Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
D	Oil, n.o.s., *with a flashpoint not less than 93 °C (200 °F).*	9	NA9277	111	Class 9 ...	.....	155	203	241	.....	.....	A	.....

11. In § 172.203, paragraph (o) is added to read as follows:

§ 172.203 Additional description requirements.

* * * * *

(o) *Oil.* Except for shipments in non-bulk packagings and petroleum distillates specifically identified in the § 172.101 Table (e.g., gasoline, kerosene), if the fact that a hazardous material that meets the definition of oil is not communicated through the proper shipping name, the word "oil" must be entered, in parentheses, in association with the basic description.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

12. The authority citation for part 173 is revised to read as follows:

Authority: 49 U.S.C. App. 1803, 1804, 1805, 1806, 1807, 1808, 1817; 49 CFR part 1, unless otherwise noted.

13. In § 173.140, paragraph (b) is revised to read as follows:

§ 173.140 Class 9—Definitions.

* * * * *

(b) Any material that meets the definition in § 171.8 of this subchapter for an elevated temperature material, a hazardous substance, a hazardous waste, a marine pollutant, or oil.

14. In § 173.150, paragraphs (f)(3)(viii) and (f)(4) introductory text are revised to read as follows:

§ 173.150 Exceptions for Class 3 (flammable and combustible liquids).

* * * * *

(f) * * *

(3) * * *

(viii) The requirements of §§ 171.5, 173.1, 173.21, 173.24, 173.24a, 173.24b, 174.1, 177.804, 177.817, and 177.834 of this subchapter.

(4) A combustible liquid that is not a hazardous substance, a hazardous waste, a marine pollutant, or oil is not subject to the requirements of this subchapter if it is a mixture of one or more components that—

* * * * *

15. In § 173.155, paragraph (d) is added to read as follows:

§ 173.155 Exceptions for Class 9 (miscellaneous hazardous materials).

* * * * *

(d) *Oil.* Except for hazardous wastes, hazardous substances, and marine pollutants the requirements of this subchapter do not apply to oil in non-bulk packagings.

PART 174—CARRIAGE BY RAIL

16. The authority citation for part 174 is revised to read as follows:

Authority: 49 U.S.C. App. 1803, 1804, 1808; 33 U.S.C. 1321; 49 CFR 1.53(e), 1.53, app. A to part 1.

17. In § 174.25, paragraph (b)(1)(i), reference to "§ 172.10" is revised to read "§ 172.101", and paragraph (b)(6) is added to read as follows:

§ 174.25 Additional information on way bills, switching orders and other billings.

* * * * *

(b) * * *

(6) Except for shipments in non-bulk packagings and petroleum distillates specifically identified in the § 172.101 Table (e.g., gasoline, kerosene), if the fact that a hazardous material that meets the definition of oil is not communicated through the proper shipping name, the word "oil" must be

entered, in parentheses, in association with the basic description.

* * * * *

PART 176—CARRIAGE BY VESSEL

18. The authority citation for part 176 continues to read as follows:

Authority: 49 U.S.C. App. 1803, 1804, 1805, 1808; 49 CFR 1.53, app. A to part 1.

§ 176.70 [Amended]

19. In § 176.70 the words ", and shipments of oil in bulk packagings," are added to paragraph (a) following the words "Marine pollutants."

Issued in Washington, DC on January 19, 1993 under authority delegated in 49 CFR part 1.

Douglas B. Ham,

Acting Administrator, Research and Special Programs Administration.

[FR Doc. 93–1866 Filed 2–1–93; 8:45 am]

BILLING CODE 4910–60–P

federal register

Tuesday
February 2, 1993

Part IV

Department of the Interior

Bureau of Indian Affairs

Seneca Nation of Indians, New York; Use and Distribution of Liquor; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Seneca Nation of Indians, New York; Use and Distribution of Liquor

January 13, 1993.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This Notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. 1161. This notice certifies that Ordinance No. 89–01 enacting the "Seneca Nation of Indians Use and Distribution of Liquor Ordinance" was duly adopted by the Seneca Nation of Indians on January 21, 1989. The ordinance provides for the distribution of alcoholic beverages in the area of Indian country under the jurisdiction of the Seneca Nation of Indians.

DATES: This Ordinance is effective as of February 2, 1993.

FOR FURTHER INFORMATION CONTACT: Bettie Rushing, Chief, Branch of Judicial Services, Division of Tribal Government Services, 18th & C Streets, NW., MS 2611–MIB, Washington, DC 20240–4001; telephone (202) 208–4400.

SUPPLEMENTARY INFORMATION: The Seneca Nation hereby adopts Ordinance No. 89–01, regulating possession and prohibiting sale of intoxicating beverages on the Seneca Reservations. The Ordinance reads as follows:

Section 1. *Unlawful Sale and introduction of Intoxicating Beverages.* The sale, and introduction for purposes of sale of intoxicating beverages shall be unlawful within the Indian country subject to this Ordinance.

Section 2. *Unlawful possession of Intoxicating Beverages.* The possession and consumption of intoxicating beverages shall be unlawful on the public lands of the Seneca Reservation within the Indian country subject to this Ordinance, including public highways, bridges, Seneca Nation property, parking lots, driveways, and grounds surrounding Seneca Nation Buildings.

Section 3. *Possession by minors.* It shall be unlawful for any person under the age of twenty-one to possess or consume intoxicating beverages, or for any person to give intoxicating beverages to any person under the age of twenty-one, on Indian country subject to this Ordinance.

Section 4. *Maintaining premises where intoxicating beverages are consumed, possessed or served.* It shall be unlawful for any person to maintain premises where intoxicating beverages are: (1) Consumed, possessed, or served to any person under the age of twenty-one; (2) consumed, possessed or served in violation of this Ordinance.

Section 5. *Conformity with State laws and this Ordinance.* The possession of intoxicating beverages shall be lawful within the Indian county subject to this Ordinance, provided that such possession is not prohibited by this Ordinance and is in conformity with the laws of the State of New York.

Section 6. *Application of Ordinance to Reservation lands.* The Seneca Reservation land to which this Ordinance applies is the Indian country subject to the jurisdiction of the Nation, except for those Allegany Reservation lands which are within the City of Salamanca and are not included in the area set aside for Seneca Nation Housing Authority Project 40–9. For the purposes of this Ordinance, these lands shall be referred to as "the Indian country subject to this Ordinance."

Section 7. *Violations—Remedies.*

(a) The Nation may bring an action in the Peacemakers Courts against any person for violation of this Ordinance. The action shall be initiated by the filing of a written compliant with the court of the tribal prosecutor, sworn to by a person having personal knowledge of the charged violation, or by a Marshall or Seneca Nation Law Enforcement officer having personal knowledge of the charged violation. The complaint shall set forth the essential facts charging that a named individual has violated this Ordinance. Such action, including any appeal which is taken from the decision of the Peacemakers Court, shall be governed by the Seneca Nation Civil Procedure Rules.

(b) Any person found to have violated this Ordinance shall pay a fine of:

(1) No more than $5000 and no less than $0 for a Section 1 violation, plus court costs.

(2) No more than $5000 and no less than $0 for a Section 2 violation, plus court costs.

(3) No more than $5000 and no less than $0 for a Section 3 violation, plus court costs.

(4) No more than $5000 and no less than $0 for a Section 4 violation, plus court costs.

In addition to the penalty described for such a violation, all intoxicating beverages confiscated from any person found to have violated this Ordinance shall be destroyed.

(c) In lieu of imposing a fine pursuant to subsection (b) above, the Peacemakers Court may employ the procedure provided in section 4–102(a), (b) of the Seneca Nation of Indians Civil Procedure Code.

(d) Any person found to have violated this Ordinance who is charged with a second subsequent violation may be referred to any other jurisdiction which the Peacemakers Court determines has concurrent jurisdiction over the charge.

(e) In addition to other remedies, the Peacemakers Court may enjoin any person in violation of this Ordinance.

Section 8. *Enforcement.* The Marshals, the Seneca Nation Conservation Officers and officers of the Seneca Nation Law Enforcement Department are authorized to enforce this Ordinance within the Indian country subject to this Ordinance.

Section 9. *Unlawfully intoxicating beverages to be confiscated.* The Marshals, the Seneca Nation Conservation Officers and law enforcement officers shall confiscate and preserve as evidence all intoxicating beverages sold, introduced for purposes of sale, or possessed in violation of this Ordinance within the Indian country subject to this Ordinance.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 93–2362 Filed 2–1–93; 8:45 am]

BILLING CODE 4310–02–M

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Vol. 58, No. 20

Tuesday, February 2, 1993

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LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

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ELECTRONIC BULLETIN BOARD

Free Electronic Bulletin Board Service for Public Law Numbers is available on 202–275–1538 or 275–0920.

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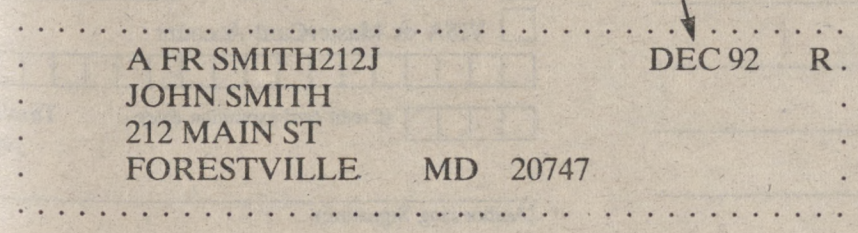

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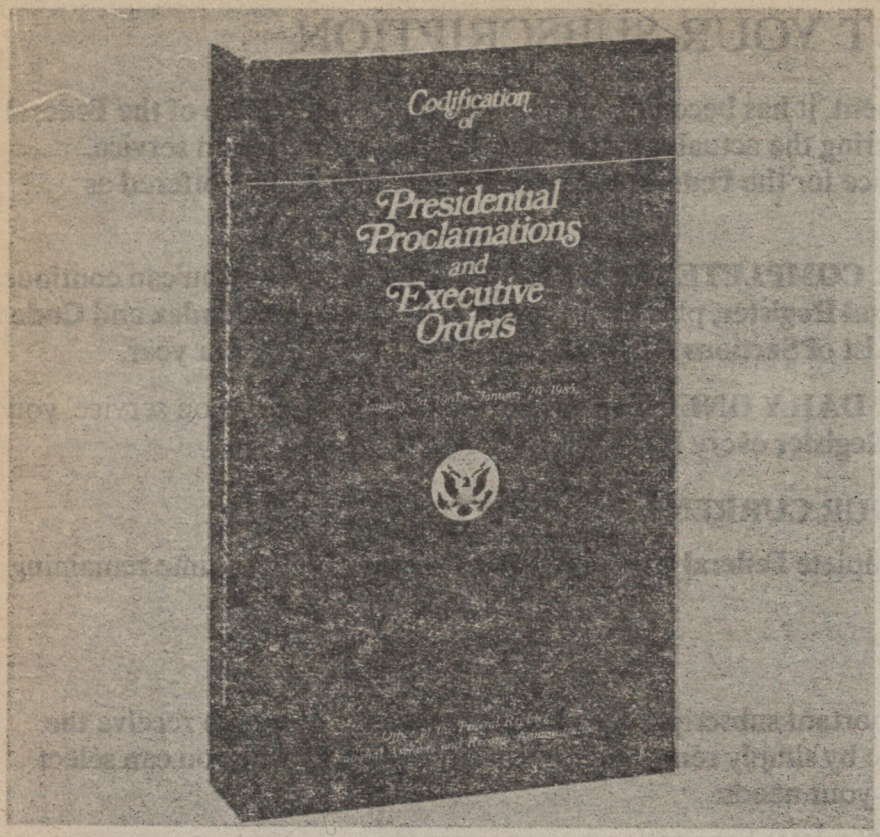

For those of you who must keep informed about **Presidential Proclamations and Executive Orders,** there is a convenient reference source that will make researching these documents much easier.

Arranged by subject matter, this edition of the *Codification* contains proclamations and Executive orders that were issued or amended during the period April 13, 1945, through January 20, 1989, and which have a continuing effect on the public. For those documents that have been affected by other proclamations or Executive orders, the codified text presents the amended version. Therefore, a reader can use the *Codification* to determine the latest text of a document without having to "reconstruct" it through extensive research.

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