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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

(two briefings)

WHEN: May 18 at 9:00 am and 1:30 pm
WHERE: Office of the Federal Register
Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)
RESERVATIONS: 202–523–4538

CHICAGO, IL

WHEN: June 9 at 9:00 am
WHERE: Ralph Metcalfe Federal Building
Conference Room 328
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 93–153–2]

Citrus Canker Regulations; Quarantined Areas and Survey Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the citrus canker regulations by removing the areas in Highlands and Manatee Counties, FL, from the list of quarantined areas and by removing the area in Hillsborough County, FL, from the list of survey areas. No evidence of citrus canker has been found in these areas for at least 2 years. This action is necessary to relieve regulatory restrictions which are no longer necessary.

EFFECTIVE DATE: May 16, 1994.

FOR FURTHER INFORMATION CONTACT: Mr Stephen Poe, Operations Officer, Domestic and Emergency Operations, Plant Protection and Quarantine, APHIS, USDA, room 661, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–6365.

SUPPLEMENTARY INFORMATION:

Background

Citrus canker is a plant disease caused by strains of the bacterium *Xanthomonas campestris* pv. citri. The disease is known to affect plants and plant parts, including fresh fruit, of citrus and citrus relatives (Family Rutaceae). It can cause defoliation and other serious damage to the leaves and twigs of susceptible plants. It may also make the fruit of infected plants unmarketable by causing lesions on the fruit. Infected fruit may also drop from trees before reaching maturity. The Asiatic strains of *Xanthomonas campestris* pv. *citri* (A strains) are aggressive strains.

In the United States, Florida is the only State where citrus canker has been present in recent years. Regulations to prevent the interstate spread of citrus canker from Florida are contained in 7 CFR 301.75–1 through 301.75–14, "Subpart—Citrus Canker" (referred to below as "the regulations").

The regulations designate certain areas in Florida as quarantined areas and impose restrictions on the interstate movement of regulated articles from and through quarantined areas. The regulations also designate survey areas, which surround the quarantined areas. Survey areas undergo close monitoring by Animal and Plant Health Inspection Service (APHIS) and State inspectors.

On March 17, 1993, we published in the **Federal Register** (58 FR 12553–12554, Docket No. 93–153–1) a proposal to amend the regulations by removing the areas in Highlands and Manatee Counties, FL, from the list of quarantined areas, and by removing the area in Hillsborough County FL, from the list of survey areas.

We solicited comments concerning our proposal for a 30-day comment period ending April 18, 1994. We received three comments, two from State agriculture departments and one from an organization of farmers.

All the commenters supported our proposal. However, one commenter pointed out that some States also impose restrictions on the movement of citrus plants into their States to prevent the introduction of diseases and pests other than citrus canker.

The commenter is correct. Some citrus-producing states restrict the movement of citrus plants into their States to prevent the introduction of citrus diseases or pests, other than citrus canker, into the State. For this reason, although we are removing the Federally-imposed citrus canker quarantines in Florida, anyone shipping citrus plants interstate should be aware that State-imposed restrictions may apply.

The facts presented in the proposed rule still provide the basis for this final rule.

Therefore, based on the rationale set forth in the proposed rule, we are adopting the provisions of the proposal as a final rule without change.

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register** This rule removes the areas in Highlands and Manatee Counties, FL, from the list of quarantined areas and removes the area in Hillsborough County, FL, from the list of survey areas. This will eliminate the requirement for regular inspection of groves in the former survey areas in which regulated fruit, trees, and plants are produced, thus reducing the burden on the operators of the groves and on APHIS and Florida State agencies, which provide inspectors to perform the inspections. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be made effective upon publication in the **Federal Register**.

This final rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

Under this final rule, all areas in Highlands and Manatee Counties are released from their classification as quarantined areas, and the area in Hillsborough County is released from its classification as a survey area. Citrus plants, plant parts, citrus fruit, and other regulated articles from formerly quarantined areas are allowed to be moved interstate to other areas in the United States, including commercial citrus-producing areas, and regulated articles are allowed to be moved interstate through quarantined areas. Requirements which apply to survey areas are also removed.

We have determined that 237 individuals and businesses will be economically affected by the changes. These individuals and businesses include: lawn care companies (82), grove owners (74 persons who own 2,177 acres), retail nursery outlets (21), fruit processors (15), fruit harvesting contractors (12), fruit shippers (12), fresh fruit packing houses (11), nurseries (9), and seed extractors (1). APHIS believes that virtually all of these individuals and businesses are small entities.

It should be noted that the costs of compliance were, in many cases, minimal, and that the individuals and

businesses affected by the regulations represent less than one percent of all similar individuals and businesses in Florida.

One of the largest groups of affected individuals and business is grove owners. We estimate that this rule change will save each affected grove owner approximately $25 per acre, per year, by removing requirements for cleaning and disinfecting vehicles, equipment, and personnel leaving their groves. These costs represent a small percentage of the owners' overall production costs.

In addition, this final rule will allow grove owners to expand the areas into which their fruit could be moved interstate, in that they will be allowed to move fruit interstate to commercial citrus-producing areas. We anticipate that any impact from this rule change will be negligible, as approximately 90 percent of all of Florida's citrus production is for the juice market, and only about 10 percent is for the fresh fruit market.

In addition to grove owners in the quarantined areas, truckers, packing and processing plants, and lawn services within the currently quarantined areas will no longer be subject to inspection and will no longer need to carry out activities now required by the regulations. This should result in financial savings to these entities. This also means that groves producing regulated fruit for interstate movement, regulated trees, and regulated plants in the current survey area will no longer be subject to regular inspections for citrus canker. This change will reduce the burden on APHIS and Florida State agencies, which currently provide inspectors to perform inspections.

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

Executive Order 12372

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

Executive Order 12778

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

Paperwork Reduction Act

This final rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

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

Accordingly 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

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

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

2. In § 301.75–4, paragraphs (a) and (d)(1) are revised to read as follows:

§ 301.75–4 Quarantined areas.

(a) The following States or portions of States are designated as quarantined areas: Citrus canker is not known to exist in the United States.

* * * * *

(d) * * *

(1) *Survey area.* In the following area, inspections are conducted as required by paragraphs (d)(1)(i), (d)(1)(ii), and (d)(1)(iii) of this section: Citrus canker is not known to exist in the United States.

* * * * *

Done in Washington, DC, this 10th day of May 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–11839 Filed 5–13–94; 2:42 pm]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–59–AD; Amendment 39–8912; AD 94–10–05]

Airworthiness Directives; Boeing Model 747 Series Airplanes Equipped With Pratt & Whitney JT9D–3 and –7 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes. This action requires inspections of the forward lower engine mount bolts for migration and damage, inspections of the bolt bushings for damage, torque checks of the nuts installed on these bolts, and correction of any discrepancies. This amendment is prompted by reports of migration of the bolts that attach the forward engine mount universal block to the engine lugs. The actions specified in this AD are intended to prevent migration of the bolts out of the engine lug joint, which could result in loss of the engine from the strut.

DATES: Effective May 31, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 31, 1994.

Comments for inclusion in the Rules Docket must be received on or before July 15, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–59–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

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 FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the **Federal Register**, 800 North Capitol Street NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: Five operators of Boeing Model 747 series airplanes, equipped with Pratt & Whitney JT9D–3 and –7 series engines, have reported cases of migration of the bolts that attach the forward engine mount universal block to the engine lugs. Investigation of the most recent case, which occurred in February 1994, revealed that an engine mount bolt's self-locking nut was missing and the bolt had partially migrated out of the forward engine mount universal block to engine lug joint. The bolt migrated approximately one inch inboard, so that the bolt retainer device sheared and the

bolt head came in contact with the thrust reverser air supply duct; this caused the duct to be chafed, dented, and cracked. The reason for the missing self-locking nut has not been determined.

A similar incident was reported in 1982. During troubleshooting of the fan thrust reverser, one operator found an engine mount bolt that had migrated due to the loss of the self-locking nut. Like the most recent case, the reason for the missing self-locking nut was not determined. Prior to this incident, two other operators had reported migration of this same bolt after the loss of the nut and washer.

If the bolt were to completely migrate out of the joint, the engine could separate from the strut. Separation of an engine from the strut could result in reduced controllability of the airplane.

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–71A2269, dated April 14, 1994, that describes procedures for repetitive inspections of the forward lower engine mount bolt for migration and replacement of the nuts if bolt migration exists. It also describes procedures for inspecting the bolts and bolt bushings for damage, replacing damaged bolts and bushings, installing new nuts and modified washers for these bolts, and torque-checking the nut.

The FAA also has reviewed and approved Boeing Service Bulletin 747–71–2192, dated March 2, 1984, that contains procedures for installing steel retention brackets. Installation of these brackets will improve secondary retention of the two bolts that engage the universal block at the lower forward engine mount.

Since an unsafe condition has been identified that is likely to exist or develop on other Boeing Model 747 series airplanes of the same type design, this AD is being issued to prevent complete migration of the forward lower engine mount bolt out of the joint, which could result in the separation of the engine from the strut. This AD requires repetitive visual inspections of the bolt for migration and replacement of the nuts if bolt migration exists; inspection of the bolts and bolt bushings for damage, and replacement of damaged bolts and bushings; and a torque check of the nut. These actions are required to be accomplished in accordance with Boeing Alert Service Bulletin 747–71A2269, described previously.

Operators who have previously installed steel retention brackets, in accordance with Boeing Service Bulletin 747–71–2192, as well as nuts having part number NAS1805 and certain modified washers, are permitted to conduct the repetitive inspections for bolt migration at longer intervals than operators without these items installed on the airplane.

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.

The FAA is considering further rulemaking action to revise this rule to require the installation of steel retention brackets, nuts having part number NAS1805, and modified washers on all engine mount bolts. However, the proposed compliance time for these actions is sufficiently long so that notice and time for prior public comment would not be impracticable.

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 94–NM–59–AD." The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

94–10–05 Boeing: Amendment 39–8912. Docket 94–NM–59–AD.

Applicability: Model 747 series airplanes; equipped with Pratt & Whitney JT9D–3 and –7 series engines (does not apply to –70 series engines); certificated in any category

Compliance: Required as indicated, unless accomplished previously.

To prevent complete migration of the forward lower engine mount bolt out of the joint, which could result in the separation of

the engine from the strut, accomplish the following:

(a) For all applicable airplanes: Within 60 days after the effective date of this AD, visually inspect the forward lower engine mount for migration of the forward lower engine mount bolts, both transverse and forward-aft, in accordance with Boeing Alert Service Bulletin 747–71A2269, dated April 14, 1994 (hereafter referred to as "the service bulletin"). The maximum gap for the transverse bolt and the forward-aft bolt in the joint is 0.06 inch; a bolt is considered to have migrated if the gap exceeds this value. Prior to further flight, accomplish the requirements of either paragraph (b) or (c) of this AD, as applicable.

(b) For airplanes not equipped with a steel retention bracket installed in accordance with Boeing Service Bulletin 747–71–2192 or its production equivalent, accomplish the following:

(1) If the inspection required by paragraph (a) of this AD indicates that the bolt has not migrated, accomplish paragraphs (b)(1)(i) and (b)(1)(ii) of this AD:

(i) Prior to further flight, perform a torque check of the nut in accordance with the service bulletin. If the torque is outside of the range specified in the service bulletin, prior to further flight, replace the nut with a new nut having part number NAS1805 and associated washer.

(ii) Repeat the inspection for migration of bolts with nuts having part number BACN10JC at intervals not to exceed 2,100 flight hours. Repeat the inspection for migration of bolts with nuts having part number NAS1805 at intervals not to exceed 3,200 flight hours.

(2) If the inspection required by paragraph (a) of this AD indicates that the bolt has migrated, accomplish paragraph (b)(2)(i) of this AD, and either paragraph (b)(2)(ii) or paragraph (b)(2)(iii), as applicable:

(i) Prior to further flight, remove the nut and replace it with a new nut having part number NAS1805 and associated washer, in accordance with the service bulletin. Thereafter, repeat the inspection for migration of these bolts at intervals not to exceed 3,200 flight hours.

(ii) Except as provided by paragraph (b)(2)(iii) of this AD: Prior to further flight, remove the bolt and visually inspect it for damage, in accordance with Part V of the service bulletin; and visually inspect the bolt bushings for damage, in accordance with Part III of the service bulletin. If the bolt is damaged, prior to further flight, replace the bolt with a new bolt having the same part number. If the bushings are damaged, prior to further flight, replace the bushings.

(iii) The inspections of the bolt and bolt bushings required by paragraph (b)(2)(ii) of this AD may be deferred for a maximum of 3,200 flight hours, provided that all of the following apply:

(A) The bolt is visually inspected for thread damage as described in Part IV of the service bulletin and no damage is found; and

(B) The nut threads are still fully engaged with the bolt; and

(C) The migrated bolt has not contacted adjacent structure or systems; and

(D) The bolt is repositioned back to clamp-up position, as described in Part IV of the service bulletin.

(c) For airplanes equipped with a steel retention bracket installed in accordance with Boeing Service Bulletin 747–71–2192 or its production equivalent, accomplish the following:

(1) If the inspection required by paragraph (a) of this AD indicates that the bolt has not migrated, accomplish paragraphs (c)(1)(i) and (c)(1)(ii) of this AD:

(i) Prior to further flight, ensure that the washer on the nut side does not rotate freely. If the washer rotates freely, prior to further flight, replace the nut with a new nut having part number NAS1805 and associated washer.

(ii) Repeat the inspection for migration of bolts with nuts having part number BACN10JC at intervals not to exceed 3,200 flight hours. Repeat the inspection for migration of bolts with nuts having part number NAS1805 at intervals not to exceed 6,000 flight hours.

(2) If the inspection required by paragraph (a) of this AD indicates that the bolt has migrated, accomplish paragraph (c)(2)(i) of this AD, and either paragraph (c)(2)(ii) or paragraph (c)(2)(iii), as applicable:

(i) Prior to further flight, remove the nut and replace it with a new nut having part number NAS1805 and associated washer, in accordance with the service bulletin. Thereafter, repeat the inspection for migration of these bolts at intervals not to exceed 6,000 flight hours.

(ii) Except as provided by paragraph (c)(2)(iii) of this AD: Prior to further flight, remove the bolt and visually inspect it for damage, in accordance with Part V of the service bulletin; and visually inspect the bolt bushings for damage, in accordance with Part III of the service bulletin. If the bolt is damaged, prior to further flight, replace the bolt with a new bolt having the same part number. If the bushings are damaged, prior to further flight, replace the bushings.

(iii) The inspections of the bolt and bolt bushings required by paragraph (c)(2)(ii) of this AD may be deferred for a maximum of 3,200 flight hours, provided that all of the following apply:

(A) The bolt is visually inspected for thread damage, as described in Part IV of the service bulletin, and no damage is found; and

(B) The nut threads are still fully engaged with the bolt; and

(C) The migrated bolt has not contacted adjacent struture or systems; and

(D) The bolt is repositioned back to clamp-up position, as described in Part IV of the service bulletin.

(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). 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 sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The actions shall be done in accordance with Boeing Alert Service Bulletin 747–71A2269, dated April 14, 1994. 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.

(g) This amendment becomes effective on May 31, 1994.

Issued in Renton, Washington, on May 6, 1994.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–11522 Filed 5–13–94; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 93–NM–98–AD; Amendment 39–8872; AD 94–08–01]

Airworthiness Directives; British Aerospace Model ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace Model ATP airplanes, that requires revising the Airplane Flight Manual (AFM) to prohibit flight in certain freezing precipitation conditions. This AD also provides an optional terminating action for the AFM revision. This amendment is prompted by reports of engine power rollback (loss of engine power) that occurred in environmental conditions involving freezing precipitation. The actions specified by this AD are intended to prevent loss of multiple engine power during flight in freezing precipitation.

DATES: Effective June 15, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 15, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. 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: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to all British Aerospace Model ATP airplanes was published in the **Federal Register** on September 3, 1993 (58 FR 46916). That action proposed to require revising the Airplane Flight Manual (AFM) to prohibit flight in certain freezing precipitation conditions.

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, but suggests that the action should have been issued to require immediate compliance to reduce the traveling public's exposure to the potential risk of loss of multiple engine power during flight in freezing precipitation and possible unplanned landings. The commenter also requests that, since the AD was issued as a proposal, the time required for publication of the final rule in the **Federal Register** be kept to a minimum so as not to induce an additional administrative delay that would only delay compliance.

The FAA does not concur with the commenter's suggestion that the final rule be issued to require immediate compliance. At the time of issuance of the proposal, the FAA could not justify that an immediate safety of flight problem existed, especially in light of the fact that the single operator of the entire U.S. fleet of Model ATP airplanes already had added an operating restriction similar to that required by this AD to its FAA-approved operation specifications and had agreed to operate in accordance with that restriction until further corrective action could be identified and incorporated. Moreover, the operating limitation was proposed by the FAA since, at that time, the airplane manufacturer, the Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, and the FAA were uncertain as to the cause of the engine power rollback problem described in the preamble to the proposal. However, considerable information was available at that time to indicate that the problem was due to ice ingestion into the engines during certain meteorological conditions. That data, however, had not yet been confirmed through testing conducted by the manufacturer and the CAA. Consequently, the FAA determined that a requirement to prohibit flight in certain freezing precipitation conditions would provide an acceptable level of safety until terminating action could be identified and developed.

In developing this AD action, the FAA considered all of these items, and determined that, since the continued operational safety of the U.S. fleet could be assured during the interim, it was not impracticable to provide notice and the opportunity for public comment on the proposed rule.

Two commenters, the CAA and Jetstream, request that the proposed rule be revised to require establishing a life limit on the engine igniter plugs, installing a bypass duct outlet eductor, and incorporating other changes to the airplane flight manual (AFM), in lieu of the proposed AFM revision. The commenters contend that, if such interim measures are taken, an acceptable level of safety would be assured pending longer term corrective action. The commenters explain that service information has been issued that describes procedures for those actions, as follows:

1. Jetstream Service Bulletin ATP–80–06, Revision 1, dated October 22, 1993, which describes procedures for placing a life limit on the engine igniter plugs and replacing those parts at staggered periods in order to improve ignition reliability.

2. Jetstream Service Bulletin ATP–54–12–35274A, Revision 1, dated December 15, 1993, which describes procedures for installation of an eductor plate over the exhaust port of the engine air intake system. Accomplishment of this installation will increase the air flow rate down the exhaust port.

3. Temporary Revision No. T/33, Issue 1, dated November 1, 1993, which revises AFM Document No. ATP 004. This temporary revision describes revisions to the Limitations and Normal Procedures sections of the FAA-approved AFM to introduce procedures for operation in icing conditions. The changes include a ground inspection of the engine inlet prior to flight, staggered selection of the left- and right-hand engine de-ice systems to ensure that the likelihood of simultaneous engine rundown on final approach is minimized, and a small increase in the final approach speed to ensure safe landing.

Jetstream also suggests two other alternatives that would provide an adequate level of safety, wherein the proposed AFM limitation could be removed:

1. Modification of the engine inlets, in addition to accomplishment of the interim measures discussed previously (a life limit on the engine igniter plugs, installation of a bypass duct outlet eductor, and certain changes to the AFM). Jetstream indicates that these modified engine inlets demonstrate a significant improvement in de-icing effectiveness in the range of temperatures and airplane speeds in which power rollbacks have been experienced.

Jetstream service bulletins that relate to the engine inlet modification are described as follows: Jetstream Service Bulletin ATP–54–13–35274B, dated October 9, 1993, describes procedures for installing engine air inlet ducts that incorporate electrical de-ice heaters with increased power and area. The service bulletin also describes procedures for performing associated electrical system changes. The installation involves installing engine air inlet ducts that incorporate an enlarged heater mat with revised electrical power densities adjacent to the engine intake flange. Jetstream Service Bulletin ATP–54–14, dated October 14, 1993, describes procedures for repetitive visual inspections of the heater mats for damage, and replacement of the engine air intake, if necessary.

2. Accomplishment of special operating procedures, not specifically defined by the commenter. Jetstream considers that requiring such operating procedures is a proven and acceptable means of providing an adequate level of safety, as generally demonstrated by the operation of aircraft throughout their flight spectra, in accordance with AFM's.

Jetstream submits one final suggestion in the event the FAA proceeds with requiring the proposed operating limitation. In this case, the commenter suggests that the actions described in Jetstream Service Bulletins ATP–54–13–35274B and ATP–54–14, in addition to the interim measures discussed previously (a life limit on the engine igniter plugs, installation of a bypass duct outlet eductor, and certain changes to the AFM), be accomplished as an alternative method of compliance for the proposed operating limitation.

The FAA concurs partially. The interim measures proposed by the CAA and Jetstream were based, to a large extent, on the flight crew performing special operating procedures to ensure a safe landing after one or both engines had run down due to ice ingestion. However, the FAA considers that requiring the flight crew to perform such special operating procedures over a long term period may not provide the degree of safety assurance necessary for these airplanes. The FAA has determined that requiring the proposed operating limitation to prohibit flight into certain meteorological conditions known to cause engine rundown will provide an acceptable level of safety until additional hardware modifications can be identified and installed on these airplanes.

However, the FAA concurs with Jetstream's suggestion that the accomplishment of the interim measures and modification of the engine inlets may be accomplished as optional terminating action for the operating limitation. Since the issuance of the proposed rule, Jetstream has issued Temporary Revision No. T/38, Issue 1, dated February 16, 1994, which revises certain pages of Temporary Revision No. T/33 (discussed previously). Temporary Revision No. T/38 amends the Normal Procedures section of the AFM as related to operation of engine continuous ignition during flight in icing conditions. The FAA finds that this new information must be included in the AFM for Model ATP airplanes in order to assure continued reliability and to prevent unnecessary wear on engine ignition systems.

Accordingly, the final rule has been revised to include a new paragraph (b), which includes the following optional terminating action:

1. Revising the Limitations section and the Normal and Abnormal Procedures sections of the FAA-approved AFM, to include the information specified in Temporary Revision No. T/33, Issue 1, dated November 1, 1993, and Temporary Revision No. T/38, Issue 1, dated February 16, 1994, to introduce procedures for operation in icing conditions.

2. Revising the FAA-approved maintenance program to place a life limit on the engine igniter plugs and to replace those parts at specified intervals in accordance with Jetstream Service Bulletin ATP–80–06, Revision 1, dated October 22, 1993.

3. Installing an eductor plate over the exhaust port of the engine air intake system in accordance with Jetstream Service Bulletin ATP–54–12–35274A, Revision 1, dated December 15, 1993.

4. Installing engine air inlet ducts that incorporate electrical de-ice heaters with increased power and area, and performing associated electrical system changes, in accordance with Jetstream Service Bulletin ATP–54–13–35274B, dated October 9, 1993.

5. Revising the FAA-approved maintenance program to include repetitive visual inspections of the heater mats for damage; and, if any damage is found, replacement of the engine air intake; in accordance with Jetstream Service Bulletin ATP–54–14, dated October 14, 1993.

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

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 9 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required AFM revision, and that the average labor rate is $55 per work hour. The cost for required parts is expected to be negligible. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $495, or $55 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

Should an operator elect to accomplish the optional terminating action that is provided by this AD action, the number of work hours required to accomplish it is approximately 159 per airplane, at an average labor rate of $55 per work hour. Required modification parts would be supplied by Jetstream at no cost to operators. Based on these figures, the total cost impact of the AD for accomplishment of the optional terminating action is $8,745 per airplane.

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

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

94–08–01 British Aerospace (Commercial Aircraft), Limited: Amendment 39–8872. Docket 93–NM–98–AD.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of multiple engine power during flight in freezing precipitation, accomplish the following:

(a) Within 30 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM.

"Flight is prohibited into forecast or reported freezing precipitation conditions where the outside air temperature is between +5 °C and −5 °C."

(b) Accomplishment of the actions specified in paragraphs (b)(1), (b)(2), (b)(3), (b)(4), and (b)(5) constitutes terminating action for the AFM revision required by paragraph (a) of this AD.

(1) Revise the Limitations section and the Normal Procedures section of the FAA-approved AFM, to include the information specified in Temporary Revision No. T/33, Issue 1, dated November 1, 1993, and Temporary Revision No. T/38, Issue 1, dated February 16, 1994, which introduce procedures for operation in icing conditions, as specified in the temporary revision; and operate the airplane in accordance with those limitations and procedures.

Note 1: This may be accomplished by inserting copies of Temporary Revision No. T/33 and No. T/38 in the AFM. When these temporary revisions have been incorporated into general revisions of the AFM, the general revisions may be inserted in the AFM, provided the information contained in the general revisions is identical to that specified in Temporary Revision No. T/33 and No. T/38.

(2) Incorporate a revision into the FAA-approved maintenance program that provides for replacement of engine igniter plugs at the intervals specified in Jetstream Service Bulletin ATP–80–06, Revision 1, dated October 22, 1993. Initial replacement of an engine igniter plug with a new plug shall be accomplished prior to the accumulation of 200 total hours time-in-service on the engine igniter plug, or within 50 hours time-in-service after incorporating the maintenance program revision, whichever occurs later.

(3) Install an eductor plate over the exhaust port of the engine air intake system in accordance with Jetstream Service Bulletin ATP–54–12–35274A, dated September 28, 1993, or Revision 1, dated December 15, 1993. Any eductor plate installed in accordance with the original issue of the service bulletin must be inspected for any aperture profile mismatch, in accordance with paragraph 2., Part B., of the Accomplishment Instructions of Revision 1 of the service bulletin. If any mismatch is found that exceeds the limit specified in that service bulletin, prior to further flight, the discrepancy must be corrected in accordance with paragraph 2., Part C, of Revision 1 of the service bulletin.

(4) Install engine air inlet ducts that incorporate electrical de-ice heaters with increased power and area, and perform associated electrical system changes, in accordance with Jetstream Service Bulletin ATP–54–13–35274B, dated October 9, 1993.

(5) Revise the FAA-approved maintenance program to include repetitive visual inspections of the heater mats for damage at intervals not to exceed 50 hours time-in-service, in accordance with Jetstream Service Bulletin ATP–54–14, dated October 14, 1993; and, if any damage is found, prior to further flight, replace the engine air intake, in accordance with the service bulletin.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, 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 2: 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 Federal Aviation Regulations (FAR) 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The actions shall be done in accordance with the following documents, as applicable, which contain the specified effective pages:

Service bulletin referenced and date	Page No.	Revision level shown on page	Date shown on page
Temporary Revision No. T/33; Issue 1, November 1, 1993	1–5	1	November 1, 1993.
Temporary Revision No. T/38; Issue 1, February 16, 1994	1–2, 7–8	1	February 16, 1994.
	3–4	(These pages are removed).	
	5–6	Original	March 5, 1993.
ATP 80–06; Revision 1, October 22, 1993	1–3	1	October 22, 1993.
ATP–54–13–35274B, October 9, 1993	1–44	Original	October 9, 1993.
ATP–54–14, October 14, 1993	1–5	Original	October 14, 1993.
ATP–54–12–35274A, September 28, 1993	1–3, 5, 7	Original	September 28, 1993.
	4, 6	(These pages are not used)	
ATP–54–12–35274A; Revision 1, December 15, 1993	1–5, 7, 9	1	December 15, 1993.
	6, 8	(These pages are not used)	

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 Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. 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 June 15, 1994.

Issued in Renton, Washington, on March 31, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–8177 Filed 5–13–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 93–NM–200–AD; Amendment 39–8911; AD 94–10–04]

Airworthiness Directives; Jetstream Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Jetstream Model 4101 airplanes, that requires a visual inspection of an area beneath the flooring for foreign objects and debris, removal of any foreign object or debris found, and installation of a protective guard on the rear cabin attendant seat. This amendment also requires a revision to the FAA-approved maintenance program to include repetitive visual inspections of the area above the protective guard for foreign objects and debris, and removal of any foreign object or debris found. This amendment is prompted by reports that foreign objects and debris have been found in the area around the elevator and rudder trim cables below the floor. The actions specified by this AD are intended to prevent foreign objects and debris from lodging in the control circuits and jamming the elevator and rudder trim systems.

DATES: Effective June 15, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 15, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Jetstream Aircraft, Inc., P.O. Box

16029, Dulles International Airport, Washington, DC 20041–6029. 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: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Jetstream Model 4101 airplanes was published in the **Federal Register** on January 25, 1994 (59 FR 3636). That action proposed to require a visual inspection of an area beneath the flooring for foreign objects and debris, removal of any foreign object or debris found, and installation of a protective guard on the rear cabin attendant seat. That action also proposed to require a revision to the FAA-approved maintenance program to include repetitive visual inspections of the area above the protective guard for foreign objects and debris, and removal of any foreign object or debris found.

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

Both commenters support the proposed rule.

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

The FAA estimates that 7 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will be supplied by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $770, or $110 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

94–10–04 Jetstream Aircraft Limited: Amendment 39–8911. Docket 93–NM–200–AD.

Applicability: Model 4101 airplanes; constructors numbers 41004 through 41023 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent jamming of the elevator and rudder trim systems, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish paragraphs (a)(1) and (a)(2) of this AD in accordance with Jetstream Alert Service Bulletin J41–A25–034, Revision 1, dated October 30, 1993.

(1) Perform a visual inspection of the underfloor area for foreign objects and debris in accordance with the alert service bulletin. Prior to further flight, remove any foreign object or debris found during the inspection.

(2) Install a protective guard on the rear cabin attendant seat in accordance with the alert service bulletin.

(b) Within 30 days after the effective date of this AD, revise the FAA-approved maintenance program to require repetitive visual inspections of the area above the protective guard for foreign objects and debris, and removal of any foreign object or debris found, in accordance with the times and procedures specified in paragraph 2.C.(7) of Jetstream Alert Service Bulletin J41–A25–034, Revision 1, dated October 30, 1993, as applicable.

(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 sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspection, removal, and installation shall be done in accordance with Jetstream Alert Service Bulletin J41–A25–034, Revision 1, dated October 30, 1993, which contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1, 3, 7	1	October 30, 1993.
2, 4–6, 8–11.	Original .	October 7, 1993.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. 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 June 15, 1994.

Issued in Renton, Washington, on May 5, 1994.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–11357 Filed 5–13–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 93–ANE–53; Amendment 39–8909; AD 94–10–02]

Airworthiness Directives; Pratt & Whitney Canada Model PT6A–67D Turboprop Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing priority letter airworthiness directive (AD), applicable to Pratt & Whitney Canada (PWC) PT6A–67D turboprop engines, that currently requires inspections of the compressor turbine (CT) disk and blades for cracking and other irregularities using visual inspections and fluorescent penetrant inspections (FPI). That AD also requires amending the Beech Model 1900D Airplane Flight Manual (AFM) and installing a placard that alerts the pilot of this requirement. This amendment continues all the requirements of the current priority letter AD and requires the installation of parts having an improved design including a CT stator assembly, a CT shroud housing, CT turbine blades, feather seals, and a small exit duct assembly. This amendment is prompted by the manufacturer developing new design improvements that will reduce the susceptibility of the CT blades to high cycle fatigue (HCF) damage. The actions specified by this AD are intended to prevent engine failure and inflight engine shutdown due to HCF failure of the CT blades.

DATES: Effective June 15, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 15, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Pratt & Whitney Canada, 1000 Marie-Victorin, Longueil, Quebec, Canada J4G 1A1. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA 01803–5299; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mark A. Rumizen, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7137, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding priority letter airworthiness directive (AD) 92–27–19, which is applicable to Pratt & Whitney Canada (PWC) PT6A–67D turboprop engines, was published in the **Federal Register** on November 26, 1993 (58 FR 62296). That action proposed to retain the inspections and Airplane Flight Manual (AFM) revisions required by the current AD, but would also require installation at the next shop visit after the effective date of this AD, or December 31, 1994, whichever occurs first, of the improved compressor turbine (CT) turbine stator assembly, CT shroud housing, small exit duct assembly, CT blades, and feather seals. Installation of this hardware constitutes terminating action to the inspections required by this AD. PWC has advised the FAA that December 31, 1994, is the earliest compliance end-date possible due to parts availability. The actions are required to be accomplished in accordance with PWC Service Bulletin (SB) No. 14128, Revision 3, dated April 19, 1993; PWC SB No. 14132, Revision 1, dated May 12, 1993; and PWC SB 14142, Revision 1, dated May 12, 1993 Transport Canada, which is the airworthiness authority of Canada, classified these service bulletins as mandatory and issued AD CF–92–25–R1, dated June 1, 1993, in order to assure the airworthiness of these PWC PT6A–67D engines in Canada.

This engine model is manufactured in Canada 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, Transport Canada has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada, 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.

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

The commenter concurs with the rule as proposed.

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

There are approximately 100 engines of the affected design in the worldwide fleet. The FAA estimates that 87 engines installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 40 work hours per engine to install the improved hardware, and that the average labor rate is $55 per work hour. PWC advises the FAA that it will reimburse operators for the cost of labor and the cost of required parts. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be negligible.

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

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

94–10–02 Pratt & Whitney Canada: Amendment 39–8909 Docket 93–ANE–53.

Applicability: Pratt & Whitney Canada (PWC) Model PT6A–67D turboprop engines with serial numbers prior to PC-E114100, installed on but not limited to Beech Model 1900D airplanes.

Compliance: Required as indicated, unless accomplished previously.

To prevent engine failure and inflight engine shutdown due to high cycle fatigue (HCF) failure of the compressor turbine (CT) blades, accomplish the following:

(a) Prior to further flight, amend the Beech Model 1900D Aircraft Flight Manual (AFM), Part Number (P/N) 129–590000–3, by inserting the following requirements between pages 2–4 and 2–5:

ENGINE OPERATING LIMITATIONS

Gas Generator RPM (N1)—Continuous operation of the gas generator between 94.0% and 97 1% is prohibited.

Notes

1. This limitation does not prohibit the use of N1's between 94.0% and 97.1% when the pilot in command determines that the power setting is required for the safe operation of the airplane. If such occurrences exceed 5 minutes, the engine(s) must be inspected in accordance with Pratt & Whitney Canada Service Bulletin No. 14128, Revision 3, dated April 19, 1993.

2. This limitation does not prohibit the use of static Take-Off Power and Maximum Continuous Power between 94.0% and 97.1% N1 to meet the required Take-Off performance. If such occurrences exceed 5 minutes, the engine(s) must be inspected in accordance with Pratt & Whitney Canada Service Bulletin No. 14128, Revision 3, dated April 19, 1993.

3. Operation at 94.0% and below, and at 97.1% and above are permitted. Continuous operation at 94.1% through 97.0% is prohibited.

4. "Continuous Operation" means time periods exceeding 5 minutes.

5. High Speed Cruise Power Tables found in the Pilot's Operating Manual may produce N1's in the prohibited range. Flights should be planned using Intermediate or Long Range Power settings.

6. The goal of the operator should be to keep the total time of operation in the prohibited range to the absolute minimum, since the effects of operating between N1's of 94.0% and 97.1% are cumulative.

PLACARDS

Located in front of the pilot on the aft edge of the glareshield between the Master Caution annunciator and the fire extinguisher control switch:

CONTINUOUS OPERATION BETWEEN 94.0% AND 97 1% N1 IS PROHIBITED—SEE AFM"

(b) Compliance with the requirements of paragraph (a) of this AD may also be accomplished by inserting a copy of this AD into the Beech Model 1900D AFM.

(c) Prior to further flight, install the placard as specified in paragraph (a) of this AD.

(d) For engines that have not been inspected prior to the effective date of this AD in accordance with PWC SB No. 14128, Revision 1, dated November 13, 1992, or debladed and inspected in accordance with PWC SB No. 14128, Revision 2, dated December 22, 1992, or PWC SB No. 14128, Revision 3, dated April 19, 1993, accomplish the following:

(1) For engines with Serial Numbers PC-E114001 to PC-E114044, within 25 hours time in service (TIS) after the effective date of this AD, deblade the CT disk, inspect the entire disk surface area and fir tree area of the CT blades for cracking and the trailing edge of the blade airfoil section for irregularities, and replace, if necessary, with serviceable parts, in accordance with the Accomplishment Instructions of PWC SB No. 14128, Revision 3, dated April 19, 1993.

(2) For engines with Serial Numbers PC-E114045 to PC-E114099, within 50 hours TIS after the effective date of this AD, deblade the CT disk, inspect the entire disk surface area and fir tree area of the CT blades for cracking, and replace, if necessary, with serviceable parts, in accordance with the Accomplishment Instructions of PWC SB No. 14128, Revision 3, dated April 19, 1993.

(e) For engines that have been inspected in accordance with PWC SB No. 14128, Revision 1, dated November 13, 1992, prior to the effective date of this AD, deblade the CT disk, inspect the entire disk surface area and fir tree area of the CT blades for cracking, and replace, if necessary, with serviceable parts, in accordance with the Accomplishment Instructions of PWC SB No. 14128, Revision 3, dated April 19, 1993, as follows:

(1) For blade sets with greater than 600 hours TIS since new on the effective date of this AD, deblade, inspect, and replace, if necessary, within the next 50 hours TIS.

(2) For blade sets with greater than or equal to 250 hours TIS, and less than or equal to 600 hours TIS, since new, on the effective date of this AD, deblade, inspect, and replace, if necessary, within the next 100 hours TIS.

(3) For blade sets with less than 250 hours TIS since new on the effective date of this AD, deblade, inspect, and replace, if necessary, within the next 250 hours TIS.

(f) For uninstalled CT disk and blade assemblies that have not been inspected in accordance with the Accomplishment Instructions of PWC SB No. 14128, Revision 2, dated December 22, 1992, or PWC SB No. 14128, Revision 3, dated April 19, 1993, in the preceding 250 hours TIS from the effective date of this AD, deblade the CT disk, inspect the entire disk surface area and fir tree area of CT blades for cracking, and replace, if necessary, with serviceable parts, in accordance with the Accomplishment Instructions of PWC SB No. 14128, Revision 3, dated April 19, 1993, prior to installation.

(g) For engines with CT disk and blade assemblies that have been debladed and inspected in accordance with the Accomplishment Instructions of PWC SB No. 14128, Revision 2, dated December 22, 1992, or PWC SB No. 14128, Revision 3, dated April 19, 1993, prior to the effective date of this AD, within 250 hours TIS since the last deblading and inspection, deblade the CT disk, inspect the entire disk surface area and fir tree area of CT blades for cracking, and replace, if necessary, with serviceable parts, in accordance with the Accomplishment Instructions of PWC SB No. 14128, Revision 3, dated April 19, 1993.

(h) For CT disk and blade assemblies that have been debladed and inspected in accordance with paragraphs (d), (e), (f), and (g) of this AD, deblade the CT disk, reinspect the entire disk surface area and fir tree area of CT blades for cracking, and replace, if necessary, with serviceable parts, in accordance with the Accomplishment Instructions of PWC SB No. 14128, Revision 3, dated April 19, 1993, at intervals not to exceed 250 hours TIS since the last deblading and inspection performed in accordance with the Accomplishment Instructions of PWC SB No. 14128, Revision 3, dated April 19, 1993

(i) Install a CT stator assembly, a CT shroud housing, and a small exit duct assembly in accordance with PWC SB No. 14132, Revision 1, dated May 12, 1993, at the next shop visit after the effective date of this AD, or December 31, 1994, whichever occurs first.

(j) Install CT blades and feather seals in accordance with PWC SB No. 14142, Revision 1, dated May 12, 1993, at the next shop visit after the effective date of this AD, or December 31, 1994, whichever occurs first.

(k) For the purpose of this AD, a shop visit is defined as when major engine flanges are separated.

(l) Installation of improved hardware in accordance with paragraphs (i) and (j) of this AD constitutes terminating action for the inspections required by paragraphs (d) through (h) of this AD.

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

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

(n) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the aircraft to a location where the requirements of this AD can be accomplished.

(o) The inspections and modifications shall be done in accordance with the following service bulletins:

Document No.	Pages	Revision	Date
PWC SB No. 14128; Total pages: 5	1–5	3	April 19, 1993.
PWC SB No. 14132; Total pages: 6	1–6	1	May 12, 1993.
PWC SB No. 14142; Total pages: 7	1–7	1	May 12, 1993.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt & Whitney Canada, 1000 Marie-Victorin, Longueil, Quebec, Canada J4G 1A1. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(p) This amendment supersedes priority letter AD 92–27–19, issued December 28, 1992.

(q) This amendment becomes effective on June 15, 1994.

Issued in Burlington, Massachusetts, on April 29, 1994.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 94–10913 Filed 5–13–94; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 71

[Airspace Docket No. 94–ACE–03]

Modification of Class D Airspace; Philip Billard Municipal Airport, Topeka, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the airspace designation of the Philip Billard Municipal Airport, Topeka, Kansas, Class D airspace published in a final rule on Tuesday, March 8, 1994 (59 FR 10742), Airspace Docket Number 94–ACE–03.

EFFECTIVE DATE: 0901 UTC, June 23, 1994.

FOR FURTHER INFORMATION CONTACT: Dale L. Carnine, Airspace Specialist, Air Traffic Division, System Management Branch, ACE–530b, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 94–5267, Airspace Docket 94–ACE–03, published on March 8, 1994, (59 FR 10742), modified the description of Philip Billard Municipal Airport, Topeka, Kansas, Class D airspace. An error was discovered in the geographical coordinates used to describe the airspace. This action corrects that error. This change does not affect the size of the Class D airspace.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the airspace designation for the Philip Billard Municipal Airport, Topeka, Kansas, Class D airspace, as published in the **Federal Register** on March 8, 1994 (59 FR 10742), **Federal Register** Document 94–5267, page 10743, column 1), is corrected in the amendment to the incorporation by reference in 14 CFR part 71 as follows:

PART 71—[CORRECTED]

Paragraph 5000 General

ACE KS D Topeka, Philip Billard Airport, KS [Corrected]

By changing the geographical coordinates from "(lat. 39°04′08″ N, long. 97°37′21″ W)" to "(lat. 39°04′08″ N, long. 95°37′21″ W)".

Issued in Kansas City, Missouri, on April 28, 1994.

Clarence E. Newbern,

Manager, Air Traffic Division, Central Region.

[FR Doc. 94–11719 Filed 5–13–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 94–ACE–04]

Modification of Class D Airspace; Forbes Field, Topeka, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects an error in the airspace designation of Forbes Field, Topeka, Kansas, Class D airspace published in a final rule on Tuesday, March 8, 1994 (59 FR 10741), Airspace Docket Number 94–ACE–04.

EFFECTIVE DATE: 0901 UTC, June 23, 1994.

FOR FURTHER INFORMATION CONTACT: Dale L. Carnine, Airspace Specialist, Air Traffic Division, System Management Branch, ACE–530b, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 94–5266, Airspace Docket 94–ACE–04, published on March 8, 1994 (59 FR 10741), modified the description of the Forbes Field, Topeka, Kansas, Class D airspace. An error was discovered in the geographical coordinates used to describe the airspace. This action corrects that error. This change does not affect the size of the Class D airspace.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the airspace designation for the Forbes Field, Topeka, Kansas, Class D airspace, as published in the **Federal Register** on March 8, 1994 (59 FR 10741), (Federal Register Document 94–5266, page 10742, column 2), is corrected in the amendment to the incorporation by reference in 14 CFR part 71 as follows:

PART 71—[CORRECTED]

Paragraph 5000 General [Corrected]

ACE KS D Topeka, Forbes Field, KS [Corrected]

By changing the geographical coordinates from "(lat. 38°57′01″ N, long. 97°39′51″ W)" to "(lat. 38°57′01″ N, long. 95°39′51″ W)"

Clarence E. Newbern,

Manager, Air Traffic Division, Central Region.

[FR Doc. 94–11724 Filed 5–13–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 94–AAL–06]

Modification of Class D Airspace and Class E Airspace

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action modifies the Class D airspace area at Bryant Army Heliport (AHP), AK, by amending the areas' effective hours to coincide with the associated control tower's hours of operation. This action also modifies Class E airspace at Gulkana Airport, AK, by amending the areas' effective hours to coincide with the associated flight service station's hours of operation. The intended effect of this action is to clarify

when two-way radio communication with the Bryant air traffic control tower (ATCT) is required and to clarify when Class E airspace exists for instrument approach procedures at Gulkana Airport.

DATES: *Effective date:* 0901 u.t.c. June 23, 1994.

Comment date: Comments must be received on or before June 23, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, AAL–530, Docket No. 94–AAL–06, Federal Aviation Administration, 222 West 7th Ave. Box 14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, System Management Branch, Air Traffic Division, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Robert C. Durand, System Management Branch, AAL–531, Federal Aviation Administration, 222 West 7th Avenue #14, Anchorage, AK 99513–7587; telephone number: (907) 271–5898.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is a final rule, and was not preceded by notice and public procedure, comments are invited on the rule. This rule will become effective on the date specified in the "DATES" section. However, after the review of any comments, and if the FAA finds that further changes are appropriate, it will initiate rulemaking proceedings to extend the effective date of the rule or to amend the regulation.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule, and in determining whether additional rulemaking is required. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the rule which might suggest the need to modify the rule.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies the Class D airspace area at Bryant AHP, AK, by amending the areas' effective hours to coincide with the associated control tower's hours of operation. This action also amends Class E airspace effective hours at Gulkana, AK, to coincide with the associated flight service station's hours of operation. Prior to Airspace Reclassification, an airport traffic area (ATA) and a control zone (CZ) existed at Bryant AHP and a control zone (CZ) existed at Gulkana. However, Airspace Reclassification, effective September 16, 1993, discontinued the use of the term "airport traffic area" and "control zone," replacing them with the designation of "Class D airspace." The former CZ was continuous, while the former ATA was contingent upon the operation of the air traffic control tower. The consolidation of the ATA and CZ into a single Class D airspace designation at Bryant AHP makes it necessary to modify the effective hours of the Class D airspace to coincide with the control tower's hours of operation. The intended effect of this action is to clarify when two-way radio communication with the air traffic control tower Bryant AHP, AK, is required and to provide adequate Class E airspace for instrument approach procedures at Gulkana, AK.

The coordinates for this airspace docket are based on North American Datum 83. Class D and E airspace designations are published in Paragraphs 5000 and 6002, respectively, of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class D and E airspace designations listed in this document will be published subsequently in the Order. Under the circumstances presented, the FAA concludes that there is an immediate need to modify this Class D and Class E airspace area in order to promote the safe and efficient handling of air traffic in these areas. Therefore, I find that notice and public procedures under 5 U.S.C. 553(b) are impracticable and contrary to the public interest.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

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

Paragraph 5000—General

* * * * *

AAL AK D Anchorage, Bryant AHP, AK [Revised]

Anchorage, Bryant AHP, AK
(lat. 61°15'45" N, long. 149°39'17" W)

That airspace extending upward from the surface to and including 1,500 feet MSL within a line beginning at lat. 61°17'13" N, long. 149°37'35" W; thence west along lat. 61°17'13" N to the long. 149°43'08" W line; thence south along long. 149°43'08" W line to the Glenn Highway; thence north and east along the Glenn Highway to its intersection with a line one-half mile east of and parallel to Bryant AHP Runway 16/34 extended centerline; thence northeast along a line one-half mile east of and parallel to Bryant AHP Runway 26/34 extended centerline to the point of beginning. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

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

* * * * *

AAL AK E2 Gulkana, AK [Revised]

Gulkana, AK
(lat. 62°09'17" N, long. 145°27'16" W)
Gulkana VORTAC
(lat. 62°09'08" N, long. 145°27'01" W)
Glennallen NDB
(lat. 62°11'43" N, long. 145°28'05" W)

Within a 3.9-mile radius of the Gulkana Airport and within 2.8 miles of each side of the Glennallen NDB 351° bearing extending from the 3.9-mile radius of the Gulkana Airport to 9.4 miles north of the Gulkana Airport and within 2.4 miles each side of the Gulkana VORTAC 180° radial extending from the 3.9-mile radius of the Gulkana Airport to

7.1 miles south of the Gulkana Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Anchorage, AK, on May 2, 1994.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 94–11849 Filed 5–13–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–ANE–23]

Modification of Class D Airspace and Establishment of Class E Airspace; Lebanon, NH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action modifies the Class D airspace area at Lebanon, NH by amending the effective hours of that area to coincide with the hours of operation of the associated air traffic control tower (ATCT). This action also establishes Class E airspace at Lebanon, NH when the associated ATCT is closed. The intended effect of this action is to clarify when two-way radio communication with the Lebanon, NH ATCT is required and to provide adequate Class E airspace for aircraft conducting instrument approach procedures when that ATCT is closed.

DATES: *Effective date:* 0901 UTC, June 23, 1994.

Comment date: Comments must be received on or before June 16, 1994.

ADDRESSES: Send comments on the rule in triplicate to: Manager, System Management Branch, ANE–530, Air Traffic Division, New England Region, Docket No. 94–ANE–23, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299.

The docket may be examined in the Office of the Assistant Chief Counsel, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299, weekdays, except Federal holidays, between the hours at 8 a.m and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Karl D. Anderson, Management System Specialist, System Management Branch, ANE–530, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone, (617) 238–7530; facsimile, (617) 238–7599.

SUPPLEMENTARY INFORMATION:

Comments Invited

Although this action is a final rule, and was not preceded by notice and public procedure, comments are invited on the rule. The rule will become effective on the date specified in the "DATES" section. However, after review of the comments and if the FAA finds that further changes are appropriate, it will initiate rulemaking proceedings to extend the effective date of the rule or amend the regulation.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule, and in determining whether additional rulemaking is required. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the rule which might suggest the need to modify the rule.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies the Class D airspace area at Lebanon, NH by amending the effective hours of that area to coincide with the hours of operation of the associated air traffic control tower (ATCT). This action also establishes Class E airspace at Lebanon, NH when the associated ATCT is closed. Prior to Airspace Reclassification, an airport traffic area (ATA) and a control zone (CZ) existed at this airport. However, Airspace Reclassification, effective September 16, 1993, discontinued the use of the terms "airport traffic area" and "control zone," replacing them with the designation "Class D airspace." The former CZ was effective on a continuous basis, while the former ATA was contingent upon the hours of operation of the ATCT. The consolidation of the ATA and CZ into a single Class D airspace designation made it necessary to modify the effective hours of the Class D airspace to coincide with the hours of operation of the ATCT. This action also establishes that necessary Class E airspace in the vicinity of Lebanon, NH during the hours the ATCT is closed. The intended effect of this action is to clarify when two-way radio communication with the Lebanon ATCT is required and to provide adequate Class E airspace for aircraft conducting instrument approach procedures to that airport when the ATCT is closed.

The coordinates for this airspace docket are based on North American Datum 83. Class D and E airspace designations are published in Paragraphs 5000 and 6002, respectively, of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class D and E airspace designations listed in this document will be published subsequently in the Order. Under the circumstances presented, the FAA concludes that there is an immediate need to modify the Lebanon Class D airspace and establish Class E airspace in the vicinity of Lebanon, NH in order to promote the safe and efficient handling of air traffic in these areas. Therefore, I find that notice and an opportunity for prior public comment under 5 U.S.C. 553(b) are impracticable and contrary to the public interest.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and

effective September 16, 1993, is amended as follows:

Paragraph 5000—General

* * * * *

ANE NH D Lebanon, NH [Revised]

Lebanon Municipal Airport, NH
(lat. 43°37'35" N, long. 72°18'15" W)
BURGR OM
(lat. 43°43'57" N, long. 72°20'00" W)
Hanover NDB
(lat. 43°42'08" N, long. 72°10'39" W)

That airspace extending upward from the surface to and including 3,100 feet MSL within a 6.7-mile radius of Lebanon Municipal Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

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

* * * * *

ANE NH E2 Lebanon, NH [New]

Lebanon Municipal Airport, NH

(lat. 43°37'35" N, long. 72°18'15" W)

Within a 6.7-mile radius of Lebanon Municipal Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Burlington, Massachusetts on May 9, 1994.

John J. Boyce,

Acting Manager, Air Traffic Division, New England Region.

[FR Doc. 94–11848 Filed 5–13–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–ANE–24]

Modification of Class D Airspace and Establishment of Class E Airspace; Springfield/Chicopee, MA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action modifies the Class D airspace area at Springfield/Chicopee, MA by amending the effective hours of that area to coincide with the hours of operation of the associated air traffic control tower (ATCT). This action also establishes Class E airspace at Springfield/Chicopee, MA when the associated ATCT is closed. The intended effect of this action is to clarify when two-way radio communication with the Springfieldd/Chicopee, MA ATCT is required and to provide adequate Class E airspace for aircraft conducting instrument approach procedures when that ATCT is closed.

DATES: *Effective date:* 0901 U.T.C., June 23, 1994.

Comment date: Comments must be received on or before June 16, 1994.

ADDRESSES: Send comments on the rule in triplicate to: Manager, System Management Branch, ANE–530, Air Traffic Division, New England Region, Docket No. 94–ANE–24, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299.

The docket may be examined in the Office of the Assistant Chief Counsel, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299, weekdays, except Federal holidays, between the hours of 8 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Karl D. Anderson, Management System Specialist, System Management Branch, ANE–530, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone, (617) 238–7530; facsimile, (617) 238–7599.

SUPPLEMENTARY INFORMATION:

Comments Invited

Although this action is a final rule, and was not preceded by notice and public procedure, comments are invited on the rule. This rule will become effective on the date specified in the "**DATES**" section. However, after review of the comments and if the FAA finds that further changes are appropriate, it will initiate rulemaking proceedings to extend the effective date of the rule or amend the regulation.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule, and in determining whether additional rulemaking is required. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the rule which might suggest the need to modify the rule.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies the Class D airspace area at Springfield/Chicopee, MA by amending the effective hours of that area to coincide with the hours of operation to the associated air traffic control tower (ATCT). This action also establishes Class E airspace at Springfield/Chicopee, MA when the associated ATCT is closed. Prior to Airspace Reclassification, an airport traffic area (ATA) and a control zone (CZ) existed at this airport. However, Airspace Reclassification, effective September 16, 1993, discontinued the use of the terms "airport traffic area" and "control zone," replacing them with the designation "Class D airspace." The former CZ was effective on a continuous basis, while the former ATA was contingent upon the hours of operation of the ATCT. The consolidation of the ATA and CZ into a single Class D airspace designation made it necessary to modify the effective hours of the Class D airspace to coincide with the hours of operation of the ATCT. Class E airspace in the vicinity of Springfield/Chicopee, MA is necessary for aircraft executing instrument approaches to that airport during times when ATCT is not in operation. The intended effect of this action is to clarify when two-way radio communication with the Springfield/Chicopee ATCT is required and to provide adequate Class E airspace for aircraft executing instrument approach procedures to that airport when the ATCT is closed.

The coordinates for this airspace docket are based on North American Datum 83. Class D and E airspace designations are published in Paragraphs 5000 and 6002, respectively, of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class D and E airspace designations listed in this document will be published subsequently in the Order. Under the circumstances presented, the FAA concludes that there is an immediate need to modify the Springfield/Chicopee Class D airspace and establish Class E airspace in the vicinity of Springfield/Chicopee, MA in order to promote the safe and efficient handling of air traffic in these areas. Therefore, I find that notice and an opportunity for prior public comment under 5 U.S.C. 553(b) are impracticable and contrary to the public interest.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

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

Paragraph 5000—General

* * * * *

ANE MA D Springfield/Chicopee, MA [Revised]
Springfield/Chicopee, Westover AFB, MA
(lat. 42°11'52" N, long. 72°31'48" W)

That airspace extending upward from the surface to and including 2,700 feet MSL within a 4.9-mile radius of Westover AFB. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

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

* * * * *

ANE MA E2 Springfield/Chicopee, MA [New]
Springfield/Chicopee, Westover AFB, MA
(lat. 42°11'52" N, long. 72°31'48" W)

That airspace extending upward from the surface to and including 2,700 feet MSL within a 4.9-mile radius of Westover AFB. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Burlington, Massachusetts on May 9, 1994.

John J. Boyce,

Acting Manager, Air Traffic Division, New England Region.

[FR Doc. 94–11850 Filed 5–13–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 94–ANE–25]

Establishment of Class E Airspace; New Haven, CT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action establishes a Class E airspace area at New Haven, CT. At present this area is designated as Class D airspace during the time when the New Haven air traffic control tower (ATCT) is in operation. A need for controlled airspace at New Haven continues, however, after the ATCT closes. The intended effect of this action is to provide adequate Class E airspace for aircraft conducting instrument flight rules (IFR) operations when the ATCT is closed.

DATES: *Effective date:* 0901 UTC, June 23, 1994.

Comment date: Comments must be received on or before June 16, 1994.

ADDRESSES: Send comments on the rule in triplicate to: Manager, System Management Branch, ANE–530, Air Traffic Division, New England Region, Docket No. 94–ANE–25, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299.

The docket may be examined in the Office of the Assistant Chief Counsel, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299, weekdays, except Federal holidays, between the hours of 8 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Karl D. Anderson, System Management Specialist, System Management Branch, ANE–530, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone, (617) 238–7530; facsimile, (617) 238–7599.

SUPPLEMENTARY INFORMATION:

Comments Invited

Although this action is a final rule, and was not preceded by notice and public procedure, comments are invited on the rule. This rule will become effective on the date specified in the **DATES** section. However, after review of the comments and if the FAA finds that further changes are appropriate, it will initiate rulemaking proceedings to extend the effective date of the rule or amend the regulation.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule, and in determining whether additional rulemaking is required. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the rule which might suggest the need to modify the rule.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes a Class E airspace area at New Haven, CT. At present, this area is designated as Class D airspace during the time when the New Haven air traffic control tower (ATCT) is in operation. A need for controlled airspace at New Haven continues, however, after the ATCT closes to provide adequate controlled airspace for aircraft operating under instrument flight rules (IFR) when the ATCT is closed. As noted in the Airspace Reclassification Final Rule, published in the **Federal Register** on December 17, 1991, airspace at an airport with a part-time ATCT should be designated as Class D airspace when the ATCT is in operation, and as Class E airspace at other times. The intended effect of this action is to provide adequate Class E airspace for aircraft conducting IFR operations when the ATCT is closed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designated as surface areas for airports are published in Paragraph 6002 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document will be published subsequently in the Order. Under the circumstances presented, the FAA concludes that there is an immediate need to establish Class E airspace in the vicinity of New Haven, CT, in order to promote the safe and efficient handling of air traffic in these areas. Therefore, I find that notice and an opportunity for prior public comment under 5 U.S.C. 553(b) are impracticable and contrary to the public interest.

The FAA has determined that this regulation only involves an established body of technical regulations for which

frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

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

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

* * * * *

ANE CT E2 New Haven, CT [New]

New Haven, Tweed-New Haven Airport, CT
(lat. 41°15'49" N, long. 72°53'12" W)

Within a 5-mile radius of the Tweed-New Haven Airport. This Class E airspace is effective during the specific dates and times established in advance by a Notice to Airmen (NOTAM). The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Burlington, Massachusetts on May 9, 1994.

John J. Boyce,

Acting Manager, Air Traffic Division, New England Region.

[FR Doc. 94–11851 Filed 5–13–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 94–ASO–7]

Revocation of Class E airspace; Thomaston, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes the Class E airspace that extends upward from 700 feet above ground level (AGL) at Thomaston, GA. The Reginald Grant Non Directional Beacon (NDB) was decommissioned on February 11, 1994. The standard instrument approach procedure (SIAP) based on the NDB will be cancelled. Controlled airspace extending upward from 700 feet above the surface will no longer be needed to contain Instrument Flight Rules (IFR) operations at Thomaston, GA. The operating status of the airport will change from IFR operations to VFR operations concurrent with decommissioning of the NDB.

EFFECTIVE DATE: 0901 UTC, May 16, 1994.

FOR FURTHER INFORMATION CONTACT: Robert L. Shipp, Jr., Airspace Section, System Management Branch, Air Traffic Division, ASO–532, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320; Telephone (404) 305–5591.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to part 71 of the Federal Aviation Regulation revokes the 700 foot Class E airspace area at Thomaston, GA. The Thomaston City Government advised the Federal Aviation Administration (FAA) of its decision to decommission the Reginald Grant NDB effective February 11, 1994. The FAA will cancel the Standard Instrument Approach based on the Reginald Grant NDB. Controlled airspace extending upward from 700 feet above the surface will no longer be needed to contain IFR operations at Thomaston, GA. In addition, the operating status of the Reginald Grant Airport is changed from IFR operations to VFR operations concurrent with the decommissioning of the Reginald Grant NDB.

Since this action merely involves the revocation of Class E airspace area, as a result of the removal of a navigation aid by the Thomaston City Government, notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Additionally, since there will no longer be a SIAP at Thomaston, Georgia, Reginald Grant Airport, the Class E airspace area must be removed to avoid confusion on the part of the pilots flying in the vicinity of the Reginald Grant Airport and to promote safe and efficient handling of air traffic in the area. Therefore, I find that good cause exists, pursuant to 5 U.S.C. 553(d), for making this amendment effective in less than thirty days.

Designations for Class E airspace extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993 and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1, effective September 16, 1993. The Class E airspace designation listed in this document will be removed subsequently from the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 17 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

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

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

* * * * *

ASO GA E5 Thomaston, GA [Removed]

* * * * *

Issued in East Point, Georgia, on May 2, 1994.

Walter E. Denley,

Acting Manager, Air Traffic Division Southern Region.

[FR Doc. 94–11716 Filed 5–13–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 770, 771, 772, 773, 774, 775, 776, 778, 779, 785, 787, and 799

[Docket No. 940530–4130]

RIN 0694–AA83

Export Administration Regulations: Changes in Categories 3, 4, and 5 of the Commerce Control List; Revisions to Country Groups and Policies; Implementation of Import Certificate/ Delivery Verification (IC/DV) Procedures for Bulgaria and Romania; Adjustments to General License GLX

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration (BXA) is amending the Export Administration Regulations (EAR) by revising certain entries in Categories 3, 4, and 5 of the Commerce Control List (CCL) to conform with changes made to the International Industrial List (IL) before the dissolution of the Coordinating Committee for Multilateral Export Controls (COCOM) on March 31, 1994. The COCOM changes require certain conforming revisions to General License GLX. A policy decision on foreign availability of telecommunications is announced.

This rule also revises the countries that are included in Country Groups V, W, and Y and amends the special country policies provisions in the EAR to reflect the changes in licensing policy for the countries that have been moved from one country group to another.

This rule amends the documentation requirements provisions of the EAR to substitute the Form BXA–629P (Statement by Ultimate Consignee and Purchaser) for the Yugoslav End-Use Certificate requirement. Finally, this rule amends the documentation requirements provisions in the EAR to implement Import Certificate/Delivery Verification (IC/DV) procedures for Bulgaria and Romania.

DATES: *Effective date*: This rule is effective May 9, 1994.

Grace period: A 60-day grace period will apply to the requirement to obtain a Bulgarian or Romanian Import Certificate in support of export or reexport license applications. During the grace period, applications will be accepted when supported by either a Form BXA–629P (Statement by Ultimate Consignee and Purchaser) or a Bulgarian or Romanian Import Certificate.

FOR FURTHER INFORMATION CONTACT: For questions of a technical nature, the following persons in the Office of Technology and Policy Analysis are available:

Category 1: Jeff Tripp—(202) 482–1309
Category 2: Surendra Dhir—(202) 482–5695
Category 3: Robert Lerner—(202) 482–1641
Category 4: Joseph Young—(202) 482–0706
Category 5: Dale Jensen—(202) 482–0730
Category 6: Joseph Chuchla—(202) 482–1641
Categories 7 and 9: Bruce Webb—(202) 482–3806
Category 8: Steve Clagett—(202) 482–3550

For information on Import Certificate/ Delivery Verification (IC/DV) Procedures for Bulgaria and Romania and changes in Country Groups and country policies, contact Rodney Joseph, Office of Technology and Policy Analysis, Telephone: (202) 482–0171.

SUPPLEMENTARY INFORMATION:

Background

This final rule revises new General License GLX (59 FR 15621) to resolve certain ambiguities and to reflect changes in national security controls. For instance, Supplement No. 1 to part 771 is revised to delete 4A03.c and 4A03.b because the paragraph references are now incorrect and new Administrative Exception Notes make listing on the Supplement unnecessary.

This rule amends a number of ECCNs in the Commerce Control List (CCL) to conform with recent changes in the COCOM International Industrial List (IL). ECCN 3A01.a.3 is revised to control "microprocessor microcircuits", "microcomputer microcircuits", and microcontroller microcircuits that:

(1) Have an arithmetic logic unit with an access width of 32 bit or more and a "composite theoretical performance" ("CTP") of 80 million theoretical operations per second (Mtops) or more; (2) are manufactured from a compound semiconductor and operate at a clock frequency exceeding 40 MHz; or (3) have more than one data or instruction bus or serial communication port for external interconnection in a parallel processor with a transfer rate exceeding 2.5 Mbyte/s. ECCN 3A01.e.1 is revised to indicate that it does not control batteries with volumes equal to or less than 27 cm^3 (e.g., standard C-cells or R–14 batteries).

This rule also revises ECCN 3C03A to control organo-arsenic, organo-antimony, and organo-phosphorus compounds having a purity (inorganic element basis) better than 99.999%. In addition, a Note is added to 3C03A indicating that the entry controls only those compounds whose metallic, partly metallic or non-metallic element is directly linked to carbon in the organic part of the molecule.

This rule removes specific control language in ECCN 4A03A applicable to: (1) Disk drives and solid state storage equipment and input/output control units designed for use with such equipment and (2) color displays and monitors.

ECCN 4A03A retains specific control parameters for "assemblies" and graphics accelerators or graphics coprocessors. ECCN 4A03A controls: (1) "assemblies" that are specially designed or modified to be capable of enhancing performance by aggregation of "computing elements" ("CEs") so that the "CTP" of the aggregation exceeds 260 Mtops and (2) graphics accelerators or graphics coprocessors exceeding a "3–D Vector Rate" of 1,600,000.

The following changes are made in the Notes for Category 4: (1) Advisory Notes 1 and 2 are revised to conform with the new paragraph designations in ECCN 4A03A (there are no changes in the administrative exceptions levels); (2) Advisory Note 3 is revised by establishing new administrative exceptions treatment levels for exports to Country Groups Q, W, and Y and the People's Republic of China for "digital computers" (a "CTP" not exceeding 1,000 Mtops), graphics accelerators or graphics coprocessors (a "3–D vector rate" not exceeding 3 million) and equipment specially designed to provide for the external interconnection of "digital computers" or associated equipment (a total data transfer rate not exceeding 400 MByte/second); (3) Advisory Note 4 is removed and reserved because 4A03A no longer contains control parameters that apply specifically to disk drives and input/ output control units therefor; (4) Advisory Note 6 is revised by establishing new favorable consideration levels for Country Groups

Q, W, and Y and the People's Republic of China for "digital" computers (a "CTP" not exceeding 1,500 Mtops) and for graphics accelerators or graphics coprocessors and equipment specially designed to provide for the external interconnection of "digital" computers; (5) Advisory Note 7 is revised to conform with the new paragraph designations in ECCN 4A03A (there are no changes in the favorable consideration levels), and (8) a new Advisory Note 8 is added to provide administrative exceptions treatment for equipment controlled by 4A03.g that is exported for use in interconnecting peripheral equipment to "digital computers" *not* controlled by 4A03.b.

In the telecommunications section of Category 5, ECCN 5A02A is revised to control modems using the "bandwidth of one voice channel" with a "data signalling rate" exceeding 28,800 bit/s. Previously, ECCN 5A02A controlled modems exceeding 19,200 bit/s. On January 13, 1994, BXA published a determination that foreign availability exists within the meaning of the Export Administration Act (EAA) for certain telecommunications equipment controlled under ECCN 5A02.a to Country Groups Q, W, Y, Z, and the People's Republic of China (59 FR 1924). The determination applies to telecommunications transmission equipment employing digital techniques, including digital processing of analog signals, and designed to operate at digital transfer rates up to 623 Mbit/s.

The determination notice specified that the Administration would enter into negotiations to preserve national security interests concerning this equipment. The Administration intends to negotiate to remove foreign availability of this high technology equipment to military end-users in Country Groups Q, W, Y, and the People's Republic of China.

It has been determined that the validated license requirement is retained on telecommunications equipment controlled by ECCN 5A02.a to military end-users and for military end-uses in Country Groups Q, W, Y and the People's Republic of China, consistent with EAA section 5(c)(6), to allow meaningful negotiations to take place. Section 5(c)(6) permits the Secretary of Commerce to maintain controls, notwithstanding foreign availability, for an initial period of six months. For purposes of this control, military end-users and end-uses include conventional military activities and all proliferation activities described in Part 778 of this subchapter.

This action does not affect the control status of this equipment to other end-users or destinations. General License GLX continues to be available for shipments of equipment controlled by ECCN 5A02, except 5A02.h and .i, to civilian end-users and for civilian end-uses in Country Groups QWY and the PRC. In addition, all of ECCN 5A02 remains eligible for General License GFW to Country Groups T & V, except Iran, Syria, and the PRC. Foreign policy controls are retained on all items controlled by ECCN 5A02 to Country Groups S and Z, Iran and Syria, and the South African military and police. Exporters are also reminded that the Department of the Treasury's Office of Foreign Assets Control maintains prohibitions on exports to Iraq, Haiti, and the Federal Republic of Yugoslavia (Serbia and Montenegro).

In the Notes for Telecommunications in Category 5, Advisory Notes 1, 8, 11, 12, 13, 14, 15, 16, 17, and 19 are revised, and new Advisory Notes 23 through 27 are added. Advisory Note 8 is revised to provide administrative exceptions treatment to the People's Republic of China for test, inspection, and production equipment controlled by 5B01A or 5B02A and "software" and technology for such equipment. Advisory Notes 11, 12, and 13 are revised to restrict their application to Albania, Bulgaria, the People's Republic of China, Mongolia, Romania, and Vietnam. Advisory Notes 14 and 17 are revised to clarify which parties are responsible for the supervision of controlled spare parts.

Advisory Note 15 is revised to restrict its application to Bulgaria and Romania. Advisory Note 16 is revised to restrict its application to Albania, Bulgaria, Mongolia, Romania, and Vietnam. Advisory Note 19 is revised by removing references to the Czech Republic and the Slovak Republic. Notes 25 and 27 are added.

This rule revises the country policy provisions in § 785.2 to conform with changes in licensing policies for proscribed countries. This rule also moves Poland, the Czech Republic and the Slovak Republic from Country Group W to Country Group V. As a result of this change, Poland and the Czech and Slovak Republics are now eligible for exports under certain special license procedures (e.g., the Distribution License Procedure) and general licenses (e.g., General License GFW).

This rule also amends the EAR to include new supporting document requirements based on the implementation of Import Certificate/Delivery Verification (IC/DV) procedures for Bulgaria and Romania. Bulgarian and Romanian ICs and DVs are issued by the respective Ministries of Trade in each country. Supplement No. 1 to Part 775 is amended to add the addresses of these issuing agencies.

This rule also amends Supplement No. 1 to Part 775 by revising the name of the agency that issues Indian Import Certificates to small scale industries and entities.

On January 2, 1992 (57 FR 8), the Bureau of Export Administration (BXA) published a final rule clarifying that the geographical area formerly known as the Soviet Union remained a controlled destination as listed in Country Group Y. That rule allowed exporters to use the designation "Union of Soviet Socialist Republics", "Soviet Union", or "USSR" on export control documents involving that geographic area until new political entities were identified. This final rule revises Supplement No. 1 to part 770, Supplement No. 5 to part 778, and § 785.2(a)(1) to include a listing of the states located in the geographic area of the former Soviet Union. These new designations should be used on all export control documents.

The dissolution of the former Socialist Federal Republic of Yugoslavia (Yugoslavia) has raised questions among exporters concerning the export control requirements for that geographic area. The geographic area formerly known as Yugoslavia continues to fall within Country Group V. At this time, the provisions of the EAR that apply to this area remain unchanged, except that this rule revises the documentation requirements to substitute a Form BXA–629P, Statement by Ultimate Consignee and Purchaser, for the Yugoslav End-Use Certificate requirement. In addition, this rule eliminates the Yugoslav End-Use Certificate requirement for exports/reexports under the Distribution License and the Service Supply Procedure.

The Consignee/Purchaser Statement procedure set forth in § 775.2 provides a broader range of exemptions than was previously available under § 775.5 for the Yugoslav End-Use Certificate.

Finally, this rule revises § 776.10(a)(2) to make the special documentation requirements for exports to Country Groups QWY and the People's Republic of China of electronic computers and related equipment conform with the revisions made by this rule in the Advisory Notes for Category 4.

Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of Executive Order 12866.

2. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501

et seq.). These collections have been approved by the Office of Management and Budget under control numbers 0694–0002, 0694–0005, 0694–0007, 0694–0008, 0694–0010, 0694–0013, 0694–0015, 0694–0017, 0694–0021, 0694–0073, and 0694–0078.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in the effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Sharron Cook, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects

15 CFR Part 770

Administrative practice and procedure, Exports.

15 CFR Parts 771, 772, 773, 774, 775, 776, and 799

Exports, Reporting and recordkeeping requirements.

15 CFR Part 778

Exports, Nuclear energy, Reporting and recordkeeping requirements.

15 CFR Part 779

Computer technology, Export, Reporting and recordkeeping requirements, Science and technology.

15 CFR Part 785

Exports.

15 CFR Part 787

Boycotts, Exports, Law enforcement, Penalties, Reporting and recordkeeping requirements.

Accordingly, parts 770, 771, 772, 773, 774, 775, 776, 778, 779, 785, 787, and 799 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

1. The authority citation for 15 CFR parts 770, 771, 772, 774, 787, and 799 is revised to read as follows:

Authority: Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; sec. 101, Pub. L. 93–153, 87 Stat. 576 (30 U.S.C. 185), as amended; sec. 103, Pub. L. 94–163, 89 Stat. 877 (42 U.S.C. 6212), as amended; secs. 201 and 201(11)(e), Pub. L. 94–258, 90 Stat. 309 (10 U.S.C. 7420 and 7430(e)), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); sec. 208, Pub. L. 95–372, 92 Stat. 668 (43 U.S.C. 1354); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended (extended by Pub. L. 103–10, 107 Stat. 40); sec. 125, Pub. L. 99–64, 99 Stat. 156 (46 U.S.C. 466c); E.O. 11912 of April 13, 1976 (41 FR 15825, April 15, 1976); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 12, 1993 (58 FR 60361, November 15, 1993); E.O. 12867 of September 30, 1993 (58 FR 51747, October 4, 1993); and E.O. 12868 of September 30, 1993 (58 FR 51749, October 4, 1993).

2. The authority citation for 15 CFR parts 773, 775, 778, 779, and 785 is revised to read as follows:

Authority: Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended (extended by Pub. L. 103–10, 107 Stat. 40); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 12, 1993 (58 FR 60361, November 15, 1993); E.O. 12867 of September 30, 1993 (58 FR 51747, October 4, 1993); and E.O. 12868 of September 30, 1993 (58 FR 51749, October 4, 1993).

3. The authority citation for 15 CFR part 776 continues to read as follows:

Authority: Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended (extended by Pub. L. 103–10, 107 Stat. 40); sec. 125, Pub. L. 99–64, 99 Stat. 156 (46 U.S.C. 466c); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 12, 1993 (58 FR 60361, November 15, 1993); E.O. 12867 of September 30, 1993 (58 FR 51747, October 4, 1993); and E.O. 12868 of September 30, 1993 (58 FR 51749, October 4, 1993).

PART 770—[AMENDED]

4. Supplement No. 1 to part 770 is amended:

a. By removing and reserving the entry for "Country Group W";

b. By revising the entry for "Country Group Y"; and

c. By adding a NOTE at the end of the Supplement to read as follows:

Supplement No. 1—Country Groups

* * * * *

Country Group W [Reserved]

Country Group Y

Albania
Armenia
Azerbaijan
Belarus
Bulgaria
Cambodia
Estonia
Georgia
Kazakhstan
Kyrgyzstan
Laos
Latvia
Lithuania
Moldova
Mongolia
Russia
Tajikistan
Turkmenistan
Ukraine
Uzbekistan
Vietnam

* * * * *

Note: Contact the Office of Foreign Assets Control (OFAC), U.S. Department of the Treasury, (202) 266–2500, before exporting to Libya, Iraq, Haiti, or the Federal Republic of Yugoslavia (Serbia and Montenegro).

PART 771—[AMENDED]

5. Section 771.20 is amended by revising the second sentence of paragraph (b) to read as follows:

§ 771.20 General License GLX: Exports to Country Groups QWY and the People's Republic of China.

* * * * *

(b) * * * Likelihood of approval notes that apply only to the PRC, or to specified destinations in Country Group Y also qualify for this general license to eligible destinations (however, those

notes indicating Country Group Q or W *only*, are specifically *not* eligible). * * *

* * * * *

6. Section 771.23 is amended by revising the sixth sentence of paragraph (c) to read as follows:

§ 771.23 General License GFW.

* * * * *

(c) * * * In addition, GFW may be used to export to eligible countries any commodities (but not software) eligible under § 771.20 for General License GLX. * * *

* * * * *

Supplement No. 1 to Part 771 [Amended]

7. Supplement No. 1 to part 771 is amended under category 4 by removing the entry "4A03.c (having a CTP of 1,000 MTOPS or less)", revising the entry "4A03A.h (having a 3–D vector rate less than 3M vectors/sec.)" to read "4A03A.d (having a 3–D vector rate less than 3M vectors/sec.)", and revising the entry "4A03A.k" to read "4A03A.f"

PART 772—[AMENDED]

8. Section 772.11 is amended:

a. By removing the phrase "Yugoslav End-Use Certificate," in paragraph (h)(2)(i); and

b. By revising the introductory text of paragraph (k)(1) to read as follows:

§ 772.11 Amending export licenses.

* * * * *

(k) * * * (1) *Change in party or increase in net quantity not in accordance with current supporting document.* The applicant shall obtain a new or appropriately amended International Import Certificate (§ 775.3 of this subchapter), People's Republic of China End-User Certificate (§ 775.6 of this subchapter), Indian Import Certificate (§ 775.7 of this subchapter), or Bulgarian, Czech, Hungarian, Polish, Romanian, or Slovak Import Certificate (§ 775.8 of this subchapter) before submitting a request to amend an export license by proposing to change any party to the transaction named on the license or by increasing the net quantity set forth on the license if the proposed change is not in accordance with the current supporting document covering the license. The original copy of the new or amended certificate shall be:

* * * * *

PART 773—[AMENDED]

9. Section 773.3 is amended as follows:

a. By removing and reserving paragraph (h); and

b. By removing paragraph (j)(2)(ii) and redesignating paragraph (j)(2)(iii) as paragraph (j)(2)(ii).

10. Section 773.7 is amended as follows:

a. By revising paragraph (d)(1)(iii);

b. By removing and reserving paragraph (e);

c. By removing the fifth sentence from paragraph (k), introductory text.

§ 773.7 Service Supply Procedure.

* * * * *

(d) * * *

(1) * * *

(iii) *Documents waived.* An application for a Service Supply License (SL) need not be supported by the Import Certificate or Consignee/Purchaser Statement otherwise required under §§ 775.2 or 775.3 of this subchapter.

* * * * *

§ 773.8 [Amended]

11. In § 773.8, paragraph (d)(1) is amended by revising the phrase "an Import Certificate, a consignee/purchaser statement, or a Yugoslav End-Use Certificate to" to read "an Import Certificate or a consignee/purchaser statement to".

Supplement No. 3 to Part 773 [Amended]

12. Supplement No. 3 to part 773 is amended by removing the term "Yugoslavia,".

PART 774—[AMENDED]

13. Section 774.3 is amended by revising paragraph (c)(1)(ii) to read as follows:

§ 774.3 How to request reexport authorization.

* * * * *

(c) * * *

(1) * * *

(ii) If the required document is a People's Republic of China End-User Certificate, a Singapore Import Certificate and Delivery Verification, or a Indian Import Certificate, and the same document must be furnished to the export control authorities of the country from which the reexport will be made, the Office of Export Licensing will permit the applicant to submit or to retain on file, as appropriate (see § 774.3(c)(1)(i)), a reproduced copy of the document being furnished to the country of reexport. If the required documentation cannot be obtained, a waiver may be requested in accordance with the applicable provisions of the Export Administration Regulations (15 CFR parts 730–799). (See § 775.7(c) of this subchapter for waiver of an Indian Import Certificate.)

* * * * *

PART 775—[AMENDED]

§ 775.1 [Amended]

14. In § 775.1, in the table in paragraph (b) is amended, as follows:

a. By removing entry 3.;

b. By redesignating entries 4. through 7. as entries number 3. through 6., respectively;

c. By revising the phrase "Czech Republic, Hungary, Poland, or Slovak Republic" in the second column for newly designated entry 5. to read "Bulgaria, Czech Republic, Hungary, Poland, Romania, or Slovak Republic"; and

d. By revising the phrase "Czech Republic, Hungary, Poland, or Slovak Republic" in footnote 1 to the table to read "Bulgaria, Czech Republic, Hungary, Poland, Romania, or Slovak Republic".

15. Section 775.2 is amended by revising paragraph (b)(1) to read as follows:

§ 775.2 Form BXA–629P, statement by ultimate consignee and purchaser.

* * * * *

(b) * * *

(1) An International Import Certificate (§ 775.3), a People's Republic of China End-User Certificate (§ 775.6), an Indian Import Certificate (§ 775.7), or a Bulgarian, Czech, Hungarian, Polish, Romanian, or Slovak Import Certificate (§ 775.8) is required in support of the application.

* * * * *

16. Section 775.3 is amended by revising paragraph (b) introductory text and footnote 1 to read as follows:

§ 775.3 International import certificate and delivery verification certificate.

* * * * *

(b) *Destinations.* The following country destinations are subject to the International Import Certificate/Delivery Verification Certificate System requirements:[1]

* * * * *

[1] See § 775.6 for People's Republic of China End-Use Certificate requirements, § 775.7 for Indian Import Certificate requirements, and § 775.8 for Bulgarian, Czech, Hungarian, Polish, Romanian, or Slovak Import Certificate requirements.

§ 775.5 [Removed]

17. Section 775.5 is removed and reserved.

18. Section 775.8 is amended:

a. By revising the section heading;

b. By revising the first sentence of paragraph (a);

c. By revising paragraph (b)(2); and

d. By revising the first sentence of paragraph (e) to read as follows:

§ 775.8 Bulgarian, Czech, Hungarian, Polish, Romanian, or Slovak Import Certificates.

(a) *Requirements.* License applications to export or reexport items identified by the code letter "A" on the Commerce Control List to Bulgaria, the Czech Republic, Hungary, Poland, Romania, or the Slovak Republic must be accompanied by the original Import Certificate issued by the appropriate ministry listed in Supplement No. 1 of this part 775. * * *

(b) * * *

(2) *Temporary export.* An Import Certificate need not be submitted to support a license application to export commodities or software for temporary exhibition, demonstration, or testing purposes in Bulgaria, the Czech Republic, Hungary, Poland, Romania, or the Slovak Republic.

* * * * *

(e) *Delivery Verification.* The Office of Export Licensing will, on a selective basis, require Delivery Verification documents for shipments to Bulgaria, the Czech Republic, Hungary, Poland, Romania, and the Slovak Republic that are subject to the Import Certificate procedure. * * *

19. Section 775.10 is amended:

a. By revising the introductory text;

b. By revising the first sentence of paragraph (a);

c. By revising the first sentence of paragraph (b);

d. By revising the heading and the introductory text of paragraph (c)(2);

e. By revising the paragraph (c)(3);

f. By revising the first sentence of paragraph (d);

g. By revising the introductory text of paragraph (f);

h. By redesignating footnote number 4 as footnote number 3, as referenced in the heading to paragraph (g);

i. By revising the introductory text of paragraph (g)(1);

j. By revising the introductory text of paragraph (g)(2)(i);

k. By revising paragraph (g)(2)(ii); and

l. By revising the introductory text of paragraph (h)(1), to read as follows:

§ 775.10 Special provisions.

The following special provisions apply as indicated to consignee/purchaser statements, International Import Certificates, Delivery Verification Certificates, People's Republic of China End-User Certificates, Indian Import Certificates, and Bulgarian, Czech, Hungarian, Polish, Romanian, or Slovak Import Certificates, and other documents submitted in support of export license applications.

(a) *Coded terms and translation requirements.* All abbreviations, coded terms, or other expressions on consignee/purchaser statements, International Import Certificates, Delivery Verification Certificates, People's Republic of China End-User Certificates, Indian Import Certificates, and Bulgarian, Czech, Hungarian, Polish, Romanian, or Slovak Import Certificates, and other documents having special significance in the trade or to the parties to the transaction must be explained on an attachment to the document. * * *

(b) *Validity period.* When a People's Republic of China End-User Certificate, Indian Import Certificate, Bulgarian, Czech, Hungarian, Polish, Romanian, or Slovak Import Certificate, or an International Import Certificate is obtained in support of one or more export license applications, the applicant must submit the first application to be supported by such certificate to the Office of Export Licensing (OEL) within the validity period shown on the Certificate or 6 months from the date of the Certificate was issued, whichever is shorter. * * *

(c) * * *

(2) *International Import Certificate, Indian Import Certificate, and the Bulgarian, Czech, Hungarian, Polish, Romanian, or Slovak Import Certificate.* Whenever the requirement for an International Import Certificate, Indian Import Certificate, or a Bulgarian, Czech, Hungarian, Polish, Romanian, or Slovak Import Certificate for any commodity is imposed or extended by virtue of one of the following:

* * * * *

(3) *People's Republic of China End-User Certificate.* Whenever the submission requirement for a People's Republic of China End-User Certificate is imposed or extended to any commodity on the Commerce Control List by the addition of Country Group V to the "Validated License Required" paragraph in the applicable entry on the Commerce Control List, a license application to export such commodity need not conform to the submission requirement for 45 days from the date such commodity becomes subject to the requirement.

(d) *Applicant's responsibility for full disclosure.* In obtaining a consignee/purchaser statement, International Import Certificate, People's Republic of China End-User Certificate, Indian Import Certificate, and Bulgarian, Czech, Hungarian, Polish, Romanian, or Slovak Import Certificate, the applicant is not relieved of the responsibility for full disclosure of any other information concerning the ultimate destination and end-use that the applicant has knowledge or belief, even if inconsistent with the representations set forth in the documents listed in this paragraph

(d). * * *

* * * * *

(f) *Request for return of certificates.* A U.S. exporter may be requested by a foreign importer to return an unused or partially used International Import Certificate, People's Republic of China End-User Certificate, Indian Import Certificate, or Bulgarian, Czech, Hungarian, Polish, Romanian, or Slovak Import Certificate. To meet such requests, exporters should adhere to the following procedures:

* * * * *

(g) * * *

(1) *Change in consignee or purchaser.* The applicant must obtain a new Statement by Ultimate Consignee and Purchaser, or an appropriately amended International Import Certificate, People's Republic of China End-User Certificate, Indian Import Certificate, or Bulgarian, Czech, Hungarian, Polish, Romanian, or Slovak Import Certificate before submitting a request for an amendment of an export license that proposes a change in consignee or purchaser in the transaction named in the export license if the proposed amendment is not in accordance with the Statement or Certificate already on file with the applicant or the Office of Export Licensing. The original copy of the new Statement or Certificate be:

* * * * *

(2) * * * (i) *Increase not supported by existing Statement or Certificate obtained in support of license application.* The applicant shall obtain a new Statement by Ultimate Consignee and Purchaser, or an appropriately amended International Import Certificate, People's Republic of China End-User Certificate, Indian Import Certificate, or Bulgarian, Czech, Hungarian, Polish, Romanian, or Slovak Import Certificate before submitting a request for an amendment of an export license that proposes any increase in the quantity set forth in the export license if the proposed amendment is not in accordance with the Statement or Certificate already on file with the applicant or the Office of Export Licensing. The original copy of the new Statement or Certificate shall be:

* * * * *

(ii) *Increase supported by existing Statement or Certificate obtained in support of license application.* (A) If a proposed quantitative amendment is in

accordance with the single transaction Statement by Ultimate Consignee or Purchaser or Certificate obtained by the applicant in support of the original export license application, the amendment shall include the following certification, as appropriate:

I (We) certify that this request for amendment of export license number _____, if granted, will not exceed the total quantity covered by the Statement By Ultimate Consignee and Purchaser against which this export license was issued.

I (We) certify that this request for amendment of export license number _____, if granted, will not exceed the total quantity authorized under the (*name of country*) International Import Certificate, People's Republic of China End-User Certificate, Indian Import Certificate, or Bulgarian, Czech, Hungarian, Polish, Romanian, or Slovak Import Certificate number _____.

(B) Where the export license is based on a multiple transactions Statement by Ultimate Consignee and Purchaser, an additional Statement is not required from the consignee or purchaser to support a proposed license amendment for an increase in quantity. In lieu thereof, the following certification shall be placed on the amendment request:

I (We) certify that the license listed above is supported by a Statement by Ultimate Consignee and Purchaser.

(h) * * * (1) *Types of request.* A request for exception to a requirement for obtaining an International Import Certificate, People's Republic of China End-User Certificate, Indian Import Certificate, or Bulgarian, Czech, Hungarian, Polish, Romanian, or Slovak Import Certificate [4] may involve either a single transaction or, where the reason necessitating the request is continuing in nature, multiple transactions.

* * * * *

20. Supplement No. 1 to part 775 is amended:

a. By adding in alphabetical order an entry for "Bulgaria";

b. By revising the phrase "Deputy Chief Controller of Imports and Exports" under the entry "India", in the second column, to read "Deputy Director General of Foreign Trade";

c. By adding in alphabetical order an entry for "Romania"; and

d. By removing the entry for "Yugoslavia", to read as follows:

e. By revising footnote at the end of the table, to read as follows:

[4] See § 775.2(c) for exceptions to the consignee/purchaser statement requirement where applicant is unable to obtain this statement.

SUPPLEMENT NO. 1—AUTHORITIES ADMINISTERING IMPORT CERTIFICATE/DELIVERY VERIFICATION SYSTEM IN FOREIGN COUNTRIES [1]

[See footnotes at end of table]

Country	IC/DV authorities	System administered [2]
*	*	*
Bulgaria	Ministry of Trade, 12 Al. Batenberg, 1000 Sofia, Bulgaria.	IC/DV
*	*	*
Romania ..	National Export Control Agency, Ministry of Trade, 17 Apolodor Street, Bucharest, Romania.	IC/DV
*	*	*

[1] Facsimiles of Import Certificates and Delivery Verifications issued by each of these countries may be inspected at the Bureau of Export Administration Western Regional Office, 300 Irvine Avenue, Suite 345, Newport Beach, California 92660–3198 or at any U.S. Department of Commerce District Office (see listing on page (ii) under District Office Addresses) or at the Office of Export Licensing, room 1099D, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Copies are not available.

[2] 1C—Import Certificate and/or DV—Delivery Verification.

PART 776—[AMENDED]

21. Section 776.10 is amended by revising paragraph (a)(2) to read as follows:

§ 776.10 Electronic computers and related equipment.

* * * * *

(a) * * *

(2) *Special documentation requirements.* Applications to export or reexport computers or related equipment that are described in Advisory Note 6 to Category 4, or that exceed any of the limits in Advisory Notes 3 or 6 to Category 4, must include:

(i) A signed statement by a responsible representative of the end-user or the importing agency describing the end-use and certifying that the "digital" computers or related equipment:

(A) Will be used only for civil applications; *and*

(B) Will *not* be reexported or otherwise disposed of without prior written authorization from the Office of Export Licensing;

(ii) A full description of the equipment *and* its intended application and workload; *and*

(iii) A complete identification of all end-users and their activities.

* * * * *

22. Section 776.11 is amended by revising paragraph (f)(6)(i)(D) and by revising paragraph (f)(6)(ii)(A) to read as follows:

§ 776.11 Supercomputers.

* * * * *

(f) * * *

(6) * * *

(i) * * *

(D) Bulgarian, Czech Republic, Hungarian, Polish, Romanian, or Slovak Republic Import Certificates—see § 775.8 of this subchapter.

(ii) * * *

(A) *Bulgaria, Czech Republic, Hungary, Poland, Romania, and Slovak Republic.* Reproduced copies of the Bulgarian, Czech, Hungarian, Polish, Romanian, and Slovak Import Certificates;

* * * * *

PART 778—[AMENDED]

23. Supplement No. 5 to part 778 is revised to read as follows:

Supplement No. 5—to Part 778—Dual-Use Chemical and Biological Equipment; Reguibs, Countries, and Other Destinations

Armenia
Azerbaijan
Bulgaria
Belarus
China
Cuba
Georgia
Kazakhstan
Kyrgyzstan
Middle East [1]
Moldova
Mongolia
Myanmar (Burma)
North Korea
Russia
Romania
South Africa
Southwest Asia [2]
Taiwan
Tajikistan
Turkmenistan
Ukraine
Uzbekistan
Vietnam

PART 779—[AMENDED]

24. Section 779.4 is amended by revising paragraph (f)(1)(i) and Footnote 10 to read as follows:

§ 779.4 General license GTDR: Technical data under restriction.

* * * * *

(f) * * *

(1) * * *

[1] See § 770.2 of this subchapter for definition.

[2] See footnote 1.

(i) Reexport, directly or indirectly, to Country Group Q, S, W,[10] Y, or Z, or the People's Republic of China any technical data relating to commodities controlled to Country Group W as described in the paragraph titled "Validated License Required" of any entry of the Commerce Control List;

* * * * *

§ 779.5 [Amended]

25. Section 779.5 is amended by revising the phrase "the Czech Republic, Hungary, Poland, and the Slovak Republic" in paragraph (a)(3) to read "Bulgaria, the Czech Republic, Hungary, Poland, Romania, and the Slovak Republic".

PART 785—[AMENDED]

26. Section 785.2 is amended:

a. By revising paragraph (a)(1), removing paragraph (a)(3) and redesignating paragraph (a)(4) as paragraph (a)(3);

b. By revising paragraph (b);

c. By revising paragraph (c), to read as follows:

§ 785.2 Country Groups Q, W, and Y[2]: Geographic area of the former U.S.S.R., Eastern Europe, Mongolia, Cambodia, Laos, and Vietnam.

(a)(1) The Export Administration Act of 1979, as amended (EAA) states that it is the policy of the United States to encourage trade with all countries with which we have diplomatic or trading relations, except those countries with which such trade has been determined by the President to be against the national interest. The Act also states that it is the policy of the United States to restrict the export of goods and technical data that would make a significant contribution to the military potential of any other country or combination of countries that would prove detrimental to the national security of the United States. Accordingly, and in compliance with the other sections of the EAA, the Department conducts a continuing review of commodities and technical data to assure that prior approval is required for the export or reexport of U.S.-origin commodities and technical data to Albania, Armenia, Azerbaijan, Bulgaria, Belarus, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Mongolia, Russia, Romania, Tajikistan, Turkmenistan, Ukraine, Uzbekistan and Vietnam only if the commodities or technical data have a potential for being used in a manner that would prove detrimental to the national security of the United States. The general policy of the Department is to approve applications or requests to export or reexport such commodities and technical data to these destinations when the Department determines, on a case-by-case basis, that the commodities or technical data are for civilian use or would otherwise not make a significant contribution to the military potential of the country of destination that would prove detrimental to the national security of the United States. However, in recognition of efforts made to adopt safeguard measures for exports, Bulgaria, Latvia, Kazakhstan, Lithuania, Mongolia, and Russia are accorded enhanced favorable consideration licensing treatment.

* * * * *

(b) See parts 776 and 778 of this subchapter for foreign policy based controls governing exports to Country Groups Q, W, and Y.

(c) *Country Group Q.* Romania (Country Group Q) has been determined to present a lesser strategic threat, and has adopted safeguard measures to protect against the diversion of national security controlled items. In recognition of these facts, the Commerce Control List includes several Advisory Notes that indicate likelihood of approval or favorable consideration for export to satisfactory end-users in Country Group Q. Items not eligible for favorable consideration will be reviewed on a case-by-case basis.

* * * * *

PART 787—[AMENDED]

27. In § 787.13, paragraphs (e)(2)(ii)(B) and (e)(2)(ii)(C) are revised to read as follows:

§ 787.13 Recordkeeping.

* * * * *

(e) * * *

(2) * * *

(ii) * * *

(B) Records required for exports under the Distribution License, as required by § 773.3 of this subchapter;

(C) Records required for exports under the Service Supply Procedure, as required by § 773.7 of this subchapter;

* * * * *

PART 799—[AMENDED]

Supplement No. 1 to § 799.1—[Amended]

28. In Supplement No. 1 to § 799.1, in Category 2 (Materials Processing), under the heading "Notes for Category 2" following ECCN 2E96G, Advisory Note 4 is removed and reserved.

29. In Category 3, ECCN 3A01A is revised to read as follows:

3A01A Electronic devices and components.

Requirements

Validated License Required: QSTVWYZ.

Unit: Number.

Reason for Control: NS, MT, NP (see Notes).

GLV: $1,500: 3A01.c, $3,000: 3A01.b.1 to b.3, 3A01.d to 3A01.f, $5,000: 3A01.a, 3A01.b.4 to b.7.

GCT: Yes, except 3A01.a.1 and 3A01.e.5 (see Notes).

GFW: Yes, except 3A01.a.1, 3A01.b.1 and b.3 to b.7, 3A01.c to f.

GNSG: Yes, *except* Bulgaria, Romania, or Russia, for 3A01.e.5 only (see Notes).

Notes: 1. MT controls apply to 3A01.a.1.a.
2. NP controls apply to 3A01.e.5.

List of Items Controlled

a. General purpose integrated circuits, as follows:

Note 1: The control status of wafers (finished or unfinished), in which the function has been determined, is to be evaluated against the parameters of 3A01.a.

Note 2: Integrated circuits include the following types: "Monolithic integrated circuits"; "Hybrid integrated circuits"; "Multichip integrated circuits"; "Film type integrated circuits", including silicon-on-sapphire integrated circuits; "Optical integrated circuits".

a.1. Integrated circuits, designed or rated as radiation hardened to withstand either of the following:

a.1.a. A total dose of 5×10^5 Rads (Si), or higher; *or*

a.1.b. A dose rate upset of 5×10^8 Rads (Si)/s or higher;

a.2. Integrated circuits described in 3A01.a.3 to a.10 or 3A01.a.12, as follows:

a.2.a. Rated for operation at an ambient temperature above 398 K (+125 °C);

a.2.b. Rated for operation at an ambient temperature below 218 K (−55 °C); *or*

a.2.c. Rated for operation over the entire ambient temperature range from 218 K (−55 °C) to 398 K (+125 °C);

Note: 3A01.a.2 does not apply to integrated circuits for civil automobile or railway train applications.

[10] Effective April 26, 1971, Country Group W no longer included Romania. Assurances executed prior to April 26, 1971, that refer to Country Group W continue to apply to Romania. On May 8, 1992, Hungary was removed from Country Group W. Assurances are no longer applicable to Hungary. On May 9, 1994, Poland, the Czech Republic, and the Slovak Republic were moved from Country Group W to Country Group V. Assurances are no longer applicable to Poland, the Czech Republic and the Slovak Republic.

[2] See Supplement No. 1 to part 770 of this subchapter for listing of Country Groups.

a.3. "Microprocessor microcircuits", "microcomputer microcircuits" and microcontroller microcircuits, having any of the following:

Note: 3A01.a.3 includes digital signal processors, digital array processors and digital coprocessors.

a.3.a. An arithmetic logic unit with an access width of 32 bit or more and a "composite theoretical performance" ("CTP") of 80 million theoretical operations per second (Mtops) or more;

a.3.b. Manufactured from a compound semiconductor and operating a clock frequency exceeding 40 MHz; *or*

a.3.c. More than one data or instruction bus or serial communication port for external interconnection in a parallel processor with a transfer rate exceeding 2.5 Mbyte/s;

a.4. Electrically erasable programmable read-only memories (EEPROMs), static random-access memories (SRAMs), and storage integrated circuits manufactured from a compound semiconductor, as follows:

a.4.a. Electrically erasable programmable read-only memories (EEPROMs) with a storage capacity:

a.4.a.1. Exceeding 16 Mbit per package for flash memory types; *or*

a.4.a.2. Exceeding either of the following limits for all other EEPROM types:

a.4.a.2.a. 4 Mbit per package; *or*

a.4.a.2.b. 1 Mbit per package and having a maximum access time of less than 80 ns;

a.4.b. Static random-access memories (SRAMs) with a storage capacity:

a.4.b.1. Exceeding 4 Mbit per package; *or*

a.4.b.2. Exceeding 1 Mbit per package and having a maximum access time of less than 20 ns;

a.4.c. Storage integrated circuits manufactured from a compound semiconductor;

a.5. Analog-to-digital and digital-to-analog converter integrated circuits, as follows:

a.5.a. Analog-to-digital converters having any of the following:

a.5.a.1. A resolution of 8 bits or more, but less than 12 bits, with a total conversion time to maximum resolution of less than 10 ns;

a.5.a.2. A resolution of 12 bits with a total conversion time to maximum resolution of less than 200 ns; *or*

a.5.a.3. A resolution of more than 12 bits with a total conversion time to maximum resolution of less than 2 microseconds;

a.5.b. Digital-to-analog converters with a resolution of 12 bits or more, and a "settling time" of less than 10 ns;

a.6. Electro-optical or "optical integrated circuits" for "signal processing" having all of the following:

a.6.a. One or more internal "laser" diodes;

a.6.b. One or more internal light detecting elements; *and*

a.6.c. Optical waveguides;

a.7. Field programmable gate arrays having either of the following:

a.7.a. An equivalent usable gate count of more than 30,000 (2 input gates); *or*

a.7.b. A typical "basic gate propagation delay time" of less than 0.4 ns;

a.8. Field programmable logic arrays having either of the following:

a.8.a. An equivalent usable gate count of more than 30,000 (2 input gates); *or*

a.8.b. A toggle frequency exceeding 133 MHz;

a.9. Neural network integrated circuits;

a.10. Custom integrated circuits for which either the function is unknown, or the control status of the equipment in which the integrated circuits will be used is unknown to the manufacturer, having any of the following:

a.10.a. More than 144 terminals;

a.10.b. A typical "basic gate propagation delay time" of less than 0.4 ns; *or*

a.10.c. An operating frequency exceeding 3 GHz;

a.11. Digital integrated circuits, other than those described in 3A01.a.3 to a.10 or 3A01.a.12, based upon any compound semiconductor and having either of the following:

a.11.a. An equivalent gate count of more than 300 (2 input gates); *or*

a.11.b. A toggle frequency exceeding 1.2 GHz;

a.12. Fast Fourier Transform (FFT) processors having any of the following characteristics:

a.12.a. A rated execution time for a 1,024-point complex FFT of less than 1 ms;

a.12.b. A rated execution time for an N-point complex FFT of other than 1,024 points of less than $N \log_2 N/10{,}240$ ms, where N is the number of points; *or*

a.12.c. A butterfly throughput of more than 5.12 MHz;

b. Microwave or millimeter wave devices:

b.1. Electronic vacuum tubes and cathodes, as follows: (For frequency agile magnetron tubes, see ITAR Category 11.)

Note: 3A01.b.1 does not control tubes designed or rated to operate in the Standard Civil Telecommunications Bands at frequencies not exceeding 31 GHz.

b.1.a. Travelling wave tubes, pulsed or continuous wave, as follows:

b.1.a.1. Operating at frequencies higher than 31 GHz;

b.1.a.2. Having a cathode heater element with a turn on time to rated RF power of less than 3 seconds;

b.1.a.3. Coupled cavity tubes, or derivatives thereof, with an "instantaneous bandwidth" of more than 7 percent or a peak power exceeding 2.5 kW;

b.1.a.4. Helix tubes, or derivatives thereof, with any of the following characteristics:

b.1.a.4.a. An "instantaneous bandwidth" of more than one octave, and average power (expressed in kW) times frequency (expressed in GHz) of more than 0.5;

b.1.a.4.b. An "instantaneous bandwidth" of one octave or less, and average power (expressed in kW) times frequency (expressed in GHz) of more than 1; *or*

b.1.a.4.c. "Space qualified";

b.1.b. Crossed-field amplifier tubes with a gain of more than 17 dB;

b.1.c. Impregnated cathodes for electronic tubes, with either of the following:

b.1.c.1. A turn on time to rated emission of less than 3 seconds; *or*

b.1.c.2. Producing a continuous emission current density at rated operating conditions exceeding 5 A/cm^2;

b.2. Microwave integrated circuits or modules containing "monolithic integrated circuits" operating at frequencies exceeding 3 GHz;

Note: 3A01.b.2 does not control circuits or modules for equipment designed or rated to operate in the Standard Civil Telecommunications Bands at frequencies not exceeding 31 GHz.

b.3. Microwave transistors rated for operation at frequencies exceeding 31 GHz;

b.4. Microwave solid state amplifiers:

b.4.a. Operating at frequencies exceeding 10.5 GHz and having an "instantaneous bandwidth" of more than half an octave; *or*

b.4.b. Operating at frequencies exceeding 31 GHz;

b.5. Electronically or magnetically tunable band-pass or band-stop filters having more than 5 tunable resonators capable of tuning across a 1.5:1 frequency band (f_{max}/f_{min}) in less than 10 microseconds with either:

b.5.a. A band-pass bandwidth of more than 0.5 percent of center frequency; *or*

b.5.b. A band-stop bandwidth of less than 0.5 percent of center frequency;

b.6. Microwave assemblies capable of operating at frequencies exceeding 31 GHz;

b.7. Mixers and converters designed to extend the frequency range of

equipment described in 3A02.c, 3A02.e or 3A02.f beyond the control limits stated therein;

c. Acoustic wave devices, as follows, and specially designed components therefor:

c.1. Surface acoustic wave and surface skimming (shallow bulk) acoustic wave devices (i.e., "signal processing" devices employing elastic waves in materials), having any of the following:

c.1.a. A carrier frequency exceeding 2.5 GHz;

c.1.b. A carrier frequency of 2.5 GHz or less, *and*:

c.1.b.1. A frequency side-lobe rejection exceeding 55 dB;

c.1.b.2. A product of the maximum delay time and the bandwidth (time in microseconds and bandwidth in MHz) of more than 100; *or*

c.1.b.3. A dispersive delay of more than 10 microseconds; *or*

c.1.c. A carrier frequency exceeding 1 GHz and a bandwidth of 250 MHz or more;

c.2. Bulk (volume) acoustic wave devices (i.e., "signal processing" devices employing elastic waves) which permit the direct processing of signals at frequencies exceeding 1 GHz;

c.3. Acoustic-optic "signal processing" devices employing interaction between acoustic waves (bulk wave or surface wave) and light waves which permit the direct processing of signals or images, including spectral analysis, correlation or convolution;

d. Electronic devices or circuits containing components, manufactured from "superconductive" materials specially designed for operation at temperatures below the "critical temperature" of at least one of the "superconductive" constituents, with any of the following:

d.1. Electromagnetic amplification:

d.1.a. At frequencies equal to or less than 31 GHz with a noise figure of less than 0.5 dB; *or*

d.1.b. At frequencies exceeding 31 GHz;

d.2. Current switching for digital circuits using "superconductive" gates with a product of delay time per gate (in seconds) and power dissipation per gate (in watts) of less than 10^{-14} J; *or*

d.3. Frequency selection at all frequencies using resonant circuits with Q-values exceeding 10,000;

e. High energy devices, as follows:

e.1. Batteries, as follows:

Note: 3A01.e.1 does not control batteries with volumes equal to or less than 27 cm^3 (e.g., standard C-cells or R–14 batteries).

e.1.a. Primary cells and batteries having an energy density exceeding 480 Wh/kg and rated for operation in the temperature range from below 243 K (−30 °C) to above 343 K (70 °C);

e.1.b. Rechargeable cells and batteries having an energy density exceeding 150 Wh/kg after 75 charge/discharge cycles at a discharge current equal to C/5 hours (C being the nominal capacity in ampere hours) when operating in the temperature range from below 253 K (−20 °C) to above 333 K (60 °C);

Technical Note: Energy density is obtained by multiplying the average power in watts (average voltage in volts times average current in amperes) by the duration of the discharge in hours to 75 percent of the open circuit voltage divided by the total mass of the cell (or battery) in kg.

e.1.c. "Space qualified" and radiation hardened photovoltaic arrays with a specific power exceeding 160 W/m^2 at an operating temperature of 301 K (28 °C) under a tungsten illumination of 1 kW/m^2 at 2,800 K (2,527 °C);

e.2. High energy storage capacitors, as follows:

e.2.a. Capacitors with a repetition rate of less than 10 Hz (single shot capacitors) having all of the following:

e.2.a.1. A voltage rating equal to or more than 5 kV;

e.2.a.2. An energy density equal to or more than 250 J/kg; *and*

e.2.a.3. A total energy equal to or more than 25 kJ;

e.2.b. Capacitors with a repetition rate of 10 Hz or more (repetition rated capacitors) having all of the following:

e.2.b.1. A voltage rating equal to or more than 5 kV;

e.2.b.2. An energy density equal to or more than 50 J/kg;

e.2.b.3. A total energy equal to or more than 100 J; *and*

e.2.b.4. A charge/discharge cycle life equal to or more than 10,000;

e.3. "Superconductive" electromagnets or solenoids specially designed to be fully charged or discharged in less than one second, having all of the following:

Note: 3A01.e.3. does not control "superconductive" electromagnets or solenoids specially designed for Magnetic Resonance Imaging (MRI) medical equipment.

e.3.a. Energy delivered during the discharge exceeding 10 kJ in the first second;

e.3.b. Inner diameter of the current carrying windings of more than 250 mm; *and*

e.3.c. Rated for a magnetic induction of more than 8 T or "overall current density" in the winding of more than 300 A/mm^2;

e.4. Circuits or systems for electromagnetic energy storage, containing components manufactured from "superconductive" materials specially designed for operation at temperatures below the "critical temperature" of at least one of their "superconductive" constituents, having all of the following:

e.4.a. Resonant operating frequencies exceeding 1 MHz;

e.4.b. A stored energy density of 1 MJ/m^3 or more; *and*

e.4.c. A discharge time of less than 1 ms;

e.5. Flash discharge type X-ray systems, and tubes therefore, having all of the following:

e.5.a. A peak power exceeding 500 MW;

e.5.b. An output voltage exceeding 500 kV; *and*

e.5.c. A pulse width of less than 0.2 microsecond;

f. Rotary input type shaft absolute position encoders having either of the following:

f.1. A resolution of better than 1 part in 265,000 (18 bit resolution) of full scale; *or*

f.2. An accuracy better than ± 2.5 seconds of arc.

Related ECCNs: * * *

30. In Category 3, ECCN 3A92F is revised to read as follows:

3A92F Electronic devices and components not controlled by 3A01.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Unit: Number
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

List of Items Controlled

a. Integrated circuits of the type described in 3A01.a.3 to a.10 or a.12. rated for operation at an ambient temperature below 219 K (−54 °C), but not less than 218 K (−55 °C);

b. "Microprocessor microcircuits", "microcomputer microcircuits", and microcontroller microcircuits having a clock frequency exceeding 25 MHz, but not exceeding 40 MHz;

c. Storage integrated circuits not controlled by 3A01, as follows:

c.1. Electrical erasable programmable read-only memories (EEPROMs) with a storage capacity;

c.1.a. Exceeding 1 Mbit per package; *or*

c.1.b. Exceeding 256 kbit per package and a maximum access time of less than 80 ns;

c.2. Static random-access memories (SRAMs) with a storage capacity:

c.2.a. Exceeding 1 Mbit per package; *or*

c.2.b. Exceeding 256 kbit per package and a maximum access time of less than 25 ns;

d. Field programmable logic arrays not controlled by 3A01 having either of the following:

d.1. An equivalent gate count of more than 5,000 (2 input gates); *or*

d.2. A toggle frequency exceeding 100 MHz;

e. Travelling wave tubes, pulsed or continuous wave, not controlled by 3A01, as follows:

e.1. Coupled cavity tubes, or derivatives thereof;

e.2. Helix tubes, or derivatives thereof, with any of the following:

e.2.a.1. An "instantaneous bandwidth" of half an octave or more; *and*

e.2.a.2. The product of the rated average output power (expressed in kW) and the maximum operating frequency (expressed in GHz) of more than 0.2;

e.2.b.1. An "instantaneous bandwidth" of less than half an octave; *and*

e.2.b.2. The product of the rated average output power (expressed in kW) and the maximum operating frequency (expressed in GHz) of more than 0.4;

f. Flexible waveguides not controlled by 3A01 designed for use at frequencies exceeding 40 GHz;

g. Surface acoustic wave and surface skimming (shallow bulk) acoustic wave devices (i.e., "signal processing" devices employing elastic waves in materials), not controlled by 3A01, having either of the following:

g.1. A carrier frequency exceeding 1 GHz; or

g.2. A carrier frequency of 1 GHz or less, *and*

g.2.a. A frequency side-lobe rejection exceeding 55 dB;

g.2.b. A product of the maximum delay time and bandwidth (time in microseconds and bandwidth in MHz) of more than 100; or

g.2.c. A dispersive delay of more than 10 microseconds;

h. Batteries not controlled by 3A01, as follows:

Note: 3A92.h does not control batteries with volumes equal to or less than 26 cm^3 (e.g., standard C-cells or UM–2 batteries).

h.1. Primary cells and batteries having an energy density exceeding 350 Wh/kg and rated for operation in the temperature range from below 243 K (−30 °C) to above 343 K (70 °C);

h.2. Rechargeable cells and batteries having an energy density exceeding 150 Wh/kg after 75 charge/discharge cycles at a discharge current equal to C/5 hours (C being the nominal capacity in ampere hours) when operating in the temperature range from below 253 K (−20 °C) to above 333 K (60 °C);

Technical Note: Energy density is obtained by multiplying the average power in watts (average voltage in volts times average current in amperes) by the duration of the discharge in hours to 75 percent of the open circuit voltage divided by the total mass of the cell (or battery) in kg.

h.3. "Space qualified" and radiation hardened photovoltaic arrays with a specific power exceeding 160 W/m^2 at an operating temperature of 301 K (28 °C) under a tungsten illumination of 1 kW/m^2 at 2,800 K (2,527 °C);

i. "Superconductive" electromagnets or solenoids specially designed to be fully charged or discharged in less than one minute, not controlled by 3A01, having all of the following:

Note: 3A92.i does not control "superconductive" electromagnets or solenoids designed for Magnetic Resonance Imaging (MRI) medical equipment.

i.1. Maximum energy delivered during the discharge divided by the duration of the discharge of more than 500 kJ per minute;

i.2. Inner diameter of the current carrying windings of more than 250 mm; *and*

i.3. Rated for a magnetic induction of more than 8 T or "overall current density" in the winding of more than 300 A/mm^2.

31. In Supplement No. 1 to Section 799.1 (the Commerce Control List), Category 3, a new ECCN 3A94F is added immediately following ECCN 3A93F to read as follows:

3A94F General purpose electronic equipment not controlled by 3A02.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Unit: Number
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

List of Items Controlled

a. Digital instrumentation magnetic tape data recorders not controlled by 3A02 having any of the following characteristics:

a.1. A maximum digital interface transfer rate exceeding 60 Mbit/s and employing helical scan techniques;

a.2. A maximum digital interface transfer rate exceeding 120 Mbit/s and employing fixed head techniques; *or*

a.3. "Space qualified";

b. Equipment, not controlled by 3A02, with a maximum digital interface transfer rate exceeding 60 Mbit/s, designed to convert digital video magnetic tape recorders for use as digital instrumentation data recorders;

c. Hydrogen/hydrogen-isotope thyratrons of ceramic-metal construction and rated for a peak current of 500A or more.

32. In Category 3, ECCNs 3C03A and 3C04A are revised to read as follows:

3C03A Organo-inorganic compounds as described in this entry.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: NS
GLV: $3,000
GCT: Yes
GFW: No

List of Items Controlled

Organo-inorganic compounds, as follows:

a. Organo-metallic compounds of aluminum, gallium or indium having a purity (metal basis) better than 99.999 percent;

b. Organo-arsenic, organo-antimony and organo-phosphorus compounds having a purity (inorganic element basis) better than 99.999 percent.

Note: 3C03A controls only compounds whose metallic, partly metallic or non-metallic element is directly linked to carbon in the organic part of the molecule.

3C04A Hydrides of phosphorus, arsenic or antimony, having a purity better than 99.999 percent, even diluted in inert gases or hydrogen.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: NS
GLV: $3,000
GCT: Yes
GFW: No

Note: 3C04A does *not* control hydrides containing 20 percent molar or more of inert gases or hydrogen.

33. In Category 3, ECCN 3D94F is amended by revising the heading of the entry to read as follows:

3D94F "Software" specially designed for the "development", "production", or "use" of electronic devices or components controlled by 3A92, electronic test equipment controlled by 3A93, general purpose electronic equipment controlled by 3A94, or manufacturing and test equipment controlled by 3B91.

* * * * *

34. In Category 3, ECCN 3E94F is amended by revising the heading of the entry to read as follows:

3E94F Technology for the "development", "production", or "use" of electronic devices or components controlled by 3A92, electronic test equipment controlled by 3A93, general purpose electronic equipment controlled by 3A94, or manufacturing and test equipment controlled by 3B91.

* * * * *

35. In Category 3, under the heading "Notes for Category 3" following ECCN 3E96G, Advisory Note 4 is removed and reserved.

36. In Category 4 (Computers), ECCN 4A03A is revised to read as follows:

4A03A "Digital computers", "assemblies", and related equipment therefor, as described in this entry, and specially designed components therefor.

Requirements

Validated License Required: QSTVWYZ

Unit: Computers and peripherals in number; parts and accessories in $ value

Reason for Control: NS, MT, NP, FP (see Notes)

GLV: $5,000

GCT: Yes, except MT and FP, and except supercomputers as defined in § 776.11(a) (no supercomputer restriction for Japan); see Notes

GFW: Yes, except MT and FP (see Notes), for computers with a CTP not exceeding 1,000 Mtops (500 Mtops for eligible countries listed in Supp. 4 to Part 778 of this subchapter) and specially designed components therefor, exported separately or as part of a system, and related equipment therefor when exported with these computers as part of a system.

N.B. 1: General License GFW is *not* available for the export of commodities that the exporter knows will be used to:

a. Enhance the performance capability (i.e., CTP) of a computer to the "supercomputer" level; or

b. Enhance the performance capability of a "supercomputer" (see § 776.11 for definition of "supercomputer").

N.B. 2: To determine whether General License GFW may be used to export related equipment controlled under another entry in the CCL, consult the GFW paragraph under the Requirements heading of the appropriate entry.

Notes: 1. MT controls apply to digital computers used as ancillary equipment for test facilities and equipment that are controlled by 9B05 or 9B06.

2. NP controls apply to computers with a CTP exceeding 500 Mtops to countries listed in Supplement No. 4 to Part 778 of this subchapter.

3. FP controls apply to computers for computerized fingerprint equipment to all destinations except Australia, Japan, New Zealand and members of NATO.

4. FP controls apply to all destinations, except Japan, for supercomputers (see § 776.11 of this subchapter).

5. FP controls apply to Iran and Syria for computers controlled by 4A03A or 4A94F (i.e., computers with a CTP of 6 Mtops or greater). See § 785.4(d)(1) of this subchapter.

List of Items Controlled

Note 1: 4A03 includes vector processors, array processors, digital signal processors, logic processors, and equipment for "image enhancement" or "signal processing".

Note 2: The control status of the "digital computers" or related equipment described in 4A03 is governed by the control status of other equipment or systems provided:

a. The "digital computers" or related equipment are essential for the operation of the other equipment or systems;

b. The "digital computers" or related equipment are not a "principal element" of the other equipment or systems; *and*

N.B. 1: The control status of "signal processing" or "image enhancement" equipment specially designed for other equipment with functions limited to those required for the other equipment is determined by the control status of the other equipment even if it exceeds the "principal element" criterion.

N.B. 2: For the control status of "digital computers" or related equipment for telecommunications equipment, see the telecommunications entries in Category 5.

c. The technology for the "digital computers" and related equipment is governed by 4E.

"Digital computers", "assemblies", and related equipment therefor, as follows, and specially designed components therefor:

a. Designed or modified for "fault tolerance";

Note: For the purposes of 4A03.a, "digital computers" and related equipment are not considered to be designed or modified for "fault tolerance", if they use:

1. Error detection or correction algorithms in "main storage";

2. The interconnection of two "digital computers" so that, if the active central processing unit fails, an idling but mirroring central processing unit can continue the system's functioning;

3. The interconnection of two central processing units by data channels or by use of shared storage to permit one central processing unit to perform other work until the second central processing unit fails, at which time the first central processing unit takes over in order to continue the system's functioning; *or*

4. The synchronization of two central processing units by "software" so that one central processing unit recognizes when the other central processing unit fails and recovers tasks from the failing unit.

b. "Digital computers" having a "composite theoretical performance" ("CTP") exceeding 260 million theoretical operations per second (Mtops);

c. "Assemblies" specially designed or modified to be capable of enhancing performance by aggregation of "computing elements" ("CEs") so that the "CTP" of the aggregation exceeds the limit in 4A03.b;

Note 1: 4A03.c applies only to "assemblies" and programmable interconnections not exceeding the limits in 4A03.b, when shipped as unintegrated "assemblies". It does not apply to "assemblies" inherently limited by nature of their design for use as related equipment controlled by 4A03.d to 4A03.f.

Note 2: 4A03.c does not control "assemblies" specially designed for a product or family of products whose maximum configuration does not exceed the limits of 4A03.b.

d. Graphics accelerators or graphics coprocessors exceeding a "3–D Vector Rate" of 1,600,000;

e. Equipment performing analog-to-digital conversions exceeding the limits in 3A01.a.5;

f. Equipment containing "terminal interface equipment" exceeding the limits in 5A02.c;

Note: For the purposes of 4A03.f, "terminal interface equipment" includes "local area network" interfaces, modems and other communications interfaces. "Local area network" interfaces are evaluated as "network access controllers".

g. Equipment, specially designed to provide for the external interconnection of "digital computers" or associated equipment, that allows communications at data rates exceeding 80 Mbytes/s.

Note: 4A03.g does not control internal interconnection equipment (e.g., backplanes, buses) or passive interconnection equipment.

37. In Category 4 (Computers), ECCN 4A94F is revised to read as follows:

4A94F Computers, "assemblies" and related equipment not controlled by 4A01, 4A02, or 4A03, and specially designed components therefor.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police

Unit: Computers and peripherals in number; parts and accessories in $ value

Reason for Control: FP

GLV: $0

GCT: No

GFW: No

List of Items Controlled

a. Electronic computers and related equipment, and "assemblies" and specially designed components therefor, rated for operation at an ambient temperature above 343 K (70°C), but not above 358 K (85°C);

b. "Digital computers" not controlled by 4A03 having a "composite theoretical performance" ("CTP") equal to or greater than 6 million theoretical operations per second (Mtops);

c. "Assemblies" not controlled by 4A03 that are specially designed or modified to enhance performance by aggregation of "computing elements" ("CEs"), as follows:

c.1. Designed to be capable of aggregation in configurations of 16 or more "computing elements" ("CEs"); *or*

c.2. Having a sum of maximum data rates on all channels available for connection to associated processors exceeding 40 million Bytes/s;

Note 1: 4A94.c applies only to "assemblies" and programmable interconnections with a "composite theoretical performance" ("CTP") not exceeding 12.5 million theoretical operations per second (Mtops), when shipped as unintegrated "assemblies". It does not apply to "assemblies" inherently limited by nature of their design for use as related equipment controlled by 4A03 or 4A94.

Note 2: 4A94.c does not control any "assembly" specially designed for a product or family of products with a maximum configuration that does not exceed a "CTP" of 12.5 Mtops.

d. Disk drives and solid state storage equipment:

d.1. Magnetic, erasable optical or magneto-optical disk drives with a "maximum bit transfer rate" exceeding 25 million bit/s;

d.2. Solid state storage equipment, other than "main storage" (also known as solid state disks or RAM disks), with a "maximum bit transfer rate" exceeding 36 million bit/s;

e. Input/output control units designed for use with equipment controlled by 4A94.d;

f. Equipment for "signal processing" or "image enhancement", not controlled by 4A03, having a "composite theoretical performance" ("CTP") exceeding 8.5 million theoretical operations per second (Mtops);

g. Graphics accelerators or graphics coprocessors, not controlled by 4A03, that exceed a "3–D vector rate" of 400,000 or, if supported by 2–D vectors only, a "2–D vector rate" of 600,000;

Note 1: The provisions of 4A94.g do not apply to work stations designed for and limited to:

a. Graphic arts (e.g., printing, publishing); *and*

b. The display of two-dimensional vectors.

h. Color displays or monitors having more than 120 resolvable elements per cm in the direction of the maximum pixel density;

Note 1: 4A94.h does not control displays or monitors not specially designed for electronic computers.

Note 2: Displays specially designed for air traffic control (ATC) systems are treated as specially designed components for ATC systems under Category 6.

i. Equipment containing "terminal interface equipment" exceeding the limits in 5A91F.

Note: For the purposes of 4A94.h, "terminal interface equipment" includes "local area network" interfaces, modems and other communications interfaces. "Local area network" interfaces are evaluated as "network access controllers".

38. In Supplement No. 1 to Section 799.1 (the Commerce Control List), Category 4 (Computers) is amended:

a. By removing the sub-heading "Equipment for the development and production of magnetic and optical storage equipment as follows." immediately following the heading "B. Test, Inspection and Production Equipment", which follows ECCN 4A96G; and

b. By removing ECCNs 4B01A, 4B02A, and 4B03A;

c. By adding a new ECCN 4B94F immediately following the heading "B. Test, Inspection and Production Equipment"; and

d. By revising the heading of ECCN 4B96G to read as follows:

4B94F Equipment for the "development" and "production" of magnetic and optical storage equipment, as described in this entry.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Unit: $ value
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

List of Items Controlled

a. Equipment specially designed for the application of magnetic coating to controlled non-flexible (rigid) magnetic or magneto-optical media;

Note: 4B94F does not control general-purpose "sputtering" equipment.

b. "Stored program controlled" equipment specially designed for monitoring, grading, exercising or testing controlled rigid magnetic media;

c. Equipment specially designed for the "production" or alignment of heads or head/disk assemblies for controlled rigid magnetic and magneto-optical storage, and electro-mechanical or optical components therefor.

4B96G Computer test, production and inspection equipment, n.e.s.

* * * * *

39. In Category 4 (Computers), ECCN 4C01A is removed, a new ECCN 4C94F is added immediately following the heading "C. Materials", and ECCN 4C96G is amended by revising the heading of the entry to read as follows:

4C94F Materials specially formulated for and "required" for the fabrication of head/disk assemblies for controlled magnetic and magneto-optical hard disk drives.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Unit: $ value
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

4C96G Materials, n.e.s., specially formulated for and "required" for the fabrication of computer equipment, "assemblies" and components.

* * * * *

40. In Category 4 (Computers), ECCN 4D01A is amended by revising the heading of the entry to read as follows:

4D01A "Software" specially designed or modified for the "development", "production" or "use" of equipment controlled by 4A01, 4A02, 4A03, or 4A04, or "software" controlled by 4D01, 4D02, or 4D03.

* * * * *

41. In Category 4 (Computers), ECCN 4D03A is revised to read as follows:

4D03A Specific "software", as described in this entry.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: NS
GTDR: Yes, except 4D03.c
GTDU: No

List of Items Controlled

a. Operating system "software", "software" development tools and compilers specially designed for "multi-data-stream processing" equipment, in "source code";

b. "Expert systems" or "software" for "expert system" inference engines providing both:

b.1. Time dependent rules; *and*

b.2. Primitives to handle the time characteristics of the rules and the facts;

c. "Software" having characteristics or performing functions exceeding the limits in the "information security" entries in Category 5;

d. Operating systems specially designed for "real time processing" equipment that guarantees a "global interrupt latency time" of less than 20 microseconds.

42. In Supplement No. 1 to Section 799.1 (the Commerce Control List), Category 4 (Computers), new ECCNs 4D92F and 4D93F are added immediately following ECCN 4D80C to read as follows:

4D92F "Software" specially designed or modified for the "development", "production", or "use" of equipment controlled by 4B94 and materials controlled by 4C94.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, *except* destinations listed under *Validated License Required*

4D93F "Program" proof and validation "software", "software" allowing the automatic generation of "source codes", and operating systems not controlled by 4D03 that are specially designed for "real time processing" equipment.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, *except* destinations listed under *Validated License Required*

List of Items Controlled

a. "Program" proof and validation "software" using mathematical and analytical techniques and designed or modified for "programs" having more than 500,000 "source code" instructions;

b. "Software" allowing the automatic generation of "source codes" from data acquired on line from external sensors described in the Commerce Control List;

c. Operating systems not controlled by 4D03A that are specially designed for "real time processing" equipment that guarantees a "global interrupt latency time" of less than 30 microseconds.

43. In Supplement No. 1 to § 799.1 (the Commerce Control List), Category 4 (Computers), ECCN 4D94F is amended by revising the heading of the entry to read as follows:

4D94F "Software" specially designed for the "development", "production", or "use" of "digital computers", "assemblies" and related equipment therefor controlled by 4A94.

* * * * *

44. In Category 4 (Computers), ECCN 4E01A is amended by revising the heading of the entry and ECCN 4E02A is amended by revising the List of Items Controlled to read as follows:

4E01A Technology, according the General Technology Note, for the "development", "production" or "use" of equipment controlled by 4A01, 4A02, 4A03, or 4A04, or "software" controlled by 4D01, 4D02, or 4D03.

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4E02A Other technology.

* * * * *

List of Items Controlled

a. Technology for the "development" or "production" of equipment designed for "multi-data-stream processing" where the "CTP" exceeds 120 Mtops;

b. Technology "required" for the "development" or "production" of magnetic hard disk drives with an "MBTR" exceeding 47 Mbit/s.

45. In Supplement No. 1 to § 799.1 (the Commerce Control List), Category 4 (Computers), new ECCNs 4E92F and 4E93F are added immediately following ECCN 4E80C to read as follows:

4E92F Technology for the "development", "production", or "use" of equipment controlled by 4B94, materials controlled by 4C94, or "software" controlled by 4D92, 4D93, or 4D94.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, *except* destinations listed under *Validated License Required*

4E93F Technology for the "development" or "production" of graphics accelerators or equipment designed for "multi-data-stream processing" and technology "required" for the "development" or "production" of magnetic hard disk drives.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, *except* destinations listed under *Validated License Required*

List of Items Controlled

a. Technology for the "development" or "production" of graphics accelerators not controlled by 4A03.d or 4A94.g;

b. Technology, not controlled by 4E02.a, for the "development" or "production" of equipment designed for "multi-data-stream processing";

c. Technology, not controlled by 4E02.b, "required" for the "development" or "production" of magnetic hard disk drives with a "maximum bit transfer rate" ("MBTR") exceeding 11 Mbit/s.

46. In Supplement No. 1 to § 799.1 (the Commerce Control List), Category 4 (Computers), ECCN 4E94F is amended by revising the heading of the entry to read as follows:

4E94F Technology for the "development", "production", or "use" of "digital computers", "assemblies" and related equipment therefor controlled by 4A94F.

* * * * *

47. In Category 4 (Computers), following ECCN 4E96G, under the heading "Notes for Category 4":

a. Advisory Notes 1, 2, and 3 are revised;

b. Advisory Note 4 and 5 are removed and reserved;

c. Advisory Notes 6 and 7 are revised; and

d. A new Advisory Note 8 is added to read as follows:

Notes for Category 4

Advisory Note 1: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Romania of the items controlled by Category 4 for national security reasons, *except*:

a. Computers controlled by 4A01 or 4A02;

b. "Digital computers" controlled by 4A03.b, having a "composite theoretical performance" (CTP) exceeding 100 million theoretical operations per second (Mtops);

c. Computers controlled by 4A04, and specially designed related equipment, "assemblies" and components therefor;

d. "Software" specially designed and technology "required" for the equipment described in this Advisory Note 1.a, .b, or .c that are controlled by 4D or 4E.

Advisory Note 2: Licenses are likely to be approved, as administrative exceptions for export to satisfactory end-users in the People's Republic of China of "digital computers", specially designed components and related equipment therefor, controlled by 4A03.b, .d, .e, or .f, or "software" controlled by 4D01, provided that:

a. They will be operated by civil end-users for civil applications;

b. They are exported as complete systems or enhancements to previously exported systems up to the limits in this Advisory Note 2.d;

c. They have been primarily designed and used for non-strategic applications;

d. The "CTP" of the "digital computers" does not exceed 20 Mtops;

e. Equipment containing "terminal interface equipment" does not exceed:

1. The limits of Advisory Note 4 to Category 5, Section I (Telecommunications);

2. The limits of 5A02.c.2; *or*

3. A "digital transfer rate" of 100 Mbit/s on the common media for "network access controllers" and related equipment controlled by 5A02.c.3; *and*

f. Any controlled "software" is the minimum required for the "use" of the approved "digital computers" and related equipment.

Advisory Note 3: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of "digital computers", "assemblies" or related equipment controlled by 4A03, or specially designed components therefor, and "software" controlled by 4D01, provided that:

a. They will be operated by civil end-users for civil applications;

b. They have been primarily designed and used for non-strategic applications;

c. They do not exceed any of the following limits:

1. The "CTP" of the "digital computers" does not exceed 1,000 Mtops;

2. The "3–D vector rate" does not exceed 3 million;

3. The total data transfer rate of equipment controlled by 4A03.g does not exceed 400 MByte/second;

d. When exported as enhancements, the enhanced "digital computer" does not exceed the limit in this Advisory Note 3.c;

e. Exports of items covered by this Advisory Note 3 shall be subject to the following restrictions:

1. The equipment will be used primarily for the specific non-strategic application for which the export has been approved;

2. The equipment will not be used for the design, development, or production of items controlled for national security reasons; *and*

3. The exporter shall report promptly any evidence of the removal or diversion of the equipment from authorized purposes related to the specific export license;

f. For systems where the "CTP" exceeds 520 Mtops, the following conditions apply:

1. The licensee or the designated representative of the licensee, who must be from a non-proscribed country, must have the right of access to all the equipment and may carry out inspections;

2. The licensee, upon the request of the Office of Export Licensing, must carry out inspections to establish that all the equipment and systems exported under the provisions of this Advisory Note:

a. Are being used for the intended civil purposes; *and*

b. Are still located at the installation sites. The licensee shall report the findings from the inspection to the Office of Export Licensing within one month after completing the inspection.

Advisory Note 4: [Reserved]

Advisory Note 5: [Reserved]

Advisory Note 6: Licenses will receive favorable consideration for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of "digital computers", "assemblies" or related equipment therefor controlled by 4A03, or specially designed components therefor, and "software" controlled by 4D01, provided that:

a. They will be operated by civil end-users for civil applications;

b. They have been primarily designed and used for non-strategic applications;

c. They do not exceed any of the following limits:

1. The "CTP" of the "digital computers" does not exceed 1,500 Mtops;

2. The "3–D vector rate" does not exceed 3 million;

3. The total data transfer rate of equipment controlled by 4A03.g does not exceed 400 MByte/second;

d. The "assemblies" controlled by 4A03.c are not specially designed or modified for a family of computers the maximum configuration of which exceeds 1,500 Mtops;

e. When exported as enhancements, the enhanced "digital computer" does not exceed the limit in this Advisory Note 6.c;

f. Any controlled "software" is the minimum required for the "use" of the approved "digital computers" and related equipment;

g. Exports of items covered by this Advisory Note 6 shall be subject to the following conditions:

1. A signed statement must be submitted by a responsible representative of the end-user(s) or the importing agency describing the end-use and certifying that the "digital computers" or related equipment:

a. Will be used only for civil applications; *and*

b. Will *not* be reexported or otherwise disposed of without prior written authorization from the Office of Export Licensing;

2. The following information must be clearly stated on an export application for equipment controlled by this Advisory Note:

a. A full description of the equipment *and* its intended application and workload; *and*

b. A complete identification of all end-users and their activities;

3. The licensee or the designated representative of the licensee, who must be from a non-proscribed country, must have the right of access to all the equipment or systems and may carry out inspections;

4. The licensee, upon the request of the Office of Export Licensing, must carry out inspections to establish that all the equipment or systems exported under the provisions of this Advisory Note:

a. Are being used for the intended civil purposes; *and*

b. Are still located at the installation sites. The licensee shall report the findings from the inspection to the Office of Export Licensing within one month after completing the inspection;

5. The licensee, or the designated representative of the licensee, must be notified of any significant change of application or of other facts on which the license was based;

h. In reviewing applications for items described in this Advisory Note, consideration will be given to:

1. The appropriateness of the equipment to the stated end-use;

2. Any evidence that would indicate that the proposed end-users are:

a. Directly involved in significant strategic, including intelligence, activities; *or*

b. Affiliated with organizations that foster diversion to strategic purposes;

3. The extent to which the equipment will support the strategic activities of the end-users; *and*

4. The extent to which diversion would disrupt the activities of the proposed end-users.

Advisory Note 7: Licenses will receive favorable consideration for exports to satisfactory end-users in Bulgaria, Kazakhstan, Latvia, Mongolia, Russia and Ukraine of all items controlled by Category 4 for national security reasons, *except:*

a. Computers controlled by 4A01 or 4A02;

b. "Digital computers" controlled by 4A03.b having a "CTP" exceeding 41 Mtops, and specially designed components therefor;

c. Computers controlled by 4A04, and specially designed related equipment, "assemblies" and components therefor;

d. "Software" specially designed and technology "required" for the equipment described in this Advisory Note 7.a, .b, or .c. controlled by 4D or 4E for national security reasons.

Advisory Note 8: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of equipment controlled by 4A03.g, provided that it is exported for use in interconnecting peripheral equipment to "digital computers" *not* controlled by 4A03.b.

48. In Category 5 (Telecommunications and "Information Security"), Subcategory I "Telecommunications", ECCN 5A01A is amended by revising the List of Items Controlled to read as follows:

5A01A Any type of telecommunications equipment having any of the characteristics, functions or features described in this entry.

* * * * *

List of Items Controlled

Any type of telecommunications equipment having any of the following characteristics, functions or features:

a. Specially designed to withstand transitory electronic effects or electromagnetic pulse arising from a nuclear explosion;

b. Specially hardened to withstand gamma, neutron or ion radiation;

c. Specially designed to operate outside the temperature range from 218 K (–55 °C) to 397 K (124 °C).

Note: 5A01.c applies only to electronic equipment.

Note: 5A01.b and c do not apply to equipment on board satellites.

49. In Category 5 (Telecommunications and "Information Security"), Subcategory I "Telecommunications", ECCN 5A02A is amended by revising the List of Items Controlled to read as follows:

5A02A "Telecommunication transmission equipment" or systems and specially designed components and accessories therefor, having any of the characteristics, functions or features.

* * * * *

List of Items Controlled

Note: "Telecommunication transmission equipment."

a. Categorized as follows, or combinations thereof:

1. Radio equipment (e.g., transmitters, receivers and transceivers);

2. Line terminating equipment;

3. Intermediate amplifier equipment;

4. Repeater equipment;

5. Regenerator equipment;
6. Translation encoders (transcoders);
7. Multiplex equipment (statistical multiplex included);
8. Modulators/demodulators (modems);
9. Transmultiplex equipment (see CCITT Rec. G.70l);
10. "Stored program controlled" digital crossconnection equipment;
11. "Gateways" and bridges;
12. "Media access units"; *and*

b. Designed for use in single or multi-channel communication via:
1. Wire (line);
2. Coaxial cable;
3. Optical fiber cable;
4. Electromagnetic radiation;
5. Underwater acoustic wave propagation.

"Telecommunication transmission equipment" or systems and specially designed components and accessories therefor, having any of the following characteristics, functions or features:

a. Employing digital techniques, including digital processing of analog signals, and designed to operate at a "digital transfer rate" at the highest multiplex level exceeding 45 Mbit/s, or a "total digital transfer rate" exceeding 90 MBit/s;

Note: 5A02.a does not control equipment specially designed to be integrated and operated in any satellite system for civil use.

b. Being "stored program controlled" digital cross connect equipment with a "digital transfer rate" exceeding 8.5 Mbit/s per port;

c. Being equipment containing:

c.1. Modems using the "bandwidth of one voice channel" with a "data signalling rate" exceeding 28,800 bit/s;

c.2. "Communication channel controllers" with a digital output having a "data signalling rate" exceeding 2.1 Mbit/s per channel; *or*

c.3. "Network access controllers" and their related common medium having a "digital transfer rate" exceeding 156 Mbit/s;

Note: If any uncontrolled equipment contains a "network access controller", it cannot have any type of telecommunications interface except those described in, but not controlled by, 5A02.c.

d. Employing a "laser" and having any of the following characteristics:

d.1. Having a transmission wavelength exceeding 1,000 nm;

d.2. Employing analog techniques and having a bandwidth exceeding 45 MHz;

d.3. Employing coherent optical transmission or coherent optical detection techniques (also called optical heterodyne or homodyne techniques);

d.4. Employing wavelength division multiplexing techniques; *or*

d.5. Performing "optical amplification";

e. Being radio equipment operating at input or output frequencies exceeding:

e.1. 31 GHz for satellite-earth station applications; *or*

e.2. 26.5 GHz for other applications;

Note: 5A02.e.2 does not control equipment for civil use when conforming with an ITU allocated band between 26.5 GHz and 31 GHz.

f. Being radio equipment:

f.1. Employing quadrature-amplitude-modulation (QAM) techniques above level 4 if the "total digital transfer rate" exceeds 8.5 Mbit/s;

f.2. Employing quadrature-amplitude-modulation (QAM) techniques above level 16 if the "total digital transfer rate" is equal to or less than 8.5 Mbit/s; *or*

f.3. Employing other digital modulation techniques and having a "spectral efficiency" greater than 3 bit/sec/Hz;

Note 1: 5A02.f does not control equipment specially designed to be integrated and operated in any satellite system for civil use.

Note 2: 5A02.f does not control radio relay equipment for operation in an ITU allocated band:

a.1. Not exceeding 960 MHz; *or*
2. With a "total digital transfer rate" not exceeding 8.5 Mbit/s; *and*
b. Having a "spectral efficiency" not exceeding 4 bit/sec/Hz.

g. Being radio equipment operating in the 1.5 to 87.5 MHz band and having either of the following characteristics:

g.1. a. Automatically predicting and selecting frequencies and "total digital transfer rates" per channel to optimize the transmission; *and*

g.1.b. Incorporating a linear power amplifier configuration having a capability to support multiple signals simultaneously at an output power of 1 kW or more in the 1.5 to 30 MHz frequency range or 250 W or more in the 30 to 87.5 MHz frequency range, over an "instantaneous bandwidth" of one octave or more and with an output harmonic and distortion content of better than −80 dB; *or*

g.2. Incorporating adaptive techniques providing more than 15 dB suppression of an interfering signal;

h. Being radio equipment employing "spread spectrum" or "frequency agility" (frequency hopping) techniques having any of the following characteristics:

h.1. User programmable spreading codes; *or*

h.2. A total transmitted bandwidth that is 100 or more times the bandwidth of any one information channel and in excess of 50 kHz;

i. Being digitally controlled radio receivers having more than 1,000 channels, which:

i.1. Search or scan automatically a part of the electromagnetic spectrum;

i.2. Identify the received signals or the type of transmitter; *and*

i.3. Have a "frequency switching time" of less than 1 ms;

j. Providing functions of digital "signal processing" as follows:

j.1. Voice coding at rates of less than 2,400 bit/s;

j.2. Employing circuitry that incorporates "user-accessible programmability" of digital "signal processing" circuits exceeding the limits of 4A03.b;

k. Being underwater communications systems having any of the following characteristics:

k.1. An acoustic carrier frequency outside the range of 20 to 60 kHz;

k.2. Using an electromagnetic carrier frequency below 30 kHz; *or*

k.3.Using electronic beam steering techniques.

50. In Category 5 (Telecommunications and "Information Security"), Subcategory I "Telecommunications", ECCNs 5D01A, 5D02A, 5E01A, and 5E02A are revised and ECCN 5D03A is amended by revising the Requirements to read as follows:

5D01A "Software" specially designed or modified for the "development", "production" or "use" of equipment or materials controlled by the telecommunications entries 5A01, 5A02, 5A03, 5A04, 5A05, 5A06, 5B01, 5B02, or 5C01.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason For Control: NS, MT (see *Note*)
GTDR: Yes, *except* MT (see *Note*)
GTDU: No

Note: MT controls apply to "software: designed or modified for the "development", "production" or "use" of items controlled by 5A01.

5D02A "Software" specially designed or modified to support "technology" controlled by telecommunications entries 5E01 or 5E02.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason For Control: NS, MT (see *Note*)
GTDR: Yes, *except* MT (see *Note*)
GTDU: No

Note: MT controls apply to "software" designed or modified to support "technology" for the "development", "production" or "use" of items controlled by 5A01.

5D03A Specific "software" as follows.

Requirements

Validated License Required:
QSTVWYZ
Unit: $ value
Reason For Control: NS, MT (see *Note*)
GTDR: Yes, *except* MT (see *Note*)
GTDU: No

Note: MT controls apply to "software" listed below as applicable to the "development", "production" or "use" of equipment controlled by 5A01.

List of Items Controlled

* * * * *

5E01A Technology according to the General Technology Note for the "development", "production" or "use" (excluding operation) of equipment, systems, materials or "software" controlled by the telecommunications entries in 5A, 5B, 5C, or 5D.

Requirements

Validated License Required:
QSTVWYZ
Reason For Control: NS, MT (see *Note*)
GTDR: Yes, *except* MT, Iran and Syria
GTDU: No

Note: MT controls apply to technology for the "development", "production" or "use" of equipment controlled by 5A01 or related "software" controlled by 5D01, 5D02 or 5D03.

5E02A Specific technologies as described in this entry.

Requirements

Validated License Required:
QSTVWYZ
Reason For Control: NS
GTDR: Yes, *except* Iran and Syria
GTDU: No

List of Items Controlled

a. "Required" technology for the "development" or "production" of telecommunications equipment specially designed to be used on board satellites;

b. Technology for the "development" or "use" of laser communication techniques with the capability of automatically acquiring and tracking signals and maintaining communications through exoatmosphere or sub-surface (water) media;

c. Technology for processing and application of coatings to optical fiber specially designed to make it suitable for underwater use;

d. Technology for "development" or "production" of equipment employing "Synchronous Digital Hierarchy" (SDH) or "Synchronous Optical Network" (SONET) techniques;

e. Technology for the "development" or "production" of "switch fabric" exceeding 64,000 bits per second per information channel other than for digital cross connect integrated in the switch;

f. Technology for the "development" or "production" of centralized network control;

g. Technology for the "development" or "production" of digital cellular radio systems;

h. Technology for the "development" or "production" of "Integrated Services Digital Network" (ISDN);

i. Technology for the "development" of QAM techniques, for radio equipment, above level 4.

51. In Category 5 (Telecommunications and "Information Security"), Subcategory I "Telecommunications", under the heading "Notes for Telecommunications", Advisory Note 1 is removed and reserved, and Advisory Notes 8, 11, 12, 13, 14, 15, 16, 17, and 19 are revised, and new Advisory Notes 23 through 27 are added to read as follows:

Notes for Telecommunications

Advisory Note 1: [Reserved]

* * * * *

Advisory Note 8: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in the People's Republic of China of test and inspection equipment and specially designed components and accessories therefor controlled by 5B01A or 5B02A and "software" and technology for such equipment, components and accessories, for the repair of telecommunications equipment, provided that:

a. Such equipment, components, accessories, "software" and technology:

1. Are specially designed for repair;

2. Are to be used to repair controlled equipment authorized for export or equipment that is not controlled for national security reasons;

3. Are shipped in reasonable quantities necessary for the types and quantities of exported equipment being serviced;

4. Do not provide local production facilities;

5. Do not provide for testing of individual electronic components; *and*

6. Do not include "software" in "source code" controlled by 5D03.a;

b. The repair does not upgrade the equipment or "software";

c. All the records of repair activity are kept by a representative of the Western supplier; *and*

d. The information to accompany each license application shall include:

1. A complete list of equipment to be provided; *and*

2. A clear identification of the users and their activities.

N.B.: Nothing in this Advisory Note 8 shall be construed as overriding controls in other ECCNs contained in the Commerce Control List.

* * * * *

Advisory Note 11: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Albania, Bulgaria, the People's Republic of China, Mongolia, Romania, or Vietnam of telecommunications equipment for optical fibers controlled by 5A02.d.1, provided that the transmission wavelength does not exceed 1,370 nm.

Advisory Note 12: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Albania, Bulgaria, the People's Republic of China, Mongolia, Romania, or Vietnam of cables or fibers controlled by 5A05, provided that:

a. Quantities are normal for the envisaged end-use; *and*

b. They are for a specified civil end-use.

Advisory Note 13: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Albania, Bulgaria, the People's Republic of China, Mongolia, Romania, or Vietnam of optical fiber test equipment controlled by 5B01.c using a transmission wavelength not exceeding 1,370 nm.

Advisory Note 14: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of digital radio equipment or systems controlled by 5A02.a or f, provided that:

a. The equipment or system is intended for general commercial international traffic in an international civil telecommunication system, one end of which is in a COCOM member country;

b. It is to be installed in a permanent circuit under the supervision of the licensee;

c. No means are to be provided for the transmission of traffic between points in a single proscribed country other than a country in Country Group Q or W;

d. The "digital transfer rate" at the highest multiplex level does not exceed 156 Mbit/s;

e. The equipment does not employ either of the following:

1. Quadrature Amplitude Modulation (QAM) techniques above level 64; *or*

2. Other digital modulation techniques with a "spectral efficiency" exceeding 6 bit/s/Hz;

f. The equipment is not controlled by 5A02.e or .h or by the "information security" entries in Category 5;

g. Spare parts shall remain under the control of the licensee or the licensee's designated representative;

Note: The supervision of the spare parts by the licensee may be effected by stock inventory procedures and does not require the permanent on-site presence of a representative of the licensee.

h. The licensee or the licensee's designated representative, who shall be from a non-proscribed country, shall have the right of access to all the equipment;

i. There will be no transfer of technology controlled for national security reasons;

j. Supervision of systems installation, operation and maintenance shall be

performed by the licensee or the licensee's designated representative, who shall be from a non-proscribed country, using only personnel from non-proscribed countries;

N.B. 1: Supervision of maintenance includes preventive maintenance at periodic intervals and intervention for major malfunctions.

N.B. 2: This does not mean that only nationals from the exporting country should install the system.

k. Upon request, the licensee shall carry out an inspection to establish that:

1. The system is being used for the intended civil purpose; *and*

2. All the equipment exported under the provisions of this Advisory Note is being used for the stated purpose and is still located at the installation sites. The licensee shall report the findings from the inspection to the Office of Export Licensing within one month after completing the inspection.

Advisory Note 15: Licenses will receive favorable consideration for exports to satisfactory end-users in Bulgaria or Romania of technology controlled by the telecommunications entries in Category 5, and of instrumentation, test equipment, components and specially designed "software" therefor, and materials and components controlled by the telecommunications entries in Category 5 or by entries in other Categories on the Commerce Control List, for the modification or "production" of telecommunications equipment or systems eligible for administrative exceptions treatment under Advisory Note 1 in the Notes for Telecommunications (Category 5), provided that:

N.B.: Technology for general purpose computers is not eligible for treatment under this Advisory Note, i.e., it remains governed by Category 4.

a. The characteristics of the telecommunications equipment or systems are limited to those eligible for administrative exceptions treatment under Advisory Note 1 in the Notes for Telecommunications (Category 5);

b. Modification of the telecommunications equipment or systems is not permitted if any aspect of the design would result in exceeding the performance thresholds or features of Advisory Note 1 in the Notes for Telecommunications (Category 5);

c. Testing of large scale integrated (LSI) circuits or those with higher component densities is limited to go/no go tests;

N.B.: Advisory Note 15.c does not preclude exports of equipment or technology that would be possible in accordance with the provisions of other Categories on the Commerce Control List.

d. The specially designed "software" is that necessary to use the transferred technology, instrumentation and test equipment;

e. All "software" shall be exported in machine executable form only;

f. "Development" technology is not included;

g. The contract includes explicit conditions to ensure that:

1. The "production" technology or "production" equipment is not exported or reexported, either directly or indirectly, to another proscribed destination;

2. The supplier or licensor may appoint a representative who is entitled to verify that the "production" technology and "production" equipment or systems serve their intended use;

3. Any modification of the capabilities or functions of the produced equipment must be approved by the supplier or licensor;

4. The supplier's or licensor's personnel have right of access to all the facilities directly involved in the "production" of the telecommunications equipment or systems;

5. The "production" technology, "production" equipment and produced equipment or systems will be for civil end-use only and not for reexport to proscribed destinations other than Bulgaria or Romania;

h. System integration testing will be performed by the supplier or licensor, if it requires test tools that would provide the licensee with the capability to recover source code or upgrade the system beyond the performance thresholds or features of Advisory Note 1 in the Notes for Telecommunications (Category 5);

i. End-use reporting of the installed telecommunication equipment or systems will be provided in accordance with the provisions of Advisory Note 1 in the Notes for Telecommunications (Category 5).

N.B. 1: No export under the favorable consideration provisions of this Advisory Note shall establish a precedent for the approval of exports under entries in other Categories on the Commerce Control List.

N.B. 2: For each license application for export pursuant to this Advisory Note, the exporter must submit the following assurances to be obtained from the importer:

a. An Import Certificate issued by the importer's national authorities;

b. An assurance that the importer will make available information as requested by the Department of Commerce; *and*

c. An assurance that the importer will allow on-site inspection if requested by the Department of Commerce.

Advisory Note 16: Licenses will receive favorable consideration for the export to satisfactory end-users in Albania, Bulgaria, Mongolia, Romania, or Vietnam of radio relay communications equipment, specially designed components and accessories, specially designed test equipment, "software" and technology for the "use" of equipment or materials therefor, controlled by the telecommunications entries in this Category, provided that:

a. It is for fixed installation and civil application;

b. It is designed for operation at a total "digital transfer rate" not exceeding 156 Mbit/s;

c. The equipment does not employ either of the following:

1. Quadrature Amplitude Modulation (QAM) techniques above 64 QAM; *or*

2. Other digital modulation techniques with a "spectral efficiency" exceeding 6.3 bit/s/Hz;

d. It operates at fixed frequencies not exceeding 9 GHz;

e. A license application for export under the provisions of this Advisory Note provides the following information:

1. The equipment or system to be provided;

2. The intended application; *and*

3. The location of the equipment.

Advisory Note 17: Licenses will receive favorable consideration for the export to satisfactory end-users in Country Groups QWY and the People's Republic of China of optical fiber cables and optical fiber transmission equipment or systems controlled by 5A02 or 5A05, provided that:

a. The equipment or systems are intended for general commercial international traffic in an international civil submarine optical fiber telecommunication system linking the importing country with a non-proscribed country;

b. It is to be installed in a permanent circuit under the supervision of the licensee;

c. No means are to be provided for the transmission of traffic between points in one or more proscribed countries other than Bulgaria or Romania;

d. The total length of optical fiber cable to be installed within the proscribed country, excluding cable in territorial waters, does not exceed 10 km or the shortest distance that is practical for installation;

e. The "digital transfer rate" at the highest multiplex level does not exceed 565 Mbit/s;

f. The "laser" transmission wavelength does not exceed 1,550 nm;

g. The equipment is not controlled by 5A02.d.2 to d.5 or by the "information security" entries in Category 5;

h. Controlled spare parts shall remain under the supervision of the licensee or the licensee's designated representative, who shall be from a non-proscribed country;

Note: The supervision of spare parts by the licensee may be effected by stock inventory procedures and does not require the permanent on-site presence of a representative of the licensee.

i. The licensee or the licensee's designated representative, who shall be from a non-proscribed country, shall have the right of access to all the equipment;

j. There will be no transfer of controlled technology;

k. Supervision of systems installation and of maintenance shall be performed by the licensee or the licensee's designated representative, who shall be from a non-proscribed country, using only personnel from non-proscribed countries; *and*

N.B. 1: Supervision of maintenance includes preventive maintenance at periodic intervals and intervention for major malfunctions.

N.B. 2: This does not require that only nationals from the exporting country should install the system.

l. Upon request, the licensee shall carry out an inspection to establish that:

1. The system is being used for the intended civil purpose;

2. All the equipment exported under the provisions of this Advisory Note is being used for the stated purpose and is still located at the installation sites. The licensee shall report the findings from the inspection

to the Office of Export Licensing within one month after completing the inspection.

* * * * *

Advisory Note 19: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of fiber optic telecommunications transmission systems or equipment controlled by 5A02.a and 5A02.d.1, fiber optic cables controlled by 5A05, or coaxial cable telecommunications transmission systems controlled by 5A02.a, and the test equipment, specially designed components, accessories, "software" and technology, necessary for the "use" thereof, provided that:

a. They are intended for international telecommunications links dedicated to international civil traffic between the following locations:

1.a. *From the following countries:* Austria, Belgium, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Norway, Poland, Portugal, the Slovak Republic, Spain, Sweden, Switzerland, Turkey, or the United Kingdom;

b. *To the following cities as listed by country:* Albania (Tirana), Armenia (Yerevan), Azerbaijan (Baku), Bulgaria (Sophia, Varna), Belarus (Minsk), Georgia (Tbilissi), Kazakhstan (Alma-Ata), Kyrgyzstan (Bishkek), Moldova (Chisinau), Romania (Bucharest, Constanza), Russia (Moscow, Novorossiisk, Rostov-on-Don, St. Petersburg, Volgograd), Tajikistan (Dushanbe), Turkmenistan (Ashgabat), Ukraine (Kiev, Odessa, Sebastopol), Uzbekistan (Tashkent) *or*

2.a. *From the following countries.* Australia, Canada, Hong Kong, Japan, New Zealand, South Korea, or the United States;

b. *To the following cities as listed by country:* People's Republic of China (Shanghai, Guangzhou), Russia (Khabarovsk, Nakhodka, Vladivostok, Yuzhno-Sadhalinsk), Vietnam (Hanoi, Ho Chi Minh City);

N.B.: No traffic shall be carried between points in proscribed countries, except in Estonia, Latvia, and Lithuania.

b. [Reserved];

c. They are designed to operate at a "digital transfer rate" at the highest multiplex level of 623 Mbit/s or less;

d. The "laser" transmission wavelength does not exceed 1,590 nm;

e. The equipment, if employing synchronous transmission techniques, must conform to one of the approved SONET or SDH standards or recommendations (i.e. ANSI or CCITT);

f. Supervision of systems installation and maintenance of controlled transmission equipment must be performed by the licensee or the licensee's designated representative, who must be from a non-proscribed country. Any portion of the installation of controlled transmission equipment that would require the transfer of controlled technology must be performed by the licensee or the licensee's designated representative using only personnel from non-proscribed countries;

N.B. 1: Supervision of maintenance includes preventive maintenance at periodic intervals and intervention for major malfunctions.

N.B. 2: This is not meant to require that only nationals from the exporting country should install the system.

g. Controlled test equipment and controlled spare parts must remain under the supervision of the licensee or the licensee's designated representative, who shall be from a non-proscribed country;

N.B.: The supervision of the test equipment and spare parts by the licensee may be effected by stock inventory procedures and does not require the permanent on-site presence of a representative of the licensee.

h. The licensee or the licensee's designated representative, who shall be from a non-proscribed country, must have the right of access to all the equipment;

i. Upon request of the government of the exporting country, the licensee must carry out an inspection to establish that:

1. The system is being used for the intended civil purpose; *and*

2. All the equipment exported under the provisions of this Advisory Note is being used for the stated end purpose and is still located at the installation sites. The licensee shall report the findings from the inspection to the Office of Export Licensing within one month after completing the inspection;

j. The license application must include a system plan containing equipment quantities and approximate locations for the proposed system. After final installation, unless already provided, the applicant must provide to the licensing authorities the final location of the installed equipment to the greatest degree of precision available and a map of the final cable route.

* * * * *

Advisory Note 23: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of "software" controlled by 5D03.a, and related technology, "software" tools and test equipment necessary for the "development", "production" or "use" thereof, provided that:

a. The "software", technology, "software" tools and test equipment will be limited to those necessary for problem analysis and reporting or for local adaptation of the switching equipment such as for subscriber terminal interface, network interface, billing, administration or similar adaptations for local civilian telecommunications requirements, by a civil end-user;

b. No "software" or technology "required" for the "development", "production" or "use" of functions, features or equipment controlled by the telecommunications entries in 5A, 5B or 5E of Subcategory I to Category 5 shall be included;

Note: This Advisory Note does not release from control the "software" in "source code" comprising that "software" that controls the management and execution of programs, commonly referred to as the operating system.

c. Such "software", technology, "software" tools or test equipment do not provide the capability to decompile, disassemble or perform similar activities to "software" in "object code" or similar format and thereby reverse-engineer controlled characteristics, functions or features;

d. The licensee or the licensee's designated representative, who shall be from a nonproscribed country, shall have the right of access to the site of, and computing equipment being used to perform, such adaptations so as to have access to:

1. The "software", technology, "software" tools and test equipment referred to in this Advisory Note; *and*

2. All "software" developed or derived from the "software" technology, "software" tools and test equipment licensed under this Advisory Note;

e. Upon request of the Office of Export Licensing, the licensee must carry out an inspection to establish that:

1. The "software", technology, "software" tools and test equipment referred to in this Advisory Note are being used for the intended civil purpose; *and*

2. All the "software", technology, "software" tools and test equipment exported under the provisions of this Advisory Note are being used for the stated end purpose and are still located at the installation sites. The licensee shall report the findings from the inspection to the Office of Export Licensing within one month after completing the inspection.

Advisory Note 24: Licenses will receive favorable consideration for exports to satisfactory end-users in the People's Republic of China of technology controlled by the telecommunications entries in Subcategory I of Category 5 and of instrumentation, test equipment, components and specially designed "software" therefor, and materials and components controlled by national security entries on the Commerce Control List, for the modification or production of the telecommunication transmission equipment or systems described in 5A02.a, 5A02.d.1, 5A02.f.1, or 5A02.f.2, provided that:

N.B. 1: Technology for general purpose computers is not eligible for treatment under this Advisory Note, i.e., it remains controlled by Category 4.

N.B. 2: No technology is to be included for the "production" of:

a. Equipment employing "SDH" or "SONET" techniques; *or*

b. "Lasers" with transmission wavelengths exceeding 1,000 nm.

a. The characteristics of the telecommunication transmission equipment or systems are limited to those that release them from control or make them eligible under the relevant Advisory Notes that provide administrative exceptions treatment, provided that the following limits are not exceeded:

1. QAM techniques of level 16;

2. A "digital transfer rate" of 140 Mbits/s and a "total digital transfer rate" of 168 Mbits/s;

N.B.: An additional 2 Mbit/s may be added to the "total digital transfer rate" of 168 Mbit/s for operation, maintenance and service communications.

3. A "laser" transmission wavelength of 1,370 nm;

b. Modification of the telecommunications transmission equipment or systems is not permitted if any aspect of the design would result in exceeding the performance thresholds or features of the relevant Advisory Notes that provide administrative exceptions treatment;

c. Testing of large scale integrated (LSI) circuits or those with higher component densities is limited to go/no go tests;

N.B.: Advisory Note 24.c does not preclude exports of equipment or technology that would be possible in accordance with the provisions of other Categories in the Commerce Control List.

d. The specially designed "software" is that necessary to use the transferred technology, instrumentation and test equipment;

e. All "software" must be supplied in machine executable form only except for the specific customer data and site parameters;

f. "Development" technology is not included;

g. The contract includes explicit conditions to ensure that:

1. The "production" technology or production equipment is not exported or reexported, either directly or indirectly, to another proscribed destination;

2. The supplier or licensor may appoint a representative who is entitled to verify that the "production" technology and production equipment or systems serve their intended use;

3. Any modification of the capabilities or functions of the equipment produced must be approved by the supplier or licensor;

4. The supplier's or licensor's personnel have right of access to all the facilities directly involved in the production of the equipment or systems covered by this Advisory Note;

5. The "production" technology, production equipment and equipment or systems produced do not exceed the characteristics of the relevant Advisory Notes that provide administrative exceptions treatment and will be for civil end-use only;

h. System integration testing will be performed by the supplier or licensor if it requires test tools that provide the licensee with the capability to recover "source code" or upgrade the system beyond the performance thresholds or features of the relevant Advisory Notes that provide administrative exceptions treatment;

i. The relevant Advisory Note that provides administrative exceptions treatment should be indicated on the license application.

N.B.: No export under the favorable consideration provisions of this Advisory Note shall establish a precedent for the approval of exports under other Categories in the Commerce Control List.

Advisory Note 25: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of components, parts and materials, controlled for national security reasons by entries on the Commerce Control List, necessary for the production of telecommunication equipment or systems, provided that:

a. The production equipment and technology for the equipment concerned has been previously legally exported;

b. The quantity of components, parts and materials exported is normal for the stated end-use;

c. Authorization under this Advisory Note will cover a program of supplies up to two calendar years for the production by the same licensee of equipment authorized under Advisory Note 25.a;

d. No technology or "software" "required" for "development", "production" or "use" shall be included;

e. The components, parts and materials exported will not be permitted to exceed the performance threshold or features of the equipment previously authorized;

f. The contract includes explicit conditions to ensure that:

1. The equipment manufactured with the exported components, parts and materials is not exported or reexported, either directly or indirectly, to another proscribed destination;

2. The supplier or licensor may appoint a representative who is entitled to verify that the "production" technology and production equipment or systems serve their intended use;

3. Any modification of the capabilities or functions of the equipment produced must be approved by the supplier or licensor;

4. The supplier's or licensor's personnel have right of access to all the facilities directly involved in the production of the equipment or systems;

5. The equipment or systems produced will be for civil end-use only.

Advisory Note 26: [Reserved]

Advisory Note 27: Licenses are likely to be approved, as administrative exceptions, for exports to Albania, Armenia, Azerbaijan, Bulgaria, Belarus, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Mongolia, the People's Republic of China, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, and Vietnam of telecommunications equipment or systems controlled by 5A02.a through 5A02.g, 5A03, 5A04 or 5A05, measuring, test or repair equipment controlled by 5B01.c or 5B02, and specially designed components and accessories, "software" and technology necessary for the "use" thereof, provided that:

a. Optical fiber telecommunication transmission equipment or systems:

1. Are designed to operate at a "digital transfer rate" of 623 Mbit/s or less at the highest multiplex level; *and*

2. Are designed to operate on a "laser" transmission wavelength not exceeding 1,590 nm.

b. Digital radio equipment or systems:

1. Are designed to operate at a "digital transfer rate" of 623 Mbit/s or less at the highest multiplex level;

2. Do not employ QAM techniques exceeding level 512 or other digital modulation techniques having a "spectral efficiency" exceeding 9 bit/s/Hz;

c. "CCS":

1. Is limited to the associated mode of operation;

2. Signalling and related speech/data channels are limited to two signalling points and must not be routed via different transmission media or different routes;

N.B.: A single route consists of one or more consecutive serial connection links that may use different transmission media.

3. Message Transfer Part (MTP) level 3 signalling routes are limited to two signalling points;

N.B.: MTP Level 3 is found in Q.704 and related recommendations of the ITU-T Q series for "CCS".

4. For point-to-point inter-city "CCS" connectivity between two signalling points, where permitted by Advisory Note 27.c.1, c.2, or c.3, the Originating Point Codes (OPC) and Destination Point Codes (DPC) for all signalling messages over such signalling links cannot be reinstalled or changed following the vendor's initial software installation without prior authorization, being available in object code only; all compilation mechanisms and administrative tools that allow for modification of the Point Codes are removed following installation;

d. The equipment or systems are designed and intended to be used for fixed civil applications directly connected to a civilian network;

e. The equipment or systems, if employing synchronous transmission techniques, conform to one of the ANSI or ITU–T approved standards or recommendations for "SONET" or "SDH";

f. Measuring, test or repair equipment controlled by 5B01.c or 5B02 and controlled spare parts remain under the supervision of the licensee or the licensee's designated representative;

g. The licensee or the licensee's designated representative have the right of access to all the equipment or systems and may carry out inspections;

h. Upon the request of the Office of Export Licensing, the licensee must carry out inspections to establish that:

1. All the equipment or systems exported under the provisions of this Advisory Note are being used for the intended civil purpose; *and*

2. Are still located at the installation sites. The licensee shall report the findings from the inspection to the Office of Export Licensing within one month after completing the inspection;

i. Supervision of systems installation and maintenance of controlled transmission equipment is performed by the licensee or the licensee's designated representative. Any portion of the installation of controlled transmission equipment that would require the transfer of controlled technology is performed by the licensee or the licensee's designated representative;

N.B. 1: Supervision of maintenance includes prevention maintenance at periodic intervals and intervention for major malfunctions.

j. License applications to export systems or equipment for "common channel signalling" identify the intended system routes and locations of signalling points.

52. In Category 5 (Telecommunications and "Information Security"), Subcategory III (Other Equipment, Materials, "Software"

and Technology), a new ECCN 5A90F is added immediately following ECCN 5A80D to read as follows:

5A90A Any type of telecommunications equipment, not controlled by 5A01, specially designed to operate outside the temperature range from 219 K (−54 °C) to 397 K (124 °C).

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Unit: $ value
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

53. In Category 5 (Telecommunications and "Information Security"), Subcategory III (Other Equipment, Materials, "Software", and Technology), ECCN 5A91F is revised to read as follows:

5A91F Transmission equipment, not controlled by 5A02, containing:

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Unit: $ value
Reason For Control: FP
GLV: $0
GCT: No
GFW: No

List of Items Controlled

a. Modems using the "bandwidth of one voice channel" with a "data signalling rate" exceeding 9,600 bits per second;

b. "Communication channel controllers" with a digital output having a "data signalling rate" exceeding 64,000 bit/s per channel; *or*

c. "Network access controller" and their related common medium having a "digital transfer rate" exceeding 33 Mbit/s.

54. In Category 5 (Telecommunications and "Information Security"), Subcategory III (Other Equipment, Materials, "Software", and Technology), a new ECCN 5D90F is added immediately following ECCN 5D20B to read as follows:

5D90F "Software" specially designed or modified for the "development", "production", or "use" of equipment controlled by 5A90 or 5A91.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Unit: $ value
Reason for Control. FP
GLV: $0
GCT: No
GFW: No

55. In Category 5 (Telecommunications and "Information Security"), Subcategory III (Other Equipment, Materials, "Software", and Technology), a new ECCN 5E90F is added immediately following ECCN 5E20B to read as follows:

5E90F Technology for the "development", "production", or "use" of equipment controlled by 5A90 or 5A91 or "software" controlled by 5D90.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Unit: $ value
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

56. In Category 6 (Sensors), under the heading "Notes for Category 6", Advisory Notes 2.4 and 4.4 are removed and reserved.

57. In Category 7 (Navigation and Avionics), under the heading "Notes for Category 7", Advisory Note 2 is removed and reserved.

58. In Category 8 (Marine Technology), under the heading "Notes for Category 8", Advisory Note 3 is removed and reserved.

59. In Category 9 (Propulsion Systems and Transportation Equipment), under the heading "Notes for Category 9", Advisory Note 3 is removed and reserved.

Dated: May 6, 1994.

Sue E. Eckert,

Assistant Secretary for Export Administration.

[FR Doc. 94–11467 Filed 5–9–94; 4:55 pm]

BILLING CODE 3510–DT–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 74

[Docket No. 92C–0295]

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

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of March 19, 1994, of the final rule that appeared in the **Federal Register** of February 16, 1994 (59 FR 7636) (effective date corrected in the **Federal Register** of February 22, 1994 (59 FR 8507)), and amended the color additive regulations to provide for the safe use of FD&C Blue No. 1 and FD&C Blue No. 1 Aluminum Lake for coloring drugs and cosmetics intended for use in the area of the eye.

DATES: Effective date confirmed: March 19, 1994.

FOR FURTHER INFORMATION CONTACT: Robert L. Martin, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204–0001, 202–254–9519.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 16, 1994 (59 FR 7636) (effective date corrected in the **Federal Register** of February 22, 1994 (59 FR 8507)), FDA amended 21 CFR 74.1101 and 74.2101 to provide for the safe use of FD&C Blue No. 1 and FD&C Blue No. 1 Aluminum Lake for coloring drugs and cosmetics intended for use in the area of the eye.

FDA gave interested persons until March 18, 1994, to file written objections or requests for a hearing. The agency received no objections or requests for a hearing on the final rule. Therefore, FDA has concluded that the final rule published in the **Federal Register** of February 16, 1994, should be confirmed as corrected on February 22, 1994.

List of Subjects in 21 CFR Part 74

Color additives, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201, 401, 402, 403, 409, 501, 502, 505, 601, 602, 701, 721 (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that no objections or requests for a hearing were filed in response to the February 16, 1994, final rule. Accordingly, the amendments promulgated thereby became effective March 19, 1994.

Dated: May 4, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–11594 Filed 5–13–94; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 178

[Docket No. 92F–0162]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to expand the safe use of sodium 2,2'-methylenebis(4,6-di-*tert*-butylphenyl)phosphate as a clarifying agent in polypropylene articles intended for contact with all types of food to include frozen or refrigerated storage of ready-prepared foods intended to be reheated in the container at the time of use. This action is in response to a petition filed by Asahi Denka Kogyo K. K.

DATES: Effective May 16, 1994; written objections and requests for a hearing by June 15, 1994.

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

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

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of May 4, 1992 (57 FR 19133), FDA announced that a food additive petition (FAP 2B4300) had been filed by Asahi Denka Kogyo K. K., c/o Japan Technical Information Center, Inc., 1002 Pennsylvania Ave. SE., Washington, DC 20003, proposing that the food additive regulations be amended in § 178.3295 *Clarifying agents for polymers* (21 CFR 178.3295) to expand the safe use of sodium 2,2'-methylenebis(4,6-di-*tert*-butylphenyl)phosphate (CAS Reg. No. 85209–1–2) as a clarifying agent in polypropylene articles intended for contact with food.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed use of the additive is safe and that the regulations in § 178.3295 should be amended as set forth below.

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

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

Any person who will be adversely affected by this regulation may at any time on or before June 15, 1994, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

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

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

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

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

2. Section 178.3295 is amended in the table by revising the entry for "Sodium 2,2'-methylenebis(4,6-di-*tert*-butylphenyl)phosphate" to read as follows:

§ 178.3295 Clarifying agents for polymers.

* * * * *

Substances	Limitations
* * * * * * *	
Sodium 2,2'- methylenebis(4,6-di-*tert*-butylphenyl)phosphate (CAS Reg. No. 85209–91–2).	For use only as a clarifying agent at a level not exceeding 0.30 percent by weight of olefin polymers complying with § 177.1520(c) of this chapter, items 1.1, 3.1, or 3.2 (where the copolymers complying with items 3.1 and 3.2 contain not less than 85 weight percent of polymer units derived from polypropylene). The finished polymers contact foods only of types I, II, IV-B, VI–B, VII–B, and VIII as identified in Table 1 of § 176.170(c) of this chapter and limited to conditions of use B through H described in Table 2 of § 176.170(c) of this chapter. or foods of all types, limited to conditions of use C through H described in Table 2 of § 176.170(c) of this chapter.

Dated: May 6, 1994.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 94–11785 Filed 5–13–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF STATE

22 CFR Part 22

[Public Notice 2006]

Schedule of Fees for Consular Services, Department of State and Foreign Service of the United States

AGENCY: Bureau of Consular Affairs, Department of State.

ACTION: Interim rule.

SUMMARY: This interim rule amends § 22.1 of title 22, Code of Federal Regulations by creating a surcharge for the processing of machine readable visas (MRV's). That surcharge, pursuant to OMB Circular No. A–25, is set at a cost-recovery based level of $20,00 per visa application.

DATES: *Effective Date:* The effective date for the new fee is May 16, 1994.

Date for submission of comments: June 15, 1994.

ADDRESSES: Interested persons are invited to submit comments in duplicate to the Office of the Executive Director, Bureau of Consular Affairs, Department of State, Washington, DC 20520–4818.

FOR FURTHER INFORMATION CONTACT: Holcombe Thomas, Office of the Executive Director, Bureau of Consular Affairs, Department of State, Washington, DC 20520–4818, (202) 647–1148.

SUPPLEMENTARY INFORMATION

Background

Public Law 103–236, enacted April 30, 1994, authorizes the Secretary of State to collect a surcharge for the processing of machine readable visa (MRV) applications, and to retain the resulting revenues, up to a ceiling of $107.5 million for fiscal years 1994 and 1995. This authority has been delegated to the Under Secretary for Management. It supplements and in part overrides section 281 of the Immigration and Nationality Act (INA) which generally provides for nonimmigrant visa fees to be set on the basis of reciprocity.

The Secretary of State has also been authorized under E.O. 10718 of June 27, 1957, to exercise the President's authority under 22 U.S.C. 4219 to prescribe rates of fees to be charged for official services performed by the Department of State. Under this authority, the Department has determined a number of fees for consular services performed overseas, as well as in the United States, within the guidelines set by OMB Circular No. A–25. The policy set out in Circular A–25 states that services which directly benefit individuals, organizations, or groups should be paid for by the users rather than the taxpayers. Services performed for the primary benefit of the general public or the U.S. Government are to be supported by tax revenues. The principles of Circular A–25 have guided various fee studies conducted by the Department. As a result, although the authority to charge for processing a machine readable visa is new, the Department has for a number of years had on hand Circular A–25-based cost estimates for visa processing.

In the Department's latest consular fee study, issued in January 1991, the cost of processing a nonimmigrant visa was determined to be $18.47. Equipment used to process machine readable nonimmigrant visas (MRV's) is considerably more expensive than the equipment used to issue the outdated stamped visas which the MRV is replacing. Given these additional equipment costs and the costs of collecting the fee, the new fee has been set at a cost-recovery level of $20.00 per visa application. This fee may in fact be below cost, but the Department believes that it is an approximate level at which to set the charge initially, given the base estimate of $18.47 and the need for a fee that can be collected with minimal transaction costs. A $20.00 fee is a whole dollar amount. Moreover, in discussing the new fee with members of Congress, $20.00 was discussed in light of the 1991 cost study as the initial amount at which the new fee would be set.

The implementation of this rule as an interim rule, with provision for post-promulgation comments, is based upon the "good cause" exception found at 5 U.S.C. 553(b)(B) and 553(d)(3). The authorization for the collection of a processing fee for machine readable nonimmigrant visas and machine readable combination border crossing card mandated by Public Law 103–236 took effect on April 30, 1994. This rule must take effect upon publication to ensure that the Department maximizes surcharge revenue for the balance of fiscal year 1994. The Department will be relying on such revenues to fund accelerated installation of improved visa processing and issuing technology at consular posts. The installation of such technology has become a high priority for the United States in light of the World Trade Center bombing and increasing concerns about visa fraud and alien terrorist activity in the United States.

This rule is not considered to be a major rule for purposes of E.O. 12291 nor is it expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. In addition, this rule does not impose information collection requirements under the provisions of the Paperwork Reduction Act of 1980. This rule has been reviewed as required by E.O. 12778 and certified to be in compliance therewith. This rule is exempt from review under E.O. 12866, but has been reviewed internally by the Department to ensure consistency with the objectives thereof.

List of Subjects in 22 CFR Part 22

Passports and visas, Schedule of Consular Fees.

Accordingly, 22 CFR part 22 is amended as follows:

1. The authority citation for part 22 continues to read as follows:

PART 22—[AMENDED]

Authority: Sections 3, 4, 63 Stat. 111, as amended; 22 U.S.C. 211a, 214, 2651, 2658, 3921, 4219; 31 U.S.C. 9701; EO 101718, 22 FR 4632; EO 11295, 31 FR 10603; 3 CFR 1954–1958 Comp. p. 507.

2. Section 22.1 is amended by adding item 26 under "Visa Services for Aliens" to read as follows:

§ 22.1 Schedule of fees.

Item No.	Fee
* * * * *	
26. Surcharge for processing machine readable nonimmigrant visa application	$20.00
(Item Nos. 27 through 29 vacant)	
* * * * *	

Dated: May 6, 1994.

Richard Moose,

Under Secretary for Management, Department of State.

[FR Doc. 94–11861 Filed 5–11–94; 3:24 pm]

BILLING CODE 4710–06–M

Bureau of Consular Affairs

22 CFR Part 41

[Public Notice 2005]

Visas: Documentation of Nonimmigrants Under the Immigration and Nationality Act

Visa Fees

AGENCY: Bureau of Consular Affairs, DOS.

ACTION: Interim rule.

SUMMARY: This rule adds a surcharge provision to part 41 title 22, Code of Federal Regulations. The amendment to the regulations authorizes the Secretary of State, pursuant to the provisions of section 140 of Public Law 103–236, to collect a surcharge for processing applications for machine readable nonimmigrant visas and machine readable combined border crossing cards. This surcharge is herein referred to as the "MRV surcharge". The authority vested in the Secretary of State mandates appropriate amendments to the nonimmigrant regulations.

DATES: *Effective date:* May 16, 1994. Interested persons are invited to submit written comments on or before June 15, 1994.

ADDRESSES: Comments should be submitted to Chief, Legislation and Regulations Division, Visa Services, Washington, DC 20520–0113.

FOR FURTHER INFORMATION CONTACT: Stephen K. Fischel, Chief, Legislation and Regulations Division, Visa Services, Washington, DC, (202) 663–1204.

SUPPLEMENTARY INFORMATION: On April 30, 1994, the President signed into law Public Law 103–236, State Department Authorization Bill for Fiscal Years 1994 and 1995. The provisions of section 140 of this law grant the Secretary of State the authority to collect a surcharge for the processing of applications of machine readable nonimmigrant visas and machine readable combined border crossing cards. Such authority is new and requires appropriate amendment of the visa regulations at 22 CFR 41.107.

Current Authority

Section 281 of the Immigration and Nationality Act (INA) provides that the Secretary of State shall establish fees for the issuance of nonimmigrant visas based upon reciprocity. Pursuant to this section of law, the Secretary of State where practicable prescribes a fee to be imposed upon nationals of a foreign country that corresponds with all the visa related costs charged U.S. citizens by that foreign country. The Department's implementing regulation, at 22 CFR 41.107(a), restates the statutory principle authorizing the Secretary of State to collect nonimmigrant visa issuance fees based on reciprocity. As a reciprocal charge, the fee prescribed by the Secretary reflects the total costs imposed by a foreign state on U.S. nationals. If no costs are incurred, no fee is prescribed. The fees collected pursuant to section 281 are remitted to the general funds of the U.S. Treasury.

MRV Surcharge

Section 140 of the State Department Authorization Bill authorizes a surcharge to be imposed for machine readable visas and border crossing cards notwithstanding INA 281 and the regulations at § 41.107. This new fee may, therefore, be charged for processing applications for machine readable visas, independent of fees prescribed pursuant to reciprocity under the provisions of section 281 of the Act. Moreover, surcharges collected pursuant to section 140 may be retained by the Department up to $107 million for FY 94 and FY 95 combined.

The regulation at section 41.107 is being amended to authorize the collection of this surcharge separate from and in addition to any other fee. The amount of the surcharge and justification for that amount are subjects of a separate regulation being promulgated by the Under Secretary of State for Management.

Interim Rule

In order to implement the provisions of section 140, Public Law 103–236, the regulation at § 41.107 is being amended to authorize the Secretary of State to collect the surcharge, separate from or independent from and in addition to any other fee, for processing applications for machine readable nonimmigrant visas and machine readable combined border crossing identification cards and nonimmigrant visas.

The implementation of this rule as an interim rule, with provision for post-promulgation comments, is based upon the "good cause" exception found at 5 U.S.C. 553(b)(B) and 553(d)(3). The authorization for the collection of a processing fee for machine readable nonimmigrant visas and machine readable combination border crossing cards mandated by Public Law 103–236 takes effect on April 30, 1994. This rule must take effect upon publication to ensure that the Department maximizes surcharge revenues for the balance of FY–94. The Department will be relying on such revenues to fund accelerated installation of an imposed visa processing and issuing technology at consular posts. The installation of such technology has become a high priority for the United States in light of the World Trade Center bombing and increasing concern about visa fraud and alien terrorist activity in the United States. This rule is not considered to be a major rule for purposes of E.O. 12291; nor is it expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. In addition, this rule does not impose information collection requirements under the provisions of the Paperwork Reduction Act of 1980. This rule has been reviewed as required by E.O. 12778 and certified to be in compliance therewith. This rule is exempt from review under E.O. 12866, but has been reviewed internally by the Department to ensure consistency with the objectives thereof.

List of Subjects in 22 CFR Part 41

Aliens, Nonimmigrants, Passports and visas, Fees, Surcharge.

Accordingly, 22 CFR part 41, is amended as follows:

1. The authority citation for part 41 would continue to read as follows:

PART 41—[AMENDED]

Authority: 8 U.S.C. 1104.

2. Sec. 41.107 is amended by adding paragraph (e) to read as follows:

§ 41.107 Visa fees.

* * * * *

(e) *Visa processing surcharge.* In addition to the collection of the fee prescribed in paragraph (a) of this section, a consular officer shall collect or ensure the collection of a surcharge for the processing of applications for machine readable nonimmigrant visas and for machine readable combined border crossing cards in the amount specified by the Secretary of State from such applicants as the Secretary of State shall designate. Such surcharge is refundable only if, as a result of action taken by the U.S. Goverment for which the alien was not responsible and over which the alien had no control, the alien's application is not processed.

Dated: May 4, 1994.

Mary A. Ryan,

Assistant Secretary for Consular Affairs.

[FR Doc. 94–11860 Filed 5–11–94; 3:24 pm]

BILLING CODE 4710–06–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 710, 712, 713, and 720

[FHWA Docket No. 93–7]

RIN 2125–AD09

Removal of Obsolete and Redundant Right-of-Way Requirements

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule eliminates a number of FHWA prior approvals previously required in the acquisition of real property for Federal-aid highway projects. Consistent with the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), this approach reduces the regulatory burden for States and encourages greater flexibility by reducing the degree to which the FHWA will be involved in the development of Federal-aid highway projects.

DATES: This regulation is effective June 15, 1994.

FOR FURTHER INFORMATION CONTACT: Gerald B. Saunders, Chief, Operations Division, Office of Right-of-Way, HRW–20, (202) 366–0142; or Reid Alsop, Office of Chief Counsel, HCC–31, (202) 366–1371. The address is Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 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: This final rule modifies several provisions in the FHWA's right-of-way regulations that require the FHWA to grant prior approvals or authorizations for particular actions by a State. These case-by-case approvals will no longer be required and will be replaced by a one-time FHWA approval of State procedures. Oversight by the FHWA will continue through the use of process reviews. In the future, prior approvals may be reinstituted if they are found to be necessary to protect the Federal investment.

As a result of a review of the FHWA's right-of-way regulations, the Office of Right-of-Way identified a number of requirements that imposed burdens on States without commensurate program benefit. The review disclosed a number of case-by-case approval actions that, based on experience, were no longer necessary to protect the investment of Federal-aid highway funds. These approval actions are divided into the two categories set forth below.

The first category includes six FHWA approvals or authorizations. The State may now take the approval or authorization actions required by the following sections if they are in accordance with procedures that have been approved by the FHWA.

Approval action	23 CFR section
Use of fee negotiators	710.203(e)(3)
Interest on right of entry payments.	710.304(j)(5)
Use of fee attorneys	712.408(a)
Land service facilities	712.805(c)(1)
Temporary use of right-of-way.	713.103(h)(1)
Appraisal fees	720.202(d)(2)

The second category includes four FHWA approvals that are eliminated on all FHWA-funded projects except those on the National Highway System (NHS). These concern the long-term use or disposal of rights-of-way and are no longer considered necessary or useful on a case-by-case basis for non-NHS projects. The FHWA will continue case-by-case approvals or authorizations relating to the use or disposal of NHS rights-of-way, consistent with the provisions of 23 U.S.C. 106(b)(2) which require that a higher level of FHWA oversight be maintained on the NHS.

Accordingly, the authorization actions required by the following sections may be taken by the State if they are in accordance with procedures that have been approved by the FHWA, except with regard to facilities or projects that are on the National Highway System (NHS), described in 23 U.S.C. 103. The FHWA approvals or authorizations that are prescribed by the following sections continue to be required with regard to facilities or projects on the NHS because of FHWA's special interest in the integrity and safety of NHS facilities and right-of-way.

Approval action	23 CFR section
Non-highway use and occupancy of right-of-way.	712.203(b)(1)
Airspace agreements	713.204
Disposal of right-of-way no longer needed.	713.305
Disposal of access-control and relinquishment of right-of-way.	620.203(d) through (l)

On July 21, 1993, the FHWA published in the **Federal Register** a notice of proposed rulemaking (NPRM) concerning the above provisions of FHWA's right-of-way regulations (58 FR 38987). The FHWA received three comments on the NPRM, all from State Departments of Transportation. All three commenters supported in varying degrees the proposed changes. Two commenters indicated that the proposed changes would increase their flexibility or simplify their right-of-way programs. The third anticipated a slight decrease in paperwork and a subsequent saving of time.

We received no negative comments. Furthermore, none of the three commenters suggested any changes in the language of the NPRM. Accordingly, the language of the final rule is unchanged from that proposed in the NPRM.

Rulemaking Analyses and Notices

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

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking will be minimal. The rulemaking would not affect the level of funding available in Federal or federally-assisted programs covered by the Uniform Relocation and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4610 *et seq.*), or otherwise have a significant economic impact; therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities. Based on the evaluation, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities since it will make relatively small changes in existing regulatory provisions by eliminating certain FHWA prior approvals.

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. This action, in effect, both clarifies and simplifies current regulatory requirements.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Number 20.205 Highway Planning and Construction. The regulations implementing Executive

Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

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

National Environmental Policy Act

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

Regulation Identification Number

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

List of Subjects

23 CFR Part 710

Civil rights, Grant programs-transportation, Highway and roads, Real property acquisition, Rights-of-way.

23 CFR Part 712

Grant programs-transportation Highway and roads, Real property acquisition, Rights-of-way.

23 CFR Part 713

Grant programs-transportation, Highways and roads, Property management, Real property acquisition, Rights-of-way.

23 CFR Part 720

Appraisal, Grant programs-transportation, Highways and roads, Real property acquisition, Rights-of-way.

Issued on May 9, 1994.

Rodney E. Slater,

Federal Highway Administrator.

In accordance with the foregoing, parts 710, 712, 713, and 720 of title 23, Code of Federal Regulations, are amended as set forth below.

PART 710—[AMENDED]

1. The authority citation for part 710 is revised to read as follows:

Authority: 23 U.S.C. 101(a) and 315; 42 U.S.C. 2000d *et seq.*, 4633, 4651–4655; 49 CFR 1.48 (b) and (cc) and parts 21 and 24; 23 CFR 1.32.

§ 710.203 [Amended]

2. In § 710.203, paragraph (e)(3) is revised to read as follows:

§ 710.203 General responsibilities.

* * * * *

(e) * * *

(3) Firms and individuals meeting the SHD's qualification standards may be employed by contract for negotiating purposes in accordance with SHD procedures that have been approved by the FHWA.

* * * * *

3. Section 710.204 is added to read as follows:

§ 710.204 State approvals.

Notwithstanding any other provision of this title, the FHWA authorizations or approvals prescribed by §§ 712.203(b)(1), 713.204, 713.305, and 620.203 (d) through (i) of this chapter may, except in the case of facilities or projects on the National Highway System (described in 23 U.S.C. 103), be made by the SHD in accordance with procedures that have been approved by the FHWA.

4. In § 710.304, the first sentence of paragraph (j)(5) is revised to read as follows:

§ 710.304 Reimbursement policy.

* * * * *

(j) * * *

(5) Federal participation shall not be allowed in interest cost on payments to an owner where the SHD accepts a voluntary right of entry instead of making such payment available to the owner directly or by deposit with the court, except in cases of unusual circumstances in accordance with SHD procedures that have been approved by the FHWA. * * *

PART 712—[AMENDED]

5. The authority citation for part 712 is revised to read as follows:

Authority: 23 U.S.C. 101(a), 107, 108, 111, 114, 204, 210, 308, 315, 317, and 323; 42 U.S.C. 2000d–1, 4633, 4651–4655; 49 CFR 1.48–(b) and (cc) and part 24; 23 CFR 1.32.

6. In § 712.408, paragraph (a) is revised to read as follows:

§ 712.408 Special counsel.

(a) If part-time assistants or legal counsel are employed for Federal-aid right-of-way procurements, reimbursement may be claimed for the eligible cost of the services of such attorney, provided that such assistants or counsel are employed in accordance with SHD procedures that have been approved by the FHWA.

* * * * *

7. In § 712.805, paragraph (c)(1) is revised to read as follows:

§ 712.805 Policies.

* * * * *

(c) *Private use and benefit.* (1) Land service facilities designed for restoration of access to and within a privately owned property shall be justified primarily on the basis of economics. In exceptional cases where the land service facility is not justified economically, but it is believed that access is nevertheless in the public interest, such access may be approved by the SHD, in accordance with SHD procedures that have been approved by the FHWA.

* * * * *

PART 713—[AMENDED]

8. The authority citation for part 713 is revised to read as follows:

Authority: 23 U.S.C. 101(a), 142(f), 156, and 315; 42 U.S.C. 4633 and 4651–4566; 23 CFR 1.32; 49 CFR 1.48(b) and (cc), 18.31 and parts 21 and 24.

9. In § 713.103, paragraph (h)(1) is revised to read as follows:

§ 713.103 Policies and procedures.

* * * * *

(h) * * *

(1) The SHD has approved temporary right-of-way limits within the overall right-of-way in accordance with SHD procedures approved by the FHWA;

* * * * *

PART 720—[AMENDED]

10. The authority citation for part 720 is revised to read as follows:

Authority: 23 U.S.C. 101(a) and 315; 42 U.S.C. 4633 and 4651–4655; 23 CFR 1.32; 49 CFR 1.48(b) and (cc) and part 24.

11. In § 720.22, paragraph (d)(2) is revised to read as follows:

§ 720.202 Appraisal fees, contracts, and agreements.

* * * * *

(d) * * *

(2) In instances in which special use or other unusual properties are involved, the SHD may approve the use of a per diem rate contracting method with a stated overall limit which should not be exceeded except by supplemental agreement, provided that such SHD approval is made in accordance with SHD procedures that have been approved by the FHWA.

* * * * *

[FR Doc. 94–11846 Filed 5–13–94; 8:45 am]

BILLING CODE 4910–22–P

Coast Guard

33 CFR Part 165

[COTP Miami 94–045]

RIN 2115–AA97

Safety Zone Regulations; Fort Lauderdale, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone at Port Everglades, Fort Lauderdale, Florida. This safety zone is needed to protect the Whitbread Round the World Race participant vessels from safety hazards associated with the spectator vessels operating in the area of the Whitbread/ Heineken Trophy Village at Port Everglades in Fort Lauderdale, Florida. Entry into this zone is prohibited unless authorized by the Captain of the Port, Miami, Florida, or his designated representative.

FOR OTHER INFORMATION CONTACT: LT Robert G. Garrott, Port Operations Department, USCG Marine Safety Office, 51 SW. First Avenue, Miami, Florida 33130 (305) 536–5693.

EFFECTIVE DATES: This regulation becomes effective at 11:30 a.m. Eastern Daylight Time (EDT), April 23, 1994 or upon arrival of the first Whitbread Round the World Race participant vessel. It terminates at 11:30 a.m. (EDT), May 21, 1994 or upon departure of the final Whitbread Round the World Race participant vessel.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication.

Drafting Information

The drafters of this regulation are Lieutenant Robert G. Garrott, Project Officer for the Captain of the Port, Miami, Florida, and Lieutenant Jacqueline M. Losego, Project Attorney, Seventh Coast Guard District Legal Office.

Discussion of Regulations

The event requiring this regulation to be established is the presence of the Whitbread Round the World Race participant vessels at the Whitbread/ Heineken Trophy Village. The Trophy Village is located within Port Everglades on the west side of the Atlantic Intercoastal Waterway with its easternmost limits marked by NO WAKE signs. There are significant risks associated with spectator vessels operating in close proximity to the participant vessels. This regulation is issued pursuant to 50 U.S.C. 191 as set out in the authority citation for all of Part 165.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule making does not have sufficient Federalism implication to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this proposal consistent with Section 2.B.2.c of Commandant Instruction M16475.1B and the establishment of safety zones has been determined to be categorically excluded from further environmental documentation.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The safety zone will only be in effect for such a small area that it is not expected to have a significant impact on any commercial navigation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–6, and 33 CFR 160.5.

2. A new § 165.TO7–045 is added to read as follows:

§ 165.TO70–45 Safety Zone: Whitbread Round the World Race participant vessels at the Whitbread/Heineken Trophy Village at Port Everglades in Fort Lauderdale, Florida.

(a) *Location.* The following area is a safety zone:

All waters within fifty yards in all directions from the easternmost limit of the Whitbread/Heineken Trophy Village, as marked by NO WAKE signs.

(b) *Effective date.* This section becomes effective at 11:30 a.m. (EDT), April 23, 1994 or upon arrival of the first Whitbread Round the World Race participant vessel. It terminates at 11:30 a.m. (EDT), May 21, 1994 or upon departure of the final Whitbread Round the World Race participant vessel.

(c) *Regulations.* In accordance with general regulations in Section 165.33 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Miami, Florida, or a Coast Guard commissioned, warrant, or petty officer designated by him. Section 165.33 also contains other general requirements.

Dated: April 14, 1994.

L. A. Doyle,

Captain, U.S. Coast Guard, Captain of the Port, Miami.

[FR Doc. 94–11709 Filed 5–13–94; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AG46

Disease Subject To Presumptive Service Connection (Cancer of the Urinary Tract)

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) has amended its adjudication regulations concerning presumptive service connection for certain diseases resulting from exposure to ionizing radiation during military service. Congress has added cancer of the urinary tract to the list of radiogenic conditions for which presumptive service connection is authorized, but did not indicate which entities it considers part of the urinary tract. This amendment is intended to define the term "urinary tract" for VA purposes.

EFFECTIVE DATE: October 1, 1992.

FOR FURTHER INFORMATION CONTACT: Caroll McBrine, M.D., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, (202) 233–3005.

SUPPLEMENTARY INFORMATION: VA published in the **Federal Register** of October 5, 1993 (58 FR 51798–99) a proposed amendment to 38 CFR 3.309(d) to define the term "urinary tract" for purposes of implementing the presumption of service connection for urinary tract cancers based on exposure to ionizing radiation established in the Radiation Exposure Amendments of 1992, Public Law 102–578. Interested parties were invited to submit written comments on or before November 4, 1993. Since no comments were received on the proposed rule, the final rule is adopted as proposed, effective October 1, 1992, the date provided by Public Law 102–578.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance program numbers are 64.104 and 64.109.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: January 31, 1994.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 3 is amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.309, paragraph (d)(2)(xv), add a note at the end to read as follows:

§ 3.309 Disease subject to presumptive service connection.

* * * * *

(d) * * *

(2) * * *

(xv) Cancer of the urinary tract.

Note: For the purposes of this section, the term "urinary tract" means the kidneys, renal pelves, ureters, urinary bladder, and urethra.

* * * * *

[FR Doc. 94–11759 Filed 5–13–94; 8:45 am]

BILLING CODE 8320–01–P

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38 CFR Part 3

RIN 2900–AG51

Returned and Canceled Checks

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) has amended its regulations concerning returned and canceled checks. The amendment will assure that the regulations clearly reflect the requirements of the governing statutes as interpreted in a precedent opinion of VA's General Counsel. The intended effect of the amendment is to ensure that the amount represented by a benefit check received but unnegotiated prior to a beneficiary's death is properly distributed.

EFFECTIVE DATE: This amendment is effective June 15, 1994.

FOR FURTHER INFORMATION CONTACT: Steven Thornberry, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 233–3005.

SUPPLEMENTARY INFORMATION: VA published a proposal to amend 38 CFR 3.1003 in the **Federal Register** of September 3, 1993 (58 FR 46920–21). Interested persons were invited to submit written comments on or before October 4, 1993. No comments were received, and the amendments are adopted as proposed with the exception of the following technical amendment. Section 3.1003(a), as here amended, will provide that the amount represented by a returned and canceled check will be payable to the living person or persons in the order of precedence listed in § 3.1000(a)(1)–(4), which deals with accrued benefits. Section 3.1000(a)(4) provides, in effect, that, where there is no living person in the classes identified in § 3.1000(a)(1)–(3), the amount of accrued benefits payable is limited to the amount necessary to reimburse the person who bore the expense of last sickness or burial. We are adding to § 3.1003(a), as originally proposed, a similar statement to ensure that there is no confusion on the amount of a returned and canceled check that may be paid in such a situation.

The Secretary hereby certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

There is no affected Catalog of Federal Domestic Assistance program number.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: January 31, 1994.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR Part 3 is amended to read as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Section 3.1003 is revised to read as follows:

§ 3.1003 Returned and canceled checks.

Where the payee of a check for benefits has died prior to negotiating the check, the check shall be returned to the issuing office and canceled.

(a) The amount represented by the returned check, or any amount recovered following improper negotiation of the check, shall be payable to the living person or persons in the order of precedence listed in § 3.1000(a)(1) through (4), except that the total amount payable shall not include any payment for the month in which the payee died (see § 3.500(g)), and payments to persons described in § 3.1000(a)(4) shall be limited to the amount necessary to reimburse such persons for the expenses of last sickness and/or burial.

(1) There is no limit on the retroactive period for which payment of the amount represented by the check may be made, and no time limit for filing a claim to obtain the proceeds of the check or for furnishing evidence to perfect a claim.

(2) Nothing in this section will preclude payment to an otherwise

entitled claimant having a lower order of precedence under § 3.1000(a)(1) through (4), if it is shown that the person or persons having a higher order of precedence are deceased at the time the claim is adjudicated.

(b) Subject to the limitations in § 3.500(g) of this part, any amount not paid in the manner provided in paragraph (a) of this section shall be paid upon settlement by the General Accounting Office to the estate of the deceased payee, provided that the estate, including the amount paid under this paragraph, will not escheat.

(c) The provisions of this section do not apply to checks for lump sums representing amounts withheld under § 3.551(b) or § 3.557. These amounts are subject to the provisions of § 3.1001 and § 3.1007, as applicable.

(Authority: 38 U.S.C. 501(a), 5122)

[FR Doc. 94–11761 Filed 5–13–94; 8:45 am]

BILLING CODE 8320–01–M

38 CFR Part 20

RIN 2900–AG42

Rules of Practice; Attorneys' and Agents' Fees

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs has amended its regulation to cover an exception to the requirements for charging a fee in connection with a proceeding before the Department with respect to benefits administered by the Secretary. These fee agreements will be treated similarly to other fee agreements for administrative efficiency.

EFFECTIVE DATE: June 15, 1994.

FOR FURTHER INFORMATION CONTACT: Steven L. Keller, Counsel to the Chairman, Board of Veterans' Appeals, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 (202–233–2978).

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 7, 1993, at pages 47100 through 47101, VA published a proposed rule to implement an exception regarding the requirements for charging a fee in connection with a proceeding before the Department in cases arising out of certain loans. The amendment regarding the exception was created by section 303 of Public Law 102–405. Interested persons were invited to submit written comments, suggestions or objections on or before October 7, 1993. Since no comments were received, the final rule is adopted as proposed.

There are no Catalogs of Federal Domestic Assistance numbers associated with these final regulatory amendments.

List of Subjects in 38 CFR Part 20

Administrative practice and procedure, Claims, Lawyers, Legal Services, Veterans.

Approved: January 25, 1994.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 20 is amended as set forth below:

PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

1. The authority citation for part 20 continues to read as follows:

Authority: 38 U.S.C. 501(a).

2. In § 20.609 paragraph (d) is redesignated as paragraph (d)(2), and a new paragraph (d)(1) is added reading as set forth below; and in paragraph (e) introductory text, the first sentence, the words "under paragraph (c)" are removed.

§ 20.609 Rule 609. Payment of representative's fees in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.

* * * * *

(d) *Exceptions*—(1) *Chapter 37 loans.* With respect to services of agents and attorneys provided after October 9, 1992, a reasonable fee may be charged or paid in connection with any proceeding in a case arising out of a loan made, guaranteed, or insured under chapter 37, United States Code, even though the conditions set forth in paragraph (c) of this section are not met.

* * * * *

(Authority: 38 U.S.C. 5902, 5904, 5905)

(Approved by the Office of Management and Budget under control number 2900–0085)

[FR Doc. 94–11760 Filed 5–13–94; 8:45 am]

BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD16–1–5967; A–1-FRL–4884–4]

Approval and Promulgation of Air Quality Implementation Plans; Maryland Small Business Stationary Source Technical Environmental Compliance Assistance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maryland for the purpose of establishing a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM). This SIP revision was submitted by the State to satisfy the Federal mandate of the Clean Air Act ("CAA" or "the Act") which lists specific program criteria to ensure that small businesses have access to the technical assistance and regulatory information necessary to comply with CAA. The rationale for EPA's approval is set forth in this document; additional information is available at the address indicated below. This action is being taken in accordance with CAA.

DATES: This final rule will become effective July 15, 1994 unless notice is received on or before June 15, 1994 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to Thomas J. Maslany, Director, Air, Radiation and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107; Air Docket, 6102, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and Maryland Department of the Environment, Air and Radiation Management Association, 2500 Broening Highway, Baltimore, Maryland 21224.

FOR FURTHER INFORMATION CONTACT: Makeba Morris at (215) 597–2923. U.S. Environmental Protection Agency, Region III (3AT11), 841 Chestnut Building, Philadelphia, PA 19107.

SUPPLEMENTARY INFORMATION:

I. Background

Implementation of the provisions of CAA, as amended in 1990, will require regulation of many small businesses so that areas may attain and maintain the National ambient air quality standards (NAAQS) and reduce the emission of air toxics. Small businesses frequently lack the technical expertise and financial resources necessary to evaluate such regulations and to determine the appropriate mechanisms for

compliance. In anticipation of the impact of these requirements on small businesses, section 507 of CAA requires that states adopt a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM), and submit this PROGRAM as a revision to the federally approved SIP. In addition, section 507 of CAA directs EPA to oversee these small business assistance programs and report to Congress on their implementation. The requirements for establishing a PROGRAM are set out in section 507 of title V of the CAA. In February 1992, EPA issued *Guidelines for the Implementation of Section 507 of the 1990 Clean Air Act Amendments*, in order to delineate the Federal and state roles in meeting the new statutory provisions, and as a tool to provide further guidance to the states on submitting acceptable SIP revisions.

On November 13, 1992, the State of Maryland submitted a SIP revision to EPA in order to satisfy the requirements of section 507. In order to gain full approval, the state submittal must provide for each of the following PROGRAM elements: (1) The establishment of a Small Business Assistance Program (SBAP) to provide technical and compliance assistance to small businesses; (2) the establishment of a state Small Business Ombudsman to represent the interests of small business stationary sources in connection with the implementation of CAA; and (3) the creation of a Compliance Advisory Panel (CAP) to determine and report on the overall effectiveness of the SBAP and the state Small Business Ombudsman.

II. Analysis

1. Small Business Assistance Program

Sections 1–402, 1–404 and 2–201 of the Code of Maryland authorizes the Secretary of the Maryland Department of the Environment (MDE) to establish a Small Business Stationary Source Technical and Environmental Compliance Assistance Program which meets the requirements of section 507 of CAA. In developing Maryland's PROGRAM submittal, the Secretary of MDE has delegated the majority of its functions to the Department of the Environment, Air Management Administration (AMA) which will establish a small business assistance office.

Section 507(a) of CAA sets forth seven requirements that states must meet to have an approvable SBAP. Six requirements will be discussed in this section of this document, while the seventh requirement, establishment of a state Small Business Ombudsman, will be discussed in the next section.

The first requirement is to establish adequate mechanisms for developing, collecting and coordinating information concerning compliance methods and technologies for small business stationary sources, and programs to encourage lawful cooperation among such sources and other persons to further compliance with CAA. The second requirement is to establish adequate mechanisms for assisting small business stationary sources with pollution prevention and accidental release detection and prevention, including providing information concerning alternative technologies, process changes, products and methods of operation that help reduce air pollution.

The State has met these first two requirements by charging the AMA SBAP with the responsibility of serving as a clearinghouse for information related to compliance methods and control technologies, pollution prevention and accidental release prevention and detection. Information on pollution prevention/accidental release will focus on the requirements under the accidental release provisions of title III of CAA, the Emergency Planning and Community Right-to-Know Act of 1986, the Occupational Safety and Health Administration (OSHA) process safety standards, using the Pollution Prevention Information Clearinghouse (PPIC) and the Chemical Emergency Preparedness and Prevention Office (CEPPO) as resources. Relevant clearinghouse material will be translated into layman's terms and organized into information packets. The AMA will also use as resources EPA's Control Technology Center (CTC), Emissions Measurement Technical Information Center (EMTIC), as well as other state organizations, such as the University of Maryland's Technology Extension Service. The AMA will work closely with other state agencies, particularly the Maryland Department of Economic and Employment Development (DEED) to optimize information exchange and program effectiveness. Information dissemination shall take two forms. The proactive portion of the program (Information Outreach Network) will utilize industry groups, trade associations, Maryland's Small Business Development Center (SBDC) and additional avenues as needed to disseminate information to eligible small business stationary sources. The AMA will also disseminate information in a reactive manner by establishing an Information Clearinghouse, via a toll-free telephone hotline, which will be responsible for answering questions directly or referring such questions to appropriate agency experts.

The third requirement is to develop a compliance and technical assistance program for small business stationary sources which assists small businesses in determining applicable requirements and in receiving permits under CAA in a timely and efficient manner. The AMA has met this requirement by planning to develop pamphlets and information packets, as well as sponsoring seminars detailing general permit requirements, new and existing regulatory requirements and methods of pollution prevention and accidental release prevention and detection. These informational packages will be disseminated in a timely manner by the Information Outreach Network described in the preceding paragraph. Specific questions about permitting responsibilities and procedures will be directed to appropriate experts in the AMA.

The fourth requirement is to develop adequate mechanisms to assure that small business stationary sources receive notice of their rights under the Act in such manner and form as to assure reasonably adequate time for such sources to evaluate compliance methods and any relevant or applicable proposed or final regulation or standards issued under CAA. The fifth requirement is to develop adequate mechanisms for informing small business stationary sources of their obligations under the CAA, including mechanisms for referring such sources to qualified auditors or, at the option of the State, for providing audits of the operations of such sources to determine compliance with CAA. The AMA has met these requirements by planning to maintain a database of all small business stationary sources and small business membership groups subject to Federal and/or state requirements and notify these sources, in a timely manner by the proactive mechanisms described above, of rights and obligations under CAA. In support of said PROGRAM, the AMA will also conduct periodic surveys, to solicit feedback from the small business community. In addition, the AMA will provide material, through the Information Outreach Network and the Information Clearinghouse, on environmental auditors to assist small businesses in meeting the requirements of CAA. AMA staff will also be available to provide limited on-site assistance.

The sixth requirement is to develop procedures for consideration of requests from a small business stationary source for modification of: (A) Any work

practice or technological method of compliance, or (B) the schedule of milestones for implementing such work practices or compliance methods. The AMA will meet this requirement by establishing a mechanism in accordance with section 507(a)(7) of CAA to receive, review and process requests for work practice, compliance method or milestone modifications.

2. Ombudsman

Section 507(a)(3) of CAA requires the designation of a state office to serve as the Ombudsman for small business stationary sources. Maryland's Secretary of the Department of the Environment has designated the Office of Community Assistance to serve as Ombudsman for small business concerns as they relate to the SBAP. The Office of Community Assistance presently coordinates the Department outreach activities, and serves a problem mediation function for private citizens, industry, and local organizations, etc. The Ombudsman will be readily accessible to small businesses and, on their behalf, be authorized to provide reports to and communicate with state air pollution control authorities and the Secretary of the Department of the Environment. It is anticipated that the Ombudsman's office will be adequately staffed and funded to fulfill its function with existing personnel.

3. Compliance Advisory Panel

Section 507(e) of CAA requires the state to establish a Compliance Advisory Panel (the CAP) that must include two members selected by the Governor who are not owners or representatives of owners of small businesses; four members selected by the state legislature who are owners, or represent owners, of small businesses; and one member selected by the head of the agency in charge of the Air Pollution Permit Program. The Compliance Advisory Panel will be established by the Governor of the State of Maryland, through an executive order to be issued no later than September 1, 1994. The Panel will include seven members who will be chosen consistent with the requirements of section 507(e) of the CAA.

In addition to establishing the minimum membership of the CAP, CAA delineates four responsibilities of the Panel: (A) To render advisory opinions concerning the effectiveness of the SBAP, difficulties encountered and the degree and severity of enforcement actions; (B) to review and assure that information for small business stationary sources is easily understandable; (C) to develop and disseminate the reports and advisory opinions made through the SBAP; and (D) to periodically report to EPA concerning the SBAP's adherence to the principles of the Paperwork Reduction Act, the Equal Access to Justice Act, and the Regulatory Flexibility Act. (Section 507(e)(1)(B) requires the CAP to report on the compliance of the SBAP with these three statutes. However, since state agencies are not required to comply with them, EPA believes that the state PROGRAM must merely require the CAP to report on whether the SBAP is adhering to the general principles of these Federal Statutes.)

Upon review of the November 13, 1992 formal SIP revision submittal EPA has determined that Maryland specifically satisfies these requirements. Section 4.0 of the SIP revision states that: (1) The CAP will render advisory opinions concerning measures to enhance the effectiveness of the program; (2) prepare periodic reports to the EPA on compliance status of the program with the Federal Paperwork Reduction Act, the Regulatory Flexibility Act and the Equal Access to Justice Act; and (3) review information directed to small businesses stationary sources to assure such information is understandable to the layperson. The SBAP will serve as the Secretariat for the development and dissemination of Panel reports and advisory opinions.

The Compliance Advisory Panel will be established by the Governor of the State of Maryland, through an executive order to be issued no later than September 1, 1994. If the executive order for the establishment of the Compliance Advisory Panel is not issued by September 1, 1994, the EPA will issue a SIP call, pursuant to 110(k)(5), to ensure its timely issuance.

4. Eligibility

Section 507(c)(1) of CAA defines the term "small business stationary source" as a stationary source that:

(A) Is owned or operated by a person who employs 100 or fewer individuals;

(B) Is a small business concern as defined in the Small Business Act;

(C) Is not a major stationary source;

(D) Does not emit 50 tons per year (tpy) or more of any regulated pollutant; and

(E) Emits less than 75 tpy of all regulated pollutants.

Except for source categories which the EPA Administrator or the State of Maryland determines (in accordance with sections 507(c)(3)(A) and (B)), to have sufficient financial and technical capabilities to meet the requirements of the Act without PROGRAM assistance, all small business stationary sources located in Maryland will be eligible to receive assistance under the PROGRAM. Maryland's PROGRAM criteria for defining a "small business stationary source" is equivalent to the criteria listed in section 507(c)(1) of CAA. The State of Maryland has not provided for the extension of eligibility for assistance under the PROGRAM beyond the requirements of sections 507(c)(1)(C)-(E). However, the State may provide "unofficial" program assistance to any source that requests help if resources are available.

III. Summary of SIP Revision

The State of Maryland has submitted a SIP revision implementing each of the PROGRAM elements required by section 507 of CAA. The Small Business Assistance Program (SBAP) will be administered by the Maryland Department of the Environment (MDE), Air and Radiation Management Administration. Program implementation will begin no later than November 15, 1994. The Compliance Advisory Panel will be established by the Governor of the State of Maryland through an executive order to be issued no later than September 1, 1994. The Panel will be appointed by no later than November 15, 1994. By this action, EPA is hereby approving the SIP revision submitted by the State of Maryland. Accordingly, § 52.1110 is added to 40 CFR part 52, subpart V in order to reflect EPA's approval action and the fact that it is considered part of the Maryland SIP.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective July 15, 1994 unless, by June 15, 1994, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by simultaneously publishing two subsequent documents. One document will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective on July 15, 1994.

IV. Final Action

The Agency has reviewed Maryland's request for revision of its federally-approved SIP and found it to be in conformance with CAA, including sections 507 and 110(a)(2)(E) thereof. EPA is approving Maryland's plan for the establishment of a Small Business Stationary Source Technical and

Environmental Compliance Assistance Program. Accordingly, § 52.1110 is added to 40 CFR part 52, subpart V-Maryland to reflect EPA's approval action.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

By this action, EPA is approving a state program created for the purpose of assisting small businesses in complying with existing statutory and regulatory requirements. The program being approved does not impose any new regulatory burden on small businesses; it is a program under which small businesses may elect to take advantage of assistance provided by the state. Therefore, because EPA's approval of this program does not impose any new regulatory requirements on small businesses, the Administrator certifies that it does not have a economic impact on any small entities affected.

This action has been classified as a Table 2 action for signature by the Acting Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions from the requirements of section 3 of Executive Order 12291 for a period of two years. The EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on EPA's request. This request is still applicable under Executive Order 12866, which superseded Executive Order 12291 on September 30, 1993.

Under section 307(b)(1) of CAA, petitions for judicial review of this action to approve the Maryland Small Business Stationary Source Technical and Environmental Compliance Assistance Program must be filed in the United States Court of Appeals for the appropriate circuit by [Insert date 60 days from date of publication]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Small business assistance program.

Dated: December 30, 1993.

Elaine B. Wright,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart V—Maryland

2. Section 52.1110 is added to subpart V to read as follows:

§ 52.1110 Small business stationary source technical and environmental compliance assistance program.

On November 13, 1992 the Acting Director of the Air and Radiation Management Administration, Maryland Department of the Environment submitted a plan for the establishment and implementation of a Small Business Stationary Source Technical and Environmental Compliance Assistance Program as a state implementation plan (SIP) revision, as required by title V of the Clean Air Act Amendments. EPA approved the Small Business Stationary Source Technical and Environmental Compliance Assistance Program on [Insert date of publication] and made it part of the Maryland SIP. As with all components of the SIP, Maryland must implement the program as submitted and approved by EPA.

[FR Doc. 94–11752 Filed 5–13–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 52

[OR39–1–6366; FRL–4882–1]

Approval and Promulgation of State Implementation Plans; Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving the revisions to the State of Oregon Implementation Plan (SIP) which were submitted on February 4, 1994 by the Oregon Department of Environmental Quality (ODEQ). These revisions to OAR Chapter 340 Division 34 (Residential Woodheating and the Woodstove Certification Program) eliminate the State's independent Woodstove Certification program. The State instead will rely on the Federal woodstove certification program which is fully equivalent to Oregon's woodstove certification requirements. The revisions also eliminate Oregon's requirement for separate efficiency testing and labeling. The elimination of the State Certification Program will eliminate the duplication of program efforts between the Federal program and the State program.

DATES: This final rule will be effective on July 15, 1994 unless notice is received by June 15, 1994 that someone wishes to submit adverse or critical comments. If such notice is received, EPA will open a formal 30-day comment.

ADDRESSES: Written comments should be addressed to: Montel Livingston, SIP Manager, Air & Radiation Branch (AT–082), EPA, Docket # OR39–1–6366, 1200 Sixth Avenue, Seattle, Washington 98101.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Copies of material submitted to EPA may be examined during normal business hours at the following locations: EPA, Region 10, Air & Radiation Branch, 1200 Sixth Avenue (AT–082), Seattle, Washington 98101, and State of Oregon Department of Environmental Quality, 811 SW., Sixth Avenue, Portland, Oregon 97204–1390.

FOR FURTHER INFORMATION CONTACT: Kelly McFadden, Air & Radiation Branch (AT–082), EPA, Seattle, Washington, (206) 553–1498.

SUPPLEMENTARY INFORMATION:

I. Background

EPA first established a Federal New Source Performance Standard (NSPS) for New Residential Wood Heaters February 26, 1988. (53 FR 5873) codified at 40 CFR part 60, subpart AAA. Oregon's Woodstove Certification Rules were first approved by EPA on August 2, 1985 (50 FR 31368) prior to promulgation of the NSPS. On

November 15, 1991 revisions to the Woodstove Certification Rules were submitted by ODEQ that included renumbering, a new requirement for temporary labeling for overall efficiency, and provisions prohibiting the sale of used non- certified woodstoves. By these revisions, ODEQ also retained its laboratory efficiency accreditation requirement as well as its overall retail enforcement authority. These revisions were approved by EPA on June 9, 1992 (57 FR 24373).

The current SIP approved Woodstove Certification rules (OAR 340–34–005 through 115) require the ODEQ to maintain a woodstove certification program separate from the Federal Woodstove Certification Program. Moreover, Oregon's program requires the testing and labeling of a woodstove's heating efficiency. EPA's NSPS does not have this requirement. By approving the revision to the State of Oregon's Air Quality Control Plan Volume 2, Oregon would eliminate the requirement for separate efficiency testing and labeling and accept the Federal Woodstove Certification Program.

This revision was adopted by the Oregon Environmental Quality Commission on December 10, 1993 and submitted to EPA by the Oregon Department of Environmental Quality on February 4, 1994. The woodstove provisions are intended to reduce particulate emissions statewide. However, by eliminating the state testing and labeling of heating efficiency, no reduction in the amount of environmental protection will be lost since there is not an efficiency standard that must be met. The Federal woodstove emission standard is as stringent as the Oregon standard for catalytic woodstoves, and is more stringent than the Oregon emission standard for noncatalytic woodstoves. Therefore, by the state deferring to the Federal certification program, the amount of environmental protection would in no way be reduced.

II. EPA Action

EPA is approving the revisions to Division 34 Residential Woodheating and Woodstove Certification Program (OAR 340–34–005 through 115). The revision includes the adoption of the rule OAR 340–34–45 into the SIP. The revision also includes the repeal of OAR 340–34–55, OAR 340–34–65 as well as OAR 340–34–075 through 340–34–115.

III. Administrative Review

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future document will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for two years. The EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

The public should be advised that this action will be effective on July 15, 1994. However, if notice is received by June 15, 1994 that someone wishes to submit adverse or critical comments on any or all of these revisions approved herein, the action on these revisions will be withdrawn and two subsequent documents will be published before the effective date. One document will withdraw the final action on those revisions and another will begin a new rulemaking by announcing a proposal of the action on these revisions and establish a comment period.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 15, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2), 42 U.S.C. 7607 (b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter.

Note: Incorporation by reference of the Implementation Plan for the State of Oregon was approved by the Director of the Office of **Federal Register** on July 1, 1982.

Dated: April 26, 1994.

Jane S. Moore,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart MM—Oregon

2. Section 52.1970 is amended by adding paragraph (c) (106) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(106) On February 4, 1994 the Oregon Department of Environmental Quality (ODEQ) submitted the formal SIP revision to Oregon's Administrative Rules (OAR) 340–34–005 through 340–34–115 (Residential Woodheating and Woodstove Certification Program). This revision includes the repeal of OAR 340–34–55, OAR 340–34–65 as well as OAR 340–34–075 through 340–34–115

(i) Incorporation by reference.

(A) February 4, 1994 letter from the Director of ODEQ to EPA Region 10 submitting a revision to the Woodstove Certification and Efficiency Testing Program.

(B) OAR 340–34–005 through 115, Residential Woodheating and Woodstove Certification Program, adopted on December 10, 1993 and effective on January 3, 1994.

3. Section 52.1977 is revised to read as follows:

§ 52.1977 Content of approved State submitted implementation plan.

The following sections of the State air quality control plan (as amended on the dates indicated) have been approved and are part of the current state implementation plan.

STATE OF OREGON

AIR QUALITY CONTROL PROGRAM

Volume 2–The Federal Clean Air Act Implementation Plan(and Other State Regulations)

Section

1. Introduction (1–86)

2. General Administration (1–86)

2.1 Agency Organization (1–86)
2.2 Legal Authority (1–86)
2.3 Resources (1–86)
2.4 Intergovernmental Cooperation and Consultation (1–86)
2.5 Miscellaneous Provisions (1–86)

3. Statewide Regulatory Provisions

3.1 Oregon Administrative Rules–Chapter 340 (1–86)

Division 12–Civil Penalties

Sec. 030 Definitions (11–8–84)
Sec. 035 Consolidation of Proceedings (9–25–74)
Sec. 040 Notice of Violation (12–3–85)
Sec. 045 Mitigating and Aggravating Factors (11–8–84)
Sec. 050 Air Quality Schedule of Civil Penalties (11–8–84)
Sec. 070 Written Notice of Assessment of Civil Penalty; When Penalty Payable (9–25–74)
Sec. 075 Compromise or Settlement of Civil Penalty by Director (11–8–84)

Division 14–Procedures for Issuance, Denial, Modification, and Revocation of Permits (4–15–72)

Sec. 005 Purpose (4–15–72)
Sec. 007 Exceptions (6–10–88)
Sec. 010 Definitions (4–15–72), except (3) "Director" (6–10–88)
Sec. 015 Type, Duration, and Termination of Permits (12–16–76)
Sec. 020 Application for a Permit (4–15–72), except(1), (4)(b), (5) (6–10–88)
Sec. 025 Issuance of a Permit (4–15–72), except(2), (3), (4), (5), (6) (6–10–88)
Sec. 030 Renewal of a Permit (4–15–72)
Sec. 035 Denial of a Permit (4–15–72)
Sec. 040 Modification of a Permit (4–15–72)
Sec. 045 Suspension or Revocation of a Permit (4–15–72)
Sec. 050 Special Permits (4–15–72)

Division 20–General

Sec. 001 Highest and Best Practicable Treatment and ControlRequired (3–1–72)
Sec. 003 Exceptions (3–1–72)

Registration

Sec. 005 Registration in General (9–1–70)
Sec. 010 Registration requirements (9–1–70)
Sec. 015 Re-registration (9–1–70)

Notice of Construction and Approval of Plans

Sec. 020 Requirement (9–1–70)
Sec. 025 Scope (3–1–72)
Sec. 030 Procedure (9–1–72), except (4)(a) Order Prohibiting Construction (4–14–89)
Sec. 032 Compliance Schedules (3–1–72)

Sampling, Testing, and Measurement of Air Contaminant Emissions

Sec. 035 Program (9–1–70)
Sec. 037 Stack Heights & Dispersion Techniques (5–12–86)
Sec. 040 Methods (9–11–70)
Sec. 045 Department Testing (9–1–70)
Sec. 046 Records; Maintaining and Reporting (10–1–72)
Sec. 047 State of Oregon Clean Air Act, Implementation Plan (9–30–85)
Sec. 136 Owners of Gasoline at Terminals, Distributors and Retail Outlets Required to Have Indirect Source Operating Permits (11–1–92)

Air Contaminant Discharge Permits

Sec. 140 Purpose (1–6–86)
Sec. 145 Renumbered to OAR 340–28–110
Sec. 150 Notice Policy (6–10–88)
Sec. 155 Permit Required (5–31–83)
Sec. 160 Multiple-Source Permit (1–6–76)
Sec. 165 Fees (3–14–86)
Sec. 170 Procedures For Obtaining Permits (1–11–74)
Sec. 175 Other Requirements (6–29–79)
Sec. 180 Registration Exemption (6–29–79)
Sec. 185 Permit Program For Regional Air Pollution Authority (1–6–76)

Conflict of Interest

Sec. 200 Purpose (10–13–78)
Sec. 205 Definitions (10–13–78)
Sec. 210 Public Interest Representation (10–13–78)
Sec. 215 Disclosure of Potential Conflicts of Interest (10–13–78)

New Source Review

Sec. 220 Applicability (9–8–81)
Sec. 225 Renumbered to OAR 340–28–110
Sec. 230 Procedural Requirements (10–16–84), except (3)(d) (6–10–88)
Sec. 235 Review of New Sources and Modifications for Compliance With Regulations (9–8–81)
Sec. 240 Requirements for Sources in Nonattainment Areas (4–18–83)
Sec. 245 Requirements for Sources in Attainment or Unclassified Areas (Prevention of Significant Deterioration) (10–16–85)
Sec. 250 Exemptions (9–8–81)
Sec. 255 Baseline for Determining Credit for Offsets (9–8–81)
Sec. 260 Requirements for Net Air Quality Benefit (4–18–83)
Sec. 265 Emission Reduction Credit Banking (4–18–83)
Sec. 270 Fugitive and Secondary Emissions (9–8–81)
Sec. 275 Repealed
Sec. 276 Visibility Impact (10–16–85)

Plant Site Emission Limits

Sec. 300 Policy (9–8–81)
Sec. 301 Requirement for Plant Site Emission Limits (9–8–81)
Sec. 305 Renumbered to OAR 340–28–110
Sec. 310 Criteria for Establishing Plant Site Emission Limits (9–8–81)
Sec. 315 Alternative Emission Controls (9–8–81)
Sec. 320 Temporary PSD Increment Allocation (9–8–81)

Stack Heights and Dispersion Techniques

Sec. 340 Definitions (4–18–83)
Sec. 345 Limitations (4–18–83)
Sec. 350 Purpose and Applicability (1–2–91)
Sec. 355 Renumbered to OAR 340–28–110
Sec. 360 Planned Startup and Shutdown (1–2–91)
Sec. 365 Scheduled Maintenance (1–2–91)
Sec. 370 Upsets and Breakdowns (1–2–91)
Sec. 375 Reporting Requirements (1–2–91)
Sec. 380 Enforcement Action Criteria (1–2–91)

Parking Offsets in the Portland Central Business District

Sec. 405 Scope (12–19–90)
Sec. 410 Definitions (12–19–90)
Sec. 420 Requirements for Parking Offsets (12–19–90)
Sec. 430 Overall Monitoring and Contingency Plan (12–19–90)

Division 21–General Emission Standards for Particulate Matter

Sec. 005 Definitions (1–16–84)
Sec. 010 Special Control Areas (7–11–70)
Sec. 015 Visible Air Contaminant Limitations (7–11–70)
Sec. 020 Fuel Burning Equipment Limitations (9–1–82)
Sec. 025 Refuse Burning Equipment Limitations (1–6–84)
Sec. 027 Municipal Waste Incinerator in Coastal Areas (1–16–84)
Sec. 030 Particulate Emission Limitations for Sources Other Than Fuel Burning and Refuse Burning Equipment (3–1–72)

Particulate Emissions From Process Equipment

Sec. 035 Applicability (3–1–72)
Sec. 040 Emission Standard (3–1–72)
Sec. 045 Determination of Process Weight (3–1–72)

Fugitive Emissions

Sec. 050 Definitions (3–1–72)
Sec. 055 Applicability (3–1–72)
Sec. 060 Requirements (3–1–72)

Upset Conditions

Sec. 070 Repealed
Sec. 075 Repealed

Industrial Contingency Requirements for PM–10 Nonattainment Areas

Sec. 200 Purpose (11–13–91)
Sec. 205 Relation to Other Rules (11–13–91)
Sec. 210 Applicability (11–13–91)
Sec. 215 Definitions (11–13–91)
Sec. 220 Compliance Schedule for Existing Sources (11–13–91)
Sec. 225 Wood-Waste Boilers (11–13–91)
Sec. 230 Wood Particulate Dryers at Particleboard Plants (11–13–91)
Sec. 235 Hardboard Manufacturing Plants (11–13–91)
Sec. 240 Air Conveying Systems (11–13–91)
Sec. 245 Fugitive Emissions (11–13–91)

Division 22–General Gaseous Emissions Sulfur Content of Fuels

Sec. 005 Definitions (3–1–72)
Sec. 010 Residual Fuel Oils (8–25–77)
Sec. 015 Distillate Fuel Oils (3–1–72)
Sec. 020 Coal (1–29–82)
Sec. 025 Exemptions (3–1–72)

General Emission Standards for Sulfur Dioxide

Sec. 050 Definitions (3–1–72)
Sec. 055 Fuel Burning Equipment (3–1–72)
Sec. 300 Reid Vapor Pressure for Gasoline, except that in Paragraph (6) only sampling procedures and test methods specified in 40 CFR part 80 are approved (6–15–89)

Motor Vehicle Fuel Specifications for Oxygenated Gasoline

Sec. 440 Policy (11–1–92)
Sec. 450 Definitions (11–1–92)
Sec. 460 Purpose and General Requirements (11–1–92)
Sec. 470 Control Areas (11–1–92)
Sec. 480 Average Oxygen Content Standard (11–1–92)
Sec. 490 Sampling, Testing and Oxygen Content (11–1–92)

Sec. 500 Alternative Compliance Options (11–1–92)
Sec. 510 Minimum Oxygen Content (11–1–92)
Sec. 520 Oxygenated Gasoline Blending (11–1–92)
Sec. 530 Registration (11–1–92)
Sec. 540 CAR, Distributor and Retail Outlet Operating Permits (11–1–92)
Sec. 550 Recordkeeping (11–1–92)
Sec. 560 Reporting (11–1–92)
Sec. 570 Prohibited Activities (11–1–92)
Sec. 580 Inspection and Sampling (11–1–92)
Sec. 590 Liability For Violation of a Prohibited Activity (11–1–92)
Sec. 600 Defenses For Prohibited Activities (11–1–92)
Sec. 610 Inability to Product Conforming Gasoline Due to Extraordinary Circumstances (11–1–92)
Sec. 620 Quality Assurance Program (11–1–92)
Sec. 630 Attest Engagements Guidelines When Prohibited Activities Alleged (11–1–92)
Sec. 640 Dispenser Labeling (11–1–92)

Division 23–Rules for Open Burning

Sec. 022 How to Use These Open Burning Rules (9–8–81)
Sec. 025 Policy (9–8–81)
Sec. 030 Definitions (6–16–84) (15) "Disease and Pest Control" (11–13–91)
Sec. 035 Exemptions, Statewide (6–16–84)
Sec. 040 General Requirements Statewide (9–8–81)
Sec. 042 General Prohibitions Statewide (6–16–84)
Sec. 043 Open Burning Schedule (11–13–91)
Sec. 045 County Listing of Specific Open Burning Rules (9–8–81)

Open Burning Prohibitions

Sec. 055 Baker, Clatsop, Crook, Curry Deschutes, Gilliam, Grant, Harney, Hood River, Jefferson, Klamath, Lake, Lincoln, Malheur, Morrow, Sherman, Tillamook, Umatilla, Union, Wallowa, Wasco and Wheeler Counties (9–8–81)
Sec. 060 Benton, Linn, Marion, Polk, and Yamhill Counties (6–16–84)
Sec. 065 Clackamas County (6–16–84)
Sec. 070 Multnomah County (6–16–84)
Sec. 075 Washington County (6–16–84)
Sec. 080 Columbia County (9–8–81)
Sec. 085 Lane County (6–16–84)
Sec. 090 Coos, Douglas, Jackson and Josephine Counties (11–13–91)
Sec. 100 Letter Permits (6–16–84)
Sec. 105 Forced Air Pit Incinerators (9–8–81)
Sec. 110 Records and Reports (9–8–81)
Sec. 115 Open Burning Control Areas (6–16–84)

Division 24–Motor Vehicles Motor Vehicle Emission Control Inspection Test Criteria, Methods and Standards

Sec. 300 Scope (4–1–85)
Sec. 301 Boundary Designations (9–12–88)
Sec. 305 Definitions (4–1–85)
Sec. 306 Publicly Owned and Permanent Fleet Vehicle Testing Requirements (12–31–83)
Sec. 307 Motor Vehicle Inspection Program Fee Schedule (8–1–81)
Sec. 310 Light Duty Motor Vehicle Emission Control Test Method (9–12–88)
Sec. 315 Heavy Duty Gasoline Motor Vehicle Emission Control Test Method (12–31–83)
Sec. 320 Light Duty Motor Vehicle Emission Control Test Criteria (9–12–88)
Sec. 325 Heavy Duty Gasoline Motor Vehicle Emission Control Test Criteria (9–12–88)
Sec. 330 Light Duty Motor Vehicle Emission Control Cutpoints or Standards (8–1–81) Subpart (3) (9–12–86)
Sec. 335 Heavy Duty Gasoline Motor Vehicle EmissionControl Emission Standards (9–12–86)
Sec. 340 Criteria for Qualifications of Persons Eligible to Inspect Motor Vehicles and Motor Vehicle Pollution Control Systems and Execute Certificates (12–31–83)
Sec. 350 Gas Analytical System Licensing Criteria (9–12–88)

Division 25–Specific Industrial Standards Construction and Operation of Wigwam Waste Burners

Sec. 005 Definitions (3–1–72)
Sec. 010 Statement of Policy (3–1–72)
Sec. 015 Authorization to Operate a Wigwam Burner (3–1–72)
Sec. 020 Repealed
Sec. 025 Monitoring and Reporting (3–1–72)

Hot Mix Asphalt Plants

Sec. 105 Definitions (3–1–73)
Sec. 110 Control Facilities Required (3–1–73)
Sec. 115 Other Established Air Quality Limitations (3–1–73)
Sec. 120 Portable Hot Mix Asphalt Plants (4–18–83)
Sec. 125 Ancillary Sources of Emission–Housekeeping of PlantFacilities (3–1–73)

Kraft Pulp Mills

Sec. 155 Statement of Policy (3–1–73)
Sec. 160 Highest and Best Practible Treatment and Control Required (3–1–73)
Sec. 165 Emission Limitations (3–1–73)
Sec. 170 More Restrictive Emission Limits (3–1–73)
Sec. 175 Plans and Specifications (3–1–73)
Sec. 180 Monitoring (3–1–73)
Sec. 185 Reporting (3–1–73)
Sec. 190 Upset Conditions (3–1–73)
Sec. 195 Other Established Air Quality Limitations (3–1–73)

Primary Aluminum Plants

Sec. 255 Statement of Purpose (6–18–82)
Sec. 260 Definitions (6–18–82)
Sec. 265 Emission Standards (6–18–82)
Sec. 270 Special Problem Areas (12–25–73)
Sec. 275 Highest and Best Practical Treatment and ControlRequirement (12–25–73)
Sec. 280 Monitoring (6–18–82)
Sec. 285 Reporting (6–18–82)

Specific Industrial Standards

Sec. 305 Definitions (11–13–91)
Sec. 310 General Provisions (4–11–77)
Sec. 315 Veneer and Plywood Manufacturing Operations (11–13–91)
Sec. 320 Particleboard Manufacturing Operations (3–22–77)
Sec. 325 Hardboard Manufacturing Operations (3–22–77)

Regulations for Sulfite Pulp Mills

Sec. 350 Definitions (5–23–80)
Sec. 355 Statement of Purpose (5–23–80)
Sec. 360 Minimum Emission Standards (5–23–80)
Sec. 365 Repealed
Sec. 370 Monitoring and Reporting (5–23–80)
Sec. 375 Repealed
Sec. 380 Exceptions (5–23–80)

Laterite Ore Production of Ferronickel

Sec. 405 Statement of Purpose (3–1–72)
Sec. 410 Definitions (3–1–72)
Sec. 415 Emission Standards (3–1–72)
Sec. 420 Highest and Best Practicable Treatment and ControlRequired (3–1–72
Sec. 425 Compliance Schedule (3–1–72)
Sec. 430 Monitoring and Reporting (3–1–72)

Division 26–Rules for Open Field Burning (Willamette Valley)

Sec. 001 Introduction (7–3–84)
Sec. 003 Policy (3–7–84)
Sec. 005 Definitions (3–7–84)
Sec. 010 General Requirement (3–7–84)
Sec. 011 Repealed
Sec. 012 Registration, Permits, Fees, Records (3–7–84)
Sec. 013 Acreage Limitations, Allocations (3–7–84)
Sec. 015 Daily Burning Authorization Criteria (3–7–84)
Sec. 020 Repealed
Sec. 025 Civil Penalties (3–7–84)
Sec. 030 Repealed
Sec. 031 Burning by Public Agencies (Training Fires) (3–7–84)
Sec. 035 Experimental Burning (3–7–84)
Sec. 040 Emergency Burning, Cessation (3–7–84)
Sec. 045 Approved Alternative Methods of Burning (PropaneFlaming) (3–7–84)

Division 27–Air Pollution Emergencies

Sec. 005 Introduction (5–20–88)
Sec. 010 Episode State Criteria for Air Pollution Emergencies (5–20–88)
Sec. 012 Special Conditions (5–20–88)
Sec. 015 Source Emission Reduction Plans (10–24–83)
Sec. 020 Repealed
Sec. 025 Regional Air Pollution Authorities (10–24–83)
Sec. 035 Operation and Maintenance Manual (10–24–83)

Division 28–Stationary Source Air Pollution Control and Permitting Procedures

Sec. 110 Definitions (11–4–93)
Sec. 1500 Purpose and Applicability (11–4–93)
Sec. 1510 Requirements (11–4–93)
Sec. 1520 Submission of Emission Statement (9–24–93)

Division 30–Specific Air Pollution Control Rules for the Medford-Ashland Air Quality Maintenance Area

Sec. 005 Purposes and Application (11–13–91)
Sec. 010 Definitions (11–13–91)
Sec 012 Application (11–13–91)
Sec. 015 Wood Waste Boilers (11–13–91) except (3)(c)
Sec. 021 Veneer Dryer Emission Limitations (11–13–91)
Sec. 025 Air Conveying Systems (9–7–89)

Sec. 030 Wood Particle Dryers at Particleboard Plants (11–13–91)
Sec. 031 Hardwood Manufacturing Plants (5–6–81)
Sec. 035 Wigwam Waste Burners (10–29–80)
Sec. 040 Charcoal Producing Plants (9–7–89)
Sec. 043 Control of Fugitive Emissions (Medford-Ashland Only) (11–13–91)
Sec. 044 Requirement for Operation and Maintenance Plans (Medford-Ashland Only) (11–13–91)
Sec. 045 Repealed
Sec. 046 Emission Limits Compliance Schedules (11–13–91)
Sec. 050 Continuous Monitoring (11–13–91)
Sec. 055 Source Testing (11–13–91)
Sec. 060 Repealed
Sec. 065 New Sources (11–13–91)
Sec. 070 Open Burning (4–7–78)
Sec. 115 Dual Fuel Feasibility Study for Wood-Waste Boilers (11–13–91)
Sec. 200 Application (11–13–91)
Sec. 205 Compliance Schedule for Existing Sources (11–13–91)
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[FR Doc. 94–11751 Filed 5–13–94; 8:45 am]
BILLING CODE 6560–50–F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7049

[ID–943–4060–02; IDI–04790–01]

Partial Revocation of Public Land Order No. 1703; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a public land order insofar as it affects 60 acres of National Forest System land withdrawn by the Department of the Army, Corps of Engineers, for the Albeni Falls Dam Project in the Kaniksu National Forest. The land is no longer needed for the purpose for which it was withdrawn. This action will open the land to surface entry and mining, and will permit the Forest Service to dispose of the land by exchange. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: June 15, 1994.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, BLM Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706–2500, 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. Public Land Order No. 1703, which withdrew National Forest System land for the Department of the Army, Corps of Engineers' Albeni Falls Dam Project, is hereby revoked insofar as it affects the following described land:

Boise Meridian

T. 56 N., R. 4 W.,
Sec. 34, lots 3 and 4.

The area described contains 60 acres in Bonner County.

2. At 9 a.m. on June 15, 1994, the land shall be opened to such forms of disposition as may by law be made of National Forest System land, including location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are

governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: May 4, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94–11811 Filed 5–13–94; 8:45 am]

BILLING CODE 4310–GG–M

43 CFR Public Land Order 7050

[AK–932–4210–06; A–026010]

Partial Revocation of Public Land Order No. 1094; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a public land order insofar as it affects approximately 50 acres of National Forest System land withdrawn for use by the Forest Service, Department of Agriculture, for the Ingram Creek Recreation Area. The land is no longer needed for the purpose for which it was withdrawn. This action also allows the conveyance of the land to the State of Alaska, if such land is otherwise available. Any land described herein that is not conveyed to the State is opened and will be subject to the terms and conditions of the national forest reservation and any other withdrawal of record.

EFFECTIVE DATE: May 16, 1994.

FOR FURTHER INFORMATION CONTACT: Sue Wolf, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5477.

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. Public Land Order No. 1094, which withdrew National Forest System land for recreational purposes, is hereby revoked insofar as it affects the following described land:

Seward Meridian

Chugach National Forest

T. 9 N., R. 2 E., unsurveyed, within Secs. 22, 23, 26, and 27, more particularly described as:

A tract extending 10 chains on each side of the centerline of the Seward-Anchorage Highway, beginning at Station 452+79 Section E and extending along and parallel to the highway centerline to Station 515+00 Section E, approximate latitude 60°51′ N., longitude 149°4′ W., excluding the following parcel:

All that part of the above described land lying south and east of the left bank of the Ingram Creek. This parcel contains approximately 8.5 acres.

The area described, less the exclusion, contains approximately 50 acres.

2. The State of Alaska application for selection made under section 6(a) of the Alaska Statehood Act of July 7, 1958, 48 U.S.C. note prec. 21 (1988), and under section 906(e) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(e) (1988), becomes effective without further action by the State upon publication of this public land order in the **Federal Register**, if such land is otherwise available. Land not conveyed to the State is opened and will be subject to the terms and conditions of the Chugach National Forest reservation, and any other withdrawal of record.

Dated: May 4, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94–11812 Filed 5–13–94; 8:45 am]

BILLING CODE 4310–JA–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 15 and 76

[ET Docket No. 93–7; FCC 94–80]

Implementation of Section 17 of the Cable Television Consumer Protection and Competition Act of 1992; Compatibility Between Cable Systems and Consumer Electronics Equipment

AGENCY: Federal Communications Commission.

ACTION: Final rules.

SUMMARY: The Commission has adopted rules for assuring compatibility between consumer electronics equipment and cable systems, as required by the Section 17 of the Cable Television Consumer Protection and Competition Act of 1992. These new rules are intended to ensure compatibility between consumer equipment and cable systems, consistent with the need to prevent theft of cable service, so that cable subscribers will be able to enjoy the full benefits of both the programming available on cable systems and the functions available on their television receivers and video cassette recorders (VCRs).

EFFECTIVE DATE: These regulations are effective June 15, 1994. The incorporation by reference of a publication listed in the regulations is approved by the Director of the Federal Register as of June 15, 1994.

FOR FURTHER INFORMATION CONTACT: Alan Stillwell (202–632–7060) or Robert Bromery (301–653–7315), Office of Engineering and Technology.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's First Report and Order in ET Docket No. 93–7, FCC 93–495, adopted April 4, 1994 and released May 4, 1994. 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, International Transcriptions Service, 2100 M Street NW., Washington, DC 20036, (202) 857–3800.

Summary of the Notice of Proposed Rule Making

1. Section 17 of the Cable Television Consumer Protection and Competition Act of 1992 (1992 Cable Act) requires that the Commission issue regulations to ensure compatibility between consumer equipment and cable systems. The goal of Section 17 is to ensure that cable subscribers will be able to enjoy the full benefits and functions of their television receivers and VCRs when receiving cable service.

2. Problems between cable systems and consumer TV equipment generally tend to arise from conflicts between new features in consumer television equipment and the techniques used by cable systems to address security and other technical operating considerations. Examples of TV receiver features affected by cable operating methods and devices include functions that permit the subscriber:

—To watch a program on one channel while simultaneously recording a program on another channel;
—To record two programs that appear on different channels; or,
—To use advanced features such as picture in picture.

3. The rules adopted by the Commission are based on the findings and recommendations in its "Report to Congress on Means for Assuring Compatibility Between Cable Systems and Consumer Electronics Equipment" and information provided in comments submitted in response to the Notice of Proposed Rule Making (Notice) in this proceeding, 58 FR 65153, December 3, 1993. These rules include measures that will assure improved compatibility between existing cable system and consumer TV equipment. They also

include provisions for achieving more effective compatibility through new cable and consumer equipment. The specific provisions of these regulations are essentially the same as those proposed in the *Notice*, with a number of modifications that address issues raised in the record. The new rules for improving compatibility between existing cable system and consumer equipment require that cable operators:

(1) Refrain from scrambling program signals carried on the basic tier of service;

(2) Offer subscribers supplemental equipment to enable them to use the special features and functions of their TV equipment with cable service; this includes providing subscribers the option of having simultaneous access to all signals that do not need to be processed by a set-top device;

(3) Provide a consumer education program to inform subscribers of potential compatibility problems and methods for resolving such problems; this includes notice that remote controls and supplemental equipment compatible with the set-top devices used by the cable system are available from third-party vendors; and

(4) Allow set-top devices that incorporate remote control capability to be operated with subscriber-owned remote controls or otherwise take no action that would prevent the use of such remote controls, including changing the infrared codes used to operate the remote control capabilities of the set-top devices they employ so as to adversely affect the operation of consumer-purchased remote controls.

The compatibility rules for new equipment provide technical standards for "cable ready" consumer TV equipment and require that both "cable ready" consumer TV equipment and cable systems use a standard cable channel plan.

4. The Commission also concluded that more effective compatibility between consumer TV equipment and cable systems that use scrambling can be achieved through use of a standard interface connector, or "Decoder Interface," in "cable ready" consumer TV equipment and associated component descrambler/decoder devices to be provided by cable systems. Used together, the Decoder Interface and component descrambler/decoder devices can eliminate the need for use of a set-top cable box. However, based on indications that the cable and consumer electronics industries are close to agreement on a new Decoder Interface standard that will serve both existing analog cable operations and also incorporate flexibility to support new technologies and services, including digital cable service, the Commission found that it would be appropriate to allow an additional period of time for the industries to complete their work on the new standard. The Commission therefore did not act on the Decoder Interface standard and related issues now, but rather will allow industry parties an additional 90 days to complete the new standard.[1] The Commission stated that would develop rules establishing a standard for a Decoder Interface connector and requirements for its use after that period.

5. As a policy matter, the Commission also found that standards for cable digital transmissions are desirable. These standards will be needed to ensure that compatibility is maintained as new digital cable technologies and services are introduced. The Commission stated that it was not, however, adopting technical standards or other rules in this area at this time, as developmental work on cable digital technologies and services has not reached a stage where it would be reasonable to attempt to specify such regulations. It stated that it will continue to monitor progress by the industries in this area and will initiate a separate action on these issues as is necessary to assure continuing compatibility in the future.

6. The Commission indicated that the actions in this First Report and Order will allow consumers to utilize equipment offered by a variety of suppliers, including the cable system operator, in a competitive market. Thus, a number of manufacturers and retailers will be able to increase their participation in markets to which they previously had limited access. Opening these markets to competitive equipment providers will give product developers and manufacturers, as well as cable system operators, the ability and incentives to introduce new products and to respond to consumer demand. In return, consumers will have greater access to technology with new features and functions. Most importantly, consumers will be assured that the equipment they buy will work with their cable system.

7. The Commission further indicated that open entry for equipment provision ensures that the equipment market remains competitive. In addition to open markets and incentives for innovation, another key component of competition is information. The new regulations ensure not only that the marketplace will be open and equipment options available to consumers, but that consumers will be informed about their choices. Competition could be stifled unless consumers are informed about their equipment options. By structuring the regulations to promote innovation and competition, the Commission expects increased investment in new technology development and increased economic activity as consumers purchase the new, competitively priced equipment.

8. Accordingly, it is ordered that parts 15 and 76 of the Commission's rules are amended as set forth below, effective 30 days after the publication of this final rule in the **Federal Register**. This action is taken pursuant to authority provided in sections 4(i), 7(a), 302, 303(c), 303(f), 303(g), 303(r) and 324A of the Communications Act of 1934, as amended 47 U.S.C. 154(i), 157(a), 302, 303(c), 303(f), 303(g), 303(r) and 324A.

List of Subjects

47 CFR Part 15

Communications equipment, Incorporation by reference, Television receivers, TV interface devices.

47 CFR Part 76

Cable television, Incorporation by reference.

Amendments to the Rules

Parts 15 and 76 of chapter I of title 47 of the Code of Federal Regulations are amended as follows:

PART 15—RADIO FREQUENCY DEVICES

1. The authority citation for part 15 is revised to read as follows:

Authority: Secs. 4, 302, 303, 304, 307 and 624A of the Communications Act of 1934, as amended, 47 U.S.C. 154, 302, 303, 304, 307 and 544A.

2. Section 15.3 is amended by adding a new paragraph (aa) to read as follows:

§ 15.3 Definitions.

* * * * *

(aa) *Cable ready consumer electronics equipment.* Consumer electronics TV receiving devices, including TV receivers, videocassette recorders and similar devices, that incorporate a tuner capable of receiving television signals and an input terminal intended for receiving cable television service, and are marketed as "cable ready" or "cable compatible." Such equipment shall comply with the technical standards specified in § 15.118.

[1] If the industry parties do not complete their work in the 90-day period, we will establish a standard using our own resources.

3. Section 15.19 is amended by adding a new paragraph (d) to read as follows:

§ 15.19 Labeling requirements.

* * * * *

(d) Consumer electronics TV receiving devices, including TV receivers, videocassette recorders and similar devices, that incorporate features intended to be used with cable television service, but do not fully comply with the technical standards for cable ready equipment set forth in § 15.118 are subject to the following labeling requirements:

(1) Such equipment shall be labeled with an advisory indicating that the device does not fully comply with the Federal Communications Commissions standards for cable ready consumer electronics equipment. The advisory must appear on the device and on its packaging. This requirement applies to consumer TV receivers, videocassette recorders and similar devices manufactured or imported for sale in this country on or after June 30, 1997.

(2) Such equipment shall not be marketed with terminology that describes the device as "cable ready" or "cable compatible," or that otherwise conveys the impression that the device is *fully* compatible with cable service. This requirement applies to consumer TV receivers, videocassette recorders and similar devices manufactured or imported for sale in this country on or after October 31, 1994.

4. Section 15.115 is amended by revising paragraph (c)(1)(*i*) and adding new paragraphs (h) and (i) to read as follows:

§ 15.115 TV interface devices, including cable system terminal devices.

* * * * *

(c) * * *

(1) * * *

(*i*) For a cable system terminal device or a TV interface device equipped for use with a cable system or a master antenna, as defined in paragraph (b)(3) of this section, the isolation between the antenna and cable input terminals shall be at least 80 dB from 54 MHz to 216 MHz, at least 60 dB from 216 MHz to 550 MHz and at least 55 dB from 550 MHz to 806 MHz. The 80 dB standard applies at 216 MHz and the 60 dB standard applies at 550 MHz. In the case of a transfer switch requiring a power source, the required isolation shall be maintained in the event the device is not connected to a power source or power is interrupted. The provisions of this paragraph regarding frequencies in the range 550 MHz to 806 MHz are applicable as of June 30, 1997.

* * * * *

(h) Stand-alone switches used to alternate between cable service and an antenna shall provide isolation between the antenna and cable input terminals that is at least 80 dB from 54 MHz to 216 MHz, at least 60 dB from 216 MHz to 550 MHz and at least 55 dB from 550 MHz to 806 MHz.The 80 dB standard applies at 216 MHz and the 60 dB standard applies at 550 MHz. In the case of stand-alone switches requiring a power source, the required isolation shall be maintained in the event the device is not connected to a power source or power is interrupted. The provisions of this paragraph are applicable as of June 30, 1997.

(i) Switches and other devices intended to be used to by-pass the processing circuitry of a cable system terminal device, whether internal to such a terminal device or a stand-alone unit, shall not attenuate the input signal more than 6 dB from 54 MHz to 550 MHz, or more than 8 dB from 550 MHz to 806 MHz. The provisions of this paragraph are applicable as of June 30, 1997.

5. Section 15.117 is amended by revising paragraph (h) to read as follows:

§ 15.117 TV broadcast receivers.

* * * * *

(h) For a TV broadcast receiver equipped with a cable input selector switch, the selector switch shall provide, in any of its set positions, isolation between the antenna and cable input terminals of at least 80 dB from 54 MHz to 216 MHz, at least 60 dB from 216 MHz to 550 MHz and at least 55 dB from 550 MHz to 806 MHz. The 80 dB standard applies at 216 MHz and the 60 dB standard applies at 550 MHz. In the case of a selector switch requiring a power source, the required isolation shall be maintained in the event the device is not connected to a power source or power is interrupted. An actual switch that can alternate between reception of cable television service and an antenna is not required for a TV broadcast receiver, provided compliance with the isolation requirement specified in this paragraph can be demonstrated and the circuitry following the antenna input terminal(s) has sufficient bandwidth to allow the reception of all TV broadcast channels authorized under this chapter. The provisions of this paragraph regarding frequencies in the range 550 MHz to 806 MHz are applicable as of June 30, 1997.

6. New § 15.118 is added to read as follows:

§ 15.118 Cable ready consumer electronics equipment.

(a) All consumer electronics TV receiving equipment marketed in the United States as cable ready or cable compatible shall comply with the provisions of this section. Consumer electronics TV receiving equipment that includes features intended for use with cable service but does not fully comply with the provisions of this section are subject to the labelling requirements of § 15.19(d).

(b) Cable ready consumer electronics equipment shall be capable of receiving all NTSC or similar video channels in the frequency range 54 MHz to 804 MHz in accordance with the channel allocation plan set forth in the Electronic Industries Association's "Cable Television Channel Identification Plan, EIA IS–132, May 1994" (EIA IS–132). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of EIA IS–132 may be obtained from: Global Engineering Documents, 2805 McGraw Ave., Irvine CA 92714. copies of EIA IS–132 may be inspected during normal business hours at the following locations: Federal Communications Commission, 1919 M Street, NW., Dockets Branch (Room 239), Washington, DC, or the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC

(c) Cable ready consumer electronics equipment must meet the following technical performance requirements. Compliance with these requirements shall be determined by performing measurements at the unfiltered IF output port. Where appropriate, the Commission will consider allowing alternative measurement methods.

(1) *Adjacent channel interference.* In the presence of a lower adjacent channel CW signal that is 1.5 MHz below the desired visual carrier in frequency and 10 dB below the desired visual carrier in amplitude, spurious signals within the IF passband shall be attenuated at least 55 dB below the visual carrier of the desired signal. The desired input signal shall be an NTSC visual carrier modulated with a 10 IRE flat field and the aural carrier should be unmodulated. Measurements are to be performed for input signal levels of 0 dBmV and +15 dBmV, with the receiver tuned to ten evenly spaced channels specified in the EIA IS–132 channel plan.

(2) *Image channel interference.* Image channel interference within the IF passband shall be attenuated below the visual carrier of the desired channel by at least 60 dB from 54 MHz to 806 MHz.

In testing for compliance with this standard, the desired input signal is to be an NTSC visual carrier modulated with a 10 IRE flat field and the aural carrier should be unmodulated. The undesired test signal shall be a CW signal equal in amplitude to the desired visual carrier and located 90 MHz above the visual carrier frequency of the desired channel. Measurements shall be performed for input signals of 0 dBmV and +15 dBmV, with the receiver tuned to ten evenly spaced channels specified in the EIA IS–132 channel plan.

(3) *Direct pickup interference.* The direct pickup (DPU) of a co-channel interfering ambient field by a cable ready device shall not exceed the following criteria. The ratio of the desired to undesired signal levels at the IF passband on each channel shall be at least 45 dB. The average ratio over the six channels shall be at least 50 dB. The desired input signal shall be an NTSC signal having a visual carrier level of 0 dBmV. The equipment under test (EUT) shall be placed on a rotatable table that is one meter in height. Any excess length of the power cord and other connecting leads shall be coiled on the floor under the table. The EUT shall be immersed in a horizontally polarized uniform CW field of 100 mV/m at a frequency 2.55 MHz above the visual carrier of the EUT tuned channel. Measurements shall be made with the EUT tuned to six EIA IS–132 channels, two each in the low VHF, high VHF and UHF broadcast bands. On each channel, the levels at the IF passband due to the desired and interfering signals are to be measured.

(4) *Tuner overload.* Spurious signals within the IF passband shall be attenuated at least 55 dB from 54 to 806 MHz below the visual carrier of the desired channel using a comb spectrum input with each signal individually set at +15 dBmV. Measurements shall be made with the receiver tuned to ten evenly spaced EIA IS–132 channels.

(5) *Cable input conducted emissions.* Conducted spurious emissions that appear at the cable input to the device must meet the following criteria. The input shall be an NTSC video carrier modulated with a 10 IRE flat field at a level of 0 dBmV and with a visual to aural ratio of 10 dB. The aural carrier shall be unmodulated. The peak level of the spurious signals will be measured using a spectrum analyzer connected by a directional coupler to the cable input of the equipment under test. Spurious signal levels must not exceed the limits in the following table:

From 54 MHz up to and including 300 MHz–26 dBmV

From 300 MHz up to and including 450 MHz–20 dBmV

From 450 MHz up to and including 806 MHz–15 dBmV

The average of the measurements on multiple channels from 450 MHz up to and including 806 MHz shall be no greater than −20 dBmV. Measurements shall be made with the receiver tuned to at least four EIA IS–132 channels in each of the above bands. The test channels are to be evenly distributed across each of the bands. Measurements for conducted emissions caused by sources internal to the device are to be made in a shielded room. Measurements for conducted emissions caused by external signal sources shall be made in an ambient RF field whose field strength is 100 mV/m, following the same test conditions as described in paragraph (c)(3) of this section.

(d) The field strength of radiated emissions from cable ready consumer electronics equipment shall not exceed the limits in § 15.109(a) when measured in accordance with the applicable procedures specified in § 15.31 and § 15.35 for unintentional radiators, with the following modifications. During testing the NTSC input signal level is to be +15 dBmV, with a visual to aural ratio of 10 dB. The visual carrier is to be modulated by a 10 IRE flat field; the aural carrier is to be unmodulated. Measurements are to be taken on six EIA IS–132 channels evenly spaced across the required RF input range of the equipment under test.

Note: The provisions of paragraphs (a) through (d) of this section are applicable as of June 30, 1997.

PART 76—CABLE TELEVISION SERVICE

7. The authority citation for part 76 is revised to read as follows:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 324A 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085, 1101; 47 U.S.C. Secs. 152, 153, 154, 301, 303, 307, 308, 309, 532, 533, 535, 542, 543, 544A, 552 as amended, 106 Stat. 1460.

8. Section 76.605 is amended by redesignating paragraphs (a)(2) through (a)(12) as paragraphs (a)(2) through (a)(12) as paragraphs (a)(3) through (a)(13), and adding a new paragraph (a)(2) to read as follows:

§ 76.605 Technical standards.

(a) * * *

(2) Cable systems shall transmit channels to subscriber premises equipment on frequencies in accordance with the channel allocation plan set forth in the Electronic Industries Association's Cable Television Channel Identification Plan, EIA IS–132, May 1994" (EIA IS–132). 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. Cable systems are required to sue this channel allocation plan for signals transmitted in the frequency range 54 MHz to 1002 MHz. Copies of EIA IS–132 may be obtained from: Global Engineering Documents, 2805 McGraw Ave., Irvine CA 92714. Copies of EIA IS–132 may be inspected during normal business hours at the following locations: Federal Communications Commission, 1919 M Street NW., Dockets Branch (Room 239), Washington, DC, or the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC. This requirement is applicable as of June 30, 1995, for new and re-built cable systems, and on June 30, 1997, for all cable systems.

* * * * *

9. New § 76.630 is added to read as follows:

§ 76.630 Compatibility with consumer electronics equipment.

(a) Cable system operators shall not scramble or otherwise encrypt signals carried on the basic service tier. Requests for waivers of this prohibition must demonstrate either a substantial problem with theft of basic tier service or a strong need to scramble basic signals for other reasons. As part of this showing, cable operators are required to notify subscribers by mail of waiver requests. The notice to subscribers must be mailed no later than thirty calendar days from the date the request waiver was filed with the Commission, and cable operators must inform the Commission in writing, as soon as possible, of that notification date. The notification to subscribers must state:

On (date of waiver request was filed with the Commission), (cable operator's name) filed with the Federal Communications Commission a request for waiver of the rule prohibiting scrambling of channels on the basic tier of service. 47 CFR § 76.630(a). The request for waiver states (a brief summary of the waiver request). A copy of the request for waiver is on file for public inspection at (the address of the cable operator's local place of business).

Individuals who wish to comment on this request for waiver should mail comments to the Federal Communications Commission by no later than 30 days from (the date the notification was mailed to subscribers). Those comments should be addressed to the: Federal Communications Commission, Cable Services Bureau, Washington, DC 20554, and should include the name of the cable operator to whom the comments are applicable. Individuals should also send a

copy of their comments to (the cable operator at its local place of business).

Cable operators may file comments in reply no later than 7 days from the date subscriber comments must be filed.

(b) Cable system operators that provide their subscribers with cable system terminal devices and other customer premises equipment that incorporates remote control capability shall permit the remote operation of such devices with commercially available remote control units or otherwise take no action that would prevent the devices from being operated by a commercially available remote control unit. Cable system operators are advised that this requirement obliges them to actively enable the remote control functions of customer premises equipment where those functions do not operate without a special activation procedure. Cable system operators may, however, disable the remote control functions of a subscriber's customer premises equipment where requested by the subscriber.

(c) Cable operators may not alter the infrared codes used to operate the remote control capabilities of the customer premises equipment they employ in providing service to subscribers. Cable operators may, however, use new equipment that includes additional infrared codes for new remote control functions that were not included in existing models of customer premises equipment.

(d) Cable system operators that use scrambling, encryption or similar technologies in conjunction with cable system terminal devices, as defined in § 15.1(e) of this chapter, that may affect subscribers' reception of signals shall offer to supply each subscriber with special equipment that will enable the simultaneous reception of multiple signals. This equipment could include, for example, set-top cable system terminal devices with multiple descramblers/decoders and/or timers, and signal bypass switches.

(1) The offer of special equipment shall be made to new subscribers at the time they subscribe and to all subscribers at least once each year.

(2) Such special equipment shall, at a minimum, have the capability:

(i) To allow simultaneous reception of any two or more scrambled or encrypted signals and to provide for tuning to alternative channels on a pre-programmed schedule; and,

(ii) To allow direct reception of all other signals that do not need to be processed through descrambling or decryption circuitry (this capability can generally be provided through a separate by-pass switch or through internal by-pass circuitry in a cable system terminal device).

(3) Cable system operators shall determine the specific equipment needed by individual subscribers on a case-by-case basis, in consultation with the subscriber. Cable system operators are required to make a good faith effort to provide subscribers with the amount and types of special equipment needed to resolve their individual compatibility problems.

(4) Cable operators shall provide such equipment at the request of individual subscribers and may charge for purchase or lease of the equipment and its installation in accordance with the provisions of the rate regulation rules for customer premises equipment used to receive the basic service tier, as set forth in § 76.923. Notwithstanding the required annual offering, cable operators shall respond to subscriber requests for special equipment for reception of multiple signals that are made at any time.

(e) Cable system operators shall provide a consumer education program on compatibility matters to their subscribers in writing, as follows:

(1) The consumer information program shall be provided to subscribers at the time they first subscribe and at least once a year thereafter. Cable operators may choose the time and means by which they comply with the annual consumer information requirement. This requirement may be satisfied by a once-a-year mailing to all subscribers. The information may be included in one of the cable system's regular subscriber billings.

(2) The consumer information program shall include the following information:

(i) Cable system operators shall inform their subscribers that some models of TV receivers and videocassette recorders may not be able to receive all of the channels offered by the cable system when connected directly to the cable system. In conjunction with this information, cable system operators shall briefly explain, the types of channel compatibility problems that could occur if subscribers connected their equipment directly to the cable system and offer suggestions for resolving those problems. Such suggestions could include, for example, the use of a cable system terminal device such as a set-top channel converter. Cable system operators shall also indicate that channel compatibility problems associated with reception of programming that is not scrambled or encrypted programming could be resolved through use of simple converter devices without descrambling or decryption capabilities that can be obtained from either the cable system or a third party retail vendor.

(ii) In cases where service is received through a cable system terminal device, cable system operators shall indicate that subscribers may not be able to use special features and functions of their TV receivers and videocassette recorders, including features that allow the subscriber to: view a program on one channel while simultaneously recording a program on another channel; record two or more consecutive programs that appear on different channels; and, use advanced picture generation and display features such as "Picture-in-Picture," channel review and other functions that necessitate channel selection by the consumer device.

(iii) In cases where cable system operators offer remote control capability with cable system terminal devices and other customer premises equipment that is provided to subscribers, they shall advise their subscribers that remote control units that are compatible with that equipment may be obtained from other sources, such as retail outlets. Cable system operators shall also provide a representative list of the models of remote control units currently available from retailers that are compatible with the customer premises equipment they employ. Cable system operators are required to make a good faith effort in compiling this list and will not be liable for inadvertent omissions. This list shall be current as of no more than six months before the date the consumer education program is distributed to subscribers. Cable operators are also required to encourage subscribers to contact the cable operator to inquire about whether a particular remote control unit the subscriber might be considering for purchase would be compatible with the subscriber's customer premises equipment.

Note: The provisions of paragraphs (a) and (b) of this section are applicable as of July 31, 1994, and June 30, 1994, respectively. The provisions of paragraphs (c) through (e) of this section are applicable as of October 31, 1994, except for the requirement under section (d)(1)(i) of this section for cable system operators to supply cable system terminal devices with multiple tuners, which is applicable as of October 31, 1995. The initial offer of special equipment to all subscribers, as required under paragraph (d) of this section shall be made by October 31, 1994.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 94–11068 Filed 5–13–94; 8:45 am]
BILLING CODE 6712–01–M

47 CFR Part 76

[MM Docket No. 93–291; DA 94–425]

Cable Television Service

AGENCY: Federal Communications Commission.
ACTION: Final rule.

SUMMARY: The Commission, through this action, amends its rules, the listing of major television markets, to change the designation of the Boston-Cambridge-Worcester, Massachusetts, television market to include the community of Lawrence, Massachusetts. This action, taken at the request of MFP, Inc. licensee of television station WMFP, Channel 63 (Independent), Lawrence, Massachusetts, and after evaluation of the comments filed in this proceeding, amends the rules to designate the subject market as the Boston-Cambridge-Worcester-Lawrence, Massachusetts, television market. With this action, the proceeding is terminated.

EFFECTIVE DATE: June 15, 1994.

FOR FURTHER INFORMATION CONTACT: Alan E. Aronowitz, Mass Media Bureau, Policy and Rules Division, (202) 632–7792.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 93–291, adopted April 29, 1994, and released May 5, 1994. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 1919 M Street, NW., Washington, DC 20554.

List of Subjects in 47 CFR Part 76

Cable television.

Part 76 of chapter I of title 47 of the Code of Federal Regulations is amended as follows:

PART 76—CABLE TELEVISION SERVICE

1. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 154,303.

2. Section 76.51 is amended by revising paragraph (a)(6) to read as follows:

§ 76.51 Major television markets.

* * * * *

(a) * * *

(6) Boston-Cambridge-Worcester-Lawrence, Mass.

* * * * *

Federal Communications Commission.
William H. Johnson
Deputy chief, Cable Services Bureau.
[FR Doc. 94–11749 Filed 5–13–94; 8:45 am]
BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 638

[Docket No. 940425–4125; I.D. 040694D]

Coral and Coral Reefs of the Gulf of Mexico and the South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.
ACTION: Emergency interim rule.

SUMMARY: NMFS publishes this interim emergency rule at the request of the Gulf of Mexico Fishery Management Council (Gulf Council) to prohibit the taking of live rock in the exclusive economic zone (EEZ) of the Gulf of Mexico (Gulf) from the Pasco/Hernando County line in Florida to the Alabama/Mississippi boundary; and, in the Gulf EEZ off Florida south of the Pasco/Hernando County line, to prohibit the use of power-assisted tools to break up or dislodge pieces of live rock and to establish a daily vessel harvest and possession limit for live rock of 25 5-gallon (19-liter) buckets. The intended effect of this rule is to protect live rock resources and fishery habitat in the Gulf.

EFFECTIVE DATES: May 16, 1994 through August 14, 1994.

ADDRESSES: Copies of documents supporting this action, including an environmental assessment, may be obtained from Georgia Cranmore, Southeast Regional Office, NMFS, 9721 Executive Center Drive, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Georgia Cranmore, 813–893–3161.

SUPPLEMENTARY INFORMATION: Coral and coral reefs in the EEZ off the southern Atlantic states and in the Gulf are managed under the Fishery Management Plan for Coral and Coral Reefs of the Gulf of Mexico and the South Atlantic (FMP). The FMP was prepared by the Gulf Council and the South Atlantic Fishery Management Council (South Atlantic Council) and is implemented through regulations at 50 CFR part 638 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Live rock consists of living marine organisms, or an assemblage thereof, attached to a hard substrate, including dead coral or rock (excluding mollusk shells), and therefore is a "fish" within the meaning of the Magnuson Act. Live rock is collected by SCUBA divers and sold to the marine aquarium industry, which markets it as the basis for mini-reef aquaria. In 1992, reported live rock landings in Florida from the EEZ totaled 783,145 lbs (355,228 kg) with an ex-vessel value of $864,521. (Florida had previously banned the harvest of live rock in its waters.) In 1992, Florida implemented regulations to phase out landings of live rock from the EEZ off Florida over a 3-year period ending in 1995.

In 1993 a Federal court overturned these regulations (Southeastern Fisheries Ass'n, Inc. v. Chiles, 979 F.2d 1504 (11th Cir. 1992).

At the request of Gulf Council members from Florida and Alabama, the Gulf and South Atlantic Councils initiated development of Amendment 2 to the FMP to address management of live rock in the EEZ. Similar to coral reefs, the current focus of the FMP, live rock resources are essentially nonrenewable and serve as habitat for a variety of other organisms.

In the recent public review process during the development of Amendment 2, the Gulf and South Atlantic Councils received testimony that rock outcroppings, that are important reef fish habitats, are being removed and sold as live rock for marine aquariums. Testimony from about 60 divers and fishermen indicated that removal of live rock by harvesters in the northern Gulf is causing severe damage to the limited outcroppings or rock ledges and reefs that occur in state and Federal waters. Divers and fishermen testified that some small banks have disappeared and many ledges off the Florida Panhandle have been seriously damaged. Such outcroppings are not nearly as abundant in this area as they are off southern Florida. These nonrenewable resources serve as essential habitat for reef fish and invertebrates. Accordingly, the Gulf Council requested an emergency rule to prohibit the taking of live rock in the EEZ of the Gulf from the Pasco/Hernando County line in Florida to the Alabama/Mississippi boundary.

The Gulf and South Atlantic Councils also heard testimony that pneumatic drills and hammers are being used to

break large rock ledges into harvestable pieces. This results in large-scale destruction of reef fish habitat. Testimony indicated that large vessels with numerous divers and equipped with power-assisted gear can devastate a rock ledge very quickly. To prevent further acceleration of harvest of live rock before the management measures proposed for inclusion in Amendment 2 can be implemented, the Gulf Council also requested a prohibition on the use of power-assisted tools and a daily vessel harvest and possession limit, both of which would apply to the harvest of live rock in the EEZ of the Gulf south of the Pasco/Hernando County line.

Live rock or live bottom habitats are at such a premium in the northern Gulf that local government and private organizations have been active in constructing artificial reefs to supplement natural habitats off the coasts of Alabama and Florida. Loss of these natural, nonrenewable, habitat areas because of live rock collections presents a serious threat to marine habitat resources.

According to the Florida Department of Environmental Protection, the closure of the Gulf EEZ from Florida's Pasco/Hernando County line to the Alabama/Mississippi boundary to live rock collecting will affect approximately 16 fishermen and live rock dealers who reported landings of live rock in Florida and Alabama in 1993.

The daily vessel harvest and possession limit and the prohibition on the use of power tools were widely supported by industry representatives during the last three public hearings conducted in conjunction with Gulf Council meetings. These restrictions are expected to affect only a few individuals who allegedly are taking up to 10,000 lbs (4,536 kg) of live rock per trip using power tools.

Amendment 2 is scheduled to be submitted for Secretarial review by the Councils in July 1994. It is expected that Amendment 2 will implement the measures in this emergency interim rule on a more permanent basis and include a phase-out schedule for live rock harvests in other areas.

Compliance With NMFS Guidelines for Emergency Rules

The Gulf Council and NMFS have concluded that the present situation constitutes biological and conservation emergencies, which are properly addressed by this emergency interim rule, and that the situation meets NMFS's policy guidelines for the use of emergency rules, published on January 6, 1992 (57 FR 375). The situation (1) results from recent, unforeseen events or recently discovered circumstances; (2) presents a serious management problem; and (3) realizes immediate benefits from the emergency interim rule that outweigh the value of advance notice, public comment, and deliberative consideration expected under the normal rulemaking process. The basis for the conclusions regarding emergency guidelines (1) and (2) was summarized above.

Regarding the realization of immediate benefits, the Gulf Council has determined that an emergency rule under section 305(c) of the Magnuson Act is the only means for immediately addressing the biological emergency involving the Gulf live rock resources.

Going through the formal FMP amendment process would delay implementation of the required measures and would result in substantial damage to live rock resources and fishery habitats in the Gulf. This emergency interim rule will prevent live rock collection in the northern Gulf and slow the harvesting rate in the rest of the Gulf EEZ until annual quotas and a phase-out can be implemented under Amendment 2 through the normal FMP amendment and rulemaking process.

NMFS concurs with the Gulf Council's findings about the biological emergency regarding Gulf live rock resources and the need for immediate regulatory action. Accordingly, NMFS publishes this emergency interim rule, effective initially for 90 days, as authorized by section 305(c) of the Magnuson Act. By agreement of NMFS and the Gulf Council, this emergency interim rule may be extended for an additional period of 90 days.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this rule is necessary to respond to an emergency situation and is consistent with the Magnuson Act and other applicable law.

This emergency interim rule has been determined to be "not significant" for purposes of E.O. 12866.

The Assistant Administrator finds for good cause under section 553(b)(B) of the Administrative Procedure Act (APA) that the need to prevent further environmental damage and loss of fishery habitat makes it impracticable and contrary to the public interest to provide prior notice and opportunity for public comment on this rule. Similarly, to implement measures to address the conservation and biological emergencies in a timely manner, the Assistant Administrator finds for good cause under section 553(d)(3) of the APA that the effective date of this rule should not be delayed.

List of Subjects in 50 CFR Part 638

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 10, 1994.

Charles Karnella,

Acting Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 638 is amended as follows:

PART 638—CORAL AND CORAL REEFS OF THE GULF OF MEXICO AND THE SOUTH ATLANTIC

1. The authority citation for part 638 continues to read as follows:

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

2. In § 638.5, effective May 16, 1994, through August 14, 1994, paragraphs (o), (p), and (q) are added to read as follows:

§ 638.5 Prohibitions.

* * * * *

(o) Harvest or possess live rock in or from the EEZ of the Gulf of Mexico from 28°26′N. lat. north and west to 88°23′12″W. long., as specified in § 638.27(b).

(p) Use a power-assisted tool to break up or dislodge pieces of live rock in the EEZ of the Gulf of Mexico south of 28°26′N. lat., or possess live rock taken with such a power-assisted tool in or from that area; as specified in § 638.27(c).

(q) Exceed the daily vessel harvest and possession limit of 25 5-gallon (19-liter) buckets, or volume equivalent, applicable to the harvest or possession of live rock in or from the EEZ of the Gulf of Mexico south of 28°26′N. lat., as specified in § 638.27(d).

3. In subpart B, effective May 16, 1994, through August 14, 1994, § 638.27 is added to read as follows:

§ 638.27 Live rock.

(a) *Definition.* Live rock means living marine organisms, or an assemblage thereof, attached to a hard substrate, including dead coral or rock (excluding mollusk shells).

(b) *Closed area.* No person may harvest or possess live rock in or from the EEZ of the Gulf of Mexico from 28°26′ N. lat. (extension of the Pasco/Hernando County, Florida, boundary) north and west to 88°23′12″ W. long. (a line due south from the seaward terminus of the Alabama/Mississippi state line).

(c) *Gear limitations.* No person may use a power-assisted tool to break up or dislodge pieces of live rock in the EEZ of the Gulf of Mexico south of 28°26′ N. lat., and no person may possess live rock taken with such a power-assisted tool in or from that area.

(d) *Harvest and possession limit.* A daily vessel limit of 25 5-gallon (19-liter) buckets, or volume equivalent, applies to the harvest or possession of live rock in or from the EEZ of the Gulf of Mexico south of 28°26′ N. lat.

[FR Doc. 94–11764 Filed 5–13–94; 8:45 am]
BILLING CODE 3510–22–P

50 CFR Part 675

[Docket No. 931059–4126; I.D. 092293E]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS is implementing a regulatory amendment to require increased observer coverage and improved equipment for estimating groundfish total catches by vessels and processors participating in the Western Alaska Community Development Quota (CDQ) pollock fisheries. This action is intended to improve estimates of total groundfish catches in the CDQ fisheries.

EFFECTIVE DATES: June 15, 1994, except for § 675.27(h)(2), which is effective August 15, 1994.

ADDRESSES: Copies of the environmental assessment/regulatory impact review/final regulatory flexibility analysis (EA/RIR/FRFA) prepared for this action may be obtained from the Fisheries Management Division, Alaska Region, NMFS, Box 21668, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: Sally Bibb, Fisheries Management Division, (907) 586–7228.

SUPPLEMENTARY INFORMATION:

Background

Fishing for groundfish by operators of U.S. vessels in the exclusive economic zone of the Bering Sea and Aleutian Islands (BSAI) management area is managed by the Secretary of Commerce (Secretary) according to the Fishery Management Plan for the Groundfish Fishery of the BSAI Area (FMP). The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and is implemented by regulations governing the U.S. groundfish fisheries at 50 CFR part 675. General regulations that also pertain to U.S. fisheries appear at 50 CFR part 620.

This regulatory amendment will require increased observer coverage and improved equipment for estimating total catch for vessels and processors participating in the Western Alaska CDQ pollock fisheries. Two NMFS-certified observers will be required on processor vessels, one or more observers in shoreside processing operations, and one observer on catcher vessels delivering to processors. In addition, processor vessels will be required to have either measured, marked, and certified fish-receiving bins to improve volumetric estimates of total catch, or scales to weigh total catch. A description of, and reasons for, these actions were discussed in the proposed rule published in the **Federal Register** on December 27, 1993 (58 FR 68386). Public comment on the proposed rule was invited through January 26, 1994. Four letters of comment were received within the comment period.

Management of the CDQs requires an estimate of the total catch weight of pollock for each vessel participating in the CDQ fisheries. The purpose of this rule is to standardize the equipment available to observers to make volumetric estimates of the weight of all groundfish caught, including pollock, or to require that the fish be weighed.

The volume of fish in the bin is determined by the area of the base of the bin and the height of fish throughout the bin. Fish poured into bins do not always form a flat, smooth surface, or settle at the same height throughout the bin. The surface of the fish often slopes from front to back or from one side to another in the bin. Fish may stack up higher in one corner than in others or pile up in the middle of the bin.

The process of making volumetric estimates of the catch using certified bins generally occurs in five steps. *First*, a certified engineer, or other authorized person, measures the inside of all bins that will be used to make volumetric estimates of catch weight, witnesses the placement of marked increments every 10 cm on the internal sides of the bin, and prepares a height-to-volume conversion table that indicates the volume of the bin, in cubic meters, below the level of each 10-cm increment. *Second*, the observer estimates the average height of fish in a bin by visual inspection. In order to determine the average height of fish in a bin, an observer must be able to see the level of fish throughout the bin. *Third*, the observer uses a height-to-volume conversion table to determine the volume associated with the average height of fish in the bin. *Fourth*, the observer applies a density factor indicating weight per unit volume (metric tons (mt) per cubic meter (m) or mt/m^3) to estimate the total weight of all fish in the bin. *Fifth*, the observer samples a portion of the fish in the bin to determine species composition (the proportion of each species or species group) and applies this distribution to the estimate of total groundfish weight to estimate the total weight of pollock. This last step provides the observer's estimate of pollock catch that is attributed to the vessel and applied against the CDQ. The volumetric methods are used to estimate the total catch weight of all groundfish, and species composition samples are used to estimate how much of that groundfish is pollock.

Changes From the Proposed Rule

There are three changes from the proposed rule in the final rule. The first change is to delete the phrase "NMFS or U.S. Coast Guard enforcement" from sentences referring to authorized officers in § 675.27 (h)(2)(i)(A) and (ii)(B)(*1*). Removing the phrase makes the references consistent with the definition of authorized officers in 50 CFR 620.2. The second change is to clarify the intent of the first sentence of § 675.27(h)(2)(ii) by replacing the phrase "estimate its total weight" with "estimate the total weight of its groundfish catch". The third change is to clarify the intent of § 675.27(h)(2)(ii)(A)(*2*). The requirement that marked increments be readable from the outside of the bin at all times has been changed to read "Marked increments, except those on the wall containing the viewing port or window, must be readable from the outside of the bin at all times." The phrase "on each side of the bin" is deleted from the last sentence of the paragraph. Although NMFS requires that all internal sides of the bin be marked, the markings on the side of the bin containing the viewing port or window need not be visible from the outside of all bins. This issue is also addressed in the response to Comment 9.

Four letters of comment were received during the comment period. One letter was in support of the rule. Three letters included comments or suggestions on technical or operational aspects of the rule. Fourteen individual comments were contained in these four letters. No comments were in opposition to the rule.

Comment 1: Increased observer coverage and improved equipment for estimating total catch in the CDQ

fisheries will be beneficial to fishery managers and to CDQ fishing partners.

Response: NMFS concurs.

Comment 2: NMFS should identify standards for catch measurement and leave it to the industry to decide what equipment and methods would meet those standards.

Response: This rule offers two options for processor vessels to provide improved estimates of catch in the CDQ fisheries. One is based on volumetric estimates and the other is based on a scale weight. While a performance standard for the accuracy of a scale system can be established by NMFS and tested by an observer, the same standard of accuracy cannot be established for volumetric estimates. The accuracy of a scale system depends on the performance of a piece of equipment, while the accuracy of volumetric estimates depends on the accurate measuring of the bin volume, on the ability of an observer to determine the volume visually, and on variation in the density of the fish. The only way to test the accuracy of volumetric estimates of total groundfish catch weight is to compare the volumetric estimates of fish weight with the scale weight of the same fish. A scale large enough to assess the accuracy of volumetric estimates of catch aboard a processor vessel would be more effectively used to weigh the catch directly. Rather than specifying an accuracy standard for volumetric estimates, NMFS has established guidelines for the equipment that must be provided for the observer to make volumetric estimates.

Comment 3: NMFS should fairly apply regulations for improved total catch weight to all sectors.

Response: This rule addresses only processors and vessels participating in the CDQ fisheries. All catcher vessels must meet the same requirements, regardless of their size. Shoreside processors are required to report scale weights, because scales are currently available in all the plants. All processor vessels are offered the same options to provide improved estimates of catch.

Comment 4: The appropriate method for estimating total catch weight should distinguish between the pelagic pollock fisheries and other mixed-species fisheries.

Response: The CDQ fisheries are predominantly pelagic pollock fisheries in that most trawl hauls contain 95 percent or more pollock by weight. The primary difference between pelagic pollock fisheries and mixed-species fisheries, with respect to volumetric estimates of total groundfish catch weight, is the appropriate density factor to use in the volume-to-weight conversion. NMFS distinguishes between the pelagic pollock fishery and other mixed-species fisheries by applying a standard density factor of 0.93 mt/m^3 for all trawl hauls in the pelagic pollock fishery and by using the observer's estimate of the appropriate density factor for hauls with less than 95 percent pollock.

Comment 5: The appropriate location of certified marks inside bins depends on the configuration of the individual bin and should be determined on a case-by-case basis.

Response: NMFS agrees that many bins have different configurations and that specifying the location and number of certified markings that would provide the most accurate volumetric estimates from each bin on each vessel may be more desirable. However, NMFS does not have the resources to review and approve the bin configurations for individual vessels. For this reason, the final rule contains specifications that must be met for each bin used to make volumetric estimates of catch weight.

Comment 6: Vessel owners should be required to submit a description of the system they plan on using, with endorsement by prospective certifiers, well in advance of the effective date, to assure that they have selected a workable system and that they have adequate time to get it in place and certified.

Response: The processor or vessel owners are responsible for completing these modifications by the effective date (i.e., August 15, 1994, see § 675.27(h)(2)). Therefore, NMFS is providing approximately 3 months for modifications to the vessel that may be necessary under this rule.

Comment 7: Visual access to the bins and to all walls in the bins is difficult to achieve, costly, and sometimes impossible.

Response: Information about the average height of fish in a bin is a critical element in volumetric estimates of groundfish catch weight. NMFS believes that processor vessel operators must provide the appropriate viewing ports or windows, bin lighting, and readable markings in order to provide the observer with the opportunity to make an estimate of the average height of fish in the bin that is as accurate as possible.

Comment 8: Marking all internal walls of a bin may result in less accurate estimates of the height of fish in the bin than could be obtained by marking fewer walls. For example, if all markings in a bin with more than four walls were used to calculate a simple average of the height of fish in the bin, the procedure would skew the height estimate toward the part of the bin with the most marked walls.

Response: The accuracy of the estimates of height of fish in a bin is based on the procedure used by the observer to determine average height and not necessarily on the number of marked walls. Identifying the sides of the bin that would always provide the best information to observers is difficult, because the surface of the fish in the bin is often not level or smooth due to the trim of the vessel or other reasons. NMFS believes that the requirement to mark all internal sides of the bins provides the maximum amount of reference points for an observer. Observers will use as much information as is available to determine the average height of fish in a bin, but they will not be instructed to calculate a simple average of the height of fish at each marked wall for reasons suggested in the letter of comment.

The rule requires that vessel operators submit certification documents prepared by an authorized, independent agent who measured the bins, witnessed the location of the marks, and calculated the volume of the bin associated with each set of marks. Instructions or recommendations from the certifying agent to estimate properly the average height of fish in the bin, or to use height-to-volume conversion tables, would improve the reliability of the volumetric estimates.

Comment 9: It is not necessary to mark the inside of the bin wall that contains the viewing port or window, because the observer cannot see these marks from outside the bin.

Response: NMFS agrees that, for some bins, an observer would not be able to see the marks on the bin wall that contains the viewing port. However, in other cases, the observer can look inside the bin from the viewing port and see the level of fish against the wall that contains the viewing port, thereby increasing the accuracy of the estimated average height of fish in the bin. NMFS prefers one standard for all bins used for volumetric estimates. NMFS will continue to require markings on all internal walls of the bin, but will not require that the markings on the side of the bin that contains the viewing port or window be readable from the outside of the bin.

Comment 10: Ultrasonic bin level sensors (bin sensors) should be considered as an alternative to determine the average height of fish in bins that are not visually accessible.

Response: Bin sensors employ transducers installed in the overhead of the bin to measure the distance from the top of the bin to the surface of the fish

in the bin. The transducers determine distance by "sounding" or measuring the amount of time it takes for an ultrasonic sound wave to travel from the transducer to the surface of the fish. The average height of fish could be estimated by locating transducers in several places throughout a bin.

NMFS has two concerns about the use of bin sensors. First, the appropriate number of transducers, location of the transducers, and direction in which they are pointed are important determinants of the accuracy of the information provided from the bin sensors. The appropriate system design depends on the configuration of the individual bin, the way fish are loaded into the bin, and the distribution of fish once inside the bin. Developing regulations that would specify a general system design applicable to all bins would be difficult. Also, NMFS does not have the resources to review and evaluate system designs for individual bins or to work with the industry to develop the appropriate configuration for individual bins.

The second, and more serious, concern relates to NMFS' ability to monitor both the initial calibration of the bin sensors and their use aboard the processor vessel to determine the level of fish in a bin. One mothership in the Alaska groundfish fisheries currently uses bin sensors to make volumetric estimates of the groundfish catch delivered by catcher vessels. However, these bin sensors are installed in fish receiving bins that have markings on the internal sides of the bins that can be seen from outside the bin. In this case, there is little difficulty in verifying the readings of the bin sensors.

Once properly calibrated, the transducers should continue to perform accurately unless the equipment malfunctions or breaks down. However, the bin sensors can be recalibrated at any time to provide either more or less accurate readings. NMFS does not intend to monitor the use of bin sensors by requiring that only observers have access to the control panel.

Representatives of a bin-sensor manufacturer suggested that each bin should contain five transducers, each of which would take an individual reading of the height of fish in the bin directly below the transducer. Transducers can be calibrated individually. Therefore, in order to verify that all transducers are reading accurately, hatches would have to be placed in the overhead of the bin next to each transducer so that the observer could drop a tape measure and check the distance against that recorded by the bin sensor. NMFS believes that this procedure would be burdensome to the processor vessel operator because of the necessity to place up to five hatches in each bin to verify transducer readings, and that it would be time-consuming and difficult for the observer.

The manufacturer's representative also suggested that the information from the initial calibration of the system, such as the distance from each transducer to the bottom of the bin, could be used to determine whether the system had been recalibrated. NMFS is concerned that the bin sensors could be recalibrated, and then changed back to the original calibration without the knowledge of the observer. Although NMFS believes that bin sensors could accurately estimate the height of fish in a bin, NMFS is not satisfied that observers have the capability or the time to monitor the system to assure accurate information about the volume of fish in enclosed and inaccessible bins.

Comment 11: An opening in the top or overhead of a bin through which a tape measure could be lowered into the bin should be considered as an alternative method for determining the average height of fish in bins that are not visually accessible.

Response: NMFS believes that reliable estimates of the volume of fish in a fish bin must be determined from averaging the height of fish in a bin from several locations in the bin. A single reading at the center of the bin may not provide accurate information if the fish are unevenly distributed throughout the bin.

Comment 12: A narrow vertical window extending the full height of one wall of the bin with marks on the outside of the bin should be considered as an alternative method for determining the average height of fish in bins that are not visually accessible.

Response: This suggestion would provide the observer with a height reading at only one location in the bin which, for reasons discussed above, is not sufficient to determine the average height of fish in the bin.

Comment 13: The use of scales to weigh groundfish harvests is a costly alternative.

Response: NMFS recognizes that a marine scale capable of accurately weighing groundfish harvests will cost between $30,000 and $50,000 per scale. This does not include the cost of installation and maintenance. This rule allows processors to choose either modification of their bins to accommodate volumetric estimates or scales to weigh groundfish harvests in the CDQ fisheries.

Comment 14: It is not feasible for processor vessel operators to weigh each species or species group of fish separately.

Response: This rule does not require weight by species or species group for management of the CDQ pollock fisheries.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), has determined that this rule is necessary for the conservation and management of the groundfish fisheries off Alaska and that it is consistent with the Magnuson Act and other applicable laws.

This final rule has been determined to be "not significant" for purposes of E.O. 12866.

The AA has determined that this rule could have a significant economic impact on a substantial number of small entities. A copy of the FRFA is available (see **ADDRESSES**).

This rule contains new collection-of-information requirements subject to the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) that have been approved by the Office of Management and Budget under control number 0648–0269. The public's reporting burden for each requirement is indicated in the following description and includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The new reporting requirements are: (1) CDQ-managing organizations must arrange for processors to transmit copies of daily observer catch messages to them in a manner that allows the CDQ-managing organization to inform processors to cease fishing operations before the CDQ allocations have been exceeded (5 minutes per message); (2) scale printouts of each CDQ delivery must be maintained in the processing operation for the duration of the fishing year, or for as long after a fishing year that the products from fish harvested during that year are retained in the processing operation (8 minutes per delivery day); (3) the volumes of bins aboard processing vessels must be certified in writing by an independent registered engineer (8 hours); and shoreside processors must notify the observers of the offloading schedule of each CDQ groundfish delivery at least 1 hour prior to offloading (2 minutes). Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing this burden, to NMFS (see **ADDRESSES**) and to the Office of Management and Budget, Attn: Desk Officer NOAA (Paperwork Reduction

Project 0648–0269), Washington, DC 20503.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Dated: May 10, 1994.

Charles Karnella,

Acting Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 675 is amended as follows:

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

1. The authority citation for part 675 continues to read as follows:

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

2. In § 675.27, paragraph (e)(4) is revised and a new paragraph (h) is added to read as follows:

§ 675.27 Western Alaska Community Development Quota Program (applicable through December 31, 1995).

* * * * *

(e) * * *

(4) It is the responsibility of the CDQ-managing organization to cease fishing operations once its respective CDQ pollock allocation has been reached. Total pollock harvests for each CDP will be determined by observer estimates of total catch and catch composition as reported on the daily observer catch message. The CDQ-managing organization must arrange for processors to transmit a copy of the observer daily catch message to it in a manner that allows the CDQ-managing organization to inform processors to cease fishing operations before the CDQ allocation has been exceeded. CDQ-managing organization representatives must also inform NMFS within 24 hours after the CDQ has been reached and fishing has ceased. If NMFS determines that the observer, the processor, or the CDQ-managing organization failed to follow the procedures described in paragraph (h) of this section for estimating the total harvest of pollock, or violated any other regulation in this part, NMFS reserves the right to estimate the total pollock harvest based on the best available data.

* * * * *

(h) *Estimation of total harvest in the CDQ fisheries—*

(1) *Observer coverage.* Vessel operators and processors participating in CDQ fisheries must comply with the following requirements for observer coverage:

(i) Each shoreside processing operation participating in the CDQ fisheries must have one NMFS-certified observer present at all times while groundfish harvested under a CDQ are being received or processed. The Regional Director is authorized to require more than one observer for a shoreside processing operation if:

(A) The CDQ delivery schedule requires an observer to be on duty more than 12 hours in a 24-hour period;

(B) Simultaneous deliveries of CDQ harvests by more than one vessel cannot be monitored by a single observer; or

(C) One observer is not capable of adequately monitoring CDQ deliveries;

(ii) Each processor vessel participating in the CDQ fisheries must have two NMFS-certified observers aboard the vessel at all times while groundfish harvested under a CDQ are being harvested, processed, or received from another vessel;

(iii) Each catcher vessel delivering groundfish harvested under a CDQ, other than a catcher vessel delivering only unsorted codends to a processor or another vessel, must have a NMFS-certified observer on the vessel at all times while the vessel is participating in the CDQ fisheries, regardless of the vessel length. Observer coverage requirements for catcher vessels participating in the CDQ fisheries are in addition to any observer coverage requirements in § 675.25.

(2) *Equipment and operational requirements.* (i) Each shoreside processing operation participating in the CDQ fisheries must comply with the following requirements:

(A) Groundfish harvested in the CDQ fisheries must be recorded and weighed on a scale certified by the State of Alaska. Such a scale must measure catch weights at all times to at least 95-percent accuracy, as determined by a NMFS-certified observer or authorized officer. The scale and scale display must be visible simultaneously by the observer;

(B) Observers must be provided access to the scale used to weigh groundfish landings;

(C) Printouts of scale measurements of each CDQ delivery must be made available to observers and be maintained in the shoreside processing operation for the duration of the fishing year, or for as long after a fishing year as product from fish harvested during that year are retained in the shoreside processing operation; and

(D) The manager of each shoreside processing operation must notify the observer(s) of the offloading schedule of each CDQ groundfish delivery at least 1 hour prior to offloading to provide the observer an opportunity to monitor the weighing of the entire delivery.

(ii) Each processor vessel participating in the CDQ fisheries must either estimate the total weight of its groundfish catch by the volumetric procedures specified in paragraph (h)(2)(ii)(A) of this section or must weigh its catch in accordance with the procedures under (h)(2)(ii)(B) of this section.

(A) *Volumetric measurements of total catch.* (*1*) Each processor vessel estimating its catch by volumetric measurement must have one or more receiving bins in which all fish catches are placed to determine total catch weight prior to sorting operations.

(*2*) The volume of each bin must be accurately measured, and the bin must be permanently marked and numbered in 10-cm increments on all internal sides of the bin. Marked increments, except those on the wall containing the viewing port or window, must be readable from the outside of the bin at all times. Bins must be lighted in a manner that allows marked increments to be read from the outside of the bin by a NMFS-certified observer or authorized officer.

(*3*) The location of bin markings, as certified, must be described in writing. Tables certified under paragraph (h)(2)(ii)(A)(*2*) of this section indicating the volume of each certified bin in cubic meters for each 10-cm increment marked on the sides of the bins, must be submitted to the NMFS Observer Program prior to harvesting or receiving groundfish and must be maintained aboard the vessel and made available to NMFS-certified observers at all times. All bin certification documents must be dated and signed by the certifier. The bin volume and marked and numbered increments must be certified by a registered engineer with no financial interest in fishing, fish processing, or fish tender vessels, or by a qualified organization that has been designated by the U.S. Coast Guard Commandant, or an authorized representative thereof, for the purpose of classing or examining commercial fishing industry vessels under the provisions of 46 CFR 28.76. Bin volumes and marked and numbered increments must be recertified each time a bin is structurally or physically changed.

(*4*) Vessel operators must notify observers prior to any removal or addition of fish from each bin used for volumetric measurements of catch in such a manner that allows an observer to take bin volume measurements prior to fish being removed from or added to the bin. Once a volumetric measurement has been taken, additional fish may not be added to the bin until at least half the original volume has been removed. Fish

may not be removed from or added to a bin used for volumetric measurements of catch until an observer indicates that bin volume measurements have been completed and any samples of catch required by the observer have been taken.

(5) Fish from separate hauls or deliveries from separate harvesting vessels may not be mixed in any bin used for volumetric measurements of catch.

(B) *Scale weight measurements of total catch.* (1) Any scale used on a processor vessel to weigh groundfish harvested in the CDQ fisheries must measure catch weights to at least 95-percent accuracy at all times as determined by a NMFS-certified observer or authorized officer. The scale must be equipped with a functional motion compensation device to account for vessel acceleration, roll, pitch and vibration movement. The scale and scale display must be visible by the observer simultaneously.

(2) Printouts of scale measurements of each haul weight must be made available to the observer and be maintained on board the vessel for the duration of the fishing year or for as long after a fishing year as products from fish harvested during that year are retained aboard a vessel.

(3) The catch from each haul must be kept separate, such that the scale weight can be obtained separately for each haul.

[FR Doc. 94–11763 Filed 5–13–94; 8:45 am]

BILLING CODE 3510–22–P

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50 CFR Part 678

[Docket No. 920409–3047; I.D. 050694H]

Atlantic Shark Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the commercial fishery for large coastal sharks conducted by vessels with a Federal Atlantic Shark permit in the Western North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea. This action is necessary to prevent exceeding the semiannual quota for the period January 1 through June 30, 1994.

EFFECTIVE DATE: The closure is effective from 0001 hours local time May 17, 1994, through June 30, 1994.

FOR FURTHER INFORMATION CONTACT: C. Michael Bailey, 301–713–2347; Kevin B. Foster, 508–281–9260; or Michael Justen 813–893–3161.

SUPPLEMENTARY INFORMATION: The Atlantic shark fishery is managed by the Secretary of Commerce according to the Fishery Management Plan (FMP) for Atlantic Sharks prepared by the Secretary of Commerce under authority of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*). Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR part 678.

Section 678.23(b)(1)(i) of the regulations provides for two semiannual quotas of large coastal sharks to be harvested from Atlantic, Caribbean, and Gulf of Mexico waters by commercial fishermen. The first semiannual quota is available for harvest from January 1 through June 30, 1994.

The Assistant Administrator for Fisheries, NOAA (AA), is required under § 678.24 to monitor the catch and landing statistics and, on the basis of these statistics, to determine when the catch of Atlantic, Caribbean, and Gulf of Mexico sharks will equal any quota under § 678.23(b)(1). When shark harvests reach, or are projected to reach, a quota established under § 678.23(b)(1), the AA is further required under § 678.24 to close the fishery.

The AA has determined, based on the reported catch and other relevant factors, that the semiannual quota for the period January 1 through June 30, 1994, for large coastal sharks, in or from the Western North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, will be attained by May 17, 1994. During this closure, for vessels issued a permit under § 678.4, possession of large coastal sharks from the management unit is prohibited, unless the vessel is operating as a charter vessel or headboat, in which case the vessel limit per trip is four large coastal sharks. However, the sale, purchase, trade, or barter or attempted sale, purchase, trade, or barter of carcasses and/or fins of large coastal sharks harvested by a person aboard a vessel that has been issued a permit under § 678.4(a)(4), is prohibited, except for those that were harvested, off-loaded, and sold, traded, or bartered prior to May 17, 1994, and were held in storage by a dealer or processor.

Vessels that have been issued a Federal permit under § 678.4 are reminded that as a condition of permit issuance, the vessel may not retain a large coastal shark during the closure, except as provided by § 678.24(a)(2). Fishing for pelagic and small coastal sharks may continue. The recreational fishery is not affected by this closure.

Classification

This action is taken under 50 CFR part 678 and is exempt from Office of Management and Budget review under E.O. 12866.

Dated: May 10, 1994.

Richard H. Schaefer,

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

[FR Doc. 94–11748 Filed 5–10–94; 3:54 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 59, No. 93
Monday, May 16, 1994

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.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 4, 30, 150

Proposed Amendments to Commodity Pool Operator and Commodity Trading Advisor Disclosure Rules

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is proposing substantial revisions to the disclosure framework applicable to commodity pool operators ("CPOs") and commodity trading advisors ("CTAs"). The proposed amendments reflect the Commission's experience in applying the disclosure requirements set forth in part 4 of the Commission's rules and significant evolution in the purposes, structure and activities of the managed funds marketplace. These proposed modifications of the CPO and CTA disclosure framework are designed to achieve greater simplicity, focus and clarity in performance history presentations; streamlining of other required disclosures; and a more concise and readable format for disclosure documents.

DATES: Comments on the proposed rules must be received on or before July 15, 1994.

ADDRESSES: Comments must be sent to Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, 2033 K Street, NW, Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Susan C. Ervin, Deputy Director/Chief Counsel, or France M.T. Maca, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION: Commission Rule 4.21 [1] requires that each CPO registered or required to be registered under the Commodity Exchange Act ("Act" or "CEA"), 7 U.S.C. 1 et seq. (1988 & Supp. 1992), provide prospective participants with a disclosure document containing the information specified in the rule on or before the date it solicits, accepts or receives funds, securities or other property from prospective participants for a pool it operates or intends to operate. Each CTA who is registered or required to be registered is also required, by Rule 4.31, to deliver a disclosure document prior to or at the time of soliciting or entering into an agreement to direct or guide the commodity interest account of a prospective client. These requirements were first promulgated on January 8, 1979, when the Commission published part 4 of its regulations relating to the operations and activities of CPOs and CTAs.[2]

I. Summary of Proposed Rule Changes

Based upon more than fifteen years of experience with administering the part 4 disclosure framework for CPOs and CTAs, the Commission has undertaken a comprehensive review of the disclosure requirements for CPOs and CTAs to identify areas in which the regulatory structure can be streamlined or simplified, while continuing to provide appropriate customer protection. Rules 4.7 and 4.8 were adopted in August 1992 as a result of the first phase of this review.[3] This proposal represents the second phase of the Commission's review of part 4, which will also include consideration of the appropriateness of a two-part format for pool disclosure documents.[4] The Commission is seeking public comment on proposed revisions of Rules 4.21 and 4.31. The amendments have three major purposes: (1) Simplification of past performance disclosures; (2) reduction of required disclosures as to matters of secondary relevance; and (3) clarification and modernization of various requirements. In addition, Rules 4.21 and 4.31 would be redrafted, reorganized and renumbered with a view towards greater clarity, simplicity and congruence with contemporary managed funds practices.

Proposed revisions to the disclosure requirements for CPO disclosure documents include the following.

A. Performance Disclosures

Under the proposal, past performance disclosures would be simplified and streamlined as follows.

1. All past performance presentations for pools would be reduced to a summary format containing specified core information.

2. For pools which have been in operation for at least three years, the only past performance record required generally would be that of the pool offered.

3. For pools with less than a three-year history, only the performance records of the pool offered, other pools operated by the CPO, CTAs allocated at least twenty-five percent of the aggregate initial futures margins and commodity option premiums for the pool offered and investee pools allocated at least twenty-five percent of the assets of the pool offered generally would be required. If the CPO has less than a three-year history, the past performance records of the CPO's principals would be required to be disclosed.

4. Certain performance data of secondary relevance to the pool offering would be replaced by a statement indicating whether that performance was "adverse," *i.e.*, the performance was one hundred basis points lower than the relevant Treasury Bill rate or the pool had to be terminated due to poor performance pursuant to a loss termination provision.

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[1] Commission rules referred to herein are found at 17 CFR Ch. I (1993).

[2] 44 FR 1918 (January 8, 1979).

[3] 57 FR 34853 (August 7, 1992). Subject to certain conditions, Rule 4.7(a) provides relief from the specific requirements of Rules 4.21 and 4.23 and from certain of the requirements of Rule 4.22 to registered CPOs with respect to pools sold only to "qualified eligible participants" and satisfying the other conditions set forth in the rule. Rule 4.7(b) provides relief from the specific requirements of Rules 4.31 and 4.32 to registered CTAs with respect to the accounts of "qualified eligible clients" as defined in the rule. Rule 4.8 permits the CPOs of certain privately offered pools to solicit participants for those pools upon filing with the Commission and delivering to prospective participants the disclosure document required by Rule 4.21, eliminating the twenty-one day pre-filing requirement of Rule 4.21(g) for such pools.

[4] If determined to be appropriate, such a document could consist of: A summary disclosure document, provided to all prospective pool participants, containing core information relevant to a determination to participate in the pool; and a supplemental document, which would be made available upon request, containing additional and more detailed information of interest to some investors.

B. Non-Performance Disclosures

Non-performance disclosures would be revised as follows.

1. Required disclosures concerning the litigation history of futures commission merchants ("FCMs") would be significantly reduced.

2. Disclosure of the business backgrounds of principals would be limited to principals who participate in making trading or operational decisions for the pool or CTA.

3. Requirements for disclosure of conflicts of interest would no longer make specific reference to FCMs and introducing brokers ("IBs"). However, a general requirement to disclose conflicts of interest on the part of any persons providing services to the pool, which would encompass FCMs and IBs as well as persons who may not be Commission registrants, would be included.

4. The required description of each fee and expense of the pool would be supplemented by a tabular presentation of fees and expenses setting forth how the "break-even point" for the pool is calculated. The break-even point is the per-unit profit that the pool must realize during its first year for a participant to recoup his initial investment in the pool.

C. Format Improvements to Enhance Readability

A number of revisions to the rules are being proposed to enhance the accessibility and prominence of relevant disclosures. Disclosure documents would be required to contain a table of contents. General information concerning the pool, including the break-even point, would be required to be set forth in the forepart of the document. The number and content of various previously required bold-face "boilerplate" cautionary statements would be reduced and all information voluntarily provided would be required to follow the relevant required disclosures.

D. Other Revisions

Changes are also proposed to generally facilitate pool offerings, particularly with respect to areas of overlap or potential inconsistency with Securities and Exchange Commission ("SEC") rules. Thus, under the revisions, CPOs may update pool disclosure documents every nine months, consistent with SEC requirements, rather than every six months, as under current CFTC rules. In addition, CPOs may provide accredited investors with a notice of intended offering and term sheet, prior to delivery of a disclosure document.

Similar changes are proposed to be made to the requirements applicable to CTA disclosure documents.

The proposed changes are more specifically discussed in the section-by-section analysis.

II. Background

In announcing the adoption of part 4 in 1979, the Commission stated that Rule 4.21, the basic disclosure document requirement for CPOs, was intended "to protect pool participants—particularly those who are unsophisticated in financial matters—by ensuring that they are informed about the material facts regarding the pool before they commit their funds."[5] Similarly, Rule 4.31 was premised, in part, upon the view that "a prospective [CTA] client or subscriber should be aware of the advisor's commodity and general business experience if he is to make an informed decision as to whether or not to avail himself of the advisor's services."[6]

Section 4.21 requires the disclosure document for commodity pools to contain various types of information concerning the pool; the pool's CPO and CTA, and their principals; the FCM through which the pool's trades will be executed and cleared; and the pool's IB, if applicable. This information includes, among other things, the pool's and CPO's form of organization (Rule 4.21(a)(1)(i)); the pool's investment objectives (Rule 4.21(a)(1)(viii)); the business backgrounds of the CPO and CTA and their principals (Rule 4.21(a)(2)); material administrative, civil or criminal actions within the five years preceding the date of the disclosure document against the CPO, CTA, FCM and IB and their principals (Rule 4.21(a)(13)(i)); conflicts of interest on the part of the CPO, CTA, FCM, IB and their principals with respect to the pool (Rule 4.21(a)(3)(i)); the performance records of the pool and its CTA (Rules 4.21 (a)(4) and (a)(5), respectively) and, if the pool has traded commodity interests for less than twelve months, the performance of each other pool operated by the CPO and by each of its principals (Rule 4.21(a)(4)(i)(B)); a complete description of each kind of expense that the pool has incurred in its preceding fiscal year or is expected to incur in its current fiscal year (Rule 4.21(a)(7)) and of commissions or other fees that are paid or may be paid by the pool, its CPO, CTA or their principals in connection with solicitations for the pool (Rule 4.21(a)(14)); and risk disclosure and cautionary statements (Rules 4.21(a)(17) and 4.21(a)(18), respectively).

The disclosure document for CTAs must contain, among other matters, the name and business background of the CTA and each principal thereof (Rules 4.21(a)(1) and 4.21(a)(2), respectively); a description of the trading program (Rule 4.31(a)(1)(iii)); the types of commodity interests the CTA intends to trade (Rule 4.31(a)(v)); the performance record of the CTA and its principals (Rule 4.31(a)(3)); a description of any conflict of interest regarding the trading program on the part of the CTA, FCM, IB and their principals (Rule 4.31(a)(5)); material actions against the foregoing persons (Rule 4.31(a)(7)); and risk disclosure and cautionary statements (Rules 4.31(a)(8) and 4.31(a)(9), respectively).

Since the adoption of Rules 4.21 and 4.31 in 1979, the number of registered CPOs has more than doubled and the number of CTAs has increased nearly threefold.[7] Assets under the management of CPOs have also grown dramatically[8] and the range of available futures and option contracts has increased substantially.[9] In addition, during the past decade, pool operations and investments have reflected increased diversity and complexity. When Rule 4.21 came into effect, most CPOs operated one or two pools, and pools usually had one CPO which generally directed the commodity interest trading for the pool or engaged the services of a CTA who invested pool assets directly in commodity interest contracts. Increasingly, however, CPOs operate multiple pools, and commodity pools' and CTAs' investments are more diverse and complex.[10] A single

[5] 44 FR 1918, 1920.

[6] 42 FR 9278, 9279 (February 15, 1977).

[7] In April 1979, 619 persons were registered as CPOs and 976 persons as CTAs. As of February 28, 1994 there were 1,265 registered CPOs and 2,511 registered CTAs.

[8] Figures compiled by the National Futures Association indicate that the assets of commodity pools (both public and private) have more than doubled from 1988 to 1991, from approximately $8.6 billion to approximately $19 billion. *Managed Accounts Reports* ("MAR") estimates public pool assets at $15 million in 1975, $250 million in 1980 and $435 million in 1983. These data reflect, in part, the increased use of managed futures by collective investment vehicles seeking to diversity their portfolios or manage the risks of securities, fixed income instruments or other assets. Concomitantly, institutional users such as state pension plans have increased their participation in managed futures. See Peltz, *The road to managed futures—the institutional perspective*, MAR Issue No. 181 (March 1994). In addition, many primarily securities vehicles invest a small portion of their assets in commodity interests pursuant to Rule 4.12(b), which went into effect on November 2, 1987. See note 13 *infra*.

[9] Commodity futures and option contracts designated by the CFTC numbered 90 in 1978 and 419 as of April 18, 1994.

[10] For example, in addition to investing directly and indirectly in commodity interest contracts

commodity pool may engage multiple CTAs to provide advisory services for the pool and also invest in other commodity pools ("investee pools") or securities funds in order to access the services of particular traders or advisors, to employ multiple trading strategies or programs, or to diversify its portfolio.[11] "Investee pools" may also hold investments in other funds, resulting in multi-tiered structures of commodity pools and other investment vehicles. Because of the proliferation of trading strategies and growing specialization of CTAs, an increasing number of pools also retain "trading managers" to recommend or select CTAs for the pool or to select funds for investment of the pool's assets. Many CPOs and trading managers follow dynamic asset allocation strategies whereby the performance of the pool's CTAs is continuously reviewed and the selection of CTAs and allocation of assets among them are subject to frequent modification. Other commodity pools are formed as vehicles for collective access to particular CTAs whose services would not be readily available on a managed account basis and who are expected to provide advisory services to the pool throughout its existence.

In implementing its statutory mandate to regulate the activities of CPOs and CTAs, the Commission has endeavored to refine its rules as appropriate to respond to changing market conditions and to simplify and streamline the disclosure process in a manner consistent with customer protection. For example, in 1985, the Commission adopted Rule 4.5, which, as last amended,[12] provides an exclusion from the definition of the term "commodity pool operator" for the operators of specified types of collective investment vehicles operating pursuant to other regulatory frameworks, *i.e.*, certain pension plans, registered investment companies, bank or trust company collective funds and insurance company separate accounts, whose use of futures and commodity option transactions is limited to hedging and to non-hedging transactions for which initial margin deposits and option premiums do not exceed five percent of the liquidation value of the entity's portfolio.[13]

In 1987, the Commission adopted Rule 4.12(b), which provides relief from certain requirements of Rules 4.21, 4.22 and 4.23 with respect to pools that commit no more than ten percent of the fair market value of their assets to establish commodity interest positions and trade such commodity interests in a manner solely incidental to their securities trading. Also in 1987, the Commission adopted Rule 4.14(a)(8), which provides registration relief to investment advisers registered as such with the SEC, who provide commodity interest trading advice to trading vehicles that are excluded from the definition of the term "pool" under Rule 4.5 or are qualifying entities for which a notice of eligibility has been filed under Rule 4.5, provided that the investment adviser's commodity interest trading advice is solely incidental to the adviser's business of providing securities advice and consistent with Rule 4.5, and that the investment adviser does not otherwise hold itself out as a CTA.

In August 1992, the Commission adopted Rule 4.7, which provides relief from certain part 4 requirements to CPOs offering pool participations and to CTAs offering managed accounts to certain highly accredited investors.[14] Rule 4.7 also facilitates multi-jurisdictional offerings by making relief available for private offerings exempt from registration pursuant to section 4(2) of the Securities Act of 1933 ("Securities Act") and pursuant to the SEC's Regulation S[15] and by including certain foreign persons as eligible participants in pools qualifying for Rule 4.7 exemption.[16]

In addition, the Division of Trading and Markets ("Division") has issued relief on a case-by-case basis to facilitate application of the disclosure requirements in the context of new market conditions not contemplated by the existing regulatory framework, such as multiple CTA and fund-of-funds structures, with the objective of fostering clear and succinct disclosure of material information, especially concerning fees and the manner in which proceeds of the offering will be used. In many cases, strict application of existing disclosure requirements to pools whose CPOs have voluminous performance histories or which retain multiple CTAs or invest in multiple investee funds may result in such extensive track record disclosure that past performance records generally may be given undue emphasis and the most germane data given insufficient prominence. These effects have been mitigated in appropriate circumstances through grants of exemptive or no-action relief. For example, in Interpretative Letter No. 92–12,[17] the Division granted relief from required disclosures (including disclosure of past performance records) concerning CTAs and investee pools allocated less than ten percent of the assets of the investor pool. The CPO had an operating history of more than three years and changed the pools' CTAs frequently based on its continuous analysis of over 500 CTAs. This relief has since been made available to other CPOs in similar circumstances.

In Interpretative Letter 94–10, the Division granted relief permitting a CPO to use a summary format containing specified core information to present, in the disclosure document of a single-advisor pool, its past performance with respect to other pools operated by the CPO, none of which was advised by the same CTA as the single-advisor pool. The CTA advising the single-advisor pool had a ten-year track record that would be fully disclosed in the disclosure document of the single-advisor pool and the full performance record of the CPO's other pools would be available upon request.[18]

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traded on U.S. contract markets, pools and managed accounts may engage in a variety of other transactions, such as swaps, Separate Trading of Registered Interest and Principal of Securities (also known as STRIPS), and repurchase and reverse repurchase agreements.

[11] For its *Survey of Commodity Pool Operators*, (the "Pool Survey") dated January 1991, the Commission's Division of Economic Analysis surveyed sixty-five large CPOs (defined as those with over $10 million in net assets under management) representing about 94 percent of the total $7.8 billion in net assets reported by the approximately 1,200 CPOs registered as of September 30, 1988. The Pool Survey indicated that, on average, each large CPO operated about four pools and employed about two CTAs per pool. At the upper end of the range, the Pool Survey showed two CPOs accounting for 20 or more pools each and three pools employing the services of as many as 14 CTAs each. The National Futures Association reported that, as of October 1993, for 300 pools the CPO also served as CTA, 376 pools had one CTA and 216 pools had more than one CTA.

[12] 58 FR 43791 (August 18, 1993), effective September 17, 1993.

[13] Rule 4.12(b) allows the use of a simplified disclosure document that does not contain, among other things, the past performance records, risk disclosure and cautionary statements otherwise required by Rule 4.21. Thus, a pool's securities offering memorandum should require little supplementation to meet the requirements for a pool disclosure document under Rule 4.12(b).

[14] See note 3 *supra*.

[15] Regulation S generally provides that the registration requirements of the Securities Act do not apply to offers and sales of securities that occur outside the United States and provides two safe harbors from those requirements for specified offerings where no "directed selling efforts" are made in the United States. "Directed selling efforts" are activities undertaken for the purpose of, or that could reasonably be expected to result in, conditioning of the market in the United States for the securities being offered. See 55 FR 18306 at 18307 (May 2, 1990).

[16] As of April 5, 1994, relief has been claimed under Rule 4.7(a) for 360 pools, and 150 CTAs have claimed relief under Rule 4.7(b).

[17] (1990–1992 Transfer Binder), Comm. Fut. L. Rep. (CCH) ¶ 25,343 (July 28, 1992).

[18] [Current Transfer Binder], Comm. Fut. L. Rep. (CCH) ¶ 25,991 (December 16, 1993). The Division

Continued

In Interpretative Letter No. 92–9,[19] the Division permitted a CPO to use a two-part disclosure document for a commodity pool provided, among other things, that both parts of the disclosure document were delivered at the same time and that the first part of the document contained all of the disclosures required by Rule 4.21 except for the disclosures required by Rule 4.21(a)(5) with respect to the performance records of the pool's CTAs, which were required to be included in the second part. By Advisory 27–92 (June 3, 1992), the Division gave notice that it had no objection to the use of a two-part disclosure document of the nature described above by other CPOs, subject to the conditions set forth in the foregoing letter.

In reviewing CPO disclosure documents, Division staff has addressed fund-of-funds structures by requiring that certain disclosures be made with respect to investee pools but limiting these disclosures with respect to investee pools allocated less than twenty-five percent of the assets of the pool offered.[20] The Division has also issued interpretative statements and advisories giving guidance with respect to the presentation of past performance in disclosure documents.[21]

In developing this proposal, the Commission has taken into account its experience in administering the current regulatory framework, reviewing disclosure documents and responding to requests for relief from registrants. The Commission has also taken into consideration the evolution of the industry, the views of the public and of market participants and the disclosure implications of recently developed trading structures.

The Commission also has had the benefit of the work of a Special Committee for the Review of CPO/CTA Disclosure Issues established by the National Futures Association ("NFA")[22] to review and make recommendations concerning CPO and CTA disclosure documents. The Special Committee's recommendations were presented to NFA's Board of Directors in February 1994. On March 15, 1994, the NFA submitted to the Commission proposed amendments to, and interpretations of, its Compliance Rules which were based upon the Special Committee's recommendations. NFA's rule submission consists of several parts. Proposed revisions of NFA Compliance Rule 2–13(a) would require CPOs to comply, not only with specified Commission rules applicable to CPOs' and CTAs' activities and disclosures, but also with interpretations of those rules issued by NFA's Board of Directors and approved by the Commission. Separately, new paragraph (b) would be added to Compliance Rule 2–13 to require CPO disclosure documents to include a "break-even" analysis, *i.e.*, a computation of the trading profit that a pool must realize in its first year for a participant to recoup its initial investment, presented in the manner prescribed by the NFA's Board of Directors, including a tabular presentation of fees and expenses. NFA is also proposing interpretations of proposed Compliance Rule 2–13 relating to disclosure of past performance information, the computation and presentation of the break-even analysis, the use of pro forma and extracted results in past performance presentations and other topics addressed by this proposal, including the disclosure of business backgrounds of CPO and CTA principals, material litigation against FCMs and other past performance issues. In addition, NFA is proposing to replace paragraph (b)(4) of NFA Rule 2–29 with a new, more detailed, paragraph (c) concerning the use of hypothetical trading results. References to the NFA proposal are made in appropriate sections of this release.[23] Certain portions of that proposal are being published for comment contemporaneously with this release. The NFA submission is available from the Commission's Office of the Secretariat.

The Commission is exploring possible mechanisms for addressing CPO and CTA disclosure issues with the benefit of industry and other external input on an ongoing basis.

III. Section-by-Section Analysis

Current Rule 4.21 would be reorganized with a view towards simplification of presentation. Rule 4.21 would continue to require CPOs to deliver a disclosure document. New Rule 4.24 sets forth general disclosure requirements, *i.e.*, requirements applicable to disclosure of all matters other than past performance. Past performance disclosure requirements would be codified in new Rule 4.25. New Rule 4.26 would contain requirements with respect to the use, amendment and filing of the disclosure document.[24]

A. Section 4.25—Performance Disclosures

Simplification of past performance disclosure requirements has been a primary objective of this rulemaking. The proposed revisions of the past performance disclosure requirements

also allowed the use of a capsule performance disclosure format in Interpretative Letter 94–12 under similar circumstances. [Current Transfer Binder], Comm. Fut. L. Rep. (CCH) ¶ 25,993 (December 27, 1993). In Interpretative Letter No. 93–107 the Division granted relief permitting a CPO to omit disclosure of the past performance of certain single-advisor pools in the CPO's disclosure documents for two multi-advisor pools, provided that the CPO gave a brief description of the single-advisor pools and made their performance records available upon request. This relief was based upon representations that the CPO, which played an active role as an administrator and asset allocator for the multi-advisor pools, performed no asset allocation functions for the single-advisor pools and that the single-advisor pools served as vehicles to provide access to commodity pools advised by certain experienced CTAs whose minimum investment levels for managed accounts would otherwise have been prohibitive for individual investors. The CPO's track record as an asset allocator would be more significant in the context of multi-advisor funds than its track record in the context of single advisor funds, where the skill of the individual CTA would be of greater interest to prospective participants. [Current Transfer Binder], Comm. Fut. L. Rep. (CCH) ¶ 25,899 (October 26, 1993).

[19] [1990–1992 Transfer Binder], Comm. Fut. L. Rep. (CCH) ¶ 25,300 (June 1, 1992).

[20] Staff comment letters have stated that pool disclosure documents should provide all information required by Rule 4.21 for each investee pool, "generally at the same level of detail as though the investee pool were providing its own separate disclosure document," but that reduced disclosures were appropriate where less than twenty-five percent of the assets of the pool offered is invested in the investee pool. Moreover, the staff indicated that it is always willing to address specific requests for relief and has done so in appropriate circumstances.

[21] See, *e.g.*, CFTC Advisory 87–2, [1986–1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 23,624 (June 2, 1987), defining the term "beginning net asset value" for purposes of computing rate of return; CFTC Advisory dated February 27, 1991 [1990–1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,005, permitting CPOs and CTAs to use alternative rate of return computation methods to more accurately reflect the return on funds available for trading during the period; and CFTC Advisory 93–13, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,554 (February 12, 1993), permitting the use of an alternative method for computing CTAs' rates of return. The use of this method may result in fewer and simplified performance tables.

[22] NFA is presently the only futures association registered with the Commission pursuant to section 17 of the Act. It has responsibilities with respect to, among others things, oversight of sales practices, including the use of promotional material.

[23] The NFA submission also includes proposed new Compliance Rule 2–34 which would govern the use of non-fully funded accounts. This part of NFA's submission has been remitted by the Commission to NFA for further explanation and supporting material.

[24] The disclosure requirements for CTAs would be correspondingly reorganized and set forth in Rules 4.31, 4.33, 4.34 and 4.35. Many of the proposed changes for pool disclosure documents are also proposed for CTA documents. Rather than repeating the discussion of these changes, the text or footnotes thereto indicate where amendments similar to those discussed for pool disclosure documents are also proposed for CTA disclosure documents.

are predicated upon the view that past performance is not predictive of future performance results and that inclusion of multiple performance records in disclosure documents may tend to give undue importance to past performance data. Nonetheless, the Commission believes that past performance disclosure may serve to reveal negative performance results and the volatility of pool returns. Consequently, the Commission is proposing to substantially simplify past performance requirements with the objective of eliminating required disclosure of past performance that is of secondary relevance to the pool offered.

The proposed rules are designed to foster clarity and simplicity. This objective would be achieved in part by substituting a summary of core performance data for the multicolumnar presentations called for under current rules. This new "capsule" format, which has recently been used by some CPOs pursuant to exemptive relief issued by the Division of Trading and Markets on a case-by-case basis,[25] provides a simple, readable and succinct overview of pool performance and substantially reduces the overall quantity of performance data required to be presented without sacrificing the elements important to customers.

The past performance disclosure requirements have also been comprehensively reviewed and revised with a view towards eliminating or reducing past performance disclosures of secondary importance. As a result, the primary focus of past performance disclosure would be the performance of the pool offered and for most pools with less than a three year operating history, upon pools of a similar nature. Only the past performance records of CTAs with responsibility for managing substantial amounts of a pool's futures or commodity option trading would be required. The performance of CTAs managing lesser amounts of the pool's futures trading and other performance data of secondary relevance to the offering would generally not be required except to the extent that such performance was below a specified benchmark rate of return or resulted in significant losses. The performance of pools dissimilar to the pool offered would be permitted to be shown in composites, subject to limitations on the types of pools that may be included in a composite.

The proposed rules also take into account structures in which a trading manager, rather than the pool's CPO, allocates pool assets, and fund-of-funds structures. In addition, because, under the proposal, the volume of required performance disclosures would be considerably reduced, the time period for these disclosures would be increased from three to five years to provide pool participants with a better chronological perspective of the track records presented in the disclosure document.[26]

Thus, the proposed past performance requirements require presentation of the past performance of the pool itself. For most pools with at least a three-year track record this would be the only past performance required to be disclosed. Proposed Rule 4.25(c) would require the following additional disclosures with respect to pools with less than a three-year history. If the pool has not commenced trading, a short statement to that effect would be required to be prominently disclosed. The performance of the CPO (or of the pool's trading manager, if applicable) would be required to be disclosed and if the CPO (trading manager) had less than a three-year trading history, the performance of its trading principals also would be required.[27] If applicable, a legend would be required to disclose the fact that neither the CPO (or trading manager), nor its principals has any commodity interest trading experience.

With respect to CTAs and investee pools, proposed Rule 4.25(c)(3) would provide for disclosure of the performance of "major" CTAs and investee pools, *i.e.*, CTAs allocated at least twenty-five percent of the pool's aggregate initial futures margins and commodity option premiums and investee pools allocated at least twenty-five percent of the pool's assets, to be set forth in the specified capsule format. The CPO would only be required to indicate any "adverse performance" as defined in proposed Rule 4.25(a)(8) on the part of CTAs allocated less than twenty-five but at least ten percent of the pool's futures margins and commodity option premiums and investee pools allocated less than twenty-five percent but at least ten percent of the assets of the pool offered. No performance disclosure would be required for CTAs allocated less than ten percent of the pool's futures margins and commodity option premiums or investee pools allocated less than ten percent of the pool's assets. If a major CTA or investee pool had no experience in trading commodity interests, a prominent legend would be required to so indicate. The legend would also indicate the percentage of futures margins and option premiums allocated to the particular CTA or pool assets allocated to the investee pool.

Past performance disclosure requirements would be codified in Rule 4.25, which would contain three sections. Paragraph (a) would set forth general principles applicable to pool performance disclosure; paragraph (b) would set forth the requirements applicable to pools with three or more years history; and paragraph (c) would address other pools.[28] The proposed changes are more fully described below.

1. Capsule Performance Presentation

Rule 4.21(a)(4) currently requires performance to be disclosed in tables showing at least quarterly the beginning and ending net asset values for the period, all additions, withdrawals and redemptions, whether voluntary or involuntary, the net performance for the period, net of additions, withdrawals and redemptions, and the rate of return for the period. These requirements have been applied in practice such that multiple pages of small-type numerical tables, frequently including performance data not required by Commission rules, are presented, often mixing without differentiation the performance of trading vehicles similar to the pool offered and of vehicles different in material respects. Such performance presentations are voluminous and may give equal weight to relevant data and to data of secondary or marginal pertinence.

The Commission is proposing a new summary format for presentation of all required past performance history.[29] This format is intended to capture the most significant information concerning a pool's history in a reader-friendly, largely nontabular form, which would generally permit multiple performance track records to be provided on a single page. The proposed new format, which is set forth in Rule 4.25(a)(1)(i) for pools and Rule 4.25(a)(1)(ii) for accounts, calls for core information intended to convey relevant data in a condensed format.

[25] The proposed summary format differs in minor respects from that used by those CPOs.

[26] This recommendation is consistent with a similar recommendation by the NFA Special Committee.

[27] This performance would be presented in a capsule format and the performance of pools of a different class than the pool offered could be presented in a composite format. See discussion of proposed Rule 4.25(a)(3)(ii) relating to composites, *infra*.

[28] Rule 4.34, which sets forth performance disclosure requirements for CTA disclosure documents, would include paragraph (a), setting forth general principles applicable to CTA performance disclosures, and paragraph (b) setting forth specific requirements.

[29] The only exception to the summary format presentation is that a CTA disclosure document would be required to present the performance of the program offered in the full format currently required by current Rule 4.31.

The capsule format for pools would set forth the date when the pool commenced trading, the aggregate gross capital subscriptions for the pool, and the pool's current net asset value. The "largest monthly draw-down" and "worst continuous peak-to-valley draw-down" are intended to show that material changes in rates of return may occur. Rates of return would also be included, on a monthly basis for the pool offered, and on an annual basis for other pools.

The "largest monthly drawn-down" and the "worst continuous peak-to-valley draw-down" would demonstrate the significant one-month and sustained declines to which commodity pool returns may be subject. Both draw-down figures would be expressed as a percentage of the pool's net asset value. The largest monthly draw-down would indicate the largest net asset loss experienced by the pool in any calendar month and the month and year in which it occurred. The peak-to-valley draw-down would indicate the largest calendar month-to-calendar month continuous net asset loss experienced by the pool during any period and the months and year in which it occurred. Dating the monthly and peak-to-valley draw-downs would permit participants to assess whether the losses were connected to market conditions by comparing the draw-downs of several pools. As explained in the rule, a peak-to-valley draw-down of 4 to 8–91/25% would indicate that the peak-to-valley lasted from April to August of 1991 and resulted in a twenty-five percent draw-down of the pool's net asset value.

The rate of return would be presented for each month for the pool offered and for each year for other pools. It would be computed on a monthly compounded basis in order that the rate of return for a given month will take into account the prior months' trading profits. Annual rates of return computed on a monthly compounded basis assume reinvestment of accrued profits and therefore the investment base on which rates of return are calculated is effectively adjusted by these amounts, presenting a more accurate picture of actual returns realized on an investment. Information currently required by Rule 4.21(a)(4) concerning additions, withdrawals and redemptions, the beginning and ending net asset values and the number of units outstanding at the end of each period at least for each quarter, would not be required.

The proposed capsule format for CTA accounts would contain similar core information, *i.e.*, the name of the CTA or other person trading the account and the name of the trading program; the date when the CTA began trading client funds and the date of inception of the program being disclosed; the number of accounts in the program; the total assets under the management of the CTA and in the trading program; the largest monthly and worst continuous peak-to-valley draw-downs for the program; and the annual and year-to-date rates of return. Registrants who compute rates of return for CTA programs on the basis permitted by Advisory 93–13 would continue to be required to state the actual and nominal account sizes, as required therein.[30]

The summary format is designed for presentation purposes only. CPOs and CTAs must continue to compute pool performance on the basis set forth in current Rule 4.21(a)(4)(ii) (proposed to be renumbered as Rule 4.25(a)(6)), as interpreted by the Commission and to maintain records substantiating such computations in accordance with Rule 1.31.[31]

An example of capsule past performance presentation follows. This table sets forth on a single page capsule past performance for eight pools.

SAMPLE.—CAPSULE PERFORMANCE OF ALL POOLS OPERATED BY X

[As of March 2, 1994]

Name of pool	Type of pool	Start date	Aggregate subscription ($× 1,000)	Current total NAV ($ × 1,000)	Worst monthly percent draw-down	Worst continuous peak-to-valley draw-down	Rate of return					
							1989	1990	1991	1992	1993	Year-to-date (percent)
A; B	2, 3, 6	8/93; 10/89	9,101	20,701	*(1.09%) 12/93	*(1.09%) 10–12/93	6.8	8.9	9.6	11.2	12.6	0.51
C	2, 4, 6	4/86	2,104	3,313	(11.70%) 4/90	(20.47%) 1–4/90	4.2	9.8	6.5	9.3	5.7	(9.08)
D	2, 3, 5	8/87	3,964	5,144	(10.13%) 11/91	(16.11%) 10–11/91	9.6	9.5	2.5	5.8	8.6	(0.28)
E	1, 3, 6	6/87	534	292	(9.86%) 9/93	(21.14%) 9–11/93	3.4	7.8	8.2	7.6	(5.2)	(2.98)
F	1, 4, 6	8/86	617	730	(11.73%) 7/93	(19.61%) 4–8/91	11.17	6.2	3.4	10.6	6.8	6.82
G	1, 4, 5	1/90	931	379	(16.01%) 6/92	(40.81%) 5–8/92	(2.3)	4.3	6.2	(8.2)	13.9	(17.26)
H	1, 3, 6	9/91	278	N/A	(12.20%) 6/93	(28.41%) 1–6/89	(7.8)	6.3	2.3	(0.7)	8.1	N/A

*Worst draw-down for any of the pools included in the composite.
Key to type of pool: 1—Private; 2—Public; 3—Multi-advisor; 4—Non-multi-advisor; 5—Limited risk; 6—Non-limited risk.

2. Pools With Three or More Years Operating History

Current Rule 4.21(a)(4) requires disclosure of the performance of the pool offered and of its CTAs and their principals for all pools. If the pool offered has less than a twelve-month track record, the performance of the CPO and of each of its principals must also be disclosed. Under the proposed rules, past performance disclosure requirements would differ based on whether the pool had a three-year, rather than twelve-month, track record. Generally, where a pool has at least a three-year track record, the only performance required to be disclosed would be that of the pool offered.

The Commission believes that, generally, where a pool has an extensive operational history, presentation of the pool's own past performance record should fulfill the objectives of past performance disclosure. If, however, the pool's historical track record occurred under materially different conditions, the track record of the pool alone may not be sufficient. For example, if the pool was essentially a proprietary trading vehicle investing a relatively small amount of funds contributed by third party sources, the track record generated may have little or no relevance to a publicly offered pool. To assure that a pool's three-year history was not acquired under circumstances in which the pool was essentially a proprietary trading vehicle, proposed Rule 4.25(b) would provide for past performance disclosure to be limited to that of the pool offered for pools that have traded commodity futures and option contracts for at least three years with no fewer than fifteen participants who are unaffiliated with the pool's CPO and in which no more than ten percent of the assets were contributed by the CPO. The pool's performance would be required to be disclosed for five full calendar years and year-to-date

[30] But see note 23.

[31] Among other things, Rule 1.31 requires all books and records to be kept for a period of five years and available for inspection by any representative of the Commission or the U.S. Department of Justice.

(or, if the pool had less than a five-year history, for the pool's entire operating history), in the specified capsule format with monthly rates of return. The CPO would be free to include additional performance records in compliance with the provision relating to voluntary information.

The Commission requests comment as to whether the performance record of a pool with a three-year operating history is generally sufficient without supplementary performance data concerning the pool's CTAs or other pools operated by the CPO. The Commission also requests comment as to whether the offered pool's operating history should be considered for purposes of the three-year minimum if such history was acquired when the pool differed in some material respect from the pool as offered, for example, in cases in which the pool's CTA, types of interests traded or the trading program have been significantly modified or the pool was initially privately offered but is now offered to the public.

3. Pools With Less Than Three Years History

As noted above, current Rule 4.21(a)(4) requires a pool disclosure document to disclose the performance of the pool offered, of each of the pool's CTAs and of each principal of the CTAs, and, if the pool offered has traded commodity interests for less than twelve months, the performance of the CPO and each of its principals.

As discussed in the preceding section, the Commission is proposing to limit required performance disclosures to the performance of the pool offered if the pool has at least a three-year performance history. With respect to pools that have less than a three-year history, proposed Rule 4.25(c) would require presentation of the performance records of the pool offered, the CPO (or trading manager), the CPO's (or trading manager's) trading principals if the CPO (or trading manager) has less than a three-year history, and the performance of each "major" CTA and investee pool, i.e., CTAs allocated at least twenty-five percent of the pool's futures margins and commodity option premiums and investee pools allocated at least twenty-five percent of the assets of the pool offered.[32] For CTAs allocated less than twenty-five percent of the pool's futures margins and commodity option premiums and investee pools allocated less than twenty-five percent of the pool's assets, the sole requirement would be to indicate any "adverse" performance as defined in the rule. No disclosure would be required for CTAs allocated less than ten percent of the pool's futures margins and option premiums or investee pools allocated less than ten percent of the pool's assets.

The proposed rules would require that the performance history for the pool offered be presented before any other performance history in the disclosure document. The performance of pools similar to the pool offered would be presented after that of the pool offered, on a pool-by-pool basis.

The performance disclosure requirement of current Rule 4.21(a)(4) focuses on the past performance of the pool offered, its CTAs, principals of the CTAs and, if the pool has less than a year history, the CPO and each of its principals. As noted above, these requirements would be largely eliminated for pools with at least a three-year operating history. For pools with a shorter history, additional past performance records would be required to be disclosed. These requirements were devised to focus upon the performance of pools similar to the pool offered and of persons responsible for management of a significant portion of the offered pool's assets. Further, to the extent that performance of principals is required, unlike the current rule which requires disclosure of the performance of all principals, the proposed rule would require disclosure of the past performance of "trading principals" only. A "trading principal" would be defined in proposed Rule 4.10(m) to mean a principal of a CPO or CTA who participates in making commodity interest trading decisions for a pool or client or who supervises, or has authority to allocate pool assets to, persons so engaged.

The proposed rules also would take into account arrangements in which pools use trading managers to direct their trading.[33] The term "trading manager" is defined in proposed Rule 4.10(j) as any person, other than the pool's CPO, with authority to allocate pool assets to CTAs or investee pools.

As noted above, the practice of retaining trading managers to select and monitor the performance of CTAs and investee pools to which pool assets will be committed has become commonplace. CPOs seek to maximize pool returns by allocating pool assets based on analysis of the returns achieved by CTAs retained for the pool and investee pools in which the pool has invested as compared to those of other CTAs and investee pools, and in response to changing market conditions. CPOs frequently rely on trading managers to continuously review the performance of CTAs and investee pools and allocate and reallocate pool funds. Because the trading manager, rather than the CPO, conducts the asset allocation activities for the pool, the Commission believes that the principal focus of the performance disclosure for a pool in which a trading manager is responsible for allocating the assets should be on the trading manager, rather than the CPO. Thus, when a pool has a trading manager, the trading manager's performance would replace that of the CPO.

With respect to CTAs, the proposed rules would require disclosure of the past performance of CTAs only where they manage twenty-five percent or more of the pool's futures and commodity option trading and thus would constitute "major CTAs," as defined in proposed Rule 4.10(k). The proposed rules also would require disclosure of past performance of investee pools constituting "major investee pools, that is investee pools allocated twenty-five percent or more of the pool's assets. The term "major CTA" would be defined in Rule 4.10(k) to mean a CTA allocated or intended to be allocated twenty-five percent or more of the pool's initial margins for futures contracts and premiums for commodity options. Proposed Rule 4.10(l) would define "major investee pool" as an investee pool allocated or intended to be allocated at least twenty-five percent of the assets of a pool. These definitions are intended to include CTAs or investee pools to whom the CPO of a pool that has not commenced trading intends to make allocations at or above the specified thresholds. Similarly, CTAs and investee pools to whom the CPO of an operating pool intends to reallocate assets such that the allocations will total twenty-five percent or more under the margin or total asset standards also would be included.

To further reduce the volume of performance data contained in the disclosure document, the proposed rules would eliminate the requirement to present performance data with respect to CTAs allocated less than twenty-five percent of the pool's initial margins and commodity option premiums and investee pools allocated less than twenty-five percent of the pool's assets and require only that "adverse" performance be disclosed as to CTAs allocated ten percent or more of the pool's initial futures margins and commodity option premiums and investee pools allocated ten percent or

[32] The lack of prior trading history of the specified persons would be indicated by legends set forth in the rule.

[33] Trading managers are CTAs and are required to be registered as such.

more of the pool's assets. "Adverse performance" would be defined in proposed Rule 4.25(a)(8) as an annual rate of return of one hundred basis points less than the ninety-day Treasury Bill rate on December 31 of the calendar year in which the performance occurred or the termination of any pool pursuant to a loss termination provision. To disclose adverse performance, the CPO would indicate the year in which the performance occurred, the rate of return for that year, and the name of the CPO, CTA or investee pool responsible for the performance. An indication of adverse performance would be required to be given for the pool's CPO (where the pool had a trading manager whose performance was disclosed in lieu of that of the CPO), any trading principal of the CPO or trading manager whose performance was not otherwise disclosed, any CTA, other than a major CTA, allocated at least ten percent of the pool's initial futures margins and commodity option premiums and any investee pool, other than a major investee pool, allocated at least ten percent of the assets of the pool offered and the trading principals of major CTAs and the CPOs of major investee pools that have no prior operating history. Proposed Rule 4.25(c)(3)(iii) would permit CPOs to provide capsule performance in lieu of giving an indication of adverse performance.

Comment is requested concerning the proposed treatment of CTA and investee pool performance, including the definitions of major CTA and major investee pools. In particular, commenters may wish to address whether use of a twenty-five percent of futures margin or commodity premium benchmark as compared to twenty-five percent of total assets adequately reflects the relative risks of direct futures trading as compared to trading through vehicles which limit the risk of loss to the initial investment. Comment also is requested as to the definition of adverse performance, in particular, as to whether any additional benchmarks for identifying whether past performance is sufficiently "adverse" to warrant disclosure would be appropriate. For example, should the adverse performance definition be revised to include a one-month draw-down exceeding a specified percentage, e.g., twenty-five percent, of account equity traded pursuant to the trading program under which the CTA will trade for the offered pool.

4. Past Performance Disclosure in CTA Disclosure Documents

CTA disclosure documents would be required to include the past performance of the CTA and its trading principals. The past performance of the program offered would be required to be disclosed in the full format currently required. For other programs, the CTA would be required to use the capsule format used by CPOs to present CTA past performance in pool disclosure documents.

5. Updating Past Performance Records

Concurrently, Rule 4.22(a) is proposed to be revised by adding paragraph (a)(4) to require periodic account statements to include the names of all of the pool's CTAs and investee pools regardless of the amount of pool assets allocated to them. In addition, to provide a ready means of presenting the performance of newly added major CTAs and investee pools, account statements would be required to include the past performance of all CTAs and investee pools that are major CTAs and major investee pools as of the date of the statements and whose performance was not previously disclosed. Use of account statements to update major CTAs' and investee pools' performance records would provide a convenient means for CPOs to amend pool performance disclosures. In the event that the pool acquired a new major CTA or investee pool whose past performance had not previously been disclosed, the CPO would be required to notify pool participants of such event and provide the relevant performance records as required by proposed Rule 4.26(c) (current Rule 4.21(b)),[34] within twenty-one calendar days after the CPO knows or should know of this occurrence, whether by way of the account statement (if this would provide timely notice under the twenty-one day requirement) or by other similar means.

6. Time Period for Which Past Performance Disclosure Would be Required

Current Rule 4.21 generally requires past performance to be presented for a three-year period. However, the Commission is aware that some registrants nonetheless include longer performance periods in their disclosure documents for marketing purposes. The Commission believes that requiring performance to be disclosed for a period longer than three years will have the benefit of making performance disclosures more uniform and will provide a better picture of the evolution of performance over time, including positive and negative fluctuations in returns. In addition, under the proposed summary format for performance disclosure, lengthy tables to present performance data would not be required. Consequently, adoption of a five-year disclosure period would not result in any significant increase in the volume of performance disclosures. Accordingly, the Commission is proposing to increase the minimum time period for which performance would be disclosed from three to five years. CPOs may continue to provide additional performance disclosures provided the performance is calculated in compliance with proposed Rule 4.25 and is included in the document following the required performance disclosures as required by proposed Rule 4.24(v) for information voluntarily provided.

A summary table of the proposed past performance disclosure requirements follows.

SUMMARY OF PROPOSED AMENDMENTS TO PERFORMANCE DISCLOSURE

Pools with three or more years history	Performance of pool offered for up to five calendar years and year-to-date ("YTD"), with monthly rates of return ("RORs").
Pools with less than three years history	Performance of pool offered for life of pool (monthly RORs); statement if pool has no history. Performance of CPO's or trading manager's other pools and accounts (annual RORs). If CPO or trading manager has less than three years history in trading same type of pool, performance of its principals (annual RORs). Statement if no prior trading history of CPO or trading manager and its principals.

[34] Rule 4.21(b) (proposed to be renumbered as Rule 4.26(c)) sets forth the requirements for amending pool disclosure documents to reflect a material change in the document.

SUMMARY OF PROPOSED AMENDMENTS TO PERFORMANCE DISCLOSURE—Continued

	Performance of major investee pools ("IPs") (allocated at least 25% of pool assets) and major CTAs (allocated at least 25% of futures margins and option premiums). Statement if no prior history.
	Unless performance otherwise disclosed, indication of adverse performance of CPO, CPO's or trading manager's trading principals and IPs allocated 10% or more of the pool's assets and CTAs allocated 10% or more of the pool's futures margins and option premiums.

7. Composite Performance Presentations

Rule 4.21(a)(4)(iv) currently permits the performance of pools operated by each person for whom performance is required to be disclosed to be presented on a composite basis provided that the performance of the pool offered is separately disclosed, the CPO describes how each composite was developed, and the composite is not misleading. Rule 4.31 also permits composite presentation of the performance of accounts directed by the CTA and each of its principals provided that material differences among the accounts and the manner in which the composite was developed are described.

Composite presentations have the obvious advantage of reducing the volume of past performance data presented. However, composite presentations raise a number of regulatory concerns precisely because they supplant individualized presentations of potentially quite different types of pools and trading programs and may smooth or camouflage actual rates of return. Composite results not only fail to reflect differences among the pools and accounts whose results are presented but also merge potentially disparate trading results into average trading results and thus fail to reflect the actual dispersion of returns as well as the volatility of individual pools and accounts. For these reasons, the Commission considered prohibiting the use of composite performance data for pools as well as accounts.

The Commission has carefully considered the benefits and disadvantages that may accrue from the use of composites and is proposing an approach designed to realize the benefits of reducing the volume of performance data created by the use of composites while reducing the potential for misleading result presentations. Under the proposal, past performance data for the pool offered and pools similar to the pool offered would be required to be separately disclosed. Pools of a different type from the pool offered would be permitted to be presented in composites with other pools of the same type, provided that such presentations would not be misleading. Pools would be considered to be of a different type or category if they differed in material respects. The proposed rule delineates several types of material distinctions among pools for this purpose, including the following: Pools privately offered pursuant to Regulation D of the Securities Act and public pools; pools traded with materially different leverages; limited risk pools and non-limited risk pools; pools using different commodity or trading methodologies; and multi-advisor pools[35] and non-multi-advisor pools.

A pool could be included in a composite with another pool only if both pools were of the same type with respect to each of these categories. For example, a publicly offered non-multi-advisor pool could not be included in the same composite as a privately offered non-multi-advisor pool and two limited risk pools that used different trading programs or materially different degrees of leverage could not be included in the same composite. Moreover, there may be instances in which even composites of pools of the same type may be misleading, such as where differences between the trading results of the pools are so great that a composite would materially distort their results. For example, two publicly offered multi-advisor pools with the same CTAs could show widely disparate results unless each CTA were allocated substantially the same portion of each pool's assets. Also, two single-advisor pools with different CTAs may achieve very different results. The proviso in proposed Rule 4.25(a)(3)(ii) that results may be presented in composite form "unless such presentation would be misleading" is intended to assure that composites are carefully reviewed to protect against any material distortion that may result from these types of situations.

Proposed Rules 4.25(a)(6) and 4.34(a)(2) would require that records substantiating the performance data set forth in CPO and CTA documents, respectively, and documenting the underlying calculations be maintained in accordance with Rule 1.31. Naturally, this requirement also applies with respect to composite presentations. Pursuant to proposed Rule 4.25(a)(3)(ii), a CPO must be prepared to justify the inclusion in a composite of the pool results contained therein.

To present capsule performance of pools in a composite, the CPO would name all pools included in the composite, set forth the categories of these pools (which, as discussed above, would be the same for each pool in the composite), including at a minimum the categories specified in proposed Rule 4.25(a)(3)(iii), and specify the dates on which each pool commenced trading. The aggregate gross capital subscriptions would be the total subscriptions for all pools in the composite. The draw-down figures would be the worst experienced by any one of the pools included in the composite and the rate of return would be the average rate of return for all pools included. The sample capsule past performance presentation table set forth above following the discussion on capsule performance includes an example of performance presentation for pools (pools A and B, in the example) whose performance is disclosed in composite form.

The Commission requests comment as to whether the pool categories delineated in proposed Rule 4.25(a)(3)(iii) relating to composite presentations are appropriate for purposes of limiting composite presentations and as to whether any additional categories of pools should be identified for this purpose. Comment is also requested as to the costs and benefits of a general requirement of separate rather than composite presentation of pool performance in lieu of a qualified approach of the nature proposed.

Proposed Rule 4.34(a)(5) would permit CTAs to include in a composite all accounts traded pursuant to the same trading program, provided that such a presentation would not be misleading and provided that the CTA describes how the composite was calculated. The term "trading program" would be

[35] Proposed Rule 4.10(h) would define the term "multi-advisor pool" as a pool in which no CTA is allocated twenty-five percent or more of the pool's aggregate initial margin and premiums for futures and commodity option contracts and no investee pool is allocated twenty-five percent or more of the pool's assets.

defined in the rule as "a trading strategy differentiated from others by commodity trading methodology, degree of risk or degree of leverage." Comment is requested as to the necessity and feasibility of providing a more detailed definition of the term "trading program" or additional guidance as to how trading programs can be differentiated.

8. Proprietary Trading Results

Use of proprietary trading results in soliciting customer accounts is a practice which has long been of concern to the Commission. CPOs and CTAs may trade proprietary funds for a variety of purposes, including to test a new trading strategy before implementing it for customer funds or to establish a track record prior to trading customer funds. However, proprietary accounts may be traded in a different manner, for example, more aggressively, using higher leverage and assuming greater risk, than customer accounts. Also, proprietary accounts are usually not subject to the same fee schedule as customer accounts. Naturally, no management or incentive fee would apply where a CTA traded its own account, and clearing fees may be waived or reduced if the account is cleared by an affiliate. In addition, where proprietary and customer assets are combined for purposes of performance presentations, the total amount of assets under management is inflated and conceals the actual amount of customer funds being traded. For these reasons, proprietary trading results may, in many cases, be of little relevance to a prospective pool participant or CTA client and actually misleading in others.

Currently, the Commission's rules do not specifically address the use of proprietary trading results in disclosure documents. However, in reviewing disclosure documents, because the rules require performance of "directed accounts" and because of the prohibition against misleading disclosures, Division staff have advised that any proprietary trading results provided must be clearly labeled as such and presented in a separate table to reduce the potential for misleading investors. The staff also has required that if fees, expenses, commissions, margin-to-equity ratios, or any other item pertaining to the proprietary trading is materially different from that relevant to the trading program offered to clients, the registrant must "pro forma" such items to correspond to those in the program offered.

In reviewing the Part 4 rules, the Commission considered prohibiting the use of proprietary results in CPO and CTA disclosure documents given the potentially misleading nature of such presentations and their at best marginal relevance in the non-proprietary trading context. However, the Commission is aware that proprietary trading results may be the only performance results available to some new traders to present to customers as evidence of trading experience. Accordingly, rather than prohibiting disclosure of proprietary trading results, the Commission is proposing to permit such disclosure under appropriate restrictions. Under proposed Rule 4.25(a)(9), pools and accounts in which the pool operator, trading manager, CTA or other person providing services to the pool owned or controlled fifty percent or more of the beneficial interest could not be included in disclosure documents unless prominently labeled as such and set forth following all required performance and non-performance disclosures. The requirement that proprietary results follow all required disclosures, rather than just the required performance disclosures, would reflect the peripheral and potentially misleading nature of proprietary trading results and reduce the potential for confusion of proprietary and customer trading results.[36]

9. Pro Forma, Hypothetical and Extracted Results

The Commission also recognizes the potential for inappropriate use of certain other types of performance data. These include hypothetical, pro forma and extracted results. Hypothetical results are results calculated based upon the application of a given program to historical market prices and purport to present results that could have been obtained in trading a particular program during the specified historical period. Thus, hypothetical results are based on hindsight and can be readily manipulated. Rule 4.41 requires that any presentation of simulated or hypothetical trading results be accompanied by a specified cautionary statement describing the limited value of such results. In its rule submission, the NFA notes that a number of NFA disciplinary cases have involved NFA members who advertise hypothetical results to solicit unsophisticated customers. When the trading program is unsuccessful and causes substantial customer losses, the program is abandoned in favor of a new program for which hypothetical results, based on hindsight, are presented. The actual performance of customers whose accounts were traded under the prior program may never be disclosed.

Pro forma results present trading results with adjustments to reflect certain factors, such as a particular fee schedule or degree of leverage, to permit easier comparison with other types of results. In its rule submission, the NFA notes that in some instances the use of pro forma results may have some of the same limitations as hypothetical results. For example, some CPOs may use pro forma data to present results that a multi-advisor pool could have achieved had assets been allocated differently among CTAs than occurred in actuality As the NFA Special Committee concluded, "[t]his use of pro forma results reflects the same sort of hindsight that hypothetical results do and invites the same sort of abuse."

Extracted performance results isolate a single component of a trading strategy for presentation to customers, and although based on actual results, are subject to manipulation as they may disproportionately emphasize a small portion of the overall strategy.

Although the Commission believes that the use of pro forma, hypothetical and extracted results must be closely scrutinized, it has determined not to prohibit them at the present time. Instead, like other disclosures voluntarily provided, the disclosure of these types of results would be subject to such restrictions as may be imposed under the rules of a registered futures association and to the Commission's general antifraud prohibitions. NFA's proposed Compliance Rule 2–29(c) would strictly limit the use of hypothetical results in promotional material, except in promotional material directed exclusively to qualified eligible participants, as defined in CFTC Rule 4.7(a)(1)(ii). NFA's proposed interpretation of Compliance Rule 2–13 would permit pro forma performance histories solely for the purpose of adjusting performance presentations to the same fee structure as that of the pool or program offered. No pro forma results which reflect a hindsight analysis, such as to show results a multi-advisor pool could have achieved using a different allocation of assets among CTAs, would be permitted. Extracted results would only be permitted to be presented based on the percentage of net asset value actually committed to the particular component extracted.

10. Voluntary Performance Disclosures

Pursuant to proposed Rule 4.24(v), disclosures, including performance disclosures, other than those required

[36] The NFA Special Committee also reached the conclusion that proprietary results should be displayed separately and labeled as such and that adjustments for fee differentials and other differences should be made.

by CFTC rules must follow all relevant required disclosures in the disclosure document [37] and may not be misleading in their content or presentation or inconsistent with required disclosures.[38] Performance disclosures voluntarily provided could have misleading effects if favorable performance data are given undue prominence. For example, if the performance of two pools other than the offered pool operated by the CPO were voluntarily provided, it may be misleading to show the favorable performance of Pool 1 but not the negative performance of Pool 2 or to show the performance of Pool 1 in capsule format and that of Pool 2 in full format. It may also be misleading to show the performance of a pool in capsule format for year one and in full format for year two or to show the pool's performance for 1991 and not 1992. Generally, inclusion of voluntarily provided performance data should be made on a result-neutral basis that results in inclusion of all similar data. For example, the past performance of two CTAs allocated an equal portion of a pool's assets should either be included or omitted, as should the performance of the CPO's other pools.

The Commission also notes that the practice of advertising the performance of a particular CTA with an excellent track record to attract prospective participants and shortly thereafter reallocating pool assets to another CTA, a practice commonly referred to as "bait-and-switch," is misleading and that performance voluntarily provided for this purpose is prohibited under general antifraud standards.

11. Cautionary Legends

The proposed rules would continue to require the inclusion of certain legends alerting pool participants and prospective participants to the lack of experience of the CPO (or trading manager), the pool's CTAs and their principals. However, these legends have been revised and substantially streamlined. Under current Rule 4.21, these legends are required to recite the relevant performance disclosure requirement. For example, Rule 4.21(4)(i)(B) requires a statement that the CFTC requires disclosure of the performance of the pool offered and of other pools operated by the CPO and its principals and that neither the CPO nor its principals have any prior performance history.[39] The proposed rules would eliminate the prescribed statements concerning CFTC rules, with the effect of deleting the bulk of the bold-faced disclosures and of focusing attention upon the primary point to be conveyed, *i.e.*, the fact that the CPO and its principals have not previously operated any commodity pools. Thus, the legend relating to the lack of trading history of a pool would read: "THIS POOL HAS NOT COMMENCED TRADING AND DOES NOT HAVE ANY PERFORMANCE HISTORY",[40] and the legend relating to the lack of experience of the CPO and its trading principals would read: "NEITHER THIS POOL OPERATOR NOR ANY OF ITS TRADING PRINCIPALS HAS PREVIOUSLY OPERATED ANY OTHER POOLS OR TRADED ANY OTHER ACCOUNTS."[41] Similar legends would be required, where applicable, with respect to trading managers and major investee pools. To further reduce the bulk of these disclosures, where several legends may be required, the proposed rules provide an alternate legend consolidating the several statements that would otherwise be required. For example, the proposed rules would require a CTA disclosure document to disclose, if true, the lack of experience of the CTA and its principals. If the CTA had no prior experience, the following legend should be included: "THIS TRADING ADVISOR PREVIOUSLY HAS NOT DIRECTED ANY ACCOUNTS." The following legend would be used for trading principals: "NONE OF THE TRADING PRINCIPALS OF THIS TRADING ADVISOR HAS PREVIOUSLY DIRECTED ANY ACCOUNTS." If neither the CTA nor any of its principals had prior trading experience, rather than displaying these two separate legends, the following single sentence would be included: "NEITHER THIS TRADING ADVISOR NOR ITS TRADING PRINCIPALS HAVE PREVIOUSLY DIRECTED ANY ACCOUNTS." These proposals are designed to reduce disclosures that complicate and lengthen disclosure documents while preserving disclosures that may be important to prospective investors.

A legend indicating that "PAST PERFORMANCE IS NOT PREDICTIVE OF FUTURE PERFORMANCE" would be required to precede any performance presentation, whether required or given voluntarily.[42]

12. Order of Disclosures

For pools with an operating history shorter than three years, the performance of the pool offered would be required to be the first performance record presented in the disclosure document. Performance data for pools of the same category as the pool offered would be required to appear after the performance history of the pool offered and to be presented on a pool-by-pool, that is non-composite, basis. Pools of a different category from the pool offered would be required to follow the performance of pools of the same category as the pool offered. As discussed above, for purposes of applying the requirement that composite presentations be used only for pools of the same category, the rule would identify a number of categories of pools.

The Commission believes that the streamlined past performance disclosure requirements should substantially increase the clarity and readability of past performance disclosures.

The Commission requests comment on all aspects of Rule 4.25 and, in particular, on the adequacy of the summary performance format to provide a basis upon which a prospective pool participant may make an informed judgment with respect to past performance results; whether a three-year history is a sufficient basis for eliminating any requirement for disclosure of past performance other than that of the pool offered; and whether the ten percent allocation thresholds for major CTAs and investee pools, below which no performance disclosures would be required, is

[37] As noted above, proprietary trading results would be required to follow all required disclosures.

[38] See general discussion on voluntary disclosures, *infra*.

[39] The entire legend reads as follows: "THE COMMODITY FUTURES TRADING COMMISSION REQUIRES THE OPERATOR OF A POOL THAT HAS TRADED COMMODITY INTERESTS FOR LESS THAN 12 MONTHS TO DISCLOSE THE ACTUAL PERFORMANCE RECORD OF THE POOL FOR ITS ENTIRE OPERATING HISTORY AND THE ACTUAL PERFORMANCE RECORD OF EACH OTHER POOL OPERATED BY THE POOL OPERATOR AND ITS PRINCIPALS. YOU SHOULD NOTE THAT THIS POOL OPERATOR AND ITS PRINCIPALS PREVIOUSLY HAVE NOT OPERATED ANY OTHER COMMODITY POOL."

[40] Proposed Rule 4.25(c)(1)(ii).

[41] Proposed Rule 4.25(c)(2)(iii). Similarly, the legend concerning major CTAs who have never directed accounts would read: "(name of CTA), A COMMODITY TRADING ADVISOR THAT HAS DISCRETIONARY AUTHORITY OVER (percentage of the pool's aggregate initial futures margin and commodity option premiums allocated to that CTA) OF THE POOL'S DIRECT FUTURES AND COMMODITY OPTION TRADING HAS NOT PREVIOUSLY DIRECTED ANY ACCOUNTS."

[42] Numerous studies have shown the general lack of predictive value of past performance. See, *e.g.*, Irwin, *The Predictability of Managed Futures Returns: Evidence from Multiple CTA Public Commodity Pools*, Working Paper Version, Ohio State University, Department of Agricultural Economics and Rural Sociology (April 1992) (unpublished). See also *Futures Pools' Returns Are a Far Cry From Their Brochures and Prospectuses* Wall St. J., Oct 2, 1992.

appropriate. The Commission also requests comment as to whether past performance presentations would provide more meaningful information if they were required to include rates of return on a risk-adjusted basis, that is, reduced by the relevant Treasury Bill rate or comparable interest figure, or to break out trading results from passive interest income.

B. Section 4.24—Required General Disclosures

Under the proposal, non-performance disclosure requirements would be set forth in Rule 4.24.

1. Table of Contents and Order of Required Information

As noted above, a primary objective of this proposal is to foster clarity and comprehensibility in the disclosure of relevant information to prospective pool participants. To this end, in addition to eliminating certain required disclosures, the Commission is proposing that certain information be presented in a required sequence which would be specified in proposed Rules 4.24(a) through (d). Like current Rule 4.21, proposed Rule 4.24 would require that a cautionary statement, *i.e.*, a statement that the CFTC has not passed upon the merits of the pool investment or the adequacy of the disclosure document, and any other information required under any other applicable federal or state laws and regulations, appear on the cover page of the disclosure document. The risk disclosure statement specified in Rule 4.24(b) would be required to be set forth immediately after these disclosures. The next item in the disclosure document would be a table of contents.[43] Prior to any detailed disclosures with respect to the pool and persons involved in operating and trading the assets of the pool, in what would constitute the "forepart" of the disclosure document, a prospective participant would find very basic information concerning the pool.[44] This information would include the name and address of the pool and CPO; the type of pool being offered, *i.e.*, whether the pool is privately offered pursuant to section 4(2) of the Securities Act of 1933, a multi-advisor pool[45], or a limited risk pool[46]; a statement whether the pool is continuously offered or the closing date of the offering; the date of the disclosure document; and the "break-even point" for the pool, that is, the trading profit that the pool must realize in its first year for a participant to recoup its initial investment. The break-even point would provide a simple illustration of the costs of investing in the pool and facilitate comparisons among pools.[47]

The Commission considered whether a particular order for all required information should be mandated in order to "standardize" the entire format of disclosure documents but determined to propose only the limited sequence requirements discussed above at this time. However, the Commission requests comment on the appropriateness and desirability of mandating that all required information be presented in a specified order to foster clarity in and comparability of disclosure documents, ease of regulatory review, and development of compliance guidance or instructions.

2. Voluntary Disclosures

To address concerns that in many cases the disclosure process fails to achieve its intended purpose due to the high volume of information included in the disclosure document, the Commission is proposing a format for disclosure documents under which "voluntary" disclosures, *i.e.*, those not required by Commission rules[48] or those of other regulators, would be required to be placed in the disclosure document after all relevant required disclosures. Proposed Rule 4.24(v) would require all information, other than that required by the Commission, the antifraud provisions of the Act, and any federal or state securities laws and regulations, to appear following the related required disclosures. Such "voluntary information" could not be misleading in content or presentation or inconsistent with required disclosures. In addition, voluntary information would be subject to the antifraud provisions of the Act and the regulations thereunder and to rules regarding the use of promotional material promulgated by a registered futures association pursuant to section 17(j) of the Act. This format is designed to accommodate the apparent desire of some CPOs and CTAs to include in disclosure documents information that is not required under the Commission's rules or those of other regulators, while assuring that core disclosures are given due prominence. Naturally, CPOs and CTAs would continue to be subject to the antifraud prohibitions of sections 4b and 4*o* of the Act, 7 U.S.C. 6b and 6*o*,[49] with respect to all disclosures, including disclosures voluntarily provided.

3. Investee Pools

The proposed disclosure framework specifically addresses disclosures concerning investee pools. As discussed in the performance section, for purposes of past performance disclosures, investee pools would be treated comparably to CTAs, *i.e.*, the scope of performance disclosure required would be based on the amount of assets of the offered pool committed to the investee pool. However, a different benchmark for applying the twenty-five percent (as used in the major investee pool definition) and ten percent (for adverse performance disclosure to be required) thresholds is used for investee pools in light of the fact that investments in other pools generally expose the pool only to loss of the initial investment and that the full amount of the investment is required to be paid at the inception of the investment. The relative importance of investee pools to

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[43] Rule 4.21 currently does not require a table of contents. However, most disclosure documents reviewed by the Division contain such a table. Further, Form S–1, the form most frequently used to register pool offerings with the SEC, requires "a reasonably detailed table of contents showing the subject matter of the various sections or subdivisions of the prospectus and the page number on which each section or subdivision begins." See Item 502(g) of Regulation S–K, 17 CFR 229.502(g), incorporated by reference into Item 2 of Form S–1, 17 CFR 239.11. The Commission believes that a table of contents should contribute to making the disclosure document "user-friendly".

[44] The cover page and forepart of CTA disclosure documents would be organized in a similar fashion and a table of contents would also be required.

[45] Proposed Rule 4.10(h) would define a "multi-advisor pool" as a pool in which no CTA is allocated twenty-five percent or more of the pool's aggregate initial futures margins and commodity option premiums and no investee pool is allocated twenty-five percent or more of the pool's total assets.

[46] Proposed § 4.10(i) would define the term "limited risk pool" as a pool designed to limit the loss of the initial investment of its participants.

[47] The break-even point is discussed in greater detail in the fees and expense section, *infra*. The break-even point would be required to account for hidden costs such as costs associated with investments in investee pools. In multi-advisor pools the potential consequences of incentive fees being calculated advisor-by-advisor should also be a disclosed risk.

[48] CFTC-required disclosures include information required by Rules 4.21(h) (proposed to be renumbered as Rule 4.24(w)) for CPOs and 4.31(g) (proposed to be renumbered as Rule 4.33(*o*) for CTAs. These rules require CPOs and CTAs to disclose all material information to existing and prospective pool participants and clients even if the information is not specifically required by Commission rules.

[49] Generally, section 4b of the Act prohibits fraud in connection with the making of any contract of sale of any commodity for future delivery. Section 4*o* of the Act prohibits CPOs, CTAs and their associated persons from employing any device, scheme, or artifice to defraud a pool participant, prospective pool participant or client and from engaging in any transaction, practice or course of business which operates as a fraud or deceit upon such participant or client. In addition, CPOs, CTAs and their associated persons are precluded from representing or implying that they have been sponsored, recommended or approved by the United States or by any agency or officer thereof.

prospective pool participants is thus more appropriately determined by reference to the proportion of the pool's total assets invested in the investee pool. The proposal would streamline other investee pool disclosures to obviate the need for CPOs to substantially incorporate in the document the contents of each investee pool's disclosure document.[50] Non-performance disclosure requirements relating to investee pools also would be tailored to take into account the relative importance of the investee pool to the offered pool, as measured by the amount of assets of the pool offered allocated to it. Thus, no disclosures would be required for investee pools allocated less than ten percent of the assets of the pool offered and disclosures with respect to other investee pools would be limited based on the proportion of the pool's assets allocated to them. Specifically, with respect to each investee pool allocated at least ten percent of the assets of the pool offered, the CPO also would be required to disclose its name and that of its CPO and its principals and any conflicts of interest on the part of the investee pool's CPO in respect of the offered pool.

With respect to major investee pools, *i.e.*, those allocated twenty-five percent or more of the assets of the offered pool, the CPO would be required to disclose the business background of, material litigation against, and any ownership in the pool offered on the part of its CPO and its principals. In addition, the use of proceeds, risk factors, fees and expense, and redemption sections of the document would call for specific information relative to investments in investee pools. Risk disclosure relative to investee pools would be required because investments in investee pools may create both the risks inherent in the investee pool's own investments and liquidity risks due to restrictions upon redemption of the investment in the investee pool. Fees and expenses may accrue at each level of a multi-tier structure and should be disclosed. Investments in investee pools with redemption periods different from those of the pool offered or with minimum "lock-in" provisions[51] may affect the ability of that pool to promptly honor redemption requests from its participants.

The Commission requests comment concerning the proposed treatment of investee pools. In particular, commenters are invited to address any special public policy or disclosure considerations presented by tiered investment structures by means of which a commodity pool can, in effect, appropriate the value of a second fund's management by investing all or a portion of its funds in the second fund. The Commission also requests comment concerning whether any additional protections, other than disclosure of applicable fees, are appropriate in light of the "layering" of fees that typically occurs at each level of a fund of funds structure.

4. Risk Disclosure Statement

Rule 4.21 currently requires that disclosure documents include a prescribed bold-face statement alerting prospective pool participants to the risks involved in participating in a pool. This statement does not specifically address the risks of trading foreign futures or foreign option contracts. The risks attributable to foreign futures and foreign options were originally required to be addressed by a special disclosure statement, set forth in part 30 of the Commission's regulations, which generally governs transactions in foreign futures and foreign options.[52] Thus, a CPO offering a pool expected to trade foreign and domestic futures or options was required to include in the disclosure document the Rule 4.21 risk disclosure statement, which does not refer to foreign futures or options, and the Rule 30.6 foreign futures and options risk disclosure statement. However, Rule 1.55, the basic risk disclosure requirement applicable to FCMs and IBs opening accounts for domestic futures and option contracts, was recently amended to consolidate the required disclosures concerning foreign futures and options into the domestic risk disclosure statement, and the separate Rule 30.6(a) disclosure statement was eliminated.[53] Consequently, under the revised Rules 1.55 and 30.6, CPOs and CTAs offering pools and accounts, respectively, which may engage in foreign futures and option transactions would be required to include the new consolidated Rule 1.55 risk disclosure statement as well as the part 4 risk disclosure statement in the disclosure document.

The Commission is proposing to address the potential for duplicative disclosure created by the recent rule revisions and to eliminate the necessity for providing two prescribed risk disclosure statements by revising the part 4 risk disclosure statements for CPOs and CTAs to address the risks of foreign as well as domestic transactions. Rule 30.6(b) would be revised to cross-reference the part 4 statement. In addition, the terms "domestic" and "foreign" previously used to refer to contract markets or exchanges in foreign jurisdictions are proposed to be replaced with the terms "United States" and "non-United States" to avoid confusion in the context of offerings in non-United States jurisdictions to non-United States participants for whom the term "foreign" does not mean "non-United States".[54] Rule 1.55 would also be amended to provide that pools need not be treated as customers for the purposes of delivery of the risk disclosure statement.

5. Business Background

Rule 4.21(a)(2) currently requires disclosure of the business backgrounds of the pool's CPO and CTA, and their principals. This disclosure requirement would be streamlined by: (1) Eliminating the requirement to disclose business backgrounds of CTAs except those of major CTAs, *i.e.*, CTAs allocated at least twenty-five percent of the fund's futures margins and commodity option premiums; and (2) limiting the requirement to disclose business backgrounds of principals[55] of CPOs and CTAs to those principals "who participate in making trading or operational decisions for the pool or who supervise those so engaged."[56] Comment is requested as to whether the business backgrounds of all principals, even those who hold a passive ownership interest in the CPO, should continue to be required to be disclosed. The business backgrounds of trading managers, who represent a subset of CTAs, and their principals who participate in making trading or operational decisions or supervise

[50] See note 20 *supra* and accompanying text.

[51] Certain pools lock in initial investments for a specified period before allowing any redemptions. There are no rules requiring availability of redemption of pool interests in very short timeframes as for investment companies, hence the added importance of volatility disclosure.

[52] The Rule 30.6(a) statement was required to be provided by FCMs and IBs to clients opening foreign futures or foreign option accounts and, pursuant to Rule 30.6(b), by CPOs and CTAs trading foreign contracts for their pool or clients.

[53] 58 FR 17495 (April 5, 1993).

[54] This discussion also applies generally to CTA disclosure documents.

[55] Pursuant to current Rule 4.10(e), the term "principal" includes, with respect to an entity, a sole proprietor, general partner, officer or director, or person occupying a similar status or performing similar functions, having the power, directly or indirectly, to exercise a controlling influence over the activities of the entity. Holders and beneficial owners of at least ten percent of the CPO or CTA and persons who contributed at least ten percent of the CPO's or CTA's capital are also included.

[56] All principals would continue to be required to be named in the disclosure document.

persons so engaged would also be required to be disclosed.

6. Principal Risk Factors

As noted above, current Rule 4.21(a)(17)(ii) requires the inclusion, at the front of the disclosure document, of a "boiler-plate" risk disclosure statement that describes generically the risks of pool investments. Proposed Rule 4.24(g) would require, in addition to this required disclosure, a discussion designed to address risk factors specific to the pool offered. This discussion would address the volatility of the pool investment as compared to investments in other types of trading vehicles and other risks relating to the particular trading program to be followed, such as risks resulting from concentration of investments in particular commodities or contracts or from trading foreign contracts that are subject to currency rate fluctuations. Risks relative to transactions in off-exchange instruments, e.g., counterparty creditworthiness risks,[57] or to the lack of relevant experience of the CPO or CTAs should also be addressed. The Commission believes that a succinct "plain English" discussion of the risks of the investment being offered would be highly material to the prospective participant's evaluation of the proposed investment and that this type of disclosure warrants particular attention when complex over-the-counter transactions are contemplated. Establishment of an express requirement for disclosure of principal risk factors essentially codifies disclosures that would likely be required under the specific requirements of existing rules or as material information.[58]

The Commission welcomes comment as to whether additional guidance should be given in the rule as to the types of risk factors that should be discussed and as to any specific factors that should be identified in this context.

[57] These risks may differ materially from those entailed in exchange-traded futures and option transactions, which are backed by clearing organization guarantees, daily marking-to-market and settlement, and segregation and minimum capital requirements applicable to intermediaries. Transactions entered directly between two counterparties generally do not benefit from such protections and expose the parties to the risk of counterparty default.

[58] This requirement is consistent with SEC requirements for public offerings and investment company offerings. See, *e.g.*, Item 3 of Form S–1, which requires a discussion of the principal factors that make the offering speculative or one of high risk and Item 4(c) of Form N–1A which requires a brief discussion of the "principal risk factors associated with investment in Registrant, including factors peculiar to the Registrant as well as those generally attendant to investment in an investment company with investment policies and objectives similar to Registrant's."

7. Use of Proceeds

Under current Rule 4.21(a)(1)(viii), the pool operator must describe the types of commodity interests that the pool is expected to trade and any restrictions or limitations on such trading established by the CPO. Current Rule 4.21(a)(9) requires a description of the manner in which the pool will fulfill its margin requirements and of the form in which non-margin funds will be held. The nature of non-cash items must be described and the person to whom any income generated by such items will be paid must be identified. Taken together, Rules 4.21(a)(1)(viii) and (a)(9) call for information concerning all types of trading and investments in which the pool is expected to engage. As a result, under current rules, CPOs generally provide a description of the overall trading activities of the pool, such that the full range of transactions, whether in securities, commodity interests or other types of interests, is disclosed.

Under the proposal, current Rules 4.21(a)(1)(viii) and 4.21(a)(9) would be consolidated into Rule 4.24(h) under the caption "Use of Proceeds"[59] and revised to better reflect changes in the nature of funds management. Proposed Rule 4.24(h) would require the description of the pool's trading[60] to include not only transactions in commodity interests but also any other types of interests in which the pool is expected to trade. With respect to pool funds that are not deposited as margin or held in cash or cash equivalents, the proposed rule would require disclosure of the nature of such property, for example, whether it consists of securities listed on a national securities exchange, bonds, commercial paper or interests in commodity pools, whether such property is subject to state or federal regulation or to regulation by a foreign government, and any investment rating applicable to such property. The proposed rule also would require the CPO to indicate the type of custodian, *e.g.*, bank, broker-dealer or other entity, which will hold property not deposited as margin or option premiums and the jurisdiction where held, if other than the United States. The Commission believes that the proposed use of proceeds provision should provide a more coherent statement of the matters called for by current requirements in a manner that is consistent with current practice.

[59] Captions are proposed to be added to increase ease of reference to the rules.

[60] The proposed rule would also call specifically for a description of the trading program that will be followed.

8. Fees and Expenses

Rule 4.21(a)(7) currently requires a description of the expenses that the CPO knows or should know have been incurred in the past year or will be incurred in the current year. Expenses required to be disclosed include, without limitation, fees for management, trading advice, brokerage commissions, legal advice, accounting and organizational services. Rule 4.21(a)(14) requires disclosure of fees and commissions paid in connection with solicitations for the pool. Proposed new Rule 4.24(i) would combine the requirements of Rule 4.21 (a)(7) and (a)(14) to provide in a single section of the disclosure document a complete discussion of costs incurred by the pool for all purposes.

The proposed provision relating to fees and expenses (Rule 4.24(i)) requires a detailed description of fees and expenses, including certain fees and expenses that are not specifically enumerated in current Rule 4.21 but that constitute material disclosures and are thus required to be disclosed.[61] Thus, clearance fees and fees paid to national exchanges and self-regulatory organizations, incentive fees, including any disproportionate share of profits allocated to the CPO, *i.e.*, a right of the CPO to receive a greater than pro-rata share of the pool's profits, and fees and expenses incurred as a result of investments in investee pools and other investment vehicles or to fund the guarantee of a limited risk pool, would be required to be set forth specifically in the table. In addition, the proposed rule would clarify that disclosure of fees paid in connection with solicitations for the pool must include trailing commissions as well as any type of benefit that may accrue to persons engaged in such solicitations.

Expenses, fees and commissions are assessed based on various factors. For example, brokerage fees are assessed based on a round-turn commission, management fees may be based on the net asset value of the pool's assets, incentive fees on trading profits, and sales commissions may be charged as a percentage of the proceeds of the offering. A description of each separate fee and expense may not, however, convey a clear understanding of the actual portion of each pool participation absorbed by fees and expenses. As the risk disclosure statement required by current Rule 4.21(a)(17) indicates, "in some cases, commodity pools are subject to substantial charges for management, advisory and brokerage

[61] See note 48.

fees," and "it may be necessary for those pools that are subject to these charges to make substantial trading profits to avoid depletion or exhaustion of their assets."

To foster a better understanding of the nature of those costs and their impact upon the investment, the proposal would require, in addition to a narrative description, a tabular presentation of fees and expenses from all sources setting forth how the break-even point for the pool is calculated ("break-even analysis"). As noted *supra*, the "break-even point" for the pool, *i.e.*, the trading profit that a pool or trading program must realize in its first year to equal all fees and expenses such that a participant or client will recoup its initial investment,[62] would be required to be set forth as a single figure in the forepart of the pool disclosure document, expressed as a percentage of a unit of initial investment. The break-even analysis would provide an explanation, in tabular form, of how the break-even point is calculated, taking into account all fees, expenses and commissions applicable to the pool. The proposal would require the break-even analysis to be prepared in accordance with rules promulgated by a registered futures association pursuant to section 17(j) of the Act. As noted above, NFA has filed with the Commission a proposed interpretation of Compliance Rule 2–13 which would set forth how a break-even point must be calculated and the format in which such calculation must be disclosed.[63] The Commission believes that these proposed requirements with respect to fees and expenses will serve to better codify disclosures required under existing rules and assist readers of disclosure documents in understanding the nature and effect upon investment returns of costs incidental to the offering and operation of the pool. The Commission requests comment as to whether a description of fees and expenses should continue to be required or whether the break-even analysis is sufficient to accurately describe the costs of participation in a pool.

9. Conflicts of Interest and Related Party Transactions

Pursuant to current Rule 4.21(a)(3), a description of any actual or potential conflict of interest regarding the pool on the part of the CPO, CTA, FCM, IB and their principals must be included in the disclosure document. This discussion must include a description of any arrangement whereby the CPO, CTA or their principals may benefit from the maintenance of the pool account with the FCM or from its introduction to an FCM by an IB. Like current Rule 4.21(a)(3), proposed Rule 4.24(j) would require disclosure of any conflict of interest on the part of the pool's CPO and its principals. Subject to the requirement that all material information be disclosed, the proposal would eliminate such disclosure with respect to CTAs allocated less than ten percent of the pool's futures margins and commodity option premiums and investee pools allocated less than ten percent of the pool's assets.[64] The proposed rule also would require disclosure of conflicts of interest with respect to any persons providing services to the pool or soliciting participants for the pool. This provision would encompass certain categories of Commission registrants specified in the existing rule, *i.e.*, FCMs and IBs, as well as any other person providing services to the pool.[65] The Commission believes that the purposes of conflict of interest disclosure are not limited to situations where such conflicts relate to a Commission registrant and that there may be unregulated parties, *e.g.*, a CPO affiliate acting as counterparty to over-the-counter transactions with the pool, as to whom such disclosure may be equally material. Consequently, the Commission proposes to delete the specific reference in the current rule to the pool's FCM and IB and their principals and to substitute more general terminology intended to include but not to be limited to FCMs and IBs. Although the express requirement of disclosure of conflicts of interest on the part of FCM and IB principals would be eliminated, disclosure of such conflicts may be required as material information in specific situations, *e.g.*, where an FCM's majority owner or other controlling person has such a conflict in regard to the pool.

In addition, the current provision requiring the description of carrying broker or introducing arrangements benefitting the CPO or CTA and their principals has been revised to make clear that payments for order flow and soft dollar arrangements must be included. Payment for order flow is a practice whereby FCMs and IBs compensate CPOs and CTAs for directing customers to them. Soft dollar arrangements consist of arrangements whereby customer or pool funds are used to pay for research or other services that benefit the CPO or CTA. Both practices have been of concern to regulators because, among other things, they are often inadequately disclosed.[66]

Separately, under proposed Rule 4.24(k) ("Related Party Transactions"), any material transactions or arrangements for which there is no publicly disseminated price between the pool and any person affiliated with a person providing services to the pool, would be required to be disclosed, including the costs of such transactions to the pool.[67] The Commission believes that this type of disclosure may be viewed as already required in many cases under the general requirement that material information be disclosed. However, given the increasing use of over-the-counter transactions in which pools contract with the pool operator or an affiliate of the pool operator, an express requirement for such disclosure appears warranted.

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[62] This definition would be set forth in Rule 4.10(n).

[63] As set forth in NFA's proposed interpretation of Compliance Rule 2–13, to calculate the break-even point, the CPO would determine, per unit of participation, the amount of fees and expenses expected to be incurred by the pool during its first year of operation and subtract from that amount the amount of interest income expected to be earned by the pool in its first year, to obtain the pool's gross trading profit necessary for the pool to retain its initial net asset value per unit. The CPO would then determine the amount of additional trading profits necessary to offset the incentive fees which the CPO would charge for managing the pool. Finally, the CPO would calculate the total amount of trading income that the pool must earn to equal the initial selling price per unit after one year. This calculation would be required to be presented in tabular form.

[64] Under the general materiality standard, disclosure of conflicts of interest on the part of CTAs and CPOs of investee pools below the ten percent thresholds would be required if, in light of all relevant circumstances, including, for example, the nature and severity of the conflict, such disclosure would be material to prospective pool participants.

[65] However, current Rule 4.21(h) would require disclosure of all material conflicts of interest.

[66] See, e.g., SEC Release No. 34–33026, 58 FR 52934 (October 6, 1993) and *Market 2000, An Examination of Current Equity Market Developments: Study V, Best Execution* (Division of Market Regulation, SEC, January 1994).

[67] The purpose of this requirement is illustrated by the events preceding the demise of Stotler Funds, Inc., a wholly-owned subsidiary of Stotler Group, Inc. ("Stotler Group"), a registered FCM. See Complaint, *CFTC* v. *Stotler Funds, Inc*., Civil Action No. 90 C 4387 (N.D. Ill., July 31, 1990). The defendant, Stotler Funds, Inc., was the general partner and CPO of, among other pools, Compass Futures Fund ("Compass") and Advanced Portfolio Management, Limited Partnership ("Advanced"). The Commission's complaint included allegations that in December 1989, Compass used pool funds in the amount of approximately $4,550,000 (about 80% of its assets) to purchase commercial paper issued by Stotler Group and that Advanced used pool funds in the amount of approximately $1 million (about 10% of its assets) to make a loan to Stotler Group. The disclosure documents of Compass and Advanced did not disclose such uses of pool funds. The limited partnership agreement for Compass specifically precluded the use of pool funds to make loans.

10. Litigation

Current Rule 4.21(a)(13) requires disclosure of any material administrative, civil or criminal action within the five years preceding the date of the disclosure document against the CPO, CTA(s), FCM, IB and their principals. Like the current rule, proposed Rule 4.24(1) would require the disclosure of administrative, civil or criminal actions against certain persons involved in operating or trading the pool during the five years preceding the date of the disclosure document. However, this requirement would be substantially simplified. Concluded actions that resulted in an adjudication on the merits in favor of such persons would not be required to be disclosed. In addition, disclosure of the litigation background of FCMs and IBs would be limited as follows. First, with respect to litigation brought by private parties, the proposed rule would provide for the materiality of the action to be determined by reference to the potential financial impact upon the FCM or IB. Specifically, an action would be considered material if it would be required to be disclosed in the notes to the registrant's financial statements prepared pursuant to generally accepted accounting principles ("GAAP"). Generally, under GAAP, certain information regarding litigation must be disclosed if the potential of a financial loss from the litigation is either probable (*i.e.*, likely to occur) or reasonably possible (more than remote but less than likely).[68] Except for events occurring subsequent to the issuance of the latest certified financial statements, under this paragraph, litigation required to be disclosed would already have been disclosed in the FCM's or IB's latest certified financial statements.

Second, the requirement to disclose actions brought by the Commission and other regulatory agencies against FCMs and IBs would be streamlined. Actions brought by the Commission would be treated differently from those brought by other regulatory agencies due to the presumptively greater significance of such actions to an investment decision. All actions brought by the Commission would be considered material other than concluded actions which did not result in fines exceeding $50,000 and did not involve allegations of fraud or other willful misconduct. Actions brought by any other federal or state agency or by a self-regulatory organization, whether domestic or foreign, would be considered material if they involved allegations of fraud or other willful misconduct.[69]

In addition, the proposed rule would eliminate the requirement to disclose litigation against CTAs allocated less than twenty-five percent of the pool's initial futures margins and commodity option premiums and the principals of FCMs and IBs. Of course, as noted above with respect to conflicts of interest on the part of FCM and IB principals, the requirement to disclose all material information may require such disclosure in particular cases. Proposed Rule 4.24(*l*) also requires disclosure of litigation against a pool's trading manager, if any, and its principals, a requirement which is encompassed within the existing requirement for disclosure of litigation against CTAs.

11. Limited Risk Pools

So-called "guaranteed pools," which generally are designed to assure participants the return of their initial investment, have been extensively offered in recent years. Such pools generally commit a significant portion of their assets to interest-bearing instruments, letters of credit or other investments to fund the "guarantee" and correspondingly reduce the level of their futures or other investments. Many "guarantee" structures require that the participant maintain his investment in the fund for a specified period of years in order to realize on the guarantee. Because such structures impose significant costs which limit the potential for futures and other investment-related returns, are often subject to significant conditions, *e.g.*, that redemption rights not be exercised for a specified period of years from the date of the initial investment, and are subject to varying degrees of risk of nonfulfillment due to unforeseen trading losses or other reasons, the use of "guarantee" terminology in pool disclosure documents raises certain regulatory concerns. These concerns relate to such matters as the representations expressly or impliedly made as to the nature and security of the pool investment and the impact of the guarantee structure upon the overall investment. In Advisory 86–1[70], the Division of Trading and Markets set forth certain disclosures that should be made in this context to assure that prospective investors are apprised of material information concerning guarantee structures. These include, for example, statements that a specified percentage of each unit of participation in the pool has been set aside to purchase the guarantee, that redemptions are not available for a specified period and that additional expenses and management fees are charged in connection with the guarantee, as applicable.

Proposed Rule 4.24(*o*) would codify minimum disclosures relevant to limited risk pools. Under the proposal, the term "limited risk pool" would be defined in Rule 4.10(i) to mean "a pool * * * that is designed to limit the loss of the initial investment of its participants." Rule 4.24(*o*) would generally codify Advisory 86–1 by requiring the CPO of a limited risk pool to describe the nature of the limitation on risk intended to be provided, the manner in which the limitation is achieved, including the cost of providing it, the conditions that must be satisfied for participants to receive the benefits of the risk limitation and the circumstances in which the risk limitation becomes operative.[71] CPOs are also reminded of the admonition in Advisory 86–1 that "(a)ny statements that suggest that the risks of futures trading are decreased by reason of this structure have a high potential to mislead or deceive and could result in serious violations of the Commission's regulations and anti-fraud provisions."

12. Other Proposed Changes

Current Rule 4.21 requires certain negative statements to be made in a pool disclosure document where there is no pertinent information to report. A CPO must state, if true, that there are no actual or potential conflicts of interest regarding any aspect of the pool on the part of certain persons, that certain persons do not own any beneficial interest in the pool, that no material litigation occurred within the past five years against the CPO, CTA, FCM, IB and their principals, and that the CPO, CTA, and their principals will not trade for their own accounts. These negative statements would no longer be required.

Proposed Rule 4.21 would permit CPOs to provide prospective participants who are accredited investors as defined in Rule 501 of Regulation D of the Securities Act[72] with a notice of intended offering and term sheet prior to delivery of the

[68] See FASB–5 (Accounting for Contingencies) relating to disclosure of contingencies, including litigation.

[69] Litigation disclosures in CTA disclosure documents with respect to FCMs and IBs would be simplified in similar fashion.

[70] (1984–1986 Transfer Binder), Comm. Fut. L. Rep. (CCH) ¶ 23,035 (April 25, 1986).

[71] Proposed Rule 4.24(p), which deals with transferability and redemption, would require a description of restrictions on redemption associated with the pool's investments. The Commission intends that this discussion include a description of any restrictions on transferability and redemption due to use of pool funds to support a guarantee and of any restrictions upon vesting of a guarantee.

[72] 17 CFR Rule 230.501 (1993).

disclosure document. This provision should facilitate the offering of pools that qualify for relief from registration under the Securities Act as private offerings.

The Commission is requesting comment as to whether there are specific situations in which the streamlined disclosure document proposed herein may not offer adequate protection to prospective and existing pool participants or managed account clients. Further, the Commission requests comment as to whether additional changes to further streamline the requirements of Rule 4.21 and 4.31 and improve the clarity of such disclosures could be made without reducing customer protection and on whether any additional disclosures should be required.

The Commission also requests comment on whether the requirement in current Rule 4.21(d) (proposed to be numbered as Rule 4.21(b)) that a CPO must receive from a prospective pool participant an acknowledgment that the participant has received a disclosure document for the pool continues to be necessary.

C. Section 4.26—Use, Amendment and Filing of Disclosure Documents

Except as follows, the requirements for updating pool disclosure documents would remain substantially unchanged and are proposed to be set forth in Rule 4.26. The Commission is proposing to extend from six to nine months the maximum period between the date on a disclosure document and the date of its use. This would conform the updating requirements of pool disclosure documents to those of Section 10(a)(3) of the Securities Act for public securities offerings.[73] As under current Rule 4.21(b), two copies of each amendment to the disclosure document must be filed within twenty-one calendar days of the date upon which the pool operator first knows or has reason to know of the defect requiring the amendment. There has been some uncertainty as to whether amendments are subject to the twenty-one day prefiling requirements of current Rule 4.21(g)(1) (renumbered as Rule 4.26(d)(1)). The Commission is confirming that such amendments may be used simultaneously with their filing with the Commission, *i.e.*, not more than twenty-one days after the date on which the pool operator first knows or has reason to know that the disclosure document is materially inaccurate or incomplete.

[73] Section 10(a)(3) of the Securities Act requires that when a securities prospectus is used more than nine months after the effective date of the registration statement, information contained therein may not be as of a date more than sixteen months prior to such use if the information is known and can be furnished without unreasonable effort or expense.

IV. 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 rule amendments discussed herein would affect registered CPOs and CTAs. The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the RFA.[74] The Commission previously determined that registered CPOs are not small entities for the purpose of the RFA.[75] With respect to CTAs, the Commission has stated that it would evaluate within the context of a particular rule proposal whether all or some affected CTAs would be considered to be small entities and, if so, the economic impact on them of any rule.[76]

The amendments proposed herein would reduce rather than increase the requirements of Rule 4.21 for CPOs and the requirements of Rule 4.31 for CTAs. Accordingly, pursuant to Rule 3(a) of the RFA (5 U.S.C. 605(b)), the Acting Chairman, on behalf of the Commission, certifies that these proposed amendments would not have a significant economic impact on a substantial number of small entities. The Commission nonetheless invites comment from any registered CPO or CTA who believes that these rules would have a significant impact on its operations.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, ("PRA") 44 U.S.C. 3501 *et. seq.*, 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 rule amendments and the associated information collection requirements to the Office of Management and Budget. The burden associated with this entire collection, including this proposed rule, is as follows:

Average Burden Hours per Response: 124.65.
Number of Respondents: 3,924.
Frequency of Response: On Occasion.

The burden associated with these specific proposed rules, is as follows:

Average Burden Hours per Response: 8.05.
Number of Respondents: 1,162.
Frequency of Response: On Occasion.

Persons wishing to comment on the estimated paperwork burden associated with this proposed rule should contact Gary Waxman, Office of Management and Budget, room 3228, 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

Customer protection, risk disclosure statements.

17 CFR Part 4

Commodity pool operators and commodity trading advisors.

17 CFR Part 30

Foreign futures and foreign options transactions.

17 CFR Part 150

Limits on positions.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act, and in particular, sections 2(a)(1), 4b, 4c, 4*l*, 4m, 4n, 4*o*, and 8a, 7 U.S.C. 2, 6b, 6c, 6*l*, 6m, 6n, 6*o*, and 12a, the Commission hereby proposes to amend Chapter I 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 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6*l*, 6m, 6n, 6*o*, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a-1, 16, 16a, 19, 21, 23 and 24.

2. Section 1.55 is proposed to be amended by adding paragraph (a)(1)(iii) to read as follows:

§ 1.55 Distribution of "Risk Disclosure Statement" by futures commission merchants and introducing brokers.

(a)(1) * * *

(iii) Solely for purposes of this section, a pool operated by a commodity pool operator registered under the Commodity Exchange Act or exempt

[74] 47 FR 18618–18621 (April 30, 1982).

[75] 47 FR 18619–18620.

[76] 47 FR 18618, 18620.

from such registration need not be treated as a customer.

* * * * *

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

3. The authority citation for part 4 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 6b, 6c, 6*l*, 6m, 6n, 6*o*, 12a and 23.

Subpart A—General Provisions, Definitions and Exemptions

4. Section 4.10 is proposed to be amended by adding new paragraphs (h), (i), (j), (k), (*l*), (m), and (n) to read as follows:

§ 4.10 Definitions.

* * * * *

(h) *Multi-advisor pool* means a pool in which no commodity trading advisor is allocated or intended to be allocated twenty-five percent or more of the pool's aggregate initial margin and premiums for futures and commodity option contracts and no investee pool is allocated or intended to be allocated twenty-five percent or more of the pool's total assets.

(i) *Limited risk pool* means a pool (commonly referred to as a "guaranteed pool") that is designed to limit the loss of the initial investment of its participants.

(j) *Trading manager* means, with respect to a pool, any person, other than the commodity pool operator of the pool, with authority to allocate pool assets to commodity trading advisors or investee pools.

(k) *Major commodity trading advisor* means any commodity trading advisor that is allocated or is intended to be allocated at least twenty-five percent of the pool's aggregate initial margin and premiums for futures and commodity option contracts.

(l) *Major investee pool* means any investee pool that is allocated or intended to be allocated at least twenty-five percent of the assets of the pool.

(m) *Trading principal* means:

(1) A principal of a commodity pool operator who participates in making commodity interest trading decisions for a pool, or who supervises, or has authority to allocate pool assets to, persons so engaged; and

(2) A principal of a commodity trading advisor who participates in making commodity interest trading decisions for a client account or who supervises or selects persons so engaged.

(n) *Break-even point* means the trading profit that a pool or trading program must realize in its first year to equal all fees and expenses such that a participant or client will recoup its initial investment, as calculated pursuant to rules promulgated by a registered futures association pursuant to section 17(j) of the Act. The break-even point must be expressed as a percentage of the minimum unit of initial investment and assume redemption of the initial investment at the end of the first year of investment.

5. Section 4.12 is proposed to be amended by revising paragraphs (b)(2)(i) and (b)(5)(i) to read as follows:

§ 4.12 Exemption from provisions of part 4.

* * * * *

(b) * * *

(2) * * *

(i) In the case of § 4.24, that the Commission accept in lieu and in satisfaction of the disclosure document specified by that section an offering memorandum for the pool which does not contain the information required by §§ 4.24(a), 4.24(b), and 4.24(n), *provided*, that the offering memorandum:

(A) Is prepared pursuant to the requirements of the Securities Act of 1933 or the exemption from said Act pursuant to which the pool is being offered and sold;

(B) Contains the information required by §§ 4.24(c) through (m) and (o) through (u);

(C) Complies with the requirements of §§ 4.24(v) and (w).

* * * * *

(5)(i) If a claim of exemption has been made under § 4.12(b)(2)(i), the commodity pool operator must make a statement to that effect on the cover page of each offering memorandum, or amendment thereto, that it is required to file with the Commission pursuant to § 4.26.

* * * * *

6. Section 4.21 is proposed to be revised to read as follows:

§ 4.21 Required Delivery of Pool Disclosure Document.

(a) No commodity pool operator registered or required to be registered under the Act may, directly or indirectly, solicit, accept or receive funds, securities or other property from a prospective participant in a pool that it operates or that it intends to operate unless, on or before the date it engages in that activity, the commodity pool operator delivers or causes to be delivered to the prospective participant a disclosure document for the pool containing the information set forth in § 4.24, *Provided, however*, That where the prospective investor is an accredited investor, as defined in 17 CFR 230.501, a notice of intended offering and term sheet may be provided subject to rules promulgated by a registered futures association pursuant to section 17(j) of the Act.

(b) The commodity pool operator may not accept or receive funds, securities or other property from a prospective participant unless the pool operator first receives from the prospective participant an acknowledgment signed and dated by the prospective participant stating that the participant received a disclosure document for the pool.

7. Section 4.22 is proposed to be amended by adding new paragraph (a)(4) to read as follows:

§ 4.22 Reporting to pool participants.

(a) * * *

(4) The Account Statement must provide the names of all commodity trading advisors directing trading for the pool and of all investee pools as of the date of the Account Statement, together with the percentage of pool assets each is allocated. In addition, if the performance of major commodity trading advisors and investee pools is required to be disclosed in a pool disclosure document, the Account Statements must include the past performance of each commodity trading advisor previously allocated less than ten percent of the pool's aggregate initial margin and premiums for futures and commodity option contracts and investee pool previously allocated less than ten percent of the pool assets that is a major commodity trading advisor or investee pool as of the date of the Account Statement.

* * * * *

8. Section 4.23 is proposed to be amended by revising paragraph (a)(3) to read as follows:

§ 4.23 Recordkeeping.

* * * * *

(a) * * *

(3) The acknowledgement specified by § 4.21(b) for each participant in the pool.

* * * * *

9. Sections 4.24, 4.25 and 4.26 are proposed to be added as follows:

§ 4.24 General disclosures required.

Except as otherwise provided herein, a disclosure document must include the following information.

(a) *Cautionary statement.* The following Cautionary Statement must be prominently displayed on the cover page of the disclosure document.

THE COMMODITY FUTURES TRADING COMMISSION HAS NOT PASSED UPON

THE MERITS OF PARTICIPATING IN THIS POOL NOR HAS THE COMMISSION PASSED ON THE ADEQUACY OR ACCURACY OF THIS DISCLOSURE DOCUMENT.

(b) *Risk Disclosure Statement.* (1) The following Risk Disclosure Statement must be prominently displayed immediately following any disclosures required to appear on the cover page of the disclosure document as provided by the Commission or any applicable federal or state securities laws and regulations.

RISK DISCLOSURE STATEMENT

YOU SHOULD CAREFULLY CONSIDER WHETHER YOUR FINANCIAL CONDITION PERMITS YOU TO PARTICIPATE IN A COMMODITY POOL. IN SO DOING, YOU SHOULD BE AWARE THAT FUTURES AND OPTIONS TRADING CAN QUICKLY LEAD TO LARGE LOSSES AS WELL AS GAINS. SUCH TRADING LOSSES CAN SHARPLY REDUCE THE NET ASSET VALUE OF THE POOL AND CONSEQUENTLY THE VALUE OF YOUR INTEREST IN THE POOL. IN ADDITION, RESTRICTIONS ON REDEMPTIONS MAY AFFECT YOUR ABILITY TO WITHDRAW YOUR PARTICIPATION IN THE POOL.

FURTHER, COMMODITY POOLS MAY BE SUBJECT TO SUBSTANTIAL CHARGES FOR MANAGEMENT, AND ADVISORY AND BROKERAGE FEES. IT MAY BE NECESSARY FOR THOSE POOLS THAT ARE SUBJECT TO THESE CHARGES TO MAKE SUBSTANTIAL TRADING PROFITS TO AVOID DEPLETION OR EXHAUSTION OF THEIR ASSETS. THIS DISCLOSURE DOCUMENT CONTAINS A COMPLETE DESCRIPTION OF EACH EXPENSE TO BE CHARGED THIS POOL AT PAGE (insert page number) AND A STATEMENT OF THE PERCENTAGE RETURN NECESSARY TO BREAK EVEN, THAT IS, TO RECOVER THE AMOUNT OF YOUR INITIAL INVESTMENT, AT PAGE (insert page number).

THIS BRIEF STATEMENT CANNOT DISCLOSE ALL THE RISKS AND OTHER FACTORS NECESSARY TO EVALUATE YOUR PARTICIPATION IN THIS COMMODITY POOL. THEREFORE, BEFORE YOU DECIDE TO PARTICIPATE IN THIS COMMODITY POOL, YOU SHOULD CAREFULLY STUDY THIS DISCLOSURE DOCUMENT, INCLUDING A DESCRIPTION OF THE PRINCIPAL RISK FACTORS OF THIS INVESTMENT, AT PAGE (insert page number).

(2) If the pool may trade foreign futures or options contracts, the Risk Disclosure Statement must further state:

YOU SHOULD ALSO BE AWARE THAT THIS COMMODITY POOL MAY TRADE FOREIGN FUTURES OR OPTIONS CONTRACTS. TRANSACTIONS ON MARKETS LOCATED OUTSIDE THE UNITED STATES, INCLUDING MARKETS FORMALLY LINKED TO A UNITED STATES MARKET, MAY BE SUBJECT TO REGULATIONS WHICH OFFER DIFFERENT OR DIMINISHED PROTECTION TO THE POOL AND ITS PARTICIPANTS. FURTHER, UNITED STATES REGULATORY AUTHORITIES MAY BE UNABLE TO COMPEL THE ENFORCEMENT OF THE RULES OF REGULATORY AUTHORITIES OR MARKETS IN NON-UNITED STATES JURISDICTIONS WHERE TRANSACTIONS FOR THE POOL MAY BE EFFECTED.

(c) *Table of Contents.* A table of contents showing, by subject matter, the location of the disclosures made in the disclosure document must appear immediately following the Risk Disclosure Statement.

(d) *Information Required In the Forepart of the Document:* (1) The name, address of the main business office, main business telephone number and form of organization of the pool. If the mailing address of the main business office is a post office box number or is not within the United States, the pool operator must state where the pool's books and records will be kept and made available for inspection;

(2) The name, address of the main business office, main business telephone number and form of organization of the commodity pool operator. If the mailing address of the main business office is a post office box number or is not within the United States, the pool operator must state where its books and records will be kept and made available for inspection;

(3) A statement whether the pool is:

(i) privately offered pursuant to 15 U.S.C. 4(2) of the Securities Act of 1933;

(ii) A multi-advisor pool as defined in § 4.10(h);

(iii) A limited risk pool as defined in § 4.10(i); and

(iv) Continuously offered and if not, the closing date of the offering.

(4) The date when the disclosure document will first be used; and

(5) The break-even point per unit of initial investment, as specified in § 4.10(n).

(e) *The name of:* (1) Each principal of the pool operator;

(2) The pool's trading manager, if any, and each principal thereof; and

(3) Each investee pool allocated or intended to be allocated at least ten percent of the assets of the pool offered, each commodity trading advisor that is allocated or intended to be allocated at least ten percent of the pool's aggregate initial margin and premiums for futures and commodity option contracts, the operator of each such investee pool and each principal of such commodity trading advisor and of the commodity pool operator of such investee pool;

(4) Which of the foregoing persons will make trading decisions for the pool; and

(5) If known, the futures commission merchant through which the pool will execute its trades.

(f) *Business background.* (1) The business background, for the five years preceding the date of the disclosure document, of:

(i) The commodity pool operator, the pool's trading manager, if any, each major commodity trading advisor and the operator of each major investee pool; and

(ii) Each principal of the foregoing persons who participates in making trading or operational decisions for the pool or supervises persons so engaged.

(2) The pool operator must include in the description of the business background of each such person the name and main business of that person's employers, business associations or business ventures and the nature of the duties performed by such person for the employers or in connection with the associations or ventures.

(g) *Principal risk factors.* As applicable, a discussion of the principal risk factors of this investment. This discussion must include, without limitation, risks relating to volatility, leverage, and counterparty creditworthiness.

(h) *Use of proceeds.* The pool operator must disclose:

(1) The types of commodity interests or other interests the commodity pool operator intends that the pool will hold or trade, with a description of the trading program that will be followed and any restrictions or limitations on such interests or trading required by the pool's organizational documents or otherwise.

(2)(i) The manner in which the pool will fulfill its margin requirements and the approximate percentage of the pool's property that will be segregated pursuant to the Act and the Commission's regulations thereunder.

(ii) If property deposited as margin generates income, to whom that income will be paid.

(iii) If the pool will fulfill its margin requirements with other than cash deposits, the nature of such deposits.

(3) With respect to pool property not deposited as margin, paid as premiums or held in cash or cash equivalents:

(i) The nature of such property (*e.g.*, securities listed on a national securities exchange, interests in commodity pools or other funds, bonds, commercial paper) including whether such property is subject to state or federal regulation or to regulation by a foreign

government, and any investment rating thereof; and

(ii) The custodian or other entity, *e.g.*, bank or brokerdealer, which will hold pool property not deposited as margin or paid as premiums, and, if such property will be held or invested outside of the United States, its territories or possessions, the jurisdiction in which it will be held;

(i) *Fees and expenses.* (1) A complete description of each fee, expense and commission which the commodity pool operator knows or should know has been incurred by the pool for its preceding fiscal year and is expected to be incurred by the pool in its current fiscal year, including fees and expenses occurring within investee pools.

(2) This description shall include, but not be limited to:

(i) Management fees;

(ii) Brokerage fees and commissions, including interest income paid to futures commission merchants;

(iii) Fees and commissions paid in connection with trading advice provided to the pool;

(iv) Fees and expenses incurred within investments in investee pools and other collective investment vehicles, disclosed separately for each investment tier;

(v) Incentive fees and any disproportionate share of profits allocated to the commodity pool operator, *i.e.*, any right of the commodity pool operator to receive a greater than pro rata share of the pool's profits, based on the percentage of capital contributions made by the commodity pool operator.

(vi) Commissions or other benefits, including trailing commissions paid or that may be paid or accrue, directly or indirectly, to any person in connection with the solicitation of participations in the pool; and

(vii) Professional and general administrative fees and expenses, including legal and accounting fees and office supplies expenses;

(viii) Organizational and offering expenses;

(ix) Clearance fees and fees paid to national exchanges and self-regulatory organizations;

(x) For limited risk pools, any costs of providing the limitation on risk as referred to in paragraph (o)(3) of this section; and

(xi) Any other fee or expense.

(3) Where any expense, fee or commission is determined by reference to a base amount including, but not limited to, "net assets," "gross profits," "net profits," or "net gains," the pool operator must specifically explain how such base amount will be calculated.

(4) Where any expense, fee or commission is based on an increase in the value of the pool, the pool operator must specify how the increase is calculated, the period of time during which the increase is calculated, the expense, fee or commission to be charged at the end of that period and the value of the pool at which payment of the expense, fee or commission commences.

(5) Where any expense, fee or commission of the pool has been paid or is to be paid by a person other than the pool, the pool operator must disclose the nature and amount thereof and the person who paid or who is expected to pay it.

(6) The pool operator must provide, in a tabular format, an analysis setting forth how the break-even point for the pool was calculated. The analysis must include all fees, expenses and commissions of the pool, as set forth in § 4.24(i)(2).

(j) *Conflicts of Interest.* (1) A full description of any actual or potential conflicts of interest regarding any aspect of the pool on the part of:

(i) The commodity pool operator, the pool's trading manager, if any, any commodity trading advisor allocated or intended to be allocated at least ten percent of the pool's aggregate initial margin and premiums for futures and commodity option contracts and the commodity pool operator of any investee pool allocated or intended to be allocated at least ten percent of the assets of the pool;

(ii) Any principal of the foregoing; and

(iii) Any person providing services to the pool or soliciting participants for the pool.

(2) Included in the description of such conflicts shall be any arrangement whereby a person may benefit, directly or indirectly, from the maintenance of the pool's account with the futures commission merchant or from the introduction of the pool's account to a futures commission merchant by an introducing broker (such as payment for order flow or soft dollar arrangements) or from an investment of pool assets in investee pools or other investments.

(k) *Related party transactions.* A full description, including a discussion of the costs thereof to the pool, of any material transactions or arrangements between the pool and any person affiliated with a person providing services to the pool for which there is no publicly disseminated price.

(*l*) *Litigation.* (1) Subject to the provisions of paragraph (*l*)(2) of this section, any material administrative, civil or criminal action, whether pending or concluded, within five years preceding the date of the document, against any of the following persons, except a concluded action that resulted in an adjudication on the merits in favor of such person:

(i) The commodity pool operator, the pool's trading manager, if any, the pool's major commodity trading advisors and the operators of the pool's major investee pools;

(ii) Any principal of the foregoing;

(iii) The pool's futures commission merchants and introducing brokers, if any.

(2) With respect to futures commission merchants and introducing brokers, an action will be considered material if:

(i) The action would be required to be disclosed in the notes to the futures commission merchant's or introducing broker's financial statements prepared pursuant to generally accepted accounting principles;

(ii) The action was brought by the Commission, *Provided, however,* That a concluded action that did not result in fines exceeding $50,000 need not be disclosed unless it involved allegations of fraud or other willful misconduct; or

(iii) The action was brought by any other federal or state regulatory agency, or by a self-regulatory organization, domestic or foreign, and involved allegations of fraud or other willful misconduct.

(m) *Trading for Own Account.* If the commodity pool operator, the pool's trading manager, any of the pool's commodity trading advisors or any principal thereof trades or intends to trade commodity interests for its own account, the pool operator must disclose whether participants will be permitted to inspect the records of such person's trades and any written policies related to such trading.

(n) *Performance disclosures* as set forth in § 4.25.

(o) *Limited risk pools.* If the pool is a limited risk pool, as defined in § 4.10(i) the commodity pool operator must:

(1) Describe the nature of the limitation on risk intended to be provided, the manner by which such risk limitation will be achieved, including sources of funding, and what conditions must be satisfied for participants to receive the benefits of the risk limitation;

(2) Specify when the limitation on risk becomes operative; and

(3) Disclose, in the break-even analysis required by § 4.24(i)(6), the costs of purchasing and carrying the assets to fund the limitation on risk, expressed as a percentage of the price of a unit of participation.

(p) *Transferability and redemption.* (1) A complete description of any restrictions upon the transferability of a participant's interest in the pool; and

(2) A complete description of the manner in which a participant may redeem its interest in the pool. That description must specify:

(i) How the redemption value of a participant's interest will be calculated;

(ii) The conditions under which a participant may redeem its interest, including the cost associated therewith, the terms of any notification required and the time between the request for redemption and payment;

(iii) Any restrictions on the redemption of a participant's interest, including any restrictions associated with the pool's investments; and

(iv) Any liquidity risks relative to the pool's redemption capabilities.

(q) *Liability of pool participants.* The extent to which a participant may be held liable for obligations of the pool in excess of the funds contributed by the participant for the purchase of an interest in the pool.

(r) *Distribution of profits and taxation.* (1) The pool's policies with respect to the payment of distributions from profits or capital and the frequency of such payments; and

The Federal income tax effects of such payments for a participant, including a discussion of the Federal income tax laws applicable to the form of organization of the pool and to such payments therefrom. If a pool is specifically structured to accomplish certain Federal income tax objectives, the commodity pool operator must explain those objectives, the manner in which they will be achieved and any risks relative thereto.

(s) *Inception of trading and other information.* (1) The minimum aggregate subscriptions that will be necessary for the pool to commence trading commodity interests;

(2) The minimum and maximum aggregate subscriptions that may be contributed to the pool;

(3) The maximum period of time for which the pool will hold funds prior to the commencement of trading commodity interests;

(4) The disposition of funds received if the pool does not receive the necessary amount to commence trading, including the period of time within which the disposition will be made; and

(5) Where the pool operator will deposit funds received prior to the commencement of trading by the pool, and a statement as to whom any income from such deposits will be paid.

(t) *Ownership in pool.* The extent of any ownership or beneficial interest in the pool held by:

(1) The commodity pool operator;

(2) The pool's trading manager;

(3) The pool's major commodity trading advisors and the operators of the pool's major investee pools; and

(4) Any principal of the foregoing.

(u) *Reporting to pool participants.* A statement that the commodity pool operator must provide all participants with monthly or quarterly (whichever applies) statements of account and with an annual report containing financial statements certified by an independent public accountant.

(v) *Voluntary information.* If any information, other than that required by the Commission, the antifraud provisions of the Act, or any federal or state securities laws and regulations, is provided, such information:

(1) May not be misleading in content or presentation or inconsistent with required disclosures;

(2) Shall be subject to the antifraud provisions of the Act and the regulations thereunder and to rules regarding the use of promotional material promulgated by a registered futures association, pursuant to section 17(j) of the Act; and

(3) May only appear following the related required disclosures, unless otherwise specified in this rule.

(w) *Material information.* This section does not relieve a commodity pool operator from any obligation under the Act or the regulations thereunder, including the obligation to disclose all material information to existing or prospective pool participants even if the information is not specifically required by this section.

§ 4.25 Performance disclosures.

(a) *General principles and definitions.* (1)(i) Capsule Performance: Unless otherwise specified, the disclosure of the performance of a pool must be net of any fees, expenses or allocations to the commodity pool operator and include the following information.

(A) The name of the pool;

(B) A statement as to whether the pool is:

(*1*) Privately offered pursuant to 15 U.S.C. 4(2) of the Securities Act of 1933;

(*2*) A multi-advisor pool as defined in § 4.10(h); and

(*3*) A limited risk pool as defined in 4.10(i);

(C) The date of inception of trading;

(D) The aggregate gross capital subscriptions to the pool;

(E) The pool's current net asset value;

(F) The largest monthly draw-down, during the most recent five calendar years and year-to-date, expressed as a percentage of pool net asset value; the month and year of the draw-down must be specified.

(G) The worst continuous peak-to-valley draw-down during the most recent five calendar years and year-to-date, expressed as a percentage of pool net asset value, indicating the months and year of the draw-down (for example, a peak-to-valley draw-down of "4 to 8–91/25%" means that the peak-to-valley draw-down lasted from April to August of 1991 and resulted in a twenty-five percent cumulative draw-down;) and

(H) The annual and year-to-date rate of return for the pool, computed on a compounded monthly basis, except that performance of the pool offered must include monthly rates of return.

(ii) Unless otherwise specified, the performance of accounts must include:

(A) The name of the commodity trading advisor or other person trading the account and the name of the trading program;

(B) The date on which the commodity trading advisor began trading client accounts and the date when client funds began being traded pursuant to the trading program;

(C) The number of accounts directed by the commodity trading advisor pursuant to the trading program specified as of the date of the disclosure document;

(D) The total assets under the management of the commodity trading advisor and in the trading program specified, as of the date of the disclosure document;

(E) The largest monthly draw-down for the trading program specified during the most recent five calendar year and year-to-date expressed as a percentage of client funds. The month and year of the draw-down must be specified;

(F) The worst ever continuous peak-to-valley draw-down in for the trading program specified during the most recent five calendar year and year-to-date, indicating the months and year of the draw-down, expressed as a percentage of net asset value (for example, a peak-to-valley draw-down of "4 to 8–91/25%" means that the peak-to-valley draw-down lasted from April to August of 1991 and resulted in a twenty-five percent cumulative draw-down;) and

(G) The annual and year-to-date rate-of-return for the program specified, computed on a compounded monthly basis.

(2) The performance of the pool offered must be identified as such and separately presented first and its rate of

return must be stated in monthly increments.

(3) With respect to pools other than the pool offered for which performance is required to be presented under this section:

(i) Pools of the same class as the pool offered must be presented following the performance of the pool offered, on a pool by pool basis.

(ii) Pools of a different class must be presented less prominently and, unless such presentation would be misleading, may be presented in composite form; Provided, That the disclosure document must disclose how the composite was developed and that pools of different classes may not be presented in a composite. The commodity pool operator must be prepared to justify the inclusion in a composite of the pools contained therein.

(iii) For the purpose of § 4.25(3)(ii), without limitation, the following shall be considered pools of different classes: Pools privately offered pursuant to Regulation D of the Securities Act and public offerings; pools of materially different leverages; limited and non-limited risk pools; pools using different trading programs; and multi-advisor pools as defined in § 4.10(h) and non-multi-advisor pools.

(iv) Material differences among the pools for which past performance is disclosed must be described.

(4) The past performance of accounts required to be presented under this section must be presented on a program by program basis using the format set forth in § 4.25(a)(1)(ii).

(5) The disclosure document must indicate whether the pool offered will use any of the trading programs for which past performance is presented.

(6) All past performance presented in a disclosure document, including voluntarily presented performance, must be calculated in accordance with generally accepted accounting principles as specified below or by a method otherwise approved by the Commission. All performance data presented in a disclosure document must be current as of a date not more than three months preceding the date of the document. The commodity pool operator or commodity trading advisor must maintain all supporting documents necessary to substantiate such calculations, in accordance with § 1.31.

(i) The beginning net asset value for the period, which shall be the same as the previous period's ending net asset value;

(ii) All additions, whether voluntary or involuntary, during the period;

(iii) All withdrawals and redemptions, whether voluntary or involuntary, during the period;

(iv) The net performance for the period, which shall represent the change in the net asset value net of additions, withdrawals, and redemptions;

(v) The ending net asset value for the period, which shall represent the beginning net asset value plus or minus additions, withdrawals, redemptions and net performance;

(vi) The rate of return for the period, which shall be calculated by dividing the net performance by the beginning net asset value or by a method otherwise approved by the Commission; and

(vii) The number of units outstanding at the end of the period, if applicable.

(7) All required performance information must be presented for the most recent five calendar years and year-to-date or for its entire duration, if less than five years.

(8) Adverse performance: Where presentation of adverse performance is required hereunder, adverse performance means any annual return of one hundred basis points less than the ninety day Treasury Bill rate on December 31 of the calendar year in which the performance occurred or any termination of a pool pursuant to a loss termination provision. To disclose adverse performance, the pool operator must indicate the year in which it occurred, the annual rate of return for that year, the commodity trading advisor or commodity pool operator responsible for the performance and the capacity of such person in respect of the pool being offered.

(9) The performance of any pool or account in which the pool operator, trading manager, commodity trading advisor or any principal thereof, or any person providing services to the pool owns or controls fifty percent or more of the beneficial interest shall not be included in a disclosure document unless such performance is prominently labeled as proprietary and is set forth separately after all required disclosures.

(10) Any past performance presentation, whether required or voluntarily provided, must be preceded by the following statement, prominently displayed:

PAST PERFORMANCE IS NOT PREDICTIVE OF FUTURE PERFORMANCE.

(b) *Pools which have traded commodity interests for three years or more with no fewer than fifteen participants unaffiliated with the commodity pool operator and in which no more than ten percent of the assets were contributed by the commodity pool operator.* The pool operator must disclose the performance of the pool offered, as set forth in § 4.25(a)(1)(i) (C) through (H).

(c) *Other pools.* (1)(i) The pool operator must disclose the performance of the pool offered, as set forth in § 4.25(a)(1)(i) (C) through (H).

(ii) If applicable, the pool operator must prominently display the following statement:

THIS POOL HAS NOT COMMENCED TRADING AND DOES NOT HAVE ANY PERFORMANCE HISTORY.

(2) (i) The pool operator must disclose the performance of each other pool operated and each other account traded by the pool operator or, if the pool has a trading manager, by the trading manager.

(ii) If the pool operator, or if applicable, the trading manager, has less than a three-year history in trading pools with no fewer than fifteen participants unaffiliated with the pool operator and in which no more than ten percent of the assets were contributed by the commodity pool operator, the pool operator must also disclose the performance of each other pool operated and each other account traded, by each trading principal of the pool operator or the trading manager, if applicable.

(iii) If neither the pool operator or trading manager, if applicable, nor any of its trading principals has operated any other pools or traded any other accounts during the prescribed period, the pool operator must prominently display the following statement:

NEITHER THIS POOL OPERATOR (TRADING MANAGER, if applicable) NOR ANY OF ITS TRADING PRINCIPALS HAS PREVIOUSLY OPERATED ANY OTHER POOLS OR TRADED ANY OTHER ACCOUNTS;

(3)(i) The pool operator must disclose the performance of any accounts (including pools) directed by any major commodity trading advisor and of any major investee pool.

(ii) If a major commodity trading advisor or major investee pool has no prior performance history, the pool operator must prominently display the following statement(s), as applicable:

(name of the major commodity trading advisor), A COMMODITY TRADING ADVISOR THAT HAS DISCRETIONARY AUTHORITY OVER (percentage of the pool's aggregate initial margin and premiums for futures and commodity option contracts allocated to that trading advisor) PERCENT OF THE POOL'S DIRECT FUTURES AND COMMODITY OPTION TRADING HAS NOT PREVIOUSLY DIRECTED ANY ACCOUNTS; and

(name of the major investee pool), AN INVESTEE POOL THAT IS ALLOCATED

(percentage of the pool assets allocated to that investee pool) PERCENT OF THE POOL'S ASSETS HAS NOT COMMENCED TRADING.

(iii) Unless this performance is otherwise required to be disclosed, the pool operator must indicate, as set forth in § 4.25(a)(8), any adverse performance for any account (including pools) directed or operated by the pool operator, any trading principal of the pool operator or trading manager, any commodity trading advisor allocated at least ten percent of the pool's aggregate initial margin and premiums for futures and commodity option contracts and for any investee pool allocated at least ten percent of the pool's assets. In addition, if a major commodity trading advisor or major investee pool has no prior operating history, the pool operator must indicate any adverse performance for any account (including pools) directed or operated by any trading principal of that advisor or of the commodity pool operator of the investee pool. In lieu of giving an indication of adverse performance, the commodity pool operator may provide capsule performance disclosure as set forth in § 4.25(a)(1).

§ 4.26 Use, amendment and filing of disclosure document.

(a)(1) Subject to paragraph (c) of this section, all information contained in the disclosure document must be current as of the date of the document; *provided, however,* That performance information may be current as of a date not more than three months prior to the date of the document.

(2) No commodity pool operator may use a disclosure document dated more than nine months prior to the date of its use.

(b) The commodity pool operator must attach to the disclosure document the most current Account Statement and Annual Report for the pool required to be distributed in accordance with § 4.22.

(c)(1) If the commodity pool operator knows or should know that the disclosure document is materially inaccurate or incomplete in any respect, it must correct that defect and must distribute the correction to:

(i) All existing pool participants within 21 calendar days of the date upon which the pool operator first knows or has reason to know of the defect; and

(ii) Each previously solicited prospective pool participant prior to accepting or receiving funds, securities or other property from any such prospective participant. The pool operator may furnish the correction by way of an amended document, a sticker on the document, or other similar means.

(2) The pool operator may not use the document until such correction has been made.

(d) Except as provided by § 4.8:

(1) The commodity pool operator must file with the Commission two copies of the disclosure document for each pool that it operates or that it intends to operate not less than 21 calendar days prior to the date the pool operator first intends to deliver the document to a prospective participant in the pool; and

(2) The commodity pool operator must file with the Commission two copies of all subsequent amendments to the disclosure document for each pool that it operates or that it intends to operate within 21 calendar days of the date upon which the pool operator first knows or has reason to know of the defect requiring the amendment.

10. Section 4.31 is proposed to be revised to read as follows:

§ 4.31 Required delivery of disclosure document to prospective clients.

(a) No commodity trading advisor registered or required to be registered under the Act may solicit a prospective client, or enter into an agreement with a prospective client to direct the client's commodity interest account or to guide the client's commodity interest trading by means of a systematic program that recommends specific transactions, unless the commodity trading advisor, at or before the time it engages in the solicitation or enters into the agreement (whichever is earlier), delivers or causes to be delivered to the prospective client a disclosure document for the trading program pursuant to which the trading advisor seeks to direct the client's account or to guide the client's trading, containing the information set forth in §§ 4.33 and 4.34.

(b) The commodity trading advisor may not enter into an agreement with a prospective client to direct the client's commodity interest account or to guide the client's commodity interest trading unless the trading advisor first receives from the prospective client an acknowledgment signed and dated by the prospective client stating that the client received a disclosure document for the trading program pursuant to which the trading advisor will direct his account or will guide his trading.

11. Section 4.32 is proposed to be amended by revising paragraph (a)(2) to read as follows:

§ 4.32 Recordkeeping.

* * * * *

(a) * * *

(2) The acknowledgement specified in § 4.31(b).

* * * * *

12. Sections 4.33, 4.34 and 4.35 are proposed to be added as follows:

§ 4.33 General disclosures required.

Except as otherwise provided herein, a disclosure document must include the following information.

(a) *Cautionary statement.* The following Cautionary Statement, must be prominently displayed on the cover page of the disclosure document:

THE COMMODITY FUTURES TRADING COMMISSION HAS NOT PASSED UPON THE MERITS OF PARTICIPATING IN THIS TRADING PROGRAM NOR HAS THE COMMISSION PASSED ON THE ADEQUACY OR ACCURACY OF THIS DISCLOSURE DOCUMENT.

(b) *Risk disclosure statement.* (1) The following Risk Disclosure Statement must be prominently displayed immediately following any disclosures required to appear on the cover page of the disclosure document as provided by the Commission or any applicable federal or state securities laws and regulations:

RISK DISCLOSURE STATEMENT

THE RISK OF LOSS IN TRADING COMMODITIES CAN BE SUBSTANTIAL. YOU SHOULD THEREFORE CAREFULLY CONSIDER WHETHER SUCH TRADING IS SUITABLE FOR YOU IN LIGHT OF YOUR FINANCIAL CONDITION. IN CONSIDERING WHETHER TO TRADE OR TO AUTHORIZE SOMEONE ELSE TO TRADE FOR YOU, YOU SHOULD BE AWARE OF THE FOLLOWING:

IF YOU PURCHASE A COMMODITY OPTION YOU MAY SUSTAIN A TOTAL LOSS OF THE PREMIUM AND OF ALL TRANSACTION COSTS.

IF YOU PURCHASE OR SELL A COMMODITY FUTURE OR SELL A COMMODITY OPTION YOU MAY SUSTAIN A TOTAL LOSS OF THE INITIAL MARGIN FUNDS AND ANY ADDITIONAL FUNDS THAT YOU DEPOSIT WITH YOUR BROKER TO ESTABLISH OR MAINTAIN YOUR POSITION. IF THE MARKET MOVES AGAINST YOUR POSITION, YOU MAY BE CALLED UPON BY YOUR BROKER TO DEPOSIT A SUBSTANTIAL AMOUNT OF ADDITIONAL MARGIN FUNDS, ON SHORT NOTICE, IN ORDER TO MAINTAIN YOUR POSITION. IF YOU DO NOT PROVIDE THE REQUESTED FUNDS WITHIN THE PRESCRIBED TIME, YOUR POSITION MAY BE LIQUIDATED AT A LOSS, AND YOU WILL BE LIABLE FOR ANY RESULTING DEFICIT IN YOUR ACCOUNT.

UNDER CERTAIN MARKET CONDITIONS, YOU MAY FIND IT DIFFICULT OR IMPOSSIBLE TO LIQUIDATE A POSITION. THIS CAN OCCUR, FOR EXAMPLE, WHEN THE MARKET MAKES A "LIMIT MOVE."

THE PLACEMENT OF CONTINGENT ORDERS BY YOU OR YOUR TRADING ADVISOR, SUCH AS A "STOP-LOSS" OR "STOP-LIMIT" ORDER, WILL NOT

NECESSARILY LIMIT YOUR LOSSES TO THE INTENDED AMOUNTS, SINCE MARKET CONDITIONS MAY MAKE IT IMPOSSIBLE TO EXECUTE SUCH ORDERS.

A "SPREAD" POSITION MAY NOT BE LESS RISKY THAN A SIMPLE "LONG" OR "SHORT" POSITION.

THE HIGH DEGREE OF LEVERAGE THAT IS OFTEN OBTAINABLE IN COMMODITY TRADING CAN WORK AGAINST YOU AS WELL AS FOR YOU. THE USE OF LEVERAGE CAN LEAD TO LARGE LOSSES AS WELL AS GAINS.

IN SOME CASES, MANAGED COMMODITY ACCOUNTS ARE SUBJECT TO SUBSTANTIAL CHARGES FOR MANAGEMENT AND ADVISORY FEES. IT MAY BE NECESSARY FOR THOSE ACCOUNTS THAT ARE SUBJECT TO THESE CHARGES TO MAKE SUBSTANTIAL TRADING PROFITS TO AVOID DEPLETION OR EXHAUSTION OF THEIR ASSETS. THIS DISCLOSURE DOCUMENT CONTAINS, AT PAGE (insert page number), A COMPLETE DESCRIPTION OF EACH FEE TO BE CHARGED TO YOUR ACCOUNT BY THE COMMODITY TRADING ADVISOR AND A STATEMENT OF THE PERCENTAGE RETURN NECESSARY TO BREAK EVEN, THAT IS, TO RECOVER THE AMOUNT OF YOUR INITIAL INVESTMENT, AT PAGE (insert page number).

THIS BRIEF STATEMENT CANNOT DISCLOSE ALL THE RISKS AND OTHER SIGNIFICANT ASPECTS OF THE COMMODITY MARKETS. YOU SHOULD THEREFORE CAREFULLY STUDY THIS DISCLOSURE DOCUMENT AND COMMODITY TRADING BEFORE YOU TRADE, INCLUDING THE DESCRIPTION OF THE PRINCIPAL RISK FACTORS OF THIS INVESTMENT, AT PAGE (insert page number).

(2) If the commodity trading advisor may trade foreign futures or options contracts, the Risk Disclosure Statement must further state the following:

YOU SHOULD ALSO BE AWARE THAT THIS COMMODITY TRADING ADVISOR MAY ENGAGE IN TRADING FOREIGN FUTURES OR OPTIONS CONTRACTS. TRANSACTIONS ON MARKETS LOCATED OUTSIDE THE UNITED STATES, INCLUDING MARKETS FORMALLY LINKED TO A UNITED STATES MARKET MAY BE SUBJECT TO REGULATIONS WHICH OFFER DIFFERENT OR DIMINISHED PROTECTION. FURTHER, UNITED STATES REGULATORY AUTHORITIES MAY BE UNABLE TO COMPEL THE ENFORCEMENT OF THE RULES OF REGULATORY AUTHORITIES OR MARKETS IN NON-UNITED STATES JURISDICTIONS WHERE YOUR TRANSACTIONS MAY BE EFFECTED. BEFORE YOU TRADE YOU SHOULD INQUIRE ABOUT ANY RULES RELEVANT TO YOUR PARTICULAR CONTEMPLATED TRANSACTIONS AND ASK THE FIRM WITH WHICH YOU INTEND TO TRADE FOR DETAILS ABOUT THE TYPES OF REDRESS AVAILABLE IN BOTH YOUR LOCAL AND OTHER RELEVANT JURISDICTIONS.

(3) If the commodity trading advisor is not also a registered futures commission merchant, the trading advisor must make the additional following statement in the Risk Disclosure Statement, prominently disclosed as the last paragraph thereof:

THIS COMMODITY TRADING ADVISOR IS PROHIBITED BY LAW FROM ACCEPTING FUNDS IN THE TRADING ADVISOR'S NAME FROM A CLIENT FOR TRADING COMMODITY INTERESTS. YOU MUST PLACE ALL FUNDS FOR TRADING IN THIS TRADING PROGRAM DIRECTLY WITH A FUTURES COMMISSION MERCHANT.

(c) *Table of contents.* A table of contents showing, by subject matter, the location of the disclosures made in the disclosure document must appear immediately following the Risk Disclosure Statement.

(d) *Information required in the forepart of the document.* (1) The name, address of the main business office, main business telephone number and form of organization of the commodity trading advisor. If the mailing address of the main business office is a post office box number or is not within the United States, the trading advisor must state where its books and records will be kept and made available for inspection; and

(2) The date when the disclosure document will first be used.

(e) *The name of.* (1) Each principal of the trading advisor;

(2) The futures commission merchant with which the commodity trading advisor will require the client to maintain its account or, if the client is free to choose the futures commission merchant with which it will maintain its account, the commodity trading advisor must make a statement to that effect; and

(3) The introducing broker through which the commodity trading advisor will require the client to introduce its account or, if the client is free to choose the introducing broker through which it will introduce its account, the commodity trading advisor must make a statement to that effect.

(f) *Business background.* (1) The business background, for the five years preceding the date of the document, of:

(i) The commodity trading advisor; and

(ii) Each principal of the trading advisor who participates in making trading or operational decisions for the trading advisor or supervises persons so engaged.

(2) The trading advisor must include in the description of the business background of each such person the name and main business of that person's employers, business associations or business ventures and the nature of the duties performed by such person for the employers or in connection with the associations or ventures.

(g) *Principal risk factors.* As applicable, a discussion of the principal risk factors of this trading program. This discussion must include, without limitation, risks due to volatility, leverage, and counterparty risks.

(h) *Trading program.* A description of the trading program. This description shall include the types of commodity interests and other interests the commodity trading advisor intends to trade, with a description of any restrictions or limitations on such trading established by the commodity trading advisor.

(i) *Fees.* A complete description of each fee which the commodity trading advisor will charge the client.

(1) Wherever possible, the trading advisor must specify the dollar amount of each such fee.

(2) Where any fee is determined by reference to a base amount including, but not limited to, "net assets," "gross profits," "net profits" or "net gains," the trading advisor must specifically explain how such base amount will be calculated.

(3) Where any fee is based on an increase in the value of the client's commodity interest account, the trading advisor must specify how that increase is calculated, the period of time during which the increase is calculated, the fee to be charged at the end of that period and the value of the account at which payment of the fee commences.

(j) *Conflicts of interest.* (1) A full description of any actual or potential conflicts of interest regarding any aspect of the trading program on the part of:

(i) The commodity trading advisor;

(ii) Any futures commission merchant with which the client will be required to maintain its commodity interest account;

(iii) Any introducing broker through which the client will be required to introduce its account to a futures commission merchant.

(2) Any principal of the foregoing.

(k) *Litigation.* (1) Subject to the provisions of paragraph (k)(2) of this section, any material administrative, civil or criminal action, whether pending or concluded, within five years preceding the date of the document, against any of the following persons, except a concluded action that resulted in an adjudication on the merits in favor of such person:

(i) The commodity trading advisor and any principal thereof:

(ii) The futures commission merchant with which the client will be required

to maintain its commodity interest account; and

(iii) The introducing broker through which the client will be required to introduce its account to the futures commission merchant.

(2) With respect to the futures commission merchant and the introducing broker, an action will be considered material if:

(i) The action would be required to be disclosed in the notes to the futures commission merchant's or introducing broker's financial statements prepared pursuant to generally accepted accounting principles;

(ii) The action was brought by the Commission, *Provided, however,* That a concluded action that did not result in fines exceeding $50,000 need not be disclosed unless it involved allegations of fraud or willful misconduct; or

(iii) The action was brought by any other federal or state regulatory agency, or by a self-regulatory organization, domestic or foreign, and involves allegations of fraud or other willful misconduct.

(l) *Trading for own account.* If the commodity trading advisor or any principal thereof trades or intends to trade commodity interests for its own account, the commodity trading advisor must disclose whether clients will be permitted to inspect the records of such person's trading and any written policies related to such trading.

(m) *Performance disclosures* as set forth in § 4.34

(n) *Voluntary Information.* If any information, other than that required by the Commission, the antifraud provisions of the Act, or any federal or state securities laws and regulations, is provided, such information:

(1) May not be misleading in content or presentation or inconsistent with the required disclosures;

(2) Shall be subject to the antifraud provisions of the Act and the regulations thereunder, and to rules regarding the use of promotional material promulgated by a registered futures association, pursuant to section 17(j) of the Act; and

(3) May only appear following the related required disclosures, unless otherwise specified.

(o) *Material information.* This section does not relieve a commodity trading advisor from any obligation under the Act or the regulations thereunder, including the obligation to disclose all material information to existing or prospective clients even if the information is not specifically required by this section.

§ 4.34 Performance disclosures.

(a) *General principles.* (1) The performance of the program offered must be displayed first, calculated in accordance with generally accepted accounting principles as specified below or by a method otherwise approved by the Commission, in a table showing at least quarterly the following information.

(i) The beginning net asset value for the period, which shall represent the previous period's ending net asset value;

(ii) All additions, whether voluntary or involuntary, during the period;

(iii) All withdrawals and redemptions, whether voluntary or involuntary, during the period;

(iv) The net performance for the period, which shall represent the change in the net asset value net of additions, withdrawals, redemptions, fees and expenses;

(v) The ending net asset value for the period, which shall represent the beginning net asset value plus or minus additions, withdrawals and redemptions, and net performance;

(vi) The rate of return for the period, computed on a compounded monthly basis, which shall be calculated by dividing the net performance by the beginning net asset value;

(2) The performance of all other programs must be presented as set forth in § 4.25(a)(1)(ii)(C) through (G) and must be based on the information set forth in § 4.34(a)(1), and calculated on a current basis. The commodity trading advisor must maintain all supporting documents necessary to substantiate such calculation in accordance with § 1.31.

(3) All performance information presented in the disclosure document must be current as of a date not more than three months preceding the date of the document.

(4) All required performance information must be presented for the most recent five calendar years and year-to-date or for its entire duration, if less than five years.

(5) Unless such presentation would be misleading, the performance of accounts traded pursuant to the same trading program may be presented in a single composite table provided that the trading advisor describes how each composite was calculated. The term *trading program* means a trading strategy differentiated from others by commodity trading methodology, degree of risk or degree of leverage.

(6) The performance of any account in which the commodity trading advisor, any of its principals or any person providing services to the pool owns or controls fifty percent or more of the beneficial interests shall not be included in a disclosure document unless such performance is prominently labeled as proprietary and set forth separately after all required disclosures.

(7) Any past performance presentation, whether required or voluntarily provided, must be preceded with the following statement, prominently displayed:

PAST PERFORMANCE IS NOT PREDICTIVE OF FUTURE PERFORMANCE.

(b) *Performance to be disclosed.* The commodity trading advisor must disclose the actual performance of all accounts directed by the commodity trading advisor and by each of its trading principals; *Provided, however,* That if the trading advisor or its trading principals previously have not directed any accounts, the trading advisor must prominently disclose this fact with one of the following statements, as applicable:

(1) THIS TRADING ADVISOR PREVIOUSLY HAS NOT DIRECTED ANY ACCOUNTS; or

(2) NONE OF THE TRADING PRINCIPALS OF THIS TRADING ADVISOR HAS PREVIOUSLY DIRECTED ANY ACCOUNTS; or

(3) NEITHER THIS TRADING ADVISOR NOR ITS TRADING PRINCIPALS HAVE PREVIOUSLY DIRECTED ANY ACCOUNTS.

§ 4.35 Use, amendment and filing of disclosure document.

(a) Subject to paragraph (c) of this section, all information contained in the disclosure document must be current as of the date of the document; *Provided, however,* That performance information must be current as of a date not more than three months preceding the date of the document.

(b) No commodity trading advisor may use a disclosure document dated more than nine months prior to the date of its use.

(c)(1) If the commodity trading advisor knows or should know that the disclosure document is materially inaccurate or incomplete in any respect, it must correct that defect and must distribute the correction to:

(i) All existing clients in the trading program within 21 calendar days of the date upon which the trading advisor first knows or has reason to know of the defect; and

(ii) Each previously solicited prospective client for the trading program prior to entering into an agreement to direct or to guide such prospective client's commodity interest account pursuant to the program. The trading advisor may furnish the correction by way of an amended

document, a sticker on the document, or other similar means.

(2) The trading advisor may not use the document until such correction is made.

(d)(1) The commodity trading advisor must file with the Commission two copies of the disclosure document for each trading program that it offers or that it intends to offer not less than 21 calendar days prior to the date the trading advisor first intends to deliver the document to a prospective client in the trading program.

(2) The commodity trading advisor must file with the Commission two copies of all subsequent amendments to the disclosure document for each trading program that it offers or that it intends to offer within 21 calendar days of the date upon which the trading advisor first knows or has reason to know of the defect requiring the amendment.

PART 30—FOREIGN FUTURES AND FOREIGN OPTIONS TRANSACTIONS

13. The authority citation for part 30 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 6, 6c, and 12a.

14. Section 30.6 is proposed to be amended by revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 30.6 Disclosure.

* * * * *

(b) *Commodity pool operators and commodity trading advisors.* (1) No commodity pool operator registered or required to be registered under this part, or exempt from registration pursuant to § 30.5 of this part, may, directly or indirectly, solicit, accept or receive funds, securities or other property from a prospective participant in a foreign pool that it operates or that it intends to operate or, in the case of a commodity trading advisor, no commodity trading advisor registered or required to be registered under this part, or exempt from registration pursuant to § 30.5 of this part, may solicit or enter into an agreement with a prospective client to direct or to guide the client's foreign commodity interest trading by means of a systematic program that recommends specific transactions, unless the commodity pool operator or commodity trading advisor, at or before the time it engages in such activities, first provides each prospective participant or client with the Risk Disclosure Statement set forth in § 4.24(b) in the case of a commodity pool operator or § 4.33(b) in the case of a commodity trading advisor.

(2) The disclosure statement required to be provided in paragraph (b)(1) of this section may be given as a separate document or, if part of the disclosure document required to be furnished customers or potential customers pursuant to § 4.21 or § 4.31 of this chapter, must be prominently disclosed immediately following any disclosures required to appear on the cover page of the disclosure document as provided by the Commission or any applicable federal or state securities laws and regulations.

* * * * *

PART 150—LIMITS ON POSITIONS

15. The authority citation for part 150 continues to read as follows:

Authority: 7 U.S.C. 6a, 6c and 12a(5) (1988).

16. Section 150.3 is proposed to be amended by revising paragraph (a)(4)(i)(D) to read as follows:

§ 150.3 Exemptions.

(a) * * *

(4) * * *

(i) * * *

(D) Solicit funds for such trading by separate disclosure documents that meet the standards of § 4.24 or § 4.33 of this chapter, as applicable, where such disclosure documents are required under part 4 of this chapter.

* * * * *

Issued in Washington, DC, on May 5, 1994, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–11380 Filed 5–13–94; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

RIN 1515–AB46

Filing of Export Certificates

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations to allow a vessel carrying a shipment of meat or meat-food products to be cleared before the filing of a copy of an export certificate by providing a statement regarding the shipment and the export certificate. The copy of the export certificate must then be presented within 4 days of the vessel's clearance. The regulations are being amended so that they will conform to revised regulations of the Food Safety and Inspection Service of the U.S. Department of Agriculture.

DATES: Comments must be received before July 15, 1994.

ADDRESSES: Comments (preferably in triplicate) should be submitted to U.S. Customs Service, ATTN: Regulations Branch, Franklin Court, 1301 Constitution Avenue, NW., Washington, D.C. 20229, and may be inspected at the Regulations Branch, 1099 14th Street, NW., suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Barbara Whiting, Carrier Rulings Branch, (202) 482–6940.

SUPPLEMENTARY INFORMATION:

Background

In this document, Customs proposes to amend its regulations so that there will be consistency between regulations of the U.S. Department of Agriculture (USDA) and those of Customs regarding the timeframe within which an exporter must file a certificate certifying the wholesomeness of meat products being exported.

Under the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*), meat and meat products intended and offered for export and sale in a foreign country must be inspected. In addition, FMIA prohibits the clearance for departure of any vessel carrying meat and meat products for export to and sale in a foreign country until the owner or shipper has obtained from an inspector a certificate indicating that the products are sound and wholesome (unless the Secretary has waived certificate requirements for the country).

In 1986, the Food Safety and Inspection Service (FSIS) of the Department of Agriculture, which administers the FMIA, amended its regulations. Previously, the FSIS regulations required that exporters deliver a duplicate of the export certificate to the shipper for filing with Customs at the time the master's manifest or supplemental manifest is filed by the chief officer with Customs; that is, on the day of departure. Otherwise, the vessel carrying the meat or meat products would not be granted clearance. Because § 4.75 of the Customs regulations allows shippers a delay of four business days in the filing of a Complete Cargo Declaration (manifest), the FSIS regulations were amended to allow a vessel carrying a shipment of meat or meat products to clear in those instances where the duplicate export certificate is not available at departure time. In lieu of the duplicate export certificate, the shipper, shipper's agent or the vessel's agent must provide Customs with a statement under the

shipper's or agent's letterhead signed by the shipper which briefly describes the shipment of the product, the number of boxes, the number of pounds, the product name and the USDA export certificate number that covers the shipment. Exporters must file the duplicate export certificate within 4 days of the clearance of a vessel carrying a shipment of meat products.

In order to maintain consistency with Customs and USDA regulations, Customs is now proposing to amend that section of its regulations governing the clearance of vessels carrying meat products. Section 4.72(a) of the Customs Regulations (19 CFR 4.72(a)) currently states that no clearance shall be granted to a vessel carrying meat or meat-food product until copies of the export certificates issued by the USDA have been filed with the district director. Customs is proposing to amend this section so that clearance can be granted to vessels when documents complying with the requirements of 9 CFR part 322 of the USDA regulations are submitted. Shippers will still have to comply with the four-day time limit of § 4.75 for submitting the actual USDA export certificate.

Comments

Before adopting the proposed amendment, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, 1099 14th Street, NW., Suite 4000, Washington, DC.

Executive Order 12866 and Regulatory Flexibility Act

This amendment is not a "significant regulatory action" within the meaning of E.O. 12866. Based on the supplementary information set forth above and pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), it is certified that the proposed amendment, if adopted, will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Drafting Information

The principal author of this document was Peter T. Lynch, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 4

Customs duties and inspection, Exports, Meat and meat products, Meat inspection, Vessels.

Proposed Amendment

It is proposed to amend part 4, Customs Regulations (19 CFR part 4), as set forth below.

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority citation for part 4 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624; 46 U.S.C. App. 3, 91;

2. Paragraph (a) of § 4.72 is revised by adding, at the end thereof, two new sentences to read as follows:

§ 4.72 Inspection of meat, meat-food products, and inedible fats.

(a) * * * If such certificate has been obtained but is unavailable at the scheduled time of the vessel's departure, the vessel may be cleared on the basis of the receipt of a statement, under the shipper's or shipper's agent's letterhead, certifying the number of boxes, the number of pounds, the product name and the USDA export certificate number that covers the shipment of the product. If such statement has been used as the basis for obtaining vessel clearance, the duplicate of the certificate must be filed with Customs within the time prescribed by § 4.75 of this part.

* * * * *

Samuel H. Banks,

Acting Commissioner of Customs.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

Approved: April 28, 1994.

[FR Doc. 94–11857 Filed 5–13–94; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AB52

Safety Requirements Governing Production Platforms and Pipelines

AGENCY: Minerals Management Service, Interior.

ACTION: Proposed rule.

SUMMARY: This rule proposes to revise various safety-related regulations regarding the design and operating procedures of production platforms and pipelines in the Outer Continental Shelf (OCS). The purpose of the revisions is to reduce or prevent the unintentional release of hydrocarbons from pipelines on or near offshore platforms during emergency situations and thereby reduce the potential for explosions or fires.

DATES: Comments must be received or postmarked no later than July 15, 1994.

ADDRESSES: Comments should be mailed or hand-carried to the Department of the Interior, Minerals Management Service, Mail Stop 4700, 381 Elden Street, Herndon, Virginia 22070–4817; Attention: Chief, Engineering and Standards Branch.

FOR FURTHER INFORMATION CONTACT: Paul Schneider, Technology Assessment and Research Branch, telephone (703) 787–1559, or Bill Hauser, Engineering and Standards Branch, telephone (703) 787–1600.

SUPPLEMENTARY INFORMATION:

Background

The MMS is proposing to revise regulations governing design, operation, and maintenance of oil and gas facilities in the OCS. These revisions were recommended by an internal task group that reviewed information on tow tragic offshore incidents in 1988 and 1989.

Safety Review Task Group

A safety review task group of MMS personnel was established to review available information in the 1988 Piper Alpha platform fire in the North Sea and the circumstances related to an interactive pipeline and platform fire in 1989 at ARCO Oil and Gas Company's (ARCO) South Pass 60 Platform "B" facility in the Gulf of Mexico. The group was asked to make specific recommendations regarding regulations and operating practices that would reduce the risk of such incidents occurring in U.S. waters. Following is a capsule summary of each incident.

Explosion and Fire on Piper Alpha Platform, North Sea, 1988

Piper Alpha was an oil and gas production platform in the United Kingdom (U.K.) sector of the North Sea that was destroyed by fire in 1988. On July 6, 1988, a series of events and operational mistakes caused an explosion and fires that ultimately destroyed the platform and killed 167 people. Maintenance personnel mistakenly activated an out-of-service injection pump causing a repair flange in the pipework to rupture. Liquid condensate leaked into the production

module for several minutes. The gas ignited and exploded, damaging the electrical power generator and the fire pumps. Eventually the fire ruptured the shut-in gas pipelines releasing high pressure gas on the platform. The fire burned for several hours until the pressure was relieved. The platform was completely destroyed.

The Public Inquiry into the Piper Alpha Disaster was published by Her Majesty's Stationery Office, London, in November 1990. The report confirmed the conclusions reached in the initial investigation report published in September 1988. The report concluded that in all likelihood the scenario of the leaking blind flange in the condensate injector pump was the initial cause of the incident. The report lists 106 recommendations for improving safety in the U.K. North Sea. The recommendations propose changes to the regulations, regulatory agency realignment, and a call for renewed commitment to safety by industry.

Summary of South Pass 60 Platform "B" Fire

On March 19, 1989, an offshore contracting crew was "cold-cutting" an 18-inch gas line riser at the platform's 10-foot level in preparation for the installation of a pig trap. "Cold cutting" is a method of cutting through a section of pipe with a mechanical cutting tool as opposed to using a blow torch. Upon penetration into the pipeline riser, pressurized condensate began to spray from the cut area. The condensate was ignited either by sparks generated on the compressor skid on an attendant workboat or by hot exhaust pipes on the above production deck. The fire raged upward from the riser, and the emergency shutdown (ESD) system shut down both Platform "B" and Platform "E" and all incoming and departing pipelines. Six of the 10 incoming and departing pipelines, including a high pressure gas line, ruptured from the heat of the fire. The resulting explosions killed seven people and destroyed the platform.

Federal Register Notice on Subsea Pipeline Valves

In support of the work of the task group, MMS published a **Federal Register** Notice dated July 23, 1990 (55 FR 29860), seeking information on subsea shutdown valve (SDV) technology and feasibility and offshore emergency pipeline pressure reduction techniques. Thirty companies and organizations representing oil- and gas-related industries responded to the questionnaire. Their responses are discussed later in the preamble.

Task Group Findings

The MMS task group identified the following areas in the regulations that should be revised:

1. Identification and notification procedures for out-of-service safety devices and systems.
2. Location and protection of pipeline risers.
3. Diesel and helicopter fuel storage areas and tanks.
4. Approval of pipeline repairs.
5. Location of ESD valves on pipelines.

Identification and Notification Procedures for Out-of-Service Safety Devices

A contributing factor to both accidents was the lack of communication and notification to personnel of the platform production systems status. In the Piper Alpha incident, the production crew attempted to start a condensate injection pump that was partially dismantled for repairs during the previous shift. Leaking condensate from the associated pipework of the pump caused the first of a series of explosions and fires. The location of the pump control panel did not allow the operator of the control panel to view the pump or detect the leak. In the South Pass 60 incident, the platform operator and the pipeline company did not provide for adequate planning and coordination of the riser cutting operation. Platform personnel were apparently unaware of the status of the riser cutting operation or the difficulty the contractor was experiencing with the unexpected flow.

Current regulations for identifying out-of-service devices are found at:

30 CFR 250.123(c), General platform operations. (1) Surface or subsurface safety devices shall not be bypassd or blocked out of service unless they are temporarily out of service for startup, maintenance, or testing procedures. Only the minimum number of safety devices shall be taken out of service. Personnel shall monitor the bypassed or blocked-out functions until the safety devices are placed back in service. Any surface or subsurface safety device which is temporarily out of service shall be flagged.

Requirements for out-of-service devices on pipelines are found at 30 CFR 250.154(c). If the required safety equipment is rendered ineffective or removed from service on pipelines which are continued in operation, an equivalent degree of safety shall be provided. The safety equipment shall be identified by the placement of a sign on the equipment stating that the equipment is rendered ineffective or removed from service.

The task group determined that the existing regulations do not provide for adequate communication or warning of out-of-service equipment and may not have prevented an accident similar to Piper Alpha if the same set of circumstances existed in the OCS. The current rule does not ensure that accidental flow of hydrocarbons will not be initiated in process components that are taken out of service, particularly if flow is initiated out of view of a flagged device or control. Flagging requirements for out-of-service equipment and valves need to be revised to ensure that control panels and certain equipment upstream of process equipment or valves are also flagged and that the procedure is documented. The task group recommended that the regulations should include requirements identifying which individuals have the authority to remove flags and to authorize equipment startup. It also recommended that subpart A be revised to include a briefing requirement to ensure that all workers on a production platform are notified of all out-of-service equipment and safety concerns at the beginning of each work shift or upon addition or replacement of personnel.

Location and Protection of Pipeline Risers

From the evidence gathered on Piper Alpha, at least one of the highly pressured risers ruptured when struck by debris falling from the burning platform. The effect of gas escaping from the high pressure pipeline was catastrophic. The escaping gas boiled to the surface, exploded, and burned under the platform for several hours.

Subpart J of the regulations currently requires risers to be protected only from contact with floating vessels. Protection is usually accomplished by locating risers between the jacket legs or by reinforcing the risers with external protection. The task group recommended that subpart J be revised to add a requirement to provide for riser protection from falling objects as well and that MMS require submission of piping drawings at an early stage in the platform design approval process.

Diesel and Helicopter Fuel Storage Areas and Tanks

During the early stages of the Piper Alpha incident, fuel drums and containers of lubricants and cleaners stored throughout the platform exploded and burned when they were exposed to flames. These materials are stored in a similar manner on U.S. facilities.

There are no current MMS regulations for fuel storage. The task group recommended that MMS revise the regulations to require operators to store diesel and other flammable liquids on platforms in accordance with the requirements contained in American Petroleum Institute (API) Recommended Practice (RP) 500, Recommended Practice for Classification of Locations for Electrical Installation at Petroleum Facilities. The task group also recommended that the revised regulations require operators to design fuel storage tanks in accordance with API RP 14C, Recommended Practice for Analysis, Design, Installation and Testing of Basic Surface Safety Systems for Offshore Production Platforms.

Approval of Pipeline Repairs

Upon examination of the events leading to the fire on the ARCO "B" platform, the task group found that there was a lack of communication and coordination between the platform operator and the pipeline repair company. The task group recommended that the regulations be strengthened by requiring MMS approval for pipeline repairs. The Regional Supervisor, upon being notified that the lessee or right-of-way holder is anticipating a pipeline repair, will consider the complexity of the repair procedure in deciding whether or not to require a written repair plan. Exceptions would be made for pipeline repairs necessitated by imminent harm to the environment or to human safety.

Location of ESD Valves on Pipelines

The Piper Alpha fire and the Arco "B" fire were greatly intensified by released gas from pipelines associated with the platforms. In the United States, incoming pipelines are required to have emergency SDV's as a protective measure, but they are often located onboard the platform to allow access for maintenance and testing.

Locating SDV's away from the process equipment, such as on the seafloor or on the riser close to the waterline, may provide a greater level of protection for the platform but would at the same time reduce accessibility for repair and maintenance. This issue has major safety and reliability implications; therefore, MMS published the advance notice of proposed rulemaking in the **Federal Register** requesting more information on this subject.

Thirty responses to the questionnaire were received from the oil and gas industry, including major oil and gas production companies, pipeline operators, and equipment manufacturers. The first 13 questions dealt with locating a pipeline SDV on the seafloor or just above the splash zone. Approximately half of the respondents cited limited access to a valve, particularly those located on the seafloor, for inspection and maintenance purposes as a major area of concern. Nearly half of the commenters suggested that the reliability of subsea valves is unknown or nonexistent. Again, supporting data was very limited. The remaining four questions dealt with pipeline pressure reduction during emergency situations. The results of the questionnaire are discussed after this section.

For applications in the United States, the task group considered three distinct riser locations for the placement of SDV's: On the platform, on the seafloor, on the vertical portion of the riser below the lowest production deck but above the waterline. The advantages and disadvantages of each location are discussed below:

The first location considered was "on the platform." Subpart J—Pipelines and Pipeline Rights-of-Way, § 250.154(b)(2) requires that,

> Incoming pipelines boarding to a production platform shall be equipped with an automatic shutdown valve (SDV) immediately upon boarding the platform * * *

This regulation allows placement of the SDV on the deck where the riser enters the platform. "Immediately upon boarding" means near the edge of the platform. Accessibility for testing and maintenance is the greatest advantage to this location since the valve is located within the platform structure. Also, since the valve is located in close proximity of the production processing equipment, there is little or no hydrocarbon inventory between the valve and the process equipment that needs to be vented in the event of an emergency. However, this location also presents the greatest potential safety hazard. Since the valve is located near the process equipment, it is vulnerable to damage from explosions, extreme heat from fires, and falling debris during emergency situations. The task group determined that the valve in this location does not fulfill the intended purpose of an SDV in all situations since failure of the SDV or pressured portion of the riser would likely result in the release of a significant portion of the pipeline inventory at the point of failure. This vulnerability was demonstrated in the Piper Alpha disaster and the South Pass 60 fire.

Next, the task group considered locating SDV's on the seafloor a short distance from the platform. The safety advantage of this location is obvious. The valve is isolated from the platform and is not vulnerable to explosions or fire that may occur during an emergency situation. However, a major drawback of this location is inaccessibility for maintenance and testing, especially in deep water. At this location, the valve would isolate the majority of the pipeline inventory from the platform. However, there may be a significant hydrocarbon inventory in the riser between the valve on the seafloor and the process equipment. This inventory must be safely vented when the pipeline is depressurized during an emergency after the valve is closed.

Lastly, the task group considered locating SDV's on the vertical portion of risers below the lowest production deck of the platform but above the waterline. This location offers several advantages. The valve is removed from and placed below the hydrocarbon process areas within the platform, thereby isolating it from potential explosion and fire damage during emergency situations. Also, it effectively isolates the entire inventory of the pipeline from the platform since there is a minimal length of riser between the valve and the process equipment that must be vented during emergency situations, and the valve is above the waterline and is accessible for maintenance and testing.

Considering the information gathered from the **Federal Register** Notice and additional information regarding subsea valve installations in the U.K. North Sea, the task group concluded that locating such valves on risers or on the seafloor was technically feasible. Other aspects of the current regulation were also reviewed. The task group considered the current regulation which requires SDV's to be installed on incoming pipelines only. Based on the events that occurred on Piper Alpha, the task group determined that there is a significant potential hazard from blackflow of pressured hydrocarbons from departing pipelines. Therefore, the task group recommended requiring SDV's on all new pipelines entering and departing production platforms. This requirement should also apply to sulphur operations since sulphur is also flammable and poses a significant threat to safety. This requirement would cover bidirectional pipelines, crossing pipelines, fuel lines, and pipelines carrying flammable or hazardous fluids. Crossing pipelines that enter onto platforms but do not take on production from those platforms pose an environmental risk, if not a risk to human safety. Therefore, crossing pipelines should also be required to have SDV's installed on the incoming and departing risers.

Responses to the Questions in the July 23, 1990, Federal Register Notice

The following represents a summary of the responses received and does not necessarily reflect the opinion of MMS.

Question—If the SDV was located on the seafloor or just above the splash zone, how would the following parameters be affected?

(a) *Maintenance.*

Response—Subsea maintenance poses a major problem, especially for deep water which would be difficult during rough seas and winter months. This jeopardizes the operation of the pipeline during those periods. Preventative subsea maintenance would be impractical while maintenance by divers would pose an additional safety risk. Minor and major repairs of a valve would most likely require removal from the pipe which is dangerous in itself and would require shutting down the pipeline system for extended periods.

The splash zone is the most corrosive offshore environment. The cyclical wetting and drying of surface materials accelerate the corrosion process and degrades protective coatings. At the splash zone, increased maintenance would be required and most platforms have limited access in this area. Splash zone maintenance could not be performed during rough seas or winter months, thus jeopardizing the operation of the pipeline during those periods. Control lines would also be exposed to the corrosive wet/dry environment. Requiring SDV's to be located subsea or at the splash zone increases the safety risk to personnel and reduces the pipeline system's reliability.

The diving cost alone to repair a subsea SDV in 180 feet of water would run between $15,000 and $18,000 per day.

(b) *Inspection.*

Response—Subsea SDV inspection by a diver would be of minimal value. Control systems for subsea valves are more complex than for surface valves. The ability of divers to inspect and perform repairs underwater is questionable and cannot be verified. Inspection and repair operations would be limited by weather conditions.

Inspection of an SDV above the splash zone is reliable since it can be performed by an engineer or company representative. All inspection information is first hand.

A typical subsea SDV inspection in 300 feet of water could cost between $20,000 and $30,000 per day.

(c) *Testing.*

Response—Testing subsea valves from a remote station is not reliable and may indicate problems that may or may not exist.

Dealing with a malfunction during testing could have serious implications due to limited accessibility.

The higher the SDV is located above the water, the greater its accessibility, maintenance, and performance.

Frequency of subsea SDV testing should be kept to a minimum in order to maintain valve reliability.

Testing would be complex. Remote monitoring or divers would be necessary to confirm test results.

(d) *Reliability.*

Response—Reliability is dependent on the individual reliability of all the components that make up the SDV and control system. Subsea valve reliability statistics are not presently available and need to be established.

It is assumed that the reliability of an SDV functioning on the seafloor would be less than at any other location. Access to the SDV and control lines would be limited and equipment and personnel would be exposed to adverse conditions.

The reliability of an SDV functioning in the splash zone would be slightly higher. Accessibility would be improved but the valve itself and control lines would be exposed to more adverse conditions.

(e) *Pressure venting.*

Response—Subsurface SDV's would be limited by the static back pressure of the seawater, or vent lines to the surface would be required. This may cause a delay in response time.

A splash zone SDV would not have back pressure, but gas exhaust would need to be routed to the platform vent system.

Underwater venting of pipelines is not recommended due to environmental considerations.

The volume of hydrocarbons vented through the platform flare system would be greater for a subsea SDV than a platform SDV. This is a serious safety consideration.

The capability to vent pressure from a pipeline should never take the form of bypassing the SDV but should be from the respective ends of the pipelines.

(f) *Bidirectional operations.*

Response—Not affected.

(g) *Pigging operations.*

Response—Subsea valves should be fitted with remote position indicators to ensure the valve is fully open during pigging operations.

Question—What measures could be taken to enhance performance and reliability—in particular, how could problems identified in response to question one be alleviated?

Response—Locating the SDV above the maximum wave height would alleviate most problems described in question one. Control lines are relatively short and the valve is readily accessible for maintenance and repairs.

There are designs where safety can be achieved by other methods. There are also "economical" platforms where the producer accepts more risk to reduce facility costs. The location of the SDV should be commensurate with the level of protection afforded to other high-risk facilities on the platform.

The SDV's should be manufactured from materials which will avoid valve replacement and offer reliable performance. The valve should have manual actuators and quick connect ends to facilitate operation or removal.

Platform operating decks should be made of plate, not grating. Plate acts as a fire wall. If the deck is made of plate, the SDV can be safely located on the deck.

The SDV's should be self-operating and fail-safe closed.

Valves should be routinely inspected and tested as well as continuously monitored.

The SDV and control system should be protected from mechanical damage.

Placement of SDV's on the platform would improve reliability but would also minimize their effectiveness.

Redundant control and instrumentation systems may be desirable. Standards should be established for value specifications and certification. Quality control in manufacturing could also enhance their reliability.

Valve technology has advanced to the point that reliable subsea operation is available. Advancement in the areas of a valve failure data base and check valve technology could yield further reliability and performance.

Require a surface SDV as well as a subsea valve.

Question—What types of SDV's are available that could be located on the seafloor?

Response—Any valve designed for subsea service such as a quarter turn ball valve, check valve, or a gate valve could perform as an SDV.

The use of hydraulically operated valves could present a pollution problem.

It is the actuator that needs to be scrutinized.

No existing SDV would likely serve the purpose when located on the seafloor.

Hydraulic or pneumatic systems would be most practical. Some manufacturers have devised an SDV for subsea service.

Question—What specific limitations would be encountered with regard to placing the SDV at the seafloor location with respect to the following variables?

(a) *Size of valve.*

Response—For the most part, the size of the valve is not a major factor. However, valves over 12 inches in diameter are cumbersome, heavy and difficult to maneuver, and maintain. Valves greater than 36 inches in diameter are difficult to obtain.

The valve and actuator may be quite large and may require mechanical protection.

(b) *Pressure.*

Response—For the most part, pressure is not a major consideration except in deep water. Very large actuators may be needed to overcome extreme differential pressures in deep water.

(c) *Flow rate.*

Response—For low flow rates, the reduced flow may not justify the placement of a seafloor SDV.

(d) *Water depth.*

Response—Water depth has a large effect on diver costs for installation, maintenance, repairs, testing, etc. Deep-water locations also require novel installation methods, additional complexity, and further development of components and testing methods to achieve valve reliability. Some SDV's may be designed for installation and maintenance using a drilling rig. Beyond, 1,000 feet, diverless maintenance and retrieval become major considerations. Common valve operators are limited to water depths of less than 3,000 feet.

In shallow water, subsea valves would be subjected to potential damage from shipping vessels.

(e) *Types of fluids transported.*

Response—Gas lines that are pressurized contribute a higher risk to platform safety than nonpressurized oil lines.

(f) *Other variables identified by commenters.*

Response—Repairing and replacing subsea SDV's would increase pollution potential.

Reliable valve operation is the biggest concern. Factors affecting operation include water pressure and severe water forces on the valve and operating lines, hydrate formation, wax build up, etc. Chemical injection may be necessary to prevent hydrate or wax build up.

The use of seafloor SDV's would preclude the use of J-tube methods of riser installation since the valve could not be passed through the J-tube.

Sea-bottom conditions may dictate the location of SDV's.

Protective coverage would be necessary to prevent trawl damage.

Heavy valves, should they become suspended, will cause additional stress on the pipeline.

The SDV's located near the waterline would be vulnerable to collisions and wave damage.

Question—What actuation and control system options are available for placement of the SDV on the seafloor (e.g., pneumatic, hydraulic, electrical)? Would actuation backup capability be necessary or desirable?

Response—Actuators can be powered by line pressure, stored gas pressure, or hydraulics. Fail-safe operation would be desirable. Pneumatic and hydraulic systems are the most reliable for subsea service. Manual operation is also necessary. Electrical systems could be used, but a backup system would be desirable. It is also necessary to provide manual diver valve actuation for emergency situations.

Question—What emergency support systems (e.g., fire loop system, ESD system, subsurface safety system) would activate the subsea SDV? Should the conditions of actuation be different than for an SDV located on the platform?

Response—All ESD and fire loop systems could operate the SDV. There would need to be a control line between the valve actuator and the platform. This could pose a maintenance problem. Pressure sensors could also be installed for the case of a ruptured or blocked line. This would require a relief valve, which brings up the following question. Where would the relief valve relieve to, the seafloor? The foregoing provides yet another reason to have the SDV above water.

Question—For seafloor placement of the SDV, what would be the optimum location in distance from the platform?

Response—Distance is not very important. The closer to the platform, the better. This would keep the control lines the shortest. Placing the valve 40 feet below the water surface on the riser would make it accessible to divers while providing its structural protection.

The location of an SDV relative to the platform should ideally be decided by a quantified risk analysis. The optimum distance for placement of an SDV should be determined on a case-by-case basis, considering water depth, anchorage areas, fishing areas, and minimizing the inventory between the platform and the SDV.

Question—What effect would burial (either intentional or unintentional) of the valve and actuator have on maintenance and operational reliability?

Response—Burial would not hurt the SDV, but it would make it harder for divers to find it. Burial would increase the diving costs associated with maintenance. Burial would preclude using a remotely operated vehicle for inspection and maintenance and should be avoided.

Question—What measures would be necessary to protect a subsea valve and control system from the following effects?

(a) *Temperature.*

Response—The SDV and control system need to be designed to operate in internal and external environments by selection of suitable materials.

(b) *Hydrates.*

Response—Hydrate formation could prevent subsea SDV operation. Glycol injection lines would be required in addition to control lines supplemented with glycol tanks, pumps, and attendant equipment.

(c) Permafrost.

Response—Not feasible.

(d) Hydrogen sulfide.

Response—The effects of hydrogen sulfide could be controlled with special alloys or inhibitors.

(e) Carbon dioxide.

Response—The effects of carbon dioxide could be controlled with special alloys or inhibitors.

(f) Stress cracking.

Response.—The effects of stress cracking could be controlled with special alloys.

(g) Other effects identified by commenters.

Response.—Control lines and connections could be damaged by boat or fishing activity. Protection will be necessary to protect small lines from being hooked by trawl boats and anchors.

Sand production could jeopardize the operation of a subsea valve.

Corrosion protection will be necessary for valve operators and control lines.

Question—Should SDV's be manufactured, maintained, and repaired in accordance with a certification process similar to the process used with surface and subsurface safety valves?

Response—API Spec 6D, Specification for Pipeline Valves, is a sufficient standard for valves, so certification is not necessary. Pipeline SDV's are not critical to permanent containment of hydrocarbons. However, proper maintenance of subsea valves may be a bigger issue.

Question—Would the use of flexible piping impose difficulties to subsea valve?

Response—Not so long as the pipeline is properly anchored at the valve location. High seas could pose a difficult problem (keeping the pipe still). Also, special support may be necessary for the SDV.

Question—If an SDV is placed at an alternate seafloor location, should an ADV also be placed on the platform?

Response—An SDV installed on a platform has a different function than a subsea SDV. The platform SDV mitigates consequences of a hydrocarbon release from the process equipment by isolating the pipeline from those facilities. Subsea SDV's mitigate the consequences of a hydrocarbon release from the pipeline which may occur as a primary or secondary event.

In general, redundancy is always safer. However, redundancy costs more for equipment and increases the chance for malfunction and platform downtime. Placement of a surface SDV should not be required but considered an option. In general, SDV's should not be placed on the seafloor except in unusual circumstances.

If an SDV is installed above the splash zone, there is no need for another one on the seafloor.

Question—Current regulations require SDV's on certain incoming pipelines. What, if any, SDV's should be required on outgoing and crossing pipelines?

Response—There is no need to place SDV's on all outgoing or crossing pipelines. Adding more valves is not necessary; however, present valves may need to be relocated to safer locations.

The SDV's should be placed on new outgoing and crossing pipelines. A risk assessment should be performed on existing lines before making such modifications.

Flow safety valves are adequate and less likely to fail, due to their simplistic design.

Unmanned platforms that contain no production facilities, no compression, and no power source should not require SDV's.

Question—What options are available to allow rapid reduction of pipeline pressure in an emergency, and what are the benefits and drawbacks of the techniques?

Response—Rapid reduction of pipeline pressure is a formidable problem. Flaring at the platform can be a very slow method of reducing pipeline pressure. Strategically located SDV's along the pipeline may offer an alternative to depressurization. An outlying subsea vent is probably safest since it distances the gas from the platform. However, in most cases, rapid pressure reduction is expensive and of limited use.

There is the damage of the formation of hydrate plugs and liquid plug flow as well as the need to prevent expanding vapor explosions.

Blowdown on the seafloor or a platform could cause considerable pollution due to entrained liquids and could feed a fire in some instances.

Blowing down a pipeline at a platform would require a scrubber system to separate liquids. These liquids would need to be disposed of safely which may be difficult during a platform emergency.

Question—What are the benefits and shortcomings of subsea pipeline diversion?

Response—System dependability might be enhanced by subsea diversion but not enough to offset additional cost over platform diversion.

Subsea diversion could place evacuating and rescuing personnel in peril and could pose a significant pollution problem.

Question—What are the advantages and disadvantages of having the capability to blow down a pipeline from both ends?

Response—It may be good engineering practice to locate blowdowns at each end of a pipeline. One end may be inaccessible due to fire or failure. If both ends are accessible, a more rapid blowdown can be accomplished. However, the majority of damage and injuries on a platform occurs during the first few minutes and before pressure could be reduced. Actual damage is not likely to be significantly reduced.

It would be necessary to bypass the check valve of the outgoing line. The bypass would need to be maintained and tested. Facilities for large scrubbing, liquid handling, and flaring would also be required.

Question—Should pipelines be required to have the capability of rapid reduction of pipeline pressure from either end and, if so, what length of time should be specified as the maximum time for pipeline pressure reduction in an emergency situation?

Response—Rapid pressure reduction is impractical during emergencies. Larger lines and volumes must be depressurized more slowly.

The pest solution is accident prevention and efficient platform evacuation. Gas pipeline pressure cannot be reduced fast enough to prevent early damage during a platform emergency.

In an emergency, evacuation is the primary concern. Flaring large volumes of gas could create a dangerous situation for aircraft and boats.

Summary of Proposed Changes

Based on the report of the task group and the analysis of the responses received following the July 23, 1990, **Federal Register** Notice, MMS proposes to:

1. Revise § 250.1, Documents incorporated by reference, to incorporate API's Recommended Practice for Classification of Locations for Electrical Installation at Petroleum Facilities, First Edition, June 1, 1991 (API RP 500), into the regulations. This document replaces API RP 500B, Recommended Practice for Classification of Areas for Electrical Installations at Drilling Rigs and Production Facilities on Land and on Marine Fixed and Mobile Platforms, Second Edition, with Supplement. API RP 500 combined API RP 500A, 500B, and 500C into a single document to provide guidelines for classifying locations at petroleum facilities for the selection and installation of electrical equipment. API RP 500 contains essentially the same information contained in API RP 500B. API RP 500 is referenced in § 250.51(i) to classify fuel and other flammable liquid storage locations. Also, references to API RP 500 replace API RP 500B in §§ 250.53(b), 250.122(e)(4)(i), 250.123(b)(9)(i), 250.291(b)(3) and (d)(4)(i), and 250.292(b)(4)(i).

2. Add a new § 250.27, Safety of operations communication, that requires operators of offshore production platforms to notify incoming or new personnel arriving on the platform of the status of repairs of process equipment, safety systems, or other systems that are out of service. The new regulation also requires operators to maintain records of all communications.

3. Revise § 250.51, General requirements, to include requirements for fuel storage on offshore facilities.

4. Revise § 250.123, Additional production system requirements, to be more specific on identifying and deactivating process equipment and controls when safety systems are out of service and maintaining records.

5. Add a new paragraph, § 250.153(a)(5), that requires operators to protect horizontal sections of pipeline risers from damage by falling objects.

6. Revise § 250.154 to require pipeline shutdown valves to be located below the lowest production deck on all new pipelines entering and departing OCS platforms. This rule also applies to all pipelines under the jurisdiction of MMS, including production flow lines, gathering lines, sulphur pipelines, fuel lines, bidirectional lines, and crossing pipelines. For existing platforms and pipelines, the rule requires installation or relocation of valves when significant riser repairs or maintenance is performed.

7. Revise § 250.158 to give the Regional Supervisor authority to require operators to submit written pipeline repair procedures for approval. The preparation and approval of written

plans ensure that an operator adequately considers the repair activity.

Author

The principal authors of this proposed rule are Elmer P. Danenberger, Chief, Engineering and Technology Division, and Paul Schneider, Technology Assessment and Research Branch.

Regulatory Flexibility Act

The DOI has also determined that this proposed rule will not have a significant economic effect on a substantial number of small entities because, in general, the entities that engage in activities offshore are not considered small due to the technical complexities and level of financial resources necessary to safely conduct such activities.

Paperwork Reduction Act

This proposed rule adds new information collection requirements to subparts A and J. The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). The collection of this information will not be required until it has been approved by OMB. Public reporting burdens for the new information collection requirements contained in subparts A and J are estimated to average 8 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 these burden estimates or any other aspects of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer; Minerals Management Service; Mail Stop 2053, 381 Elden Street; Herndon, Virginia 22070–4817, and the Office of Management and Budget; Paperwork Reduction Project (1010–0030) for subpart A and (1010–0050) for subpart J; Washington, DC 20503, telephone (202) 395–7340.

Takings Implication Assessment

The DOI certifies that the proposed rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared pursuant to E.O. 12630, Government Action and Interference with Constitutionally Protection Property Rights.

E.O. 12778

The DOI has certified to OMB that this proposed regulation meets the applicable civil justice reform standards provided in sections 2(a) and 2(b)(2) of E.O. 12778.

National Environmental Policy Act

The DOI has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment; therefore, preparation of an Environmental Impact Statement is not required.

E.O. 12866

This rule was reviewed under E.O. 12866. The rule was determined to not be a significant rule under the criteria of E.O. 12866 and, therefore, was not reviewed by OMB.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated: April 4, 1994.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

For the reasons set forth in the preamble, 30 CFR part 250 is proposed to be amended as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 continues to read as follows:

Authority: Sec. 204, Pub. L. 95–372, 92 Stat. 629 (43 U.S.C. 1334).

2. In § 250.1, paragraphs (d)(9) and (d)(15) are revised as follows:

§ 250.1 Documents incorporated by reference.

* * * * *

(d) * * *

(9) API RP 14C, Recommended Practice for Analysis, Design, Installation and Testing of Basic Surface Safety Systems for Offshore Production Platforms, Fourth Edition, September 1, 1986, API Stock No. 811–07180, incorporated by reference at §§ 250.51(i); 250.122 (b) and (e)(2); 250.123(a), (b)(2)(i), (b)(4), (b)(5)(i), (b)(7), (b)(9)(v), and (c)(2); 250.124 (a) and (a)(5); 250.152(d); 250.154(b)(12); 250.291 (c) and (d)(2); 250.292 (b)(2) and (b)(4)(v); and 250.293(a).

* * * * *

(15) API RP 500, Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities, First Edition, June 1, 1991, API Stock No. 811–06005, incorporated by reference at §§ 250.51(i), 250.53(b), 250.122(e)(4)(i), 250.123(b)(9)(i), 250.291(b)(3) and (d)(4)(i), and 250.292(b)(4)(i).

* * * * *

3. A new § 250.27 is added to subpart A to read as follows:

§ 250.27 Safety of operations communication.

At the beginning of each crew shift and upon addition or replacement of personnel, incoming workers shall receive safety information relative to activities and repairs underway on the facility and any process or safety equipment that is out of service. This information may be provided through a safety meeting, a notice provided to each employee, or a posted notice that must be read by each employee. A record of this communication shall be kept and maintained at the facility.

4. In § 250.51, a new paragraph (i) is added to read as follows:

§ 250.51 General requirements.

* * * * *

(i) Diesel and other fuel storage tanks, drums containing lubricants, cleaners, and other flammable liquids shall be clearly labeled and located as far as practicable from ignition sources. Storage locations shall be classified in accordance with the American Petroleum Institute (API) Recommended Practice (RP) for Classification of Locations for Electrical Installations at Petroleum Facilities (API RP 500). Tanks shall be adequately vented or equipped in accordance with API RP for Analysis, Design, Installation and Testing of Basic Surface Safety Systems for Offshore Production Platforms (API RP 14C). Fire detection devices, such as fusible plugs, shall be installed in fuel and flammable liquid storage areas.

5. In § 250.53, paragraph (b) is revised to read as follows:

§ 250.53 Electrical equipment.

* * * * *

(b) All areas shall be classified in accordance with API RP 500, Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities.

* * * * *

6. In § 250.122, the introductory text of paragraph (e)(4)(i) is revised to read as follows:

§ 250.122 Design, installation, and operation of surface production-safety systems.

* * * * *

(e) * * *

(4) * * *

(i) A plan of each platform deck outlining all hazardous areas classified in accordance with API RP 500, Recommended Practice for Classification of Location for Electrical Installations at Petroleum Facilities, and outlining areas in which potential ignition sources, other than electrical, are to be installed. The area outline shall include the following information.

* * * * *

7. In § 250.123, paragraphs (b)(9)(i) and (c)(1) are revised to read as follows:

§ 250.123 Additional production system requirements.

* * * * *

(b) * * *

(9) *Fire- and gas-detection system.* (i) Fire (flame, heat, or smoke) sensors shall be installed in all enclosed classified areas. Gas sensors shall be installed in all inadequately ventilated, enclosed classified areas. Adequate ventilation is defined as ventilation that is sufficient to prevent accumulation of significant quantities of vapor-air mixture in concentrations over 25 percent of the lower explosive limit (LEL). One approved method of providing adequate ventilation is a change of air volume every 5 minutes or 1 cubic foot of air-volume flow per minute per square foot of solid floor area, whichever is greater. Enclosed areas (e.g., buildings, living quarters, or doghouses) are defined as those areas confined on more than four of their six possible sides by walls, floors, or ceilings more restrictive to air flow than grating or fixed open louvers and of sufficient size to allow entry of personnel. A classified area is any area classified Class I, Group D, Division 1 or 2, following the guidelines of API RP 500.

* * * * *

(c) *General platform operations.* (1) Surface or subsurface safety devices shall not be bypassed or blocked out of service unless they are temporarily out of service for startup, maintenance, or testing procedures. Personnel shall monitor the bypassed or blocked-out functions until the safety devices are placed back in service. Any surface or subsurface safety device that is temporarily placed out of service shall be flagged. When conducting repairs or maintenance that expose the production safety system to the atmosphere or to conditions that constitute a potential danger to safety of personnel or protection of the environment, the system shall be purged of hydrocarbons and flow shall be blocked from the area under repair or maintenance. Valves, pumps, or other equipment that could initiate flow through the designated area shall also be flagged and removed from service. The activation of such equipment from the control panel shall be temporarily precluded. Only the person in charge of the repair or maintenance may authorize the resumption of service. This authorization may not be given until the repair or maintenance action is completed.

* * * * *

8. In § 250.153, a new paragraph (a)(5) is added to read as follows:

§ 250.153 Installation, testing, and repair requirements for DOI pipelines.

(a) * * *

(5) Risers shall be designed to prevent damage from falling debris. Horizontal sections of risers shall be of minimal length and protected to prevent damage from falling objects.

* * * * *

9. In § 250.154, paragraphs (b) and (c) are revised to read as follows:

§ 250.154 Safety equipment requirements for DOI pipelines.

* * * * *

(b) All new oil, gas, or sulphur pipelines approved or modified after the effective date of these regulations shall comply with this section, where applicable.

(1)(i) Incoming pipelines to a platform shall be equipped with a flow safety valve (FSV).

(ii) For sulphur operations, incoming pipelines delivering gas to the power plant platform may be equipped with high- and low-pressure sensors (PSHL), which activate audible and visual alarms in lieu of requirements in paragraph (b)(1)(i) of this section. The PSHL shall be set at 15 percent or 5 psi, whichever is greater, above and below the normal operating pressure range.

(2) Incoming pipelines boarding to a production platform or delivering gas to a power plant platform shall be equipped with an automatic shutdown valve (SDV) below the lowest production deck of the platform. The SDV shall be connected to the automatic- and remote-emergency shut-in systems.

(3) Departing pipelines receiving production from production platforms shall be protected by PSHL to directly or indirectly shut in all production facilities. The PSHL shall be set not to exceed 15 percent above and below the normal operating pressure range. However, high pilots shall not be set above the pipeline's maximum allowable operating pressure.

(4) Departing pipelines from a production platform shall be equipped with an SDV below the lowest production deck of the platform. The SDV shall be connected to the automatic- and remote-emergency shut-in systems in a manner that allows the safe shut in of the platform prior to SDV closure.

(5)(i) Crossing pipelines on production or manned nonproduction platforms shall be equipped with an SDV on both the incoming and departing lines below the lowest production deck. These SDVs shall be connected to the automatic- and remote-emergency shut-in systems.

(ii) Crossing pipelines on unmanned nonproduction platforms shall be equipped with an FSV.

(6) Bidirectional pipelines servicing production or manned nonproduction platforms shall be equipped with a PSHL and an SDV on all risers.

(7) All SDV's shall be operable locally and connected to the automatic- and remote-emergency shut-in systems. The SDV shall be protected from fire, explosion, and impacts from falling objects and marine vessels. The SDV shall be accessible for inspections, maintenance, repairs, and testing. The SDV shall be inspected and tested at least once each calendar month, but the interval shall not exceed 6 weeks.

(8) For facilities and pipelines installed prior to the effective date of these regulations, an SDV shall be installed when riser maintenance or repair is performed.

(9) The Regional Supervisor may require that oil pipelines be equipped with a metering system to provide a continuous volumetric comparison between the input to the line at the structure(s) and the deliveries onshore. The system shall include an alarm system and shall be of adequate sensitivity to detect variations between input and discharge volumes. In lieu of the foregoing, a system capable of detecting leaks in the pipeline may be substituted with the approval of the Regional Supervisor.

(10) Pipelines incoming to a subsea tie-in shall be equipped with a block valve and a FSV. Bidirectional pipelines connected to a subsea tie-in shall be equipped with only a block valve.

(11) Gas-lift or water-injection pipelines on unmanned platforms need only be equipped with an FSV installed immediately upstream of each casing annulus or the first inlet valve on the wellhead.

(12) Pipeline pumps shall comply with Section A7 of API RP 14C. The setting levels for the PSHL devices are specified in paragraph (b)(5) of this section.

(c)(1) If the SDV or other required safety equipment is rendered ineffective or removed from service on pipelines that are continued in operation, an equivalent degree of safety shall be provided. The affected safety equipment shall be identified by the placement of a sign on the equipment stating that the equipment is rendered ineffective or removed from service.

(2) When conducting repairs or maintenance to the pipeline system components that expose the pipeline to the atmosphere or to conditions that constitute a potential danger to safety of personnel or protection to the environment, the system shall be purged of hydrocarbons and flow shall be blocked from the area under repair or maintenance. Valves, pumps, or other equipment that could allow or initiate flow through the designated area shall also be flagged and removed from service. Activation of this equipment from the control panel shall be temporarily precluded. Only the person in charge of the repair or maintenance may authorize the resumption of service. This authorization may not be given until the repair or maintenance action is completed.

10. In § 250.158, paragraph (e) is revised to read as follows:

§ 250.158 Reports.

* * * * *

(e)(1) Except for emergency repairs necessary to prevent or minimize pollution or the loss of human life, the lessee or right-of-way holder shall notify the Regional Supervisor prior to the repair of any pipeline or pipeline component. Based on the nature of the repair, the Regional Supervisor may require the lessee or right-of-way holder to submit detailed pipeline repair procedures for approval before conducting repairs. The repair procedures shall include the types of equipment and specifications of components used in the repair.

(2) A detailed report of the pipeline repair shall be submitted to the Regional Supervisor within 30 days after completion of the repair. The report shall include the following:

(i) Type of damage sustained and cause;

(ii) Type and volume of hydrocarbons lost due to damage;

(iii) Specifications of components utilized in the repair and a detailed repair procedure;

(iv) Results of pressure and other verification tests; and

(v) Date pipeline or component returned to service.

* * * * *

11. In § 250.291, paragraphs (b)(3) and (d)(4)(i) are revised to read as follows:

§ 250.291 Design, installation, and operation of production systems.

* * * * *

(b) * * *

(3) Electrical system information, including a plan of each platform deck that shows:

(i) All hazardous areas classified in accordance with API RP 500, Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities; and

(ii) All areas in which potential ignition sources are to be installed;

* * * * *

(d) * * *

(4) * * *

(i) A plan of each platform deck, outlining all hazardous areas classified in accordance with API RP 500 and outlining areas in which potential ignition sources are to be installed;

* * * * *

12. In § 250.292, paragraph (b)(4)(i) is revised to read as follows:

§ 250.292 Additional production and fuel gas system requirements.

* * * * *

(b) * * *

(4) *Fire- and gas-detection system.* (i) Fire (flame, heat, or smoke) sensors shall be installed in all enclosed classified areas. Gas sensors shall be installed in all inadequately ventilated, enclosed classified areas. Adequate ventilation is defined as ventilation that is sufficient to prevent accumulation of significant quantities of vapor-air mixture in concentrations over 25 percent of the LEL. One approved method of providing adequate ventilation is a change of air volume every 5 minutes or 1 cubic foot of air-volume flow per minute per square foot of solid floor area, whichever is greater. Enclosed areas (e.g., buildings, living quarters, or doghouses) are defined as those areas confined on more than four of their six possible sides by walls, floors, or ceilings more restrictive to air flow than grating or fixed open louvers and of sufficient size to allow entry of personnel. A classified area is any area classified Class I, Group D, Division 1 or 2, following the guidelines of API RP 500.

* * * * *

[FR Doc. 94–11601 Filed 5–13–94; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 222

RIN 0596–AA35, 0596–AB42

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 1780 and 4100

[WO–220–4320–02 24 1A]

RIN 1004–AB89

Administration of Grazing on Public Lands and National Forest System Lands

AGENCIES: Forest Service, USDA and Bureau of Land Management, Interior

ACTION: Proposed rule; notice of hearings and informational meetings.

SUMMARY: This document provides notice of public hearings in which the public is invited to comment on regulations proposed by the Bureau of Land Management (BLM) and the Forest Service, relating to the administration of grazing on the public lands administered by the BLM and on National Forest System lands. These hearings will also provide the public an opportunity to comment on a draft environmental impact statement (EIS) for Rangeland Reform '94. Immediately preceding the hearings, BLM and the Forest Service will sponsor informational meetings on the proposed regulations.

DATES: All hearings will be held on June 8, 1994.

ADDRESSES: Hearings will be held at the facilities listed in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: Lee Otteni (BLM), 202–208–7701 or Jerry McCormick (Forest Service), 202–205–1746.

SUPPLEMENTARY INFORMATION:

Background

The United States Department of the Interior is proposing to amend the regulations which govern how the BLM administers livestock grazing on the public lands. A proposed rule was published in the **Federal Register** on Friday, March 25, 1994 (59 FR 14314). The proposed rule provides for a public comment period that runs until July 28, 1994.

On April 28, 1994, the United States Department of Agriculture published similar proposed rules in the **Federal Register** (59 FR 22074, 22094) which govern how the Forest Service

administers livestock grazing on National Forest System lands. These proposed rules also provide for public comments to be received by July 28, 1994.

In addition to the proposed rules, the Bureau of Land Management and the Forest Service, as cooperating agencies, have prepared a draft EIS. The draft EIS is currently being printed and prepared for distribution. Notice of availability of the draft EIS will be made through a separate publication in the **Federal Register**.

During the preparation of the BLM proposed rule, Interior Secretary Bruce Babbitt met on a number of occasions throughout the West with governors, State and local officials, ranchers, environmentalists and other public land users. These meetings resulted in many useful suggestions that are reflected in the proposed rule. In order to continue this important communication with user groups and members of the public, and to further elicit valuable comments on the proposed rules of both Departments and the draft EIS, the BLM and Forest Service have jointly scheduled 49 public hearings to be held throughout the United States on June 8, 1994.

Hearing Procedures

The purpose of the hearings is to provide the public an alternate method by which to comment on the proposed rules and the EIS. The hearings do not replace the public comment period described in the proposed rules. All members of the public may submit comments in accordance with the procedures set forth in the proposed rules and are encouraged to do so.

The hearings will be preceded by informal general information sessions which will begin at 8 a.m. in each location. The purpose of these sessions is to allow the public an opportunity to learn more about the proposed rules and EIS. BLM and Forest Service personnel will be present to describe the key elements of the proposals, and to answer questions so that those who wish to testify at the hearings will fully understand the proposals. These sessions are not part of the hearing and will not appear as part of the hearing record.

The hearings themselves will begin at 10:30 a.m. and continue until 5 p.m., with a lunch recess to be determined by the Hearing Officer. The hearings will resume at 7 p.m. and will continue until 10 p.m. or thereafter until all speakers have been heard.

In order to have productive and meaningful hearings and to ensure that those who wish to speak at the hearings are able to do so in a fair and orderly manner, the following procedures will be observed:

—Persons wishing to testify must register at the hearing site between 8 a.m. and 9 p.m. Speakers will be heard in the order in which they register, with the exception of elected Federal, state or local officials, who will speak first at the beginning of each session or as otherwise arranged with the Hearing Officer.

—Each person may present testimony only once. However, if time permits, the Hearing Officer may allow each speaker additional time after all other witnesses have had the opportunity to speak. When provided, such additional time will be granted to speakers in the same order in which they originally testified.

—Because a large number of speakers is anticipated, it will be necessary to limit the amount of time of each speaker. Since the number of speakers may vary greatly from location to location, the time allocated to each speaker may also vary among the hearings. However, within any one hearing, all speakers will be allocated an equal amount of time. The amount of time allocated to each speaker will be left to the discretion of the Hearing Officer. Time limitations will be strictly followed.

—The purpose of the hearings is to elicit comments from the public. A technical representative from the BLM and Forest Service will be present to ask clarifying questions of witnesses. Time spent asking and answering these questions will not count against the time allocated to the speaker. Because of the time constraints and the desire to maximize public input, the technical representatives will not respond to questions from or otherwise engage in discussions with the speaker. Speakers who wish to ask questions should do so during the informal information session.

—A transcript of the hearing will be made and become part of the rulemaking record. Speakers are encouraged to submit a written copy of their statements to be included in the hearing record. The record of the hearing will remain open through June 13, 1994 for submission of supplemental written statements or other exhibits. The name and address of the designated official to receive these statements or exhibits will be announced at the hearing.

Location

The hearings are to be held at the following locations:

ARIZONA

Fountain Suites Hotel, 2577 W. Greenway, Phoenix, AZ, on the Southeast Corner of the Black Canyon Freeway.
Eastern Arizona College, Student Activity Center, Highway 70, Thatcher, AZ

CALIFORNIA

Red Lion Inn, 1830 Hilltop Drive, Redding, CA 96002
Red Lion Inn, 3100 Camino del Rio Court, Bakersfield, CA 93308
Barstow Community Center, 841 Barstow Road, Barstow, CA 92311
Lassen Community College, Room H221–222 (Humanities Building), Highway 139, Susanville, CA 96130

COLORADO

Holiday Inn Denver West, 14707 West Colfax Avenue, Golden, CO
Holy Cross Abbey, Community Center, 2951 East Highway 50, Canon City, CO
Moffat County Fairgrounds Pavilion, Craig, CO
Two Rivers Convention Center, 159 Main Street, Grand Junction, CO
The Montrose Pavilion, 1800 Pavilion Road, Montrose, CO

IDAHO

Weston Plaza, 1350 Blue Lakes Blvd., N., Twin Falls, ID 83301
Senior Citizens Center, Rt. 2 Truck Route, Grangeville, ID 83530
Quality Inn of Pocatello, 1555 Pocatello Creek Road, Pocatello, ID 83201
Boise Center On-the-Grove, 850 Front, Boise, ID 83702
Salmon Valley Center, 200 Main Street, Salmon, ID 83467

MONTANA

Copper King Inn, 4655 Harrison Ave. S., Butte, MT 59701
Exhibition Hall, Custer Co. Fairgrounds, Garryowen Rd., W. of Miles City, Miles City, MT 59301
Fergus High School, 201 Casino Creek Dr., Lewistown, MT 59457

NEVADA

Elko Junior High School, 770 Country Club Drive, Elko, NV 89801
Humboldt County Fairgrounds, Exhibition Hall, Fairgrounds Road, Winnemucca, NV 89445
Peppermill Hotel and Casino, 2707 S. Virginia Street, Reno, NV 89502
Bristlecone Convention Center, 150 6th Street, Ely, NV 89301
Cashman Field, 850 N. Las Vegas Blvd., Room 103–104, Las Vegas, NV 89101
Austin High School, Highway 305 North, Austin, NV 89310

NEW MEXICO

UNM Continuing Education Conference Center, 1634 University Blvd., NE, Main Auditorium, Albuquerque, NM 87131–4006
The Best Western Mesilla Valley Inn, Aspen Room, 901 Avenida de Mesilla, Las Cruces, NM 88005
Pearson Auditorium, New Mexico Military Institute Campus, Roswell, NM 88201

Farmington Civic Center, 200 West Arrington, Farmington, NM 87401

NORTH DAKOTA

Hospitality Inn, Remington-Winchester Rooms, Highway 22 and I–94, Dickinson, ND

OREGON

BLM Salem District, Lobby Level Conference Room, 1717 Fabry Road SE, Salem, OR 97306
Vale Catholic Church, Parish Hall, 690 A Street West, Vale, OR 97918
Harney County Fairgrounds, Memorial Building, South Egan Road, Burns, OR 97720
BLM Medford District, The Oregon Room, 3040 Biddle Road, Medford, OR 97504
Central Oregon Community College, Hitchcock Auditorium, 2600 NW College Way, Bend, OR 97701
Lake County Courthouse, Lakeview, OR 97630
LaGrande Senior High School, High School Auditorium, 708 K Avenue, LaGrande, OR 97850

UTAH

Holiday Inn, 1575 W. 200 N., Cedar City UT
Sevier County Courthouse, 250 North Main Street, Richfield, UT
Uintah County High School, Little Theater, 1880 W. 500 N., Vernal, UT
Star Hall, Center Street, Moab, UT
Salt Lake City Public Library, Third Floor Lecture Hall, 209 E. 500 S., Salt Lake City, UT
Dixie High School, 350 East 700 South, St. George, UT

WASHINGTON

Wenatchee Convention Center, South Ball Room, 201 Wenatchee Avenue, Wenatchee, WA 98801

WASHINGTON DC

Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia 22153

WYOMING

Elks Lodge BPOE II 1908, 601 Coburn Avenue, Worland, WY 82401
While Mountain Junior High School Auditorium, 2550 Foothills Blvd, Rock Springs, WY 82901
Jeffrey Center, 3rd and Spruce St., Rawlins, WY 82301
Natrona County Agricultural Building, 2011 Fairground Road, Casper, WY 82604

Dated: May 5, 1994.

Mike Dombeck,

Acting Director, Bureau of Land Management.

Mark A. Reimers,

Acting Chief, Forest Service.

[FR Doc. 94–11653 Filed 5–13–94; 8:45 am]

BILLING CODE 4310–84–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–4881–6]

RIN 2060–AD97

National Emission Standards for Hazardous Air Pollutants Epoxy Resins Production and Non-nylon Polyamides Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: The proposed standard would limit emissions of hazardous air pollutants (HAP) from existing and new facilities that manufacture polymers and resins produced from epichlorohydrin feedstock, specifically, basic liquid epoxy resins (BLR) and non-nylon polyamide resins, also known as wet strength resins (WSR). The proposed standards implement section 112(d) of the Clean Air Act (Act) amendments of 1990, which require the Administrator to regulate emissions of hazardous air pollutants listed in section 112(b) of the Act. The intent of these standards is to protect the public by requiring new and existing major sources to control emissions to the level achievable by the maximum achievable control technology (MACT), taking into consideration the cost of achieving such emission reductions, any nonair quality and other air quality related health and environmental impacts, and energy requirements.

DATES: *Comments.* Comments must be received on or before July 15, 1994.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by June 6, 1994, a public hearing will be held on June 15, 1994, beginning at 10 a.m. Persons interested in attending the hearing should call Ms. Lina Hanzely at (919) 541–5673 to verify that a hearing will be held.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact EPA by June 6, 1994, by contacting Ms. Lina Hanzely, Chemicals and Petroleum Branch, (MD–13), U. S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5673.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Air Docket Section (LE–131), Attention: Docket No. A–92–37, U. S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Background Information Document

The background information document (BID) for the proposed standard may be obtained from the docket or from the U. S. EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone number (919) 541–2777. Please refer to "Emissions from Epoxy Resins Production and Non-Nylon Polyamides Production—Background Information for Proposed Standards" EPA 453/R–94–033a.

Docket. Docket No. A–92–37, containing supporting information used in developing the proposed standards, is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket Section, Waterside Mall, room 1500, 1st Floor, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For information concerning the standards, contact Mr. Randy McDonald at (919) 541–5402, Chemicals and Petroleum Branch, Emission Standards Division (MD–13), U. S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. List of Source Categories
II. Background
III. Authority for National Emission Standards for Hazardous Air Pollutants (NESHAP) Decision Process
  A. Source of Authority for NESHAP Development
  B. Criteria for Development of NESHAP
IV. Summary of Proposed Standards
  A. Source Categories to be Regulated
  B. Pollutants to be Regulated
  C. Affected Emission Points
  D. Format of the Standards
  E. Proposed Standards
  F. Certification of Compliance
  G. Monitoring Requirements
  H. Reporting and Recordkeeping Requirements
V. Summary Of Environmental, Energy, Cost, and Economic Impacts
  A. Facilities Affected by These NESHAP
  B. Air Impacts
  C. Water and Solid Waste Impacts
  D. Energy Impacts
  E. Cost Impacts
  F. Economic Impacts
VI. Rationale
  A. Selection of Emission Points to be Covered by the Standards
  B. Designation of Sources
  C. Selection of Basis and Level of Proposed Standards for Existing Sources
  D. Selection of Basis and Level of Proposed Standards for New Sources
  E. Selection of the Format of the Proposed Standards
  F. Selection of Compliance and Performance Testing Provisions and Monitoring Requirements

G. Selection of Reporting and Recordkeeping Requirements
H. Operating Permit Program
VII. Administrative Requirements
A. Public Hearing
B. Docket
C. Executive Order 12866
D. Paperwork Reduction Act
E. Regulatory Flexibility Act
F. Miscellaneous

I. List of Source Categories

Section 112 of the amended Act requires that EPA evaluate and control emissions of HAP. The control of HAP is achieved through promulgation of emission standards under sections 112(d) and 112(f) and work practice and equipment standards under section 112(h) for categories of sources that emit HAP. On July 16, 1992, EPA published an initial list of major and area source categories to be regulated (57 FR 31576). Included on that list were major sources emitting HAP from epoxy resins and non-nylon polyamides production.

The categories of major sources that would be affected by this regulation are defined as the manufacture of basic liquid epoxy resins (BLR) and resins made of epichlorohydrin (EPI) cross-linked non-nylon polyamides, also known as wet strength resins (WSR). The BLR source category does not include the manufacture of specialty epoxy resins (epoxy resins that are not BLR) or the modification of epoxy resins (BLR that are blended with solvents, reactive diluents, or other resins). The WSR source category are those that are made with dibasic esters, dicarboxylic acids, amines, and EPI. In developing the background information to support the proposed standard, no reasons for subcategorizing either of the source categories were identified.

Production methods used in the two source categories include both batch and continuous operations. The sizes of the facilities range from those that make several thousand pounds of resin per year (lb/yr) to those that produce over 100 million lb/yr. Air emissions of HAP compounds originate from breathing and working losses from storage tanks, venting of process vessels, leaks from piping equipment used to transfer HAP compounds (equipment leaks), and volatilization of HAP from wastewater streams. Pollutants (HAP) emitted from the production processes include EPI, methanol, and hydrochloric acid (HCl). Detailed information describing manufacturing processes and emissions can be found in "Emissions from Epoxy Resins Production and Non- Nylon Polyamides Production—Background Information for Proposed Standards" (EPA 453/R–94–033a), Chapter 3.

As of 1990, only three U.S. companies were producing BLR. All three of these facilities are considered to be major sources according to the Act criterion of having the potential to emit 10 tons per year of any one HAP or 25 tons per year of combined HAP. There are at least 17 facilities in the U.S. that manufacture WSR; of these, 9 are considered major sources because they are co-located within larger chemical manufacturing operations, based on the criteria mentioned above. The proposed standard would apply to all major sources that produce BLR and/or WSR. Area sources would not be subject to this standard.

II. Background

In 1989, EPA conducted a study that examined the use of epichlorohydrin in industry. This study identified the BLR and WSR industries as the major users of epichlorohydrin in the U.S.

Under section 112(c) of the Act, the Administrator is required to publish and from time to time revise a list of source categories and subcategories that emit one or more of the hazardous air pollutants listed in section 112, as amended. Information from the study of epichlorohydrin use in industry was used during the development of the source category list. On July 16, 1992 (57 FR 31576), the EPA published the initial list of source categories, which includes epoxy resins production and non-nylon polyamides production.

III. Authority for National Emission Standards for Hazardous Air Pollutants (NESHAP) Decision Process

A. Source of Authority for NESHAP Development

Section 112 of the Clean Air Act gives the Environmental Protection Agency the authority to establish national standards to reduce air emissions from sources that emit one or more HAP. Section 112(b) contains a list of HAP to be regulated by NESHAP. Section 112(c) directs the Agency to use this pollutant list to develop and publish a list of source categories for which NESHAP will be developed; this list was published in the **Federal Register** on July 16, 1992 (57 FR 31576). The Agency must list all known categories and subcategories of "major sources" (defined below) that emit one or more of the listed HAP. A major source is defined in section 112 (a) as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit in the aggregate, considering controls, 10 tons per year or more of any one HAP or 25 tons per year or more of any combination of HAP.

B. Criteria for Development of NESHAP

The NESHAP are to be developed to control HAP emissions from both new and existing sources according to the statutory directives set out in section 112(d) of the Act. The statute requires the standards to reflect the maximum degree of reduction in emissions of HAP that is achievable for new or existing sources. This control level is referred to as the "maximum achievable control technology" (MACT). The selection of MACT must reflect consideration of the cost of achieving the emission reduction, any nonair quality health and environmental impacts, and energy requirements for control levels more stringent than the floor (described below).

The MACT floor is the least stringent level for MACT standards. For new sources, the standards for a source category or subcategory "shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source, as determined by the Administrator" (section 112(d)(3)). Existing source standards should be no less stringent than the average emission limitation achieved by the best performing 12 percent of the existing sources for categories and subcategories with 30 or more sources or the average emission limitation achieved by the best performing 5 sources for categories or subcategories with fewer than 30 sources (section 112(d)(3)).

In a March 9, 1994 **Federal Register** notice reopening the public comment period for determination of "MACT floor" for NESHAP source categories (59 FR 11018), the Agency considered more than one interpretation of the statutory language concerning the MACT floor for existing sources and solicited comment on them. The MACT floor decision that the EPA will make on the basis of this March 9, 1994 notice will have broad precedential effects, and will presumptively be followed by the Agency in any rulemakings subsequently promulgated under Title III of the Act. The MACT floor determinations proposed in today's rulemaking may therefore be affected by the Agency's final interpretation of "MACT floor."

IV. Summary of Proposed Standards

A. Source Categories To Be Regulated

The proposed standards would regulate HAP emissions from epoxy resins production (facilities that produce BLR), and from non-nylon

polyamides production (facilities that produce WSR), that are determined to be major sources. The standards would apply to existing sources as well as new sources.

B. Pollutants To Be Regulated

Hazardous air pollutants emitted from existing BLR and wet strength resin production processes include epichlorohydrin, methanol, and hydrochloric acid. The proposed standards would regulate emissions of these compounds, as well as any other HAP that may be emitted.

In addition, note that epichlorohydrin is listed under section 112(r) of the Act. The intent of section 112(r), Prevention of Accidental Releases, is to focus on chemicals that pose a significant hazard to the community should an accident occur, to prevent their accidental release, and to minimize consequences should a release occur. Epichlorohydrin, along with the other substances listed under section 112(r)(3), is listed because it is known to cause, or may be reasonably anticipated to cause death, injury, or serious adverse effects to human health or the environment (see 59 FR 4478, January 31, 1994). Sources that handle epichlorohydrin in greater quantities than the established threshold quantity under section 112(r)(5) will be subject to the risk management program requirements under Section 112(r)(7) (see 58 FR 54190, October 20, 1993).

C. Affected Emission Points

Emission points identified for BLR and wet strength resin production include process vents, equipment leaks, storage tanks, and wastewater.

D. Format of the Standards

The standards for process vents, storage tanks, and wastewater for existing facilities are presented in an emission limit format in the units of pounds of HAP per 1 million pounds of product (lb HAP/MM lb product). Facilities will have the option of using any control technology or pollution prevention strategy, as long as the HAP production-based emission limits are achieved. An emission limit format cannot be used for the standard for new facilities because it would identify a specific facility's production level, which is claimed as confidential business information. Therefore, standards for new facilities are in the equipment standard format. Facilities would have to implement the controls specified in the standard, or demonstrate equivalency, to achieve compliance.

The EPA solicits comments on the equipment standard format of the standards for process vents, storage tanks, and wastewater at new facilities. In particular, the EPA solicits comments on whether performance standards for vents, tanks, and wastewater at new facilities can be used without compromising confidential business information and whether operators can comply with performance standards for vents, tanks, and wastewater at new facilities without compromising confidential business information.

Standards for equipment leaks are specified for new and existing BLR facilities, and are presented as an alternative standard for new and existing wet strength resin facilities. Equipment leak standards are in the form of equipment/work practice standards. Facilities would be required to implement the program specified in the proposed regulation to achieve compliance with the standard.

E. Proposed Standards

Table 1 summarizes the standards for existing BLR and WSR sources. In each case, for purposes of determining compliance with the emission requirements, the source was divided into two portions: (1) The combination of process vents, storage tanks, and wastewater, and (2) equipment leaks. The proposed standards for BLR production would require existing facilities to limit emissions from all process vents, storage tanks, and wastewater combined to a level at or below 130 lb HAP/MM lb production. Existing BLR facilities would also be required to implement the leak detection and repair (LDAR) program specified in the Negotiated Regulation for Equipment Leaks (40 CFR part 63, subpart H). The LDAR program specified under subpart H requires specific equipment modifications and work practices that reduce emissions from equipment leaks.

TABLE 1.—PROPOSED STANDARDS FOR EXISTING AND NEW SOURCES

Emission source	Basic liquid epoxy resins	Wet strength resins	
			Equivalent standard
Existing sources			
(1) Process vents, storage tanks, and wastewater.	Emission limit of 130 lb/MM lb product.	Emission limit of 10 lb/MM lb product.	No requirement.
(2) Equipment leaks	Requirements of 40 CFR 63, subpart H.	No requirement	Requirements of 40 CFR 63, subpart H.
New sources			
(1) Process vents, storage tanks and wastewater.	(a) Route process vents and storage tank vents to a common water scrubber w/efficiency of 99 percent.	(a) Control process vent emissions w/water-cooled condenser @ 25 °C.	No requirement.
	(b) Recirculate scrubber liquor back to process.	(b) Eliminate the production of methanol by-product in the manufacturing process	
	(c) Control wastewater to 99%	(c) Eliminate the use of hydrochloric acid in the manufacturing process	
(2) Equipment leaks	Requirements of 40 CFR 63, subpart H.	No requirement	Requirements of 40 CFR 63, subpart H.

For new BLR facilities, the standards would be based on the technology used by the best performing facility in the category for process vents, storage tanks, and wastewater, which is the use of a 99 percent efficient water scrubber on all process vents coupled with recirculation of the scrubber effluent to the process, and 99 percent control of emissions from wastewater. As for existing facilities, new facilities would be required to implement the LDAR program of subpart H to control equipment leak emissions.

For existing wet strength resin facilities, the proposed standards would require an emission limit of 10 lb HAP/MM lb product from process vents, wastewater, and storage tanks combined. No emission limits or equipment standards are required for equipment leaks; however, facilities may elect to implement the subpart H LDAR program in lieu of complying with the emission limit for process vents, storage tanks, and wastewater, as this alternative would achieve a greater emission reduction. Similar to BLR production, for new wet strength resin facilities, the standards would be based on the technology used by the best performing source in the category. This technology is the use of a water-cooled condenser, from which the outlet gas temperature shall be no higher than 25 °C, on the batch reactor and no methanol by-product formation or hydrochloric acid usage, or the implementation of the subpart H LDAR program to control equipment leak emissions.

F. Certification of Compliance

1. Existing sources

a. *Process vents, storage tanks, and wastewater emission points.* To determine compliance with the emission limit for process vents, storage tanks, and wastewater combined, the owner or operator of an existing BLR or WSR manufacturing facility would calculate the total emissions per product produced by summing the production-based emission values for process vents, storage tanks, and wastewater according to the following equation:

$$E=\Sigma PV=\Sigma ST=\Sigma WW \quad (1)$$

where:

E=Emissions, lb HAP/10^6 lb product
PV=Process vent emissions, lb HAP/10^6 lb product
ST=Storage tank emissions, lb HAP/10^6 lb product
WW=Wastewater emissions, lb HAP/10^6 lb product

The required calculation methods for each type of emission point are described below for the BLR and WSR source categories.

i. *BLR source category.* For basic liquid resin production, tests would be required to determine the flow rate and HAP concentration of emissions from process vents and, where applicable, storage tank vents that are combined with process vents. Data from three 1-hour tests would be used to calculate an average HAP emission rate in pounds per hour. Initial performance tests for uncontrolled streams or streams controlled by devices other than flares and certain boilers and process heaters would consist of measuring HAP concentration using the EPA Method 18 or Method 25A of 40 CFR part 60, appendix A. Method 25A may be used only if a single HAP compound greater than 50 percent of the total organic HAP in the vent stream and that HAP compound is used for calibration. Method 2, 2A, 2C, or 2D of 40 CFR part 60, appendix A is specified for measuring vent stream flowrate.

To determine the production-based emission rate for process vents, the owner or operator would calculate an hourly rate of production based on production data for the previous year and the actual operating hours during the same annual period. For each vent, the hourly emission rate, determined from the average of three 1-hour tests, would be divided by the hourly production rate (calculated as described above) to determine the production-based emission rate for the vent. The sum of production-based emission rates from all process vents (and storage tank vents if manifolded with process vents) constitutes the first term in the equation used to determine compliance. Because emissions are divided by the annual production of the previous year, testing must take place under operating conditions that represent the production rate for the previous year.

Emissions from storage tanks not manifolded with process vents would be calculated according to the methodology described in 40 CFR 63.150(f)(3). The annual emissions would be divided by the annual production from the previous year to determine the production-based emission rate from storage tanks.

Emissions from wastewater would be calculated according to the methodology described in 40 CFR 63.150(f)(5). Monthly emissions calculated using this methodology would be divided by a monthly production rate, which would be calculated by dividing the annual production rate for the previous year by 12. Testing is required by 40 CFR 163.150(f)(5) to determine wastewater stream parameters such as the flow rate and HAP concentration. Because emissions would be divided by a production rate calculated using production data for the previous year, test conditions must reflect typical production for the previous year.

ii. *WSR source category.* If a process uses a condenser to recover HAP, emissions would be calculated for the purpose of determining compliance using equations developed for batch operations, in lieu of compliance tests. Testing would be required to determine the emission rate from uncontrolled vents and vents controlled by devices other than condensers. Testing requirements are the same as for the BLR source category, except that testing would take place over the batch cycle, rather than hourly. Likewise, the production-based emission rates used in the equation to determine compliance would be calculated based on emissions and production data obtained on a per-batch basis, not per-hour as is the case for the BLR source category.

As with the BLR source category, storage tank emission calculations would follow the methodology described in 40 CFR 63.150(f)(3). The methodology of 40 CFR 63.150(f)(5) would be used to determine emissions from wastewater.

b. *Equipment leaks emission point.* To determine compliance with the standard for equipment leaks, BLR and WSR facilities would have to demonstrate that an LDAR program meeting the requirements of 40 CFR part 63, subpart H (40 CFR 63.160–63.183) is in place. This includes performance of the test methods and procedures used to verify the adequacy of monitoring equipment outlined in 40 CFR 63.180.

2. New Sources

a. *BLR source category.* Although the proposed standards for new BLR sources are essentially equipment standards, control efficiencies are required for the equipment specified in the standards. Therefore, in addition to installing the equipment required by the standards, new BLR facilities would be required to perform the appropriate EPA test methods to demonstrate that the common water scrubber required to control emissions from process vents, storage tanks, and wastewater is achieving 99 percent control. The testing methodology described in 40 CFR 163.150(f)(5) would be required to demonstrate that wastewater treatment systems are achieving 99 percent control.

b. *WSR source category.* The equipment standards for new WSR facilities do not specify any control efficiencies that must be achieved. Therefore, facilities would only be required to demonstrate operation of a

water-cooled condenser at an outlet temperature of 25 °C, that no methanol is being produced during the manufacturing process, and that no hydrochloric acid is being used to produce WSR.

G. Monitoring Requirements

Monitoring is required by the proposed standards to determine whether a BLR or wet strength resin process is in compliance. This monitoring is done either by: (1) Continuously measuring outlet mass flowrate and concentration, or by (2) continuously measuring a site-specific operating parameter, the value of which is established by the owner or operator during the initial compliance test. The operating parameter value is defined as the minimum or maximum value established for a control device or process parameter that, if achieved by itself or in combination with one or more other operating parameter values, determines that an owner or operator is complying with the applicable emission limitation or standards. A summary of the monitoring requirements of the proposed standards is provided in Table 2.

TABLE 2.—MONITORING REQUIREMENTS

Emission source	Parameter monitored	Noncompliance
BLR process and storage*:		
Carbon adsorber controlled.	Continuous measurement of outlet HAP concentration using Method 25A if possible or Method 18 if speciation necessary.	One-hour average outlet concentration is greater than the maximum concentration established during the compliance test.
Uncontrolled	Continuous measurement of outlet HAP concentration using Method 25A if possible or Method 18 if speciation necessary.	One-hour average outlet concentration is greater than the maximum concentration established during the compliance test.
Condenser controlled	Continuous measurement of outlet gas temperature	One-hour average exhaust gas temperature is greater than the maximum temperature established during the compliance test.
Scrubber controlled	Continuous measurement of scrubber liquid flowrate	One-hour average scrubber flowrate is below the minimum flowrate established during the compliance test.
Flare controlled	Continuous verification of pilot flame presence with heat sensing device such as a UV sensor or thermocouple.	Loss of pilot flame.
Wastewater	Flow rate, pH, and HAP concentration measured daily; TSS and BOD measured biweekly.	Monitored values are outside the range established during initial compliance.
All air pollution control devices.	Flow diversion: if bypass lines that could divert flow from the control device to the atmosphere exist flow must be monitored continuously or the line must be secured with a car-seal or lock-and-key type configuration that is inspected daily.	Presence of flow detected in the line, rupture of the car-seal, or removed of the lock-and-key must be reported in the quarterly reporting requirement of §63.10. Occurrence does not establish noncompliance.
Wet strength resin batch reactor:		
Condenser controlled	Continuous measurement of outlet gas temperature during each step in batch process.	Average outlet gas temperature over the step is greater than the maximum temperature established from compliance calculations.
Carbon adsorber controlled Uncontrolled.	Continuous measurement of outlet HAP concentration using Method 25A if possible or Method 18 if speciation necessary.	Average outlet HAP concentration over the step is greater than the maximum value established during the compliance test.
Scrubber controlled	Measurement of average outlet gas flowrate during each step in batch process.	Average scrubber flowrate over the step is below the acceptable minimum flowrate established during the compliance test.
Wastewater	pH, flow rate and HAP concentration measured daily; TSS and BOD measured bi-weekly.	Monitored values are outside the range established during compliance.

*Monitoring of emissions from storage tanks is required only if emissions are combined with other tank or process emissions prior to discharge to the atmosphere.

H. Reporting and Recordkeeping Requirements

The owner or operator of any BLR or wet strength resin source subject to these standards would be required to fulfill all reporting requirements outlined in the General Provisions to 40 CFR part 63.

V. Summary of Environmental, Energy, Cost, and Economic Impacts

A. Facilities Affected by These NESHAP

These NESHAP would affect BLR and WSR facilities that are major sources in themselves, or constitute a portion of a major source. There are three existing manufacturers of BLR, all of which were assumed to be major sources for the purpose of developing these standards. (Final determination of major source status occurs as part of the compliance determination process). Of the 17 existing facilities that manufacture WSR, 9 were assumed to be considered major sources. The expected growth rate for the BLR industry and the wet strength resin industry is expected to be between 2 and 3 percent through 1995. Impacts associated with the control options are presented in Table 3 and Table 4; the options selected as proposed standards are footnoted.

TABLE 3.—IMPACTS OF MEETING MACT FLOORS AND REGULATORY ALTERNATIVES FOR BLR SOURCE CATEGORY

Regulatory option	Baseline emissions, Mg/yr	Emission reduction, Mg/yr	Energy burden, 10^6 Btu/yr	Wastewater generated, gal/yr	Capital costs, $/1,000	Annual costs, $	Cost effectiveness, $/Mg	Incremental cost effectiveness, $/Mg
MACT floor	122	52	1.5	3,200,000	335	127,500	2,500	.....
Regulatory Alternative 1[a]	122	95	1.5	3,200,000	410	140,000	1,500	300
Regulatory Alternative 2	122	97	1.5	3,200,000	419	152,000	1,600	6,000

[a] This option was chosen as the standard.

TABLE 4.—IMPACTS OF MEETING MACT FLOORS AND REGULATORY ALTERNATIVES FOR WET STRENGTH RESIN SOURCE CATEGORY

Regulatory option	Baseline emissions, Mg/yr	Emission reduction, Mg/yr	Energy burden, 10^6 Btu/yr	Wastewater generated, tons/yr	Capital costs, $/1,000	Annual costs, $	Cost effectiveness, $/Mg	Incremental cost effectiveness, $/Mg
MACT floor[a]	27	2	4	0	510	520,000	210,000	.....
Regulatory Alternative I	27	16	4	0	648	572,000	35,750	3,700
Regulatory Alternative II	27	17	4	0	808	792,000	46,590	220,000
Equivalent standard	27	14	0	0	138	52,000	3,700	.....

[a] This option was chosen as the standard.

B. Air Impacts

The proposed standards would reduce HAP emissions from existing BLR sources by 95 megagrams per year (Mg/yr) (105 tons per year [tons/yr]) from the baseline level, a reduction of 78 percent from baseline. Emissions of HAP from existing wet strength resin sources would decrease by 2 Mg/yr (2 tons/yr) if facilities elect to comply with the MACT floor, a reduction of 7 percent from baseline. If facilities elect to implement the alternative standard for the process vents, storage tanks, and wastewater source, HAP emissions would decrease by 14 Mg/yr (15 tons/yr), a reduction of 52 percent from baseline.

C. Water and Solid Waste Impacts

The proposed standards will result in the generation of 3,200,000 gallons of wastewater per year from the BLR source category, assuming gas absorbers (water scrubbers) are installed to control process vents and storage tank emissions. This amount of wastewater represents approximately 10 percent of the wastewater currently generated at the BLR production facility and a small portion of the total wastewater from the plant. EPA believes the additional wastewater can be treated on-site in the plant's existing wastewater treatment system. Wastewater impacts may be less if an alternative control measure is used to comply with the standard.

There is no wastewater generated from the WSR production process, because emissions are controlled with condensers. There is also no solid waste generated from the BLR or WSR production processes.

D. Energy Impacts

The proposed standards for the BLR source category would require an additional energy usage of 1.5×10^6 Btu per year (Btu/yr). Additional energy usage for the WSR source category is 4×10^6 Btu/yr if the MACT floor is implemented; however, if facilities elect to comply with the alternative standard, the additional energy usage is negligible.

E. Cost Impacts

The emission reductions that would be required by this regulation could be met using one or more of several different techniques. To determine costs, certain control scenarios were assumed. The scenarios used in costing were judged to be the most feasible scenarios possible for meeting the requirements of the proposed standards from a technical and cost standpoint. The total control cost includes the capital cost to install the control device, the costs involved in operating the control device, and costs associated with monitoring the device to ensure compliance. Monitoring costs include the cost to purchase and operate monitoring devices, as well as reporting and recordkeeping costs required to demonstrate compliance.

The cost impacts of the proposed standards are summarized in Table 3 and Table 4. Nationwide, the total annual cost of this standard to the BLR industry is $140,000.

The total cost of this regulation to the wet strength resin industry is $520,000, assuming all facilities do not decide to achieve compliance with the alternative standard (controlling equipment leaks). If all facilities *do* decide to comply with the alternative standard, the total annual cost is $52,000.

F. Economic Impacts

The economic impact analysis of this standard shows that the estimated price increase from compliance with the recommended alternative for process vents, storage tanks, and wastewater is 0.05 percent for BLR. Estimated reduction in market output for BLR is 0.08 percent.

For WSR, control of equipment leaks is not required, but is allowed as an alternative standard because it achieves an emission reduction which is equivalent to or better than the MACT floor level of control for vents, tanks, and wastewater. Assuming compliance with the alternative standard for WSR, the estimated price increase is 0.22 percent and the estimated reduction in market output is 0.20 percent.

No plant closures are expected from compliance with this set of alternatives. For more information, consult the background information document for these standards (see the *Background Information Documents* section near the beginning of this preamble).

VI. Rationale

A. Selection of Emission Points To Be Covered by the Standards

Emissions from BLR and WSR production occur from the following emission points: Storage tanks, process vents, equipment leaks, and wastewater. The proposed standards consider all of these emission points. Wastewater emissions from wet strength resin facilities are negligible, although they are included as an emission point.

B. Designation of Sources

For these proposed standards, a source is defined as all HAP emission points within a facility that are related to the production of BLR or WSR, including process vents, storage tanks, wastewater, and equipment leaks. For the purpose of developing the standards, the emission points included in the definition of the source are divided into two portions:

1. All process vents, storage tanks, and wastewater emission points; and

2. Equipment leaks.

The Administrator considered proposing a single emission limit that would apply to process vents, storage tanks, wastewater and equipment leaks. However, equipment leaks cannot be included with process vents, storage tanks, and wastewater because: (1) The negotiated standard for equipment leaks has no fixed performance level; and (2) no method currently exists for determining the magnitude of allowable emissions to assign for leaks. Without a method to determine the magnitude of allowable emissions to assign for equipment leaks, an averaging policy that included equipment leaks would be difficult to enforce. Therefore, the MACT floor and each regulatory alternative has two components—one for the combination of process vents, storage tanks, and wastewater, and another for equipment leaks. When methods are developed to assign allowable emission levels for particular leak points, the EPA will consider revising these standards to allow inclusion of equipment leaks in the emission limit.

The Administrator also considered proposing separate emission limits for each type of emission point, but determined that this approach was not feasible because tanks, and wastewater emission points are intertwined by existing control strategies. For example, in existing BLR facilities, process vents and storage tank emissions are manifolded together and controlled using a common device. The device commonly used to control these emissions is a water scrubber, which functions in transferring potential HAP emissions from gaseous point sources to a wastewater emission source. Therefore, a single emission limit is proposed for process vents, storage tanks, and wastewater combined to give facilities flexibility in complying with the standard. Specifying a single emission limit for this combination of emission points gives facilities the latitude to determine the best way for them to achieve emission reductions. Separate regulatory options were identified for equipment leaks for the reasons described at the beginning of this section.

C. Selection of Basis and Level of Proposed Standards for Existing Sources

1. BLR Source Category

Because there are three existing facilities in the U.S. that produce BLR (all three are believed to be major sources), EPA used the average of the total production-based emission factors achieved by the three facilities to determine the MACT floors. Using this method, the production-based emission limit of 130 lb HAP/MM lb product was established as the MACT floor for the process vents, storage tanks, and wastewater portion of the source based on information from BLR facilities.

Existing BLR facilities control equipment leak emissions using various leak detection and repair (LDAR) programs. The impacts associated with the MACT floor and regulatory alternatives for sources at existing BLR facilities are presented in Table 3.

Regulatory Alternative II represents the highest level of control identified for existing BLR sources. Because the MACT floor for the process vents, storage tanks, and wastewater portion of the source reflects a high level of control (the use of water scrubbers, carbon adsorbers, refrigerated condensers, and flares on process and storage tank vents, and biodegradation to reduce emissions from wastewater), only one area was identified as a possible additional controlled emission point: the generation of HAP-containing scrubber effluent, which is normally routed to the facility's wastewater treatment system. This wastewater could be controlled by recirculating scrubber effluent to the process. This measure would result in an emission limit of 125 lb HAP/MM production. Therefore, this emission limit was chosen for Regulatory Alternative II for the process vents, storage tanks, and wastewater portion of the source. The control method proposed for the equipment leaks portion of the source was to implement the LDAR program specified in 40 CFR 63, subpart H, which represents a higher level of control than is currently practiced by any existing BLR facility.

In evaluating Regulatory Alternative II, the Administrator considered the impacts (air, cost, water, and energy). Regulatory Alternative II was rejected because the incremental emission reduction over Regulatory Alternative I (2 Mg/yr [2 tons/yr]) is not significant considering the associated cost. Water and energy impacts were examined; however, because the magnitude of these impacts were small, they were not a major factor in the decision to reject Regulatory Alternative II.

The first regulatory alternative above the MACT floor (Regulatory Alternative I) considered for existing BLR sources was to implement the LDAR program specified in 40 CFR 63, subpart H to control the equipment leaks portion of the source, and to require the MACT floor emission limit of 130 lb HAP/MM lb product for the process vents, storage tanks, and wastewater portion. The LDAR program of subpart H would achieve a higher level of control than the MACT floor; also, the cost of this control option was judged to be reasonable (see Table 3). Therefore, the Administrator selected Regulatory Alternative I as the standard for existing BLR sources.

2. WSR Source Category

The MACT floor for process vents, storage tanks, and wastewater for existing wet strength resin facilities was calculated based on data supplied by the nine major sources making up this source category. The MACT floor represents the average value of the lowest five production-based emission totals from major sources in the industry. For the process vents, wastewater, and storage tanks portion of the source, the emission limit is 10 lb/MMlb production. Because no existing facility in the WSR source category controls equipment leak emissions, the MACT floor for the equipment leaks portion of the source represents an uncontrolled situation. Impacts associated with the MACT floor and regulatory alternatives for sources at existing wet strength resin facilities are presented in Table 4.

Regulatory Alternative II, the most stringent alternative identified for existing WSR sources, would require an emission limit of 5 lb HAP/MM lb product for the process vents, storage tanks, and wastewater portion of the source, as well as requiring the subpart H LDAR program for the equipment leaks portion of the source. In evaluating Regulatory Alternative II, the Administrator considered the impacts (air, cost, water, and energy). Regulatory Alternative II was rejected because the incremental emission reduction over Regulatory Alternative I, (1 Mg/yr) is not significant considering the associated cost. No additional water or energy impacts were associated with Regulatory Alternative II; therefore, water and energy impacts were not a factor in the decision to reject Regulatory Alternative II.

Regulatory Alternative I, the first regulatory alternative above the MACT floor for existing WSR sources, would require the MACT floor emission limit of 10 lb HAP/MM lb production for the process vents, storage tanks, and wastewater portion of the source, and the LDAR program described in 40 CFR part 63, subpart H for the equipment leaks portion of the source. In evaluating Regulatory Alternative I, the Administrator considered the impacts (air, cost, water, and energy). Considering the emission reduction and cost of Regulatory Alternative I, the Administrator judged this option to be unreasonable. No additional water or energy impacts were associated with Regulatory Alternative I; therefore, water and energy impacts were not a factor in the decision to reject Regulatory Alternative I.

Because both Regulatory Alternatives were judged to be unreasonable, the control levels proposed for both the combined process vents, storage tanks, and wastewater emission points, as well as the equipment leaks portions of existing WSR sources are the MACT floor levels. However, the Administrator proposes the implementation of the subpart H LDAR program for equipment leaks as an equivalent standard for existing WSR sources. The subpart H LDAR program represents an effective control option with reasonable associated costs for the equipment leaks portion of the source, with significant emission reductions, no negative water impacts, and negligible energy impacts. The subpart H LDAR program was chosen as an alternative standard because it achieves an emission reduction which is equivalent to or better than that achieved by the technology basis for the floor level of control for vents, tanks, and wastewater and because costs of implementation of this LDAR program are in many cases much more reasonable than those incurred from requiring compliance with the emission limit (see Table 4).

D. Selection of Basis and Level of Proposed Standards for New Sources

1. BLR Source Category

For new sources, the MACT floor shall be no less stringent than the level representing the best controlled similar source. For new BLR sources, the MACT floor for the portion of the source consisting of the combination of process vents, storage tanks and wastewater is achieved by: (1) Routing process vents and storage tank vents to a common water scrubber with an efficiency of 99 percent; (2) recirculating scrubber effluent back to the process, and (3) Controlling HAP emissions from wastewater by 99 percent. This strategy represents a 99 percent emission reduction for this portion of the source. No regulatory alternatives more

stringent than the new source MACT floor could be identified for this portion of new BLR sources.

The MACT floor for the equipment leaks portion of new BLR sources is the LDAR program of 40 CFR part 60, subpart VV.

Regulatory Alternative I for new BLR sources would require sources to implement the subpart H LDAR program to control equipment leaks, in addition to the MACT floor requirement for process vents, storage tanks, and wastewater. The subpart H LDAR program represents a cost-effective control option for equipment leaks with significant emission reductions, no negative water impacts, and negligible energy impacts. For these reasons, the Administrator chose Regulatory Alternative I as the proposed standard for new BLR sources.

2. WSR Source Category

The MACT floor for process vents, storage tanks, and wastewater for new wet strength resin facilities is achieved by equipping the batch reactor with a cooling water condenser, and by operating the process without the use of hydrochloric acid and prohibiting the formation of methanol. This represents the highest level of control that is technically feasible. Therefore, no regulatory alternatives above the MACT floor could be identified.

Because no existing facility in the WSR source category is controlling equipment leak emissions, the MACT floor represents an uncontrolled situation. Regulatory Alternative I for new WSR sources is the LDAR program described in 40 CFR part 63, subpart H for the equipment leaks portion of the source (the same as for existing facilities), and the MACT floor equipment standard described in the previous paragraph for the process vents, storage tanks, and wastewater portion of the source. In evaluating Regulatory Alternative I, the Administrator considered the impacts (air, costs, water, and energy). Considering the emission reduction and cost of Regulatory Alternative I, the Administrator judged this option to be unreasonable. No additional water or energy impacts were associated with Regulatory Alternative I; therefore, water and energy impacts were not a factor in the decision to reject Regulatory Alternative I.

Because the only Regulatory Alternative above the MACT floor was judged to be unreasonable, the control levels proposed for both the combined process vents, storage tanks, and wastewater emission points, as well as the equipment leaks portions of new WSR sources are the MACT floor levels. However, the Administrator proposes the implementation of the subpart H LDAR program for equipment leaks as an equivalent standard for new WSR sources. The subpart H LDAR program represents an effective control option with reasonable associated costs for the equipment leaks portion of the source, with significant emission reductions, no negative water impacts, and negligible energy impacts. The subpart H LDAR program was chosen as an alternative standard because it achieves an emission reduction which is equivalent to or better from that achieved by the technology basis for the floor level of control for vents, tanks, and water and because costs of implementation of this LDAR program are expected to be much more reasonable than those incurred from requiring compliance with the emission limit.

E. Selection of the Format of the Proposed Standards

The formats of the proposed standards were selected in order to give facilities the most flexibility possible in achieving the level of control required by the selected regulatory alternative. Because the MACT floor for the process vents, storage tanks, and wastewater portion of the source reflects control by various methods, the format needs to allow sufficient flexibility for facilities to meet the level of the standard using the various control methods already in place to the extent possible.

Of the formats considered (mass emission limits, percent concentration, percent reduction, equipment standards, work practice standards), the mass emission limit format was chosen because various combinations of controls can be employed among several emission points to achieve the same mass emission rate. Also, mass emission limits encourage facilities to reduce emissions through process changes, work practice changes, and other methods to avoid costly add-on controls. In this way, mass emission limits serve to encourage pollution prevention. An equipment standard format is not needed for this source because an emission limit can be established. Formats such as specifying a concentration or a percent reduction, offer no advantages over the emission limit format, and would be more cumbersome from an enforcement standpoint due to the different characteristics of the emission points that make up the source of process vents, storage tanks, and wastewater.

For process vent, storage tank, and wastewater emission points within new sources, however, equipment standards have been proposed. An emission limit format cannot be used for these emission points within new sources because it would identify specific facilities' production levels, which are claimed as confidential business information. However, facilities would have the opportunity to employ other technologies to meet the standard by demonstrating equivalence.

The EPA solicits comments on the equipment standard format of the standards for process vents, storage tanks, and wastewater at new facilities. In particular, the EPA solicits comments on whether performance standards for vents, tanks, and wastewater at new facilities can be used without compromising confidential business information and whether operators can comply with performance standards for vents, tanks, and wastewater at new facilities without compromising confidential business information.

The LDAR program of 40 CFR part 63, subpart H is a combination of an equipment standard/work practice format. Under section 112 of the Act, national emission standards must, whenever possible, take the format of a numerical emission standard. Typically, an emission standard is written in terms of an allowable emission rate, performance level, or allowable concentration. These types of standards require the direct measurement of emissions to determine compliance. For some emission points, emission standards cannot be prescribed because it is not feasible to measure emissions. Section 112(h)(2) recognizes this situation by defining two conditions under which it is not feasible to establish an emission standard. These conditions are: (1) If the pollutants cannot be emitted through a conveyance designed and constructed to emit or capture the pollutant; or (2) if the application of measurement methodology is not practicable due to technological and economic limitations. If an emission standard cannot be established, the EPA may instead establish a design, equipment, work practice, or operational standard or combination thereof.

For equipment leak emission points, such as pumps and valves, EPA has previously determined that it is not feasible to prescribe or enforce emission standards. Except for those items of equipment for which standards can be set at a specific concentration, the only method of measuring emissions is total enclosure of individual items of equipment, collection of emissions for a specified time period, and measurement of the emissions. This procedure, known as bagging, is a time-consuming

and prohibitively expensive technique considering the great number of individual items of equipment in a typical process unit. Moreover, this procedure would not be useful for routine monitoring and identification of leaking equipment for repair. Therefore, LDAR program of 40 CFR, subpart H, an equipment/work practice standard, was chosen for the equipment leaks emission point.

F. Selection of Compliance and Performance Testing Provisions and Monitoring Requirements

The proposed regulation contains compliance provisions that require owners or operators to conduct an initial performance test to demonstrate compliance with the proposed standards. As a means of demonstrating compliance with the standards following the initial performance test, the owner or operator must also establish source-specific parameters based on the characteristics of the emission stream, process, or type of control device used. The Administrator determined that these provisions were necessary to meet the monitoring requirements of the General Provisions (40 CFR part 63, subpart A).

1. Testing and Monitoring

Compliance is comprised of initial performance testing and continuous compliance verification, or monitoring. The proposed requirements for initial compliance testing and any periodic or continuous measurement to verify ongoing compliance are based on the emission stream characteristics that would be encountered either at the outlet of the control device or at the point of release to the atmosphere for uncontrolled emission streams. Often, an important factor to consider in evaluating emission stream characteristics is the type of control device that is preceding the emission stream. Also, the operating parameters of the device can be used as an indicator of the level of control of the device and therefore, the outlet emissions. The selection of appropriate test methods for initial and ongoing compliance, therefore, is related to both the characteristics of the stream and to the type of device used to control it. The discussion of both factors is presented below.

2. Emission Stream Characteristics

An important characteristic to consider when evaluating measurement methods are whether the streams are from continuous sources or whether they are from batch sources. Streams that are from continuous sources would have minimal variation in characteristics; the test measurement method therefore can be intermittent in nature. For example, flowrate and concentration can be sampled on an intermittent basis to obtain an average emission value that presumably will not vary significantly. Batch emission streams, however, are expected to have wide variation in flowrate, composition, and conditions throughout the course of a batch (i.e., with time). Often, proportional sampling of flowrate and composition over the course of a batch to arrive at a total emission number over the entire batch is necessary. Alternatively, simultaneous measurement of flowrate and composition must be made to arrive at an instantaneous emission rate. Because these methods are difficult, an initial compliance test requiring concentration measurement is not recommended for most batch operations. Specifically for these NESHAP, equations are provided in the regulation to determine HAP emissions from the batch reactor used in WSR production.

A second important characteristic of the emission stream to consider during selection of a test method is the composition. If organic material other than HAP are contained in the stream, it may be necessary to speciate the stream or at least identify the HAP constituents in the stream. This identification limits how continuously the stream can be sampled. The most common technology that will be used in identification is gas chromatography, specified in EPA Reference Method 18 of 40 CFR part 60, appendix A. Gas chromatography, coupled with the quantification of material typically done with a flame-ionization device (FID), EPA Reference Method 25A, can be done at sub-minute intervals, but not continuously. However, if identification of organic species is not necessary, an FID alone can be used. This technology will provide a continuous reading of concentration.

3. Control Devices

The devices used to abate HAP emissions will affect the outlet stream composition and conditions and therefore affect the degree of confidence of the initial and continuous compliance methods. Devices that are commonly used in the basic liquid resins and WSR industry to control process vents and storage tank emissions are condensers, gas absorbers (water scrubbers), carbon adsorbers, and flares. These devices differ from one another in the type of streams that they control and the outlet conditions of the streams.

i. *Condensers.* In the case of condensers, which are usually applied to saturated emission streams and by design yield saturated streams, it can be assumed that the components will be present at levels corresponding to their saturated values (equilibrium) at the outlet conditions. This measure provides a worst-case estimate of emissions. Therefore, the direct measurement of concentration often may be foregone in lieu of the measurement of stream temperature and flow rate and subsequent calculation to yield mass emissions. For wet strength resin batch reactors, this is the required measurement to determine HAP concentration in both initial and continuous performance tests. Because the emission streams controlled by condensers in basic liquid resin manufacturing will be more likely to have multiple sources with numerous components that will affect the ability to predict HAP concentrations by measurement of secondary parameters, the direct measurement of concentration is required at least in the initial performance test. Thereafter, concentration measurements to establish continuous compliance may be reasonably approximated with a measurement of outlet gas temperature.

ii. *Gas Absorbers.* Gas absorbers (water scrubbers), however, differ in that there is no parameter that can be measured and used to establish a limit of HAP concentration. Often, the streams routed to scrubbers are more dilute, and the control device functions in not only changing the conditions of the gas temperature like a condenser would do, but in employing concentration gradients to remove materials from gas streams. In order to predict the performance of a gas absorber, information must be known about the appropriate mass transfer coefficients for the specific system. Most often, the mass transfer coefficients are experimentally derived for specific applications and are usually functions of the mass velocities and contacting path variables. While it is possible to calculate the scrubber outlet compositions without mass transfer information by assuming that the amount of material transferred to the liquid is limited by the equilibrium-defined composition, this information is not indicative of the physical scrubber because it does not provide for the evaluation of the contacting path. Therefore, a direct measurement of composition is required during the initial performance test.

Evaluation of continuous compliance need not be done by continuous direct measurement of HAP concentration

from the scrubber effluent, however. Another parameter, the liquid to gas molar ratio through the scrubber, could be monitored to ensure required removal. The L/G ratio, which often reduces to the measurement of L, the liquid molar flow rate, because G, the gas molar flow rate is often constant, could be measured during the initial performance test to evaluate the sensitivity of the ratio with removal efficiency. Thereafter, the L/G ratio could be used to verify appropriate removal if the ratio remained within the limits established during the initial compliance test.

iii. *Carbon Adsorbers.* Streams controlled by carbon adsorption will usually be diluted, compared to those controlled by condensers and scrubbers. No surrogate parameters have been identified as measures of HAP concentration or removal efficiencies. Therefore, a direct measurement of concentration will be required during the initial performance test as well as in continuous compliance monitoring.

iv. *Flares.* Compliance testing for flares can be complicated by the formation of undesired products of combustion (including HAP) and the inability to further capture and control these byproducts. Nevertheless, if a facility chooses to use a flare as a control device, EPA has established flare combustion efficiency criteria that specify that 98 percent or greater combustion efficiency can be achieved provided that certain operating conditions are met. If a HAP is formed from combustion, the quantity formed must be considered when calculating control efficiency. These conditions prescribe that the flare must be operated with no visible emissions and with a flame present and that the heating value and exit velocity of the gas routed to the flare must be within certain ranges, depending upon whether the flares are steam-assisted.

Additionally, the NESHAP general provisions provide for an initial performance test to determine whether the net heating value will fall within the applicable ranges for control at 98 percent. The performance test involves measuring the incoming gas flowrate and the concentration of combustible compounds (40 CFR 63.11) to determine net heating value. However, it appears that as the number of compounds in the stream increases, the determination of the net heating value becomes increasingly difficult. Also, in light of the fact that flares are often used to control discontinuous or upset conditions, the net heating value at any one time is subject to change. Continuously measuring the concentration of combustible compounds to determine heating value on a continuous basis is probably not feasible. Therefore, the enhanced monitoring method chosen for these standards is to require that the presence of a pilot flame be monitored continuously. Also, an initial measurement and characterization of the inlet mass emissions to the flare is required for two reasons:

1. To determine the fraction of hazardous air pollutant emissions that are being controlled by the flare; and

2. To determine the net heating value of the vent stream.

v. *Wastewater.* Because air emissions from wastewater treatment systems cannot be collected and measured, certain parameters must be identified that indicate the emission rate from wastewater for monitoring purposes. The proposed methods for estimating wastewater emissions for initial compliance with the proposed standards for the emission source of process vents, storage tanks, and wastewater, as well as for identifying enhanced monitoring parameter values for wastewater, are those specified in 40 CFR 63.150(f)(5). The requirements of 40 CFR 63.150(f)(5) consist of monitoring specific wastewater treatment parameters and emission calculation methods. Monitoring of the following wastewater parameters is required: inlet flow rate, HAP concentration, pH, and biological oxygen demand. These parameters were chosen for monitoring because they can be used to determine wastewater treatment system performance.

vi. *Storage Tanks.* Storage tank emissions vary greatly over time, which prohibits testing over reasonable periods of time. Therefore, no initial compliance test is proposed for this emission point, unless emissions are manifolded with process vents, in which case the compliance tests specified for process vents apply. Instead, the methods specified in 40 CFR 63.150(f)(3) are proposed to calculate emissions. Emissions would be calculated based on the facility's solvent usage records for the most recent 1-year period and divided by the amount of product produced during the same period. A 1-year period is necessary to reduce the effect of variation in solvent usage on the emission calculation. Because emissions are calculated from factors, and because storage tank emissions are not dependent on parameters that can be controlled, no continuous monitoring requirements are proposed for this emission point, except that facilities that control storage tank emissions must certify that such controls are in proper working order.

vii. *Equipment Leaks.* Like wastewater emissions, equipment leak emissions occur in open areas and in most cases cannot feasibly be captured. Therefore, no performance test is required for the equipment leaks source. Instead, facilities must demonstrate that they have an LDAR program in place that meets the requirements of 40 CFR part 63, subpart H. No monitoring requirements are proposed for equipment leaks, as the proposed standard for equipment leaks is a work practice/equipment standard.

5. Averaging Times

i. *Initial compliance.* The standards for the process vents, storage tanks, and wastewater source at existing BLR and WSR production facilities are in the form of mass emission limits. Initial compliance is determined by adding the emissions per unit mass of product calculated for each process vent, storage tank, and wastewater emission point within the facility. For BLR production, a continuous process, a 1-hour averaging time is specified for process vent compliance tests; the emission rate would be the average of the results of three 1-hour tests. For WSR production, typically a batch operation, the emission rates used to determine compliance would be the average of 3 tests taken over for 3 different batch runs. Longer averaging times are required for batch operations to minimize the effect of emissions that vary significantly with time.

Storage tank emissions would be averaged over a period of 1 year, based on HAP usage records from the previous year, to minimize the effect of variation in solvent usage on the calculated emission rate. A monthly averaging time is required for wastewater, as specified in 40 CFR 63.150(f)(5). Different averaging times are possible for different emission types because emissions are divided by the production rate for an equal time period. The resulting production-based emissions are then added together according to Equation 1 and compared with the mass emission limit to determine compliance.

ii. *Monitoring.* In accordance with § 63.8(c)(4) of the General Provisions, all continuous monitoring systems measuring either emissions or an operating parameter shall complete a minimum of one measurement cycle (sampling, analyzing, and data recording) for each successive 15-minute period.

BLR source category. For BLR manufacturers, the determination of compliance varies for each type of

control or capture system. Owners and operators complying with the standard by using carbon adsorbers, condensers, incinerators, and total enclosures on continuous processes may be determined to be out of compliance with the standard if, for any 1-hour period, the average operating parameter value exceeds or is less than the value established during the initial performance test, as applicable. A 1-hour averaging time is chosen to determine compliance because it parallels the length of time for each of the three test runs conducted for the initial performance test.

WSR source category. Wet strength resins are produced in batch processes, during which emissions may vary significantly. Therefore, longer averaging times are necessary for WSR processes than for BLR processes. The averaging time proposed for WSR processes is the time required to complete one batch operation (typically about 8 hours). Because producers of WSR do not vary the production process from batch to batch, emissions data averaged over the course of one batch operation would be representative of the actual emissions from future batch runs.

G. Selection of Reporting and Recordkeeping Requirements

The owner or operator of any BLR or wet strength resin facility subject to these standards would be required to fulfill all reporting requirements outlined in the General Provisions 40 CFR part 63. No special considerations have been identified for these industries that would warrant additional reporting and recordkeeping requirements.

H. Operating Permit Program

Under Title V of the Act, all HAP-emitting facilities will be required to obtain an operating permit. Oftentimes, emission limits, monitoring, and reporting and recordkeeping requirements are scattered among numerous provisions of State implementation plans (SIP's) or Federal regulations. As discussed in the proposed rule for the operating permit program published on May 10, 1991 (58 FR 21712), this new permit program would include in a single document all of the requirements that pertain to a single source. Once a State's permit program has been approved, each facility containing that source within that State must apply for and obtain an operating permit. If the State wherein the source is located does not have an approved permitting program, the owner or operator of a source must submit the application under the proposed General Provisions of 40 CFR part 63.

VII. Administrative Requirements

A. Public Hearing

A public hearing will be held, if requested, to discuss the proposed standard in accordance with section 307(d)(5) of the Clean Air Act. Persons wishing to make oral presentation on the proposed standards for epoxy resins production and non-nylon polyamides production should contact EPA at the address given in the **ADDRESSES** section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Written statements should be addressed to the Air Docket Section address given in the **ADDRESSES** section of this preamble and should refer to Docket No. A–92–37.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Air Docket Section in Washington, DC (see **ADDRESSES** section of this preamble).

B. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this proposed rulemaking. The principal purposes of the docket are:

1. To allow interested parties to readily identify and locate documents so that they can intelligently and effectively participate in the rulemaking process; and

2. To serve as the record in case of judicial review (except for interagency review materials (section 307(d)(7)(A)]).

C. Executive Order 12866

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)] the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of this Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

1. Have an annual effect of the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

3. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this a "significant regulatory action" within the meaning of the Executive Order. EPA has submitted this action for OMB review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

D. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1681.01), and a copy may be obtained from Sandy Farmer, Information Policy Branch, EPA, 401 M Street SW., (2136), Washington, DC 20460, or by calling (202) 260–2740. The public reporting burden for this collection of information is estimated to average 600 hours per source, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, 2136, U. S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires EPA to consider potential impacts of proposed regulations on small business "entities." If a preliminary analysis indicates that a proposed regulation would have a significant economic impact on 20 percent or more of small entities, then a regulatory flexibility analysis must be prepared.

Regulatory Flexibility Act guidelines for regulations like this one whose start action notifications (SAN's) were filed before April 1992 indicate that an economic impact should be considered significant if it meets one of the following criteria:

1. Compliance increases annual production costs by more than 5 percent, assuming costs are passed onto consumers;

2. Compliance costs as a percentage of sales for small entities are at least 10 percent more than compliance costs as a percentage of sales for large entities;

3. Capital costs of compliance represent a "significant" portion of capital available to small entities, considering internal cash flow plus external financial capabilities; or

4. Regulatory requirements are likely to result in closure of small entities.

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities. All of the affected BLR and WSR producers are large enough not to satisfy the criteria for a small business. Consequently, no significant small business impacts will result from compliance with these standards.

F. Miscellaneous

In accordance with section 117 of the Act, publication of this proposal was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. The Administrator will welcome comments on all aspects of the proposed regulation, including health, economic and technical issues, and on the proposed test methods.

This regulation will be reviewed 8 years from the date of promulgation. This review will include an assessment of such factors as evaluation of the residual health and environmental risks, any overlap with other programs, the existence of alternative methods, enforceability, improvements in emission control technology and health data, and the recordkeeping and reporting requirements.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: April 29, 1994.

Carol M. Browner,

Administrator.

[FR Doc. 94–10973 Filed 5–13–94; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 90

[FRL–4881–5]

RIN 2060 AE29

Control of Air Pollution; Emission Standards for New Nonroad Spark-ignition Engines at or Below 19 Kilowatts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: Today's action proposes emission standards for new nonroad spark-ignition engines at or below 19 kilowatts (25 horsepower). This action is authorized by section 213(a)(3) of the Clean Air Act as amended. The proposed standards are expected to result in a 32 percent reduction in hydrocarbon emissions and a 14 percent reduction in carbon monoxide emissions from these engines by the year 2020 when complete fleet turnover is projected.

DATES: Comments must be received on or before July 15, 1994. A public hearing will be held on June 21, at 10 a.m.; requests to present oral testimony must be received on or before June 15, 1994.

ADDRESSES: Interested parties may submit written comments (in triplicate, if possible) for EPA consideration by addressing them as follows: EPA Air and Radiation Docket, Attention: Docket Number A–93–25, 401 M Street SW., Washington, DC 20460. Materials relevant to this rulemaking are contained in this docket and may be viewed at this location from 8 a.m. until 4 p.m. Monday through Friday. As provided in 40 CFR part 2, a reasonable fee may be charged by EPA for photocopying. The public hearing will be held at Dominos Farm, Ulrich room, lobby E, 24 Frank Lloyd, Ann Arbor, MI 48104.

FOR FURTHER INFORMATION CONTACT: Lucie Audette, Office of Mobile Sources, Certification Division, (313) 741–7878.

SUPPLEMENTARY INFORMATION:

I. Obtaining Copies of the Regulatory Language

EPA has not included in this document the proposed regulatory language or the draft Regulatory Support Document (RSD). Electronic copies (on 3.5" diskettes) of both the proposed regulatory language and the draft RSD may be obtained free of charge by visiting, calling, or writing the Environmental Protection Agency, Certification Division, 2565 Plymouth Road, Ann Arbor, MI 48105, (313) 741–7878. Refer to Docket A–93–25. A copy is available for inspection in the docket (see **ADDRESSES**).

The proposed regulatory language and the draft RSD are also available electronically on the Technology Transfer Network (TTN). TTN is an electronic bulletin board system (BBS) operated by EPA's Office of Air Quality Planning and Standards. Users are able to access and download TTN files on their first call. After logging onto TTN BBS, to navigate through the BBS to the files of interest, the user must enter the appropriate command at each of a series of menus. The steps required to access information on this rulemaking are listed below. The service is free, except for the cost of the phone call.

TTN BBS: 919–541–5742 (1,200–14,400 bps, no parity, eight data bits, one stop bit) Voice help: 919–541–5384 Internet address: TELNET ttnbbs.rtpnc.epa.gov Off-line: Mondays from 8:00 - 12:00 Noon ET

1. Technology Transfer Network Top Menu:<T> GATEWAY TO TTN TECHNICAL AREAS (Bulletin Boards) Command: T
2. TTN TECHNICAL INFORMATION AREAS <M> OMS - Mobile Sources Information Command: M
3. OMS BBS ==== MAIN MENU FILE TRANSFERS <K> Rulemaking & Reporting Command: K
4. RULEMAKING PACKAGES <6> Non-Road Command: 6
5. Non-Road Rulemaking Area: File area #2 * * * Non-Road Engines Command: 2<CR>
6. Non-Road Engines

At this stage, the system will list all available nonroad engine files. To download a file, select a transfer protocol which will match the terminal software on your own computer, then set your own software to receive the file using that same protocol.

If unfamiliar with handling compressed (i.e., ZIP'ed) files, go to the TTN topmenu, System Utilities (Command: 1) for information and the necessary program to download in order to unZIP the files of interest after downloading to your computer. After getting the files you want onto your computer, you can quit TTN BBS with the <G>oodbye command.

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III. Statutory Authority and Background

A. Statutory Authority

Authority for the actions proposed in this notice is granted to EPA by sections 203, 204, 205, 206, 207, 208, 209, 213, 215, 216, and 301(a) of the Clean Air Act (CAA or Act) as amended (42 U.S.C. 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7547, 7549, 7550, and 7601(a)).

CAA section 213(a) directs EPA to: (1) Conduct a study of emissions from nonroad engines and vehicles; (2) determine whether emissions of carbon monoxide (CO), oxides of nitrogen (NO_X), and volatile organic compounds (VOCs) from nonroad engines and vehicles are significant contributors to ozone or CO concentrations in more than one area that has failed to attain the National Ambient Air Quality Standards (NAAQS) for ozone and CO; and (3) regulate those categories or classes of new nonroad engines and vehicles that, in EPA's judgment cause or contribute to such air pollution. Under CAA section 213(a)(4), EPA may also regulate emissions other than CO, NO_X, and VOCs from new nonroad engines and vehicles if EPA determines that such other emissions significantly contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. The Nonroad Engine and Vehicle Emission Study (hereafter, "Nonroad Study") required by section 213(a)(1) was completed in November 1991. The Nonroad Study is available in docket A–91–24. The determination of the significance of emissions from nonroad engines and vehicles in more than one NAAQS nonattainment area, required by section 213(a)(2), was proposed on May 17, 1993 (58 FR 28809) and is incorporated by reference into this proposal. At the same time, the first set of regulations for a class or category of nonroad engines that contribute to air pollution, required by section 213(a)(3), was proposed (58 FR 28809) for new nonroad compression-ignition (CI) engines at or above 37 kilowatts (kW). Today's action continues to implement section 213(a)(3); it proposes emission standards for nonroad spark-ignition (SI) engines at ornd below 19 kW (25 horsepower) (hereafter, "small SI engines"), another class or category of nonroad engines that contributes to air pollution.

Background

On the basis of the Nonroad Study, EPA has proposed its determination that emissions of CO, NO_X, and VOCs from nonroad engines and vehicles contribute significantly to ozone or CO in more than one NAAQS nonattainment area (see 58 FR 28809, May 17, 1993). According to the Nonroad Study, nonroad engines and vehicles contribute an average of ten percent of summer VOCs in the 19 ozone nonattainment areas included in the study. Small SI engines are the source of half of those nonroad summer VOC emissions. In the 16 CO nonattainment areas included in the study, nonroad engines and vehicles account on average for nine percent of winter CO emissions. Small SI engines are the source of 56 percent of the nonroad winter CO contribution, according to the study.

Since March 1992, EPA has held several public workshops and meetings to solicit information on technical characteristics, emissions, potential regulatory strategies, and general regulatory issues related to small SI engines. Public notice of such meetings may be found in the docket for this rulemaking.

At the March 1992 public workshop, the Engine Manufacturers Association and the Outdoor Power Equipment Institute encouraged federal regulation of nonhandheld small SI engines and expressed interest in working in a cooperative program with EPA to develop regulations by November 1993. Likewise, the Portable Power Equipment Manufacturers Association encouraged federal regulation of portable 2-stroke power equipment and expressed interest in working cooperatively with EPA.

Industry's interest in federal regulation of small SI engines may be traced to California's efforts to develop a statewide regulatory program. CAA section 209(e)(2) authorizes California to enforce emission standards for certain nonroad engines if: (1) California determines that such standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards, and such standards are not arbitrary and capricious, (2) California needs such standards to meet compelling and extraordinary conditions, and (3) California standards and accompanying enforcement procedures are consistent with section 209(e)(2). (See 58 FR 45866, September 6, 1991, for EPA's Notice of Proposed Rulemaking for implementing section 209(e). This rulemaking is ongoing and the exact criteria for EPA granting an authorization to California will be prescribed in the final section 209(e) rule. Definitions of farm and construction equipment are also provided in this section 209(e) rule.) CAA section 209(e)(2) also authorizes other states to opt into California standards. The California Air Resources Board (CARB) has adopted standards for nonroad lawn and garden and utility SI and CI engines from 0–25 horsepower (0–19 kilowatts). EPA is currently reviewing CARB's section 209(e) authorization request for its lawn and garden and utility rule. A decision will be issued once EPA's section 209(e) procedural rule is finalized. There is potential for other states to adopt the California standards, which are scheduled to become effective in 1995, if EPA decides to approve California's waiver request.

Following the March 1992 workshop, EPA determined that setting emission standards for the small SI engine category might be suitable for a consultative approach to rulemaking, such as negotiated rulemaking. The Negotiated Rulemaking Act (5 U.S.C. 581–590) establishes a framework for conducting negotiated rulemaking. Under that Act, in deciding whether to conduct a negotiated rulemaking, the head of an agency must consider several factors, including whether, at the preproposal stage of development, the number of identifiable parties who would come to the negotiating table is relatively limited, the number of specific issues for which sufficient information and technology is in hand for resolution is limited, and a time-forcing factor exists that lends an air of urgency to issuance of the rule in question. Negotiations are conducted through a committee chartered under the Federal Advisory Committee Act (5 U.S.C. App. II section 9(c)). The goal of a regulatory negotiation committee is to reach consensus on the language or issues involved in a rule. If consensus is reached, it is used as the basis of the Agency's proposal.

EPA initiated a convening process to determine the best way to work with industry and other interested parties in developing regulations for small SI engines. The conveners interviewed individuals in leadership roles in key organizations identified by EPA to determine what parties were interested in these regulations, what issues were important to interested parties, and whether a consultative rulemaking process would be feasible and appropriate. A copy of the convening report, dated August 24, 1992, is available in the docket for this rulemaking.

The convening report recommended an exploratory meeting of interested parties to discuss, but not initiate, a consultative process. EPA determined that the number of parties who would come to the negotiating table would be relatively limited, the number of specific issues for resolution would be limited, sufficient information and technology would be in hand or could be timely developed for resolution of issues, and time-forcing factors existed. (See 58 FR 34389, June 25, 1993, for a complete discussion of the application of the factors in this case.) Time-forcing factors lending an air of urgency to issuance of the rule include the potential threat to industry of patchwork regulation if a number of states opt into California's program in order to attain national air quality goals. More recently, an air of urgency has been created by the settlement of *Sierra Club v. Browner*, Civ. No. 93–0197 NHJ (D.D.C. 1993), which requires EPA to propose emission standards for small SI engines by April 1994 and to promulgate such standards by May 1995.

The exploratory meeting recommended in the convening report was held in Ann Arbor, Michigan on November 16–17, 1992. Participants decided that state and public interest representatives needed more technical information to fully understand some of the regulatory issues participants might face. It was also decided that another meeting was necessary to discuss the potential design of a consultative process for a small SI engine rulemaking. The technical briefing for state and public interest representatives was conducted in Ann Arbor on December 16, 1992. On January 28–29, 1993, a meeting to discuss consultative process design was held in Ann Arbor.

At the January meeting, it was suggested that EPA consider a two-phased approach to regulation of small SI engines. In the suggested first phase, EPA would propose regulations for new small SI engines through the normal regulatory process rather than a consultative process. It was suggested that Phase 1 regulations could be similar to California's Regulation for 1995 and Later Utility and Lawn and Garden Equipment Engines, modified as necessary to meet CAA requirements. (For example, EPA's proposal could modify CARB's program by including engines preempted from regulation in California.) The Phase 1 proposal would be completed as soon as possible, but no later than the spring of 1994. The final rule would be promulgated no later than spring of 1995. The suggested second phase of regulation could be developed through the consultative process of regulatory negotiation. It could include issues such as useful life, in-use emissions, evaporative emissions, refueling emissions, test procedure, and market-based incentive programs. Negotiations could begin in Fall 1993 and continue for approximately 18 months.

EPA has decided to proceed with the phased approach. Today's action proposes the first phase of regulation for new small SI engines. The data that supports the proposed emission standards and the technology, cost, and benefits assessments for this proposal are outlined herein and in the draft Regulatory Support Document (RSD), a copy of which is located in the public docket for this rulemaking. EPA does not currently have sufficient data to establish useful life standards or an in-use liability program. However, rather than lose the potential early emission benefits while EPA develops the data necessary to establish useful life and in-use liability, EPA is choosing to claim those early benefits in this first phase of new small SI engine regulation and to continue developing the data necessary for the second phase of small SI engine regulation. EPA believes that the potential for early benefits to public health and the environment provided by the first phase of emission standards is of sufficient magnitude to postpone determinations of useful life and in-use liability until the second phase of rulemaking. The phased approach to regulation of small SI engines is incorporated in the *Sierra Club* v. *Browner* settlement, a copy of which is available in the public docket for this rulemaking.

IV. Requirements of the Proposed Rule

The general provisions of this rule, as well as the rationale for the key parts of this proposal, are briefly described in the following section.

A. Overview

EPA proposes to regulate emissions of hydrocarbons (HC), NO_X, and CO from certain new nonroad spark-ignition engines that have a gross power output at and below 19 kW.[1] A spark-ignition engine is an internal combustion engine in which the air/fuel mixture is ignited in the combustion chamber by an electric spark.

The scope of this rule would encompass a broad range of small SI engine applications, including farm and construction equipment, which individual states are preempted from regulating under section 209(e)(1) of the CAA. Exclusions from the rule are detailed below.

Under this proposal, exhaust emissions from new small SI engines could not exceed levels for a given engine class as listed in Table 1. Engine classes would be specified both by engine displacement, as measured in cubic centimeters (cc), and by the type of equipment the engine powered—either handheld or nonhandheld. Five engine classes are being proposed today. Each has a unique set of emission standards. Nonhandheld engine classes would be: Class I—engines less than 225 cc in displacement; and Class II—engines greater than or equal to 225 cc in displacement. Engines powering equipment defined as handheld would be classified as Class III, IV, or V: Class

[1] To convert kilowatts to horsepower multiply kW by 1.34 and round to the same number of significant digits. For example 3.5 kW×1.34=4.7 hp.

III—engines less than 20 cc in displacement; Class IV—engines equal to or greater than 20 cc and less than 50 cc in displacement; and Class V—engines equal to or greater than 50 cc in displacement. Emission standards being proposed today are considered Phase 1 new small SI engine standards.

TABLE 1—EXHAUST EMISSION STANDARDS

[Grams per kilowatt hour]

Engine class	Hydrocarbon plus oxides of nitrogen	Hydrocarbon	Carbon monoxide	Oxides of nitrogen
I	16.1	.....	402	.....
II	113.4	.....	402	.....
III	.....	295	805	5.36
IV	.....	241	805	5.36
V	.....	161	402	5.36

The rule would explicitly exclude from regulation the following small SI engines:

(1) Engines used to propel marine vessels as defined in the General Provisions of the United States Code, 1 U.S.C. 3 (1992). A "vessel" includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water. 1 U.S.C. 3 (1992).

(2) Engines used in underground mining or engines used in underground mining equipment and regulated by the Mining Safety and Health Administration (MHSA). See 30 CFR parts 7, 31, 32, 36, 56, 57, 70, and 75.

(3) Engines used in motorcycles and regulated in 40 CFR part 86, subpart E.

(4) Engines used in aircraft as that term is defined in 40 CFR 87.1(a).

(5) Engines used in recreational vehicles, which are defined as engines which have no installed speed governor and which have a rated speed of greater than or equal to 5,000 revolutions per minute (RPM). Engines used in recreational vehicles are not used to propel marine vessels and do not meet the criteria to be categorized as a Class III, IV, or V engine under this rule.

This rule proposes the following regulatory scheme:

- Designation of product lines into groups of engines with similar emission characteristics (such groups are called engine families),
- Manufacturer emission testing of selected engines with a specified test procedure to demonstrate compliance with new engine emission standards,
- Labeling of engines, and alternatively, equipment labeling if the engine label becomes obscured when placed in the equipment,
- Submission of an application for certification for each engine family,
- Inclusion of various certification requirements such as the prohibition of defeat devices,
- Issuance of an emission certificate of conformity for each engine family,
- Prohibition against offering for sale in the United States engines not certified by EPA,
- Requirement that equipment manufacturers use the appropriate handheld or nonhandheld certified engine in their equipment,
- Recordkeeping and reporting requirements,
- EPA Administrator testing provisions,
- Design warranty provisions and prohibition on tampering,
- Inclusion of all farm and construction engines, state regulation of which is preempted under the CAA,
- Development of an engine manufacturer's program to evaluate in-use emission deterioration,
- Requirement that if catalysts are used in an engine family, catalyst durability must be confirmed by means of the evaluation procedure that is specified in this notice,
- Defect reporting and voluntary recall,
- Importation provisions,
- General prohibitions and enforcement provisions, and
- Production line Selective Enforcement Auditing (SEA). Certain elements of EPA's on-highway program are not being proposed for this Phase I rule including:
- No certification requirement for engine durability demonstration,
- No performance warranty,
- No averaging, banking, and trading program, and
- No useful life determination and no in-use enforcement.

B. General Enforcement Provisions

EPA, as authorized in the CAA, would enforce nonroad standards in a manner similar to on-highway standards. Section 213(d) of the Act provides that the standards promulgated under 213 "shall be subject to sections (206, 207, 208, and 209), with such modifications of the applicable regulations implementing such sections as the Administrator deems appropriate, and shall be enforced in the same manner as standards prescribed under section (202)." Section 206 specifies requirements for motor vehicles and motor vehicle engine compliance testing and certification; section 207 requires manufacturers to warrant compliance by motor vehicles and motor vehicle engines in actual use; section 208 requires recordkeeping by manufacturers of new motor vehicles or new motor vehicle engines and authorizes EPA to collect information and require reports; and section 209 preempts states and political subdivisions from adopting or enforcing standards relating to emission control, certification, or inspection of new motor vehicles or new motor vehicle engines, unless specifically authorized to do so by EPA.

Pursuant to this authority, EPA is proposing in today's action regulations that require manufacturers of new small SI engines to obtain certification and that subject them to Selective Enforcement Auditing. Any manufacturer of a new small SI engine would be responsible for obtaining from the Administrator a certificate of conformity covering any engine introduced into commerce in the United States.

The Agency is also proposing certain prohibited acts and general enforcement provisions similar to those for on-highway vehicles under sections 203, 204, 205, and 208 of the CAA.

Section 203 specifies prohibited acts; section 204 provides for federal court injunctions of violations of section 203(a); section 205 provides for assessment of civil penalties for violations of section 203; and section 208 provides the Agency with information collection authority. The general enforcement language of section 213(d) provides the Agency's authority for applying section 203, 204, 205, and 208 of the CAA to new small SI engines and equipment.

As applied to nonroad engines, vehicles and equipment under section 213(d), Phase 1 prohibited acts would include, but would not be limited to:

- An engine manufacturer's introduction into commerce of new small SI engines that are not covered by a certificate of conformity issued by EPA,
- The introduction into commerce of new small SI equipment and vehicles which do not incorporate the appropriate nonhandheld or handheld certified nonroad engine,
- Tampering with emission control devices or elements of design installed on or in a small SI engine, and
- Failure to provide information to the Agency if requested.

EPA is also proposing regulations, under the authority of section 205 of the Act, which set forth the maximum statutory penalties for violating the prohibitions.

EPA is proposing general information collection provisions similar to current

on-highway provisions under section 208 of the Act which would include, but would not be limited to, the manufacturer's responsibility to provide information to EPA, perform testing if requested by EPA, and maintain records. In addition, EPA is proposing emission system defect reporting regulations which require manufacturers to report to EPA emission system-related defects that affect a given class or category of engines. EPA enforcement personnel would be authorized to gain entry and access to various facilities under section 208 and today's action proposes these entry and access provisions.

This rule's information requirements are similar to those proposed in the nonroad large compression-ignition (CI) rule,[2] but reduced from the on-highway program requirements. EPA requests comment on whether patterning the small SI engine information requirements after the nonroad large CI rule is appropriate for the manufacturers of small nonroad engines. In particular, EPA request comments on whether there are more efficient or more effective ways than those proposed for manufacturers to create, maintain, and report this information; whether electronic data interchange (EDI) is a common practice within this industrial sector; and whether EPA should consider using EDI or any other technology in its information collection to reduce the burden and costs of compliance.

EPA is authorized under section 217 of the CAA to establish fees to recover compliance program costs associated with section 206 and 207. EPA will propose to establish fees for today's nonroad compliance program at some future time, after this rule has been promulgated and associated costs are determined.

C. Program Description and Rationale

This section describes several features of EPA's proposed Phase 1 small SI engine, vehicle and equipment compliance program and EPA's rationale for including these features in the program. Specific issues related to the proposed program which require in-depth discussion are presented in "V. Discussion of Issues."

1. Applicability

This rule would apply to new nonroad spark-ignition engines that have a gross power output at or below 19 kW and are manufactured after August 1, 1996 for use in the United States. New engines that would be covered by this rule are used in a large and varied assortment of vehicles and equipment including lawnmowers, string trimmers, edgers, chain saws, commercial turf equipment, small construction equipment, and lawn and garden tractors.

EPA estimates that in the first year of regulation approximately 16,525,000 new engines, or approximately 19.4 percent of the in-use fleet, would be subject to this regulation. See Chapter 4 of the draft Regulatory Support Document (hereafter, draft RSD) for this rulemaking.[3]

EPA is proposing to require certification of new small SI engines, not the vehicle or equipment which houses such engines. First, small SI engines are used in a variety of applications. EPA believes it is inappropriate to mandate that a specific SI engine be manufactured for any given application. Second, the number of manufacturers and the diversity of vehicles and equipment in which small SI engines are used would present clear administrative problems. Regulating primarily by vehicle or equipment type would dramatically increase administrative cost associated with this rule with no comparable reduction in emissions. EPA is, however, proposing to require that vehicle and equipment manufacturers and importers use the appropriate certified nonroad engines in their vehicles and equipment. This requirement is discussed in "V.H. Requirements Applicable to Vehicle and Equipment Manufacturers."

EPA also considered, but rejected, the idea of including SI engines above 19 kW in this Phase 1 rule. Engines above the proposed 19 kW cutoff tend to exhibit different operating cycle characteristics than small SI engines. This difference necessitates the development of additional test procedures. EPA does not have sufficient data to undertake such a development within the timeframe of this Phase 1 rule. As part of the *Sierra Club* v. *Browner* settlement, EPA will determine by November 1996 whether to undertake a rulemaking which targets emissions from SI engines over 19 kW.

Certain small SI engines which otherwise would be subject to this rule would be explicitly excluded from regulation:

(1) Engines used to propel marine "vessels" as such term is defined in 1 U.S.C. 3 (1992). EPA is not including these engines because they are currently subject to safety regulations by the U.S. Coast Guard (See 46 U.S.C. 331 and 46 U.S.C. 4302.), and EPA is developing a separate rulemaking which will propose appropriate methods of regulating emissions from these engines.

(2) Engines regulated by the Mining Safety and Health Administration (MSHA) for underground use. EPA is not including in this proposal engines that are used in underground mining or engines used in underground mining equipment as regulated by MSHA under the authority of 30 CFR parts 7, 31, 32, 36, 56, 57, 70, and 75. MSHA is responsible for protecting miners from unhealthy levels of air pollution in underground mines and has issued air quality standards for mines and standards for NO_x and CO emissions from some types of mining equipment. Although EPA considered applying EPA regulations to these engines, EPA chose not to include them at this time in order to avoid dual regulation of these engines.

(3) Engines used in motorcycles and regulated in 40 CFR part 86, subpart E. EPA has regulated emissions from motorcycles since 1978. A motorcycle means any motor vehicle with a headlight, taillight, and stoplight and having two wheels or three wheels and a curb mass less than or equal to 680 kilograms.

(4) Engines used in aircraft as that term is defined in 40 CFR 87.1(a).

(5) Engines used in recreational vehicles which are defined as follows: (1) The engine has no installed speed governor; (2) the engine's rated speed is greater than or equal to 5,000 RPM; (3) the engine is not used for the propulsion of a marine vessel; and (4) the engine does not meet the criteria to be categorized as a Class III, IV, or V engine under this regulation. Recreational vehicles include: All-terrain vehicles, off-road motorcycles, snowmobiles, and go-karts. These engines are being excluded for several reasons: First, the duty cycle is completely different from most small SI engine applications. These engines experience highly transient operation and likely will require completely different test procedures for purposes of emission control testing. Second, they are designed to emphasize power output; thus, they are typically designed to run at much higher RPMs than other small SI engines. EPA invites comments on other criteria which may be utilized in defining the class of nonroad engines which propel recreational vehicles.

[2] See Control of Air Pollution; Emissions of Oxides of Nitrogen and Smoke From New Nonroad Compression-Ignition Engines at or above 50 Horsepower, 58 FR 28809 and 51595 (May 17, 1993).

[3] A copy of the draft RSD may be found in the docket for this rulemaking.

2. Exclusions and Exemptions to Today's Proposal

Pursuant to section 203(b)(1) of the CAA, the Agency is proposing additional categories of exemptions from new small SI engine regulation similar to the exclusions and exemptions that exist for on-highway engines and that have been proposed in the nonroad large CI engine rule. These include exemptions for purposes of research, investigations, studies, demonstrations, training, or for reasons of national security. Exemptions would be obtained either categorically, that is without application to the Administrator, or by submitting a written application to the Administrator. Export exemptions and manufacturer-owned engine exemptions would be granted without application. Testing exemptions, display exemptions, and national security exemptions would be obtained by application.

Exclusions from this regulation include nonroad engines that are used solely for competition or for combat.

Exemptions and exclusions are justified in these cases because the sources are limited in number or scope, so minimal environmental harm results; the particular use of the source is determined to further air quality research; and/or the exemption is vital to the security of the nation. (See 39 FR 10601, March 21, 1974.)

3. Effective Date for Certification

EPA is proposing that certification of new small SI engines begin in 1996. Manufacturers of engines produced on or after August 1, 1996, would be required to obtain from the Administrator a certificate of conformity covering the engine family. The certificate would be obtained prior to selling, offering for sale, introducing into commerce, or importing into the United States the new engine.

While the small SI engines affected by this proposal include a broad range of engine types, EPA believes that the effective date for the proposed standards is reasonable and technologically feasible and that engine manufacturers will be able to implement these regulations within the short lead time provided under this rule. This issue is discussed, in detail, in "V.I. Effective Date." Further, an August 1, 1996 effective date is consistent with the Congressional mandate found in section 213(c) of the Clean Air Act which requires that, "Standards * * * shall take effect at the earliest possible date considering lead time necessary to permit the development and application of the requisite technology * * *"

4. Emission Standards

Section 213(a)(3) of the CAA states that nonroad emissions standards:

> * * * shall achieve the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available for the engines or vehicles to which such standards apply, giving appropriate consideration to the cost of applying such technology within the period of time available to manufacturers and to noise, energy, and safety factors associated with the application of such technology. In determining what degree of reduction will be available, the Administrator shall first consider standards equivalent in stringency to standards for comparable motor vehicles or engines (if any) regulated under section 7521 of this title, taking into account the technological feasibility, costs, safety, noise, and energy factors associated with achieving, as appropriate, standards of such stringency and lead time * * *.

The emission standards being proposed for this Phase 1 small engine regulation are listed in Table 1 in the Overview Section. The proposed emission standards result in significant emission reductions in the near term while work is going on to develop more stringent Phase 2 standards and while manufacturers work to design engines and equipment capable of meeting lower standards at a later date.

EPA believes these proposed emission standards represent the greatest emission reductions achievable given the short lead time prior to this rule's effective date and the technology available during this period. Requiring more stringent Phase 1 emission standards than those proposed today would necessarily delay implementation of new small SI engine standards by at least two years. This additional lead time would be needed to allow manufacturers time to redesign engines and equipment to accommodate requirements of more sophisticated technologies. Air quality benefits which will accrue under the proposed emission standards are large and meet the statutory criteria for nonroad standards required by the CAA. These benefits are discussed in Section VI of this preamble.

In determining the appropriate level of emission standards to propose, EPA initially considered, as required in the CAA, comparable motor vehicle standards. Due to technological constraints present in small engines, EPA believes that promulgating emission standards comparable with motor vehicle standards in a Phase 1 rule is not technologically achievable. See chapter 1 of the draft RSD for further discussion of small SI engine technological constraints.

In proposing these emission standards, EPA has also considered potential safety and noise issues. Of concern is 36 CFR 261.52 which directs the Forest Service to prohibit the operation or use of any handheld internal or external combustion engine without a spark-arresting device properly installed, maintained, and in effective working order. The Forest Service also requires that multipositional small engines used on federal park lands have exposed exhaust system surface temperatures not exceeding 550 °C. Exhaust gas temperatures may not exceed 475 °C.

The type of engine changes EPA expects as a result of the proposed emission standards will not present a safety concern. Only catalytic converters designed to produce high conversion efficiencies can generate sufficient exotherms to raise exhaust system skin temperatures to a level that might present a safety problem. Manufacturers have indicated that they will not use catalytic converters to meet the proposed emission standards for most product lines. EPA estimates that up to 30 percent of engines in Class I may need low efficiency catalysts to meet the standards. However, one manufacturer stated that the exotherm generated by these low efficiency catalysts will not affect exhaust system skin temperatures sufficiently to warrant more advanced heat dissipation and heat shield technologies.

Noise levels of small SI engines will not be allowed to increase as a result of the proposed emission standards. The type of engine changes EPA expects to see among current engine designs to meet the proposed emission standards are not expected to impact noise levels. The primary source of noise from nonroad small engines originates from combustion and the moving parts in the engine, such as the piston, valve train, and so forth. Noise from combustion is controlled primarily through the engine muffler. EPA believes the principal method to be used by all engine manufacturers to meet the proposed emission regulation will be leaner air/fuel ratios. Noise levels in future engines which meet the proposed regulations must, therefore, not exceed that of current production engines.

EPA requests comment on the possible impact of this proposed regulation on both engine noise and safety.

In EPA's judgment, section 213(a)(3)'s requirement that EPA regulate emissions from those classes or

categories of new nonroad engines which cause, or contribute to concentrations of ozone in nonattainment areas allows EPA to set emission standards for HC, rather than VOCs in general, as EPA believes that HC emissions from small gasoline engines are those that cause or contribute to ozone nonattainment concentrations. In addition, regulating HC rather that VOCs would be consistent with on-highway practice. EPA requests comment on this proposed approach.

In the Nonroad Study, EPA described VOCs as any compounds containing carbon and hydrogen or containing carbon and hydrogen in combination with any other element which has a vapor pressure of 1.5 pounds per square inch absolute or greater under actual storage conditions.

HCs contain both hydrogen atoms and carbon atoms but no other atoms and are a subset of VOCs. For small SI engines, based on engines tested by Southwest Research Institute under contract with EPA, HCs make up more than 99 percent of the VOCs emitted from these engines. Less than one percent of the measured VOC emissions are from constituents other than HC emissions (aldehydes and ketones were the measured non-hydrocarbon constituents in this case).

In general, the types of emission controls employed to reduce HC emissions also reduce emissions of non-hydrocarbon VOCs. Therefore, in the case of small SI engines, setting emission limits for HC emission accomplishes essentially the same overall reduction in VOC emission as would setting emission limits for VOCs. Of course reductions in the individual non- hydrocarbon VOC species varies, as does the individual hydrocarbon species.

5. Engine Classes

The category of small SI engines is very complex and comprises a wide range of engines used in a broad spectrum of equipment. EPA proposes to adopt a "class" structure for this Phase 1 regulation. In determining which class of emission standards a particular engine must meet, an engine's end use or application must be determined. This rule proposes two broad use categories—nonhandheld and handheld. Nonhandheld engines would be required to meet either Class I or Class II standards while handheld engines would have to meet either Class III, IV, or V emission standards. Once the applicable use category is determined, the engine class would be selected on the basis of engine displacement as measured in cubic centimeters (cc).

Each engine class would have unique emission standards. EPA is proposing five engine classes: Class I—small nonhandheld engines less than 225 cc in displacement; Class II—small nonhandheld engines greater than or equal to 225 cc in displacement; Class III—small handheld engines less than 20 cc in displacement; Class IV—small handheld engines equal to or greater than 20 cc to less than 50 cc in displacement; Class V— small handheld engines equal to or greater than 50 cc in displacement.

Class I engines are overwhelmingly found in lawnmowers. Class II engines primarily include engines used in generator sets, garden tractors, and commercial lawn and garden equipment.

Only engines used in equipment defined as handheld would be allowed to meet Class III, IV, or V emission standards. Class III includes engines used in consumer handheld products, such as small string trimmers, edgers, and brush cutters. Class IV encompasses engines used in both residential and commercial settings and includes large trimmers, edgers, blowers, and chain saws. Class V includes a majority of engines utilized in commercial chain saws.

EPA is proposing five separate engine classes based on a number of factors. First, some types of equipment are currently powered exclusively by 2-stroke engines. EPA estimates that as much as 90 percent of 2-stroke engines are utilized in handheld equipment. These current handheld 2-stroke engines incorporate a technology which is inherently more polluting than current 4-stroke engine technology and which results in 2-stroke engines experiencing a higher concentration of hydrocarbons in their exhaust. EPA's view is that it is not technologically feasible to apply the nonhandheld Class I and II engine standards to handheld engines in this Phase 1 rule; therefore the need arises for Class III, IV, and V handheld engine standards. Differences in stringency between classes III, IV, and V are due to the fact that energy-specific emissions generally increase as engine size decreases. This principle is also true in the case of engines used in nonhandheld applications and meeting emission standards of either classes I or II. See discussion in the draft RSD. Finally, the engine classification approach for Phase 1 harmonizes federal small engine regulations with California's lawn and garden regulations.

In summary, it is EPA's view that the emission standards proposed today for handheld and nonhandheld engines and reflected in the five engine class categories represent the greatest emission reduction achievable for this Phase 1 rule.

6. Handheld Engine Qualifications

To qualify as a handheld engine under this proposal, the small SI engine would be required to meet at least one of the following three requirements:

(1) The engine must be used in a piece of equipment that is carried by the operator throughout the performance of its intended function(s). This is meant to encompass such equipment as lightweight leafblowers, trimmers (both string and hedge), and cutters.

(2) The engine must be used in a piece of equipment that must operate multipositionally, such as upside down and sideways, to complete its intended function(s). EPA intends this category to include all types of chain saws as well as items already listed in the first requirement.

(3) The engine must be used in a piece of equipment for which the combined engine and equipment dry weight is under 14 kilograms, no more than two wheels are present, and at least one of the following attributes is also present:

(a) The operator must alternately provide support or carry the equipment throughout the performance of its intended function(s). This allows lightweight snowblowers that are carried up stairs, or edgers which are picked up and supported during operation to qualify for handheld status.

(b) The operator must provide support or attitudinal control for the equipment throughout the performance of its intended function(s). This attribute will allow equipment such as lightweight tillers, augers, cutoff/concrete saws, and edgers to qualify for handheld status.

(c) The engine is used exclusively in a hand-portable generator or pump.

For purposes of this section "support" would mean that the operator holds the equipment in position so as to prevent it from falling, slipping, or sinking. It would not be necessary for the entire weight of the equipment to be borne by the operator. "Attitudinal control" would mean that the operator regulates either the horizontal or vertical position of the equipment, or both. "Carry" would mean that the operator completely bears the weight of the equipment, including the engine.

Section "V.G. Definition of Handheld Engines" provides additional discussion on this issue. EPA believes that this proposed handheld definition adequately covers those categories of

engines which should be allowed to meet the less stringent handheld engine standards.

EPA requests information regarding specific engine applications which are not clearly identifiable as handheld or nonhandheld under the proposed definition. EPA also requests alternative language which could be incorporated in this definition to clarify the distinction between handheld and nonhandheld. EPA is particularly concerned that manufacturers of 2-stroke lawnmowers may attempt to qualify for handheld status utilizing the second requirement—multiposition operation. It is not EPA's intent that pushing a lawnmower up and down hills would qualify as multiposition operation.

7. Standards for Classes I and II

EPA is proposing to adopt one of two options under consideration for setting standards applicable to Class I and II engines. EPA requests comments on each of these options.

Option 1: Phase 1 would adopt a combined HC + NO_X standard for engine classes I and II. While engines in classes I and II have high HC emission rates, most currently produce extremely low levels of NO_X. Due to technological constraints of all small SI engines, HC reductions would generally come at the expense of increased NO_X. See "VII. Technology Assessment" for a discussion of this phenomenon. However, the resultant overall increase in NO_X emission inventories would be slight relative to the NO_X produced by sources such as nonroad large CI engines. The sensitivity of NO_X emissions to HC control varies greatly between engine designs. EPA believes that a Phase 1 approach which allows incremental tradeoffs between HC and NO_X controls through a combined standard would be consistent with EPA's statutory mandate that nonroad engine emission standards reflect the greatest emission reductions achievable. See "VII. Technology Assessment" for further discussion.

To meet the combined standard, a manufacturer would add its HC emission test result to the NO_X test result. This combined number would then be submitted to EPA. Individual levels of these pollutants would not be established. The manufacturer would also be required to meet this combined level during Administrator testing and the SEA enforcement program. EPA believes that this approach would be workable for a Phase 1 rule. Setting separate standards for HC and NO_X would be addressed in EPA's Phase 2 regulatory negotiations. For further discussion of this issue, see "V. M. HC + NO_X Standard for Class I, II Engines."

EPA is reluctant to set such a combined standard because it is extremely concerned that no precedent be set for promulgating combined emission standards in future rulemakings. EPA's past practice has been to set separate pollutant standards. EPA is considering the combined standard approach only for this Phase 1 small SI engine rule because of limited data availability, the aggressive timeframe of this rule, and to harmonize with the California lawn and garden regulation.

Option 2: Under this option EPA would set separate Class I and II emission levels for HC and NOx. Based on information currently available to EPA, the NOx standard would be approximately 136 percent higher than current new engine levels, while the HC standard would be approximately equal to the difference between those levels and the HC + NO_x standards proposed in option 1. EPA requests comment on this specific option, including industry data which addresses the appropriate level of both HC and NOx if separate standards were to be promulgated.

8. Engine Family Categorization

For the purpose of demonstrating emission compliance, EPA is proposing that manufacturers of small SI engines divide their product line into groups of engines, called engine families, which are composed of engines having similar emission characteristics. Small SI engine families would be determined by using the same criteria (type of fuel, method of air aspiration, number of cylinders, and so forth) currently used to define on-highway motorcycle engine families.

To be placed in the same engine family, engines would be required to be identical in all the following applicable respects:

(1) Combustion cycle,

(2) Cooling mechanism,

(3) The cylinder configuration (inline, vee, opposed bore spacings, and so forth),

(4) The number of cylinders,

(5) The engine class,

(6) The number of catalytic converters (location, volume, and composition), and

(7) The thermal reactor characteristics.

At the manufacturer's option, engines identical in all the above respects could be further divided into different engine families if the Administrator determined that such engines were expected to have different emission characteristics. This determination would be based on a number of features, such as the intake and exhaust valve or port size, the fuel system, exhaust system, and method of air aspiration.

EPA requests comment on the appropriateness of adding governed engine RPM range as a criterion for the determination of an engine family. EPA is concerned that a wide-governed RPM spread in the same engine family, that is one engine configuration has a no-load governed speed at 3,200 RPM and another engine configuration has a rated no-load governed speed of 2,200 RPM, may be a sufficient reason to break up one engine family into more than one engine family.

9. Compliance With Emission Standards

The test engine(s) representing an engine family would be required to demonstrate that emissions are less than or equal to each separate emission standard. If a test engine exceeded any one emission standard in the applicable class, the engine family would be deemed not in compliance with emission standards of that class.

EPA is proposing that if catalysts are used in an engine family to meet the emission standards of this regulation, the engine manufacturer must affirm that the durability of the catalysts has been confirmed on the basis of the evaluation procedure that is specified in this notice.

10. Useful Life Period, In-use Enforcement, and Development of an In-use Testing Program

EPA is not proposing a small SI engine useful life period or an in-use enforcement program in today's proposal. However, EPA believes that a critical element in the success of its nonroad program is assuring that manufacturers build engines that continue to meet emission standards throughout the engine's useful life. While section 213(d) of the CAA authorizes EPA to enforce emission standards in-use, EPA is proposing to postpone setting a useful life period and an in-use enforcement program for small SI engines until the Phase 2 regulations become effective and, instead, to require in this Phase 1 regulation that manufacturers test in-use engines. The Phase 2 rulemaking for small SI engines is under a court-ordered deadline and must be promulgated by April 30, 1997.

EPA is not proposing a Phase 1 useful life period for several reasons. Only limited testing data is currently available on in-use performance of small SI engines. Additional data would be provided by the in-use testing program described below. Second, EPA does not believe that emission controls proposed

for Phase 1 will experience significant deterioration beyond normal engine deterioration, although this area needs more research. For further discussion of these issues see "V.P. Applicability of In-Use Standards" and "V.Q. In-Use Testing Requirements."

The proposed in-use testing requirement is intended to parallel in-use testing previously or currently conducted by industry. While manufacturers and their associations have proposed that EPA adopt a cooperative testing program, EPA believes cooperative programs would not adequately or as effectively achieve the goals of this in-use program. See "V.Q. In-Use Testing Requirements."

EPA is proposing that engine manufacturers test a sample of in-use engines. In the absence of in-use emission standards, EPA believes this testing requirement would be invaluable for manufacturers and EPA to learn about in-use emissions and emission deterioration. Although EPA would not enforce in-use emission standards for Phase 1 engines, EPA expects that manufacturers would take appropriate actions to prevent recurrence of in-use noncompliance and to also remedy in-use noncompliance when it was discovered.

At the time of certification the engine manufacturer would propose which engine families are to be included in the in-use test program. The certificate of conformity issued by EPA for engine families included in the in-use testing program would be conditional based on completion of the test program for that family. EPA would approve a manufacturer's test program if the selected engine families represented an adequate consideration of the elements discussed below.

Number of engines to be tested: The number of small SI engines to be tested by a manufacturer would be determined by the following method:

For an engine manufacturer with total projected annual production of more than 75,000 small SI engines, the minimum number of engines to be tested will be the lowest of the numbers determined in (1), (2), or (3) below:

(1) Divide the manufacturer's total projected annual production of small SI engines by 50,000, and round to the nearest whole number,

(2) Test five engines each from 25 percent of all small SI engine families certified in that model year,

(3) Test three engines each from 50 percent of all small SI engine families certified in that model year.

An engine manufacturer with total projected annual production of 75,000 small SI engines or less must test a minimum of two engines.

Criteria for selecting test engines: An engine manufacturer would be required to select test engines from engine families utilizing the following criteria and in the order specified:

(1) Engine families using emission technology which may be used on phase 2 engines,

(2) Engine families using aftertreatment,

(3) Engine families certified to different emission standards,

(4) Different engine designs (such as side valve versus overhead valve engines),

(5) Engine families using emission control technology specifically installed to achieve compliance with Phase 1 standards,

(6) The engine family with the highest projected annual sales, and

(7) Engine families which meet the above criteria, but have not been included in prior model year in-use testing programs as required by these provisions.

Collection and testing of in-use engines: An engine manufacturer would be required to procure in-use engines which have been operated for between half and three-quarters of the engine's advertised (or projected) useful life. All testing would be completed within three years after the certificate is issued or is effective, whichever is later, for an engine family which requires in-use testing.

A test engine would be procured from sources not associated with the engine manufacturer or equipment manufacturer, except that, with prior approval of the Administrator, an engine manufacturer with annual sales of less than 50,000 engines might obtain in-use engines associated with itself or its equipment manufacturer.

A test engine would be required to have a maintenance history representative of actual in-use conditions. To comply with this requirement a manufacturer would question the end user regarding the accumulated usage, maintenance, operating conditions, and storage of the test engine.

The manufacturer would perform minimal set-to-spec maintenance on a test engine. Maintenance would include only what is listed in the owner's instructions for engines with the amount of service and age of the acquired test engine. One valid emission test would be required for each in-use engine. Finally, if a selected in-use engine failed to comply with any applicable certification emission standards, the manufacturer would be responsible for determining the reason for noncompliance.

In-use test program reporting requirements: The manufacturer would be required to submit to the Administrator by January 30 of each calendar year all emission testing results generated from the in-use testing program. At the Administrator's request, a manufacturer would be required to provide documents used in the procurement process, including criteria used in the procurement screening process and information from the end user(s) related to use, maintenance, and storage of the selected engines.

EPA is aware that engine manufacturers may have near-term concerns regarding testing capacity and the burden this type of program may impose on a newly regulated industry. EPA requests comments on the lack of in-use standards, the lack of in-use enforcement, all elements of this proposed testing requirement, and on possible alternative designs of in-use testing programs (such as a joint program between manufacturers and EPA) or enforcement that may be more effective, giving consideration to the limited lead time and duration of the Phase 1 program.

11. Certificate of Conformity, Requirements of Certification

Any manufacturer of a small SI engine would be responsible for obtaining from the Administrator a certificate of conformity covering any engine introduced into commerce in the United States, before such an engine is sold, offered for sale, introduced or delivered for introduction into commerce, or imported into the United States.

Section 203 of the CAA does not prohibit the production of vehicles or engines before a certificate of conformity is issued. Vehicles or engines produced prior to the effective date of a certificate of conformity might also be covered by the certificate if the following conditions were met:

- The engine conformed in all respects to the engines described in the application for the certificate of conformity.
- The vehicles or engines were not sold, offered for sale, introduced into commerce, or delivered for introduction into commerce prior to the effective date of the certificate of conformity.
- The Agency was notified prior to the beginning of production when such production would start, and the Agency was provided full opportunity to inspect and/or test the engines during and after their production. For example, the Agency would have the opportunity to conduct SEA production line testing as

if the engines had been produced after the effective date of the certificate.

EPA is proposing that a number of requirements be met by the engine manufacturer prior to granting a certificate of conformity. As is the case for on-highway vehicles and engines, the proposed regulations would make it illegal for any person to use a device on a nonroad engine which senses operation outside normal emission test conditions and reduces the ability of the emission control system to control the engine's emissions. To guard against use of these devices, EPA would reserve the right to require testing of a certification test engine over a modified test procedure if EPA suspected a defeat device was being used by an engine manufacturer on a particular engine. In addition, use of defeat devices would be considered a prohibited act subject to civil penalties.

Engines equipped with adjustable operating parameters would have to comply with all the regulations with the parameters adjusted to any setting in the full range of adjustment. For example, this could include adjustment of the high-speed needle for alteration of the air/fuel ratio or adjustment of the speed set screw. This would ensure that changes to the adjustable operating parameters that might readily occur in use would not cause the engine to fail to comply with these regulations.

EPA is proposing to require that manufacturers label each engine and that the label meet the same requirements with respect to durability and visibility as required in the current on-highway program. The engine manufacturer would be responsible for proper labeling of engines from each engine family. In addition, EPA is proposing labeling requirements for vehicle and equipment manufacturers if the engine label is obscured.

EPA is also proposing that each engine must have a unique engine identification number which may be part of the engine label or engraved on the engine. Such identification is necessary for tracking individual engines. Use of engine identification numbers would facilitate setting up a tracking system and allow manufacturers to sample in-use engines for their programs. This identification would be essential for development of a long-term in-use durability program. EPA requests comment on the labeling proposal as well as on current engine identification practices within the industry.

Finally, EPA also proposes to require that all engine crankcases must be closed to preclude the emissions that occur when a crankcase is vented to the atmosphere. Since most currently produced engines do have closed crankcases, EPA believes this requirement would impact relatively few manufacturers. Finally, small SI engine noise levels would not be allowed to increase as a result of this rule.

EPA requests comment on these proposed certification requirements. While EPA is today proposing vehicle and equipment manufacturer labeling responsibilities, EPA is considering whether to instead make engine manufacturers responsible for ensuring that the emission control label is visible once the certified engine is incorporated into a given piece of nonroad equipment. EPA requests comment on this specific issue as well.

12. Vehicle/Equipment Manufacturer Requirements

Commencing on this rule's effective date, manufacturers of small SI vehicles and equipment and importers would be prohibited from introducing into U.S. commerce any vehicle or equipment powered by a small SI engine which does not incorporate the appropriate certified handheld or nonhandheld engine. Failure to do so would make the equipment manufacturer liable for the assessment of civil penalties. EPA is proposing this requirement because it is concerned that engines certified to meet handheld engine standards may in fact be used in nonhandheld equipment. This would significantly and negatively impact air quality benefits which are to accrue as a result of this rule. Due to the potential for engines in different categories to be substituted for one another, this prohibition would ensure that the regulated engines are used in appropriate applications.

As noted above, EPA is proposing to require that the original emission control engine label is visible once the certified engine is placed in the vehicle or equipment. If the engine label is obscured as a result of the vehicle or equipment manufacturer's placement of the engine in the nonroad vehicle or equipment, the vehicle or equipment manufacturer would be required to attach an identical but supplemental label, in a readily visible location on a part necessary for normal vehicle or equipment operation before it is introduced into United States commerce.

Section 213 gives EPA the authority to require nonroad equipment manufacturers to use certified nonroad engines. For further discussion, see "V.F. Nonroad Engine and Vehicle Definitions."

13. Certification Procedures—Application Process

The engine manufacturer would be required to submit an application to EPA requesting a certificate of conformity for each engine family for every model or calendar year. Certificates would be issued to cover production for a single model year. See "V. W. Duration of Certificates of Conformity, Definition of Model Year, Annual Production Period" for further discussion of these issues. An application for a certificate would be submitted every model year even when the engine family does not change from the previous certificate, although representative test data could be reused in the succeeding model year's application. If the emissions from the test engine were below the applicable standards and EPA believed that all other requirements of the regulation were met, EPA would issue a certificate of conformity for that engine family.

The application would need to provide EPA with sufficient information to determine the appropriate test results and emission characteristics of the engine family. It would also allow EPA to determine test engine compliance with the applicable emission standards in a timely manner. It would be important that the engine manufacturer succinctly, fully, and accurately submit all pertinent information to EPA and maintain internal records which could be easily accessed if such access is determined to be necessary by EPA.

If changes to an engine family configuration occur after the application is submitted which cause the changed version to be the engine family's worst case emitter, then emission testing of the changed version is required. Additionally, the Administrator may require a manufacturer to conduct testing to demonstrate compliance.

The application would be submitted to the United States Environmental Protection Agency, Certification Division, Office of Mobile Sources, 2565 Plymouth Road, Ann Arbor, MI 48105. A second copy of the application would be forwarded to Manufacturers Operation Division, Office of Mobile Sources, 401 M St., SW (Mail Code 6405J), Washington, DC 20460. The application would include the following information:

- A description of the basic engine design including engine family specifications,
- A complete description and explanation of how the emission control system operates, including a detailed description of all emission control

components, and a listing of the engine and emission control calibrations,

- Part numbers for all emission control components which might reasonably be expected to affect emissions,
- Proposed test engine selection and the rationale for such a selection,
- A description of the test engine starting instructions, fuel, and lubricants to be used,
- A description of the operating cycle and the service accumulation period necessary to break in the test engine,
- A description of all adjustable operating parameters,
- Information relating why the physical limits or stops used to establish the physically adjustable range of each parameter were effective,
- A description of the rated speed(s) and power(s) within the engine family,
- Fuel flow rates for each configuration within the engine family,
- The proposed maintenance instructions, the emission warranty, and emission control label,
- All test data obtained by the manufacturer on the test engine,
- A description of the test facilities, test equipment, and test procedures,
- A section which incorporated any revisions or amendments to the application, including any production changes,
- A list of official manufacturer contacts, organizational chart, and individual designated to receive the certificate of conformity,
- The projected annual sales for the engine family,
- A statement indicating which information in the application was confidential, and
- An unconditional statement certifying that all engines in the engine family complied with all the requirements of the Clean Air Act and this regulation.

14. Certification Procedures—Testing Overview and Preliminaries

EPA is proposing that the emission level used to certify an engine family be equal to the highest emission test level reported for any engine configuration in that family. The engine manufacturer would be responsible for selecting and testing one engine from each engine family which is most likely to be that engine family's worst case emitter. The criterion for selecting the worst case engine would be that engine configuration which has the highest weighted brake-specific fuel consumption over the appropriate engine test cycle. EPA could verify the test results by requiring Administrator testing of this engine. EPA would also have the option to test any available test engine representing other configurations in the engine family.

Before emission testing was carried out, the manufacturer would perform service accumulation on each test engine over the dynamometer hour accumulation cycle of its choice based on good engineering practices (for example, a cycle representative of typical "break-in" operation of a new production engine in actual use). For each engine family, the manufacturer would determine the number of hours required to stabilize the emissions of the test engine. However, the number of hours which the manufacturer chose could not exceed 12 hours. EPA does not believe a break-in time greater that 12 hours is necessary to stabilize new engine emissions. In addition, this cutoff is necessary to ensure that EPA gets an equitable view of stabilized emissions over all engine families which may vary with respect to HC and CO emission degradation and NO_x emission improvement with time. The manufacturer would maintain, and provide in its application to the Administrator, a record of the rationale used both in making the dynamometer cycle selection and in making the service accumulation hours determination.

The manufacturer would be required to conduct emission tests of selected engine(s) using the proposed test procedure discussed herein. Finally, the proposed rule does provide for Administrator approval of special test procedures if the small SI engine is not capable of being satisfactorily tested under the proposed test procedures.

15. Certification Procedures—Emission Test Procedure for HC, CO, and NO_x

EPA is proposing a single test procedure with three different test cycles for measuring HC, CO, and NO_x. One cycle would be for all Class III, IV, and V engines (Cycle C), while two cycles would be possible for Class I and II engines (Cycles A and B).

Cycle B would only be used for those Class I and II engine families in which 100 percent of the engines were sold with a governor which maintained engine speed within ± two percent of rated speed (rated speed means the speed at which the manufacturer specifies the maximum rated power of an engine) under all operating conditions. Cycle B would be a 6-mode steady state cycle consisting of five power modes at rated speed and one no-load mode at idle speed. For all other Class I and II engines, the test cycle to be used would be Cycle A. Cycle A would be identical to Cycle B, except the five power modes would be run at intermediate engine speed (intermediate speed is defined as 85 percent of rated speed).

For Class III, IV, and V engines, the engine manufacturer would be required to use Cycle C. Cycle C is a 2-mode steady state cycle consisting of one power mode (at rated speed) and one no-load mode at idle speed. The test modes for each cycle would be run in a prescribed order.

The three test cycles (modes and power settings) documented in the proposed regulations are based on work performed by the Society of Automotive Engineer's (SAE) Small Engine Committee. The SAE Small Engine Committee has published a recommended practice for measuring gaseous exhaust emissions from small utility engines typically less than 20 kW. This recommended procedure is known as SAE J1088. Test Cycles A, B, and C are all taken from J1088. The mode weighting factors are taken from work performed by CARB.

In addition, the International Standards Organization (ISO) has published recommended test cycles for measuring exhaust emissions from reciprocating internal combustion engines. Recommended exhaust gas measurement procedures and test cycles for reciprocating internal combustion engines are contained in ISO 8178, Part 4. ISO has three test cycles for spark-ignition engines less than 20 kW termed G1, G2, and G3 which are identical to SAE Cycles A, B, and C, respectively.

EPA believes the proposed test procedures are adequate for the proposed emission standards. The purpose of a certification test procedure is to adequately represent the emission levels produced by the test engine when it is used in actual operation. The test procedure in this proposed rule does this. The 6-mode test cycles (Cycle A and Cycle B) used for Class I and II engines and the 2-mode cycle (Cycle C) used for Class III, IV, and V engines were developed by the Society of Automotive Engineer's Small Engine Committee to cover the broad range of engine operating conditions seen by small engines. The weighting factors were developed by CARB using data supplied by the small engine industry. The weighting factors are intended to be representative of the modes (speed and power conditions) used by the broad range of small gasoline engines. The Agency believes these weighting factors are sufficient for this proposed rule.

The methods used to measure the gaseous emissions of HC, CO, and NO_x for all small engines would be independent of the type of engine and

test cycle. EPA proposes to allow manufacturers to sample emissions using either the Raw Gas Method (raw) or the Constant Volume Sampling Method (CVS). Using either method, each test engine would be stabilized at each mode before emission measurement began. After stabilizing the power output during each mode, the concentration of each pollutant, exhaust volume, and fuel flow would be determined. The measured values would be weighted and then used to calculate the grams of exhaust pollutant emitted per kilowatt-hour.

SAE J1088 contains a recommended procedure for the measurement of gaseous emissions using the Raw Gas Method. A recommended testing procedure, such as SAE J1088 or ISO 8178, by definition allows sufficient flexibility for individual manufacturers to develop unique features in their test procedures while still being within the allowable guidance. This flexibility is not a desirable feature in a regulatory program where both manufacturers and EPA want to ensure uniformity between test labs, since conformity and compliance testing decisions are binding on the parties involved. For this reason, the test procedures proposed by EPA are not identical to SAE J1088 or ISO 8178, but are compatible with those procedures.

EPA understands the importance of compatibility between the EPA proposed test procedures and those used to demonstrate emission compliance for other regulatory agencies within the U.S. and throughout the world. Compatibility allows a manufacturer to exercise the cost efficiencies of using one engine configuration to demonstrate emission compliance in more than one market. EPA has tried to establish a test procedure that is compatible with both CARB's utility engine test procedure and with ISO 8178. As a result, EPA expects that a manufacturer using the resultant EPA procedure would also meet the CARB and ISO requirements. However, since the SAE and ISO procedures are recommended practices and do not have stringent test parameter tolerances, a manufacturer using the SAE or ISO procedure may or may not meet EPA requirements.

16. Administrator Testing

EPA is proposing Administrator testing provisions that allow EPA flexibility in determining when and where engine testing may occur. This is necessary given EPA's limited testing facilities.

Specifically, this provision would allow EPA to require test engine testing at any given location, including at a manufacturer's facility. The Administrator would be empowered to require the manufacturer to make available such instrumentation and equipment that was specified by the Administrator. Any testing conducted at a manufacturer's facility would be scheduled by the manufacturer as promptly as possible. Authorized EPA personnel would be given access to the facilities to observe such testing.

17. Catalyst Durability

EPA expects the emission controls used to meet the exhaust emission standards specified in this rulemaking to be durable so that emission reduction benefits are realized not only when the engines are new, but also during operation in-use, over time. Although EPA is not proposing full emission control system durability demonstration requirements in this notice, manufacturers are fully expected to design such systems to be effective under normal in-use operating conditions over time. Full emission control system durability demonstration requirements are expected to be included in the Phase 2 regulations for small SI engines. However, EPA has concerns that certain emission control components, namely catalysts, warrant separate consideration. Therefore, EPA is proposing durability demonstration requirements for catalysts in this notice as discussed in greater detail in "V. U. Catalyst Durability."

18. Information Requirements, Application for Certificate of Conformity, Amendments

This rule's information retention requirements are similar to those proposed in the nonroad large CI rule. EPA believes that the proposed information requirements are sufficient to adequately determine compliance with this regulation and the appropriateness of awarding a certificate of conformity.

A manufacturer would be responsible for retaining certain information applicable to each test engine along with copies of the submitted applications for individual certificates of conformity. A manufacturer would also be required to submit an amendment(s) to the application or certificate of conformity whenever additional small SI engines were added to an engine family or changes were made to a product line covered by a certificate of conformity. Notification normally would occur prior to either producing such engines or making such changes to a product line.

19. Selective Enforcement Auditing Program

EPA is proposing to conduct a Selective Enforcement Auditing (SEA) program of small SI engines as authorized by section 213 of the CAA. The small engine SEA program would be an emission compliance program for new production small SI engines in which manufacturers would be required to test engines as they leave the assembly line, with EPA oversight. Through SEA testing, EPA could determine with reasonable statistical certainty whether or not tested engine families were in compliance with the Act.

EPA believes that an SEA program is necessary to verify that production engines comply with applicable regulations. Since certification would be based on preproduction prototype engines which often contain specially built and installed components, production engines could still fail to meet emission standards if quality control was inadequate. SEAs would provide a means to test actual production engines as they came off the assembly line. Since no in-use enforcement program is being proposed for small SI engines, SEA provides the only opportunity for EPA to determine the compliance of production engines.

EPA would assign a limit to the number of SEAs each manufacturer could receive during a model year. As in the on-highway SEA program, this annual limit would be used to provide assurance to manufacturers that EPA would not significantly overburden a manufacturer with an unreasonable number of audits during the model year

Each SEA would be an audit of one engine family, and each passing audit would count toward the manufacturer's annual limit. EPA is proposing an annual limit of two for each manufacturer with projected annual production of less than 100,000 engines. For manufacturers with annual production of 100,000 or more engines the annual limit would be the greater of either two or the number determined by dividing the number of engine families certified in that model year by five, and rounding to the nearest whole number. For example, a manufacturer with a projected annual United States production of 600,000 engines with 13 certified engine families would have an annual limit of three, and a manufacturer with a projected annual production of 300,000 small SI engines and 22 engine families would have an annual limit of four.

EPA believes this method of determining annual limits is most

appropriate for the small SI engine industry. EPA is proposing the minimum annual limit of two because manufacturers may change production during the model year. If a manufacturer passed an SEA early in a model year, the manufacturer might subsequently implement changes in its production process which could increase engine emissions. With an annual limit of two, EPA would have the flexibility to audit a manufacturer early in the model year, and then return later in the model year if that manufacturer implemented a change in production which could increase engine emissions.

As described above, EPA is also proposing that manufacturers with projected annual production of 100,000 small SI engines or more may have an annual limit of more than two. EPA believes it might be necessary to conduct more than two SEAs on larger engine manufacturers when they have a large variety of engine families. When manufacturers have a variety of engine families, an SEA might only check a small portion of the manufacturers' production. Therefore, by dividing the number of engine families certified by larger manufacturers by five, EPA could establish a higher annual limit for those manufacturers with a variety of engine families with different emission characteristics. Manufacturers with lower production should be assured that EPA would not overburden its limited test facilities with SEAs.

Annual limits would act as a cap and would not necessarily be the actual number of audits a manufacturer received. EPA would not exceed a manufacturer's annual limit unless the Agency had reason to believe noncompliance was occurring. EPA requests comment on the proposed method for determining annual limits. The SEA program strives to encourage manufacturers to perform self-auditing and promptly remedy the emission noncompliance it discovers. Therefore, EPA would consider reducing the number of audits conducted by the Agency, minimizing audits of engine families which are unusually burdensome to audit, or both options, if the manufacturer provided substantial data to demonstrate conformity of actual production engines with the applicable emission standards. EPA suggests that manufacturers unfamiliar with self-auditing review existing on-highway programs, such as CARB's Quality Audit Program or the manufacturers' Assembly Line Test Data, for guidance in implementing an in-house auditing program. Examples of audit programs are available in the docket for this rulemaking.

EPA would review self-audit data and procedures used in acquiring the data to assess the validity and representativeness of each manufacturer's self-audit program. The primary criteria EPA would use in evaluating the in-house programs are sample size, randomness within the family of the audited engine(s), frequency of testing, and the applicable required test procedures. EPA would discount the value of any self-audit data if the Agency received indications of noncompliance or concluded that the data were invalid, incomplete, unrepresentative, or insufficient. In addition, manufacturers with a comprehensive self-audit program would be subject to spot checks with EPA oversight to provide EPA assurance of compliance. EPA requests comment on this issue.

Manufacturers would be notified of an SEA by means of a test order. This test order would specify the engine family to be audited. EPA might also specify an engine configuration or range of configurations from a family to be audited. However, EPA would reserve the option to select all configurations within an engine family for an SEA. To minimize the burden on manufacturers, EPA would consider requests by manufacturers to exclude particular engines or engine configurations from a test sample. Justification for such requests could be to avoid a delay in shipment of urgent customer-ordered engines or to minimize test cell set-up time by selecting engines of similar physical configurations.

Test orders would include information relevant to the SEA. The test order would indicate any specific procedures, such as the time to begin selecting engines, during the course of the audit. Additionally, the test order would authorize EPA enforcement officers, upon presentation of enforcement credentials, to inspect engine production, test facilities, storage facilities, and records necessary to establish compliance with nonroad regulations.

Due to differences between the small SI industry and the on-highway industry, EPA is proposing that some aspects of the on-highway SEA program be modified for small SI engines. Historically, on-highway engine SEAs have been conducted on engine configurations: a specific engine family, an engine code, a rated speed and an emission control system. EPA believes that making an entire small engine family subject to an audit would lead manufacturers to use extra care when grouping engines in a family. Consequently, EPA is proposing that nonroad SEAs be conducted by sampling engines from within an engine family. EPA requests comments on this aspect of the program.

SEA engines would typically be selected from a point of final engine assembly or from a storage or shipping facility. Most often, this selection point would be at the end of the engine assembly line, where no further quality control procedures happen or parts would be installed on the engines. Selection of imported engines could occur at a port of entry. SEA engines could not receive any additional inspections or quality control other than that of normal production engines and pre-test safety checks. Engines would be tested in the same order as they were selected. EPA requests comment on the feasibility of selecting equipment, then removing the engine for audit testing.

EPA proposes to include ports of entry or storage locations in the United States as locations for EPA selection of foreign- produced small SI engines for SEA emission testing at laboratories in the United States. The location of these selections could be designated by the manufacturer to minimize disruption and shipping costs. The manufacturer would be responsible for ensuring that a test facility in the United States was available for SEA testing.

"Port selection" would assist the Agency in reducing its travel costs. Recently, in the on-highway program, EPA has had requests from light-duty vehicle manufacturers to conduct port selection during SEAs. These audits were performed and ran smoothly. EPA might permit reasonable maintenance and inspections of port-selected engines to address problems that could result from long-term storage, ocean shipping, or repeated handling. EPA requests comments on the port selection aspect of the SEA program.

Prior to testing SEA engines, manufacturers could operate engines to break in engine components. This break-in or service accumulation of an SEA engine family would follow the same procedures and could be up to 12 hours or the same number of break-in hours accumulated for that family's emission data engine during certification. Service accumulation would be performed expeditiously and in a manner using good engineering judgment.

Audit engines would be tested using the same test cycle, either Test Cycle A, B, or C, as was used in certification; however, deviations allowed in certification from the full test procedures as described in proposed 40 CFR part 90 would not be permitted in SEAs.

EPA is proposing that small SI engines will be selected for SEA testing at a rate of at least four engines per day, unless production is less than four engines per day. To minimize delays in shipment of engines to customers, manufacturers could test the first engines selected for an audit while additional engines were produced.

The total number of engines tested in an SEA would be dictated by the number of engines required to reach the statistically acceptable pass/fail decision within the sampling plan applied. EPA is proposing a sequential sampling plan for small SI engine SEAs. These sampling plans have been designed to meet a 40 percent Acceptable Quality Level (AQL) and to ensure low statistical risks of incorrect pass/fail determinations. The maximum theoretical percentage of failing engines for passing an SEA is 40 percent. EPA is proposing a 40 percent AQL for the small SI engine SEA program. EPA has used this AQL since the 1970s for the on-highway program, and EPA currently has no reason to propose a different AQL for a nonroad program. EPA is proposing that the small SI engine SEA program use the same sampling plans used for the on-highway heavy-duty engine SEA program.

EPA proposes that engine manufacturers with projected United States annual sales of 7,500 or greater must complete a minimum of two engine tests per day during an SEA. Engine manufacturers with projected United States annual sales of less than 7,500 would be required to complete a minimum of one engine test per day during an SEA. A valid emission test or a voided test would each count as one test toward meeting the requirement. EPA requests comments on this aspect of the proposal.

A test engine's pass or fail determination would be made by comparing final test results to the applicable federal emission standard. Within five working days of the conclusion of an audit, manufacturers would be required to submit a report to EPA summarizing engine test results, test procedures, and audit events such as the date, time, and location of each test, repairs to engines, and the reason for the repair.

Failure of an SEA could result in suspension or revocation of the certificate of conformity for that family. To have the certificate reinstated subsequent to a suspension, or reissued subsequent to a revocation, the manufacturer would be required to demonstrate, by showing passing data, that improvements, modifications, or replacement had brought the family into compliance. The proposed regulations include hearing provisions which allow the manufacturer to challenge EPA's suspension or revocation decision based on application of the sampling plans or the manner in which tests were conducted.

20. Importation of Nonconforming Small SI Engines

EPA is proposing certain restrictions on the importation of nonconforming small SI engines. Such restrictions are based in part on the existing regulations for the importation of nonconforming motor vehicles and motor vehicle engines.

While EPA provides for an Independent Commercial Importer (ICI) program for motor vehicles and motor vehicle engines, EPA is not certain that an ICI program is necessary or practical for small SI engines. For the on-highway program, ICIs are responsible for all aspects of compliance required of manufacturers (e.g., certification, testing, labeling, warranty, recall, maintaining records). EPA solicits comment on the need for an ICI program for small SI engines. Due to the uncertainty about the need for an ICI program, EPA is proposing in the alternative both to have an ICI program that parallels that of the on-highway program, and to have no ICI program in the final rule. EPA currently favors no ICI program for small SI engines; if the Agency determines not to promulgate an ICI program, the proposed regulatory language will be deleted from the final rule.

This proposal includes a special provision for individuals to import a limited number of nonconforming small SI engines for personal use. EPA expects that individuals may not know of the regulations applicable to small SI engines and, without this once in a lifetime exemption, individuals may be stopped at a port of entry with small SI engines and equipment included with their personal possessions. Additionally, this exemption would relieve a significant burden on EPA and the U.S. Customs Service. EPA is proposing that, at least for Phase 1 of these regulations, individuals be permitted to import up to three nonconforming small SI engines and not have these engines brought into compliance with the proposed standards. This is a one-time exemption (for one importation) in which individuals are permitted to import these engines for personal use and not for purposes of resale. This exemption would not require prior EPA written approval. Additional small SI engines, after an individual's limit of three, would not be permitted to be imported under the proposal unless otherwise provided under another exemption or exclusion. All small SI engines imported for purposes of resale would be required to be imported and modified by an ICI. If EPA does not finalize an ICI program, such engines may not be imported for resale. EPA requests comment on this proposed exemption.

Today's proposal also provides certain exemptions to the restrictions on importing nonconforming small SI engines. These include exemptions for repairs and alterations, testing, precertification, display, national security, hardship, small SI engines greater than 20 original production years old, and certain small SI engines proven to be identical, in all material respects, to their corresponding United States certified versions. These exemptions would also include the exclusion of nonconforming engines used solely in competition.

EPA is not proposing to include provisions for a catalyst control program for small SI engines. The catalyst control program for motor vehicles consists of a special provision for catalyst-equipped vehicles to be operated in countries where the catalyst may be poisoned by the use of leaded fuel. In the on-highway catalyst control program, owners may either have the catalyst removed while the vehicle is operated outside of the United States or, if the vehicle is driven only in countries that have a wide availability of unleaded gasoline, demonstrate by using a plumbtesmo test that the vehicle was not operated on leaded fuel. EPA is not proposing a catalyst control program for small SI engines because EPA does not expect that U.S. certified small SI engines equipped with catalysts will be used in countries that do not have a wide availability of unleaded fuel and then imported into the United States. Additionally, EPA has no knowledge of the extent to which catalysts will be used on Phase 1 small SI engines. EPA requests comments on the absence of a catalyst control program and the need for such a program for Phase 1 engines.

Finally, EPA is not proposing to include a provision for small SI engine Designated Canadian Importer (DCI). EPA's motor vehicle import program has a special provision in which DCIs may import and sell Canadian vehicles that were manufactured to be identical in all material respects to U.S. certified counterparts. Because EPA has no indication that Canada will adopt EPA's Phase 1 small SI engine standards, engines imported from Canada into the United States will likely be nonconforming engines and thus would

not be eligible to be imported by a small SI engine DCI. Consequently, EPA expects that provisions for small SI engine DCI are unnecessary. EPA requests comment on the absence of a DCI program and the need for such a program for Phase 1 engines.

Importation regulations are joint regulations between EPA and the United States Department of the Treasury (Customs Service). The citation for United States Customs Service, Department of Treasury regulations governing import requirements is reserved. The citation will be inserted upon promulgation by the United States Customs Service of the applicable regulations.

21. Defect Reporting and Voluntary Recall

EPA is proposing that a manufacturer of small SI engines file a defect information report whenever a manufacturer identifies the existence of a specific emission-related defect in 25 or more engines in a single engine family manufactured in the same model year. However, no report would need to be filed if the defect was corrected prior to the sale of the affected engines to the ultimate purchaser. These proposed reporting requirements are similar to the requirements found in the on-highway program. EPA is currently revising the on-highway reporting program and new regulations will shortly be proposed. The new regulations may encompass both on-highway and the nonroad sector.

EPA is also proposing that individual manufacturers establish, when appropriate, voluntary recall programs. EPA is proposing limited guidelines which engine manufacturers would follow when undertaking such a program. EPA invites comments on how such a voluntary program might be effectively structured.

22. Emission Defect Warranty Requirements

EPA is proposing that engine manufacturers provide an emission warranty for the first two years of engine use. The two-year warranty period was adopted from California's lawn and garden regulations to reduce the burden on manufacturers of administering two different warranty programs.

EPA is also considering "hours of engine use" as an alternative measure for the warranty period. Under this option, an engine manufacturer would need to install some form of metering device to track the hours of use for an engine. EPA solicits comments on this metering option, the feasibility of outfitting small engines with such devices, and the feasibility of employing the useful life hours generated in the Nonroad Study as a measure for an hours-based warranty period.

EPA believes that a warranty program is necessary to ensure the quality of emission control components and systems that are used on or in nonroad engines and also to protect consumers from costly repairs that result from manufacturing defects. Furthermore, a warranty program gives the engine owner/operator the incentive to get emission-related system failures repaired, since failures to the emission control system do not always affect the ability of an engine to work.

The warranty requirements proposed today are consistent with emission defect warranty policies developed for on-highway vehicles, located in section 207(a) of the Act. Manufacturers of new nonroad engines would warrant to the ultimate purchaser and each subsequent purchaser that such engine was (1) designed, built, and equipped so as to conform at the time of sale with applicable regulations under section 213 of the Act, and (2) free from defects in materials and workmanship which cause such engine to fail to conform with applicable regulations for its warranty period. The related parts and components covered by section 207(a) are detailed in an advisory parts list issued by EPA on July 15, 1991, and encompass parts and systems which are or may be used on small SI engines. A copy of the parts list is in the public docket for this rulemaking. EPA invites comments on this parts list and its applicability to small SI engines.

EPA is currently developing more detailed regulations that will further clarify manufacturers' responsibilities under section 207(a) for both on-highway and nonroad engines. EPA will rely on the existing 207(a) practices until those regulations are finalized.

23. Tampering Enforcement

Today's action would make it illegal for any person to tamper with any emission-related component or system installed on or in a small SI engine. EPA believes that an engine would more likely continue to meet the applicable emissions standards in-use if the engine maintained its certified configuration. Therefore, EPA believes it is necessary to impose antitampering provisions for such engines and is proposing that the existing policies developed for on-highway tampering also apply to engines included in this rule. See Office of Enforcement and General Counsel; Mobile Source Enforcement Memorandum No. 1A, June 25, 1974. A copy of this memorandum is in the public docket for this rulemaking.

V. Discussion of Issues

This section contains further discussion of a number of issues raised during the development of this proposal.

A. Use of Metric Units

Metric units are used throughout the proposed rule without English equivalents. This is done in compliance with the Metric Conversion Act of 1975, as amended, and Executive Order 12770, July 25, 1981, which directs all federal agencies to use metric as the primary unit in regulations by September 30, 1992 and to only provide English equivalents when the affected party(s) uses English as the primary unit.

EPA acknowledges slight differences between the two systems and the use of mixed units by CARB. Comments are solicited on the impact of using only metric units or the need for including the English equivalent.

B. Use of Power Rating as Cutoff for Applicability

EPA is proposing to limit the applicability of this action to engines at or below 19 kW (25 horsepower) rated power as compared to CARB's 25 horsepower limit. EPA considered limiting the regulation's applicability based instead on a total displacement, but has chosen to propose a power-based cutoff for consistency with CARB.

EPA is aware that the measurement of rated power is subject to engine configuration and test conditions, and that a cutoff based on power might create an incentive for manufacturers with engines just below the cutoff to change engine and/or test procedure parameters to result in a higher measured power.

In examining data from Power Systems Research (PSR),[4] EPA has identified a relationship between total displacement and rated power which suggests that a one-liter total displacement cutoff would affect nearly an identical group of engines as a 19 kW cutoff. However, using such a cutoff would cause a limited number of engines to be included that would not be included using a 19 kW cutoff (that is, engines above 19 kW but less than one liter displacement). Examples include larger two-stroke engines. A limited number of engines would also go unregulated under this scenario (that

[4] Power Systems Research (PSR), *Engindata North America and Parts Link Aftermarket*, 1992, St. Paul-Minneapolis, Minnesota.

is, engines under 19 kW but greater than one liter). Examples include larger industrial four-stroke engines.

Because of the differences in applicability between a power- and displacement-based cutoff, EPA has chosen to propose the former despite the potential advantages of the latter. EPA requests comment on the appropriateness of instead limiting this regulation to engines under one-liter total displacement (or a different displacement limit), or limiting the applicability to engines that are below displacement or power cutoffs. Comments should address the relative market and environmental impact of the alternative approaches, as well as the relative enforceability.

C. Exclusion of Compression-ignition Engines

EPA is not proposing to regulate small CI engines in this action. As part of the *Sierra Club* v. *Browner* settlement, EPA will determine by November 1996 whether to undertake a rulemaking which targets emissions from small CI engines. CI engines have different emission characteristics from the engines addressed by this proposal, emitting much lower levels of HC and considerably higher levels of NO_x than small SI engines.

In contrast to the current proposal, which is focused on achieving reductions in emissions of HC, a regulation addressing CI engines would likely focus on NOx. EPA lacks sufficient data regarding baseline emissions and control technologies for nonroad CI engines in this power range to determine appropriate standards at this time. Therefore EPA has chosen to exclude these engines from the current proposal, which is aimed at achieving significant reductions in small engine HC emissions on an expedited basis.

EPA is raising this as an issue because of the potential that unregulated CI engines could be substituted for post-control SI engines. In EPA's view, while this may occur in some cases (for example, small agricultural tractors), the most price-sensitive products such as string trimmers and lawnmowers are unlikely to shift significantly toward CI engines due to technological limitations, consumer preference, or both.

The Agency solicits comment on the exclusion of compression-ignition engines, and on the appropriate test procedure and standards that should be applied to CI engines if they were to instead be covered by this regulation.

D. Exclusion of Recreational Propulsion Engines

EPA is proposing to exclude engines used in recreational vehicles, examples of which include snowmobiles, off-road motorcycles, and all-terrain vehicles. Golf carts do not qualify as recreational vehicles under this proposal, and they would be subject to the emission standards of this rule. Engines used in such recreational vehicles are defined by the following characteristics: Use of a continuously variable throttle (as opposed to a governor), rated engine speeds in excess of 5,000 RPM, and wide variations in both engine load and speed.

EPA's primary reason for this exclusion is the extremely transient operation of the products in which these engines are used, which limits the ability of the proposed steady state test procedure to adequately represent exhaust emissions. This exclusion is not based on a determination that these engines do not contribute to air pollution and therefore need not be controlled. EPA has chosen to exclude engines used in recreational vehicles in order that it may proceed quickly with a program for other small SI engines. As part of the *Sierra Club* v. *Browner* settlement, EPA will determine by November 1996 whether to undertake a rulemaking which targets emissions from engines used in recreational vehicles.

EPA solicits comment on the exclusion of engines used in recreational vehicles, on the criteria used to identify such engines, and on the appropriate test procedure and emission standards if EPA were to include such engines in this proposal.

E. Exclusion of Marine Propulsion Engines

EPA proposes to exclude marine propulsion engines, examples of which, in this power range, include outboard marine engines. EPA is developing emission standards for marine propulsion engines in a separate action. However, small SI engines used on marine vessels for purposes other than propulsion, such as generators and pumps, are not excluded in this proposal.

F. Nonroad Engine and Vehicle Definitions

EPA is proposing to incorporate in this rule the nonroad engine definition proposed in the large CI rule. EPA will include in this rule any changes to that definition included in the final large CI rule. EPA is also proposing to amend the definition of nonroad vehicle proposed there by adding the following sentence: "Nonroad vehicle also includes equipment that is powered by nonroad engines."

The statutory definition of nonroad vehicle adopted by Congress in the 1990 CAA Amendments provides little guidance as to what is a nonroad vehicle. Rather, statutory language describes only what is not a nonroad vehicle, namely, motor vehicles and vehicles used solely for competition. A review of the Conference Report, the Statement of Senate Managers, and the Statement of House Managers does not provide any additional guidance. It is necessary to examine both the House and Senate Committee Reports of the original legislation before this issue is discussed.

The United States House of Representatives, Committee on Energy and Commerce, Report on H.R. 3030, offers some insight into the meaning of both nonroad engine and vehicle. In part the report states, "(T)he term 'nonroad engine' is defined for purposes of this section to include certain internal combustion engines not used in a motor vehicle or a competition vehicle, while a nonroad vehicle is a vehicle powered by (a) nonroad engine that is not a motor vehicle and not used solely for competition. Stationary internal combustion engines are to be regulated under Title I of the Clean Air Act amendments of 1990, and are not subject to the requirements of this section." [5]

Equally enlightening is the report of S. 1630 from the United States Senate, Committee of Environment and Public Works, which discusses at some length the Committee's understanding of what the terms nonroad engine and nonroad vehicle mean. A pertinent part of the report states,

> * * * "non-road engines" include a wide range of engine uses and vehicles. The term includes, for example, diesel locomotives, farm and construction equipment, utility engines such as lawn and garden equipment, marine vessels, forklifts and airport vehicles. The definition in the bill for non-road vehicles is an inclusive one that covers all engines that are not used in motor vehicles, or in a vehicle used solely for competition in vehicle racing, that are not regulated by standards promulgated under section 111 of the Act, and that are not subject to regulation under part B of title I of the Act, related to aircraft.[6]

[5] H. Rep., Legislative History of the 1990 Amendments to the Clean Air Act of 1990, Committee on Energy and Commerce to accompany H.R. 3030, May 17, 1990, at 310.

[6] S. Rep. Legislative History of the 1990 Amendments to the Clean Air Act, Committee on Environment and Public Works to accompany S. 1630, December 20, 1989, at 104–105.

EPA believes that Congress used the terms "non-road engine," "equipment," and "vehicle" interchangeably. It is EPA's belief that Congress intended nonroad vehicles and nonroad engines to be inclusive terms covering all manner of equipment not defined as motor vehicles, vehicles for competition, and stationary sources. Furthermore, there is a practical interrelationship between an engine and the equipment that houses it or is powered by it. Equipment or vehicle characteristics may have a significant impact on the emissions associated with the operation of the engine. The nonroad engine definition proposed in the large CI rule and incorporated in this rulemaking relies to a great extent on this interrelationship between an engine and a piece of equipment to determine whether an engine is a nonroad engine. In future development of a small SI engine program, it may become necessary and appropriate to regulate aspects of equipment to control fuel spillage, evaporative emissions, or refueling emissions. EPA believes that CAA section 213 provides authority for such regulation.

G. Definition of Handheld Equipment

EPA is proposing that engines intended for use in equipment defined as handheld be certified to standards much less stringent than those applicable to engines used in nonhandheld equipment. However, on a percentage basis, the reductions obtained from handheld and nonhandheld engines will be of similar magnitude. Because of the unique characteristics of handheld 2-stroke engines, it is not feasible, given the timing of this proposal and the unique performance requirements of handheld equipment, to require that all engines covered in this proposal meet emission levels that can be achieved by 4-stroke engines used in nonhandheld equipment.

This distinction is based, in part, on the substantial difference between emissions from current 4-stroke and 2-stroke engines, which is an inherent result of the design differences of these engines. Because of scavenging losses, current 2-stroke engines generally emit approximately ten times more unburned HC (on an energy-specific basis) than their 4-stroke counterparts.

However, current 2-stroke engines are generally lighter than current 4-stroke engines of the same rated power and can be operated in any orientation. As a result, applications requiring that the operator pick up and/or carry the device while using it (for example, chain saws), are nearly exclusively powered by 2-stroke engines. On the other hand, nonhandheld applications such as lawnmowers, which are currently sold in both 2-stroke and 4-stroke versions, can clearly be powered by 4-stroke engines. Approximately 90 percent of the lawnmowers sold in the United States are powered by 4-stroke engines. Section VII discusses the present market mix of small engines.

EPA is proposing to distinguish between "handheld" and "nonhandheld" equipment in a manner that is similar to that adopted by CARB. However, EPA proposes to clarify and expand on California's handheld definition.

First, in cases where the operator carries all of the equipment's weight during engine operation, the equipment would be classified as handheld. Second, where the equipment is clearly required to operate in any position the equipment would also be classified as handheld. California's handheld definition requires that the equipment must both be carried and used multipositionally in order to qualify for handheld status. EPA requests comment on whether this approach may preclude equipment which is in practice "handheld" from qualifying for handheld status. The proposed federal definition does not require that both stated criteria be present for a given piece of equipment to qualify as handheld. One criterion is sufficient. It is EPA's intent that the preceding two criteria allow leafblowers, trimmers (both string and hedge), cutters, or chain saws to qualify for handheld status.

In addition, EPA is proposing that engines be allowed to meet Class III, IV, or V standards if the dry weight of the equipment they are used in, including engine weight, is under 14 kg, there are no more than two wheels present on the equipment, *and* at least one of the following three attributes is also present: (1) The operator alternately provides support or carries the equipment throughout its performance; (2) the operator provides support and attitudinal control for the equipment throughout its performance; (3) the engine is used exclusively in a generator or pump.

EPA believes that a weight-based criterion is an appropriate initial determinant of whether a 2-stroke engine can be handheld. Industry data show clear weight distinctions between those engines which are "lightweight" and made for handheld operations and those which are not. For example, review of industry brochures revealed that 2-stroke engines were almost always found in equipment under 14 kg. In addition, the presence of not more than two wheels in a given piece of equipment is another important indicator of the need for an operator to either support, carry, or provide attitudinal control for the equipment.

The first attribute seeks to classify as "handheld" equipment which is either carried or supported by the operator throughout the entire engine operation. An operator carries equipment when the full weight of the equipment is borne by the operator. Support means that the operator holds the equipment in position so as to prevent it from falling, slipping, or sinking. The entire weight of the equipment is not necessarily borne by the operator. Legitimate sources of support might include the ground, ice, wood, or concrete. EPA intends that lightweight snowblowers, edgers, and augers qualify for handheld status under this first attribute.

The second attribute classifies as "handheld" equipment which requires either operator support or attitudinal control during the entire operation. Attitudinal control means the operator regulates either the horizontal or vertical position of the equipment. This definition is meant to allow certain lightweight tillers, augers, or edgers to qualify for handheld status. Both ice and earth augers must be carried to each drill site by the operator, and must be supported by the operator during operation. In addition, the operator must control the vertical attitude of the equipment during operation including pulling upward after each hole is drilled. Tillers without wheels or with no more than two wheels are designed to be supported or picked up frequently during operation while maneuvering between rows in a garden. Likewise, the vertical and horizontal position of the tiller is controlled by the operator.

Finally, the third attribute acknowledges that engines used in lightweight pumps and generators should be allowed to meet the handheld emission standards. Like augers, lightweight generators and pumps are carried to the work site by the operator and may operate at significant distances from electrical-power outlets.

All other equipment would be classified as nonhandheld equipment. Examples of nonhandheld equipment include lawnmowers, compressors, lawn tractors, garden tractors, tillers with wheels, chippers/grinders, and log splitters.

EPA believes that the proposed handheld definition identifies sufficient criteria by which all handheld equipment types may be classified. However, it may still be possible that certain equipment types which are in practice handheld applications would

not meet this definition. EPA is considering whether to institute a "case-by-case review process" so that, where appropriate in the Administrator's judgment, engines used in specific types of nonhandheld equipment would either be reclassified as handheld or would be allowed to meet the handheld emission standards as if that type of equipment was classified as handheld. In such cases, the Administrator might consider factors including, but not necessarily limited to the following: Equipment function and design (for example, handle placement); equipment capability; equipment weight; engine weight; rated power; multipositional operating requirements; presence and number of wheels; presence of other weight supports; availability of similar 4-stroke, electric, and/or nonpowered models by the same manufacturer or competitors; typical operating profiles (including season of use), and nationwide annual industry-wide sales. The manufacturer requesting such a review might be required to demonstrate, based on these and any other pertinent factors, that a 2-stroke engine clearly was a necessary design feature of the equipment concerned.

EPA is currently aware of at least one type of equipment that, in EPA's view, might need to be evaluated through such a process. Unlike CARB, EPA is not allowing all currently produced 2-stroke snowthrowers to meet standards applicable to engines used in handheld equipment. In approving its regulations, California accepted arguments that nonhandheld 2-stroke snowthrowers should be allowed an exemption from the nonhandheld standards to meet emission standards for handheld engines. In EPA's view, at least two factors could have formed a basis for this decision: First, snowthrowers are operated in the winter, which means that they do not significantly impact ozone nonattainment and thus need not be subject to stringent control aimed at improving ambient air quality; and second, at least some of the lightweight 2-stroke snowthrowers that were exempted from nonhandheld standards appear to be designed to be picked up while in operation (for example, to clear porch steps), implying that the use of a 4-stroke engine would significantly limit critical performance features.

While the first of these factors raises questions regarding the need to control emissions at all from products that are clearly only used in the winter, regardless of their classification as handheld or nonhandheld, those questions must also be weighed against the need to address CO emissions, and the need to protect the health of equipment operators. The second factor reveals potential problems with CARB's definition of "handheld." Specifically, CARB's action with regard to snowthrowers raises questions regarding other "fringe" products.

EPA believes that it would be appropriate to classify as handheld equipment lightweight snowthrowers under 14 kg which have no more than two wheels and which would either be carried or supported during operation. All other snowthrowers would be classified as nonhandheld and required to meet the standards that were generally applicable to engines used in nonhandheld equipment. EPA solicits comment on this proposal.

Under EPA's proposed definitions, lawnmowers will be classified as nonhandheld equipment and thus engines used in lawnmowers must meet the more stringent nonhandheld emission standards. Manufacturers of 2-stroke lawnmower engines have raised concerns over their economic survival if required to meet nonhandheld standards, based on their doubt that cost-effective technology now exists to bring their 2-stroke engines into timely compliance. EPA requests comment on the ability of 2-stroke lawnmower engine manufacturers to meet the nonhandheld standards, the impact such a requirement would have on such manufacturers, the need for relief for such manufacturers, and the impact such relief might have on the environmental benefits of this proposal.

EPA further requests comment on the following options for providing relief to 2-stroke lawnmower engine manufacturers: (1) Provide an extended effective date, such as 1998, for 2-stroke lawnmower engines to meet the nonhandheld standards; (2) allow 2-stroke lawnmower engines to meet the handheld engine standards until the effective date of the second phase of small SI engine regulations; (3) cap the number of 2-stroke lawnmowers allowed to certify to the handheld standards to the number sold in the year this proposal is published or promulgated until the effective date of the second phase of small SI engine regulations; or (4) allow a declining percentage of 2-stroke lawnmower engines to meet the handheld standards, such as 100 percent in 1996, 75 percent in 1997, 50 percent in 1998, and 25 percent in 1999, so that by the year 2000, all 2-stroke lawnmower engines sold would meet the nonhandheld emission standards.

EPA solicits comment on the proposed definition of handheld equipment and on the potential process for handling those types of equipment that may pose difficulties to classification. EPA also requests comment on the specific cases discussed. Finally, EPA solicits comment on alternative definitions that may be appropriate. Alternative definitions of "handheld equipment" might include, but need not be limited to, the following elements:

- Lack of wheels or other means of support (other than operator),

I11- Overall weight below some limit such as 10 kg or 20 kg, and

- Portion of overall weight attributable to current engine above some minimum, such as 75 percent.

Conversely, alternative definitions of "nonhandheld equipment" could include elements such as:

- Presence of wheels or other means of support other than operator,
- Overall weight above some minimum such as 10 kg or 20 kg, and
- Portion of overall weight attributable to current engine below some limit such as 75 percent.

It should be recognized that recent engineering developments may eventually obviate the need to provide different standards for handheld and nonhandheld equipment engines. Future technical solutions may provide engines used in all applications with comparable emission performance capability. For example, one firm has recently announced plans to begin marketing portable string trimmers, traditionally powered by either electricity or 2-stroke gasoline engines, that are instead powered by lightweight, high-speed 4-stroke engines. This company claims to achieve emission rates much lower than either current 2-stroke engines or engines that would meet the handheld standards proposed in this rulemaking. Numerous efforts are also under way to develop direct injection systems applicable to larger 2-stroke engine-systems that may be able to bring emissions from engines such as those used for outboard marine engines down to levels equivalent to a well-calibrated 4-stroke engine in the same power range. However, the applicability of direct injection systems to small engines used in handheld applications has not yet been investigated. In developing Phase 2 standards, EPA intends to revisit this issue in its entirety and may combine all engines under one set of standards, modify the definitions of nonhandheld and handheld equipment, as well as the applicable standards, or may promulgate an entirely different regulatory structure.

H. Requirements Applicable to Vehicle and Equipment Manufacturers

EPA is proposing to require that vehicle and equipment manufacturers and importers use the appropriate handheld or nonhandheld certified engine in their vehicles and equipment. Section 213 gives EPA the authority to require nonroad vehicle and equipment manufacturers and importers to use certified nonroad engines. EPA has determined that the most effective way to ensure that certified engines are used in nonroad vehicles and equipment is to require that manufacturers and importers use such engines. Without such a requirement, there would be no penalty for vehicle and equipment manufacturers that knowingly purchase noncomplying engines, thus undercutting the entire program.

EPA is proposing that vehicle and equipment manufacturers and importers be subject to the prohibition, injunction, and penalty provisions of CAA sections 203, 204, and 205, except that only the nonroad engine in the vehicle or equipment, rather than the vehicle or equipment itself, would need to be certified for compliance. Although engine manufacturers will bear the burden of certification under this proposal, the focus of enforcement will fall to some extent on vehicle and equipment manufacturers because they determine whether a handheld or nonhandheld engine is appropriate for use in their vehicle or equipment and will ensure that those engines are certified.

No federal paperwork or reporting burden would be imposed on vehicle and equipment manufacturers by the requirement that certified nonroad engines be used. This is consistent with the nonroad large CI engine proposal (58 FR 28809 at 28815 (May 17, 1993) and 58 FR 51595 at 51597 (October 4, 1993)).

Only new engines manufactured on or after the effective date of this rule would be subject to the provisions of this rule. For example, rebuilt engines originally manufactured prior to the effective date of this rule would not be subject to this rule. Rebuilt engines originally manufactured after the effective date of this rule would be subject only to the tampering provisions. New replacement engines manufactured after the effective date would be subject to this rule. EPA requests comment on whether there is any need for manufacturers to produce replacement engines for use in pre-1996 equipment, and the extent of such a need, if any.

Labeling requirements proposed in this notice may also impact nonroad vehicle and equipment manufacturers and importers.

I. Effective Date

EPA is proposing an effective date of August 1, 1996 for this rulemaking. This midyear effective date coincides with model changeover in the small SI engine industry. Engines manufactured on or after August 1, 1996 for use within the United States would have to meet the standards and requirements included in this rulemaking.

Vehicle and equipment manufacturers that use regulated engines would be required to use appropriate certified nonroad engines in their vehicles and equipment after August 1, 1996. EPA requests comment on whether a separate effective date for nonroad vehicle and equipment manufacturers should be established and, if so, whether that date should be three months after the August 1, 1996 effective date for nonroad engine manufacturers (that is, November 1, 1996). It appears, based on best available data, that the start of large volume equipment production is approximately November 1 of every year. EPA is considering this separate effective date because it is concerned that equipment manufacturers have small inventories of noncertified engines that could not be incorporated into equipment by the August 1 effective date. EPA would consider extending this flexibility to six months, that is, February 1, 1997, if manufacturers could quantitatively demonstrate that the increased risk of stockpiling noncertified engines by the equipment manufacturers would be minimal and the inventory buildup would be normal. EPA also requests comment on whether a separate effective date for equipment manufacturers should be based on introduction of equipment into commerce, rather than the date of equipment manufacture.

The August 1996 effective date allows engine manufacturers over two years of lead time from the date of this proposal, and more than one year beyond the 1995 implementation date imposed by CARB. EPA is not proposing the same effective date as CARB in order to allow manufacturers some lead time between the CARB and federal effective dates to bring preempted engines into compliance; however, EPA requests comment on the feasibility of a 1995 effective date for federal standards, particularly for those engines that are not preempted from state regulation.

While EPA acknowledges the need for sufficient lead time to perform research, develop testing capacity, apply emission control technology, and manufacture clean engines, EPA's view is that engine manufacturers have been aware for a considerable period of time that emission regulations were likely to impact their products in the near future. In 1990, CARB was required under the California Clean Air Act (CCAA) to develop emission standards for lawn and garden and utility equipment engines by December of 1990. In November of 1990, Congress amended the federal Clean Air Act, requiring that EPA study emissions of nonroad engines and vehicles by November of 1991 and promulgate applicable regulations by November of 1992 if these sources were found to contribute significantly to air pollution. At a public workshop held in March of 1992, EPA discussed the importance of emissions from small SI engines, announcing its intent to develop applicable regulations. Consequently, manufacturers have known since March 1992, at the latest, that EPA was planning to develop standards applicable to their products, and have already had more than two years to assess emission control technologies and develop testing capacity.

Several state and environmental interest groups have expressed concerns that a 1996 effective date delays the realization of reductions of in-use air pollutant emissions unnecessarily and limits the ability of many states to adhere to the schedules mandated in the CAA for reasonable further progress toward volatile organic compound reductions from 1990 levels and for attainment of the ozone National Ambient Air Quality Standard. Manufacturers have argued that a 1996 effective date offers too little lead time given that this proposed rule covers various categories of equipment that California is preempted from regulating.

Both the Outdoor Power Equipment Institute and the Engine Manufacturers Association have requested that EPA extend the effective date to 1997 for all engines. The Portable Power Equipment Manufacturers Association has requested that EPA extend it to 1997 for engines regulated and sold in California and to 1999 for preempted engines and engines discontinued in California. These industry association requests are available in the docket for this rulemaking. In all cases, these associations have argued that more lead time is needed to apply these standards to nationwide sales.

EPA requests comment on the impact of its proposed effective date on both engine and equipment manufacturers. EPA also requests comment on alternative effective dates, including phased effective dates, such as 1996 for

nonpreempted engines and 1997 for preempted engines, or a phase-in by engine size where Class I, II, III, IV, and V engines would meet the applicable standards at different times based on environmental impact and lead time constraints.

J. Selection of Worst Case Emitter

EPA is proposing to use the criteria of highest weighted brake-specific fuel consumption (BSFC) over the appropriate engine test cycle to determine that engine configuration within an engine family which will be selected as the certification test engine. EPA believes that BSFC is an appropriate criterion for selecting a worst case emitter. In particular, EPA believes that an engine configuration with high BSFC will generally emit higher levels of hydrocarbons and carbon monoxide than a second configuration in the same engine family which has a lower BSFC. EPA solicits comments on the appropriateness of weighted BSFC as the criterion to be used for selecting the worst case emitter.

EPA considered one alternative method of selecting the worst case emitter. EPA considered leaving the selection of the worst case emitter up to the engine manufacturer with the guideline that the engine manufacturer must test that engine configuration within an engine family which is most likely to exceed any emission standard. EPA solicits comment on the appropriateness of this approach for selecting the worst case emitter.

K. Adequacy of Test Cycle

The test procedure proposed in this notice is capable of predicting emission reductions at the level of proposed emission standards. The proposed test cycles are based on the Society of Automotive Engineers (SAE) recommended practice #J1088. This is a procedure that measures emissions over a number of steady state operating modes or conditions (speed/load points) and determines average emissions over the entire test cycle by weighting the modes relative to their likely occurrence in actual use. Much of the emission assessment work to date has occurred using the J1088 test procedures.

EPA has determined that the types of technology that will be forced by setting standards using the proposed test cycle will result in real emission reductions in actual use. The current feasible technologies are analogue in nature. Thus, when a technology is demonstrated to reduce emissions on six discrete points on the engine speed/load performance curve, EPA expects these technologies will perform in a continuum between those test points. No large emission spikes will occur under operating conditions that were not specifically tested.

No time is available to develop a more accurate test cycle. While improvements can be made and must be studied before proposing more stringent emission standards that require more sophisticated technologies, EPA has determined this test cycle is adequate to produce the desired emission reductions expected by the proposed emission standards.

As part of the Phase 2 emission regulation process, EPA has identified three test modes of the test cycle that it intends to study. First, EPA wants to evaluate whether the test procedure should be run using the engine's governor to control throttle. Second, EPA wants to evaluate the method by which the load points used in the test cycle are determined. Third, EPA wants to study the sensitivity of emissions to the operating conditions not used in the test cycle to ensure emission benefits are not being overlooked.

Operating the engine directly on the governor as opposed to on the throttle is allowed in the current test procedure as proposed. However, it is optional and most manufacturers choose to run the test by directly controlling the throttle. Manufacturers do this to reduce the factors that can add variability to the test. EPA believes that, since engines in use are controlled by the governor, a test cycle that simulates actual operation as closely as possible has the potential to predict real in-use emissions more accurately. Before such a change is adopted, EPA intends to analyze the validity of this hypothesis.

The average power generated during the test cycle has a large impact on the emission result. The emission standards are based on the mass emission generated for the amount of work accomplished (g/kWh). Since power is a factor in how much work can be accomplished, it weighs heavily in the final mass emission result. EPA wants to ensure that the test cycle does not reflect how much power (and thus work) the engine is capable of achieving, but is reflective of how much power the equipment actually commands from the engine as it does its work. EPA is concerned that the actual power drawn by equipment in actual use is lower than the average power drawn from the engine during the proposed test procedures. EPA does not have time to adequately verify this hypothesis within the timeline of this rule, but intends to do this during the Phase 2 rulemaking process.

Finally, EPA has not verified that the operating modes in the proposed test procedures are the optimal representation of what happens in actual use. Any test cycle is at best an approximation of the operating conditions experienced by engines in actual use. Indeed, any one engine will be installed in a range of equipment types and will experience a different operating environment in each application. To determine if the test procedures are doing the best possible job at estimating real world operation, EPA intends to collect data on a full range of operating conditions that are not represented in the current test cycle. Manufacturers have presented histograms of a range of equipment operations such that, for purposes of this notice, the test cycle is directionally acceptable. Further investigation may result in a determination that the current cycle adequately covers the range of operation. However, time is not available to make that determination in this proposal.

Any of the above mentioned changes to the current proposed test cycle or procedures would require extensive testing and development. All emission data to date is based on the proposed test procedures. Before introducing any change in the test procedures EPA would have to develop emission standards based on the revised procedures and would have to assess emission impact on the procedures. The current timeline constraints provide neither adequate time to properly assess whether any of these changes would benefit the program, nor adequate time to develop appropriate emission standards using the revised procedures. Faced with these constraints, EPA believes that the proposed test procedures are the best available to ensure early emission reduction from the engines covered in this notice.

L. Alternative, Oxygenated, and Reformulated Fuels

EPA is not proposing the requirement of any specific type of fuel to be used in engines produced to meet the proposed emission standards. EPA's proposal would require that all SI engines under 19 kW meet the proposed standards. This includes SI engines which run on "alternative" fuels, such as liquid petroleum gas (LPG) and natural gas. A few research papers have been published which indicate well calibrated spark-ignition engines running on LPG fuel may be able to meet the proposed emission standards with less difficulty than an equivalent engine running on gasoline. EPA proposes to let the engine manufacturer

decide what type of fuel a given engine application will use and not require any specific engine to use a "cleaner" fuel.

EPA's proposal would not allow engines which are designed to run on gasoline to perform certification emission testing using an alternative fuel. EPA understands that oxygenated and reformulated gasoline fuel is currently available in different areas around the United States. However, availability of oxygenated and reformulated fuels varies widely across the country. EPA does not have information that would provide adequate assurance that the alternative fuel, and not gasoline, would be used in these engines in actual use. Faced with the difficulty of tracking small SI engine owners, EPA does not have adequate resources, nor an adequate tracking mechanism to enforce a requirement that small SI engine owners use only the specified alternative fuel. At the same time, preliminary tests performed on small engines using reformulated and oxygenated fuels show approximately a three to five percent improvement in exhaust emission levels of CO and total HC. See the draft RSD in the docket for further discussion of this issue. Reformulated fuel was designed to lower HC levels from on-highway vehicles, primarily engines with fuel injection and catalytic convertors. EPA is not convinced it can reasonably expect the same type of benefit from carbureted single and two-cylinder engines. EPA solicits comment on the feasibility of requiring small SI engines to run only on oxygenated or reformulated fuels.

M. HC + NO_X Standard for Class I and II Engines

EPA is considering two options for setting Class I and II HC and NOx standards. Option 1 would consist of setting a combined standard for emissions of HC and NO_X for Class I and II engines. Under option 2, EPA would set separate HC and NO_X emission levels for Class I and II engines.

Regardless of which option EPA chooses, it anticipates that NO_X emission rates from engines meeting this proposed rule's standards will be generally higher than those extremely low NO_X levels emitted by current engines. The Agency views this as an inevitable consequence of the level of HC reduction being achieved in this rule. Furthermore, EPA estimates that the resulting increase in NO_X emission inventories would be slight enough in this particular case to be warranted given the much greater decrease in HC emission inventories. See "VI. Environmental Benefit Assessment" in this preamble.

Nonroad small SI engines currently operate on an extremely rich fuel and air mixture—in other words, one that contains a very high proportion of fuel relative to that used by, for example, automotive engines. Because this results both in less complete combustion and much lower peak combustion temperatures, exhaust concentrations of unburned HC are extremely high, while concentrations of NO_X are extremely low. As a result, small SI engines contribute appreciably to HC emission inventories, but very little to NO_X emission inventories.

In the 19 ozone nonattainment areas studied by EPA in the 1991 Nonroad Study, emissions from all nonroad sources, on average, represented ten percent of total HC emissions and 17 percent of total NO_X emissions. Of those contributions, small SI engines contributed an average of 50 percent of total HC from nonroad sources, but only one percent of total NO_X. In contrast, nonroad large CI engines, for which EPA has proposed NO_X standards, contributed an average of ten percent of total HC from nonroad sources and 75 percent of total NO_X. Consequently, EPA's primary focus in developing emission standards for small SI engines is achieving sizeable reductions in HC emission rates.

Given the extremely rich operation of small SI engines, EPA does not believe that small engine technology is available to prevent NO_X levels from increasing while HC levels decrease substantially within the short lead time period set forth in this proposal. While it may be possible in some isolated cases to employ automotive-type emission control systems relying on closed-loop operation and three-way catalytic converters, the state of development of such technology is not ready for small engine application in the short lead time proposed. Furthermore, the sensitivity of such systems to in-use deterioration and malmaintenance would greatly lessen their in-use effectiveness given the state of the service industry available to these engines.

EPA has estimated that by the year 2020, when current equipment turnover is projected, the proposed emission standards would result in approximately a 32 percent reduction in HC emission from current levels, or 356,710 tons per year. Under the same timeframe, in-use NO_X emission rates would be expected to increase 1.36-fold, or 34,000 tons per year. Given the magnitude of the relative contribution of these small SI engines to HC and NO_X emission inventories in ozone nonattainment areas, EPA believes this projected decrease in HC and increase in NO_X levels would be consistent with EPA's statutory mandate that emissions standards reflect the greatest emission reductions achievable. This is especially the case in light of the fact that this rule would increase the national NO_X inventory by about one quarter of one percent, while EPA's nonroad large CI engine regulations would reduce the national NO_X inventory by about four percent.

EPA anticipates that, given the magnitude of the HC reduction proposed, emission rates would be marginally sensitive enough that near-term compliance with separate emission standards at the proposed level of stringency could be difficult in some cases, whereas compliance with a combined standard is expected to be achievable.

However, EPA is concerned that establishing a combined standard might be viewed as setting a precedent for future rulemakings. EPA does not intend to establish any such precedent, and is considering a combined standard for Phase 1 only due to the present lack of available data for setting a separate NO_X standard, the current lack of technology for achieving NO_X reductions simultaneously with HC reductions for the subject engines and vehicles, the need to achieve HC reductions as soon as possible under the Phase 1 rule, and the desire to harmonize with California's standards.

EPA requests comment on a combined standard (option 1). EPA also requests comments and data supporting separate numerical standards for HC and NO_X (option 2). Based on information currently available to EPA, if it were necessary to develop separate standards, the NO_X standard would be approximately 136 percent higher than current new engine levels, while the HC standards would be approximately equal to the difference between those levels and the proposed HC+NO_X standards.

N. CO Standard for Handheld Engines Over 50 cc

EPA is concerned that the CO levels for handheld engines be kept as low as possible. The operators of equipment using these engines are in close proximity to the exhaust pipe. The Class V engines are a large concern. The majority of these engines are used on large commercial chain saws used in logging operations. The high power and high load factors associated with this equipment mean the operator is potentially exposed to a high CO rate

from the engine and could experience high CO intake during operation.

EPA is proposing to limit CO emissions from large (Class V) handheld engines to 402 g/kWh. In comparison, smaller (Class III, IV) handheld engines would be required to meet the higher standard of 804 g/kWh. The larger Class V engines have technical advantages over smaller engines, with respect to fuel metering and combustion chamber boundary layer conditions, that would allow them to achieve these lower levels of CO emission. This technical rationale is discussed at length in the draft RSD in the docket. In addition to the technical rationale that the Class V engines are capable of lower CO emission levels, a number of engines were tested by the Portable Power Equipment Manufacturers Association (PPEMA) and an individual manufacturer, modified for a six percent enleanment over current production calibration. Approximately 20 to 30 percent of these engines met the 402 g/kWh CO standard, achieving average CO levels of eight percent below the standard. The remaining engines tested did not meet either the HC or the CO emission standards. (See data in the draft RSD.) EPA observed that, in general, port design may affect the ease with which engines can meet emission standards. EPA requests comment and data on whether there is a supportable technical rationale why it would not be feasible to further optimize these engines to bring both the HC and CO emissions into line with the engines capable of achieving the proposed standards.

PPEMA has argued that the 402 g/kWh level is too stringent, but did not focus on Class V engines at the time California rules were being considered since its members anticipated limited regulation of the Class V engines in California due to preemption of many of the products in which these engines are used. In a letter to EPA, a copy of which is included in the docket for this rulemaking, PPEMA suggests that a standard of 603 g/kWh would be more appropriate. EPA would need further data and information that establishes 603 g/kWh as the appropriate technical limit and addresses the need for this higher CO standard as noted above.

Based on the data currently available, EPA does not see the need for the higher standard and believes that the proposed standard is achievable. However, EPA is requesting additional information and data that would verify the need for the higher standard and justify why all engines cannot be designed to meet the CO levels achieved by the 20 to 30 percent of engines tested by PPEMA that met all proposed standards.

O. Cap on Noise

EPA is proposing to require that engine noise levels not increase as a result of this rulemaking. The type of engine changes which EPA believes will be used to meet the proposed exhaust gaseous emission standards should not increase engine noise above current levels. EPA is aware that several European nations currently have sound level standards for different classes of nonroad equipment, some of which are powered by SI engines less than 19 kW. EPA lacks the necessary information to determine if regulating engine noise without regard to the type of equipment in which the engine will eventually be used is a sensible technical approach. EPA requests data and comments on this issue.

P. Applicability of In-Use Standards

The proposed rule does not require that small engines meet in-use standards over a useful life period for several reasons. First, limited emission testing of in-use engines has been performed. Additional data will be provided by the in-use testing program described in "IV.C. Program Description and Rationale." Second, EPA does not believe that emission controls proposed for Phase 1 will experience significant deterioration beyond normal engine deterioration, although this area needs more research. EPA does acknowledge its responsibility to achieve enforceable reductions of in-use emissions and plans to develop such measures in its long-term Phase 2 program.

Until such measures are developed, EPA proposes to maintain regulatory language in the Phase 1 rule that commits EPA to setting in-use standards and useful life periods by April 1997. In developing Phase 2 regulations, EPA intends to amend this language, replacing it with regulatory language specifying programs that are developed to meet this commitment.

EPA solicits comment on the lack of in-use standards and on the appropriate level of in-use standards, useful life period, and enforcement measures if EPA were to make these a requirement of Phase 1. EPA also invites comment on the regulatory language in the Phase 1 rule that commits EPA to developing these requirements by April 1997. This language states, "A useful life period for engines subject to the provisions of subpart A of this part will be set by the Agency and will be promulgated no later than the year 1997."

Q. In-Use Testing Requirement

This proposal requires that manufacturers procure and test a sample of in-use engines and report the results to EPA. In developing this program, EPA considered manufacturer suggestions that any in-use testing program be conducted jointly between EPA, manufacturers, and manufacturers' organizations. EPA is concerned that a joint program would not as efficiently address the goals of the proposed in-use testing program.

EPA is proposing the in-use testing requirement with two main goals in mind. Primarily, EPA believes that a critical element in the success of its nonroad program is assuring that manufacturers build engines that continue to meet emission standards beyond the certification and production stages. By requiring manufacturers to test and report results, EPA expects that manufacturers would act responsibly to avoid or correct in-use emission problems.

EPA's authority to recall engines which do not comply with emission standards in use provides an important incentive to on-highway manufacturers to design and build durable engines and vehicles. However, at this time, EPA has limited data by which to propose in-use standards for small SI engines under section 213(d) of the CAA, subjecting nonroad engine manufacturers to the requirements of section 207(c) of the CAA. Because EPA is not proposing to establish in-use emission standards in this rulemaking, it is necessary to require that manufacturers test in-use engines to gain important knowledge about the emission deterioration of their engines and report the results to EPA. EPA expects that this knowledge will be critical to developing more durable emission control systems and achieving better in-use compliance with Phase 2 engines.

An auxiliary outcome of this Phase 1 testing program would be that manufacturers, by working closely with EPA to evaluate in-use emissions and identify solutions to problems, would be preparing for the Phase 2 in-use compliance program. This Phase 1 testing program would permit issues associated with a variety of maintenance and use conditions to be identified and resolved prior to Phase 2.

As stated previously, EPA is concerned that these goals may not be as fully achieved with joint testing programs involving several manufacturers and their respective organizations. By requiring direct communication with EPA, manufacturers would have to

individually provide test data showing in-use performance. EPA's experience has been that aggregate data (sorted by organizations and stripped of engine identification) is not effective in identifying specific in-use problems. The generated Phase 1 in-use data would improve estimates of in-use emissions, thereby enhancing the basis for emission inventories used to support the State Implementation Plan (SIP) development process.

Given the critical feedback the in-use testing program would provide, EPA believes it is compelled to ensure the fulfillment of the obligation to perform in-use testing. For engine families where in-use testing would be required, certification is proposed to be conditioned upon the completion of a number of in-use tests as agreed upon by EPA and the manufacturer at the time of certification. Completion of the number of valid in-use tests as agreed, regardless of the test results, would satisfy this condition.

Under this proposal, a manufacturer's failure to fully execute the in-use tests would be considered a failure to satisfy the conditions under which the certificate was issued. An engine would be considered to be covered by the certificate only if the manufacturer fulfilled the conditions upon which the certificate was issued. Thus, failure to satisfy the conditions of the certificate could subject a manufacturer to the imposition of civil penalties. However, EPA recognizes that a manufacturer, notwithstanding its best efforts, might fail to perform the required testing due to circumstances beyond its control. Thus EPA would consider all relevant factors when determining whether to view an engine as not being covered by a certificate based on failure of a manufacturer to fully execute the test program condition of the certificate.

EPA requests comment on the proposed in-use testing program.

R. Absence of Averaging, Banking, and Trading Programs

EPA is not proposing an averaging, banking, and trading program (ABT) for small SI engines at this time. ABT programs, which EPA uses in its on-highway heavy-duty engine program and proposed for the nonroad large CI engine program, provide manufacturers flexibility in meeting the emission standards. EPA is increasingly using market-based incentive programs such as ABT because such programs can reduce the cost of controlling emissions. An ABT trading program can also reduce the burden of regulation on small manufacturers by providing them flexibility in meeting requirements.

At this time, EPA has not been able to construct an ABT program, given the uncertainties surrounding projected in-use emission levels. These uncertainties will be resolved as part of the Phase 2 regulatory negotiations. However, as part of the requirements of approving an ABT program, EPA must know the in-use emission characteristics of engine families in order to implement an ABT standard, unless all engine families deteriorate at the same rate.

The lifetime emissions of engine families must be averaged together in order to compute the average emission level of a manufacturer's product line. Use of lifetime emissions is necessary because it may be the case that the emissions of one type of engine deteriorate at a higher rate than another type, or a smaller engine may deteriorate at a higher rate than a larger engine of the same type. EPA is not in a position to determine what the in-use emission level is presently or would be under this Phase 1 regulation. EPA's initial assessment is that the emissions of these engines deteriorate somewhat over time and likely deteriorate at different rates between engine families, but more research is necessary. However, even if engine families deteriorate at different rates, if such deterioration is not systematically biased, it may not undermine the validity of an ABT program. EPA requests comment on this point.

Phase 2 will directly assess in-use emission characteristics of engine families and incorporate enforcement of in-use emission levels. Once in-use emission levels are known with more confidence, EPA expects that market-based programs such as ABT will be viewed favorably by the regulatory negotiation committee during policy development.

EPA requests comment on the absence of an ABT program.

S. Engine Manufacturer Requirement—Disclosure of Maximum Exhaust Pressure and Minimum Inlet Pressure

The design of the exhaust system can influence emissions. Most small engines are supplied with both an air inlet system and an exhaust system which are tested as part of the engine package, and the entire package is used by the equipment manufacturer. However, some engines are designed to be installed in a chassis with more complex packaging requirements where the equipment manufacturer may supply and/or install the exhaust system, or part of it, and even the air inlet system. In these latter cases, EPA is considering a requirement that the engine manufacturer would need to specify to the equipment manufacturer the maximum exhaust pressure and the minimum inlet pressure, and the equipment manufacturer would be required to adhere to those specifications. EPA requests both engine and equipment manufacturer comments regarding this issue.

T. Direct Health Effects of Air Toxics and CO

In addition to the concern of the role of HC and CO in ozone and CO nonattainment, EPA is concerned about direct health effects of air toxics and CO exposure. The concentrations and direct health effects of toxic pollutants in exhaust are especially important because the operator of a small SI engine application is typically near the equipment as it functions. In some applications, the operator must be adjacent to the exhaust outlet and is in the direct path of the exhaust as it leaves the engine. See "VI. Environmental Benefit Assessment" for further discussion of this issue. The Agency requests additional information on the effects of air toxics and CO exposure associated with the use of small SI engines.

U. Catalyst Durability

Relative to all other types of emission-related engine components, catalysts are unique in that:

- Relatively small changes in chemical and/or physical characteristics of a catalyst can result in very large deleterious changes in operational characteristics.
- The engine manufacturer is not likely to be involved in the design or fabrication of the catalysts nor be able to verify the acceptability of vendor-supplied catalysts by means of the simple checks and tests that are adequate for other engine components.
- The satisfactory operational durability of catalysts are much more dependent on the catalyst manufacturer's proprietary techniques and processes than is the case with other emission control system components.
- Since it is the last component in the emission control system, a catalyst can compensate for sub-standard performances by other emission control components, but it is not itself supported by any other back-up component that is able to compensate for a reduction in catalyst performance capability.
- Substantial reductions in performance can result from:

—Abrasion or fracturing as a result of relative motion between the catalyst and its protective outer metal jacket.

—Poisoning as a result of fuel contaminants (such as lead),
—Glazing as a result of excessive quantities of lubricating oil in the exhaust, and
—Thermal degradation as a result of exposure to excessively high temperatures for prolonged periods.

Catalytic converters designed for small SI engines in the short term will be low efficiency catalysts to address safety concerns. The catalysts designed for potential Phase 1 use would have conversion efficiencies on the order of approximately 30 percent for HC and CO emission. The design constraint that dictates these low efficiencies is the need to limit the increase in exhaust temperatures, since the exhaust is in close proximity to the operator in handheld equipment. Efficiencies much higher than 30 percent begin to generate exotherms that can substantially increase exhaust temperatures. Since the industry has not yet developed the necessary solutions, such as creative small-scale insulation approaches, to control the added temperature, only low efficiency catalysts would be available for Phase 1 use.

While adequate durability of catalysts is a concern relative to catalytic converters used in on-highway engine applications, EPA is less concerned with the emission impact of failures of the catalytic converters expected to be used for engines regulated by this rule. This is because the conversion efficiency of catalysts used in small SI engines would not exceed approximately 30 percent for reasons discussed in the previous paragraph. Faced with this constraint, an engine manufacturer would need to modify its base engine to realize substantial emission reduction of engine-out emissions even before the exhaust was converted further by the catalytic converter. Should such a low efficiency catalyst fail in use, the increase in emissions would not be as large as occurs when a high efficiency on-highway vehicle catalyst fails.

The preceding discussion underscores the need for some means to validate the adequacy of catalysts that would be added to engines to provide compliance with the emission standards during in-use operation. Various approaches could be used for ensuring that the "long term" conversion capabilities of catalysts would be adequate. For example, certification engines could be tested with catalysts which had been subjected to some type of "aging" process to substantiate that the catalysts were adequately designed and fabricated. Alternatively, certification engines could be tested with new catalysts that had been proven to be satisfactory by meeting the requirements of a catalyst certification procedure that would be separate from the engine emission certification test.

The main advantage of a validation approach involving the use of "aged" catalysts on certification engines would be its simplicity. The aging process would be carried out by either the engine manufacturers or the catalyst vendors. In either case, there would be no requirements for special catalyst performance testing and, hence, no need for the establishment of performance standards that would be needed for evaluating the test results.

The main disadvantage of this approach is the possible negative impact on catalyst usage that might result from a Phase 1 certification process which imposed durability testing requirements on catalysts but not on certification engines or any other engine components involved in their construction. On one hand, the dependence of successful certification of engine families on the performance capabilities of aged catalysts might result in engine manufacturers being reluctant to use catalysts to meet the applicable emission standards. Also, given that there is limited field data on small engine catalysts, it would be extremely difficult to design a fair aging procedure that could be evaluated by the certification engine test and accompanying emission standards.

Such possibly adverse results would be avoided by the engine manufacturer's use of a new catalyst that was "certified" by the supplier or the engine manufacturer as having design and fabrication details that resulted in specific long-term conversion performance capabilities. This approach would have the disadvantage of being more complicated in that it additionally involves the establishment of limits on the amount of efficiency loss that would be acceptable and would require a test procedure for determining compliance with such limits.

As a consequence of concerns regarding possible negative impacts on catalyst development for small engines that might result from a provision requiring the certification of engines with aged catalysts, EPA is not proposing such a requirement in this notice. Instead, EPA is proposing that for systems utilizing catalysts, the certification engine configuration to be tested must be equipped with a new catalyst of a design that has been "certified." A "certified" catalyst design would be one which had successfully met the requirements of a separate catalyst durability demonstration procedure which is described in more detail in the following paragraphs. This approach ensures that durable catalysts are used on small engines while avoiding excessive requirements that could discourage the development of very promising catalyst technology.

Comments regarding this proposal are requested. Also requested are comments regarding the advantages and disadvantages of this requirement, as well as the alternative requirement for the use of preconditioned or aged catalysts during engine emission certification testing.

The use of an oven exposure procedure for evaluating catalyst resistance to thermal degradation is proposed in this notice. This procedure would involve the heating of the test catalyst in air to a temperature of 1,000 °C for six hours. Prior to heating the catalyst to 1,000 °C, an optional pre-heating procedure is proposed to be allowed to remove the "green" effect of the catalyst. This optional procedure would consist of heating the catalyst to no more than 500 °C for no more than two hours.

The oven exposure procedure described above is proposed in lieu of procedures which involve exposure to synthetic or actual exhaust gas mixtures because EPA believes that the oven aging procedure aggressively and directly stresses the catalyst and is the best method for assessing the most major catalyst durability concern: thermal stability. Another advantage of this method is that it is much less complex than the other exposure procedures.

For example, in the case of the procedure which involves exposure to synthetic exhaust gas mixtures, information is lacking regarding the most appropriate test parameters, such as the temperature of the mixtures and the duration of the exposure. Similarly, with respect to the procedure which involves exposure to actual exhaust gas mixtures, information is needed regarding a number of test variables that are related to the engine that is used to generate the exhaust gas mixture, such as its combustion cycle and power output, the manner in which it is operated and the operating times that are involved in each phase of the operating cycle.

General comments regarding the applicability and suitability of the proposed oven exposure procedure are requested. Specific comments are also requested regarding variation in the procedure, such as: The use of an oven atmosphere other than air; if flow through the catalyst is recommended;

and the composition and flow rate of the gas or gaseous mixture that is used.

Regardless of which method is used to age the catalyst, some means must be used to determine the effects of the aging process. With respect to the intended purpose of this process, the most straightforward evaluation would involve the determination of the extent to which the performance characteristics of the test catalyst had been adversely affected. Of particular significance would be the adverse effect on the catalyst's conversion capabilities with respect to the oxidation of HC and CO and/or the reduction of NO_X.

The use of a procedure which uses a synthetic exhaust gas mixture for evaluating the effects of thermal stressing is being proposed for several reasons. One of the main reasons is the relative simplicity of such a procedure. For example, it would not involve the questions regarding the in-use representativeness of test parameters, such as the temperature of the mixture and the duration of the test, that arise when a synthetic exhaust gas mixture is used for actually thermally stressing a catalyst. For evaluation purposes, any fixed temperature which allowed the conversion reactions of interest to occur could be specified. The specification of a particular exposure time would not be required since the conversion efficiency existing as a result of the previous thermal stressing would be involved rather than a time-related change in efficiency. Furthermore, a procedure which used synthetic exhaust gas would be simpler than a procedure that used actual exhaust gas. Using synthetic exhaust gas mixtures alleviates the need for detailed information not readily available at this time. Another reason for proposing the use of synthetic exhaust gas mixtures is the standardization that results; all catalysts would be aged under the specific conditions that are proposed in subpart E of the proposed regulations. The composition of the synthetic exhaust gas mixture that is specified in this subpart is comparable to compositions of synthetic exhaust gas mixtures currently used by catalyst manufacturers for testing related to the kinds of engines covered by the proposal.

Comments are solicited concerning these specifications, particularly with regard to the chemical composition and temperature of the synthetic exhaust mixture and its flow rate as it enters the test catalyst.

A fixed catalyst efficiency loss limit of 20 percent for HC, CO, and NO_X is proposed in this notice on the basis of on-highway experience and the absence of information at this time regarding the conversion efficiencies that will be used with small engines. To illustrate this loss limit, a catalyst with initial HC conversion efficiency of 50 percent would be required to maintain at least a conversion efficiency of 40 percent after thermal aging.

Comments are requested regarding the use of a different fixed deterioration limit. Comments are also requested regarding the relative advantages and disadvantages of one fixed limit versus several limits that are proportional to initial conversion efficiency.

V. Test Procedure Requirements

EPA received a technical review of an early draft of the test procedure from the Small Engine Committee of the Society of Automotive Engineers (SAE) in September 1993. EPA requests comment on several points mentioned in SAE's comments.

EPA is proposing that during each mode of the emission test cycle, engine manufacturers collect and analyze exhaust constituents and measure engine parameters during a period of time referred to as the "sampling period." EPA is proposing that the sampling period be a minimum of four minutes long. The SAE recommended test procedure J1088 recommends the sampling period be "* * * at least two minutes. Longer averaging times may be required to ascertain the true time averaged emissions if data variability over time is significant." Based on EPA's experience with several small (two to four kW) engines, a two-minute averaging time for idle modes is not sufficient to make accurate fuel flow measurements. EPA requests comment on the appropriateness of a four minute averaging time, including any available test data to substantiate an averaging time less than four minutes.

EPA is proposing that for the final calculation of the brake-specific emission rate (gr/kWh), any power measured during the idle mode not be included in the calculation for the reported brake-specific emission rate. EPA believes the idle mode is, by definition, that engine operating mode during which no useful work is performed. Any power measured during this mode is a result of the frictional losses resulting from the dynamometer. EPA is concerned that an engine manufacturer using an inappropriately large dynamometer with a large frictional loss would not provide an accurate measurement of the engine idle mode. EPA believes it is inappropriate to include power generated by the engine to overcome the windage losses of the dynamometer in the calculation of emissions during the idle mode. EPA requests comment on the appropriateness of including power measured by the dynamometer in the calculation of the final brake-specific emission rate.

W. Duration of Certificates of Conformity, Definition of Model Year, Annual Production Period

EPA is considering adopting one of the following three options for defining model year, annual production period, and duration of the certificate of conformity. Regardless of the option selected, EPA is also proposing in this notice that it would be a prohibited act to introduce an uncertified small SI engine into commerce after August 1, 1996. Furthermore, it would be a prohibited act to introduce a specific model year engine into commerce prior to or after the model year for which the certificate of conformity was issued and in effect. EPA requests comment on each of these three alternatives.

Option 1: EPA would incorporate the on-highway definition of model year, annual production period, and duration of a certificate of conformity.

The model year would include January 1 of the calendar year for which it is designated and would not include a January 1 of any other calendar year. Thus, the maximum duration of a model year would be one calendar year plus 364 days.

The "annual production period" for any specific model within an engine family would begin either: (1) When such an engine was first produced, or (2) on January 2 of the calendar year preceding the year for which the model year was designated, whichever date was later. The annual production period would end either: (1) When the last engine was produced, or (2) on December 31 of the calendar year for which the model year was named, whichever date was sooner.

A certificate of conformity would be issued to cover engines introduced into commerce for a single model year. Under option 1, the 1997 model year certificate could cover production between January 2, 1996 and December 31, 1997, although engines regulated under this proposal would be manufactured after August 1, 1996.

Interested parties may wish to consult OMS Advisory Circular A/C No. 6B, issued December 31, 1987, which summarizes the on-highway treatment of model year, annual production period, and duration of the certificate of conformity. A copy of the circular has been placed in the docket for this rulemaking.

Option 2: This option represents a variation of Option 1. EPA believes that

the dates selected for the commencement of model year and the annual production period more closely parallel the experience of the small engine industry.

Under option 2, the model year would include August 1 of the preceding calendar year for which it was designated and would not include an August 1 of any other calendar year. The maximum duration of a model year would remain one calendar year plus 364 days.

The "annual production period" for a specific model within an engine family would begin either: (1) When such an engine was first produced, or (2) on August 2 of two calendar years preceding the year for which the model year was designated, whichever date was later. The annual production period would end either: (1) When the last engine was produced, or (2) on July 31 of the calendar year for which the model year was named, whichever date was sooner.

The certificate of conformity would be issued to cover production for a single model year. For example, the 1997 model year could cover production between August 2, 1995 through July 31, 1997.

The proposed extended coverage period described in options 1 and 2 for a certificate of conformity (that is, up to one year plus 364 days) is primarily intended to allow flexibility in the production of new models. Under no circumstances should it be interpreted that existing models could "skip" yearly certification by pulling ahead the production of every other model year. While this situation, to our knowledge, has not occurred in the on-highway program in the past, a practice of producing small SI engines for a two year period would violate Congress' intent of annual certification based upon an *annual* production period. EPA is not currently proposing rules for how to determine when abuse has occurred since this has not been a problem to date. However, manufacturers should note EPA's concern in this area and should use normal yearly production periods for existing models.

Option 3: Under this option, the certificate of conformity would be issued to cover production from August 1 of a given calendar year through July 31 of the subsequent calendar year for which it was issued. EPA would retain the model year concept found in on-highway programs but would define it as follows: "*Model year* means the manufacturer's annual production period which includes August 1 of a given calendar year through July 31 of the subsequent calendar year." Thus the maximum duration of a model year would be 365 days.

VI. Environmental Benefit Assessment

National Ambient Air Quality Standards (NAAQS) have been set for criteria pollutants which adversely affect human health, vegetation, materials, and visibility. Concentrations of ozone (O_3) are impacted by HC emissions and, to a lesser extent, emissions of CO. Ambient concentrations of CO are, of course, impacted by CO emissions. EPA has determined that the standards set in this rule would reduce emissions of HC and CO and, despite also increasing emissions of NO_X, help most areas come into compliance with the NAAQS for ozone and, to a lesser extent, CO. The following provides a summary of the emission reductions expected and the health effects of HC components, CO, and ozone. A discussion of the roles of HC and NO_X in ozone formation is also presented. The underlying analysis is described in greater detail in the draft RSD, a copy of which is in the public docket for this rulemaking.

A. Estimated Emissions Impact of Proposed Regulation

The emission standards proposed in today's action should reduce average per-engine HC and CO emission from small SI engines by 32 percent and 14 percent, respectively, by the year 2020, when complete fleet turnover is projected. This would result in annual nationwide reductions of roughly 350,000 tons of HC and 2,000,000 tons of CO by the year 2020. In-use NO_X emission rates are expected to increase, roughly, from 7,000 to 34,000 tons per year. This increase represents one quarter of one percent of the national NO_X inventory, and is small compared to the substantial NO_X reductions achieved in the nonroad large CI proposal (58 FR 28809).

In addition to control of HC, the proposed standards should be effective in reducing emissions of air toxics, including benzene and 1,3-butadiene. However, the magnitude of reduction would depend on whether the control technology reduces the individual toxics in the same proportion to total hydrocarbons.

These emission reduction estimates for HC and CO are based on population projections using estimates of annual engine consumption (that is, sales), engine attrition (that is, scrappage), activity indicator, and current and proposed in-use emission factors. Data on activity indicators and the baseline emission factors were obtained from the Nonroad Study. Estimates of annual engine consumption for years from 1973 to 1992 were based on engine consumption data available from the PSR databases and industry data from OPEI,[7] PPEMA,[8] and Booz Allen & Hamilton.[9] Future consumption estimates are for the most part based on estimates of population growth for the United States. Attrition rates (that is, likelihood, as a function of engine age, that an engine remains in service) for all engines included in this analysis were developed on the assumption that equipment attrition is described by a two-parameter form of the Weibull cumulative distribution function.

For the analysis summarized in Tables 2 and 3, the emission inventories were developed for the five regulated engine classes as well as for all pieces of equipment using engines covered by this proposed rule. Using estimated engine consumption and attrition, EPA projected the total in-service engine population for each year from 1973 through 2020. EPA projected the total annual nationwide HC, CO, and NO_X emissions from small SI engines included in the current proposal under the baseline (that is, no controls applied) and controlled scenarios.

For the controlled scenario, EPA assumed that new engines sold beginning in 1996 would meet the proposed standards. For both scenarios, in-use emission rates were determined so as to account for deterioration by adjusting the difference between new engine and in-use engine emission rates by a factor which is a function of age of the specific engine and its B–50 or median life expressed in years.

[7] Outdoor Power Equipment Institute's historical national shipment data.

[8] Portable Power Equipment Manufacturers Association's shipment data for selected equipment.

[9] Booz Allen & Hamilton, 1990 Report to California Air Resource Board.

TABLE 2.—PROJECTED ANNUAL NATIONWIDE HC EMISSIONS

[tons/year]

Year	Baseline	With proposed controls	Reduction from baseline	Percent of baseline
1990	729,458	729,458	.....	.....
1996	813,575	733,597	79,978	9.8
2000	871,723	618,876	252,847	29.0
2005	938,275	636,769	301,506	32.1
2010	1,002,164	676,759	325,405	32.5
2015	1,058,864	716,899	341,965	32.3
2020	1,112,630	755,920	356,710	32.0

TABLE 3.—PROJECTED ANNUAL NATIONWIDE CO EMISSIONS

[tons/year]

Year	Baseline	With proposed controls	Reduction from baseline	Percent of baseline
1990	8,109,097	8,109,097	.....	.....
1996	9,499,739	9,112,559	387,180	4.1
2000	10,384,195	9,107,279	1,276,916	12.3
2005	11,379,821	9,807,781	1,572,040	13.8
2010	12,320,136	10,591,294	1,728,842	14.0
2015	13,153,741	11,303,418	1,850,323	14.1
2020	13,939,000	11,977,377	1,961,623	14.1

B. Health and Welfare Effects of HC Emissions

The focus of today's action is reduction of HC emission as a part of the solution to the ozone nonattainment problem. However, direct health effects are also a reason for concern due to direct human exposure to emissions from small SI engines during operation of equipment using such engines. Of specific concern is the emission of air toxics. In some applications, the operator must be adjacent to the exhaust outlet and is in the direct path of the exhaust as it leaves the engine. Today's regulations should be effective in reducing air toxics such as benzene and 1,3-butadiene.

Based on data from the Nonroad Study, the exhaust and crankcase emissions from a 2.9 kW lawnmower with a 4-stroke engine contain 3.5 grams of benzene per hour. Exhaust emission of a 2.9 kW, 2-stroke lawnmower contains 17 grams of benzene per hour. A small, 2.2 kW chainsaw emits 28.2 grams of benzene per hour, compared to a large, 4.5 kW chainsaw that emits 40.8 grams per hour.

Also, according to data from the Nonroad Study, 1,3- butadiene content in exhaust and crankcase emissions from a 2.9 kW, 4-stroke lawnmower is approximately 1.5 grams per hour. For a 2.9 kW, 2-stroke lawnmower, 1,3-butadiene content in exhaust is 7.0 grams per hour. Butadiene emitted from a small, 2.2 kW chainsaw is approximately 12.2 grams per hour, and is 17.7 grams per hour from a large 4.5 kW chainsaw.

Benzene is a clear, colorless aromatic hydrocarbon which is both volatile and flammable. Benzene is present in both exhaust and evaporative emissions. Health effects caused by benzene emissions differ based on concentration and duration of exposure.

1,3-butadiene is a colorless, flammable gas at room temperature. This suspected human carcinogen is insoluble in water and its two conjugated double bonds make it highly reactive. 1,3–Butadiene is formed in internal combustion engine exhaust by the incomplete combustion of the fuel and is assumed not present in evaporative and refueling emissions.

Since air toxic levels generally decrease in proportion to overall emissions once emission control technology is applied, the amount of benzene and 1,3-butadiene produced by new small SI engines should diminish after this rule becomes effective. Consequently, exposure to air toxics from new small SI engines will be reduced, as will associated health effects.

There is little data on direct health effects of small SI engine emissions. No study has been conducted involving the health effects of air toxic emissions specifically from small SI engines. The Agency requests additional information on this topic.

C. Health and Welfare Effects of CO Emissions

Carbon monoxide (CO) is a colorless, odorless gas which can be emitted into ambient air as a result of both natural processes and human activity. Although CO exists as a trace element in the troposphere, much of human exposure resulting in elevated levels of carboxyhemoglobin (COHb) in the blood is due to incomplete fossil fuel combustion, as occurs in small SI engines.

The concentration and direct health effect of CO exposure are especially important in small SI engines because the operator of a small SI engine application is typically near the equipment as it functions. In some applications, the operator must be adjacent to the exhaust outlet and is in the direct path of the exhaust as it leaves the engine. According to numbers published in the Nonroad Study, a 4-stroke, 2.9 kW lawnmower engine emits 1051.1 g/hr CO, while a 2-stroke, 2.9 kW engine emits 1188.4 g/hr CO.

Although no studies measuring the human health effects of CO emanating from small SI engine exhaust have been conducted, ample research results are available concerning general health effects of exposure to CO. The toxicity of CO effects on blood and tissues, and how these effects manifest themselves as organ function changes have been topics of substantial research efforts. However, most of these involved higher, more constant exposure concentration

levels of CO than are likely to be produced under normal operations of these small SI engines. Such studies provided information for establishing the National Ambient Air Quality Standard for CO. The current primary and secondary NAAQS for CO are 9 parts per million for the one-hour average and 35 parts per million for the eight-hour average.

D. Roles of HC and NO_X in Ozone Formation

Both HC and NO_X contribute to the formation of tropospheric ozone through a complex series of reactions. In general, the ratio between the ambient concentrations of HC and NO_X in a localized area is an indicator of the likely effectiveness of HC and/or NO_X reductions as ozone control measures. If the level of HC is high relative to the level of NO_X (that is, in a ratio of 20 to one), ozone formation is limited by the amount of NO_X present, making reduction of NO_X emission an effective strategy for reducing ozone levels. Alternatively, if the level of HC is low relative to the level of NO_X (that is, in a ratio of eight to one), efforts to control HC would be expected to be a more effective means of reducing ozone concentration. In a recent report, researchers emphasize that both HC and NO_X controls are needed in most areas of the United States.[10]

E. Health and Welfare Effects of Tropospheric Ozone

EPA's primary reason for controlling emissions from small SI engines is the role of HC in forming ozone. Of the major air pollutants for which NAAQS have been designated under the CAA, the most widespread problem continues to be ozone, which is the most prevalent photochemical oxidant and an important component of smog. Ozone is a product of the atmospheric chemical reactions involving oxides of nitrogen and other compounds. These reactions occur as atmospheric oxygen and sunlight interact with hydrocarbons and oxides of nitrogen from both mobile and stationary sources.

A critical part of this problem is the formation of ozone both in and downwind of large urban areas. Under certain weather conditions, the combination of NO_X and HC can result in urban and rural areas exceeding the national ambient ozone standard by a factor of three. The ozone NAAQS represents the maximum level considered protective of public health by the EPA.

Ozone is a powerful oxidant causing lung damage and reduced respiratory function after relatively short periods of exposure (approximately one hour). The oxidizing effect of ozone can irritate the nose, mouth, and throat causing coughing, choking, and eye irritation. In addition, ozone can also impair lung function and subsequently reduce the respiratory system's resistance to disease, including bronchial infections such as pneumonia.

Elevated ozone levels can also cause aggravation of pre-existing respiratory conditions such as asthma.[11] Ozone can cause a reduction in performance during exercise even in healthy persons. In addition, ozone can also cause alterations in pulmonary and extrapulmonary (nervous system, blood, liver, endocrine) function.

The current NAAQS for ozone of 0.12 part per million (ppm) is set at a level that, with an adequate margin of safety, is protective of public health. However, ozone has also been shown to damage forests and crops, watershed areas, and marine life.[12] The NAAQS for ozone is frequently violated across large areas in the United States, and after 20 years of efforts aimed at reducing ozone-forming pollutants, although EPA has reported a trend toward lower average ozone concentrations from 1982 to 1989,[13] the ozone standard has proven to be exceptionally difficult to achieve. High levels of ozone have been recorded even in relatively remote areas, since ozone and its precursors can travel hundreds of miles and persist for several days in the lower atmosphere. Ozone damage to plants, including both natural forest ecosystems and crops, occurs at ozone levels between 0.06 and 0.12 ppm.[14] Repeated exposure to ozone levels above 0.04 ppm can cause reductions in the yields of some crops above ten percent.[15] While strains of some crops are relatively resistant to ozone, many crops experience a loss in yield of 30 percent at ozone concentrations below the NAAQS.[16] The value of crops lost to ozone damage, while difficult to estimate precisely, is on the order of $2 billion per year in the United States.[17] The effect of ozone on complex ecosystems such as forests is even more difficult to quantify. However, there is evidence that some forest types are negatively affected by ambient levels of ozone.[18] Specifically, in the San Bernadino Mountains of southern California, ozone is believed to be the agent responsible for the slow decline and death of ponderosa pine trees in these forests since 1962.[19]

Finally, by trapping energy radiated from the earth, tropospheric ozone may contribute to heating of the earth's surface, thereby contributing to global warming (that is, the greenhouse effect,[20] although tropospheric ozone is also known to reduce levels of UVB radiation reaching the earth's surface, the increase of which is expected to result from depletion of stratospheric ozone.[21]

VII. Technology Assessment

In the draft RSD, EPA presents a comprehensive technology assessment supporting the emission standards proposed for each class of engines in this notice. This assessment demonstrates that small SI engine manufacturers will be technically capable of achieving the proposed emission standards and will not be capable of achieving lower emission standards in this Phase 1 rule. This assessment also considers factors of noise, energy, and safety as outlined in section 213(a)(3) of the CAA. The public docket for this rulemaking contains a lengthier version of this Technology Assessment section.

The levels of the proposed emission standards under this rule are in large part driven by the aggressive timeline of Phase 1. EPA agreed to promulgate Phase 1 small SI engine standards to realize early emission reduction benefits while a more comprehensive long-term program will be developed for Phase 2.

A. Achievability of Proposed Emission Standards

EPA believes that the proposed Phase 1 emission standards are the lowest standards for Class I–V engines achievable by the 1996 model year.

The engines covered by this proposed regulation are divided into five classes with unique emission standards

[10] National Research Council, Rethinking the Ozone Problem in Urban and Regional Air Pollution, National Academy Press, 1991.

[11] United States Environmental Protection Agency, Review of the National Ambient Air Quality Standards for Ozone—Assessment of Scientific and Technical Information: OAQPS Staff Paper, EPA–450/2–92–001, June 1989, pp. VI–11 to 13.

[12] U.S. EPA, Review of NAAQS for Ozone.

[13] NRC, Rethinking the Ozone Problem, p. 61.

[14] U.S. EPA, Review of NAAQS for Ozone, p. X–10.

[15] U.S. EPA, Review of NAAQS for Ozone, p. X–10.

[16] U.S. EPA, Review of NAAQS for Ozone, p. X–10.

[17] U.S. EPA, Review of NAAQS for Ozone, p. X–22.

[18] U.S. EPA, Review of NAAQS for Ozone, p. X–27.

[19] U.S. EPA, Review of NAAQS for Ozone. p. X–29.

[20] NRC, Rethinking the Ozone Problem, p. 22.

[21] The New York Times, September 15, 1992, p. C4.

proposed for each class. The lowest level of emission standards achievable was determined for each class of engines. The unique standards for each class are driven by differences in emission reduction capability of engines with different combustion cycles and different displacements.

Class I and II engines represent nonhandheld engines that, in large part, use 4-stroke combustion cycle engines, as opposed to Class III–V engines which represent handheld engines that, in large part, use 2-stroke combustion cycle engines. Within the time constraints for compliance with this rule, Class I and II engines will be capable of achieving a lower HC + NO_X composite emission standard and lower CO emission standard than the Class III–V engines are capable of achieving. Furthermore, within each combustion cycle type, the larger displacement classes will be capable of achieving lower HC + NO_X, HC, and CO emission standards. A full discussion of the technical rationale for these limitations is set forth in the draft RSD.

EPA's belief that the proposed emission standards for Classes I–V are the lowest achievable standards is based on emission data provided on nonoptimized prototype configurations of engines that meet the proposed standards, technical discussions with manufacturers, and EPA analysis of information on technologies collected from a range of sources. The following is a summary of these analyses. A complete analysis is provided in the draft RSD.

EPA has compiled emission data on selected Class I–V engines and prototypes that were tested at either an independent or industry laboratory and met the proposed emission standards. These prototypes represent the greatest degree of emission control technology achievable given the aggressive timeline for earliest possible introduction of these engines into commerce at reasonable cost (one of the parameters for achievability listed in CAA section 213(a)(3)). Data was compiled and reported on three Class I engines, two Class II engines, one Class III engine, two Class IV engines plus one data point representing the aggregate of 27 Class IV engines, and one Class V engine plus one data point representing the aggregate of 18 Class V engines. These data and the specific technologies used on each are presented in Chapter 1 of the draft RSD.

Additional support for the proposed emission standards being the lowest achievable standards is provided by EPA's analytical summary of confidential discussions with manufacturers and information on technologies collected from a range of sources. EPA used this summary information to compile and predict the expected percentage usage of each emission control technology discussed.

For Class I and II engines, EPA predicts that manufacturers will use different combinations of the following technologies: Carburetor enleanment and/or modifications; fuel system modifications; ignition timing modifications; valve system and valve timing modifications; combustion chamber modifications; cooling system modifications; some conversion from side valve to overhead valve engines; and some conversion from 2-stroke to 4-stroke engines.

For Class III, IV, and V engines, EPA predicts that manufacturers will use combinations of the following technologies: Carburetor enleanment and/or modifications; carburetor limiter cap installation; fuel system modifications; combustion chamber modifications; port timing and scavenging modifications; cooling system modifications; and some conversion from 2-stroke to 4-stroke engines. The estimated percent usage of each technology by engine class is presented and discussed in the draft RSD.

In addition to the technologies listed, the use of catalytic converters, exhaust gas recirculation (EGR), and air injection technology may occur on a limited basis or not at all in the 1996 model year. EPA estimates that manufacturers will meet proposed Phase 1 emission standards without the use of catalysts. However, some manufacturers are developing low efficiency catalysts in case some marginally acceptable engine family should need this technology to meet the standards. If catalysts were to be used, EPA estimates that their use would occur on no more than 30 percent of Class I engines and one percent of all Class II–V engines. EPA requests information on the likelihood that catalyst, EGR, or air injection systems will be used and, if so, any additional information on percent usage.

B. Proposed Emission Standards Are Lowest Feasible

EPA believes that three specific emission control technologies, while allowing engines to meet lower standards than those proposed today, cannot be developed within the timeline of this rule or at reasonable cost. Technologies such as high efficiency catalytic converters, low cost fuel injection systems, and low cost electronic control systems are currently either available on only a limited basis or are in the early design phase. These technologies cannot be used on the vast majority of engines by the proposed implementation date. These technologies have the potential to develop much greater emission reductions than those technologies determined to be achievable for this rule. As discussed in Chapter 1 of the draft RSD, a number of technical barriers and safety issues must still be overcome before standards can be set that would reflect general or blanket use of these technologies.

C. Impact on Equipment

EPA estimates that the proposed emission standards can be met with the identified engine emission control technologies with minimal impact on equipment design. However, EPA also believes that to propose more stringent emission standards in today's rule than those already proposed would necessitate equipment redesign to accommodate more sophisticated technologies, such as high efficiency catalysts.

It has been EPA's past experience that, given the latitude to change either the engine or equipment, most manufacturers will choose to modify the engine. EPA estimates that most engine models will require only internal modifications (such as tighter tolerances and fuel mixture enleanment strategies) to meet the proposed standards. These modifications will have little, if any, effect on equipment design.

EPA estimates that few engine models will be discontinued as a result of the proposed standards. Models that may be discontinued represent older engine designs and low volume sales. Since this market generally has a large number of engine models, substitutions should be readily available for these few incidents of model discontinuation.

Catalytic converter use is not predicted for the Phase 1 rule. However, if catalysts should be used on a small percentage of equipment, EPA has estimated the equipment impact of catalyst use in terms of additional shielding as a result of higher exhaust skin temperatures.

The draft RSD summarizes EPA's estimates of equipment impacts as a result of this rulemaking. EPA requests comment or additional information with respect to the estimations concerning impact of the proposed standards on equipment.

D. Energy, Noise, and Safety

Section 213(a)(3) of the Act requires that EPA also give appropriate consideration to energy, noise, and safety factors associated with the

application of technologies. Energy factors include engine fuel consumption and power. Noise factors are self explanatory, and safety factors include safety for the user as well as compliance with other existing regulations in this country and abroad.

In Chapter 1 of the draft RSD, EPA has analyzed the likely average fuel consumption change considering all factors that would impact the final figure in actual use. EPA estimates that a reduction in fuel consumption is likely to be seen in actual use and will average approximately 13 percent for handheld engines and 26 percent for nonhandheld engines. Since this is a desirable impact, little additional design effort will be expended to optimize fuel consumption effects.

Manufacturers will also optimize final designs such that the expected power loss on resulting production engines will be minimized. Based on analyses in Chapter 1 of the draft RSD, EPA estimates that the resulting average power change in actual use will be a gain of approximately five percent for Class I and II engines and a three percent reduction for Class III–V engines. The major contributors to this gain for Class I and II are changes in technology for Class I side valve engines which make up a large majority of engines in this rulemaking.

Although overall power may increase, some engines may experience a decrease in power availability. However, real time data collected on equipment in actual use demonstrate that many engines do not need their full power capability in actual use. This is especially true in the case of nonhandheld engines. The operators of these engines will likely experience no performance impact as a result of this rule.

Engine noise level is expected to stay at current levels. Further discussion of this issue can be found in "V.O. Cap on Noise."

Many safety regulations and recommendations have been established for small engines and their related use in equipment. These regulations will affect the feasibility of using some technologies on handheld engines. One example is a regulation requiring spark arresters on equipment used on certain federal lands. See 36 CFR part 261. The regulation results in a temperature limit on exhaust and exhaust surfaces which, to date, has resulted in a limitation on the feasibility of the use of catalysts for handheld engines due to the high heat levels emitted during conversion of pollutants as seen when applied to these engines.

Safety recommendations and regulations also have an impact on the end use of the engines. Some small SI equipment have operating restrictions of certain speeds and loads. One example is ANSI standard B71.1 which contains information for measuring mower blade tip speed and a description of the use of safety brake systems. A summary of safety regulations and recommendations is presented in the draft RSD. EPA requests further information on additional safety regulations or requirements which may impact engines covered by this rulemaking.

E. Per Engine Cost Estimates Due to Proposed Standards

The technical solutions required to meet the emission standards proposed in this notice will be cost-effective. Further discussion is presented in "IX. Cost-Effectiveness." While this summary presents only aggregate costs for nonhandheld and handheld engines, the draft RSD gives cost estimates by technology and by engine displacement class.

The retail price of equipment which uses nonhandheld engines ranges from $90 to $9,000. On average, the cost to the engine manufacturer to install the necessary emission control technology on these engines will be approximately $0.80 to $1.13 per engine. The retail price of equipment which uses handheld engines ranges from $60 to $1,000. On average, the cost to install the necessary control technology on all handheld equipment engines, hardware variable costs, and production costs will be approximately $2.05 to $2.20 per engine to the engine manufacturer. Tables in the draft RSD list the Agency's estimated variable hardware and production cost broken out by engine technology for each engine class.

EPA's cost estimate assumes that catalytic converters will not be needed to comply with proposed standards. However, as discussed previously, engine manufacturers may voluntarily decide to use catalysts on a percentage of engines at risk of only marginally complying. Should catalysts actually be used, EPA estimates that the additional variable hardware costs for nonhandheld engines will be $1.09 per engine and for handheld engine will be $0.10 per engine, with an additional $0.24 per engine for equipment modifications and $0.20 per potential heat shielding. The Agency requests additional comment on these cost estimates for application of catalyst technology and equipment impacts.

VIII. Economic Effects

The total national average annual cost of this rule is estimated to be $55 million. If catalysts become necessary, the average annual cost estimate becomes $73 million.

EPA's economic analysis of the proposed rule's likely impact on consumers and industry indicates that reducing pollution from these engines will result in offsetting costs to consumers. Consumers will find small increases in retail prices for most equipment powered by these engines. The initial purchase price to the consumer will, however, be partially offset by savings in fuel and maintenance costs. Thus, over time, environmentally friendly, alternatively powered equipment such as electric powered trimmers, chain saws, and lawnmowers will become less costly to consumers. Industry will bear pollution control costs that are moderate (roughly six percent for handheld and two percent for nonhandheld equipment) relative to current production costs. (The level of pollution control costs is largely due to the high levels of pollution emitted by these engines, especially 2-stroke engines, and the relatively outdated state of the technology compared to on-highway engines.) However, the costs are small in absolute terms, and it is anticipated that these costs will be passed through to consumers in higher product prices. The complete economic analysis can be found in Chapter 3 of the draft RSD.

A. Consumer Cost

EPA estimated the increase in consumer cost of the equipment powered by these engines. In assessing consumer cost, three areas were analyzed: change to the retail cost of the engine, cost of fuel, and cost of maintenance.

1. Retail Cost

The increase in retail price of the equipment to the consumer is estimated using a percentage increase over the average amortized and discounted per engine manufacturers' cost, weighted by the sales mix. As such, the estimated sales-weighted average increase in retail cost to the consumer due to the proposed rule in 1996 is $4.04 for handheld equipment and $2.35 for nonhandheld equipment. If catalysts are necessary, the estimated sales-weighted average increase in retail cost to the consumer due to the proposed rule in 1996 is $4.30 for handheld equipment and $3.68 for nonhandheld equipment.

The retail price effects for specific engines may be more or less than the

costs shown here, depending on the specific technology of the engine. However, the price increases shown here reflect the relative price increases considering all types of engines in the market. Therefore, these estimates are not indicative of the price increase specific to any particular manufacturer's engine or equipment.

2. Fuel Cost

This rule is expected to decrease fuel consumption significantly. The average sales-weighted handheld engine is expected to experience a 13 percent decrease in fuel consumption and the average sales-weighted nonhandheld engine is expected to experience a 26 percent decrease in fuel consumption. However, these decreases are translated into small discounted lifetime sales-weighted fuel savings of approximately $0.22 for a handheld engine and $2.79 for a nonhandheld engine.

3. Maintenance Cost

EPA estimates that the engines produced to meet the proposed emission standards will be higher quality: the parts and raw materials will be more durable and less likely to malfunction. See Chapter 2 of the draft RSD for further discussion of this phenomenon. This will result in equipment which is operational a higher percentage of the time and which lasts longer. EPA is unable to estimate the increase in useful life or the decrease in maintenance costs at this time. EPA requests comment on the potential decrease in maintenance costs and potential increase in useful life.

4. Lifetime Consumer Cost Impact

The lifetime consumer cost impact was assessed by considering the decrease in maintenance cost and the fuel savings along with the increase in retail price of the average, sales-weighted engine. The increase in price of an engine will be mitigated somewhat by these other impacts. Applying the lifetime savings in fuel costs, the average sales-weighted handheld engine's lifetime increase in cost will be adjusted to $3.82 and the average sales-weighted nonhandheld engine's lifetime cost impact will be a savings of $0.44. If catalysts are necessary this will be $4.08 for a handheld engine and $.89 for a nonhandheld engine. EPA requests comments on lifetime consumer costs. Submission of quantified estimates would be beneficial.

B. Incremental Economic Impacts

EPA considered the potential incremental economic impacts due to today's proposal. EPA estimates the net present value of pollution control capital costs to be approximately $27 million. EPA estimates that there will be no long run negative impacts on employment as a result of this rule. Costs can be recovered through increased prices. Any potential decreases in employment that might occur due to obsolescence of product line should be offset by increased production of engines meeting emission standards. Total demand for these products has traditionally been relatively inelastic, and thus industry sales volume is not expected to decrease. Energy impacts will be positive, freeing up approximately $9 million for other uses in the economy.

IX. Cost-Effectiveness

Based upon the costs and benefits in the previous discussion, EPA has prepared a cost-effectiveness analysis and has performed a Regulatory Impact Analysis (RIA) for this proposal. See "X.A. Administrative Requirements" for an explanation of the mandate for an RIA. Because the benefits of this proposal are not easily monetized, a cost-effectiveness analysis has been prepared. The complete RIA is contained in the draft RSD. Presented here is a summary of the cost-effectiveness of the proposed small SI engine Phase 1 program.

If all program costs are allocated to HC reductions, today's proposal has a cost-effectiveness of $197 per ton of HC reduced. Alternatively, if all program costs are allocated to CO reductions, the cost-effectiveness would be $37 per ton.

If the costs of the program were equally split between HC and CO, the cost-effectiveness of HC reduction would be $99 per ton and the cost-effectiveness of CO would be $19 per ton.

These cost-effectiveness numbers are significantly lower than costs per ton of other available control strategies. The cost-effectiveness estimates, underlying quantitative methodology, and comparisons to other available control strategies discussed above are explained further in the draft RSD/RIA.

In summary, the cost-effectiveness of the standard included in the current proposal is favorable relative to the cost-effectiveness of several other control measures required under the Clean Air Act. To the extent that cost-effective nationwide controls are applied to small SI engines, the need may be reduced to apply in the future more expensive additional controls to mobile and stationary sources that also contribute to ozone nonattainment, nutrient loading, and visibility.

X. Administrative Requirements

A. Administrative Designation and Regulatory Analysis

Under Executive Order 12866, (58 **Federal Register** 51,735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action" because this rulemaking adversely affects in a material way a sector of the economy, namely manufacturers of small SI engines, particularly the manufacturers who specialize in the production of small handheld engines. Further, EPA believes that an RIA is important for this rule because small SI engines have not previously been regulated. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. Copies of the ICR document may be obtained from Sandy Farmer, Information Policy Branch, EPA, 401 M Street, SW (PM–223Y), Washington, DC 20460 or by calling (202) 260–2740.

Table 4 provides a listing of this proposed rulemaking's information collection requirements along with the appropriate information collection request (ICR) numbers. The cost of this burden has been incorporated into the cost estimate for this rule.

EPA has estimated that the public reporting burden for the collection of information required under this proposed rule would average approximately 6,100 hours annually for a typical engine manufacturer. The hours spent by a manufacturer on information collection activities in any given year would be highly dependent upon manufacturer specific variables, such as the number of engine families, production changes, emission defects, etc.

TABLE 4. PUBLIC REPORTING BURDEN

EPA ICR No.	Type of information	OMB control No.
N/A	Certification	2060–0104
0282	Emission defect information	2060–0048
N/A	Importation of nonconforming engines	N/A
N/A	Selective enforcement auditing	N/A
0012	Engine exclusion determination	2060–0124
0095.03	Precertification and testing exemption	2060–0007
N/A	In-use testing	N/A

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch, EPA, 401 M Street, SW (PM–223Y), Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will contain response to OMB or public comments on the information collection requirements contained in this proposal.

C. Impact on Small Entities

The Regulatory Flexibility Act of 1980 requires federal agencies to identify potentially adverse impacts of federal regulations upon small entities. In instances where significant impacts are possible on a substantial number of these entities, agencies are required to perform a Regulatory Flexibility Analysis (RFA). The RFA explores options for minimizing those impacts.

EPA has recently adopted a new approach to regulatory flexibility [22] for purposes of EPA's implementation of the Act, any impact is a significant impact, and any number of small entities is a substantial number. Thus, EPA will consider regulatory options for every regulation subject to the Act that can reasonably be expected to have an impact on small entities.

Therefore, in light of this new approach, EPA has determined that this rule will have a significant effect on a substantial number of small entities. As a result, EPA has tailored this rule to minimize the cost burdens imposed on smaller engine manufacturers.

The proposed regulations contain certification requirements for new engines, in-use testing requirements for controlled engines, Selective Enforcement Auditing provisions for the testing of production engines, and prohibitions on incorrect engine use for equipment manufacturers.

The certification program has been structured in this proposal such that all manufacturers may take advantage of a more simplified certification process than that currently mandated in the on-highway program. Testing requirements for test engines are reduced. The application and certification process is more straightforward.

The in-use testing program is structured such that manufacturers with lower annual production volumes have a lower minimum number of engines which must be tested. This places the burden of the in-use testing mostly on manufacturers with high production volumes. Provisions are also allowed for manufacturers whose number of product lines are limited. Also, manufacturers with very low production volumes are allowed maximum flexibility in procuring engines to be tested. Refer to "IV.C.10. In-use Testing Program" for a more detailed discussion.

The SEA program is structured such that the annual limit on the number of SEA's that EPA may perform is lower for manufacturers with lower projected annual production. Additionally, manufacturers with high projected annual production but fewer engine families will have a lower annual limit. Furthermore, manufacturers with low projected annual production may perform fewer audit tests per day to minimize the SEA burden on its test facilities. Refer to "IV.C.19. Selective Enforcement Auditing Program" for a more detailed discussion.

EPA is proposing that equipment manufacturers must correctly use engines that are certified upon implementation of these regulations. However, EPA has decided to make the use of non- certified engines for United States-marketed equipment a prohibited act rather than requiring equipment manufacturers to report to EPA that they are using certified engines in their equipment being consumed in the United States. Further, it is a prohibited act for equipment manufacturers to incorrectly use an engine certified as handheld in nonhandheld equipment marketed in the United States. EPA decided to make these provisions prohibited acts in order to reduce any potential reporting or recordkeeping burden for engine and equipment manufacturers. Manufacturers who attempt to sell equipment to the United States market which uses noncertified engines or uses handheld engines in nonhandheld equipment will be voluntarily reported to EPA by their competitors. EPA has proposed stiff fines on prohibited acts. Competition should effectively police these prohibited acts as competitors have a competitive incentive to make sure that no equipment manufacturer is dumping equipment with lower cost, unlawful, noncertified, or incorrectly used engines (that is, the use of a handheld engine in nonhandheld equipment) into the U.S. market.

EPA considered, but rejected, the notion of exempting small manufacturers from enforcement programs or from the regulation entirely. A more proportionate sharing of cost burden was deemed appropriate. The pollution emitted by each of these engines not only contributes to ambient air quality problems but also has health impacts on the user of the equipment who is in close proximity to the exhaust emissions. See "VI. Environmental Benefit Assessment" for a discussion of the health impacts of the related exhaust pollutants.

[22] Habiicht, F. Henry II, Deputy Administrator, Internal EPA Memorandum, "Revised Guidelines for Implementing the Regulatory Flexibility Act," April 9, 1992.

List of Subjects in 40 CFR Part 90

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Environmental protection, Imports, Incorporation by reference, Labeling, Nonroad source pollution, Reporting and recordkeeping requirements.

Dated: April 29, 1994.

Carol M. Browner,

Administrator.

[FR Doc. 94–10975 Filed 5–13–94; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 180

[OPP–300343; FRL–4866–7]

RIN No. 2070–AC18

Pesticide Tolerances for 1-[(6-Chloro-3-Pyridinyl)Methyl]-N-Nitro-2-Imidazolidinimine

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to establish time-limited tolerances for residues of the insecticide 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine and its metabolites (proposed common name "imidacloprid") in or on dried hops at 3.0 parts per million (ppm), milk at 0.05 ppm, and meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep at 0.2 ppm, with an expiration date of 1 year after the beginning of the effective date of a final rule based on this proposal. EPA is issuing this proposal on its own initiative.

DATES: Comments, identified by the document control number, [OPP-300343], must be recieved on or before June 15, 1994.

ADDRESSES: Comments may be submitted to: Public Docket and Freedom of Information Section, Field Operations Division (7506C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20604. In person, bring comments to: Rm. 1128, CM #2, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by the EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the address given below, from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis H. Edwards, Jr., Product Manager (PM) 19, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 207, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6386.

SUPPLEMENTARY INFORMATION: On its own initiative and pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), EPA is proposing a time-limited tolerance for the residues of imidacloprid on dried hops at 3.0 parts per million (ppm). EPA recently reclassified dried hops as raw agricultural commodity (59 FR 9167; Feb. 25, 1994 and 59 FR 17487; April 13, 1994). EPA is proposing the tolerance because EPA has granted a petition for an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136p, for the use of imidacloprid on hops in the States of Washington, Oregon, and Idaho; imidacloprid is used in other countries that export hops to the United States; and the database for imidacloprid is relatively complete. The most significant data gap for establishing a permanent tolerance for imidacloprid on dried hops is a third field-residue trial. Given the relatively low risks presented by imidacloprid, EPA does not believe that the missing data will significantly change EPA's risk assessment. Nevertheless, EPA is establishing a 1-year time limitation on this tolerance for a full residue data base to be available in making a decision on a permanent tolerance.

All relevant materials have been evaluated. The toxicology data considered in support of the tolerance include:

1. A three-generation rat reproduction study with a no-observed-effect level (NOEL) of 100 ppm (8 mg/kg/bwt); rat and rabbit teratology studies were negative at doses up to 30 mg/kg/bwt and 24 mg/kg/bwt, respectively.

2. A 2-year rat feeding/carcinogenicity study that was negative for carcinogenic effects under the conditions of the study and had a NOEL of 100 ppm (5.7 mg/kg/bwt in male and 7.6 mg/kg/bwt female) for noncarcinogenic effects that included decreased body weight gain in females at 300 ppm and increased thyroid lesions in males at 300 ppm and females at 900 ppm..

3. A 1-year dog feeding study with a NOEL of 1,250 ppm (41/mg/kg/bwt).

4. A 2-year mouse carcinogenicity study that was negative for carcinogenic effects under the conditions of the study and that had a NOEL of 1,000 ppm (208 mg/kg/day).

There is no cancer risk associated with exposure to this chemical. Imidacloprid has been classified as a "Group E" (no evidence of carcinogenicity for humans) carcinogen by the OPP Reference Dose (RfD) Committee.

The reference dose (RfD), based on the 2-year rat feeding/carcinogenic study with a NOEL of 5.7 mg/kg/bwt and 100-fold uncertainity factor, is calculated to be 0.057 mg/kg/bwt. The theoretical maximum residue contribution (TMRC) from the proposed tolerances is 0.000984 mg/kg/bwt/day and utilizes 2 percent percent of the ADI.

The nature of the residue in plants and livestock is adequately understood. Results of a bovine feeding study show that finite imidacloprid residues will actually occur in milk, meat, fat, and meat by-products of cattle, goats, hogs, horses, and sheep from feeding of imidacloprid-treated raw agricultural commodities or their processed commodities when the formulations are used as directed; therefore, tolerances are required. Spent hops are not considered a poultry feed item; therefore, secondary imidacloprid tolerances for poultry and eggs are not required. The analytical method is a common moiety method for imidacloprid and its metabolites containing the 6-chloropyridiyl moiety in plants using a permanganate oxidation, silyl derivatization, and capillary GC-MS selective ion monitoring. The magnitude of the residue crop field trial data for imidacloprid on hops indicate that residues of total imidacloprid will not exceed the proposed tolerance when the formulations are used as directed.

The tolerance would be established for 1 year, with an expiration date of 1 year after the beginning of the effective date of a final rule based on this proposal.

This pesticide is considered useful for the purposes for which the tolerances are sought. Based on the above information considered by the Agency, the tolerances established by amending 40 CFR part 180 would protect the public health. Therefore, it is proposed that the tolerances be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under FIFRA, as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with FFDCA section 408(e).

Interested person are invited to submit written comments on the proposed regulation. Comments must bear notation indicating the document control number, [OPP-300343]. All written comments filed in response to this document will be be available in the Public Docket and Freedom of Information Section, at the addressed given above from 8 a.m. to 4 p.m, Monday through Friday, except legal holidays.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement of this effect was published in the **Federal Register** of May 4, 9181 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: May 9, 1994.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to as follows:

Authority: 21 U.S.C. 346a and 371.

b. By adding new 180.472, to read as follows:

§ 180.472 1-[(6-Chloro-3-pyridinyl) methyl]-N-2-imidazolidinimine; tolerances for residues.

Time-limited tolerances, to expire (1 year after beginning of effective date of final rule), are established permitting the combined residues of the insecticide 1-[(6-chloro-3-pyridinyl) methyl]-*N*-2-imidazolidinimine and its metabolites containing the 6-chloropyridinyl moiety, all expressed as 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine, in or on the following raw agricultural commodities:

Commodity	Parts per million
Cattle, fat	0.2
Cattle, meat	0.2
Cattle, meat byproducts	0.2
Hops, dried	3.0
Goats, fat	0.2
Goats, meat	0.2
Goats, meat byproducts	0.2
Hogs, fat	0.2
Hogs, meat	0.2
Hogs, meat byproducts	0.2
Horses, fat	0.2
Horses, meat	0.2
Horses, meat byproducts	0.2
Milk	0.05
Sheep, fat	0.2
Sheep, meat	0.2
Sheep, meat byproducts	0.2

[FR Doc. 94–11827 Filed 5–11–94; 12:37 pm]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[GN Docket No. 94–33, FCC 94–101]

Further Forbearance From Title II Regulation for Certain Types of Commercial Mobile Radio Service Providers

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rule making.

SUMMARY: This notice of proposed rule making (Notice) solicits comment on whether, within particular services classified as Commercial Mobile Radio Service (CMRS), there may be types of providers that merit forbearance from certain requirements found in Title II of the Communications Act. Specifically, the Commission asks whether we should forbear from enforcing those provisions of Title II that we determined did not merit general forbearance in our Second Report and Order in Gen. Docket No. 93–252. If the further forbearance is warranted, the Commission asks how we should determine which types of CMRS providers should be excused from remaining Title II requirements and how we should implement and enforce such forbearance provisions.

DATES: Comments are due by June 27, 1994 and reply comments are due by July 12, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Gina Harrison or Susan McNeil, Private Radio Bureau, Land Mobile and Microwave Division, (202) 632–7792 and 634–2443, respectively, or Peter Batacan, Common Carrier Bureau, Tariff Division (202) 632–6917.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice in GN Docket No. 94–33, adopted April 20, 1994 and released May 4, 1994. The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Docket Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Washington, DC 20037

Synopsis of the Notice of Proposed Rule Making

1. In the Second Report and Order in General Docket No. 93–252, 59 FR 18493 (Apr. 19, 1994) the Commission elected, pursuant to the Omnibus Budget Reconciliation Act of 1993 (Budget Act), to forbear from applying Sections 203, 204, 205, 211, 212, and 214 of Title II of the Communications Act to any service classified as CMRS. The Commission determined that the remaining sections of Title II should be enforced with respect to CMRS providers in order to promote competition or to protect consumers, and that this decision would not place any undue burden on any CMRS provider or class of providers. Nevertheless, the Commission also announced that it would consider additional relief in a future rule making that would gather a more extensive record on the potential effect of the remaining sections of Title II on particular types of CMRS providers within each class of service. The purpose of this Notice is to initiate that rule making.

2. The Budget Act authorizes the Commission to take forbearance actions if it determines that: (i) Enforcement of such provision is not necessary in order to ensure that the charges, practice, classifications, or regulations for or in connection with that service are just and reasonable and are not unjustly discriminatory; (ii) enforcement of such provision is not necessary for the protection of consumers; and (iii) specifying such provision is consistent with the public interest. The legislative history of this provision indicates that the Commission may distinguish among types of CMRS providers in making this determination. Assuming that further

forbearance in a particular case would not adversely affect rates or practices or harm consumers under the first two prongs of the test, the Commission tentatively identified two factors under the public interest test of the last prong that could serve to guide its determinations: (1) Whether there are differential costs of compliance with the remaining Title II sections that could make further forbearance appropriate for particular types of providers; and (2) whether the public interest benefits from application of particular Title II provisions are less for certain types of CMRS providers. Thus, in applying the last prong of the statutory test, the Commission asks commenters to identify (1) the benefits of applying the remaining Title II sections, (2) the costs of compliance with any the remaining Title II sections, and (3) whether the costs of compliance with any of the remaining sections of Title II outweigh the benefits. In addition, the Commission asks, pursuant to 47 CFR 332(c)(1)(C), whether further forbearance will enhance future CMRS competition from a diversity of entities.

3. The Commission also asks commenters to demonstrate actual or projected costs of compliance with each provision of Title II that was not forborne, and the extent to which such costs vary across different types of providers. For example, if the costs of regulation are fixed, it could indicate that small CMRS providers are more likely than other types of CMRS providers to be burdened by the costs of regulation. The Commission asks whether there are instances where these additional costs outweigh the public interest benefits of applying the statutory provision in issue. The Commission seeks evidence on the magnitude of any such fixed costs.

I. Application of Further Forbearance

4. Commenters should address (1) how the statutory forbearance test applies to each remaining Title II provision, (2) how further forbearance from applying each provision of Title II would enhance future CMRS competition, (3) how Congressional intent underlying each Title II provision would be affected, (4) how forbearance for particular types of CMRS providers would comport with regulatory symmetry and (5) whether there are other factors or alternatives we should consider in classifying CMRS for further forbearance.

5. The Commission seeks comment on its tentative view that there would be no purpose in forbearing from applying 47 U.S.C. 210, which allows common carriers to issue franks and passes to their employees, and to provide the Government with free service in connection with preparation for national defense.

6. The Commission characterized 47 U.S.C. 213, 215, 218, 219, and 220 as primarily reservations of authority and reaffirmed its finding in the Second Report and Order that it was unnecessary to forbear from applying these provisions to CMRS. Section 213 authorizes the Commission to make valuations of carrier property. Section 215 gives the Commission the authority to examine carrier activities and transactions. Section 218 authorizes the Commission to inquire into the management of a carrier and its owner. Section 219, *inter alia*, authorizes the Commission to require annual reports from carriers. Section 220 gives the Commission discretion to prescribe the forms of accounts, records, and memoranda to be kept by carriers, as well as depreciation rates. Even though these provisions impose no affirmative obligations on CMRS providers, and may have no immediate impact on CMRS, the Commission seeks comment on whether the potential for increased regulation (and any concomitant costs) might have an adverse economic impact on specific types of provides that is not in the public interest.

7. 47 CFR 223 governs obscene, harassing and indecent communications. In relevant part, the statute forbids a common carrier (if the carrier collects payments for an adult information provider using the carrier's services) to the extent technically feasible, to permit access to an obscene or indecent communication from the telephone of any subscriber who has not previously requested such access. This requirement, known as "reverse blocking," applies only if a carrier bills and collects fees for the adult information provider. As a technical matter, then, a CMRS provider subject to this obligation would have to program its switch (should it employ one) to accomplish this blocking.

8. The Commission tentatively reaffirms its general conclusion in the Second Report and Order that section 223 should continue to apply to CMRS. Commenters are asked to address the impact of section 223 on existing and projected CMRS offerings, and in particular, whether CMRS providers are likely to be involved in services that implicate Section 223.

9. 47 U.S.C. 225, Title IV of the Americans with Disabilities Act, requires all common carriers providing interstate or intrastate telephone voice transmission service to provide telecommunications services that enable persons with hearing and speech disabilities to communicate with hearing individuals. Common carriers may select one of several methods of offering TRS, but most have elected to designate a TRS provider or to provide TRS in concert with other carriers.

10. For purposes of further forbearance, the Commission asks whether there are any CMRS providers whose market is so specialized, or their customer base or size of operation so small that applying TRS obligations to them would not appreciably advance the universal service objectives of Section 225. Would forbearance in such cases meet the test in section 332? Parties are also asked to address whether the need for forbearance is reduced by providers' ability to designate a third party to provide TRS. The Commission also seeks comment on whether there are technical or operational limitations that would make compliance with our TRS technical standards difficult for a particular type of CMRS provider. The Commission asks whether interfacing with a third-party TRS provider would also pose technical difficulties, particularly for those private providers who will be reclassified as CMRS after new technical/operational rules become effective.

11. The Commission has adopted a shared-funding mechanism for interstate TRS cost recovery. Under the Commission's shared-funding plan, providers of interstate telecommunications services are required to contribute to a TRS fund and comply with reporting and filing obligations, including conforming their accounts to a specified format. The amount of the yearly contribution is a percentage (.00030) of the carrier's gross interstate revenues. Each carrier must contribute at least $100, even if its share under the actual computation would be less.

12. In light of the small percentage used to calculate the contribution and the low minimum required, the Commission asks whether the burden from the funding and concomitant filing obligations are likely to be significant for any type of CMRS. The Commission also reiterates that providers that do not themselves use TRS facilities are nevertheless required to contribute to the Fund. The Commission seeks comment on its tentative view that the public interest would not be furthered by exempting CMRS entirely because they do not use TRS facilities.

13. The Telephone Operator Consumer Services Improvement Act (TOCSIA), codified at 47 U.S.C. 226, protects consumers making interstate

operator service calls from phones available to the public or to transient users against unreasonably high rates and anti-competitive practices. It regulates two groups. The first consists of operator service providers (OSPs). These are providers of interstate telecommunications service from phones available to the public or to transient users that give automatic or live assistance for billing or completion to a caller. The second group are aggregators, generally persons that, in the ordinary course of their operations, make telephones available to the public or to transient users of the premises and who use a provider of operator services. Pursuant to TOCSIA and Commission rules, OSPs are subject to various identification, disclosure and billing requirements, including the requirement that they "brand" calls, *i.e.*, audibly identify themselves at the beginning of the call and before the consumer incurs any charges for the call. They may not engage in "call splashing" (transfer of a call to another carrier at a location different from the originating consumer where the second carrier cannot tell the originating location, with the result that the charge to the consumer is incorrect and not based on originating location). OSPs must file informational tariffs. Aggregators are required to identify and disclose certain information regarding the presubscribed OSP and to disclose that rate information is available and that the consumer has the right to use an OSP of his or her choice. The aggregator must also ensure (1) that its telephones presubscribed to an OSP allow consumers to use 800 or 900 numbers to obtain access to the OSP of choice, and (2) according to an established implementation schedule, that any of its presubscribed equipment allows the consumer to use equal access (10XXX) codes to access the customer's choice of OSP.

14. The Notice requests comment on whether forbearance from section 226 for particular classes of CMRS would be justified. Parties advocating forbearance for specific types of providers from the aggregator or OSP rules should explain how such action would meet the three-part test for forbearance under Section 332. In particular, parties should address how the first and second prongs of the test, that rates be just and reasonable and that consumers be adequately protected, would be met. In connection with the third prong, parties should address whether the statute imposes any costs that would be exceptionally difficult for certain types of CMRS provider to bear, and whether forbearance in such case would significantly diminish statutory protections for the public. In particular, the Commission seeks comment on whether such costs are likely to prove unduly burdensome for specific types of small CMRS providers.

15. The telephone Consumer Protection Act of 1991 (TCPA), 47 U.S.C. 227, restricts the use of automatic telephone dialing systems, artificial or prerecorded voice messages, and telephone facsimile machines to send unsolicited advertisements. TCPA prohibits autodialed and prerecorded voice message calls to emergency lines, health care facilities or similar establishments, and with certain exceptions, number (such as cellular numbers) for which the called party is charged for the call.

16. Current TCPA obligations primarily apply to the originator of the unwanted message, *e.g.*, telemarketers. Unless a CMRS provider also engages in telemarketing or sends unsolicited facsimiles or other unwanted communications, the statute generally does not apply to it. In so far as small CMRS providers act as originators of unsolicited voice or facsimile transmissions, the Commission tentatively concludes that forbearance for such providers would not adequately protect consumers' privacy interests under the second prong of the Section 332 test. Moreover, the decision to undertake telemarketing services would be a voluntary business judgment on the part of a CMRS provider. Such telemarketing is not a necessary part of what is generally regarded as CMRS. The Commission also sees no public interest benefit under the third prong of the test in permitting CMRS providers, even small ones, to undertake such activities without complying with TCPA. The Notice seeks comment on these tentative views.

17. 47 U.S.C. 228 incorporates the Telephone Disclosure and Dispute Resolution Act (TDDRA), which governs pay-per-call services (also known as "audiotext" or "900" services), and imposes obligations in interexchange carriers, local exchange carriers and common carriers in general. Pursuant to the Act and our implementing regulations, local exchange carriers must offer subscribers, where technically feasible, an option to block access to 900 services. They must also tariff the terms and conditions for such blocking.

18. TDDRA also imposes additional obligations on all common carriers. (a) 800 Service. With certain exceptions, information service charges cannot be assessed against callers to 800 and other toll-free numbers. Common carriers must enforce this obligation by contract or tariff. (b) Collect Calls. Common carriers may not transmit collect information services that are either at a per-call or per-time-interval charge that is greater than, or in addition to, the charge for the transmission of the call, or have not been affirmatively accepted by the called party. (c) Payment. Common carriers are prohibited from disconnecting or interrupting service for failure to remit pay-per-call or similar service charges. Common carriers may not recover the cost of complying with TDDRA requirements from ratepayers.

19. The Commission seeks comment on the extent to which the local exchange carrier obligation to permit subscribers to block access where technically feasible should apply to CMRS, and whether there are particular types of CMRS providers for which such an obligation would be particularly difficult. Would local exchange carriers provide blocking for customers of CMRS providers that interconnect with the public switched network? Additional TDDRA obligations, including restrictions on disconnection or on transmission of collect pay-per-call charges, are imposed on carriers who bill and collect for 900 services, which is not a common carrier service. The Commission asks for comment on whether this type of voluntary business activity is not essential to provision of CMRS and hence, would not justify forbearance for any type of CMRS.

20. In analyzing application of any of the above TDDRA obligations, commenters are asked to address the three parts of the section 332 forbearance test. In connection with the third prong, the Commission asks whether Section 228 obligations would impose exceptional costs on certain types of CMRS and whether forbearance in such cases would significantly diminish statutory protections to the public. Parties should also address the effect forbearance would have on the TDDRA objectives of promoting the legitimate development of pay-per-call services and protecting consumers from fraudulent and deceptive practices.

II. CMRS Providers Meriting Further Forbearance

21. Turning to the question of which types of CMRS providers merit further forbearance, the Commission asks as a threshold matter whether any further forbearance is merited, noting that application of Title II is not expected to create any undue burden on any CMRS provider, or on CMRS competition generally. To the extent that regulatory obligations impose fixed costs, however they would place relatively greater

burdens on small providers who have less of a revenue base and other resources to support them. The Commission seeks comment on whether there are technical or operational limitations inherent in the services these small businesses provide that may make application of certain of the statutory provisions in question not in the public interest. The Commission also recognizes the public interest in maintaining opportunities for small businesses and the role that further forbearance might play in reducing the cost of doing business for them. The Notice thus seeks comment on whether the size of the provider may be a basis for defining CMRS eligibility for further forbearance. Finally, the Notice seeks comment on whether to consider an analysis of a CMRS provider's customer base as another possible factor in determining the appropriateness of further forbearance. Certain types of providers, particularly small providers, may serve predominantly business customers who require more advanced communications services and may have relatively greater bargaining power than CMRS customers that make personal use of the service. As a result the differing needs of business and individual customers could affect the analysis of whether forbearance would reduce benefits to customers. In addition, the Commission asks whether it should distinguish between medium to large business customers, and small businesses.

22. The Commission seeks comment on how to determine which type of provider should be considered "small" for purposes of further forbearance. The Commission asks interested parties to comment on whether any one or any combination of the options advanced below should be applied. Parties are invited to identify alternatives and to comment on how the Commission could draw on its experience in identifying small carriers in other contexts, *e.g.*, the exemption to the cable-telco cross-ownership rule. Finally, the Notice asks interested parties to provide their views on how the Commission might best implement and enforce any classification scheme. The Notice seeks comment on the advantages and disadvantages of the various options with respect to implementation by both the Commission and licensees.

A. Measurement Factors

23. One possible standard for size of business operation is the Small Business Administration (SBA) definition of small entity: an entity with a net worth not in excess of $6 million with average net income after Federal income taxes for the two preceding years not in excess of $2 million. The Commission relied on this standard to define small businesses entitled to preferences under the spectrum auction rules. The Commission believes that these criteria are appropriate for identifying entities entitled to preferred entry into new business ventures, as in the spectrum auction context. The Commission tentatively finds, however, that this standard is too generous for purposes of determining which CMRS providers are entitled to relief from remaining title II obligations, many of which, as discussed above, are designed to protect consumers. The Notice thus asks whether the Commission should employ a more modest income and net worth standard. Those commenters that nevertheless advocate use of this approach should discuss how it would affect the different services comprising CMRS, providing as much data as possible on the number of providers in a particular service that would be eligible for further forbearance under this definition, and how it would affect consumer protection. The Commission might also measure size and scope by a number of objective factors, such as average revenues per subscriber or percentage of interconnected traffic, average number of customers or for part 90 licensees, number of mobile units, or average subscriber rate. Interested parties should provide data to demonstrate whether providers within their suggested definition would find the costs of complying with the title II regulatory obligations burdensome and how their recommended definition comports with the statutory factors set forth in section 332(c) governing forbearance.

24. The Commission also seeks comment on how, if standards applicable to individual providers are established, it should treat affiliated corporations or operators of systems in more than one geographic area or providers who own multiple small systems. In addition, the Notice seeks comment on whether the Commission should attribute ownership of systems that are operated pursuant to an exclusive management contract, and thus not forbear when management contracts are in force. Further, it seeks comment on the impact, if any, of industry mergers on application of a size standard. Should a small system's affiliation with a corporation that would yield greater vertical integration disqualify that system from further forbearance? Would a small mobile system necessarily enjoy benefits of scale and scope from an affiliation with, for example, a long distance provider? If so, would such a provider be ineligible for further forbearance?

25. Number of channels would provide an administratively straightforward means of identifying small CMRS entities. The Commission thus asks for comment on whether number of channels is a workable and rational approach to measuring size of CMRS licensees. Commenters should specify specific types of CMRS providers licensed under parts 22 and 90 of the Commission's Rules, and suggest numbers of channels that would identify small providers in each mobile radio service. In responding to these questions, commenters should consider the likelihood that channels can be aggregated to form systems that would no longer be operated by a small provider, and how transition to a different level of forbearance would be effectuated. Commenters should also address how licensees conforming to this approach would be affected by the remaining title II obligations discussed above, and whether their users or competitors would be adversely affected by further forbearance.

26. The character of a provider's customer base,—*i.e.*, whether its customers subscribe to the service to meet their business communications requirements, or whether customers are primarily consumers with a personal need for mobile communications service—may be another possible factor to consider in determining whether to undertake further forbearance. To the extent that certain types of CMRS providers predominantly serve business customers.—such as traditional SMR and business radio service,—rather than individual customers, such business customers may have relatively greater bargaining power and information concerning their telecommunications options. In addition, the Commission asks whether it should also distinguish between large and medium-sized and small business customers, on the assumption that small businesses may be more like individual consumers in their bargaining power over telecommunications services. The Commission accordingly seeks comment on (1) whether to apply an analysis of a CMRS provider's customer base and (2) what factors might contribute to this analysis.

B. Case-by-Case Determination

27. The Commission might also extend further forbearance to particular CMRS providers on a case-by-case basis. Under this approach, providers desiring further forbearance from the remaining provisions of title II that continue to

apply could petition the Commission to forbear in individual circumstances. To qualify for further forbearance, petitioners would have to demonstrate that they meet the statutory test for forbearance, as implemented by the rules and policies established in this proceeding. The Notice seeks comment on this approach, which is consistent with the Commission's previous conclusion that the degree of forbearance adopted in the Second Report and Order should not be unduly burdensome for the vast majority of CMRS providers.

C. Implementation

28. If the Commission exercises further forbearance with respect to individual providers, how should the Commission enforce its standards efficiently, in terms of both identifying eligible entities and deterring evasive behavior? One option would be to amend application forms to require certification of compliance with specific standards as part of our revised application form for the mobile services. The Commission could use random staff audits of licensees to determine whether they in fact quality for further forbearance. A second alternative would be to impose affirmative reporting requirements on small providers. A third option would be to rely on complaints alleging violations of our further forbearance standards. Commenters should discuss these and any alternative enforcement methods. The Notice also seeks comment on whether existing licensees should have to file a separate certification to be eligible for further forbearance.

Procedural Matters

Ex Parte Consideration

29. This is a non-restricted proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules. *See* generally 47 CFR 1.1202, 1.203 and 1.206(a).

Comment Information

30. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments on or before June 27, 1994 and reply comments on or before July 12, 1994. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

Initial Regulatory Flexibility Statement

I. *Reason for Action.* In an effort to avoid the imposition of unwarranted costs or other burdens upon carriers, the *Second Report and Order* determined that the Commission would initiate a rule making (the instant proceeding) to determine whether further forbearance from application of Title II provisions to CMRS was necessary.

II. *Objectives of the Action.* We seek here to determine whether to forbear further from the imposition of Title II regulation on certain types of CMRS providers, particularly small providers, and how to define small CMRS providers.

III. *Legal Basis.* Communications Act, section 332, 47 U.S.C. 332.

IV. *Description, potential impact, and number of small entities affected.* We do not have the data at this time to estimate the number of CMRS providers affected by this rule making, but we are herein proposing to reduce regulatory burdens for these providers.

V. *Reporting, record keeping and other compliance requirements.* The proposals under consideration in this Notice include the possibility of new reporting and record keeping requirements for small CMRS providers; however, one of the objectives in this proceeding is to minimize such burdens.

VI. *Federal rules which overlap, duplicate or conflict with these rules.* If adopted, the proposals here in would modify existing rules codified at 47 CFR part 20 and 47 CFR 1.728–1.734.

VII. *Any significant alternatives minimizing the impact on small entities and consistent with stated objectives.* This Notice proposes to reduce the administrative burdens and costs of compliance with Title II regulation on small CMRS providers. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. Written public comments are requested on the IFRA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the IRFA. The Secretary shall send a copy of this Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

Paperwork Reduction Act Statement

The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified information collection requirement on the public. This proposed requirement would, however, reduce information collection requirements otherwise applicable to small CMRS providers. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

Ordering Clauses

Accordingly, the Commission adopts this Notice pursuant to the authority contained in Section 332 of the Communications Act of 1934, as amended, 47 U.S.C. § 332.

List of Subjects in 47 CFR Part 20

Commercial mobile radio services, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–11750 Filed 5–13–94; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 59, No. 93
Monday, May 16, 1994

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

Newspapers Used for Publication of Legal Notice, Comment and Appeal of Decisions for Pacific Northwest Region, Oregon and Washington

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by all ranger districts, forests, and the Regional Office of the Pacific Northwest Region to publish legal notice of all decisions subject to appeal under 36 CFR parts 215 and 217 and to publish notice for public comment and notice of decisions subject to the provisions of 36 CFR part 215. The intended effect of this action is to inform interested members of the public which newspapers will be used to publish the legal notice for public comment or decision. This allows the public to receive constructive notice of a decision, to provide clear evidence of timely notice, and to achieve consistency in administering the appeal process.

DATES: Publication of legal notices in the listed newspapers will begin with proposals for public comment or decisions subject to appeal that are made on or after April 30, 1994. The list of newspapers will remain in effect until another notice is published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: James L. Schuler, Regional Appeals Coordinator, Pacific Northwest Region, P.O. Box 3623, Portland, Oregon 97208–3623, phone: (503) 326–2322.

SUPPLEMENTARY INFORMATION: Responsible Officials in the Pacific Northwest Region will give legal notice of decisions that may be subject to appeal under 36 CFR part 215 and 217 in the following newspapers which are listed by Forest Service administrative units. Where more than one newspaper is listed for any unit, the first newspaper listed is the principal newspaper, which shall be used to constitute legal evidence that the agency has given timely and constructive notice for comment and for decisions that may be subject to administrative appeal. The timeframe for appeal shall be based on the date of publication of a notice of decision in the principal newspaper.

The newspapers to be used are as follows:

Pacific Northwest Regional Office

Pacific Northwest Regional Forester decisions on Oregon National Forests:
The Oregonian, Portland, Oregon
Pacific Northwest Regional Forester decisions on Washington National Forests:
The Seattle Post-Intelligencer, Seattle, Washington
Columbia Gorge National Scenic Area Manager decisions:
The Oregonian, Portland, Oregon

Oregon National Forests

Deschutes National Forest

Deschutes Forest Supervisors decisions:
The Bulletin, Bend, Oregon
Bend District Ranger decisions:
The Bulletin, Bend, Oregon
Crescent District Ranger decisions:
The Bulletin, Bend, Oregon
Fort Rock District Ranger decisions:
The Bulletin, Bend, Oregon
Sister District Ranger decisions:
Sisters Nugget, Sisters, Oregon
Bend Pine Nursery Managers decisions:
The Bulletin, Bend, Oregon
Redmond Air Center Managers decisions:
The Bulletin, Bend, Oregon

Fremont National Forest

Fremont Forest Supervisor decisions:
Herald and News, Klamath Falls, Oregon
Newspapers providing additional notice for Fremont Forest Supervisor decisions;
Lake County Examiner, Lakeview, Oregon
The Bulletin, Bend, Oregon
Bly District Ranger decisions:
Herald and News, Klamath Falls, Oregon
Lakeview District Ranger decisions:
Lake County Examiner, Lakeview, Oregon
Paisley District Ranger decisions:
Lake County Examiner, Lakeview, Oregon
Silver Lake District Ranger decisions:
Herald and News, Klamath Falls, Oregon
Newspaper providing additional notice of Silver Lake decisions:
The Bulletin, Bend, Oregon

Malheur National Forest

Malheur Forest Supervisor decisions:
Blue Mountain Eagle John Day, Oregon
Bear Valley District Ranger decisions:
Blue Mountain Eagle, John Day, Oregon
Burns District Ranger decisions:
Burns Times Herald, Burns, Oregon
Long Creek District Ranger decisions:
Blue Mountain Eagle, John Day, Oregon
Prairie City District Ranger decisions:
Blue Mountain Eagle, John Day, Oregon

Mt. Hood National Forest

Mt. Hood Forest Supervisor decisions:
The Oregonian, Portland, Oregon
Barlow District Ranger decisions:
The Oregonian, Portland, Oregon
Bear Springs District Ranger decisions:
The Oregonian, Portland, Oregon
Clackamas District Ranger decisions:
The Oregonian, Portland, Oregon
Columbia Gorge District Ranger decisions:
The Oregonian, Portland, Oregon
Estacada District Ranger decisions:
The Oregonian, Portland, Oregon
Hood River District Ranger decisions:
The Oregonian, Portland, Oregon
Zigzag District Ranger decisions:
The Oregonian, Portland, Oregon

Ochoco National Forest

Ochoco Forest Supervisor decisions:
The Bulletin, Bend, Oregon
Newspapers providing additional notice of Ochoco Forest Supervisor decisions:
Burns Times/Herald, Burns, Oregon
Central Oregonian, Prineville, Oregon
Big Summit District Ranger decisions:
The Bulletin, Bend, Oregon
Crooked River National Grassland District Ranger decisions:
The Bulletin, Bend, Oregon
Newspapers providing additional notice of Grassland decisions:
Madras Pioneer, Madras, Oregon
Paulina District Ranger decisions:
The Bulletin, Bend, Oregon
Newspapers providing additional

notice of Paulina decisions:
Blue Mountain Eagle, John Day, Oregon
Prineville District Ranger decisions:
The Bulletin, Bend, Oregon
Newspapers providing additional notice of Prineville decisions:
Central Oregonian, Prineville, Oregon
Snow Mountain District Ranger decisions:
The Bulletin, Bend, Oregon
Newspapers providing additional notice of Snow Mountain decisions:
Burns Times/Herald, Burns, Oregon

Rogue River National Forest

Rogue River Forest Supervisor decisions:
Mail Tribune, Medford, Oregon
Applegate District Ranger decisions:
Mail Tribune, Medford, Oregon
Ashland District Ranger decisions:
Mail Tribune, Medford, Oregon
Butte Falls District Ranger decisions:
Mail Tribune, Medford, Oregon
J. Herbert Stone Nursery Managers decisions:
Mail Tribune, Medford, Oregon
Prospect District Ranger decisions:
Mail Tribune, Medford, Oregon

Siskiyou National Forest

Siskiyou Forest Supervisor decisions:
Grants Pass Courier, Grants Pass, Oregon
Chetco District Ranger decisions:
Curry Coastal Pilot, Brookings, Oregon
Galice District Ranger decisions:
Grants Pass Courier, Grants Pass, Oregon
Gold Beach District Ranger decisions:
Curry County Reporter, Gold Beach, Oregon
Illinois Valley District Ranger decisions:
Grants Pass Courier, Grants Pass, Oregon
Powers District Ranger decisions:
The World, Coos Bay, Oregon
Newspaper providing additional notice of Powers decision:
Curry County Reporter, Gold Beach, Oregon

Siuslaw National Forest

Siuslaw Forest Supervisor decisions:
Corvallis Gazette-Times, Corvallis, Oregon
Alsea District Ranger decisions:
Corvallis Gazette-Times, Corvallis, Oregon
Hebo District Ranger decisions:
Headlight Herald, Tillamook, Oregon
Mapleton District Ranger decisions:
Siuslaw News, Florence, Oregon
Oregon Dunes National Recreation Area Manager decisions:
The World, Coos Bay, Oregon
Waldport District Ranger decisions:
Newport News Times, Newport, Oregon

Umatilla National Forest

Umatilla Forest Supervisor decisions:
East Oregonian, Pendleton, Oregon
Heppner District Ranger decisions:
East Oregonian, Pendleton, Oregon
North Fork John Day District Ranger decisions:
East Oregonian, Pendleton, Oregon
Pomeroy District Ranger decisions:
East Oregonian, Pendleton, Oregon
Walla Walla District Ranger decisions:
East Oregonian, Pendleton, Oregon

Umpqua National Forest

Unpqua Forest Supervisor decisions:
The News-Review, Roseburg, Oregon
Cottage Grove District Ranger decisions:
The News-Review, Roseburg, Oregon
Diamond Lake District, Ranger decision:
The News-Review, Roseburg, Oregon
North Umpqua District Ranger decisions:
The News-Review, Roseburg, Oregon
Tiller District Ranger decisions:
The News-Review, Roseburg, Oregon
Dorena Tree Improvement Center Manager decisions:
The News-Review, Roseburg, Oregon

Wallowa-Whitman National Forest

Wallowa-Whitman Forest Supervisor decisions:
Baker City Herald, Baker City, Oregon
Baker District Ranger decisions:
Baker City Herald, Baker City, Oregon
Eagle Cap District Ranger decisions:
Wallowa County Chieftain, Enterprise, Oregon
Hells Canyon National Recreational Area Ranger decisions:
Occurring in Oregon—
Wallowa County Chieftain, Enterprise, Oregon
Occurring in Idaho—
Lewiston Morning Tribune, Lewiston, ID
La Grande District Ranger decision:
The Observer, La Grande, Oregon
Pine District Ranger decisions:
Baker City Herald, Baker City, Oregon
Unity District Ranger decisions:
Baker City Herald, Baker City, Oregon
Wallowa Valley District Ranger decisions:
Wallowa County Chieftain, Enterprise, Oregon

Willamette National Forest

Willamette Forest Supervisor decisions:
Register-Guard, Eugene, Oregon
Newspapers providing additional notice of Willamette Forest Supervisor decisions:
Salem Statesman-Journal, Salem, Oregon
Albany Democrat Herald, Albany, Oregon
Blue River District Ranger decisions:
Register-Guard, Eugene, Oregon
Newspapers providing additional notice of Blue River decisions:
Salem Statesman-Journal, Salem, Oregon
Albany Democrat Herald, Albany, Oregon
Detroit District Ranger decisions:
Register-Guard, Eugene, Oregon
Newspapers providing additional notice of Detroit decisions:
SalemStatement-Journal, Salem, Oregon
Albany Democrat Herald, Albany, Oregon
Lowell District Ranger decisions:
Register-Guard, Eugene, Oregon
Newspapers providing additional notice of Lowell decisions:
Salem Statement-Journal, Salem, Oregon
Albany Democrat Herald, Albany, Oregon
McKenzie District Ranger decisions:
Register-Guard, Eugene, Oregon
Newspapers providing additional notice of McKinzie decisions:
Salem Statement-Journal, Salem, Oregon
Albany Democrat Herald, Albany, Oregon
Oakridge District Ranger decisions:
Register-Guard, Eugene, Oregon
Newspapers providing additional notice of Oakridge decisions:
Salem Statement-Journal, Salem, Oregon
Albany Democrat Herald, Albany, Oregon
Rigdon District Ranger decisions:
Register-Guard, Eugene, Oregon
Newspapers providing additional notice of Ridgon decisions:
Salem Statement-Journal, Salem, Oregon
Albany Democrat Herald, Albany, Oregon
Sweet Home District Ranger decision:
Register-Guard, Eugene, Oregon
Newspapers providing additional notice of Sweet Homes decisions:
Salem Statement-Journal, Salem, Oregon
Albany Democrat Herald, Albany, Oregon

Winema National Forest

Winema Forest Supervisor decisions:
Herald and News, Kalamath Falls, Oregon
Chemult District Ranger decisions:
Herald and News, Kalamath Falls, Oregon
Chiloquin District Ranger decisions:
Herald and News, Kalamath Falls, Oregon
Klamath District Ranger decisions:

Herald and News, Klamath Falls, Oregon

Washington National Forests

Colville National Forest

Colville Forest Supervisor decisions:
Statesman-Examiner, Colville, WA
Colville District Ranger decisions:
Statesman-Examiner, Colville, WA
Kettle Falls District Ranger decisions:
Statesman-Examiner, Colville, WA
Newport District Ranger decisions:
Newport Miner, Newport, WA
Republic District Ranger decisions:
Republic News Miner, Republic, WA
Sullivan Lake District Ranger decisions:
Newport Miner, Newport, WA

Gifford Pinchot National Forest

Gifford Pinchot Forest Supervisor decisions:
Columbian, Vancouver, Washington
Mount St. Helens National Volcanic Monument Manager decisions:
Columbian, Vancouver, Washington
Mt. Adams District Ranger decisions:
Enterprise, White Salmon, Washington
Packwood District Ranger decisions:
Chronicle, Chehalis, Washington
Randle District Ranger decisions:
Columbian, Vancouver, Washington
Wind River District Ranger decisions:
Columbian, Vancouver, Washington

Mt. Baker-Snoqualmie National Forest

Mt. Baker-Snoqualmie Forest Supervisor decisions:
Seattle Post-Intelliquencer, Seattle Washington
Darrington District Ranger decisions:
Everett Herald, Everett, Washington
Mt. Baker District Ranger decisions:
Skagit Valley Herald, Mt. Vernon, Washington
North Bend District Ranger decisions:
Valley Record, North Bend, Washington
Skykomish District Ranger decisions:
Everett Herald, Everett, Washington
White River District Ranger decisions:
Enumclaw Courier Herald; Enumclaw, Washington

Okanagon National Forest

Koanagon Forest Supervisor decisions:
Omak Chronicle, Omak, Washington
Tonasket District Ranger decisions:
The Gazette-Tribune, Oroville, Washington
Twisp District Ranger decisions:
Methow Valley News, Twisp, Washington
Winthrop District Ranger decisions:
Methow Valley News, Twisp, Washington

Olympic National Forest

Olympic Forest supervisor decisions:
The Olympian, Olympia, Washington
Newspaper providing additional notice for Olympic Forest Supervisor decisions:
Mason County Journal, Shelton, Washington
Daily World, Aberdeen, Washington
Peninsula Daily News, Port Angeles, Washington
Bremerton Sun, Bremerton, Washington
Hood Canal District Ranger decisions:
Mason County Journal, Shelton, Washington
Quilcene District Ranger decisions:
Pennisula Daily News, Port Angeles, Washington
Newspaper providing additional notice for Quilicene decisions:
Bremerton Sun, Bremerton, Washington
Quinault District Ranger decisions:
The Daily World, Aberdeen, Washington
Soleduck District Ranger decisions:
The Forks Forum, Forks, Washington

Wenatchee National Forest

Wenatchee Forest Supervisor decisions:
The Wenatchee World, Wenatchee, Washington
Newspaper providing additional notice for Wenatchee Forest Supervisor decisions:
The Yakima Herald-Republic, Yakima, Washington
Chelan District Ranger decisions:
The Wenatchee World, Wenatchee, Washington
Newspaper providing additional notice for Chelan decisions:
The Yakima Herald-Republic, Yakima, Washington
Cle Elum District Ranger decisions:
The Wenatchee World, Wenatchee, Washington
Newspaper providing additional notice for Cle Elum decisions:
The Yakima Herald-Republic, Yakima, Washington
Entiat District Ranger decisions:
The Wenatchee World, Wenatchee, Washington
Newspaper providing additional notice for Entiat decisions:
The Yakima Herald-Republic, Yakima, Washington
Lake Wenatchee District Ranger decisions:
The Wenatchee World, Wenatchee, Washington
Newspaper providing additional notice for Lake Wenatchee decisions:
The Yakima Herald-Republic, Yakima, Washington
Leavenworth District Ranger decisions:
The Wenatchee World, Wenatchee, Washington
Newspaper providing additional notice for Leavenworth decisions:
The Yakima Herald-Republic, Yakima, Washington
Naches District Ranger decisions:
The Wenatchee World, Wenatchee, Washington
Newspaper providing additional notice for Naches decisions:
The Yakima Herald-Republic, Yakima, Washington

Dated: May 9, 1994.

Nancy Graybeal,

Deputy Regional Forester.

[FR Doc. 94–11781 Filed 5–13–94; 8:45 am]

BILLING CODE 3410–11–M

Savant Sage Resource Area; Idaho Panhandle National Forests, Kootenai County, Idaho.

ACTION: Notice of availability of the final environmental impact statement for activities in the Savant Sage Resource Area.

DATES: The appeal period on this Final Environmental Impact Statement ends June 29, 1994.

APPEAL RIGHTS: Send appeals to Appeal Reviewing Officer, Regional Forester David F. Jolly, USDA Forest Service, Northern Region, Federal Building, 200 East Broadway, P.O. Box 7669, Missoula, MT 59807. Appeals must meet the requirements of 36 CFR 215.4.

FOR FURTHER INFORMATION CONTACT: Questions about the decision and environmental impact statement should be directed to Patrick Sheridan, Planning Staff Officer, Fernan Ranger District, Idaho Panhandle National Forests, 2502 East Sherman Avenue, Coeur d'Alene, ID 83814. Phone: (208) 664–2318.

SUMMARY: The notice is hereby given that the Forest Service has prepared a Final Environmental Impact Statement (EIS) documenting activities in the Savant Sage Resource Area. The area is located approximately 5 miles east of Athol, Idaho, and is approximately 7,500 acres in size.

SUPPLEMENTARY INFORMATION: The proposed action was based on a landscape-level approach to ecosystem management, and included timber harvest and reforestation in the Savant Sage Resource Area, through implementation of a single timber sale. The scope of the proposed action is limited to timber harvesting, reforestation, and related road construction and reconstruction activities. During development of the proposed action and alternatives to the proposed action, emphasis was placed

on addressing the water resource needs and visual concerns of local residents.

Five alternatives were developed, including a No-Action Alternative. Alternative 4 is the alternative selected by the Responsible Official. Alternative 4 provides resource management practices that move toward the desired future conditions for the area, described in the Forest Plan, and includes several features favored by the public: no new roads, large streamside management zones where no cutting will occur, no helicopter yarding, and protection of unfragmented habitat. Alternative 4 demonstrates a balance between protecting visual, recreation, fragmentation, biodiversity, watershed, and wildlife resources, and initiating treatment of disease conditions. It will allow for the effective re-establishment of native tree species (white pine, ponderosa pine, and western larch), and will reduce the risk of severe fires on the acres that are treated. Alternative 4 will provide timber volume to the timber industry and funds to the local counties for schools and roads.

Management activities would be administered by the Fernan Ranger District of the Idaho Panhandle National Forests in Kootenai County, Idaho. This EIS will tier to the Forest Plan (September 1987) which provides the overall guidance (Goals, Objectives, Standards and Guidelines, and Management Area direction) in achieving the desired future condition for this area.

Dated: May 1, 1994.

Donald J. Bright,

District Ranger, Fernan Ranger District, Idaho Panhandle National Forests.

[FR Doc. 94–11321 Filed 5–13–94; 8:45 am]

BILLING CODE 3410–11–M

Eastside Forest Restoration Project, Tahoe National Forest, Sierra County, CA

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare an environmental impact statement.

SUMMARY: The U.S. Department of Agriculture, Forest Service will prepare an environmental impact statement (EIS) for proposed timber harvest, plantation thinning, fire hazard reduction, watershed restoration, and wildlife habitat improvement projects for areas in the Feather River Watershed and Truckee River Watershed. The project area is located within portions of T.19N., R.14, 15, 16, & 17E., T.20N., R.14, 15, 16, & 17E., and T.21N., R.15, 16, and 17E., MDB&M.

The agency invites comments and suggestions on the scope of the analysis. In addition, the agency 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 should be made in writing and received by June 30, 1994.

ADDRESSES: Written comments concerning the project should be directed to Steve Bishop, District Ranger, Sierraville Ranger District, P.O. Box 95, Sierraville, CA 96126.

FOR FURTHER INFORMATION CONTACT: Steve Bishop, District Ranger, or Barbara Bonefeld, Public Services Director, Sierraville Ranger District, Sierraville, CA 96126, telephone (916) 994–3401.

SUPPLEMENTARY INFORMATION: The Eastside Analysis Area is about 85,000 acres in size. Most of the area is in the Feather River Watershed, with a small portion in the Truckee River Watershed. It is located two miles south of Sierraville, southwest to Webber Lake, east to the crest of the Bald Mountain Range, and north to approximately 4 miles south of Loyalton. The area is dominated by eastside pine stands with catastrophic insect-induced mortality resulting from several years of severe drought.

The extensive mortality and overstocked timber stands have resulted in poor forest health and an extreme fire hazard. There are opportunities to treat these stands in order to improve forest health and reduce the fire hazard, while concurrently accomplishing watershed restoration and wildlife habitat improvement goals.

In preparing the environmental impact statement, the Forest Service will identify and analyze a range of alternatives that address the issues developed for this area. One of the alternatives will be no treatment. Other alternatives will consider differing levels of implementation of California spotted owl standards and guidelines, salvage and sanitation treatments, group selection harvests, plantation thinning, thinnings from below, fuelbreak construction, plantation protection from fire, watershed restoration, road obliteration, wildlife habitat improvement, and new road construction and reconstruction. An ecological approach will be used to achieve multiple-use management of the Eastside area. It also means that the needs of people and environmental values will be blended in such a way that this area would represent a diverse, healthy, productive, and sustainable ecosystems.

Public participation will be important during the analysis, especially during the review of the Draft Environmental Impact Statement. The Forest Service is seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft environmental impact statement (DEIS). The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

The following list of issues has been identified through initial scoping:

(1) To what extent will future options for the management of California spotted owls be maintained?

(2) To what extent can the potential for large catastrophic wildfires be reduced within the project area?

(3) To what extent can the forest health be improved within the project area? In addition, what level of timber commodities could result from forest health improvement projects?

(4) To what extent will the view from Highway 49 and Highway 89 be affected? What will the visual character be resulting from the proposed activities and to what extent will these activities affect views from private land within the study area?

(5) To what extent will water quality in the Feather River and the Truckee River watersheds be affected by the proposed activities?

(6) To what extent will air quality in the Sierra Valley and Truckee areas be affected by proposed activities?

(7) To what extent will long term soil productivity be affected by proposed activities?

Comments from other Federal, State, and local agencies, organizations, and individuals who may be interested in, or affected by the decision, are encouraged to identify other significant issues. Public participation will be solicited through mailing letters to potentially interested or affected mining claim owners, private land owners, and special use permittees on the Sierraville

Ranger District; posting information in local towns; and mailing letters to local timber industries, politicians, school boards, county supervisors, and environmental groups. Continued participation will be emphasized through individual contacts. Public meetings used as a method of public involvement during preparation and review of the draft environmental impact statement will be announced in newspapers of general circulation in the geographic area of such meetings well in advance of scheduled dates.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by the end of January, 1995. 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, at this early stage, it is important to give reviewers notice 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 be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages Inc.* v. *Harris*, 490 F. Supp. 1334, (E.D. Wis. 1980). Because of the 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 them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The final EIS is expected to be available by May, 1995. The responsible official is John H. Skinner, Forest Supervisor, Tahoe National Forest.

Dated: May 4, 1994.

John H. Skinner,

Forest Supervisor.

[FR Doc. 94–11820 Filed 5–13–94; 8:45 am]

BILLING CODE 3410–11–M

Hawaii Tropical Forest Recovery Task Force

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The Hawaii Tropical Forest Recovery Task Force will conduct business meetings and meetings with the public on June 13 and 14, 1994. A Task Force business meeting will be held in Honolulu to review and discuss written public comments on the draft forest recovery action plan issued by the Task Force in May 1994. The Task Force will also conduct evening public comment meetings in Hilo, Hawaii and in Honolulu, Hawaii to give the public the opportunity to share their comments on the draft action plan with members of the Task Force. A Task Force business meeting will then be conducted in Kahului on the island of Maui to finalize the action plan. A period of time will be available at that meeting for the public to share their comments on the draft action plan with members of the Task Force. All sessions are open to the public. A detailed meeting agenda is available from the Task Force Coordinator.

The Task Force is composed of 12 members, including the Administrator of the Department of Land and Natural Resources, State of Hawaii, and 11 others appointed by the Governor of Hawaii and the Secretaries of Agriculture and the Interior.

DATES: On June 12, 1994, the Task Force business meeting in Honolulu on the island of Oahu will be held from 10 a.m. to 1 p.m. From 6 p.m. to 8 p.m., concurrent public comment meetings will be held in Honolulu, and in Hilo on the island of Hawaii. On June 14, 1994, the business meeting in Wailuku on the island of Maui will be held from 11 a.m. to 4 p.m..

ADDRESSES: The June 13 Task Force business meeting in Honolulu and the evening public comment meeting will be in the Department of Land and Natural Resources Board Room, located on the ground floor, oceanside, in the Kalanimoku Building, 1151 Punchbowl Street, Honolulu, Hawaii. The June 13 Hilo public comment meeting will be held in the Ola Ballroom at the Hilo Hawaiian Hotel, 71 Banyan Drive, Hilo, Hawaii. The concluding June 14 Task Force business meeting will be held in the Nahele Room, Sandalwood Golf Course, 2500 Honoapiilani Highway, Wailuku, on the island of Maui.

FOR FURTHER INFORMATION CONTACT:

Jan Lerum, Coordinator, Hawaii Tropical Forest Recovery Task Force, 1151 Punchbowl Street, room 323, Honolulu, HI 96813, Telephone: (808) 522–8233, FAX: (808) 522–8236.

Dated: May 10, 1994.

Michael T. Rains,

Associate Deputy Chief, State and Private Forestry.

[FR Doc. 94–11755 Filed 5–13–94; 8:45 am]

BILLING CODE 3410–11–M

Packers and Stockyards Administration

Deposting of Stockyards

Notice is hereby given, that the livestock markets named herein, originally posted on the dates specified below as being subject to the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*), no longer come within the definition of a stockyard under the Act and are therefore, no longer subject to the provisions of the Act.

Facility No., name, and location of stockyard	Date of posting
MO–131, Callaway Livestock Center, Inc. Fulton, Missouri.	May 11, 1959.
TX–142 Clifton Livestock Commission Company, Inc. Clifton, Texas.	March 19, 1957.

This notice is in the nature of a change relieving a restriction and, thus, may be made effective in less than 30 days after publication in the **Federal Register** without prior notice or other public procedure. This notice is given pursuant to section 302 of the Packers and Stockyards Act (7 U.S.C. 202) and is effective upon publication in the **Federal Register**.

Done at Washington, D.C. this 10th day of May, 1994.

Tommy Morris,

Acting Director, Livestock Marketing Division.

[FR Doc. 94–11768 Filed 5–13–94; 8:45 am]

BILLING CODE 3210–KD–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New Mexico Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the New Mexico Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 3 p.m. on June 14, 1994, at the Albuquerque Hilton, 1901 University Boulevard, NE., Albuquerque, New Mexico 87102. The purpose of the meeting is to plan future activities in northwestern New Mexico.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Emma Armendariz or Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–0508). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 6, 1994.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 94–11803 Filed 5–13–94; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1995 Census Test – Precanvass Operation.

Form Number(s): DG–102A thru DG–102D, DG–328.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 4,605 hours.

Number of Respondents: 92,100.

Avg Hours Per Response: 3 minutes.

Needs and Uses: In preparation for the Year 2000 Decennial Census, the Census Bureau will conduct a test census in 1995 of five test sites around the United States. We will conduct a precanvass operation at three of the test sites classified as urban areas. The precanvass operation will identify and collect a complete mailing address for every housing unit not already appearing in the Census Bureau's Master Address File (MAF). The MAF consists of 1990 census addresses updated with recently acquired United States Post Service (USPS) address records. During precanvass, enumerators will conduct interviews with homeowners and owners or managers of multiunit buildings. Unit addresses will be corrected, deleted, or added to a listing given to the enumerators. This operation will test the completeness of USPS address records and the quality of forms and procedures to be implemented for the Year 2000 Decennial Census.

Affected Public: Individuals or households.

Frequency: One time only.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: May 11, 1994.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 94–11872 Filed 5–13–94; 8:45 am]

BILLING CODE 3510–07–F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1992 Economic and Agriculture Censuses—1994 Farm and Ranch Irrigation Survey.

Form Number(s): 94–A62.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 14,400 hours.

Number of Respondents: 20,000.

Avg Hours Per Response: 43 minutes.

Needs and Uses: The 1994 Farm and Ranch Irrigation Survey will update data on irrigation inputs and investment in the agricultural production sector. Inadequate surface water, overuse of ground water, concerns about water quality, and increasing competition for available water are currently recognized as problems of national concern. Agricultural irrigation is the largest single use of available U.S. water supplies. Farm and ranch irrigation surveys have provided the only source of detailed, nationally consistent data on water–management practices and water uses in American agriculture. The 1994 Farm and Ranch Irrigation Survey will obtain data to describe the irrigation activities of U.S. farm operations. The survey will collect critically needed data on issues of national concern, such as water conservation practices and the chemical application practices of irrigators. Federal and state agencies, the irrigation industry, agricultural producers, and universities will use the results of the survey in preparing a wide variety of water–related programs, economic models, legislative initiatives, market analyses, and feasibility studies.

Affected Public: Farms.

Frequency: Every 5 years.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: May 11, 1994.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 94–11871 Filed 5–13–94; 8:45 am]

BILLING CODE 3510–07–F

Bureau of Export Administration

Action Affecting Export Privileges; Solomon Schwartz

Order Denying Permission to Apply for or Use Export Licenses

In the matter of: Solomon Schwartz, Number 2 Hillside Terrace, Suffern, New York 10901.

On January 29, 1992, Solomon Schwartz (hereinafter referred to as "Schwartz") was convicted in the U.S. District Court for the Eastern District of New York of, among other crimes, four

counts of violating the Arms Export Control Act (22 U.S.C.A. § 2778 (1990, Supp. 1993)) (the "AECA"), for exporting night vision devices to Argentina and the Soviet Union, and for exporting firearms and ammunition to Iraq and Poland, without obtaining the required licenses or written approval from the U.S. Department of State. Section 11(h) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401–2420 (1991, Supp. 1993, and Pub. L. No. 103–10, March 27, 1993)) (the "EAA"), provides that, at the discretion of the Secretary of Commerce,[1] no person convicted of violating the AECA, or certain other provisions of the United States Code, shall be eligible to apply for or use any export license issued pursuant to, or provided by, the EAA or the Export Administration Regulations (currently codified at 15 CFR Parts 768–799 (1993)) (the "Regulations"), for a period of up to 10 years from the date of the conviction. In addition, any export license issued pursuant to the EAA in which such a person had any interest at the time of his conviction may be revoked.

Pursuant to §§ 770.15 and 772.1(g) of the Regulations, upon notification that a person has been convicted of violating the AECA, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person permission to apply for or use any export license issued pursuant to, or provided by, the EAA and the Regulations and shall also determine whether to revoke any export license previously issued to such a person. Having received notice of Schwartz's conviction for violating the AECA, the following consultations with the Director, Office of Export Enforcement, I have decided to deny Schwartz permission to apply for or use any export license, including any general license, issued pursuant to, or provided by, the EAA and the Regulations, for a period of 10 years from the date of his conviction. The 10-year period ends on January 29, 2002. I have also decided to revoke all export licenses issued pursuant to the EAA in which Schwartz had an interest at the time of his conviction.

Accordingly, it is *hereby Ordered*

I. All outstanding individual validated licenses in which Schwartz appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Schwartz's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II. Until January 29, 2002, Solomon Schwartz, Number 2, Hillside Terrace, Suffern, New York 10901, hereby is denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, in whole or in part, and subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license, reexport authorization or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States, and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

III. After notice and opportunity for comment as provided in § 770.15(h) of the Regulations, any person, firm, corporation, or business organization related to Schwartz by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. As provided in § 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) in any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

V. This Order is effective immediately and shall remain in effect until January 29, 2002.

VI. A copy of this Order shall be delivered to Solomon Schwartz. This Order shall be published in the **Federal Register**.

Date: May 4, 1994.

Eileen M. Albanese,

Acting Director, Office of Export Licensing.

[FR Doc. 94–11823 Filed 5–13–94; 8:45 am]

BILLING CODE 3510–DT–M

[1] Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by Section 11(h) of the EAA.

Action Affecting Export Privileges; Grimm DePanicis; Order Denying Permission to Apply for or Use Export Licenses

In the matter of Grimm DePanicis, 529 East 7th Avenue, Mount Dora, Florida 32757.

On June 24, 1991, Grimm DePanicis (hereinafter referred to as "DePanicis") was convicted in the U.S. District Court for the Eastern District of New York of, among other crimes, one count of violating the Arms Export Control Act (22 U.S.C.A. 2778 (1990, Supp. 1993)) (the "AECA"), for exporting firearms and ammunition to Iraq without obtaining the required licenses or written approval from the U.S. Department of State. Section 11(h) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401–2420 (1991), Supp. 1993, and Public Law No. 103–10, March 27, 1993)) (the "EAA"), provides that, at the discretion of the Secretary of Commerce,[1] no person convicted of violating the AECA, or certain other provisions of the United States Code, shall be eligible to apply for or use any export license issued pursuant to, or provided by, the EAA or the Export Administration Regulations

[1] Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by section 11(h) of the EAA.

(currently codified at 15 CFR parts 768–799 (1993)) (the "Regulations"), for a period of up to 10 years from the date of the conviction. In addition, any export license issued pursuant to the EAA in which such a person had any interest at the time of his conviction may be revoked.

Pursuant to §§ 770.15 and 772.1(g) of the Regulations, upon notification that a person has been convicted of violating the AECA, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person permission to apply for or use any export license issued pursuant to, or provided by, the EAA and the Regulations and shall also determine whether to revoke any export license previously issued to such a person. Having received notice of DePanicis' conviction for violating the AECA, and following consultations with the Director, Office of Export Enforcement, I have decided to deny DePanicis permission to apply for or use any export license, including any general license, issued pursuant to, or provided by, the EAA and the Regulations, for a period of 10 years from the date of his conviction. The 10-year period ends on June 24, 2001. I have also decided to revoke all export licenses issued pursuant to the EAA in which DePanicis had an interest at the time of his conviction.

Accordingly, it is *hereby Ordered*

I. All outstanding individual validated licenses in which DePanicis appears or participated, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of DePanicis' privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II. Until June 24, 2001, Grimm DePanicis, 529 East 7th Avenue, Mount Dora, Florida 32757, hereby is denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving in any commodity or technical data exported or to be exported from the United States, in whole or in part, and subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license, reexport authorization or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States, and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

III. After notice and opportunity for comment as provided in § 770.15(h) of the Regulations, any person, firm, corporation, or business organization related to DePanicis by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. As provided in § 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) in any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in directly or indirectly, any of these transactions.

V. This Order is effective immediately and shall remain in effect until June 24, 2001.

VI. A copy of this Order shall be delivered to Grimm DePanicis. This Order shall be published in the **Federal Register**.

Dated: May 4, 1994.

Eileen M. Albanese,

Acting Director, Office of Export Licensing.

[FR Doc. 94–11821 Filed 5–13–94; 8:45 am]

BILLING CODE 3510–DT–M

Action Affecting Export Privileges; Leon Albert Lisbona; Order Denying Permission to Apply for or Use Export Licenses

In the matter of: Leon Albert Lisbona, 110–46 68th Drive, Forest Hills, New York 11375 currently incarcerated at: U.S. Bureau of Prisons, Federal Correctional Institute, Allenwood, Post Office Box 1000, Montgomery, Pennsylvania 17752.

On January 29, 1992, Leon Albert Lisbona (hereinafter referred to as "Lisbona") was convicted in the U.S. District Court for the Eastern District of New York of, among other crimes, four counts of violating the Arms Export Control Act (22 U.S.C.A. 2778 (1990, Supp. 1993)) (the "AECA"), for exporting night vision devices to Argentina and the Soviet Union and for exporting firearms and ammunition to Iraq and Poland, without obtaining the required licenses or written approval from the U.S. Department of State. Section 11(h) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. sections 2401–2420 (1991, Supp. 1993, and No. 103–10, March 27, 1993)) (the "EAA"), provides that, at the discretion of the Secretary of Commerce,[1] no person convicted of violating the AECA, or certain other provisions of the United States Code, shall be eligible to apply for or use any export license issued pursuant to, or provided by, the EAA or the Export Administration Regulations (currently codified at 15 CFR parts 768–799 (1993)) (the "Regulations"), for a period of up to 10 years from the date of the conviction. In addition, any export license issued pursuant to the EAA in which such a person had any interest at the time of his conviction may be revoked.

Pursuant to §§ 770.15 and 772.1(g) of the Regulations, upon notification that a person has been convicted of violating the AECA, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person permission to apply for or use any export license issued pursuant to, or provided by, the EAA and the

[1] Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by section 11(h) of the EAA.

Regulations and shall also determine whether to revoke any export license previously issued to such a person. Having received notice of Lisbona's conviction for violating the AECA, and following consultations with the Director, Office of Export Enforcement, I have decided to deny Lisbona permission to apply for or use any export license, including any general license, issued pursuant to, or provided by, the EAA and the Regulations, for a period of 10 years from the data of his conviction. The 10-year period ends on January 29, 2002. I have also decided to revoke all export licenses issued pursuant to the EAA in which Lisbona had an interest at the time of his conviction.

Accordingly, it is hereby

Ordered

I. All outstanding individual validated licenses in which Lisbona appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Lisbona's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II. Until January 29, 2002, Leon Albert Lisbona, 110–46 68th Drive, Forest Hills, New York 11375, currently incarcerated at U.S. Bureau of Prisons, Federal Correctional Institute—Allenwood, Post Office Box 1000, Montgomery, Pennsylvania 17752, hereby is denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, in whole or in part, and subject to the Regulations. Without limiting the generality of the foregoing, participating, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license, reexport authorization or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States, and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

III. After notice and opportunity for comment as provided in § 770.15(h) of the Regulations, any person, firm, corporation, or business organization related to Lisbona by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. As provided in § 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) in any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

V. This Order is effective immediately and shall remain in effect until January 29, 2002.

VI. A copy of this Order shall be delivered to Leon Albert Lisbona. This Order shall be published in the **Federal Register**.

Dated: May 4, 1994.

Eileen M. Albanese,

Acting Director, Office of Export Licensing.

[FR Doc. 94–11822 Filed 5–13–94; 8:45 am]

BILLING CODE 3510–DT–M

Foreign-Trade Zones Board

[Docket 17–94]

Foreign-Trade Zone 84—Houston, TX; Application for Subzone Status Microwave Networks, Inc. (Microwave Radios)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port of Houston Authority, grantee of FTZ 84, requesting special-purpose subzone status for the microwave radio manufacturing plant of Microwave Networks, Inc. (MNI), located in Houston, Texas. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on April 29, 1994.

The MNI plant is located at 10795 Rockley Road, in Harris County, Houston, Texas. The facility (3.5 acres, 240 employees) is used to manufacture microwave radios for use in cellular and other wireless communication networks (duty rates: 2.4% to 6%). Foreign-origin materials used in the manufacturing process (some 70% of total) include: Electronic transformers, multiplexors, antennnas, transmitters/receivers, capacitors, resistors, printed circuits, diodes, transistors, integrated circuits, insulated wire, coaxial cable, flexible RF waveguide and waveguide parts (duty rates: duty-free to 10%). The application indicates that privileged foreign status (19 CFR 146.41) would be elected on all foreign merchandise admitted to the subzone.

Zone procedures would exempt MNI from Customs duty payments on the foreign materials used in export production (90% of output). On domestic sales, MNI would be able to defer Customs duty payments until the finished products leave the plant. Foreign materials and finished products held for export would be eligible for an exemption from certain state and local ad valorem taxes. The application indicates that the savings from zone procedures would help improve MNI's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been appointed examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is July 15, 1994. Rebuttal comments in response to material

submitted during the foregoing period may be submitted during the subsequent 15-day period August 1, 1994.

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce District Office #1 Allen Center, 500 Dallas, Suite 1160 Houston, TX 77002.

Office of the Executive Secretary Foreign-Trade Zones Board U.S. Department of Commerce, Room 3716,14th Street & Constitution Avenue NW., Washington, DC 20230.

Dated: May 9, 1994.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 94–11868 Filed 5–13–94; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–427–812]

Amendment of Final Determination of Sales at Less Than Fair Value: Calcium Aluminate Flux From France

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 16, 1994.

FOR FURTHER INFORMATION CONTACT: V. Irene Darzenta or Katherine Johnson, Office of Antidumping Duty Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–6320 or (202) 482–4929, respectively.

Amendment to the Final Determination

We are amending the final determination of sales at less than fair value of calcium aluminate (CA) flux from France to reflect the correction of a ministerial error made in the margin calculations in that determination. We are publishing this amendment to the final determination in accordance with 19 CFR 353.28(c).

Scope of Investigation

The merchandise subject to this investigation is CA flux, other than white, high purity CA flux. This product contains by weight more than 32 percent but less than 65 percent alumina and more than one percent each of iron and silica.

CA flux is currently classifiable under *Harmonized Tariff Schedule of the United States* (HTSUS) subheading 2523.10.0000. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this investigation remains dispositive.

Case History and Amendment of Final Determination

In accordance with section 735(d) of the Tariff Act of 1930, as amended (the Act), on March 25, 1994, the Department of Commerce (the Department) published its final determinations that CA cement, cement clinker and flux from France were being sold at less than fair value (59 FR 14136). Subsequent to the final determinations, we received ministerial error allegations by both petitioner and respondent in these investigations.

On April 8, 1994, Lafarge Fondu International and its U.S. subsidiary Lafarge Calcium Aluminates, Inc. (collectively Lafarge), the sole respondent in these investigations, alleged that the Department made a ministerial error in the final margin calculation for CA cement and clinker. Respondent alleged that the Department "inadvertently" used the wrong fixed costs for the period of investigation (POI) to calculate the constructed value (CV) of CA clinker and the foreign manufacturing cost of CA clinker used to allocate profit on U.S. sales of further manufactured CA clinker (*i.e.*, U.S. sales of CA cement). Specifically, respondent claimed that the Department "inadvertently" used the POI fixed costs that Lafarge reported in its initial response to Section D of the Department's questionnaire submitted on August 19, 1994, for its clinker CV and further manufacturing profit calculation. Respondent argued that the Department should have used the revised POI costs that were submitted in a subsequent supplemental questionnaire response dated September 28, 1993, and ultimately verified by the Department after some minor corrections were made based on the information contained in a relevant cost verification exhibit.

On April 20, 1994, we rejected respondent's allegation on the grounds that the alleged error did not constitute a "ministerial error" as defined in the Department's regulations. (See April 20, 1994, Memorandum to Barbara R. Stafford from The Team Re. Ministerial Error Allegations.) We stated in the **Federal Register** notice announcing our final determinations that we were "us[ing] only the *reported* fixed costs for the POI as [best information available] BIA." (emphasis added) (See 59 FR 14136, March 25, 1994.) That is, we explicitly chose the cost data that we used. Moreover, respondent alleged a "ministerial" error based on our *choice* of fixed costs used in the final determination. These are not "ministerial" actions. 19 CFR 353.28(d) defines "ministerial error" as "an error in addition, subtraction or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the Secretary considers ministerial." Contrary to respondent's allegation, the alleged error was neither "clerical" nor "unintentional" in nature. As our choice of BIA is a methodological issue, this is not an issue of ministerial error properly raised under 19 CFR 353.28.

On April 12, 1994, we received an allegation from the petitioner, Lehigh Portland Cement Company (Lehigh), that the Department made a ministerial error in the final margin calculation for CA flux. Lehigh alleged that the Department erred by double counting the cost of raw materials used to calculate the foreign manufacturing cost of CA flux for purposes of allocating profit on U.S. sales of further manufactured flux. Specifically, Lehigh alleged that the Department's computer program for calculating the weighted-average dumping margin for CA flux contained an instruction which overstated the cost of foreign manufacture used to calculate profit associated with U.S. further manufacturing because it double counted the cost of raw materials. Petitioner requested that the Department correct this clerical error by deleting the extraneous field from the computer program.

We agree that this alleged error is a ministerial one. Upon re-examination of the final computer program relevant to CA flux, we noted that raw material costs had indeed been inadvertently double counted in the manner described above. Therefore, we have corrected the data in question, and have recalculated the margin in our final determination for CA flux to reflect this correction in accordance with 19 CFR 353.28(c). The corrected margin is 37.93 percent.

Based on the foregoing, the cash deposit or bonding rate for Lafarge is now 37.93 percent. The cash deposit or bonding rate for the "All Others" category is also now 37.93 percent.

Suspension of Liquidation

We are directing the Customs Service to suspend liquidation of all entries of CA flux from France that are entered, or withdrawn from warehouse, for consumption on or after March 25, 1994, at the revised cash deposit or bonding rates specified above.

Notification of International Trade Commission (ITC)

In accordance with section 735(d) of the Tariff Act of 1930, as amended (the Act), we have notified the ITC of our amended final determination.

This amended determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)) and 19 CFR 353.28(c).

Dated: May 9, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–11870 Filed 5–13–94; 8:45 am]

BILLING CODE 3510–DS–P

Postponement of the Preliminary Determinations of Antidumping Duty Investigations: Stainless Steel Bar From Brazil, India, Italy, Japan, and Spain

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 16, 1994.

FOR FURTHER INFORMATION CONTACT: Irene Darzenta or Shawn Thompson, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–6320, or (202) 482–3965, respectively.

POSTPONEMENT: On April 26, 1994, AL Tech Specialty Steel Corp., Carpenter Technology Corp., Crucible Specialty Metals Division, Electralloy Corporation, Republic Engineered Steels, Slater Steels Corporation, Talley Metals Technology, Inc. and the United Steelworkers of America, AFL–CIO/CLC, petitioners in the above-referenced investigations, requested that the Department of Commerce (the Department) postpone its preliminary determinations until July 28, 1994. Petitioners made this request in order to permit further analysis of the respondents' questionnaire responses in the investigations of stainless steel bar from India, Italy and Spain. Furthermore, petitioners stated that postponements are necessary to permit them to determine whether the record contains evidence to support allegations that home market sales were made at prices below the cost of production in India and Italy. Finally, petitioners request that the investigations of stainless steel bar from Brazil and Japan be postponed in order to keep all five investigations on the same time table.

In accordance with section 733(c)(1)(A) of the Tariff Act of 1930, as amended (the Act), (19 U.S.C. 1673b(c)(1)(A)) and 19 CFR 353.15(c), we find no compelling reason to deny the request and are, accordingly, postponing the date of all five preliminary determinations until July 28, 1994.

This notice is published pursuant to section 733(c)(2) of the Act and 19 CFR 353.15(d).

Dated: May 9, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–11869 Filed 5–13–94; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[I.D. 042194A]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of modification to permit no. 748 (P77#50).

SUMMARY: Notice is hereby given that on May 3, 1994, Permit No. 748, issued to the Southwest Fisheries Science Center, NMFS, P.O. Box 271, La Jolla, CA 92038, was modified.

ADDRESSES: The modification and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/712–2289); and

Director, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802, (310/980–4016).

SUPPLEMENTARY INFORMATION: The subject modification has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of §§ 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the provisions of § 222.25 of the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

Permit No. 748, which authorizes photo-identification studies and aerial surveys for a number of cetacean species, was modified to extend the effective date through July 31, 1996.

Dated: May 3, 1994.

William W. Fox, Jr.

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–11782 Filed 5–13–94; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title; Applicable Form, and OMB Control Number: Application for DoD Military Serial Support or Community Relations Events; DD Form 2535; OMB Control Number 0704–0290

Type of Request: Revision

Number of Respondents: 2,000

Responses Per Respondent: 1

Annual Responses: 2,000

Average Burden Per Response: 30 minutes

Annual Burden Hours: 1,000

Needs and Users: The information collected hereby, provides the DoD approving authority with the data necessary to evaluate a rule on requests from the public for military aerial support at community relations events

Affected Public: Individuals or households; States or local governments; Federal agencies or employees; and Non-profit institutions

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: May 11, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–11874 Filed 5–13–94; 8:45 am]

BILLING CODE 5000–04–M

Department of the Air Force

USAF Scientific Advisory Board Meeting

The Space Mission Panel of the USAF Scientific Advisory Board will meet on 7–8 June 1994 at AF Space Command from 8 a.m. to 5 p.m.

The purpose of this meeting will be to receive briefings and gather information related to space debris and the resulting hazards to spacecraft.

The meeting will be closed to the public in accordance with Section 552b of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 94–11815 Filed 5–13–94; 8:45 am]

BILLING CODE 3910–01–P

USAF Scientific Advisory Board Meeting

The Training Panel of the USAF Scientific Advisory Board's 1994 Summer Study on "Mission Support & Enhancement for Foreseeable Aircraft Force Structure" will meet on 28–30 June 1994 at Charleston AFB, SC and Fort Rucker, AL from 8 a.m. to 5 p.m.

The purpose of this meeting will be to receive briefings and gather information related to extending the service life of current inventory aircraft.

The meeting will be closed to the public in accordance with section 552b of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 94–11816 Filed 5–13–94; 8:45 am]

BILLING CODE 3910–01–P

USAF Scientific Advisory Board Meeting

The Training Panel of the USAF Scientific Advisory Board's 1994 Summer Study On "Mission Support & Enhancement for Foreseeable Aircraft Force Structure" will meet on 14–16 June 1994 at The ANSER Corporation, 1215 Jefferson Davis Highway, Arlington, VA and The Institute for Defense Analysis, Washington, DC from 8 a.m. to 5 p.m.

The purpose of this meeting will be to receive briefings and gather information related to extending the service life of current inventory aircraft.

The meeting will be closed to the public in accordance with section 552b of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 94–11817 Filed 5–13–94; 8:45 am]

BILLING CODE 3910–01–P

Department of the Army

Availability of Patents for Exclusive, Partially Exclusive or Nonexclusive Licenses

AGENCY: U.S. Army Aviation and Troop Command, DOD.

ACTION: Notice of availability.

SUMMARY: The Department of the Army announces the general availability of exclusive, partially exclusive or nonexclusive licenses under the following patent. Any licenses granted shall comply with 35 U.S. Code 209 and 37 CFR part 404.

Issued patent	Title	Issue date
5,303,883	Gliding decelerator including an assembly for improving the lift to drag ratio associated therewith.	04/19/94

ADDRESSES: U.S. Army Natick Research, Development and Engineering Center, Office of Chief Counsel, Attn: Patents, Natick, MA 01760–5035.

FOR FURTHER INFORMATION CONTACT: Mr. John T. Stone, Chief Counsel or Ms. Jessica M. Niro, Paralegal Specialist, (508) 651–4322.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94–11802 Filed 5–13–94; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Morgantown Energy Technology Center; Financial Assistance Award (Grant Renewal)

AGENCY: U.S. Department of Energy (DOE), Morgantown Energy Technology Center.

ACTION: Notice of noncompetitive financial assistance renewal award.

SUMMARY: Based upon a determination made pursuant to 10 CFR 600.7(b)(2)(i) Criteria (A), the DOE, Morgantown Energy Technology Center (METC) gives notice of its plans to award a grant renewal to Syracuse University, Department of Chemical Engineering & Materials Science Department, c/o Office of Sponsored Programs, 113 Bowne Hall, Syracuse, NY 13244–1200, in the amount of approximately $150,000 and covers a twelve (12) month budget period.

FOR FURTHER INFORMATION CONTACT: Beverly J. Harness, I–07, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26507–0880. Telephone: (304) 291–4089. Procurement Request No. 21–94MC28072.501.

SUPPLEMENTARY INFORMATION: The pending award is based on a renewal application for continuing work of an activity presently being funded by DOE and for which competition for support would have a significant adverse effect on continuity or completion of the activity. The grant is to provide financial assistance to Syracuse University for conducting research focused on the utilization of low-quality natural gas by economically upgrading the gas to pipeline quality via membrane separation processes. The objective of this follow-on effort is to evaluate the potential usefulness of membrane separation processes for the removal of acid gases, water vapor, and nitrogen from low-quality natural gas. The effort will comprise gas permeability and separation measurements, process design studies, and economic evaluations using novel membrane configurations which were developed under the current grant. By providing financial support, DOE expects to stimulate utilization of U.S. natural gas resources, reduce oil imports, and help stabilize our energy supply.

Louie L. Calaway,

Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 94–11865 Filed 5–13–94; 8:45 am]

BILLING CODE 6450–01–P

Advisory Committee on Demonstration and Commercial Application of Renewable Energy and Energy Efficiency Technologies

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

NAME: Advisory Committee on Demonstration and Commercial Application of Renewable Energy and Energy Efficiency Technologies.

DATE AND TIME: June 7, 1994, 9 a.m.–5 p.m.; June 8, 1994, 9 a.m.–12 p.m.

PLACE: The Madison Hotel, 15th & M Street NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Elaine Guthrie, Office of Technical Assistance (EE–542), Energy Efficiency and Renewable Energy, U.S. Department of Energy, Washington, DC 20585, Telephone 202/586–1719.

SUPPLEMENTARY INFORMATION: Purpose of the Committee: To advise the Secretary of Energy on the development of the solicitation and evaluation criteria for commercialization ventures, and on otherwise carrying out her responsibilities under the Renewable Energy and Energy Efficiency Technology Competitiveness Act of 1989 (Pub. L. 101–218, 42 U.S.C. 12005), as amended by the Energy Policy Act of 1992 (Pub. L. 102–486, 42 U.S.C. 13201).

Tentative Agenda: Briefings and discussion of:

Orientation of Members;
Background of 1994 Solicitation Process;
Alternative Financial Mechanisms;
FY 1995 Congressional Appropriations;
Committee Work Plan;
Other Matters Requiring Committee Consideration;
Public Comment Period (10 minute rule).

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Elaine Guthrie at the address or telephone number listed above. Requests to make oral presentations must be received 5 days prior to the meeting; reasonable provisions will be made to include the statement in the agenda. The Chair of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on May 10, 1994.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 94–11866 Filed 5–13–94; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. MG88–14–003]

Black Marlin Pipeline Co.; Filing

May 10, 1994.

Take notice that on April 22, 1994, Black Marlin Pipeline Company (Black Marlin) filed revised procedures under Order Nos. 497 *et seq.*[1] Black Marlin's filing is in response to Order No. 497–F which, among other things, required Black Marlin to show cause why it should not be required to remove the operating employee restrictions from its Standards E and F, 18 CFR 161.3 (e) and (f).[2] Black Marlin filed, under protest, revised standards of conduct procedures that remove the reference to "operating" from its Standards E and F. Black Marlin's filing also reflects that its electronic bulletin board is now internally managed.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protests should be filed on or before May 25, 1994. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–11772 Filed 5–13–94; 8:45 am]

BILLING CODE 6717–01–M

[1] Order No. 497, 53 FR 22139 (June 14, 1988), III FERC Stats. & Regs. ¶ 30,920 (1988); Order No. 497–A (*order on rehearing*), 54 FR 52781 (December 22, 1989), III FERC Stats. & Regs. 30,868 (1989); Order No. 497–B (*order extending sunset date*), 55 FR 53291 (December 28, 1990), III FERC Stats. & Regs. ¶ 30,908 (1990); Order No. 497–C (*order extending sunset date*), 57 FR 9 (January 2, 1992), III FERC Stats. & Regs. ¶ 30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); *Tenneco Gas* v. *FERC* (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992); Order No. 497–D (*order on remand and extending sunset date*), 61 FERC ¶ 61,307 (December 4, 1992), 57 FR 58978 (December 14, 1992); Order No. 497–E (*order on rehearing and extending sunset date*), 59 FR 243 (January 4, 1994), FERC Stats. & Regs. ¶ 30,987 (December 23, 1993); Order No. 497–F (*order denying rehearing and granting clarification*), 66 FERC ¶ 61,347 (March 24, 1994).

[2] Standard E provides that a pipeline may not disclose to its affiliate any information the pipeline receives from a nonaffiliated shipper or potential nonaffiliated shipper.

Standard F provides that to the extent a pipeline provides to a marketing affiliate information related to transportation of natural gas, it must provide that information contemporaneously to all potential shippers, affiliated and nonaffiliated, on its system.

[Docket No. RP93–187–007]

Equitrans, Inc.; Proposed Changes in FERC Gas Tariff

May 10, 1994.

Take notice that on May 4, 1994, Equitrans, Inc. (Equitrans) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following proposed tariff sheets:

Sub 3rd Sub Second Revised Sheet No. 5
Sub 3rd Sub First Revised Sheet No. 7

The proposed tariff sheets contain an effective date of March 1, 1994.

On April 20, 1994, the Commission issued an Order on Rehearing and Motion Filing in the instant proceeding. The Commission required Equitrans to file revised tariff sheets that specify the amount of the demand surcharge resulting from Equitrans' proposed stranded cost treatment of certain company-owned production costs and well plugging costs. Equitrans states that the revised rate sheets are filed in compliance with the Commission's order, and contain separate columns showing the base tariff rates and the stranded cost surcharge for each service to which the surcharge applies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 17, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the

Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–11774 Filed 5–13–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–306–000]

Keystone Energy Service Co. L.P.; Issuance of Order

May 10, 1994.

On December 20, 1993, as supplemented on February 23, 1994, Keystone Energy Service Company, L.P. (Keystone) filed a power sale agreement with Atlantic City Electric Company. Keystone also requested waiver of various Commission Regulations. In particular, Keystone requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Keystone.

On April 28, 1994, the Commission granted the request for blanket approval under 18 CFR part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Keystone should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Keystone is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Keystone's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is May 31, 1994. Copies of the full text of the Order are available from the Commission's Public Reference Branch, room 3308, 941 North Capital Street N.E., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 94–11770 Filed 5–13–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MG91–1–004]

National Fuel Gas Supply Corp.; Filing

May 10, 1994.

Take notice that on April 20, 1994, National Fuel Gas Supply Corporation (National Fuel) filed revised procedures under Order Nos. 497 *et seq.*[1] National Fuel's revisions reflect changes to Standard F, 18 CFR 161.3(f) (1993), instituted in Order Nos. 497–D and 497–E.[2]

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protests should be filed on or before May 25, 1994. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–11773 Filed 5–13–94; 8:45 am]

BILLING CODE 6717–01–M

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[1] Order No. 497, 53 FR 22139 (June 14, 1988), III FERC Stats. & Regs. ¶ 30,920 (1988); Order No. 497–A (*order on rehearing*), 54 FR 52781 (December 22, 1989), III FERC Stats. & Regs. 30,868 (1989); Order No. 497–B (*order extending sunset date*), 55 FR 53291 (December 28, 1990), III FERC Stats. & Regs. ¶ 30,908 (1990); Order No. 497–C (*order extending sunset date*), 57 FR 9 (January 2, 1992), III FERC Stats. & Regs. ¶ 30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); *Tenneco Gas* v. *FERC* (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992); Order No. 497–D (*order on remand and extending sunset date*), 61 FERC ¶ 61,307 (December 4, 1992), 57 FR 58978 (December 14, 1992); Order No. 497–E (*order on rehearing and extending sunset date*), 59 FR 243 (January 4, 1994), FERC Stats. & Regs. ¶ 30,987 (December 23, 1993); Order No. 497–F (*order denying rehearing and granting clarification*), 66 FERC ¶ 61,347 (March 24, 1994).

[2] Standard F currently provides that to the extent a pipeline provides to a marketing affiliate information related to transportation of natural gas, it must provide that information contemporaneously to all potential shippers, affiliated and nonaffiliated, on its system.

[Docket No. TM94–9–59–000]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

May 10, 1994.

Take notice that on May 5, 1994, Northern Natural Gas Company (Northern), tendered for filing changes in its FERC Gas Tariff, Fifth Revised Volume No. 1, Ninth Revised Sheet No. 53, to become effective May 1, 1994.

Northern states that Ninth Revised Sheet No. 53 is being filed to establish the April 1994, Index Price for determining the dollar/volume equivalent for any transportation imbalances that may exist on contracts between Northern and its Shippers.

Northern states that copies of the filing were served upon the company's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC, 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 17, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant parties to the proceedings. 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 inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–11778 Filed 5–13–94; 8:45 am]

BILLING CODE 6717–01–M

Southern Natural Gas Co.; Resubmitted Tariff Sheet

[Docket No. RP94–67–010]

May 10, 1994.

Take notice that on May 4, 1994, Southern Natural Gas Company (Southern) filed to resubmit language that was inadvertently omitted from Southern's tariff. In accordance with the Commission's orders dated March 16, 1994 and March 31, 1994 in the above referenced docket Southern submitted for filing on April 15, 1994, revised tariff sheets to its FERC Gas Tariff, Seventh Revised Volume No. 1. As a result of inadvertently omitting certain language, Southern resubmitted the following tariff sheet with the proposed effective date of April 1, 1994:

First Substitute Second Revised Sheet No. 202

Southern states that copies of the filing were served upon Southern's customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before May 17, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of Southern's filing are on file with the Commission and are available for public inspection.

Linwood S. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–11775 Filed 5–13–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–230–000]

Tenaska Washington Partners II, L.P.; Issuance of Order

May 10, 1994.

On December 10, 1993, Tenaska Washington Partners II, L.P. (Tenaska) filed a power sale agreement with Bonneville Power Administration. Tenaska also requested waiver of various Commission regulations. In particular, Tenaska requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Tenaska.

On April 28, 1994, the Commission granted the request for blanket approval under 18 CFR part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Tenaska should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Tenaska is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Tenaska's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is May 31, 1994. Copies of the full text of the order are available from the Commission's Public Reference Branch, Room 3308, 941 North Capitol Street NE, Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 94–11769 Filed 5–13–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–97–002]

Transwestern Pipeline Co.; Proposed Changes In FERC Gas Tariff

May 10, 1994.

Take notice that on May 5, 1994, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet, to be effective June 6, 1994:

2nd Revised Sheet No. 148

Transwestern states that the tariff sheet revises Transportation Service Agreement—Form N, Operator Balancing Agreement, Sheet No. 148 in order to revise the Index Price contained therein. These revisions will allow an operator to elect (for a period of at least one year) to utilize the published prices for gas from one basin or two basins (rather than the standard Operator Balancing Agreement's (OBA) three basins) if such basin or basins is/are the source of all of the gas covered by the operator's OBA. In addition, the existing price references are corrected and the OBA is revised to provide for the inclusion of additional generally accepted available industry publications in calculating the Index Price.

Transwestern states that copies of the filing were served on its gas utility customers, interested state commissions, and all parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before May 17, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–11776 Filed 5–13–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–234–000]

Transwestern Pipeline Co.; Proposed Changes In FERC Gas Tariff

May 10, 1994.

Take notice that on May 5, 1994, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to be effective June 6, 1994:

Effective June 6, 1994

6th Revised Sheet No. 5A.04
2nd Revised Sheet No. 49
3rd Revised Sheet No. 51
5th Revised Sheet No. 64
3rd Revised Sheet No. 72
1st Revised Sheet No. 72A
11th Revised Sheet No. 80
4th Revised Sheet No. 80A
4th Revised Sheet No. 80B
Original Sheet No. 81D
Original Sheet No. 81E
3rd Revised Sheet No. 92F
Original Sheet No. 95B
1st Revised Sheet No. 95
1st Revised Sheet No. 95A
2nd Revised Sheet No. 95B
Original Sheet No. 95B.1
2nd Revised Sheet No. 95C
1st Revised Sheet No. 95D
1st Revised Sheet No. 95E
1st Revised Sheet No. 95F
2nd Revised Sheet No. 95G
2nd Revised Sheet No. 95H
1st Revised Sheet No. 95H.1
1st Revised Sheet No. 95I
1st Revised Sheet No. 95J
1st Revised Sheet No. 95K
1st Revised Sheet No. 95L
1st Revised Sheet No. 95N
1st Revised Sheet No. 95O
1st Revised Sheet No. 95P
11th Revised Sheet Nos. 96–104
2nd Revised Sheet No. 115
2nd Revised Sheet No. 116
8th Revised Sheet No. 147
2nd Revised Sheet No. 149
1st Revised Sheet No. 152

Transwestern states that the tariff sheets contain revisions relating to the one-year review of Transwestern's Order No. 636 restructuring proceeding. Specifically, Transwestern is modifying its tariff: (i) To improve and streamline the capacity release program, (ii) to add

provisions pertaining to the EBB interactivity function, (iii) to allow Transwestern to maintain better control of its system, and (iv) to revise certain miscellaneous provisions, as set forth in its tariff filing.

In light of actual experience under Transwestern's capacity release program, Transwestern states that it proposes to: (i) Shorten the timeline for releases for one to three months, (ii) provide for partial day capacity releases, (iii) revise the minimum notice revisions so that such do not apply to pre-arranged deals at maximum rates, (iv) collapse the Notice of Available Capacity and Notice of Original Transaction into one notice called an Offer to Release Capacity, (v) delete Form C, (vi) revise the term section of Form D—Capacity Release Agreement, and (vii) revise certain miscellaneous capacity release provisions as explained in its tariff filing. Such modifications will simplify Transwestern's capacity release program and make it more user-friendly.

With respect to Transwestern's EBB, Transwestern states that it proposes to: (i) Add provisions relating to the EBB interactivity function (i.e. direct posting of Offers to Release Capacity and bids), (ii) delete provisions regarding the posting of buy-sell arrangements, and (iii) delete provisions relating to a shipper's posting of a request to purchase supplies.

With respect to operational provisions, Transwestern submits that the following tariff modifications will enable it to maintain better control of its system. In light of actual experience under Order No. 636, Transwestern proposes to: (i) Decrease the tolerance level in its Operator Balancing Agreement ("OBA"), (ii) provide additional incentives for the timely resolution of imbalances, (iii) accommodate parties who wish to be aggregators for OBA purposes, (iv) provide for an Alert Day in the event of operational distress, (v) provide for real-time nominations by shippers, and (vi) change the operator confirmation deadline form 5:00 p.m. to 2:00 p.m. Central time.

Finally, Transwestern is making certain miscellaneous tariff revisions relating to: (i) The now-obsolete FTS–2 cost-based sales rate, (ii) the definitions of "day" and "month", (iii) errors in billing and prior period adjustments, (iv) nominations of receipts and deliveries, and (v) pre-OBA shipper imbalance provisions, as explained in more detail therein.

Transwestern states that copies of the filing were served on its gas utility customers, interested state commissions, and all parties to this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before May 17, 1994. 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 persons 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–11777 Filed 5–13–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT94–41–000]

Williston Basin Interstate Pipeline Co., Compliance Filing

May 10, 1994.

Take notice that on May 5, 1994, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, to become effective May 5, 1994:

Second Revised Sheet Nos. 779 through 795
Second Revised Sheet Nos. 825 through 828
Third Revised Sheet Nos. 829 through 830
Second Revised Sheet Nos. 831 through 832
Third Revised Sheet No. 833

Williston Basin states that the revised tariff sheets are being filed to update its Master Receipt/Delivery Point List.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before May 17, 1994. 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 to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–11771 Filed 5–13–94; 8:45 am]

BILLING CODE 6717–01–M

Office of Energy Research

Energy Research Financial Assistance Program Notice 94–17; Medical Applications Program

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Health and Environmental Research (OHER) of the Office of Energy Research (ER), U.S. Department of Energy, announces its interest in receiving applications to support one specific research area, Receptor-Targeted Cancer Imaging and Therapy with Genetically Modified Radiolabeled Probes, within the Medical Applications Program. The research applications should address the use of antibody-based molecular strategies to develop new radiolabeled molecules which will significantly advance the current state of tumor imaging and therapy for potential human use. Appropriate consideration should be given to receptor mediated localization and stability of the administered molecular form *in vivo*, its rate of clearance, selective delivery to the target in high yield with target-binding affinity, and specificity and selectivity for effective imaging and killing of cancer micrometastases. A well integrated multi-disciplinary team effort combining the areas of radiopharmaceutical chemistry, molecular immunology, and oncologic nuclear medicine to achieve the projected goals will be important.

DATES: Formal applications submitted in response to this Notice must be received 4:30 p.m., EDT, September 15, 1994, to be accepted for a merit review in November 1994, and to permit timely consideration for award in Fiscal Year 1995.

ADDRESSES: Formal applications referencing Program Notice 94–17 should be forwarded to: U.S. Department of Energy, Office of Energy Research, Acquisition and Assistance Management Division, ER–64 (GTN), Washington, DC 20585, Attn: Program Notice 94–17. The following address must be used when submitting applications by U.S. Postal Service Express Mail, any commercial mail delivery service, or when hand carried

by the applicant: U.S. Department of Energy, Office of Energy Research, Acquisition and Assistance Management Division, ER–64, 19901 Germantown Road, Germantown, Maryland 20874.

FOR FURTHER INFORMATION CONTACT: Dr. Prem C. Srivastava, Office of Health and Environmental Research, ER–73, U.S. Department of Energy, GTN, Washington, D.C. 20585, telephone: (301) 903–4071.

SUPPLEMENTARY INFORMATION: Potential applicants are strongly encouraged to submit a brief preapplication in accordance with 10 CFR 600.10 (d)(2), which consists of two or three pages of narrative describing the research project objectives and methods of accomplishment. These will be reviewed relative to the scope and research objectives of the Medical Applications Program. Preapplications referencing Program Notice 94–17 should be received by June 15, 1994, and sent to Dr. Prem C. Srivastava, Office of Health and Environmental Research, ER–73, Department of Energy, GTN, Washington, DC 20585, FAX: (301) 903–0567. Telephone and FAX numbers are required to be part of the preapplication. A response to the preapplications discussing the program relevance of a formal application will be communicated by July 15, 1994.

It is anticipated that approximately $3 million will be available for grant awards during FY 1995 contingent upon availability of appropriated funds. Previous awards have ranged from $100,000 per year up to $400,000 per year with terms lasting up to 3 years. Similar award sizes are anticipated for new grants. Funding of multiple year new grant awards is expected, and is also contingent upon availability of funds.

Information about development and submission of applications, eligibility limitations, evaluation and selection process, and other policies and procedures may be found in the Application Guide for the Office of Energy Research Financial Assistance Program and 10 CFR part 605. The Application Guide is available from the Office of Health and Environmental Research, ER–73, U.S. Department of Energy, (GTN), Washington, DC 20585. Telephone requests may be made by calling (301) 903–5349.

The Catalog of Federal Domestic Assistance Number of this program is 81.049.

D.D. Mayhew,

Director, Office of Management, Office of Energy Research

[FR Doc. 94–11867 Filed 5–13–94; 8:45 am]

BILLING CODE 6450–01–P

Office of Fossil Energy

[Docket No. FE C&E 94–6—Certification Notice—134]

Michigan Power Limited Partnership Notice of Filing of Coal Capability Powerplant and Industrial Fuel Use Act

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: On May 6, 1994, Michigan Power Limited Partnership submitted a coal capability self-certification pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

ADDRESSES: Copies of self-certification filings are available for public inspection, upon request, in the Office of Fuels Programs, Fossil Energy, Room 3F–056, FE–52, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell at (202) 586–9624.

SUPPLEMENTARY INFORMATION: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 et seq.), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of May 6, 1994. The Secretary is required to publish a notice in the **Federal Register** that a certification has been filed. The following owner/operator of a proposed new baseload powerplant has filed a self-certification in acccordance with section 201(d).

OWNER: Michigan Power Limited Partnership Houston, Texas.

OPERATOR: Destec Operating Company Houston, Texas.

LOCATION: Township of Pere Marquette, in Mason County adjacent to Ludington, Michigan.

PLANT CONFIGURATION: Combined cycle cogeneration.

CAPACITY: 123 megawatts.

FUEL: Natural gas.

PURCHASING UTILITIES: Consumers Power.

IN-SERVICE DATES: Late 1995.

Issued in Washington, DC, May 11, 1994.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–11864 Filed 5–13–94; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4882–9]

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.

DATES: Comments must be submitted on or before June 15, 1994.

FOR FURTHER INFORMATION CONTACT: For further information, or to obtain a copy of this ICR, contact Sandy Farmer at EPA (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Prevention, Pesticides and Toxic Substances

Title: Notification of Stored Pesticides with Canceled or Suspended Registration Under section 6(g) of the Federal Insecticide, Rodenticide and Fungicide Act (FIFRA). (EPA # 1519.03; OMB # 2070–0109). This is a request for an extension of the expiration date of a currently approved collection with no changes.

Abstract: Section 6(g) of the FIFRA requires anyone who holds a pesticide product with a canceled or suspended registration, to provide the EPA and State Lead Agencies with the following information:

(1) The identity and address of the company submitting FIFRA 6(g) information;

(2) Name and telephone number of a contact person in the company;

(3) Any active ingredient of the pesticide subject to the FIFRA section 6(g) requirement;

(4) The relationship of the company to the pesticide subject to section 6(g) (i.e. exporter, producer, pesticide product registrant, applicant for registration, applicant for or holder of an Experimental Use Permit (EUP),

commercial applicator, distributor, retailer, etc.);

(5) The street address of each location owned/leased or operated in the United States by the submitter where the canceled or suspended pesticide is held;

(6) For each location listed, the quantity of canceled or suspended pesticide listed by the number of units of each size container and by EPA registration number; and

(7) For each location listed, the total quantity of canceled or suspended pesticide product.

The EPA and the State Lead Agencies, use the information to monitor compliance with the FIFRA, and to ensure safe storage and distribution of pesticide products with canceled or suspended registration.

Burden Statement: The public reporting burden for this collection of information is estimated to average 60 minutes per response annually. This estimate includes the time to review instructions, search for existing data sources, gather and maintain the data needed, and complete and review the collection of information.

Respondents: Holders of canceled or suspended registration of pesticide products.

Estimated Number of Respondents: 156,000.

Estimated Number of Responses per Respondents: 1.

Estimated Total Burden on Respondents: 156,000 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street, SW., Washington, DC 20460.

and

Matthew Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20530.

Dated: May 6, 1994.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 94–11830 Filed 5–13–94; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4885–1]

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.

DATES: Comments must be submitted on or before June 15, 1994.

FOR FURTHER INFORMATION CONTACT: For further information, or to obtain a copy of this ICR, contact Sandy Farmer at EPA (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Prevention, Pesticide and Toxic Substances

Title: Section 8(a) Chemical-Specific Rules (*EPA ICR No.:* 1198.04; *OMB No.:* 2070–0067). This is a request for extension of the expiration date of a currently approved collection.

Abstract: Section 8(a) rules of the Toxic Substances Control Act (TSCA), require persons to report to the EPA if they manufacture, import, or process or propose to manufacture, import, or process chemical substances or mixtures identified in the TSCA section 8(a) rules. Information that EPA may require includes, but is not limited to, chemical names, production volumes, use categories, byproducts of chemical production, data on deaths and environmental effects, exposure data and disposal information.

The Agency uses these data to monitor the production, importation, and uses of the identified chemical substance or mixture and to regulate as appropriate.

Burden Statement: The burden for this collection of information is estimated to average about 65.8 hours per response for reporting, and 3 hours per recordkeeper annually. This estimate includes the time needed to review instructions, gather the data needed, and review the collection of information.

Respondents: Manufacturers, importers, or processors of chemical substances.

Estimated No. of Respondents: 4.

Estimated No. of Responses Per Respondent: 1.

Estimated Total Annual Burden on Respondents: 275 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of the 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

Matthew Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20530.

Dated: May 6, 1994.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 94–11831 Filed 5–13–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4884–9]

Disclosure of Confidential Business Information Obtained Under the Comprehensive Environmental Response, Compensation and Liability Act to EPA Contractor Techlaw, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for comment.

SUMMARY: EPA hereby complies with the requirements of 40 CFR 2.301(h) and 40 CFR 2.310(h) for authorization to disclose to its contractor, TechLaw, Inc. (hereinafter "TechLaw") of Lakewood, Colorado, cost recovery support documentation for the Superfund sites; (See Attachment). This disclosure includes Confidential Business Information ("CBI") which has been submitted to EPA Region 8, Hazardous Waste Management Division, Superfund Remedial Branch. TechLaw's office is located at 12600 West Colfax Avenue, suite C310, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Sam Marquez, Superfund Management Branch, Environmental Protection Agency, Region 8, 999 18th Street, suite 500, Denver, Colorado 80202. (303) 294–7151.

SUPPLEMENTARY INFORMATION:

Notice of Required Determinations, Contract Provisions and Opportunity To Comment

The Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), as amended, (commonly known as "Superfund") requires the establishment of an administrative record upon which the President shall base the selection of a response action. CERCLA also requires the maintenance of many other records, including those relevant to cost recovery. EPA has entered into Enforcement Support Services (ESS) contract No. 68–W4–0025 with TechLaw for management of these records. EPA Region 8 has determined that disclosure of CBI to TechLaw

employees is necessary in order that they may carry out the work requested under this contract with EPA. The contract complies with all requirements of 40 CFR 2.301(h)(2)(ii) and 40 CFR 2.310(h). EPA Region 8 will require that each TechLaw employee working on cost recovery work sign a written agreement that he or she:

(1) Will use the information only for the purpose of carrying out the work required by the contract.

(2) Shall refrain from disclosing the information to anyone other than EPA without the prior written approval of each affected business or of an EPA legal office, and

(3) Shall return to EPA all copies of the information and any abstracts or extracts therefrom, (a) upon completion of the contract, (b) upon request of the EPA, or (c) whenever the information is no longer required by TechLaw for performance of work requested under the contract. These non-disclosure statements shall be maintained on file with the EPA Region 8 Project Officer for TechLaw. TechLaw employees will be provided technical direction from EPA contract management staff.

EPA hereby advises affected parties that they have ten working days to comment pursuant to 40 CFR 2.301(h)(2)(iii) and 40 CFR 2.310(h). Comments should be sent to Environmental Protection Agency, Region 8, Carol Macy, 8HWM–SR, 999 18th St, Denver, Colorado 80202.

Dated: May 9, 1994.

Jack McGraw,

Acting Regional Administrator.

COLORADO

AIR FORCE PLANT PJKS
ASARCO INC (GLOBE PLANT)
BRODERICK WOOD PRODUCTS
CALIFORNIA GULCH
CENTRAL CITY-CLEAR CREEK
CHEMICAL SALES CO
DENVER RADIUM SITE
EAGLE MINE
LINCOLN PARK
LOWRY LANDFILL
MARSHALL LANDFILL
ROCKY FLATS PLANT (USDOE)
ROCKY MOUNTAIN ARSENAL
SAND CREEK INDUSTRIAL
SMELTERTOWN/KOPPERS
SMUGGLER MOUNTAIN
SUMMITVILLE MINE
URAVAN URANIUM PROJECT (UNION CARBIDE)

MONTANA

ANACONDA CO. SMELTER
BN LIVINGSTON SHOP COMPLEX
CLARK FORK RIVER
EAST HELENA SITE
IDAHO POLE CO
KALISPELL POLE & TIMBER CO INC
LIBBY GROUNDWATER CONTAMINATION
MILLTOWN RESERVOIR SEDIMENTS
MONTANA POLE AND TREATING
MOUAT INDUSTRIES
SILVER BOW CREEK/BUTTE AREA

NORTH DAKOTA

ARSENIC TRIOXIDE SITE
MINOT LANDFILL

SOUTH DAKOTA

ANNIE CREEK MINE TAILINGS
ELLSWORTH AIR FORCE BASE
WHITEWOOD CREEK
WILLIAMS PIPE LINE CO. DISPOSAL PIT

UTAH

HILL AIR FORCE BASE
KENNECOTT—BINGHAM/SOUTH ZONE
KENNECOTT TAILINGS/NORTH ZONE
MIDVALE SLAG
MONTICELLO MILL TAILINGS (DOE)
MONTICELLO RADIOACTIVELY CONTAMIN PROPS
MURRAY SMELTER
OGDEN DEFENSE DEPOT
PETROCHEM RECYCLING CORP/EKOTEK
PORTLAND CEMENT (KILN DUST #2 & #3)
RICHARDSON FLAT TAILINGS
ROSE PARK SLUDGE PIT
SANDY SMELTER SITE
SHARON STEEL (MIDVALE TAILINGS)
TOOELE ARMY DEPOT (NORTH AREA)
UTAH POWER & LIGHT/AMERICAN BARREL
WASATCH CHEMICAL CO. (LOT 6)

WYOMING

BAXTER/UNION PACIFIC TIE TREATING
F.E. WARREN AIR FORCE BASE
MYSTERY BRIDGE AT HWY 20

[FR Doc. 94–11832 Filed 5–13–94; 8:45 am]
BILLING CODE 6560–50–P

[FRL–4884–8]

Waste Analysis Plans (WAP) Guidance Manual: the Resource Conservation and Recovery Act (RCRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of Waste Analysis Plan Guidance Manual.

SUMMARY: The Environmental Protection Agency announces a revision of the October 1984 Waste Analysis Plan Guidance Manual. This guidance document was developed by the Office of Waste Programs Enforcement for facilities that generate, treat, store, and dispose of hazardous wastes. RCRA was the first federal law to address hazardous waste, and was designed to ensure that the generation, transportation, treatment, storage and disposal of hazardous wastes are conducted in a manner that "protects human health and the environment". The cornerstone of the program, is the ability of facility personnel to properly identify their waste. The guidance manual is designed to assist the regulated community, permit writers and enforcement officials by establishing criteria to properly evaluate and prepare RCRA waste analysis plans.

ADDRESSES: Copies of the Waste Analysis Plan Guidance Manual F94–TTAA–FFFF may be obtained by visiting the RCRA Docket. The RCRA docket is located in room M2616 at EPA Headquarters, 401 M Street SW., Washington, DC 20460. It is open from 9 a.m. to 4 p.m., Monday through Friday, except on Federal holidays. The public must make an appointment to review docket materials. Call (202) 260–9327 for appointments. Copies cost 0.15 per page. In addition, this document is available for purchase through the National Technical Information Service (NTIS), U.S. Department of Commerce, Springfield, Virginia 22161, at (703) 487–4600. Waste Analysis Plan Guidance Manual (NTIS #PB94–963–603).

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Hotline at (800) 424–9346 toll-free or (703) 920–9810 locally. For information on specific aspects of the guidance manual, contact Jim Thompson at (202) 260–2265, RCRA Enforcement Division (5503), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Dated: April 5, 1994.

Samuel Coleman,

Acting Deputy Director, Office of Waste Programs Enforcement.

[FR Doc. 94–11829 Filed 5–13–94; 8:45 am]
BILLING CODE 6560–50–P

[OPP–50783; FRL–4778–6]

Receipt of a Notification To Conduct Small-Scale Field Testing; Genetically-Altered Microbial Pesticide

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: EPA has received from AgriVirion Inc., of New York, a notification of intent to conduct a small-

scale field test involving the genetically-altered (polyhedrin-minus) *Autographa californica* nuclear polyhedrosis virus (ACNPV). AgriVirion intends to test the pesticide on cabbage in New York. The target pest for these field trials is the cabbage looper.

DATES: Written comments must be received on or before June 15, 1994.

ADDRESSES: Comments in triplicate, must bear the docket control number OPP–50783 and be submitted to: Public Docket and Freedom of Information Section, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked, will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and all written comments will be available for public inspection in Rm. 246 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Phil Hutton, Product Manager (PM) 18, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency; 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 213, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703–305–7690).

SUPPLEMENTARY INFORMATION: A notification of intent to conduct small-scale field testing pursuant to EPA's Statement of Policy entitled, "Microbial Products Subject to the Federal Insecticide, Fungicide, and Rodenticide Act and the Toxic Substances Control Act," published in the **Federal Register** of June 26, 1986 (51 FR 23313), has been received from AgriVirion Inc. of New York. The purpose of the proposed testing is to evaluate the efficacy of the genetically-altered AcNPV under field conditions on cabbage in New York. The target pest for these field trials is the cabbage looper. A 2 acre test site will be treated twice this growing season; all treated crops will be destroyed. Following the review of AgriVirion's application and any comments received in response to this Notice, EPA will decide whether or not an experimental use permit is required.

List of Subjects

Environmental protection.

Dated: April 27, 1994.

Stephanie R. Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–11833 Filed 5–13–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Open Season; Thrift Savings Plan Elections

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Notice.

SUMMARY: The Federal Retirement Thrift Investment Board (Board) in its regulation at 5 CFR 1600.2 provides that notice will be given of the beginning and ending dates of all open seasons (as defined at 5 CFR 1600.1) which are subsequent to the open season ending on July 31, 1987. The Board's next open season will commence on May 15, 1994, and will end on August 1, 1994. The election period (as defined at 5 CFR 1600.1) covered by this open season extends from July 1, 1994 through August 1, 1994. The open season and the election period are being extended through August 1, 1994 because July 31, 1994 falls on a Sunday.

FOR FURTHER INFORMATION CONTACT: James B. Petrick, (202) 942–1661.

Dated: May 11, 1994.

Roger W. Mehle,

Executive Director.

[FR Doc. 94–11862 Filed 5–13–94; 8:45 am]

BILLING CODE 6760–01–M

GENERAL SERVICES ADMINISTRATION

Inter-City Telecommunications Services

ACTION: Notice for Request for Post–FTS2000 Ideas/Comments—Inter-city Telecommunications Services—Public Review of the "Post–FTS2000 Acquisition Alternatives White Paper" released on April 29, 1994, and other Post–FTS2000 documents.

SUMMARY: The Federal government currently satisfies its inter-city telecommunications services through the FTS2000 program. The existing FTS2000 contracts will expire in 1998. As a part of the continuing, open discussion related to the post–FTS2000 provision of telecommunications services to Federal government users, the government hereby advises interested parties of the following opportunities to participate in this discussion. The government released a report entitled, "Post–FTS2000 Acquisition Alternatives White Paper" on April 29, 1994. The report addresses the solicited submissions from industry and other parties regarding the various approaches available for provisioning telecommunications services for the post–FTS2000 environment. This report was prepared, as a framework for further study, by the Acquisition Working Group, a subcommittee of the Interagency Management Council. At present, the government plans that the report will be available for public viewing in the General Services Administration Bid Room and electronically via the Internet (see below for access information). The government also plans to make available at these sites other post–FTS2000 documents, including the report entitled, "Networking for a Reinvented Government: Federal Telecommunications Requirements and Industry Technology Assessment." The government will accept clarification questions on the alternatives enumerated in the above report through May 31, 1994. Clarification questions may be submitted to General Services Administration, Attention: Concept Development Record, 7980 Boeing Court, Vienna, Va 22182–3988. It is preferred that clarification questions be submitted electronically to the Internet address, cdr@post.fts2k.gsa.gov. The government will provide responses to the clarification questions on or about July 1, 1994. At present, the government plans that the responses will be available for public viewing in the General Services Administration Bid Room and electronically via the Internet (see below). The government also plans to make available to interested parties an analysis report of the various acquisition alternatives on or about August 12, 1994. The government will accept written comments on the alternatives report and the analysis report through September 23, 1994. Written comments may be submitted to General Services Administration, Attention: Concept Development Record, 7980 Boeing Court, Vienna, VA 22182–3988. It is preferred that comments be submitted electronically to

an Internet address of cdr@post.fts2k.gsa.gov. The government also intends to invite verbal summaries, based on the written comments received prior to August 30, 1994, to be presented before a Government Panel consisting of members of the Interagency Management Council on September 13, 14, and 15, 1994.

The times and locations of these sessions will be announced on or about July 29, 1994. As a related matter, the government is also interested in receiving written comments on the impact of the National Information Infrastructure's telecommunications deregulation initiatives on industry for the post–FTS2000 environment. Written comments may be submitted to General Services Administration, Attention: Concept Development Record, 7980 Boeing Court, Vienna, VA 22182–3988. It is preferred that comments be submitted electronically to the Internet address, cdr@post.fts2k.gsa.gov, through June 10, 1994. At present, the government plans that the comments will be available for public viewing in the General Services Administration Bid Room and electronically via the Internet (see below) on or about July 15, 1994. Information on the above programs may be accessed electronically via the Internet in one of two methods. Files may be downloaded electronically via anonymous FTP from post.fts2k.gsa.gov under the/pub directory. Files may also be perused (and downloaded) and full-text searches may be made via a World Wide Web client (such as Mosaic) by accessing our home page, whose URL is http://post.fts2k.gsa.gov/. Electronic responses sent to cdr@post.fts2k.gsa.gov may be in any of the following four formats: ordinary ASCII; PostScript; uuencoded representations of Microsoft Word (versions 6.0 and earlier) documents; and uuencoded representation of Word Perfect (version 6.0 and earlier) documents. If you have any questions regarding this notice, please contact Richard Kosko at Area Code (703) 827–5107.

DATES: May 31, 1994: The cut-off date for clarification questions on the alternatives enumerated in the "Post–FTS2000 Acquisition Alternatives White Paper"; June 10, 1994: Cut off date for receipt of written comments on the impact of the National Information Infrastructure's telecommunications deregulation initiatives on industry for the post–FTS2000 environment; July 1, 1994: The Government will provide responses to the 5/31/94 clarification questions; July 15, 1994: Target date the government plans to display for public viewing (GSA's Bid Room and via Internet) the comments received on the impact of the National Information Infrastructure's telecommunications deregulation initiatives on industry for the post–FTS2000 environment; July 29, 1994: Will announce the times and locations where the Government Panel sessions scheduled for September 13, 14, and 15, 1994, will be held; August 12, 1994: On/or about 8/12/94 the government plans to make available an analysis report of the various acquisition alternatives; August 30, 1994: The government intends to invite verbal summaries, based on the written comments received prior to August 30, 1994; September 13–15, 1994: The written comments received prior to 8/30/94 will be presented before a Government Panel consisting of members of the Interagency Management Council, and September 23, 1994: The cut-off date for written comments on the alternatives report and the analysis report.

ADDRESSES: Please mail all responses (written comments) to the General Services Administration, Attn: Concept Development Record, 7980 Boeing Court, Vienna, VA 22182–3988. Preferred method to be submitted electronically to Internet address of: cdr@post.fts2k.gsa.gov. The GSA's Bid room is located at 7th & D Streets SW., room 1701, Washington, DC 20407.

FOR FURTHER INFORMATION CONTACT: Richard J. Kosko at (703) 827–5107.

Dated: May 4, 1994.

Phillip R. Patton,

Branch Chief, Kena.

[FR Doc. 94–11804 Filed 5–13–94; 8:45 am]

BILLING CODE 6820–25–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Examination of Methods for Assessing Comprehensive Community Change Initiatives

AGENCY: Office of the Assistant Secretary for Planning and Evaluation, HHS.

ACTION: Request for applications to conduct research to examine methods for assessing comprehensive community change initiatives.

SUMMARY: The Department seeks applications from not-for-profit or for-profit organizations or entities to conduct research to examine methods for assessing comprehensive community change initiatives and to develop possible solutions to assessment problems for these initiatives. The Primary goal of the proposed research is to further the understanding of the problems confronted in assessing the impact of comprehensive community change initiatives. It is anticipated that one "Cooperative Agreement" of $50,000 for 12–17 months will be awarded.

DATES: *Closing date:* The closing date for submitting an application is July 15, 1994.

ADDRESSES: Send applications to Grants Officer, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, 200 Independence Avenue SW., room 405F, Hubert H. Humphrey Building, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Grants Officer at above address, phone (202) 401–3951.

SUPPLEMENTARY INFORMATION:

PURPOSE OF THE SOLICITATION

Pursuant to section 1110 of the Social Security Act, the Assistant Secretary for Planning and Evaluation (ASPE) is seeking applications from not-for-profit or for-profit organizations or entities to conduct research to examine methods for assessing comprehensive community change initiatives and to develop possible solutions to assessment problems for these initiatives. It is anticipated that a "Cooperative Agreement" will be awarded as a result of this announcement.

The primary goal of the proposed research is to further the understanding of the problems confronted in assessing the impact of comprehensive community change initiatives. These initiatives have several features that do not correspond to traditional assessment methods: (1) They rely on a complex interaction of components, (2) they are intended to produce impacts in several different spheres, (3) they are purposefully flexible and variable rather than standardized, (4) they saturate a community, affecting all members of the community, and (5) they involve contexts and systems that are in a continuous process of change. Given these difficulties, an examination is needed of how assessment of these initiatives can be improved.

A. Type of Application Requested

1. Background

ASPE has a long history of interest in comprehensive human services efforts and the methods of assessing the impact of such efforts. This includes an interest in service integration projects, as well as an interest in community-based human services reform. The office has funded

assessments of individual projects and clearinghouses for information on comprehensive strategies.

Several private foundations have recently created initiatives that attempt to change human service and other systems in communities. These initiatives attempt to work across systems, involving the social services, the health care system, the schools, and economic and physical redevelopment. They are generally focused on one or more urban communities. Examples of foundation initiatives include several foundation-sponsored efforts such as the Annie E. Casey foundation's New Futures Initiative, the Pew Charitable Trust's Children's Initiative, and the Ford Foundation's Neighborhood and Family Initiative. Recent federal initiatives, such as the Empowerment Zone and Enterprise Community Initiative, include similar features.

2. Research Approach

As a background for further work, the organization should investigate and document how comprehensive community change initiatives have been assessed in the past, how they are now being assessed, and the problems and successes encountered in assessing these initiatives. Many problems in assessing comprehensive initiatives are not new and are not confined to any one set of social reform efforts. Such an investigation would identify similarities and differences in the types of assessments underway, the processes being described, and the outcomes being measured, cataloging topics requiring attention for the next generation of initiatives and for assessment of the current generation and creating a research agenda for the field.

Possible topics and research activities of interest may include the following:

- Articulating the assumptions and hypotheses underlying existing comprehensive community change initiatives. This work would clarify the causal connections that assessments of initiatives should explore. Such work might include collaborating with a specific initiative to map the assumptions and expected causal relationships. The creation of an outline of assumptions, hypotheses, and causal connections should involve many different perspectives, including the funders, developers, technical assistance providers, and community participants of initiatives.
- Generating, based on the improved articulation of assumptions and hypotheses, a set of interim progress indicators with clear links to the ultimate goals of the initiative.
- Identifying gaps in measurement that hold back assessment and working to improve measurement tools. This work could involve participating with an initiative to test methods. Results would then be summarized for the field.
- Developing suggestions for improved assessment practice. For example, developing methods appropriate for initiatives that saturate a community, making it impossible to randomly select individuals in treatment and control groups.
- Other topics as defined by the work group.

3. Awardee and Government Responsibilities

A. Awardee Responsibilities

1. Establish a work group of experts and knowledgeable practitioners to assist the project. The work group should include people with the following backgrounds:
- direct experience in developing and conceptualizing comprehensive community change initiatives
- direct experience in assessing comprehensive community change initiatives
- direct experience in managing or overseeing comprehensive community change initiatives
- direct experience in assessment and measurement of social programs.

2. Plan and conduct a series of meetings in which the work group develops key issues to be addressed.

3. Submit a final work plan that updates the work plan submitted in the original application. This work plan should include a plan for dissemination of research findings.

4. Conduct one or more small studies to explore the key issues identified by the work group.

5. Prepare a final report describing the procedures, findings, and other relevant information in a form that will maximize the dissemination and use of the findings, and a set of papers addressing the research topics. A draft of this report will be delivered to the Federal project officer within 15 months of the date the award is made. The Department will return comments within one month. A final report will be delivered to the Federal project officer within 17 months of the date the award.

6. Participate in a wrap-up meeting involving Federal officials and other key audiences.

B. Federal Government Responsibilities

1. Assist in the selection of members of the work group,

2. Participate in all work group meetings,

3. Provide input into the final work plan, including the dissemination plan.

4. Assist in developing the wrap-up meeting.

3. Application

This announcement seeks applications from organizations or entities that will enter into a cooperative agreement with ASPE to create a process to examine issues in the assessment of community change initiatives. One cooperative agreement will be awarded.

A. Applicant Qualifications

Applicants must demonstrate experience with the issues confronted in comprehensive community change initiatives, as well as experience with issues related to the measurement and assessment issues of such initiatives.

Applicants must demonstrate an ability to manage a complex multi-activity research project involving an oversight work group.

Applicants must demonstrate connections to key audiences for dissemination. Audiences include federal, state, and local policy makers, foundation officials, local and community leaders, and the research community.

Applicants must demonstrate access to matching funds at a 2 to 1 ratio of private or local funding to federal funding.

B. Content and Organization of the Application

The application must begin with a cover sheet followed by the required application forms and an abstract (of not more than one page). Failure to include the abstract may result in delays in processing the application. The application must contain the required Federal forms, title page, table of contents, and the sections listed below. All pages of the narrative should be numbered.

The application must include the following elements:

Goals and Objectives

Present the goals of the effort and related objectives.

Workplan

Describe the planned activities (e.g., meetings of the work group or research activities). Outline the rationale for undertaking those activities, and note the timing of the activities over the period of the cooperative agreement.

Corporate Capacity

Describe the organizational character of the applicant and how the applicant meets the qualifications outlined in Section 3A above.

Staffing

List primary staff and the activities they will perform on this project. Curriculum Vitae or job descriptions for key staff must be appended.

Work Group

List proposed members of the work group. Descriptions of their affiliations, their relevant experiences, and evidence of arrangements that have been made to assure their participation in the work group.

Budget

Submit a request for federal funds using Standard Form 424A. In addition, include a detailed breakdown of all Federal line items along with a brief narrative description or justification for these line items. This detailed breakdown should separate items for which Federal funds are requested from items to be provided by other sources, with those other sources identified. Documentation must be included which substantiates the existence of a commitment to provide the required non-Federal share. (See Section IV, paragraph C below for specific requirements regarding this non-Federal local contribution.) All costs fees for services of the work group and travel by the work group should be included in the budget.

B. Applicable Regulations

1. "Grants Programs Administered by the Office of the Assistant Secretary for Planning and Evaluation" (45 CFR part 62)

2. "Administration of Grants" (45 CFR part 74)

C. Effective Date and Duration

The cooperative agreement awarded pursuant to this announcement is expected to be made on or about September 9, 1994.

In order to avoid unnecessary delays in the preparation and receipt of applications, this notice is effective immediately. The closing date for applications is specified in Section G.

The cooperative agreement will be awarded for a 12–17 month period.

D. Statement of Funds Available and Matching Funds Requirement

HHS intends to award one cooperative agreement resulting from this announcement. $50,000 has been set aside for one cooperative agreement to be awarded in FY 1994. Funds will be obligated fully at the time of award.

This cooperative agreement will require a 2 to 1 match of private or local funding to federal funding. For example, to receive $50,000 of federal funds, an organization must have $100,000 of private or local funding.

Nothing in this application should be construed as committing the Assistant Secretary to make an award.

E. Application Processing

1. Applications will be initially screened for relevance to the interests and needs defined in Section A. If judged relevant, the application will be reviewed by a government review panel. Three (3) copies of each application are required. Applicants are encouraged to send an additional seven (7) copies of their application to ease processing, but applicants will not be penalized if these extra copies are not included.

2. Applications will be judged according to the criteria set forth in item 5 below.

3. An unacceptable rating on any individual criterion may render the application unacceptable. Consequently, applicants should take care to ensure that all criteria are fully addressed in the application.

4. Applications should be as brief and concise as possible. Applicants are encouraged to respond within 15 double-spaced typed pages, exclusive of forms, abstract, curriculum vitae, and proposed budget. They should neither be unduly elaborate nor contain voluminous supporting documentation.

5. *Criteria for Evaluation.* Evaluation of applications will employ the following criteria. The relative weights are shown in parentheses.

A. *Goals, Objectives, and Need for Assistance.* (10 points).

i. *Rationale.*

Is there a clear rationale for the project, including a documented need?

ii. *Goals and Objectives.*

Are the goals and objectives presented in observable, measurable terms, and how well do they reflect the specific program requirements delineated in the announcement?

B. Project Design and Approach. (40 points).

i. *Strategic Plan.*

Do the planned activities match clearly with the needs of the field? Is there a clear mechanism for linking together the activities in the project? Is there a clear dissemination strategy?

C. *Organization and Staffing.* (40 points).

I. *Staff.*

Are the number and type of staff positions sufficient to achieve project objectives? Do the staff have experience with comprehensive community change initiatives and with assessment issues? Does the work group represent the necessary perspectives? Does the work contain people with extensive expertise in this area?

ii. *Organizational Capacity.*

Does the organization demonstrate experience with the issues confronted in comprehensive community change initiatives? experience with issues related to the measurement and assessment issues?

Does the organization demonstrate an ability to manage a complex multi-activity research project?

Does the organization demonstrate connections to key audiences for dissemination?

D. *Budget.* (10 points).

Is the proposed budget reasonable and sufficient to ensure implementation?

Are the required matching funds being provided and is this commitment reliable?

Is evidence provided that the matching costs represent an additional effort and not a reallocation of existing resources?

F. Deadline for Submittal of Applications

The closing date for submittal of applications under this announcement is 60 days after publication in the **Federal Register.** Applications must be postmarked or hand delivered to the application receipt point no later than 5:30 p.m. on the day 60 days after publication in the **Federal Register.** Hand-delivered applications will be accepted Monday through Friday, excluding Federal holidays during the working hours of 9:00 a.m. to 5 p.m. in the lobby of the Hubert H. Humphrey building located at 200 Independence Avenue SW., in Washington, DC. When hand-delivering an application, call (202) 401–3951 from the lobby for pick up. A staff person will be available to receive applications. Faxed applications will not be accepted.

An application will be considered as meeting the deadline if it is either: (1) received at, or hand-delivered to, the mailing address on or before 60 days after publication in the **Federal Register,** or (2) postmarked before midnight of the deadline date 60 days after publication in the **Federal Register** and received in time to be considered during the competitive review process.

When mailing applications, applicants are strongly advised to obtain a legibly dated receipt from a commercial carrier (such as UPS, Federal Express, etc.) or from the U.S. Postal Service as proof of mailing by the deadline date. If there is a question as to when an application was mailed, applicants will be asked to provide proof of mailing by the deadline date. When proof is not provided, an application will not be considered for funding. Private metered postmarks are

not acceptable as proof of timely mailing.

Applications which do not meet the deadline are considered late applications and will not be considered or reviewed in the current competition. DHHS will send a letter to this effect to each late applicant.

DHHS reserves the right to extend the deadline for all proposals due to natural disasters, such as floods, hurricanes or earthquakes; or if there is a widespread disruption of the mail; or if DHHS determines a deadline extension to be in the best interest of the government. However, DHHS will not waive or extend the deadline for any applicant unless the deadline is waived or extended for all applicants.

G. Disposition of Applications

1. *Approval, disapproval, or deferral.* On the basis of the review of the application, the Assistant Secretary will either (a) approve the application as a whole or in part; (b) disapprove the application; or (c) defer action on the application for such reasons as lack of funds or a need for further review.

2. *Notification of disposition.* The Assistant Secretary will notify the applicants of the disposition of their applications. If approved, a signed notification of the award will be sent to the business office named in the ASPE checklist.

H. Application Instructions and Forms

Copies of applications should be requested from and submitted to: Grants Officer, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, 200 Independence Avenue SW., room 405F, Hubert H. Humphrey Building, Washington, DC 20101, Phone (202) 401–3951. Questions concerning the preceding information should be submitted to the Grants officer at the same address. Neither questions nor requests for applications should be submitted after 60 days after publication in the **Federal Register.** Applications will not be faxed.

I. Federal Domestic Assistance Catalog

This program is not listed in the Catalog of Federal Domestic Assistance.

J. State Single Point of Contact (E.O. 12372)

DHHS has determined that this program is not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs," because it is a program that is national in scope and does not directly affect State and local governments. Applicants are not required to seek intergovernmental review of their applications within the constraints of EO. 12372.

K. Components of a Complete Application

A compete application consists of the following items in this order:

1. Application for Federal Assistance (Standard Form 424);
2. budget Information—Non-Construction programs (Standard Form 424A);
3. Assurances—Non-Construction Programs (Standard Form 424B);
4. Table of contents;
5. Budget Justification for Section B Budget Categories;
6. Proof of Non-profit Status, if appropriate;
7. Copy of the applicant's Approved Indirect Cost Rate Agreement, if necessary;
8. Project Narrative Statement;
9. Any appendices or attachments;
10. Certification Regarding Drug-Free Workplace;
11. Certification Regarding Debarment, Suspension, or other Responsibility Matters;
12. Certification and, if necessary, disclosure Regarding Lobbying;
13. Supplement to Section II—Key Personal;
14. Application for Federal Assistance Checklist.

Dated: May 5, 1994.

David T. Ellwood,

Assistant Secretary for Planning and Evaluation.

[FR Doc. 94–11842 Filed 5–13–94; 8:45 am]

BILLING CODE 4151–04–M

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB) for Clearance

AGENCY: Health Care Financing Administration, HHS.

The Health Care Financing Administration (HCFA), Department of Health and Human Services (HHS), has submitted to OMB the following proposals for the collection of information in compliance with the Paperwork Reduction Act (Pub. L. 96–511).

1. *Type of Request:* Revision; *Title of Information Collection:* Medicare Uniform Institutional Provider Bill; *Form No.:* HCFA–1450; *Use:* The 1450 is a claim form completed by institutional providers for inpatient and outpatient services. All intermediary processed Medicare claims are billed on the HCFA–1450; *Frequency:* On occasion; *Respondents:* State or local governments; *Estimated Number of Responses:* 100,168,729; *Average Hours Per Response:* 5–9 minutes; *Total Estimated Burden Hours:* 3,590,518.

2. *Type of Request:* New; *Title of Information Collection:* Hospice Survey and Deficiencies Report; *Form No.:* HCFA–643; *Use:* In order to participate in the Medicare program, a hospice must meet certain Federal health and safety conditions of participation. This form will be used by State surveyors to record data about a hospice's compliance with these conditions of participation in order to initiate the certification or recertification process. This request includes the recently revised Hospice Interpretive Guidelines used as the basis for the instructions for the form; *Frequency:* Annually; *Respondents:* State or local governments, Federal agencies or employees; *Estimated Number of Responses:* 1,200; *Average Hours Per Response:* 2.5; *Total Estimated Burden Hours:* 3,000.

3. *Type of Request:* Extension; *Title of Information Collection:* Requirement to Disclose Health Maintenance Organization (HMOs) Financial Information to Members; *Form No.:* HCFA–R–97; *Use:* HMOs are required to disclose specific information to members, potential members, employees, and contractors. This rule specifies what information can be disclosed; *Frequency:* Annually; *Respondents:* Businesses or other for profit, nonprofit organizations; *Estimated Number of Responses:* 380; *Average Hours Per Response:* .5; *Total Estimated Burden Hours:* 190.

4. *Type of Request:* Reinstatement; *Title of Information Collection:* Hospital Request for Certification in the Medicare/Medicaid Program; *Form No.:* HCFA–1514; *Use:* Section 1861 of the Social Security Act requires hospitals to be certified to participate in the Medicare/Medicaid program. These providers must complete the Hospital Request for Certification on the Medicare/Medicaid program form which concerns information collection requirements and their uses; *Frequency:* Annually; *Respondents:* State or local governments; *Estimated Number of Responses:* 2,548; *Average Hours Per Response:* .25; *Total Estimated Burden Hours:* 637.

Additional Information or Comments: Call the Reports Clearance Office on (410) 966–5536 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer

designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, room 3001, Washington, DC 20503.

Dated: May 4, 1994.

John A. Streb,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 94–11819 Filed 5–13–94; 8:45 am]

BILLING CODE 4120–03–P

Health Resources and Services Administration

Availability of Funds for New Community Health Centers, and Expanded Community Health Center Activities

[PIN 2227]

RIN–0905–ZA34

AGENCY: Health Resources and Services Administration, PHS.

ACTION: Notice of availability of funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces the availability of discretionary grant funds of approximately $12.5 million in fiscal year (FY) 1994 under section 330 of the Public Health Service (PHS) Act to establish new community health centers (CHCs) and new CHC service delivery sites for existing CHCs. For more than twenty-five years, the CHC program has been working toward ensuring the availability and accessibility of essential primary health services to those individuals who have the most limited access to services. The goal of the CHC New Start and Expansion strategy is to extend primary health services to populations currently without such services and to improve the health status of medically underserved individuals by supporting the development and maintenance of systems of care in areas where such systems are lacking or inadequate.

The PHS is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity. The health center program directly addresses the Healthy People 2000 objectives by improving access to preventive and primary care services for underserved populations, especially minority and other disadvantaged populations. Potential applicants may obtain a copy of *Healthy People 2000* (Full Report: Stock No. 017–001–00474–0) or *Healthy People 2000* (Summary Report: Stock No. 017–001–00473–01) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone 202–783–3228).

The PHS strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

ADDRESSES: The PHS Regional Grants Management Officers (RGMOs) whose names and addresses are provided in the appendix to this document are responsible for distributing application kits and guidance (Form PHS 5161–1 with revised face sheets DHHS Form 424, as approved by the Office of Management and Budget (OMB) under control number 0937–0189), and completed applications must be submitted to them. The RGMO can also provide assistance on business management issues.

DATES: Applications are due June 1, 1994. An advance notice of application deadline dates for this program was published in the **Federal Register** at 59 FR 8649 on February 23, 1994. Applications shall be considered to have met the deadline if they are: (1) Received on or before the deadline date; or (2) postmarked before the deadline date and received in time for orderly processing. Untimely applications will be returned to the applicant. Applicants should obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service or request a legibly dated U.S. Postal Service postmark. Private metered postmarks shall not be accepted as proof of timely mailing.

If a proposed area or population to be served is not currently federally designated, in whole or in part, as a medically underserved area (MUA) or medically underserved population (MUP), the applicant must have requested a designation from the Bureau of Primary Health Care by March 15, 1994. Applicants were also encouraged to submit a letter of interest to the appropriate RGMO by March 15, 1994. The above deadlines for this program were published in the **Federal Register** at 59 FR 8649 on February 23, 1994.

FOR FURTHER INFORMATION CONTACT: For general program information and technical assistance, contact Richard C. Bohrer, Director, Division of Community and Migrant Health, 4350 East-West Highway, 7th Floor, Rockville, MD 20857 (301) 594–4300.

SUPPLEMENTARY INFORMATION:

Grant Amounts

Approximately $12.5 million in discretionary grants to establish CHCs in new geographic areas and/or to establish new CHC service delivery sites for existing CHCs in new or existing geographic areas will be made available under section 330 of the PHS Act (42 U.S.C. 254c). Of the approximately $12.5 million available, approximately $8.5 million will be directed to new CHCs and approximately $4 million will be directed to new CHC service delivery sites that expand the service capacity (i.e., increase the number of new patients served) of existing CHCs.

Number of Awards

Approximately 35 to 40 section 330 awards will be made. The awards will range up to $600,000, including a limit of $150,000 for capital requests. Awards will be made for a one year budget period. Project periods for new CHCs will be for up to two years, while expansion grants will have project periods consistent with the ongoing grant.

Eligible Applicants

Eligible applicants for new CHCs are public or private nonprofit entities. Section 329 grantees not currently receiving section 330 funds may request section 330 funds to support primary health services for other than migrant and seasonal farmworkers and their families. The proposed service area must be a defined geographic area or population which is federally designated, in whole or in part, as a MUA or MUP. Applicants must be prepared to provide the comprehensive primary health services required under section 330, and supplemental services necessary to assure that required primary health services are provided effectively.

Eligible applicants for CHC expansions must be current recipients of section 330 funds. The applicant's proposed delivery system, in conjunction with its current delivery capacity, must provide the comprehensive primary health services required under section 330, and supplemental services necessary to assure that required primary health care services are provided effectively. The proposed service area must be a defined geographic area or population which is federally designated, in whole or in part, as a MUA or MUP.

Criteria for Evaluation

When determining whether Federal support will be made available for CHC

new start or expansion grants, the Department will review the applications for compliance with standard criteria stipulated in the program regulations (42 CFR 51c.305 for operating CHCs). These include:

(a) The relative need of the population to be served for the services to be provided based on the following indicators:

For urban applicants: (1) Percentage of the population with incomes below 200 percent of the official poverty level; (2) percentage of minority populations; (3) percentage of the population that is uninsured; (4) a shortage of necessary primary care health professionals to meet the needs of the target population; and (5) other documented community health issues such as a high unemployment rate, high growth rate of minority/special populations, high percentage of immigrant population, high infant mortality rate/high percentage of low birthweight, late entry into prenatal care, high teenage pregnancy rate, high morbidity rates due to specific diseases, high percentage geriatric population, cultural/language barriers, or excessive travel time/distance to next nearest source of primary care for the target population.

For rural applicants: (1) Percentage of the population with incomes below 200 percent of the official poverty level; (2) geographic barriers based on average travel time/distance to next nearest source of primary care that is accessible to the target population; (3) percentage of the population that is uninsured; (4) shortage of necessary primary care health professionals to meet the needs of the target population; and (5) other documented community health issues such as a high unemployment rate, high growth rate of minority/special populations, high percentage of immigrant population, high infant mortality rate/high percentage of low birthweight, late entry into prenatal care, high teenage pregnancy rate, high morbidity rates due to specific diseases, high percentage geriatric population, cultural/language barriers, or a high percentage of minority populations; and

(b) The extent to which the applicant's project plan for CHC new start or expansion grants meets the program requirements:

For CHC New Start and Expansions in New Service Areas: (1) The extent to which the applicant demonstrates an understanding of its State and local health care environment (e.g., identifying key State health care initiatives/proposals and describing local community resources/providers), and addresses how it will position itself strategically in both of these environments;

(2) The applicant's capability in the following health services/clinical management areas: (i) A service delivery plan that addresses the priority health problems of the target population; (ii) provision of patient case management, the assurance of continuity of care and a quality assurance program; and (iii) an appropriate number and mix of primary care physicians, non-physician primary care providers and clinical support staff to support the clinical component of the service delivery plan;

(3) The degree to which the applicant ensures that its governing board is appropriately structured and has by-laws reflecting all its functions and responsibilities. A public entity must be able to meet all governance requirements or have an acceptable co-applicant board (governing boards of public centers by statute are not required to set general policies for the center);

(4) The administrative and management capability of the applicant, particularly the extent to which center operations will emphasize efficiency of operations and sound financial management;

(5) The extent to which the proposed facility is adequate and available to meet the projected demand of the target population; and

(6) Whether the proposed new start will result in new patients being served or, for expansion applicants, whether the proposed expansion will result in new patients being served through a new service delivery site.

For CHC Expansions in an Existing Service Area: Applicants will be evaluated according to the following criteria:

(1) The extent to which the grantee justifies a patient demand in excess of what is reasonable for the current organization to serve;

(2) The extent to which the service delivery plan addresses the priority health problems of the new patients to be served;

(3) The extent to which the proposed expansion plan is a reasonable and cost-effective solution to meet the projected demand;

(4) The extent to which the budget is reasonable and appropriate and corresponds to the objective of the request for funds;

(5) The extent to which the proposed facility is adequate and available to meet the projected demand of the target population; and

(6) Whether the proposed expansion will result in new patients being served through a new service delivery site.

The HRSA hopes to achieve a wide geographic dispersion of awards. Contingent upon the outcome of the review process, grant awards will be made in such a manner as to achieve a distribution of resources throughout the country. Special consideration will be given to applicants that received Section 330(c) planning grant funds in FY 1993 to assist in their development of a new CHC.

Other Award Information: All grants to be awarded under this notice are subject to the provisions of Executive Order 12372, as implemented by 45 CFR part 100, which allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application kit will contain a listing of States which have chosen to set up a review system and will identify a State Single Point of Contact (SPOC) in each State for the review. Applicants (other than federally-recognized Indian tribal governments) should contact their SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. State process recommendations should be submitted to the appropriate Regional Office (see Appendix). The due date for State process recommendations is 60 days after the appropriate application deadline date. The Bureau of Primary Health Care does not guarantee that it will accommodate or explain its response to State process recommendations received after this date.

Public Health System Reporting Requirement: These programs are subject to the Public Health System Reporting Requirement, PHS Circular 92.01. Reporting requirements have been approved by the OMB—0937–0195. Under this requirement, the community-based nongovernmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprised of proposed health services grant applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental applicants are required to submit the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted no later than the Federal application receipt due date: (1) a copy of the face

page of the application (SF 424); and (2) a summary of the project (PHSIS), not to exceed one page, which provides a description of the population to be served, a summary of the services to be provided and a description of the coordination planned with the appropriate State or local health agencies. In the OMB Catalog of Federal Domestic Assistance, the number for the Community Health Center program is listed as 93.224

Dated: March 28, 1994.

John H. Kelso

Acting Administrator

Appendix—Regional Grants Management Officers

Region I: Mary O'Brien, Grants Management Officer, PHS Regional Office I, John F. Kennedy Federal Building, Boston, MA 02203, (617) 565–1482

Region II: Frank DiGiovanni, Grants Management Officer, PHS Regional Office II, Room 3300, 26 Federal Plaza, New York, NY 10278, (212) 264–4496

Region III: Martin Bree, Grants Management Officer, PHS Regional Office III, 3535 Market Street, P.O. Box 13716, Philadelphia, PA 19101, (215) 596–6653

Region IV: Wayne Cutchens, Grants Management Officer, PHS Regional Office IV, Room 1106, 101 Marietta Tower, Atlanta, GA 30323, (404) 331–2597

Region V: Lawrence Poole, Grants Management Officer, PHS Regional Office V, 105 West Adams Street, 17th Floor, Chicago, IL 60603, (312) 353–8700

Region VI: Joyce Bailey, Grants Management Officer, PHS Regional Office VI, 1200 Main Tower, Dallas, TX 75202, (214) 767–3885

Region VII: Michael Rowland, Grants Management Officer, PHS Regional Office VII, Room 501, 601 East 12th Street, Kansas City, MO 64016, (816) 426–5841

Region VIII: Susan Jaworowski, Grants Management Officer, PHS Regional Office VIII, 1961 Stout Street, Denver, CO 80294, (303) 844–4461

Region IX: Al Tevis, Grants Management Officer, PHS Regional Office IX, 50 United Nations Plaza, San Francisco, CA 94102, (415) 556–2595

Region X: James Tipton, Grants Management Officer, PHS Regional Office X, Mail Stop RX 20, 2201 Sixth Avenue, Seattle, WA 98121, (206) 553–7997

[FR Doc. 94–11783 Filed 5–13–94; 8:45 am]

BILLING CODE 4160–15–P

RIN: 0905–ZA55

Program Announcement and Proposed Criteria for Meeting the General Statutory Funding Preference for Grants for Nurse Anesthetist Faculty Fellowships for Fiscal Year 1994

The Health Resources and Services Administration (HRSA) announces that applications will be accepted for fiscal year (FY) 1994 Grants for Nurse Anesthetist Faculty Fellowships under the authority of section 831(b), title VIII of the Public Health Service (PHS) Act, as amended by the Nurse Education and Practice Improvement Amendments of 1992, title II of the Health Professions Education Extension Amendments of 1992, Pub. L. 102–408, dated October 13, 1992. Comments are invited on the proposed criteria for meeting the general statutory funding preference.

Approximately $100,000 will be available in FY 1994 for this program. It is anticipated that $100,000 will be available to support 10 competing awards averaging $10,000.

Previous Funding Experience

Previous funding experience information is provided to assist potential applicants to make better informed decisions regarding submission of an application for this program. In FY 1993, HRSA reviewed 22 applications for Grants for Nurse Anesthetist Faculty Fellowships. Of those applications, 100 percent were approved. Fifteen projects, or 68% of applications received, were funded. In FY 1992, HRSA reviewed 9 applications for Grants for Nurse Anesthetist Faculty Fellowships. Of those applications, 100 percent were approved and funded.

Purpose

Section 831(b) of the Public Health Service Act authorizes the Secretary to make grants to provide financial assistance to certified registered nurse anesthetists (CRNA) who are faculty members in accredited programs to enable such nurse anesthetists to obtain advanced education relevant to their teaching functions. Applicants must compete for Federal support annually.

Eligibility

Public and private nonprofit institutions which employ CRNA faculty to teach registered nurses in a full-time accredited nurse anesthetist training program may apply for a Grant for Nurse Anesthetist Faculty Fellowships.

National Health Objectives for the Year 2000

The Public Health Service urges applicants to submit work plans that address specific objectives of Healthy People 2000. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone 202–783–3238).

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between U.S. Public Health Service education programs and programs which provide comprehensive primary care services to the underserved.

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Criteria for Fellows

The following criteria for fellows were established in FY 1993 after public comment (58 FR 40658, 7/29/93), and will be extended in fiscal year 1994.

To be eligible for fellowship support an individual must be:

1. A United States citizen, noncitizen national, or foreign national who possesses a visa permitting permanent residence in the United States;
2. A certified registered nurse anesthetist with current licensure to practice, and with teaching responsibilities in an accredited nurse anesthetist education program;
3. Enrolled or accepted for enrollment in a formal program of study which leads to a master's or doctoral degree;
4. Proposed for a fellowship in the applicant institution's grant proposal; and
5. A faculty member employed by, or affiliated with, the applicant institution during the period of approved fellowship support.

Policy on Payment of Stipends

The following policy on payment of stipends was established in fiscal year 1990 after public comment (55 FR 36325, dated September 5, 1990) and is being extended in fiscal year 1994.

A faculty member may be paid a stipend for living costs if attending an

educational institution as a full-time student; no stipend would be available for a faculty member who is enrolled in part-time study or who is employed on a full-time basis. This policy is designed to target stipend assistance to the individuals who are most in need of such aid.

Review Criteria

Applications will be reviewed and award amounts will be calculated by staff in the Division of Nursing and in the Grants Management Branch of the Bureau of Health Professions. The review of applications will take into consideration the following criteria:

1. The eligibility of applicants;
2. The eligibility of faculty; and
3. The extent to which an applicant meets the funding preferences.

These review criteria were established in 1990 (55 FR 36325, 9/5/90). Different criteria were established for use in FY 1993 to meet the statutory requirement for peer review. The requirement for peer review was deleted by Public Law 103–43.

Other Considerations

In addition, the following funding factors may be applied in determining funding of approved applications.

A funding preference is defined as the funding of a specific category or group of approved applications ahead of other categories or groups of approved applications.

It is not required that applicants request consideration for a funding factor. Applications which do not request consideration for funding factors will be reviewed and given full consideration for funding.

Statutory Funding Preference

Section 860(e) of the PHS Act, as amended by the Nurse Education and Practice Improvement Amendments of 1992, title II of the Health Professions Education Extension Amendments of 1992, Public Law 102–408, enacted on October 13, 1992, provides for the following statutory preference for this program of Grants for Nurse Anesthetist Faculty Fellowships, as well as for certain other programs under titles VII and VIII of the PHS Act.

Statutory preference will be given to qualified applicants that: (1) Have a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or (2) have achieved, during the 2-year period preceding the fiscal year for which such an award is sought, a significant increase in the rate of placing graduates in such settings.

This preference will only be applied to applications that rank above the 20th percentile of applications that have been recommended for approval.

Proposed Criteria for Meeting the General Statutory Funding Preference

It is proposed that, for Grants for Nurse Anesthetist Faculty Fellowships, qualified applicants will meet the general statutory funding preference if a minimum of 50% of the nurse anesthetist faculty are teaching in medically underserved communities.

Additional information concerning the implementation of this preference has been published in the **Federal Register** at 58 FR 40659, dated 7/29/93.

Established Funding Preference

The following funding preference was established in fiscal year 1990 after public comment (55 FR 36325, dated September 5, 1990). A revised version is being extended in fiscal year 1994. The Department determined that this is a more appropriate means to achieve program goals.

A funding preference will be given first to faculty who will be completing degree requirements before or by the end of the funded budget year, second to faculty who are full-time students, and third to faculty who are part-time students.

Information Requirements Provision

Under section 860(e)(2) of the Act, the Secretary may make an award under the Nurse Anesthetist Faculty Fellowships only if the applicant for the award submits to the Secretary the following information:

1. A description of rotations or preceptorships for students, or clinical training programs for residents, that have the principal focus of providing health care to medically underserved communities.

2. The number of faculty on admissions committees who have a clinical practice in community-based ambulatory settings in medically underserved communities.

3. With respect to individuals who are from disadvantaged backgrounds or from medically underserved communities, the number of such individuals who are recruited for academic programs of the applicant, the number of such individuals who are admitted to such programs, and the number of such individuals who graduate from such programs.

4. If applicable, the number of recent graduates who have chosen careers in primary health care.

5. The number of recent graduates whose practices are serving medically underserved communities.

6. A description of whether and to what extent the applicant is able to operate without Federal assistance under this title.

Additional details concerning the implementation of this information requirement have been published in the **Federal Register** at 58 FR 43642, dated 8/17/93 and will be provided in the application materials.

Paperwork Reduction Act

The standard application form PHS 6025–1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. This approval includes the burden for collection of information for the statutory general preference and for the information requirement provision. (OMB #0915–0060, expiration date 7/31/95)

Additional Information

Interested persons are invited to comment on the proposed review criteria and the proposed criteria for meeting the general statutory funding preference. The comment period is 30 days. All comments received on or before June 15, 1994 will be considered before the final review criteria and the final criteria for meeting the general statutory funding preference are established. Written comments should be addressed to: Marla Salmon, ScD, RN, FAAN, Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 9–35, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Nursing, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

Application Requests

Requests for application materials and questions regarding grants policy and business management issues should be directed to: Ms. Jacquelyn Whitaker (A–22), Grants Management Specialist, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8C–26, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6857 FAX: (301) 443–6343.

Completed applications should be returned to the Grants Management Branch at the above address.

If additional programmatic information is needed, please contact: Donna English, Acting Chief, Nursing Practice Resources Section, Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 9–36,5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–5763 FAX: (301) 443–8586.

The deadline date for receipt of applications is June 24, 1994. Applications will be considered to be "on time" if they are either:

(1) Received on or before the established deadline date, or

(2) Sent on or before the established deadline date and received in time for orderly processing. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

Late applications not accepted for processing will be returned to the applicant.

This program, Grants for Nurse Anesthetist Faculty Fellowships, is listed at 93.907 in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100). This program is not subject to the Public Health System Reporting Requirements.

Dated: March 29, 1994.

John H. Kelso,

Acting Administrator.

[FR Doc. 94–11784 Filed 5–13–94; 8:45 am]

BILLING CODE 4160–15–P

Public Health Service

RIN: 0905–2A56

Office of Minority Health; Cooperative Agreement for Family and Community Violence; Prevention Demonstration Program; Notice of Availability of Funds and Request for Application

Introduction

The Office of Minority Health (OMH) announces the availability of Fiscal Year 1994 funds to support a cooperative agreement with a consortium of Historically Black Colleges and Universities (HBCUs). Specifically, the intent of this project is to design, develop, implement, and test a series of models that may be effective in preventing minority male related violence in such communities.

Models developed under this project should address behavioral patterns and environmental influences that may precipitate violence within the family or the community. Such factors may contribute to dysfunctional patterns of individual behavior or dysfunctional relationships within families. They include breakdowns in family structure, alcoholism and drug abuse, lack of economic and job opportunities, educational deficiencies, poverty, and crime. With respect to domestic violence, these issues may include spousal and child abuse and rape; transmission of violent behavior to subsequent generations; societal and family relationships.

Multi-purpose family support systems are planned through both linkages and consortiums of campus based centers and participating official and private community based organizations providing a range of prevention and service interventions. Interventions will be directed toward several different target populations including primary school (k–5), junior high school (6–8), and high school as well as young adults, adults, parents, and the elderly. They will involve, but not be limited to certain common strategies such as target group focused education; individual counseling, treatment and individually relevant assistance; and referral to public and private agencies, which includes the college and university based family support center or the participating professionals, institutions and organizations within the community. The provider system encompasses colleges and university students and faculty, parents, school officials and teachers, a large array of professionals and official community agencies. The system is designed to utilize and expand the expertise of these educational institutions and other community resources in the areas to be addressed. The consortium consists of 16 Historically and Predominantly Black Colleges and Universities (HBCUs) and a number of key public and private entities functioning together to improve the lives of individuals residing throughout the communities in which they live.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objective of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and to improve the quality of life. This announcement is related to the priority area of Violence and Abusive Behavior, which includes the following sub-areas: homicide, suicide, weapon-related deaths, child abuse and neglect, spousal abuse, assault injuries, suicide attempts by adolescents, physical fighting among youth, weapon-carrying youth and comprehensive violence programs.

Authority

This project is authorized under, section 1707(d)(1), Public Health Service Act.

Eligible Applicant

Approximately $4,250,000 is available to support a family and community violence prevention effort. Assistance will be provided to Central State University of Wilberforce, Ohio, which will serve as the lead entity for the consortium of 16 Historical and Predominately Black Colleges and Universities, specifically the Consortium for Practicum and Research on Minority Males/Minority Males Consortium (MIN–MALES. The Acting Deputy Assistant Secretary for Minority Health has determined that this consortium is uniquely qualified to receive this award because it is a pre-existing proven consortium which can respond rapidly to the OMH requirement to complete the award process this fiscal year. Each institution participating in this existing consortium is already actively involved in on-campus or in neighborhoods/ community based projects that are designed to remedy minority male and family educational and health problems. Furthermore, all participating institutions are working in an official and coordinated capacity to focus specifically on violence-related problems faced by minority communities. In addition, the consortium members are geographically distributed in such a manner that allows them to access and service a large and diverse number of racial and ethnic minorities.

They have established functional working relationships with community-based organizations, churches, schools, prisons, etc. * * * which demonstrates the existence of a viable network with cultural competence and existing outreach mechanisms targeting multiple racial and ethnic family populations. This consortium is uniquely prepared by virtue of its expertise, geographic distribution and existing network to implement a model family domestic violence program expeditiously. No other applications will be solicited.

Availability of Funds

Approximately $4,250,000 (indirect and direct costs) will be available in Fiscal Year 1994 to fund this

cooperative agreement. The project is expected to begin on September 30, 1994, for a 12 month budget period within a project period not to exceed 3 years. Continuation awards within the project period will be made on the basis of satisfactory progress and availability of funds. The funding estimate above may vary and is subject to change.

Background

Violent and abusive behavior exacts a large toll on the physical and mental health of Americans. Child abuse, spouse abuse, and other forms of intrafamilial violence continue to threaten the health of thousands of American families, particularly minorities.

In 1986, an estimated 1.6 million children nationwide experienced some form of abuse or neglect. Physical abuse accounted for the greatest portion of abuse incidents. Studies suggest that between 2 million and 4 million women are physically battered each year by their partners. On an annual basis, more than 1 million women seek medical assistance for injuries caused by battering. Also, the vast majority of domestic homicides are preceded by episodes of violence. Domestic violence is a major context for suicide attempts, substance abuse, and mental illness among women and 45 percent of mothers of abused children are themselves battered women.

The characteristics of homicides indicate a clear and consistent pattern of friend and family violence. Half of the yearly 23,000 homicide victims in the United States die at the hands of an acquaintance. For example, family members are responsible for 20 percent of the deaths whereas casual acquaintances are responsible for 30 percent.

During 1985, the Surgeon General and the U.S. Public Health Service provided a national focus on violence as a leading public health problem in the United States. Since that time, public health perspectives in preventing death and disability due to violent and abusive behavior have emerged across the country.

Violence in America is a public health problem that takes its greatest toll on young minority males. Minority males have the highest rates of contact with the criminal justice system of any group in the nation. In 1987, more than half of all prison inmates in the nation were Black or Hispanic males. Problems confronting minority males are those particularly associated with poverty, violence, single parent households, school drop-out rates, delinquency, unemployment, access to higher education and health status. The American Council on Education recently reported that African American Male enrollment in colleges and universities declined by five percent, while the enrollment among Hispanic males remained constant, between 1990–1992.

Purpose

The purpose of this cooperative agreement is to design, implement, and assess the use of a consortium to conduct model centers for the development and demonstration of interventions related to minority male, family and community violence.

Program Requirements

The consortium will design, implement, and assess Minority Male, Family and Community Violence Prevention Models which maximize the leadership of minority institutions of higher education in: (1) Organizing a total "town and gown" initiative with respect to both their own functions and responsibilities and those of entities to be involved throughout the community, e.g., primary/secondary schools, churches, public agencies; (2) The life centers should at a minimum conduct the following:

- Assess local community resources dedicated to address problems of family and community violence.
- Coordinate with local violence efforts currently in place to minimize duplication of efforts and to maximize use of local resources.
- Specifically, though not exclusively, address the problem of interpersonal family violence by designing and implementing an educational/prevention intervention.
- Design and implement a student assessment project to identify students from dysfunctional families and to delineate positive and negative coping strategies.

(3) developing educational experiences, preventive measures and therapeutic interventions designed to address the issues of dysfunctional males and families; and (4) formulating methods and strategies for execution of the initiatives through a variety of avenues within the minority institutions of higher education and throughout the community. This initiative seeks to address the escalating national problems experienced by dysfunctional families and individuals in the minority community. These national problems are precipitated by such conditions as breakdowns in family structures, alcoholism and drug abuse, educational deficiencies, poverty, crime, and violence.

The consortium will establish a maximum of sixteen (16) Family Life Centers on the campuses of minority institutions of higher education. A complete organizational structure will be developed for initiatives to be executed through this program with respect to both the minority institutions of higher education and community components involved including methodologies and strategies for their operation. The consortium will develop and test the interventions and other programmatic content for all facets of the program that are internal and external to the minority institutions of higher education. These include, methods of their delivery and the competencies necessary for all students and professionals involved (mentor, counselors, faculty, etc.) in carrying out the interventions.

Use of Cooperative Agreement: A cooperative agreement will be awarded because of the anticipated substantial programmatic involvement by OMH staff. OMH will take the lead programmatic responsibility for this activity and will work in collaboration with other PHS and DHHS co-sponsoring entities. Substantial programmatic involvement is as follows:

(1) OMH shall arrange an initial orientation meeting to discuss and finalize a project management plan, to clarify roles and responsibilities of the consortium and OMH staff, to establish clear lines of communication, to introduce the consortium participants to other PHS and DHHS co-sponsors, and to discuss and review a workplan.

(2) OMH staff shall provide technical assistance and oversight as necessary for the overall design, implementation and assessment of the project activity.

(3) OMH staff shall provide technical assistance to the consortium in the design, development, and implementation of the evaluation plans and strategies.

(4) OMH staff shall review and approve all consortium evaluation plans and strategies prior to implementation.

(5) OMH staff shall provide non-financial assistance to the consortium to arrange an annual meting and to provide briefings regarding programmatic outcomes, evaluation plans, strategies, agreement, and to provide expertise regarding the identification of evolving areas of concern affecting the minority populations.

Technical Assistance

OMH will collaborate with representatives of the Consortium in the identification of specific areas of intervention activities and the development of research areas. The

following document has been provided by OMH to the Consortium: Healthy People 2000

Application Content

In a narrative form, the applicant shall submit sufficient supporting evidence to satisfy all items in the "Evaluation Criteria". This information should be presented using the PHS Application form PHS 5161 (Approved by OMB under control no 0937–0189). The application submitted under this cooperative agreement will contain multiple subparts addressing the individual contributions of consortium members. It is anticipated that the application received will contain technical proposal(s) that may cover up to a three-year period.

Evaluation Criteria

A. The application will be evaluated according to the following criteria:

1. The extent to which the proposed family community violence intervention model(s) will address the needs of the targeted minority populations as expressed by clear and measurable goals and objectives; the reasonableness of the effort required to incorporate the model into the long-term institutional goals as expressed by letters of long-term institutional commitment. (40%)
2. The appropriateness of the proposed model design, purpose, methodology, scope, assessment, and timetable. (40%)
3. Evidence for collaborative effort within the consortium and with other significant participants such as community based organizations. (5%)
4. Adequacy of resources; including background and training of key personnel and percentage effort allocation to achieve stated objectives and goals. (10%)
5. Potential for the proposed interventions and reports to lead to publishable results. (5%)
6. Budget and Cost-effectiveness; the extent to which the total budget is reasonable and will be adequate to achieve stated project goals. The budget cost of the project to the Government must be reasonable. (Not Scored)

Contacts: For program information, contact Mr. Michael A. Douglas, Project Officer, Division of Policy Coordination, Office of Minority Health, 5515 Security Lane, Suite 1000, Rockville, Maryland, 20852, telephone number (301) 443–9923. For grants management information, contact Ms. Carolyn A. Williams, Grants Management Officer, Division of Grants Management, Office of Minority Health, 5515 Security Lane, Suite 1000, Rockville, Maryland, 20852, telephone number (301) 594–0758.

Application Deadline: The application deadline is June 15, 1994.

Guide for Grants and Contracts: The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

State Reviews: Executive Order 12372 sets up a system for State and local review of proposed Federal assistance applications. Applicants (other than federally-recognized Indian tribal governments) should contact their State Single Points of Contact (SPOCs) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. A current list of SPOCs is included in the application kit. SPOCs will have 60 days to provide comments. SPOC comments must be received by July 15, 1994. The Office of Minority Health does not guarantee to accommodate or explain State process recommendations after that date. SPOC comments are to be sent to: Office of Minority Health, Grants Management Officer, Rockwall II Building, suite 1000, 5515 Security Lane, Rockville, MD 20852.

Public Health System Reporting Requirement: This program is subject to Public Health Systems Requirements. Under these requirements, a community-based nongovernmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS) (Approved by OMB under control no. 0937–0195). The PHSIS is intended to provide information to State and local health officials to keep them apprised of proposed health services grant applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental applicants are required to submit the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted no later than the Federal application receipt due date: (a) a copy of the face page of the applications (SF 424), (b) a summary of the project (PHSIS), not to exceed one page, which provides: (1) a description of the population to be served, (2) a summary of the services to be provided, (3) a description of the coordination planned with the appropriate State or local agencies.

(The Catalog of Federal Domestic Assistance number is 93.105).

Dated: March 29, 1994.

Audrey F. Manley,

Acting Deputy Assistant Secretary for Minority Health.

[FR Doc. 94–11753 Filed 5–13–94; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary—Office of Lead-Based Paint Abatement and Poisoning Prevention

[Docket No. N–94–3769; FR–3725–N–01]

Task Force on Lead-Based Paint Hazard Reduction and Financing; Open Meeting

AGENCY: Office of Lead-Based Paint Abatement and Poisoning Prevention, HUD.

ACTION: Notice of open meetings.

SUMMARY: The Task Force was established by the Secretary pursuant to section 1015 of the Residential Lead-Based Paint Hazard Reduction Act of 1992. The charter of the Task Force was approved July 14, 1993.

The Task Force includes individuals representing the Department of Housing and Urban Development; the Farmers Home Administration; the Department of Veterans Affairs; the Federal Home Loan Mortgage Corporation; the Federal National Mortgage Association; the Environmental Protection Agency; employee organizations in the building and construction trades industry; landlords; tenants; primary lending institutions; private mortgage insurers; single-family and multifamily real estate interests; nonprofit housing developers; property liability insurers; public housing agencies; low-income housing advocacy organizations; national, State, and local lead-poisoning prevention advocates and experts; and community-based organizations located in areas with substantial rental housing. These members were selected on the basis of personal experience and expert knowledge. Three committees were established by the Task Force members; (1) Finance Committee; (2) Liability Committee; and (3) Implementation Committee. The members of these committees are members of the Task Force.

DATES: The committees will be meeting on June 20, 1994—Finance Committee (9 to 5), June 21, 1994—Implementation Committee (9 to 5), and June 22, 1994—Liability Committee (9 to 5), (EST), at the Marriott Waterfront Hotel, 80 Compromise Street, Annapolis,

Maryland 21401, telephone number (410) 268–7555, or (301) 261–2240.

ADDRESSES: Members of the public are invited to provide written material to: Ruth Wright, Task Force Staff Director, Department of Housing and Urban Development, 451 7th Street SW., room B–133, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Ruth Wright, Task Force Staff Director, Department of Housing and Urban Development, 451 7th Street SW., room B–133, Washington, DC 20410; telephone (202) 755–1805. The TTD numbers are (202) 708–9300 or 1–800–877–8339. (Except for the "800" number, these are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The last Task Force Committee meetings were held on April 4, 5 & 6, 1994 in Washington, DC. An announcement will be published in the **Federal Register** at least 15 days before each meeting. All meetings will be open to the public, with limited seating available on a first-come, first-served basis.

The mandate of the Task Force is to make recommendations to the Secretary of HUD and the Administrator of the Environmental Protection Agency (EPA) concerning:

(1) Incorporating the need to finance lead-based paint hazard reduction into underwriting standards;

(2) Developing new loan products and procedures for financing lead-based paint hazard evaluation and reduction activities;

(3) Adjusting appraisal guidelines to address lead safety;

(4) Incorporating risk assessments or inspections for lead-based paint as a routine procedure in the origination of new residential mortgages;

(5) Revising guidelines, regulations, and educational pamphlets issued by the Department of Housing and Urban Development and other Federal agencies relating to lead-based paint poisoning prevention;

(6) Reducing the current uncertainties of liability related to lead-based paint in rental housing, by clarifying standards of care for landlords and lenders and by exploring the "safe harbor" concept;

(7) Increasing the availability of liability insurance for owners of rental housing and certified contractors and establishing alternative systems to compensate victims of lead-based paint poisoning; and

(8) Evaluating the utility and appropriateness of requiring both risk assessments or inspections and notification to prospective lessees of rental housing.

Authority: 42 U.S.C. 4852a, 4852b.

Dated: May 10, 1994.

Ronald J. Morony,

Acting Director, Office of Lead-Based Paint Abatement and Poisoning Prevention.

[FR Doc. 94–11835 Filed 5–13–94; 8:45 am]

BILLING CODE 4210–32–P

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–94–3739; FR–3640–C–02]

Funding Availability (NOFA) for Comprehensive Improvement Assistance Program (CIAP); Correction

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of funding availability for Fiscal Year (FY) 1994.

SUMMARY: On April 19, 1994 (59 FR 18642), the Department published in the **Federal Register**, a notice of funding availability for Fiscal Year (FY) 1994 for the Comprehensive Improvement Assistance Program (CIAP). Because of an error in an editorial instruction, the date "June 18, 1994" calculates to be a nonworking business day and is not correct. The purpose of this document is to correct the application due date listed in the **DATES** section of the preamble.

DATES: Application is due on or before 3 p.m. local time on June 20, 1994, at the HUD Field Office with jurisdiction over the Public Housing Agency or Indian Housing Authority (herein referred to as HA), Attention: Director, Public or Indian Housing Division.

FOR FURTHER INFORMATION CONTACT: Janice D. Rattley, Director, Office of Construction, Rehabilitation and Maintenance, Department of Housing and Urban Development, 451 Seventh Street, SW., room 4138, Washington, DC 20410. Telephone (202) 708–1800. (This is not a toll-free number).

IHAs may contact Dominic A. Nessi, Director, Office of Native American Programs, Department of Housing and Urban Development, 451 Seventh Street, SW., room 4140, Washington, DC 20410. Telephone (202) 708–1015. (This is not a toll-free number).

Hearing- or speech-impaired individuals may call HUD's TDD number (202) 708–0850. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Accordingly, in FR Doc. 94–9321, a Notice of Funding Availability for Comprehensive Improvement Assistance Program (CIAP), published in the **Federal Register**, on April 19, 1994 at 59 FR 18642 is corrected to read as follows:

On page 18642, in the first column, in the **DATES** section, the date "June 18, 1994" is corrected to read "June 20, 1994".

Dated: May 10, 1994.

Myra L. Ransick,

Assistant General Counsel for Regulations.

[FR Doc. 94–11766 Filed 5–13–94; 8:45 am]

BILLING CODE 4210–33–P

Office of Administration

[Docket No. N–94–3767]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for expedited review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due date:* May 23, 1994.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within seven (7) working days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Josephe F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone no. (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of Housing and Urban Development has submitted to OMB, for expedited processing, and information collection package with respect to the Public Housing Residents Anti-crime Survey. HUD is requesting a 7-day OMB review of this information collection.

HUD is currently implementing Operation Safe Home, a joint anti-crime effort with the U.S. Departments of Justice, Treasury, and the Office of National Drug Control, to eliminate criminal activity in public housing. A key component of Safe Home is

coordinated strikes by Federal agencies against drug-related crime in public housing. Predatory violent crime in public housing also has been targeted for action. In an effort to make Operation Safe Home as effective as possible and to guide HUD's policy and legislative agenda, the Secretary wants to survey public housing residents on their opinions regarding crime and associated problems.

These survey data will be used directly by the Office of Public and Indian Housing to strengthen HUD's crime prevention activities in public housing and by the Office of Policy Development and Research to enhance HUD's policy and legislative initiatives for crime prevention in a broad range of other settings as well.

The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35):

(1) The title of the information collection proposal;

(2) The office of the agency to collect the information;

(3) The description of the need for the information and its proposed use;

(4) The agency form number, if applicable;

(5) What members of the public will be affected by the proposal;

(6) How frequently information submission will be required;

(7) An estimate of the total number of hours needed to prepare the information submission including numbers of respondents, frequency of response, and hours of response;

(8) Whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and

(9) The names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: May 3, 1994.

Michael A. Stegman,

Assistant Secretary, Office of Policy Development and Research.

Submission of Proposed Information Collection to OMB

Proposal: Public Housing Residents Anti-Crime Survey.

Office: Policy Development and Research.

Description of the Need for the Information and its Proposed Use: The survey is needed so that HUD can poll public housing residents on their opinion regarding crime prevention activities in public housing. The information will be used to strengthen HUD's crime prevention activities in public housing and to ensure client feedback is incorporated into their design.

Form Number: None.

Respondents: Individuals or Households.

Frequency of Submission: One Time.

Reporting Burden:

	No. of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Survey	2,500	..	1	..	.08		200
Interviews	1,500	..	1	..	.42		633

Total Estimated Burden Hours: 833.

Status: New.

Contact: Donald S. Bradley, HUD, (202) 708–4504, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Date: May 3, 1994.

Information for Inclusion, OMB Clearance Package, Public Housing Residents Anti-Crime Survey Sponsored by U.S. Department of Housing and Urban Development, Conducted by Research Triangle Institute

Section A: Justification

A.1 Circumstances That Make Information Collection Necessary

The U.S. Department of Housing and Urban Development (HUD) is currently implementing Operation Safe Home, a joint anti-crime effort with the U.S. Department of Justice, U.S. Department of Treasury, and the Office of National Drug Control, to eliminate criminal activity in public housing. A key component of Safe Home is coordinated strikes by federal agencies against drug-related crime in public housing. Predatory violent crime in public housing also has been targeted for action. In an effort to make Operation Safe Home as effective as possible, the Secretary wants to survey public housing residents on their opinions regarding crime and associated problems.

A.2 Use and Users of Information—Overview of Data Requirements

These survey data will be used directly by the Office of Public and Indian Housing (PIH) to strengthen HUD's crime prevention activities in public housing and by the Office of Policy Development and Research (PD&R) to enhance HUD's policy and legislative initiatives for crime prevention in a broad range of other settings as well.

A.3 Consideration of the Use of Improved Information Technology

The survey is utilizing several technological approaches to create an innovative way to efficiently gather information from a population in which data collection has traditionally been difficult. We are creating the sampling frame for the telephone interviews by obtaining recent telephone numbers for the sample or addresses, using a commercial file matching service. The phone numbers obtained will be loaded into an electronic scheduler which will assign cases to interviews at times which maximize the probability of successful contact. The scheduling algorithm considers time zones, time and result of previous efforts, and the most appropriate time to make calls to residences, as well as handling specific call-back appointments.

Once contact has been made with an eligible residence, and an eligible respondent selected, the Computer Assisted Telephone Interview (CATI) program will guide the interviewer through the questionnaire. Respondent burden is reduced since CATI selects the correct question sequence based on the respondent's previous answers allowing the interviewer to concentrate on reading the question and entering the response, not searching for the correct next question. CATI requires the entry of consistent data which falls into appropriate ranges thus eliminating editing time while the respondent is on the phone or callbacks to resolve problems. The CATI program can also offer the opportunity of providing the questions and response categories in an alternate language, if needed to allow special population to participate fully.

A.4 Efforts to Identify Duplication

The Department has examined existing administrative data sources to determine if similar data are collected. The information that this survey seeks to gather is not available from existing administrative or other survey instruments. This is the first telephone survey of its kind to focus on public housing residents.

A.5 Why Similar, Already Available Data Cannot Be Used

There does not exist a source of data on the attitudes of public housing residents toward crime/crime prevention issues equivalent to what is being collected in this effort. The Department regularly collects information (such as income and number of dependents) on residents of low-income public housing developments for use in administering low-income housing programs but does not collect information on resident's perceptions of crime and safety, and their opinions of programs that could effectively address these issues.

A.6 Reducing the Burden

The only burden associated with this survey is the 25 minute interview which respondents agree to complete. As discussed in Item A.3, the use of CATI minimizes the burden associated with the mode of administration.

A.7 Consequences of Less Frequent Data Collection

Since this is a one-time data collection effort, this section is not applicable.

A.8 Special Circumstances Requiring Inconsistency With 5CFR1320.6

All data collection procedures and data collection instruments have been designed in a manner which is in compliance with all sections of 5 CFR 1320.6. No exceptions are requested.

A.9 Consultations With Persons Outside the Agency

The survey design and the data collection instrument have been designed by project staff at the Research Triangle Institute (RTI) working under contract from HUD to design and completer the survey. RTI staff and their consultant, Dr. William Rohe from the University of North Carolina, have worked closely with the HUD project staff to develop the questionnaire and the sampling approach which will be used with standard telephone data collection procedures to complete the survey. During the questionnaire design, RTI methodologists consulted with the staff from the Census Bureau on issues of question wording and ordering.

A.10 Confidentiality

During an introduction to the interview which address the components of informed consent, all respondents will be assured that the information that they provide will remain confidential, and that they can refuse to answer any individual question during the interview. No names are requested and the address and telephone numbers will not be included in the data file prepared and delivered to HUD. Any location information used in the analyses will be presented in composite form which will not allow the identification of individual respondents.

All project staff and each telephone interviewer will comply with all aspects of relevant federal regulations concerning privacy of respondent's data, and the data will be maintained in limited access secured computer files.

A.11 Justification for Questions of a Sensitive Nature

During their cognitive and telephone pretest interviews, we attempted to identify questions which the respondents might consider sensitive. None of the respondents indicated any problems with the questions in the questionnaire. We did replace a household income question with a proxy measure, monthly rent, which we felt would be less intrusive.

A.12 Estimates of Cost

The cost of the survey design, data collection, and analysis and reporting contract to RTI is $142,401.

A.13 Estimates of Respondents

The sample will consist of 2,500 telephone numbers which will be screened to determine eligibility, defined as a working residential number at the address determined for the sample. These screening calls will require an average of 5 minutes. The interview will be completed for 1,500 respondents and will take, on average, 25 minutes. The total burden is estimated to be 833 hours.

A.14 Reasons for Change in Respondent Burden

Since this is a one-time effort, there is no change in the respondent burden.

A.15 Plans for Publication and Statistical Tabulation

RTI will prepare a databook presenting outcome variables cross-tabulated by independent variables. A final results report will provide summary tables and/or graphics that present main findings and text that interprets and gives highlights of the main findings.

Section B: Statistical Methods of Data Collection

B.1 Sampling Method and Respondent Universe

B.1.1 Target Population and Respondent Universe

The target population, the desired inference population, comprises all public housing residents in the 48 coterminous States. The respondent universe or study population, defined as the portion of the target population actually being sampled from, is essentially the public housing residents in the 48 States that have listed telephone numbers. Because of undercoverage of this list source compared to the target population, that is, residents with no listed telephone and some that are not covered by the HUD address file (the 951 data base), special attention is being given to the sample allocation and to the construction of analysis weights to improve interferences relating to the target population.

The basic source of sample residents will be the HUD 951 data base, which is basically an address file. The approximately 300,000 addresses on this file represent 68 percent of the 1.3 million public housing units in the United States. Those not represented are the result of nonreporting, data errors, and indefinite addresses (rural addresses, etc.) provided to HUD in response to the periodic mailout to all of the Public Housing Authorities. The circa 300,000 records identify on the average about three housing units each because of a single address and file record representing a multi-family unit in many cases. The respondent universe will be developed by matching these addresses to telephone listings.

B.1.2 Sampling Method

The sample public housing resident will be selected in several phases beginning with a proportional stratified sample of approximately 25,000 addresses obtained from the 300,000 records on the 951 data base (proportional to the target population counts in 32 strata). The strata to be used at each phase are the cross of 4 Census Regions, 4 sizes of Housing Authority, and by housing for elderly versus other. The telephone numbers obtained from the addresses selected for matching will be subsampled, again using random stratified sampling with proportional allocation. The result will

be a nearly self-weighting sample with respect to the target population.

Approximately 2500 telephone numbers will be selected for fielding, possibly in two waves to facilitate early testing of analysis and weighting software and with expectation of obtaining 1500 interviews required for the study. Finally, any eligible individual (a resident of the household who is 18 years of age or older) will become the sample respondent.

The sample of 1500 is expected to yield sampling errors ranging from about 2 to 4 percentage points for the required domain estimates when the estimates are near 50 percent (the domains will be approximately 15 percent or more of the total).

B.2 Procedures To Deal With Nonresponse

Two categories of nonresponse are important in this survey: first, the undercoverage of the sampling frame and, second, the potential nonparticipation of those residents contacted. With regard to the potential for nonparticipation, we are making allowance for nonworking numbers, other types of loss, and approximately a 20 to 25 percent nonresponse by fielding 2500 numbers to obtain the required 1500 interviews.

To deal with potential for nonresponse and undercoverage biases, we are also developing analysis weights that align the final sample with known control totals (with regard to the design strata defined above). Finally, other control totals will be compared to weighted frequencies (based on the initial analysis weights). Additional weight adjustments using iterative proportional fitting will be used as needed to agree with other important control totals (for example, age, race, metro/nonmetro).

B.3 Pretesting

RTI staff conducted pretesting of the questionnaire during the second week of the contract. The testing included four cognitive interviews and eight telephone interviews with residents of public housing facilities in Durham, North Carolina. The four in-depth cognitive interviews lasted approximately 45 minutes each, including introductory and concluding comments. Respondents were paid $20 for participating in the interview. During each interview, the respondents listened to the survey questions and responded to each as appropriate. We used concurrent probing during the interview to obtain insight into how respondents were interpreting question wording and choosing the best response option. In addition, we asked respondents to comment on what we felt were the most sensitive items (for example, the gun ownership and income questions) in order to determine the likelihood that respondents would provide valid responses.

We also conducted 8 telephone interviews to determine if there were any additional changes to the questionnaire that were needed due to the mode of administration. All respondents were paid $10 for completing the interview. These calls averaged about 25 minutes each. Three of these interviews were conducted by project survey specialists and methodologists. The remaining interviews were conducted by RTI Telephone Survey Unit (TSU) supervisors, and were monitored by one of the project survey specialists. After each of these interviews, the interviewer completed a debriefing form with the respondent and then answered a similar set of items gauging his or her perception of how well the questionnaire worked.

Based on these pretest interviews, we prepared a series of recommendations which were faxed to HUD and used as the basis of a series of discussions of potential revisions. The revisions which were agreed upon were included in the final version of the questionnaire, which is included in Section B5.

B.4 Persons Responsible for Statistical Aspects of the Design

Staff at RTI responsible for the statistical aspects of the design include:

Project Statistician—Steve Williams, (919) 541–6246

Task Manager—Harvey Zelon, (919) 541–5888

Policy Analyst—Sam Leaman, (919) 541–6682

Staff at HUD involved in the design include:

Project GTR—Don Bradley, (202) 708–4504

Sampling Staff—Lynn Rodgers, (202) 708–2031

B.5 Copy of the Survey Instrument

A copy to the current version of the survey instrument is attached as Appendix A. The following table indicates the questions associated with the analysis domains.

Screening questions used to verify the household and identify an eligible sample member	S1–S4
Background/demographic questions used to characterize the respondent and his/her living situation	1, 2, 40–47
Level of fear of crime and perception of safety	3, 4
Attitudes toward police role in the public housing neighborhood	5, 6
Existence of and attitudes toward citizen involvement in crime prevention activities	7–11, 25–27
Perception of perpetrators of crime	12, 14, 17
6-month history of victimization	13, 15, 16
Perception of developmental characteristics	18, 24, 31, 37–39
Perceived efficacy of crime-reduction measures	19–23, 28–36

BILLING CODE 4210–01–M

Appendix A—Survey Instrument

HUD RESIDENT CRIME SURVEY

Hello, this is _____, from the Research Triangle Institute in North Carolina. We are doing a study for the United States Department of Housing and Urban Development.

S1. Is this (___)___-____?

1 YES
2 NO —→ Thank you. I'll redial the number. If your phone should ring, please answer it as I do have to verify the number. HANG UP AND DIAL THE NUMBER AGAIN.

S2. The address that I have on record for this household is:

ADDRESS OF PROJECT/UNIT

Is this correct?

1 YES
2 NO —→ TERMINATE.

S3. CHECK ITEM: ARE YOU SPEAKING WITH AN ADULT?

1 YES
2 NO —→ May I please speak to someone 18 or older?

1 YES —→ WHEN AN ADULT IS ON THE PHONE: This is _____ from the Research Triangle Institute in North Carolina. We are doing a study for the United States Department of Housing and Urban Development. CONTINUE WITH S4.
2 NOT AVAILABLE—→SET CALLBACK.
3 NO ONE 18 OR OLDER LIVES HERE—→ Thank you. That is all the information that I need. TERMINATE.

S4. I need to speak to someone who lives at this address who is 18 years of age or older? Do you live there and are you 18 or older?

1 YES
2 NO ——▸ May I please speak to someone 18 or older who lives there?

1 YES ——▸ WHEN AN ADULT IS ON THE PHONE: This is _____ from the Research Triangle Institute in North Carolina. We are doing a study for the United States Department of Housing and Urban Development.
2 NOT AVAILABLE ——▸ SET CALLBACK.
3 NO ONE 18 OR OLDER LIVES HERE ——▸ Thank you. That is all the information that I need. TERMINATE.

This study is being conducted to better understand the kinds of crimes that take place in public housing developments, or projects, and to identify ways to help prevent crime. The federal government is considering a number of ways to make public housing safer for residents and would like your thoughts on what should be done. Your household was chosen at random to participate in this study. All the information that you provide will be kept confidential and will only be used for the purposes stated for this study. Your participation is voluntary and you can refuse to answer any question. The questions should only take about 25 minutes.

[INTERVIEWER: IF RESPONDENT OBJECTS TO THE TERM "PROJECT", SUBSTITUTE WITH THE TERM "DEVELOPMENT" IN THE QUESTIONNAIRE TEXT.]

First, I need to know what type of place you live in.

1. Many public housing units are in a project with other public housing units, but some are single units that are not with other public housing units. Is the unit that you live in...

1 a project with other public housing units
2 a single unit that is not part of a public housing project

2. How long have you lived in your current house or apartment? Would you say...

1 6 months or less
2 between 6 months and 1 year
3 1 to 5 years
4 6 to 10 years
5 more than 10 years

3. (During the past 6 months, that is, since DATE 6 MONTHS AGO,/since you moved into your current home), how safe a place has your (housing project/neighborhood) been to live in? Would you say that it has been...

1 very safe
2 somewhat safe
3 somewhat unsafe
4 very unsafe

4. (During the past 6 months/Since you moved into your current home), how fearful have you been that you would be held up, mugged, or assaulted in your (housing project/neighborhood)? Would you say you have been...

1 very fearful
2 somewhat fearful
3 a little fearful
4 not at all fearful

5 Are there any efforts taking place in your (housing project/neighborhood) to help prevent or reduce crime?

1 YES
2 NO ——▸ SKIP TO 8.
3 DON'T KNOW ——▸ SKIP TO 8.

6. What efforts or programs are you aware of?

1 COMMUNITY/NEIGHBORHOOD/BLOCK WATCH PROGRAM
2 PATROLS BY RESIDENTS
3 POLICE MINI-STATION IN THE PROJECT/BUILDING
4 INCREASED POLICE PATROLS
5 AFTER-SCHOOL/WEEKEND YOUTH PROGRAMS
6 JOB-TRAINING PROGRAMS FOR ADULTS
7 OTHER (SPECIFY_____)

7. At any time (in the past 6 months/since you moved in to your current home), have you actively participated in any of these programs?

1 YES
2 NO

8. How would you rate the quality of service provided by the local police or sheriff's department to your neighborhood? Would you say it is...

1 good
2 fair
3 poor

I am going to list some actions that the government might ask your public housing authority to do. As I read each action, please tell me how much you think the action would help to reduce crime.

9. Do you think that having...

	A LOT	SOMEWHAT	A LITTLE	NOT AT ALL
a. more police officers patrol your neighborhood on a regular basis would help reduce crime a lot, somewhat, a little, or not at all?	1	2	3	4
b. police officers patrol the neighborhood on foot?	1	2	3	4
c. police officers patrol the neighborhood on bicycles?	1	2	3	4
d. more police cars patrol your neighborhood?	1	2	3	4
e. police officers live in your (project/neighborhood)?	1	2	3	4

We are interested in your views on resident patrols as a way to control or reduce crime. By "resident patrols", I mean people from your (project/neighborhood) who volunteer to walk or ride around and report anything suspicious to the police.

10. Do you think that a resident patrol in your (project/neighborhood) would help reduce crime...

1 a lot
2 somewhat
3 a little
4 not at all

11. Are you willing to participate in a resident patrol?

1 YES
2 NO
3 ALREADY PARTICIPATES

12. Would you say that most of the crime in your (project/neighborhood) is committed by people who live in the (project/neighborhood) or by people coming from outside the (project/neighborhood)?

1 INSIDE
2 AN EQUAL AMOUNT FROM INSIDE AND OUTSIDE
3 OUTSIDE
4 DON'T KNOW

13. Since (DATE 6 MONTHS AGO, that is, in the past 6 months/you moved into your current home), has your home been broken into or have you had anything stolen from your home or yard?

1 YES
2 NO —— ▸ SKIP TO 15.

14. The last time something was stolen from your home or yard, was the thief someone who lived in your (project/neighborhood) or outside of it?

1 LIVED IN PROJECT/NEIGHBORHOOD
2 LIVED OUTSIDE PROJECT/NEIGHBORHOOD
3 DON'T KNOW

15 (In the past 6 months/since you moved into your current home), has anyone, including anyone you lived with, assaulted, mugged, or robbed you (or any member of your household)?

1 YES
2 NO —— ▸ SKIP TO 18.

16. The last time (you were/either you or someone in your household was) assaulted, mugged, or robbed, did it happen inside your home, within two blocks of your home, or someplace more than two blocks from your home?

1 IN THE HOME
2 IN THE TWO BLOCK AREA
3 MORE THAN TWO BLOCKS AWAY

17. The last time (you were/either you or someone in your household was) assaulted, mugged, or robbed, was the attacker someone who lived in your own household, someone who lived in your (project/neighborhood), or someone who lived outside your (project/neighborhood)?

1 LIVED IN HOUSEHOLD
2 LIVED IN PROJECT/NEIGHBORHOOD
3 LIVED OUTSIDE PROJECT/NEIGHBORHOOD
4 DON'T KNOW

I'm going to read a list of things that are sometimes problems in (housing projects/neighborhoods). As I read each one, please tell me if it has been a big problem, somewhat of a problem, or not a problem at all in your (housing project/neighborhood).

18. (During the past 6 months/Since you moved into your current home), do you think that...

	BIG	SOMEWHAT	NOT AT ALL	NA
a. people in your (project/ neighborhood) shooting guns?	1	2	3	9
b. people having their homes broken into?	1	2	3	9
c. people being robbed or having their purses or wallets taken from them?	1	2	3	9
d. people being attacked or assaulted?	1	2	3	9
e. people breaking hallway, stairway, or street lights?	1	2	3	9
f. not having enough streetlights or the streetlights not working?	1	2	3	9
g. people damaging elevators?	1	2	3	9
h. doors being broken or removed?	1	2	3	9
i. broken glass or trash in the yards?	1	2	3	9
j. graffiti on walls or doors of buildings?	1	2	3	9

The next questions are about ways to limit or control access into your neighborhood. I will read several actions that could be taken to control who can come into your neighborhood. As I read each action, please tell me how much you think it would help to reduce crime.

19. Do you think that...

	A LOT	SOMEWHAT	A LITTLE	NOT AT ALL	DON'T KNOW
a. closing off one end of your street, so that cars could not drive through the neighborhood on your street would help a lot, somewhat, a little, or not at all?	1	2	3	4	8
b. hiring private security guards to patrol the neighborhood around the clock?	1	2	3	4	8
CHECKPOINT: IF Q1=1, CONTINUE. IF Q1=2, SKIP TO 20.					
c. building a fence around the project?	1	2	3	4	8
d. having an intercom system that would make visitors identify themselves before they are allowed into the building?	1	2	3	4	8
e. having video cameras that would record what was going on in the public areas in and around your building?	1	2	3	4	8
f. requiring that residents of the project show identification cards before they are allowed into the building?	1	2	3	4	8
g. having a police mini-station at or near your housing project?	1	2	3	4	8
h. having the project manager live in the project?	1	2	3	4	8

20. Now, please think about the housing authority rules for your (project/home), for example, rules about noise, drinking in public, or about who can stay in the unit. Do you think that enforcing the current rules more strictly would help reduce crime...

1 a lot
2 somewhat
3 a little
4 not at all

The next few questions ask about criminal background checks, that is, checking with the police to see if a person has ever been arrested or convicted for a crime.

21. Do you think that allowing your public housing authority to conduct criminal background checks on people who apply to live there would help reduce crime...

1 a lot
2 somewhat
3 a little
4 not at all

22. Do you think that prohibiting people with criminal backgrounds from living in your (project/neighborhood) would help reduce crime...

1 a lot
2 somewhat
3 a little
4 not at all

23. Do you think that evicting residents who are arrested for drug sales and other crimes, even if they have not been convicted, would help to reduce crime...

1 a lot
2 somewhat
3 a little
4 not at all ——▸ SKIP TO 25.

24. Are you for or against residents being evicted when they are arrested for drug sales and other crimes, even if they have not been convicted?

1 FOR
2 AGAINST

The presence of drug dealers is a problem in some (housing projects/neighborhoods). In other (housing projects/neighborhoods), this is not a problem.

25. (In the past 6 months/Since you moved to your current home), how much of a problem has the presence of drug dealers been in your (project/neighborhood)? Would you say that it has been...

1 a big problem
2 somewhat
3 not a problem at all ——▸ SKIP TO 28.

26. If the housing authority would help people in your (project/neighborhood) move to another (project/neighborhood) and would give them Section 8 or other housing assistance, do you think that they would be willing to testify in court against drug dealers?

1 YES
2 NO
3 DON'T KNOW/MAYBE

27. If the housing authority would help you move to another (project/neighborhood) and would give you Section 8 or other housing assistance, would you be willing to testify in court against drug dealers?

1 YES
2 NO
3 DON'T KNOW/MAYBE

The next few questions are about guns. When I ask about guns, please include pistols, shotguns, rifles, and other types of firearms. Do not include guns that cannot fire, starter pistols, or BB guns.

28. How many residents in your (project/neighborhood) would turn in guns in exchange for $50 in cash or for clothing or food that would sell for about $50? Would you say...

1 most or all
2 some
3 a few
4 none ——▸ SKIP TO 30.

29. Are you for or against a program that would let residents exchange guns for $50 in cash or for clothing or food that would sell for about $50?

1 FOR
2 AGAINST

30. Do you think that rules prohibiting residents from possessing guns (for example, pistols, shotguns, or other types of firearms) help reduce crime....

1 a lot
2 somewhat
3 a little
4 not at all

Some public housing authorities ask local police to conduct unannounced searches of houses or units in a development to look for illegal guns or drugs.

31 Do you think that these "sweeps" or searches would make your (project/neighborhood)...

1 a lot safer
2 somewhat safer
3 a little safer
4 not at all safer ——▸ SKIP TO 33.

32. Are you for or against allowing the local police to conduct these "sweeps?"

1 FOR
2 AGAINST

33. How concerned are you that these "sweeps" would be done in the homes of residents who do not have illegal guns or drugs? Would you say you are...

1 very concerned
2 somewhat concerned
3 a little concerned
4 not at all concerned

Some problems in public housing are associated with gangs of young people.

34 (In the past 6 months/since you moved into your current home) have gangs in your (project/neighborhood) been a big problem, somewhat of a problem, or no problem at all?

1 big problem
2 somewhat of a problem
3 not a problem at all

Next, I am going to read a list of different things that might be done to help prevent young people from joining gangs. As I read each one, please tell me whether you think that it would help a lot, somewhat, a little, or not at all.

35. Do you think that...

	A LOT	SOMEWHAT	A LITTLE	NOT AT ALL
a. a minimum-wage job would help prevent young people from joining gangs a lot, somewhat, a little, or not at all?	1	2	3	4
b. organized and supervised activities that run after 10:00 at night?	1	2	3	4
c. organized and supervised activities that run from 6:00 until 10:00 in the evening?	1	2	3	4
d. after-school programs that run until 6:00 in the evening?	1	2	3	4

Next, I am going to read a list of different types of assistance that might be used to help unemployed residents in public housing get a job. As I read each one, please tell me how much you think it would help residents get a job.

36. Do you think that assistance with...

	A LOT	SOMEWHAT	A LITTLE	NOT AT ALL
a. transportation would help a lot, somewhat, a little, or not at all?	1	2	3	4
b. child care?	1	2	3	4
c. medical needs, including health insurance?	1	2	3	4
d. school or training?	1	2	3	4
e. the cost of food?	1	2	3	4

Next, I am going to read a list of training programs that might be used to help unemployed residents in public housing get a job. As I read each type of program, please tell me how much you think the program would help residents in public housing get a job.

37. Do you think that...

	A LOT	SOMEWHAT	A LITTLE	NOT AT ALL
a. high school equivalency programs, like GED, would help people in your (project/neighborhood) get a job a lot, somewhat, a little, or not at all?	1	2	3	4
b. college or adult education courses?	1	2	3	4
c. skills or technical training programs that train people for a job like a machine operator, secretary, or truck driver?	1	2	3	4
d. programs that train people on how to find a new job?	1	2	3	4

Some people think that these kinds of programs would help to reduce crime because more people in the (project/neighborhood) would have jobs. Other people do not think that these kinds of programs would help to reduce crime.

38. How much do you think these kinds of programs would help reduce crime in your (project/neighborhood)? Would you say that they would help...

1 a lot
2 somewhat
3 a little
4 not at all

39 What other things would you recommend to help reduce crime in your (housing project/neighborhood)?

_____

_____

_____

CHECKPOINT: IF Q1=1, CONTINUE. OTHERWISE, SKIP TO 44.

Now, I have just a few more general questions about the kind of place that you live in.

40. Which of the following best describes the project that you live in? Is it...

1 one or more high-rise buildings with an elevator
2 one or more low-rise buildings (without an elevator)
3 attached townhouses or rowhouses
4 single-family houses

41 Thinking about all the buildings in your project, how many units, that is houses or apartments, are there? Would you say...

1 between 2 and 50
2 between 51 and 100
3 between 101 and 500
5 more than 500
6 DON'T KNOW

42. Thinking now just about your building, how many separate units or apartments are there in your building?

1 2 TO 10
2 11 TO 20
3 21 TO 50
4 MORE THAN 50

43 How many of the residents in your building are handicapped or at least 62 years old? Would you say that...?

1 almost all or all of them
2 some of them
3 a few of them
4 none of them

Finally, I have just a few general questions about your background.

44. What is the year of your birth?

_____ YEAR OF BIRTH

45. What is the highest grade or year of school you have attended?

_____ HIGHEST GRADE/YEAR ATTENDED

46. Did you complete that year?

1 YES
2 NO

47. Do you currently have a job? By "job", I mean either full- or part-time work that you do for pay.

1 YES
2 NO

48. How much rent do you (or others in your household) pay each month for your apartment or house?

_____ PER MONTH

49. Are you of Spanish or Hispanic origin or decent, for example, Mexican, Puerto Rican, or Cuban?

1 YES
2 NO

50. Which of the following best describes your race?

1 American Indian or Alaskan Native
2 Asian or Pacific Islander
3 Black
4 White
5 OTHER (SPECIFY_____)

51. CHECK ITEM: RECORD SAMPLE MEMBER'S GENDER.

1 MALE
2 FEMALE

Those are all of the questions that I have. Thank you for your time and assistance.

[FR Doc. 94–11836 Filed 5–13–94; 8:45 am]
BILLING CODE 4210–01–C

[Docket No. N–94–3768]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) as required by the Paperwork Reduction Act for expedited review. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: May 26, 1994.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within ten (10) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of Housing and Urban Development has submitted to OMB, for expedited processing, a form to be used to report annual accomplishments regarding employment, training, and contracting opportunities under Section 3, and a (complaint) form for filing with the Department allegations of non-compliance with section 3. HUD is requesting a 10-day OMB review of the documents.

The Department has submitted the proposal for the collection of information as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35):

(1) The title of the information collection proposal;

(2) The Office of the agency to collect the information;

(3) The description of the need for the information and its proposed use;

(4) The agency form number, if applicable;

(5) What members of the public will be affected by the proposal;

(6) How often information submission will be required;

(7) An estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours for preparing the response;

(8) Whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and

(9) The name and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: May 2, 1994.

Roberta Achtenberg,

Assistant Secretary for Fair Housing and Equal Opportunity.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Information Collection for Part 135—Employment Opportunities for Low and Very Low-Income Persons

Office: Office of Economic Opportunity, EPE Assistant Secretary for Fair Housing and Equal Opportunity

Description of the Need for the Information and its Proposed Use: This information collection will facilitate the collection of Section 3 information to assess the impact of HUD-assisted activities on enhancing the employment opportunities for lower income persons and the use of businesses that provide economic opportunities to them.

Form Number: Form HUD 958 and Form HUD 60002

Respondents: HUD recipients and their contractors and subcontractors

Frequency of Submission: Annually

Reporting Burden: Form Hud–60002

Number of respondents	Number of reports	Hours per report	Total hours
58,403 (recipients)	1	2	116,806
75,000 (contractors and subcontractors)	1	2	150,000

Form HUD–958

Number of respondents	Number of responses	Hours per response	Total hours
100 complainants .	100	1	100
100 respondents	90	4	360

Total Estimated Burden Hours: 534,072

Status: Revision of a currently approved collection

Contact: Maxine B. Cunningham, HUD (202) 708–2251, Joseph F. Lackey, Jr., OMB (202) 395–6880

Date: May 2, 1994

Supporting Statement

1. Need for Information and Legal Requirements

Section 3 Reporting Form

Section 3 of the Housing and Urban Development Act of 1968 (Section 3) mandates that the Department ensure that employment and other economic opportunities generated by its housing and community development assistance programs are, to the greatest extent feasible, directed toward low- and very low-income persons, particularly those who are recipients of government assistance for housing.

The Housing and Community Development Act (HCDA) of 1992 requires the Secretary of Housing and Urban Development (HUD) to submit to the Congress, not later than one year after the date of enactment, a report describing (1) the Secretary's efforts to enforce Section 3; (2) barriers to full implementation of Section 3; (3) the anticipated costs and benefits of full implementation of Section 3; and (4) recommendations for legislative changes to enhance the effectiveness of Section 3.

Congressional actions support the need for a data collection instrument to assess Section 3's impact. Responding to a directive in the Conference Report on the Housing and Community Development Act of 1987, the Department in FY 1991 issued a report to Congress. This report assessed the impact of HUD-assisted activities on enhancing the employment opportunities for lower income persons and the use of businesses located in the area of assisted projects. Further, the Fair Housing Act, as amended in 1988, at Section 808(e)(6) requires the Secretary of HUD to report annually to Congress, and make available to the public, data on beneficiaries of HUD-assisted programs pursuant to Section 3. In addition, Section 562 paragraph (a) of the Housing and Community Development Act of 1987 requires HUD to collect data and report annually to Congress on the racial and ethnic characteristics of persons eligible for, assisted by or otherwise benefiting from each community development and housing assistance program administered by HUD. Since the provisions of Section 3 apply to community development and housing assistance programs, Section 562 authorizes the Secretary to collect information determined to be necessary and appropriate in order to complete this report. In spite of these numerous reporting requirements, no data is collected on Section 3 which allows the Department to determine the potential or to evaluate the impact of the statute in meeting its objectives.

Congress, as well as the Department's Office of Inspector General, have admonished the Department in failing to systematically implement Section 3. The primary impediment is the absence of a regulation which conforms to the statute and applies to all Section 3 covered assistance.

The regulations governing Section 3 at 24 CFR Part 135 have been revised to incorporate the statutory amendments in the Housing and Community Development Act of 1992; reflect certain changes in the Department's programs that are subject to the Section 3 regulations; clarify the obligations of individuals and entities subject to the requirements of Section 3; and simplify the Department's administration of Section 3 requirements. The revised regulations include recordkeeping and reporting requirements.

The section 3 proposed rule was published on October 8, 1993 for public comment. As a result of comments received, the Department made a number of changes to the rule. Accordingly, the previously approved section 3 reporting form, OMB No. 2529–0043, was revised to reflect the changes made in the rule.

Changes in the rule affecting the recordkeeping and reporting requirements are the establishment of numerical goals to be reported in staff hours for training and employment and numerical goals to be reported in percentages for contracting opportunities. The section 3 reporting form, OMB No. 2529–0043, requested that data be reported on the number of section 3 residents hired in available positions and the total dollar amount of contracts awarded to section 3 business concerns. Based on revisions to the rule, the data collection will reflect staff hours for new hires and section 3 positions, and a percentage of the total dollar amount of contracts awarded to section 3 business concerns. These are elements needed for an effective program performance measurement system as required under the Government Performance and Results Act of 1993.

In addition, we are adding a Complaint Register which will be used to file section 3 complaints for your approval. Although the regulations implementing section 3, since 1973 have provided for HUD processing of allegations of non-compliance, this is the first request for OMB approval of a formal complaint form for this requirement.

The Department is seeking a three year approval of the revised section 3 reporting form, OMB No. 2529–0043; and the section 3 complaint form.

Complaint Register

The Complaint Register for section 3 of the Housing and Urban Development Act of 1968 (Section 3 Compliant Form) is necessary for the collection of information relative to the investigation of allegations of noncompliance pursuant to Section 3 of the Housing and Urban Development Act of 1968, as amended (Section 3). Section 3 requires that the Department, to the greatest extent feasible, provide: (1) job and training opportunities for lower income persons within that unit of local government or the metropolitan area (or nonmetropolitan county) where the project is located; and (2) business opportunities for firms located or owned in substantial part by persons in the same metropolitan area (or nonmetropolitan county) as the project. The regulation at 24 CFR part 135 provides that Section 3 residents and business concerns may file a complaint alleging noncompliance with Section 3 by a recipient, contractor or subcontractor. The complaint must be filed within 180 days of the alleged violation.

It is anticipated that the Section 3 Complaint Form will help to expedite the acceptance of complaints because the form guides the complainants to include all necessary components of the complaint, thereby saving costs associated with staff time that would otherwise be spent securing additional information that would be necessary to complete a complaint.

Statutory Authority

The authorization for the information collection on the Section 3 Reporting Form is Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. The implementing regulations are found at 24 CFR Part 135 Subpart F—Recordkeeping and Reporting.

The authorization for Section 3 Complaint Form is Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. The implementing regulations are found at 24 CFR Part 135 Subpart D—Complaint and Compliance Review. The Section 3 Complaint Form was developed to provide for uniformity in the information that, by regulation, must be included in a complaint and for the convenience of the public. The Section 3 regulation (24 CFR Part 135) states what each complaint should contain. For purposes of meeting the time requirement for filing complaints (180 days), initially these complaints do not have to be submitted on the form that HUD provides.

2. Use of Information

The Section 3 Reporting Form will be used by the Department to monitor program recipients' compliance with Section 3. HUD Headquarters will use the information to assess the results of the Department's efforts to meet the statutory objectives of Section 3. Also, the data collected will be used by recipients as a self-monitoring tool. If the information is not collected, HUD will be unable to prepare the mandatory reports to Congress or to assess the effectiveness of Section 3.

The Section 3 Complaint Form will be used by a complainant to provide the necessary information to file a complaint. A complaint may be filed by mail, in person or by telephone with the Office of Fair Housing And Equal Opportunity (FHEO), Department of Housing and Urban Development. FHEO staff will use the information provided by this form as the basis for the Department's determination of jurisdiction over a complainants' allegations.

3. Improved Technology To Reduce Burden

This issue is not applicable to the Section 3 Reporting Form.

The collection of data on the Section 3 Complaint Form is consistent with the use of improved technology as the Department prepares to convert their form to a direct electronic input source. This electronic input source will reduce the burden of completing the form manually before the information is stored on to an electronic media for use in the Department's automated tracking system.

4. Duplication

The Section 3 Reporting Form does not duplicate any other reporting requirement in the Department.

The Section 3 Complaint Form does not duplicate any other information collection process. HUD is the only Federal agency with responsibility for administration of Section 3. This form is unique to the processing of a allegation of noncompliance with the Section 3 statute or implementing regulations.

5. No Similar Information

No similar information is available to HUD with respect to the Section 3 Reporting Form.

6. Small Business Burden

The collection of information by the Section 3 Reporting Form involves recipients, contractors, and subcontractors receiving Federal financial assistance for housing and community development programs covered by Section 3. To minimize the burden, the Department has attempted to provide clear guidance on the required information collection. This guidance will prevent the recipient from collecting and submitting unnecessary or duplicative information. The Section 3 regulations apply to any Public and Indian Housing programs that receive: (1) Development assistance pursuant to Section 5 of the U.S. Housing Act of 1937; (2) operating assistance pursuant to Section 9 of the U.S. Housing Act of 1937; or (3) modernization grants pursuant to Section 14 of the U.S. Housing Act of 1937. The regulations also apply to other housing and community development assistance expended for: (1) housing rehabilitation (including reduction and abatement of lead-based paint hazards); (2) housing construction; (3) other public construction projects; and (4) housing and community development assistance for which the HUD share of the project cost (as defined in § 135.5) for such activity exceeds $100,000, or the amount of any subcontract awarded in connection with the covered activity exceeds $50,000.

Recipients and contractors subject to Section 3 requirements must maintain appropriate documentation to establish that, at a minimum, a good faith effort was made to provide economic opportunities resulting from financial assistance for housing and community development programs to low- and very low-income residents. Each recipient who receives Section 3 covered assistance from HUD shall submit to the Assistant Secretary for Fair Housing and Equal Opportunity an annual report in such form and with such information as the Assistant Secretary may request, for the purpose of determining the results of Section 3 activities.

These results are used to assess the impact of the law, to target monitoring and compliance reviews, and to prepare reports to Congress.

A Section 3 complaint may be filed by an individual representing the interests of a small business. The information required on the Section 3 Complaint Form, is the same type of information voluntarily provided by a person representing an individual. Complainants are individuals or businesses

who chose to submit this form to HUD, and by electing to do so, are required to only submit it once. No reporting of any kind is required, nor are respondents remunerated by HUD for this effort.

7. Reporting Cycle

Section 3 Reporting Form information will be collected annually. The report may be submitted on the same cycle as the performance report required by the program under which Section 3 covered assistance is provided. Where a performance report is not required, the Section 3 report is due to the local HUD (Category A) Office within ten (10) days after the end of the reporting period indicated in Block 8 of form HUD–60002 or at the completion of the project if sooner. Also, an annual reporting cycle will assist HUD in meeting its reporting requirements under Section 808(e)(6) of the Fair Housing Act, Section 561 of the HCDA of 1987 and Section 916 of the HCDA of 1992. This report also will assist the Department in evaluating and managing program performance.

The Section 3 Complaint Form mandates no specific requirements with respect to the frequency of collection of information. The Section 3 Compliant Form is made available to the public for use by individuals or businesses who wish to file a Section 3 compliant with HUD. Complaints are individuals who chose to submit this form to HUD, and by electing to do so, are required to only submit it once. No remunerated by HUD for this effort.

8. Consistency With 5 CFR 1320.6

Use of the Section 3 Reporting Form is consistent with 24 CFR part 1320.6.

Use of the Section 3 Complaint Form is consistent with 24 CFR part 1320.6.

9. Outside Consultation

Pursuant to statutory requirements, staff from the Departments of Labor and Commerce, and the Small Business Administration have been contacted regarding the Section 3 Reporting Form. The attached Section 3 Reporting Form—Economic Opportunities for Low- and Very Low-Income Persons, Housing and Urban Development Act of 1968, has been developed by the Section 3 Compliance Division for collecting Section 3 data. Form HUD–2516 is modified to collect Section 3 contracting data from public and Indian housing programs and all community development programs except those administered by States. Form HUD–60002 is designed to collect Section 3 contracting data from all other Section 3 covered programs and to collect training and employment data on all Section 3 covered programs. These data collection forms are the only instruments that collect Section 3 employment, training and contracting information.

No one was consulted outside the Department with respect to the Section 3 Complaint Form. The instructions are specific, and the information provided by the complainant is unique on each form.

10. Confidentiality

An assurance of confidentiality is not applicable to the Section 3 Reporting Form. The form will be filed with HUD's Office of Fair Housing and Equal Opportunity. The Privacy Act of 1974 and OMB Circular A–108 are not applicable.

All information collected by the Section 3 Complaint Form complies with the Privacy Act of 1974 and OMB Circular A–108, "Responsibilities for Maintenance of Records About Individuals by Federal Agencies". Each respondent is apprised of the filing of a Section 3 Complaint against them. However, information obtained during the investigation is held in confidence and may not be divulged while the investigation is in progress.

11. Sensitive Questions

The Section 3 Reporting Form reporting requirements do not contain sensitive questions. The information requested deals with the results of the recipient's good faith efforts to provide opportunities for lower income residents to receive job training and employment and for local businesses to receive contracts in connection with HUD assisted programs. Data is cumulative and personal identifying information is not included.

The Section 3 Complaint Form does not request information of a sensitive nature such as sexual behavior and attitudes, religious beliefs and other matters that are commonly considered private. Section 3 is racially neutral and as such the complaint form does not request information regarding the complainants' race, color, sex, or national origin because these areas are not protected classes or issues which determine beneficiaries of Section 3. The information provided on this complaint form is given voluntarily and provides the basis for HUD's investigation of the complaint to determine if the allegations of noncompliance are valid.

12. Estimate of Costs

For HUD Section 3 Reporting Form—Preparing the Report	
FHEO:	
GS–13 to compile and analyze the information at $25.18 per hour for approximately 8 hours.	$201.44
GS–15 to review and approve at $35 per hour for approximately 3 hours.	105.00
GS–7 to type, copy, and prepare report for mailing at $11.94 per hour for approximately 8 hours.	95.52
Mailing costs for first class for 58,403 packages per recipient @ $1 per report. (33,000 PHI recipients, 403 Housing recipients, & 25,000 CPD recipients)	58,403.00
Total	58.804.96
For Respondents—Recordkeeping and Reporting Recipients	
One professional staff at $25 per hour for approximately 3 hours.	75.00
One secretary to type, copy, and prepare report for mailing at $11 per hour for approximately 12 hours.	132.00
Mailing costs for first class for 1 package @ $1 per report.	1.00
Total	208.00
Contractors	
One professional staff at $25 per hour for approximately 1½ hours.	37.50
One secretary to type, copy, and prepare report for mailing at $11 per hour for approximately 4 hours.	44.00
Mailing costs for first class for one package @ $1 per report.	1.00
Total	82.50
For HUD—Reviewing the Section 3 Complaint Form	
FHEO:	
GS–12 to review each Section 3 Complaint Form at $19 per hour for ⅓hour.	
HUD anticipates a receipt of 100 complaints annually. 100 complaints x .33 minutes = 33 hrs.	
33 hrs x $19 per hour	627.00
10 % overhead	62.70
Total	689.70
For Complainants—Completion of Section 3 Complaint Form	
This form is voluntarily filled out by a Section 3 Complainant in one hour. There is no financial investment required or expected	
For Respondents—Completion of Section 3 Complaint Form	
A Respondent does not complete the Section 3 Complaint Form. However, the respondent is required to respond and/or resolve the allegations identified on the Section 3 Complaint Form. The estimated time for response is four (4) hours. The estimated cost for this response time is as follows:	
One professional staff (attorney) at $75 per hour for approximately 3 hours.	225.00
One secretary to type, copy, and prepare response for mailing at $11 per hour for approximately 1 hour.	11.00
Mailing costs for first class for one package @ $1 per response.	1.00
Total	237.00

13. Estimate of Collection Burden

For the Section 3 Reporting Form the total universe of potential respondents, including recipients, prime contractors and subcontractors, is approximately 133,403. We anticipate that about 58,403 respondents (HUD recipients) will submit summary reports to HUD. Prime contractors and

subcontractors will submit reports, *as requested*, to the recipients. The required summary report from the recipients is submitted to HUD annually, 10 days after the end of the designated reporting period. The information is generated by the recipient through maintaining documentation that summarizes efforts made, and the results of those efforts, to provide opportunities for training and employment arising from HUD assistance to low- and very low-income residents. The data will be recorded on the Section 3 reporting form (form HUD–60002, Economic Opportunities for Low- and Very Low-Income Persons). It is estimated that two hours per reporting period will be required of the recipients, contractors and subcontractors to prepare the Section 3 report. We estimate that the burden will not vary significantly among the respondents.

Form HUD–60002

Number of respondents	Number of reports	Hours per report	Total hours
58,403 (recipients) ..	1	2	116,806
75,000 (contractors and subcontractors)	1	2	150,000

For the Section 3 Complaint Form, the Department estimates that during the course of a year approximately 100 Section 3 complaints will be filed. It is anticipated that it will take the complainant approximately one (1) hour to complete the complaint form. It is anticipated that it will take the respondent approximately four hours to respond to the allegations of the complaint. Of the 100 complaints anticipated for receipt, HUD does not expect to require or receive a response from each respondent. About 10% of the complaints received will be administratively closed for lack of jurisdiction prior to the notification of the respondent. Therefore, the number of responses by the respondent has been lessened by 10% (to 90 responses) resulting in 360 total response hours for a respondent.

The total number of burden hours for the Section 3 Complaint Form is 460 hours calculated as follows:

Section 3 Complaint Form

Number of respondents	Number of responses	Hours per response	Total hours
100 complainants	100	1	100
100 respondents	90	4	360
Record-keeping: 133,403 recipients, contractors & subcontractors	1	4	266,806

14. Change in Burden

The Section 3 Reporting Form is revised to reflect public comments to the proposed rule. This is the first time that the Section 3 Complaint Form information has been requested.

15. Publication of Data

There are no existing plans for the tabulation and publication of Section 3 Reporting Form data.

There are no existing plans for the tabulation and publication of Section 3 Complaint Form data.

BILLING CODE 4210–01–M

Economic Opportunities for Low- and Very Low-Income Persons in Connection with Assisted Projects

HUD Act of 1968, Section 3

U.S. Department of Housing and Urban Development
Office of Fair Housing and Equal Opportunity

OMB Approval No. 2529-0043 (Exp. 4/30/97)

Public Reporting Burden for this collection of information is estimated to average 2 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 Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2529-0043), Washington, D.C. 20503. Do not send this completed form to either of these addressees.

1 Recipient Name and Address (Street, City, State, Zip)	2 Federal Identification (Contract/Award No.)	3. Dollar Amount of Award
	4 Contact Person	5. Phone(include Area code)
	6. Reporting Period	7 Date Report Submitted

8. Program Code [ ] (Use a separate sheet for each Program code)

Part I: Employment and Training (* Include New Hires in columns C and D.)

A Job Category	B % of Aggregate New Hires that are Section 3 Residents	C % of total staff hours for Section 3 Employees and Trainees *	D Number of Section 3 Employees and Trainees *	E Racial/Ethnic Code(s) For Columns D and E, show Numbers 1	2	3	4	5
Professionals								
Technicians								
Office/Clerical								
Construction by Trade (List) Trade:								
Trade:								
Trade								
Trade:								
Trade:								
Other:(List)								

Contract Codes:
C = Contractor
S = Subcontractor

Racial/Ethnic Codes:
1 = White American
2 = Black American
3 = Native American
4 = Hispanic American
5 = AsianPacific American
6 = Hasidic Jews (For Part II only)

Program Codes:
1 = Flexible Subsidy
2 = Section 202/811
3 = Public/Indian Housing Development, Operation and Modernization
4 = Homeless Assistance
5 = HOME
5 = HOME-State Administered
7 = CDBG-Entitlement
8 = CDBG-State Administered
9 = Other CD Programs
10 = Other Housing Programs

form HUD-60002 (05/06/94)
ref Handbook 8023.1

Part II: Contracts Awarded

1. Construction Contracts:

A. Total dollar amount of all contracts awarded on the project $ _____

B. Total dollar amount of contracts awarded to Section 3 businesses $ _____

C. Percentage of the total dollar amount that was awarded to Section 3 businesses _____ %

D. Total number of Section 3 businesses receiving contracts _____

E. Enter the number of Section 3 businesses receiving contracts by Racial/Ethinic code(s)(see page 1 for codes)

1 [ ] 2 [ ] 3 [ ] 4 [ ] 5 [ ] 6 [ ]

2. Non-Construction Contracts:

A. Total dollar amount of all non-construction contracts awarded on the project/activity $ _____

B. Total dollar amount of non-construction contracts awarded to Section 3 businesses $ _____

C. Percentage of the total dollar amount that was awarded to Section 3 businesses _____ %

D. Total number of Section 3 businesses receiving non-construction contracts _____

E. Enter the number of Section 3 businesses receiving non-construction contracts by Racial/Ethinic code(s)(see page 1 for codes)

1 [ ] 2 [ ] 3 [ ] 4 [ ] 5 [ ] 6 [ ]

Part III: Summary

Indicate the efforts made to direct the employment and other economic opportunities generated by HUD financial assistance for housing and community development programs, to the greatest extent feasible, toward low- and very low-income persons, particularly those who are recipients of government assistance for housing. (Check all that apply.)

_____ Attempted to recruit low-income residents through: local advertising media, signs prominently displayed at the project site, contacts with community organizations and public or private agencies operating within the metropolitan area (or nonmetropolitan county) in which the Section 3 covered program or project is located, or similar methods.

_____ Participated in a HUD program or other program which promotes the training or employment of Section 3 residents.

_____ Participated in a HUD program or other program which promotes the award of contracts to business concerns which meet the definition of Section 3 business concerns.

_____ Coordinated with Youthbuild Programs administered in the metropolitan area in which the Section 3 covered project is located.

_____ Other; describe below.

form HUD-60002 (05/06/94)
ref Handbook 8023.1

Instructions for completing form HUD-60002, Economic Opportunities for Low- and Very Low-Income Persons in Connection with Assisted Projects.

This form is to be used to report annual accomplishments regarding employment, training and contracting opportunities provided to low- and very low-income persons under Section 3 of the Housing and Urban Development Act of 1968 (Section 3). The Section 3 regulations apply to any **public and Indian Housing** programs that receive: (1) development assistance pursuant to section 5 of the U.S. Housing Act of 1937; (2) operating assistance pursuant to section 9 of the U.S. Housing Act of 1937; or (3) modernization grants pursuant to section 14 of the U.S. Housing Act of 1937 and to **housing and community development** assistance expended for: (1) housing rehabilitation (including reduction and abatement of lead-based paint hazards); (2) housing construction; or (3) other public construction projects; **and** to contracts and subcontracts on such programs where the amount of any contract or subcontract awarded in connection with the covered activity exceeds $100,000.

Form HUD-60002 has three parts which are to be completed for all programs covered by Section 3. Part I relates to **employment and training**, Part II of the form relates to **contracting**, and Part III summarizes recipients' **efforts** to comply with Section 3.

Recipients or contractors subject to Section 3 requirements must maintain appropriate documentation to establish that HUD financial assistance for housing and community development programs were directed toward low- and very low-income persons.* A recipient of Section 3 covered assistance shall submit two copies of this report to the local HUD Field Office. Where the program providing assistance requires an annual performance report, this Section 3 report is to be submitted with the program performance report. Where an annual performance report is **not** required, this Section 3 report is to be submitted by January 10 and, if the project ends before December 31, within 10 days of project completion. **Only Prime Recipients are required to report to HUD. The report must include accomplishments of all recipients and their Section 3 covered contractors and subcontractors.**

1. Recipient: Enter the name of the recipient submitting this report.

4. Federal Identification: Enter the number that appears on the award form (with dashes). The award may be a grant, cooperative agreement or contract.

5. Dollar Amount of Award: Enter the dollar amount, rounded to the nearest dollar, received by the recipient.

6. Contact Person: Enter the name and telephone number of the person with knowledge of the award and the recipient's implementation of Section 3.

8. Reporting Period: Indicate the time period (months and year) this report covers.

Part I: Employment and Training Opportunities

Block A: Contains various job categories. Professionals are defined as people who have special knowledge of an occupation (i.e., supervisors, architects, surveyors, planners, and computer programmers). For construction positions, list each trade and provide data in columns B through F for each trade where persons were employed. The category of "Other" includes occupations such as service workers.

Block B: Enter the percentage of all the new hires (Section 3 residents) in connection with this award. New Hires include full-time positions (permanent, temporary and seasonal).

Block C: Enter the percentage of the total staff hours worked for Section 3 employees and trainees (including new hires) connected with this award. Include staff hours for part-time and full-time positions.

Block D: Enter the number of Section 3 residents that were hired and trained in connection with this award.

Block E: Enter under each racial/ethnic code (1-5) the number of employees and trainees recorded in columns D and E.

Part II: Contract Opportunities

Block 1: Construction Contracts

Item A: Enter the total dollar amount of all contacts awarded on the project/program.

Item B: Enter the total dollar amount of contracts connected with this project/program that were awarded to Section 3 businesses.

Item C: Enter the percentage of the total dollar amount of contracts connected with this project/program awarded to Section 3 businesses.

Item D: Enter the number of Section 3 businesses receiving awards. Indicate the appropriate racial/ethnic code(s).

Item E: Enter under each racial/ethnic code (1-6) the number of employees and trainees recorded in Item D.

Block 2: Non-Construction Contracts

Item A: Enter the total dollar amount of all contacts awarded on the project/program.

Item B: Enter the total dollar amount of contracts connected with this project awarded to Section 3 businesses.

Item C: Enter the percentage of the total dollar amount of contracts connected with this project/program awarded to Section 3 businesses.

Item D: Enter the number of Section 3 businesses receiving awards. Indicate the appropriate racial/ethnic code(s).

Item E: Enter under each racial/ethnic code (1-6) the number of employees and trainees recorded in Item D.

Part III: Summary of Efforts - Self-Explanatory

Submit two (2) copies of this report to your local HUD Field Office within ten (10) days after the end of the reporting period you specified in item 8. Include only contracts executed during this reporting period. PHAs/IHAs are to report all contracts/subcontracts.

*The terms "low-income persons" and "very low-income persons" have the same meanings given the terms in section 3(b)(2) of the United States Housing Act of 1937. **Low-income persons** mean families (including single persons) whose incomes do not exceed 80 per centum of the median income for the area, as determined by the Secretary, with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 80 per centum of the median for the area on the basis of the Secretary's findings such that variations are necessary because of prevailing levels of construction costs or unusually high- or low-income families. **Very low-income persons** mean low-income families (including single persons) whose incomes do not exceed 50 per centum of the median family income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 50 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of unusually high or low family incomes.

COMPLAINT REGISTER

SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968

1. Name of aggrieved person or organization (last name, first name, middle initial) (Mr., Mrs., Miss, Ms.)

   Home Phone: ( ) Business Phone: ( )

   Street Address (include City, County, State and zip code)

   Check the applicable box or boxes which describe(s) the status of the complainant named above.

   A. Low/very low income resident(s)

   B. Public Housing resident(s)

   B. Representative of low/very low income residents or public housing residents

   C. Section 3 business concern(s)

   D. Representative of Section 3 business concerns

2. Against whom or what organization is this complaint being filed? Name (last name, first name, middle initial; Mr., Mrs., Miss, Ms.)

   Phone Number:

   Street Address (include City, County, State and zip code)

   Check the applicable box or boxes which describe(s) the party/organization named above.

   A. APPLICANT
   B. RECIPIENT
   C. SUB-RECIPIENT
   D. CONTRACTOR
   E. SUBCONTRACTOR
   F. OTHER

   If you named an individual who appeared to be acting for a company in this case, check this box and write the name and address of the company in this space:

PROOF

NAME ADDRESS

Name and identify others (if any) you believe violated the law in this case:

3. On what basis are you alleging noncompliance with Section 3?

A. TRAINING OPPORTUNITIES FOR SECTION 3 RESIDENTS
B. EMPLOYMENT OPPORTUNITIES FOR SECTION 3 RESIDENTS
C. CONTRACTING OPPORTUNITIES FOR SECTION 3 BUSINESSES

4. What did the person/organization you are complaining against do? Check all that apply and give the most recent date of the act(s) occurred in block No. 6a below.

A. FAILED TO UNDERTAKE REQUIRED TRAINING EFFORTS

B. FAILED TO UNDERTAKE REQUIRED EMPLOYMENT EFFORTS

C. FAILED TO UNDERTAKE REQUIRED CONTRACTING EFFORTS

5. Identify the HUD program(s) through which assistance is being provided. Check all that apply:
PIH/DEV _____ PIH/MOD _____ PIH/OPER _____ OTHER PIH____
202/811 _____ OTHER HOUSING _____ CDBG _____ HOME _____
HOMELESS _____OTHER CPD _____ LEAD-BASED PAINT _____

6. Summarize in your own words what happened. Use this space for a brief and concise statement of the facts. Additional details may be submitted on an attachment. Note: HUD will furnish a copy of the complaint to the person or organization against whom the complaint is made.

6a. When did the act(s) checked in Item 3 occur? (Include the most recent date if several dates are involved.)

7. I declare under penalty of perjury that I have read this complaint (including any attachments) and that it is true and correct.

Signature and Date:

PROOF

COMPLAINT REGISTER

SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968

Instructions. This form is to be used to report allegations of noncompliance with Section 3 of the Housing and Urban Development Act of 1968, as amended (Section 3) and implementing regulations at 24 CFR Part 135.

What Does Section 3 of the Housing and Urban Development Act of 1968 provide?

The law describes the HUD programs directly affected by Section 3, receiving Federal financial assistance from the Department, and dictates how these programs are to provide employment and other economic opportunities for low and very low income persons.

What does the Law Cover?

Section 3 applies to any public and Indian Housing programs that receive: (1) developmental assistance pursuant to section 5 of the U.S. Housing Act of 1937; (2) operating assistance pursuant to section 9 of the U.S. Housing Act of 1937; or (3) modernization grants pursuant to section 14 of the U.S. Housing Act of 1937 and to housing and community development assistance extended for: (1) housing rehabilitation (including reduction and abatement of lead-based paint hazards); (2) housing construction; or (3) other public construction projects; and for which the contract or subcontract amount exceeds $100,000.

What Can You Do About Violations of the Law?

Remember, Section 3 applies to the awarding of jobs and contracts, generated from projects receiving HUD financial assistance. If you believe that, as a low income person or a Section 3 business concern, the responsibilities to provide economic opportunities under Section 3 have been violated, you have a right to file a complaint within 180 days of the last alleged occurrence of noncompliance.

Complain to the Assistant Secretary for Fair Housing and Equal Opportunity, Department of Housing and Urban Development, by filing this form by mail or in person. The information received will be used by HUD to determine jurisdiction under Section 3.

HUD will send the complaint to the appropriate HUD recipient for resolution. If resolution by the recipient fails, HUD will investigate. If HUD finds that the complaint has merit, it will try to end the violation by informal resolution. If conciliation fails, HUD may initiate other steps to enforce the law, including but not limited to suspension and debarment of the recipient or contractors as applicable.

You can obtain assistance in learning about Section 3 or in filing a complaint at the HUD Offices listed below:

Assistant Secretary
HUD - Fair Housing and Equal Opportunity
451 7th Street SW
Washington, DC 20410

New England (Connecticut, Maine, Massachusetts, New Hampshire Rhode Island, Vermont)
HUD - Fair Housing and Equal Opportunity (FHEO)
Boston Federal Office Building, 10 Causeway Street
Boston, Massachusetts 02222-1092

New york, New Jersey
HUD - Fair Housing and Equal Opportunity (FHEO)
26 Federal Plaza
New York, New York 10278-0068

Mid-Atlantic (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia)
HUD - Fair Housing and Equal Opportunity (FHEO)
Liberty Square Building, 105 7th Street
Philadelphia, Pennsylvania 19106-3392

Southeast (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico, Virgin Islands)
HUD - Fair Housing and Equal Opportunity (FHEO)
Richard B. Russell Building, 75 Spring Street, SW
Atlanta, Georgia 30303-3388

Midwest (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin)
HUD - Fair Housing and Equal Opportunity (FHEO)
Ralph H. Metcalfe Federal Building, 77 West Jackson Blvd.
Chicago, Illinois 60604-3507

Great Plains (Arkansas, Louisiana, New Mexico, Oklahoma, Texas)
HUD - Fair Housing and Equal Opportunity (FHEO)
1600 Throckmorton, P.O. Box 2905
Fort Worth, Texas 76113-2905

Rocky Mountain (Iowa, Kansas, Missouri, Nebraska)
HUD - Fair Housing and Equal Opportunity (FHEO)
Gateway Tower II, 400 State Avenue
Kansas City, Kansas 66101-2406

Southwest (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming)
HUD - Fair Housing and Equal Opportunity (FHEO)
Executive Tower Building, 1405 Curtis Street
Denver, Colorado 80202-2349

Northwest/Alaska (Alaska, Idaho, Oregon, Washington)
HUD - Fair Housing and Equal Opportunity (FHEO)
Suite 200 Seattle Federal Building, 909 1st Avenue
Seattle, Washington 98104-1000

Pacific/Hawaii (Arizona, California, Hawaii, Nevada, Guam, American Samoa)
HUD - Fair Housing and Equal Opportunity (FHEO)
450 Golden Gate Avenue
San Francisco, California 94102-3448

Privacy Act of 1974 (P.L.93-579)

Authority: Section 3 of the Housing and Urban Development Act of 1968, as amended by the Housing and Community Development Act of 1992, U.S.C. 1701u and implementing regulations at 24 CFR Part 135.

Purpose: The information requested on this form is to be used to investigate and process Section 3 complaints.

Penalty: Failure to provide some or all of the requested information will result in delay or denial of HUD assistance.

Disclosure of this information is voluntary.

H:S3CPTFOR

[FR Doc. 94-11837 Filed 5-13-94; 8:45 am]
BILLING CODE 4210-01-C

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–920–94–4120–01]

Utah and Colorado: Uinta Southwestern Utah Regional Coal Team Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of regional coal team meeting.

SUMMARY: In accordance with the responsibilities outlined in the Federal Coal Management Regulations (43 CFR part 3400), the Regional Coal Team (RCT) for the decertified Uinta Southwestern Utah Federal Coal Production Region will hold a meeting to discuss and make recommendations concerning coal leasing and development in the region. The RCT will review pending coal lease applications under the "Leasing by Application" (LBA) program and discuss any additional coal-related activities appropriate at this time.

Members of the public, coal companies and interested agencies are invited to make comments at the meeting.

SUPPLEMENTARY INFORMATION: A total of seven coal lease applications are pending in the region, including six in Utah and one in Western Colorado. The RCT will be reviewing the applications and where appropriate making recommendations to the BLM concerning processing the applications. Pending applications in the region include:

State	Applicant	Coal field	Estimated acreage
Utah	Mining & Energy Res. Inc	Wasatch Plateau	[1] 3,431
	Coastal States Energy	Wasatch Plateau	2,020
	Sage Point Coal Co	Book Cliffs	1,104
	Sage Point Coal Co	Book Cliffs	2,098
	PacifiCorp Electric Oper	Wasatch Plateau	7,865
	Genwal Coal Co	Wasatch Plateau	4,052
Colorado	Mountain Coal	Paonia/Summerset	2,276

[1] Portions of this application were leased in early 1994.

DATES: The Regional Coal Team meeting will be June 16, 1994, at 1 p.m.

ADDRESSES: The meeting will be held at Bureau of Land Management, Utah State Office, BLM Conference Room, No. 302, 324 South State, Salt Lake City, Utah.

FOR FURTHER INFORMATION CONTACT: Max Nielson, Uinta Southwestern Utah Coal Project Manager, Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145–0155, Telephone 801–539–4038.

Dated: May 10, 1994.

James M. Parker,

State Director, Utah.

[FR Doc. 94–11859 Filed 5–13–94; 8:45 am]

BILLING CODE 4310–DQ–M

[AK–050–04–4331–04]

Modifications of Alaska Off-Road Vehicle Designations; Tangle Lakes National Register Archaeological District, Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice on off-road vehicle decision.

SUMMARY: This notice is provided in reference to the use of off-road vehicles on public lands within the Glennallen District, Alaska, in accordance with authority and requirements of Executive Order's (E.O.) 11644 and 11989 and the regulations contained in 43 CFR part 8340. The following described lands under the administration of the Bureau of Land Management are designated open, limited use, or closed to off-road motorized vehicle (ORV) use. This modifies earlier notices, published July 6, 1984 and May 4, 1992. This order will be effective upon publication and remain in effect until rescinded and/or modified by the District Manager, Glennallen District.

A 226,600-acre area is affected by the designations, known as the Tangle Lakes National Register Archaeological District. This area is located in South Central Alaska, within the Clearwater Geographic Reference Unit. The reduced and revised boundaries for this National Register District were accepted by the Keeper of the National Register of Historic Places as of August 12, 1993. The reduction and revision has resulted in changes to certain previously designated ORV trails. Trails previously designated limited use, the Maclaren River Road and Sevenmile Lake Trail, are now outside the National Register Archaeological District Boundary. Use is open for motorized vehicles.

A. Limited Designations

1. Limited Season of Use—226,600 Acres

The Tangle Lakes National Register Archaeological District is located west of Paxson, Alaska along the Denali Highway from mileposts (MP) 17 to 38. The area is open to motorized vehicle use from October 16 to May 15. Motorized vehicle use is limited to designated trails from May 16 to October 15, to protect historic properties.

2. Use Limited to Designated Roads and Trails

Motorized vehicle use in this area is permitted on designated roads and trails which are identified on maps which are available at the Glennallen District Office and by signs posted at major access points.

The following roads and trails are designated and open for motorized vehicle use, in accordance with item 1 above. All trails originate at the Denali Highway, with the exceptions of trails 7 and 8.

1. Maclaren Summit Trail, at the Maclaren Summit, 4,086 ft. elevation (MP 37). Of this short 3-mile long trail only the first mile remains limited use.
2. Osar Lake Trail, south to vicinity of Osar Lake (MP 37).
3. Glacier Lake Trail, north to Glacier Lake (MP 30).
4. Landmark Gap Trail South, south with a southwest branch extending to an area north of Osar Lake; the southeast fork extends toward the Tangle Lakes (MP 24.7).
5. Landmark Gap Trail North, north to Landmark Gap Lake (MP 24.6).
6. Swede Lake Trail, south to the Swede Lakes, portions of the Swede Lake trail are outside the National Register Archaeological District boundary. Additional signage will alert users when they are outside the

National Register District. Trails 9 and 10 depart from this trail (MP 16).

7. Middle Fork Gulkana Branch Trail, parallels the Middle Fork Gulkana River, west to Dickey Lake remains within the National Register Archaeological District; the portion east to Meier Lake is located outside the National Register Archaeological District.

8. Alphabet Hills Trail, south extension of Swede Lake after crossing the Middle Fork Gulkana River.

Additional trails may be opened as required federal legislation, pertinent to historic properties and environmental concerns, are met. The above designations become effective upon publication in the FR and will remain in effect until rescinded and/or modified by the Authorized Officer.

Operators of ORVs in violation of these designations are subject to penalties prescribed in 43 CFR 8340.0–7 and Public Law 96–95.

ADDRESSES: Direct questions and/or comments to: Glennallen District Manager, Bureau of Land Management, P.O. Box 147, Glennallen, Alaska 99588. (907) 822–3217.

FOR FURTHER INFORMATION CONTACT: Patricia McCoy 907/822–3217.

Dated: May 2, 1994.

Michael Zaidlicz,

Acting District Manager.

[FR Doc. 94–11614 Filed 5–13–94; 8:45 am]

BILLING CODE 4310–JA–M

[WY–920–04–4140–03, WYW132641]

Sodium Exploration License; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of invitation for sodium exploration license (WYW132641).

SUMMARY: Pursuant to section 302(b), and to the regulations at CFR 43, subpart 3524, members of the public are hereby invited to participate with Tg Soda Ash, Inc. on a pro rata cost sharing basis in its program for the exploration of sodium deposits owned by the United States of America in the following-described lands in Sweetwater County, WY:

T. 20 N., R. 110 W., 6th P.M., Wyoming,
Sec. 4: Lots 1 thru 4, S2N2, S2;
Sec. 10: All.
Containing approximately 1181.85 acres.

All of the sodium in the above-described lands consists of unleased Federal sodium within the Green River Basin Known Sodium Leasing Area. The purpose of the exploration program is to conduct off-lease exploration by drilling to evaluate thickness, quality, and other characteristics of the sodium mineral deposits located on lands adjacent to Tg Soda Ash's existing mining operation.

ADDRESSES: The proposed exploration program is fully described and will be conducted pursuant to an exploration plan to be approved by the BLM. Copies of the exploration plan are available for review during normal business hours in the following offices (serialized under number WYW132641): BLM, WY State Office, 2515 Warren Avenue, Cheyenne, WY; and, BLM, Rock Springs District Office, Highway 191 North, Rock Springs, WY.

SUPPLEMENTARY INFORMATION: Any party electing to participate in this exploration program must send written notice to both the BLM and Tg Soda Ash, Inc. by the close of business June 15, 1994. The written notice should be sent to the following addresses: Tg Soda Ash, Inc., Attn: Terry Leigh, P.O. Box 100, Granger, WY 82934; and, BLM, WY State Office, Chief, Branch of Mining Law and Solid Minerals, P.O. Box 1828, Cheyenne, WY 82003.

Vernon G. Rulli,

Acting Chief, Branch of Mining Law and Solid Minerals.

[FR Doc. 94–11873 Filed 5–13–94; 8:45 am]

BILLING CODE 4310–22–M

[ID–942–04–321A–02]

Idaho: Filing of Plats of Survey; Idaho

The plat of survey of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., May 4, 1994.

The plat representing the dependent resurvey of portions of the north boundary and subdivisional lines, and the subdivision of section 3, Township 23 North, Range 22 East, Boise Meridian, Idaho, Group No. 829, was accepted May 2, 1994.

This survey was executed to meet certain administrative needs of the U.S.D.A. Forest Service.

All inquiries concerning the survey of the above-described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: May 4, 1994.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 94–11814 Filed 5–13–94; 8:45 am]

BILLING CODE 4310–GG–M

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Risk Assessment and Management Committee Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Risk Assessment and Management Committee (Committee), a committee of the Aquatic Nuisance Species Task Force. The Committee meeting will continue development of the draft risk assessment process.

DATES: The Risk Assessment and Management Committee will meet from 8 a.m. to 5 p.m. on Wednesday, June 1, 1994, and 8 a.m. to 2 p.m. on Thursday, June 2, 1994.

ADDRESSES: The Risk Assessment and Management Committee meeting will be held at the Southeastern Biological Science Center, National Biological Survey, 7920 NW. 71st Street, Gainesville, Florida 32606.

FOR FURTHER INFORMATION CONTACT: Richard Orr, Risk Assessment and Management Committee Chairman, U.S. Dept. of Agriculture, Animal and Plant Health Inspection Service, 6505 Belcrest Rd., room 810, Hyattsville, MD (301) 436–8939.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Aquatic Nuisance Species Task Force Risk Assessment and Management Committee established under the authority of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (Pub. L. 101–646, 104 Stat. 4761, 16 U.S.C. 4701 *et seq.*, November 29, 1990). Minutes of the meetings will be maintained by the Coordinator, Aquatic Nuisance Species Task Force, room 840, 4401 North Fairfax Drive, Arlington, Virginia 22203 and the Risk Assessment and Management Committee Chairman, U.S. Dept. of Agriculture, Animal and Plant Health Inspection Service, 6505 Belcrest Rd., room 810, Hyattsville, MD 20782 and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: May 9, 1994.

Gary Edwards,

Co-Chair, Aquatic Nuisance Species Task Force, Assistant Director—Fisheries.

[FR Doc. 94–11754 Filed 5–13–94; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service (MMS)

Information Collection Submitted to the Office of Management and Budget (OMB) for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to OMB for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collections of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget; Paperwork Reduction Project (1010–0038); Washington, DC 20503, telephone (202) 395–7340, with copies to John V. Mirabella; Chief, Engineering and Standards Branch; Engineering and Technology Division; Mail Stop 4700; Minerals Management Service; 381 Elden Street; Herndon, Virginia 22070–4817.

Title: 30 CFR part 250, subpart N, Remedies and Penalties.

OMB Approval Number: 1010–0038.

Abstract: Respondents submit this information to MMS seeking administrative review of charges that they have failed to comply with provisions of the Outer Continental Shelf Lands Act (OCSLA) or provisions of a lease, license, or permit issued under the OCSLA, or any regulation or order issued under the OCSLA. The alleged violator is permitted to submit information for review and analysis by MMS's Reviewing Officer in the determination of the facts and issues involved and the amount of the civil penalty which might be assessed.

Bureau Form Number: None.

Frequency: On occasion.

Description of Respondents: Federal Outer Continental, Shelf oil and gas lessee.

Estimated Completion Time: 80 hours.

Annual Responses: 15.5.

Annual Burden Hours: 1,240.

Bureau Clearance Officer: Arthur Quintana, (703) 787–1239.

Dated: February 14, 1994.

Henry G. Bartholomew,

Deputy Associate Director for Operations and Safety Management.

[FR Doc. 94–11818 Filed 5–13–94; 8:45 am]

BILLING CODE 4310–MR–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–700–701 (Preliminary)]

Disposable Lighters From the People's Republic of China and Thailand

AGENCY: International Trade Commission.

ACTION: Institution and scheduling of preliminary antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigations Nos. 731–TA–700–701 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the People's Republic of China and Thailand of disposable pocket lighters, gas fueled, non-refillable, provided for in subheading 9613.10.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. The Commission must complete preliminary antidumping investigations in 45 days, or in this case by June 23, 1994.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: May 9, 1994.

FOR FURTHER INFORMATION CONTACT: Valerie Newkirk (202–205–3190), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access 2 to the Commission should contact the Office of the Secretary at 202–205–2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed on May 9, 1994, by BIC Corporation, Milford, CT.

Participation in the Investigations and Public Service List

Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these preliminary investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on June 1, 1994, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Valerie Newkirk (202–205–3190) not later than May 27, 1994, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before June 6, 1994, a written brief containing information and arguments pertinent to

the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules.

By order of the Commission.

Issued: May 10, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–11765 Filed 5–13–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 303–TA–25 (Preliminary)]

Disposable Lighters From Thailand

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of preliminary countervailing duty investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary countervailing duty investigation No. 303–TA–25 (Preliminary) under section 303 of the Tariff Act of 1930 (19 U.S.C. 1303) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Thailand of disposable pocket lighters, gas fueled, non-refillable, provided for in subheading 9613.10.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of Thailand. The Commission must complete preliminary countervailing duty investigations in 45 days, or in this case by June 23, 1994.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: May 9, 1994.

FOR FURTHER INFORMATION CONTACT: Valerie Newkirk (202–205–3190), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on May 9, 1994, by BIC Corporation, Milford, CT.

Participation in the Investigation and Public Service List

Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this preliminary investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on June 1, 1994, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Valerie Newkirk (202–205–3190) not later than May 27, 1994, to arrange for their appearance. Parties in support of the imposition of countervailing duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before June 6, 1994, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules.

Issued: May 10, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–11912 Filed 5–13–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 22–55]

Peanut Butter and Peanut Paste; Rescheduling of Public Hearing

AGENCY: United States International Trade Commission.

ACTION: Rescheduling of public hearing.

SUMMARY: The Commission has rescheduled to June 30, 1994, from May

19, 1994, its public hearing in this investigation pursuant to a request for a change in the hearing date from the National Peanut Growers Group.

The schedule for filing briefs has been revised as follows: the deadline for filing prehearing briefs is June 23, 1994; the hearing will be held at the U.S. International Trade Commission Building at 9:30 a.m. on June 30, 1994; and the deadline for filing posthearing briefs is July 7, 1994.

EFFECTIVE DATE: May 9, 1994.

FOR FURTHER INFORMATION CONTACT: Jim McClure (202–205–3191), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION: The subject investigation was instituted by the Commission on January 18, 1994. Notice of the investigation and the schedule for its conduct was published in the **Federal Register** of January 26, 1994 (59 FR 3734). Notice of the rescheduling of the public hearing to May 19 was published in the **Federal Register** of April 1, 1994 (59 FR 15456).

For further information concerning the conduct of this investigation and rules of general application see the Commission's notice of investigation cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 204, (19 CFR part 204).

This notice is published pursuant to section 204 of the Commission's rules (19 CFR 204.4).

Issued: May 11, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–11911 Filed 5–13–94; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32492]

Chicago and North Western Transportation Company—Trackage Rights Exemption—Soo Line Railroad Company, d/b/a CP Rail Systems

Soo Line Railroad Company, d/b/a CP Rail Systems (Soo) has agreed to grant trackage rights to Chicago and North Western Transportation Company (C&NW) over a segment of Soo's track, commonly known as the Saunders Connection, in the City of Superior, WI, which lies between and connects to trackage owned and operated by the Duluth Messabe and Iron Range Railroad, and to trackage owned and operated by the Burlington Northern Railroad. The trackage rights will permit C&NW to operate over the connecting line segment, and thereby facilitate more economical and efficient operation in and through the City of Superior, WI. The trackage rights were to become effective on or after May 5, 1994.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Thomas F. Flanagan, 165 North Canal Street, Chicago, IL 60606–1551.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: May 6, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–11838 Filed 5–13–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Appleton, Papers Inc.*, Civil No. 92 C–0962, was lodged on May 3, 1994 with the United States District Court for the Eastern District of Wisconsin.

The Consent Decree provides penalties and injunctive relief for defendant's violations of the Clean Water Act, 33 U.S.C. 1251 *et seq.*, the General Pretreatment Regulations for Existing and New Sources of Pollution, 40 CFR part 403, and provisions of a local pretreatment program established by the City of Appleton. The Consent Decree requires defendant to implement a comprehensive compliance program, and pay to the United States a civil penalty of $670,000, plus interest from the date of lodging of the decree, for its past violations of the Clean Water Act.

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, Department of Justice, Washington, DC, 20530, and should refer to *United States* v. *Appleton Papers, Inc.* (E.D. Wisc.) and DOJ Ref. No. 90–5–1–1–3879.

The proposed Consent Decree may be examined at any of the following offices:

(1) The Office of the United States Attorney, Eastern District of Wisconsin, Federal Building, room 330, 517 E. Wisconsin Avenue, Milwaukee, Wisconsin (53202);

(2) The Region V office of U.S. EPA, 77 West Jackson Blvd., Chicago, Illinois (60604–3590); and

(3) The Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC (20005), (202) 624–0892.

A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please enclose a check in the amount of $3.75 (25 cents per page reproduction costs) payable to "Consent Decree Library."

John C. Cruden,

Section Chief, Environmental Enforcement Section Environment and Natural Resources Division.

[FR Doc. 94–11808 Filed 5–13–94; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, and 42 U.S.C. 9622(d)(2), notice is hereby given that a proposed consent decree in *United States* v. *Bridgestone/Firestone, Inc., et al.*, Civil Action No. *94–56–2–ALB–AMER(DS)*, was lodged on April 25, 1994 with the United States District Court for the Middle District of Georgia. The proposed Consent Decree concerns the Firestone Tire and Rubber Co. Superfund Site (the "Site") near Albany, Georgia. The Site involves soils and groundwater contaminated by PCBs and other hazardous substances. The Albany-Dougherty Payroll Authority has owned the Site since 1967. From 1968 until 1986, Firestone Tire and Rubber Co. manufactured tires at this location,

during which operations it contaminated the Site with heavy metals, PCBs and other hazardous substances. Bridgestone/Firestone ("B/F") is the corporate successor to Firestone Tire and Rubber Co. Pursuant to sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986, Public Law No. 99–499, 42 U.S.C. 9696 and 9607(a), the Complaint in this action seeks performance of the remedy selected by EPA, as well as recovery of all past response costs incurred by the United States at the Site and of all future and oversight costs to be incurred by the United States in connection with the Site.

B/F has agreed in the proposed Consent Decree to (1) perform the remedy selected by EPA at a total estimated cost of $2 million, and (2) reimburse the United States for all of its past response costs incurred at the Site ($348,333.04), and all of its future response and oversight costs. The selected remedy requires excavation and off-site disposal of the contaminated soils and the extraction and treatment of contaminated groundwater. In the proposed Consent Decree, The Albany-Dougherty Payroll Development Authority has agreed to provide access to the Site, record deed restrictions, and impose institutional controls on the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Bridgestone/Firestone, Inc., et al.*, DOJ Ref. #90–11–3–1130.

The proposed consent decree may be examined at the office of the United States Attorney for the Middle District of Georgia, 433 Cherry Street, 4th Floor, Macon, Georgia; the Environmental Protection Agency, Region 4, 345 Courtland Street NE., Atlanta, Georgia; and at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005, (202) 624–0892.

A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $54.00 (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. 94–11807 Filed 5–13–94; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* versus *Fiji Sugar Corporation, Ltd., et al.*, Civil Action No. 94–00305–DAE, was lodged on April 25, 1994, with the United States District Court for the District of Hawaii. The settling defendants are Fiji Sugar Corporation, Ltd., Industrial Iron Works Corporation, and Russell C. McGarry, d.b.a. R & D Hawaii. The Complaint in this action, brought under section 113(b) of the Clean Air Act, 42 U.S.C. 7413(b), alleged that the defendants committed violations of the asbestos NESHAP notification and work practice requirements of 40 CFR part 61, Subpart M, during the removal of a boiler at Hamakua Sugar Company's Ookala Sugar Mill in Ookala, Hawaii.

The proposed consent decree requires the settling defendants to pay a civil penalty of $120,000; to inspect and sample facilities to identify asbestos before commencing a renovation or demolition operation; and, when hiring workers for asbestos-related projects, to employ only persons who have successfully completed an EPA-approved training course.

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, Department of Justice, Washington, DC 20530, and should refer to *United States* versus *Fiji Sugar Corporation, Ltd., et al.*, DOJ Ref. #90–5–2–1–1524.

The proposed consent decree may be examined at the Office of the United States Attorney, District of Hawaii, room C–242, U.S. Courthouse, 300 Ala Moana Blvd., Honolulu, Hawaii; the Region IX Office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105; and at the Consent Decree Library, 1120 G Street, NW., Washington, DC 20005. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $3.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–11809 Filed 5–13–94; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Environmental Research Forum Project 92–16

Notice is hereby given that, on March 22, 1994, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the participants in the Petroleum Environmental Research Forum ("PERF") Project 92–16 have filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in its membership. The notifications were filed for the purpose of extending the protections of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Arco Exploration and Production Technology Company, Plano, TX, has become a member of PERF Project 92–16.

No other changes have been made in either the membership or planned activity of PERF Project 92–16. Membership in this group research project remains open, and PERF Project 92–16 intends to file additional written notification disclosing all changes in membership.

On August 13, 1993, the participants in PERF Project 92–16 filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on September 30, 1993, (58 FR 51104).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 94–11805 Filed 5–13–94; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Environmental Research Forum Project 92–08: "Biodegradation of VOC's in Vapor Bioprocesses"

Notice is hereby given that, on March 22, 1994, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et. seq.* ("the Act"), the Chevron Research & Technology Company, acting on behalf of the Petroleum Environmental Research Forum ("PERF") Project 92–08: "Biodegration of VOC's in Vapor Bioprocesses" has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the protections of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, Southern California Edison Company, Rosemead, CA, and Bohn Biofilter Corporation, Tucson, AZ have become members of PERF Project 92–08.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the members intend to file additional written notification disclosing all changes in membership.

On February 9, 1993, PERF Project 92–08 filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 11, 1993, 51 FR 8903.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 94–11806 Filed 5–13–94; 8:45 am]

BILLING CODE 4410–01–M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 94–2A CARP DD]

1992 and 1993 Digital Audio Recording Royalty Funds; Motions and Objections

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of time period to file motions and objections.

SUMMARY: The Copyright Office is giving notice to the claimants to the 1992 and 1993 Digital Audio Recording Royalty Funds of the commencement of a 30-day period to file any precontroversy motions or objections. This includes any objections for cause to the arbitrators nominated by various professional arbitration associations.

DATES: Any motions or objections are due June 15, 1994.

ADDRESSES: If sent by mail, an original and five copies should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. If hand delivered, an original and five copies should be brought to: Office of the General Counsel, Copyright Office, room LM–407, James Madison Memorial Building, 101 Independence Avenue, SE, Washington, DC 20540.

FOR FURTHER INFORMATION CONTACT: Marilyn J. Kretsinger, Acting General Counsel, U.S. Copyright Office, Library of Congress, Washington, DC 20540. Telephone (202) 707–8380.

SUPPLEMENTARY INFORMATION: On May 9, 1994, the Copyright Office of the Library of Congress published in the **Federal Register** the interim regulations that govern the distribution and ratemaking proceedings conducted by the Copyright Arbitration Royalty Panels (CARP), as specified by the Copyright Royalty Tribunal Reform Act of 1993. 59 FR 23964 (May 9, 1994).

Section 251.45 of these interim regulations provides that, before the initiation of any CARP royalty distribution proceeding, the Librarian of Congress will "designate a 30-day period in which any party to the proceeding may file with the Librarian of Congress objections to, or motions to dismiss, any party's royalty claim, or motions for declaratory rulings, or for procedural or evidentiary rulings, on any proper ground."

At the same time, § 251.4 of the CARP rules provides that, during this same 30-day period, "any party to the proceeding may * * * file an objection with the Librarian of Congress to one or more of the persons contained on the arbitrator list for the proceeding. Such objection shall plainly state the grounds and reasons for each person claimed to be objectionable."

We are currently anticipating that a CARP proceeding may be required for the distribution of 1992 and 1993 digital audio recording royalties (DART). On March 1, 1994, we published in the **Federal Register** a notice asking the claimants to those two funds whether any controversies exist, and requested their filing of a notice of intention to participate. We stated that, if controversies do exist, we would initiate the proceeding on June 30, 1994. 59 FR 9773 (Mar. 1, 1994).

Precontroversy motion and objection period for 1992 and 1993 DART. Therefore, by this Notice, we are establishing the 30-day precontroversy period called for by §§ 251.4 and 251.45 for the filing of precontroversy motions and objections, and for the filing of objections to the list of arbitrators nominated by professional arbitration association. The precontroversy motion and objection period begins today and ends June 15, 1994.

The list of nominated arbitrators was published in the **Federal Register** on May 12, 1994, and is available, with accompanying supporting materials, by contacting the Office of the General Counsel, Copyright Office. 59 FR 23964 (May, 9, 1994).

Other matters. In our March 1, 1994, notice, we asked whether the claimants wanted to file a motion for consolidation of the 1992 and 1993 DART distribution proceedings. We requested comments by June 10, 1994. Although a motion for consolidation is typical of the types of motions for which the 30-day precontroversy period (ending on June 15, 1994) is designed, we have already set the deadline for the motion for consolidation as June 10, 1994, and we are not changing that slightly earlier deadline by our action today.

Handling of precontroversy motions and objections. For any precontroversy motion or objection, the Librarian of Congress has discretion either to rule on it or to refer it to the CARP panel. See, § 251.45(b). As explained in our preamble to the interim CARP regulations issued on May 9, 1994, we have decided that, unlike the situation with respect to precontroversy motions and objections, there is no practical way to allow for precontroversy discovery under the statute. Thus, any motion that is in the nature of precontroversy discovery will be referred by the Librarian to the CARP panel to be handled during the controversy. See, 59 FR 23964, 23977 (May 9, 1994).

For any objection to one or more listed arbitrators, the Librarian will take into account the objection as part of the entire consideration of each nominee at the time he is required to select two arbitrators for the proceeding. The mere filing of an objection will not, in and of itself disqualify an arbitrator or, without supporting reasons, diminish the person's chances of being selected. As we have said earlier, peremptory challenges will not be allowed, and all objections must be fully substantiated. See, 59 FR 2550, 2552 (Jan. 18, 1994); 59 FR 23964, 23969 (May 9, 1994).

Dated: May 9, 1994.

Barbara Ringer,

Acting Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 94–11858 Filed 5–13–94; 8:45 am]

BILLING CODE 1410–09–P

NUCLEAR REGULATORY COMMISSION

All Power Reactor Licensees; Receipt of Petition for Director's Decision

Notice is hereby given that by Petition dated April 13, 1994, Paul M. Blanch (Petitioner) has requested that the NRC take immediate action with regard to all power reactor licensees, concerning the potential meltdown of the fuel in the spent fuel pools for all reactors in the United States. Specifically, the Petitioner requests that: (1) The NRC immediately issue an information notice or other appropriate notification forwarding all information in its possession to all power reactor licensees regarding the potential meltdown of fuel in spent fuel pools, and reminding licensees of their responsibilities to perform timely operability determinations in accordance with their technical specifications and NRC Generic Letter 91–18; (2) each licensee immediately perform an evaluation of compliance of this potential deficiency with respect to its current licensing basis; (3) the NRC deny all requests for license amendments for the expansion of spent fuel pool capacity until these safety concerns are fully resolved; and (4) after evaluation by each licensee, if the NRC determines there is little or no risk to the public health and safety, the NRC may issue a Notice of Enforcement Discretion.

As bases for his request, the Petitioner asserts that the NRC was informed approximately one and one-half years ago of a potential substantial nuclear safety hazard at the Susquehanna Steam Electric Station and the NRC has intentionally withheld this information from other utilities. According to the Petitioner, this hazard involves a major design flaw such that during a design basis loss of coolant accident, the electrical power to the fuel pool cooling system would be turned off, resulting in loss of cooling for the spent fuel pool. The Petitioner alleges that radiation levels in the reactor building would prohibit operators from entering the reactor building to restart the system. According to the Petitioner, if cooling is not restored, the water in the spent fuel pool will boil, water will evaporate and, since the valves which must be opened to provide replacement water are within the inaccessible reactor building, replacement water cannot be provided, resulting in high onsite and offsite radiation levels and a meltdown of the spent fuel in the pool resulting in release of massive amounts of airborne radioactivity outside of primary and secondary containment. The Petitioner alleges further that the residual heat removal system could not cool the fuel pool under accident conditions, and that if replacement water could be provided, the temperature and humidity conditions would be generated in the reactor building which would cause the emergency systems to fail, resulting in additional meltdown and failure of the primary and secondary containment.

The request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The request has been referred to the Director of the Office of Nuclear Reactor Regulation. By letter dated May 5, 1994, the Petitioner's request for immediate action has been denied.

A copy of the Petition is available for inspection at the Commission's Public Document Room at 2120 L Street, NW. (lower level), Washington, DC 20555.

Dated at Rockville, Maryland this 6th day of May 1994.

For the Nuclear Regulatory Commission.

William T. Russell,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 94–11788 Filed 5–13–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 40–8681]

UMETCO Minerals Corporation Receipt of Petition for Director's Decision

Notice is hereby given that by Petition dated January 13, 1994, Thomas W. Clawson, on behalf of Envirocare of Utah, Inc. (Petitioner), requested that the Nuclear Regulatory Commission (Commission) hold an informal hearing concerning the August 2, 1993, approval of an amendment to Umetco Minerals Corporation's (Umetco) materials license pursuant to 10 CFR 2.1205 and institute pursuant to 10 CFR 2.206 a proceeding to modify, suspend or revoke Umetco's materials license, pending the preparation of either an environmental assessment pursuant to the National Environmental Policy Act of 1969 (NEPA) or an environmental report under 10 CFR 51.60, and while a determination is made whether the amended license complies with controlling Commission rules and with the standards promulgated by the Environmental Protection Agency, as required under 42 U.S.C.A. 2114(a)(2).

As basis for the request, the Petitioner asserts that the Commission has allowed Umetco to convert the White Mesa Mill facility into a major commercial byproduct materials disposal facility without a current environmental analysis in violation of NEPA and the Commission's environmental regulations and which does not have to comply with current environmental protection standards.

By Memorandum and Order of the Commission's Atomic Safety and Licensing Board dated March 4, 1994, the Petitioner's request for an informal hearing pursuant to 10 CFR 2.1205 was denied. Accordingly, the Petitioner's request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The request has been referred to the Director of the Office of Nuclear Materials Safety and Safeguards. As provided by § 2.206, appropriate action will be taken on this request within a reasonable period of time.

A copy of the Petition is available for inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland this 3rd day of May 1994.

For the Nuclear Regulatory Commission.

Robert M. Bernero,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 94–11787 Filed 5–13–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–213]

Connecticut Yankee Atomic Power Co., Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–61, issued to Connecticut Yankee Atomic Power Company (the licensee), for operation of the Haddam Neck Plant located in Middlesex County, Connecticut.

The proposed amendment would modify the pressure temperature limit curves of Technical Specification 3/4.4.9, "Pressure/Temperature Limits, Reactor Coolant System," Figures 3.4–3, 4, and 5 and the associated Bases section.

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

By June 15, 1994, 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 Russell Library, 123 Broad Street, Middletown, Connecticut 06457. If a request for a hearing or petition for leave in 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 a 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.

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 John F. Stolz: 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 Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103–3499, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petition and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer of 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).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated April 7, 1994, 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 Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Dated at Rockville, Maryland, this 9th day of May 1994.

For the Nuclear Regulatory Commission.

Alexander W. Dromerick,

Acting Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–11789 Filed 5–13–94; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–34034; File No. 265–19]

Consumer Affairs Advisory Committee; Meeting

AGENCY: Securities and Exchange Commission.

ACTION: Notice of meeting of the Securities and Exchange Commission ("Commission") Consumer Affairs Advisory Committee ("Committee").

SUMMARY: This is to give notice that the Securities and Exchange Commission Consumer Affairs Advisory Committee will meet on May 25, 1994, in room 1C30 at the Commission's main offices, 450 Fifth Street NW., Washington, DC, beginning at 9 a.m. The meeting will be open to the public. This notice also serves to invite the public to submit written comments to the Committee.

ADDRESSES: Written comments should be submitted in triplicate and should refer to File No. 265–19. Comments should be submitted to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Paul Atkins, Office of the Chairman (202) 942–0100; Securities and Exchange Commission 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

In accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. app 10a, the Securities and Exchange Commission Consumer Affairs Advisory Committee hereby gives notice that it will meet on May 25, 1994, in room 1C30 at the Commission's main offices, 450 Fifth Street NW., Washington, DC, beginning at 9 a.m. The meeting will be open to the public.

The Committee's responsibilities include assisting the Commission in identifying investor problems and being more responsive to their needs. The Committee will explore fundamental issues of concern to investors, including matters currently under consideration by the SEC and topics of emerging concern to investors and the financial services industry.

The purpose of this meeting will be general organizational issues, as well as consideration of proposed Commission rules on mutual funds advertisements; litigation reform and broker-dealer sales practices.

Dated: May 10, 1994.

Jonathan G. Katz,

Advisory Committee Management Officer.

[FR Doc. 94–11767 Filed 5–13–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34025; File No. SR–CBOE–93–60]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Permanent Approval of the Pilot Program Involving Debit Put Spreads in Broad-Based Indexes With European-Style Exercise

May 9, 1994.

On December 27, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(10 of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] proposed rule change seeking permanent approval of Exchange Rule 24.11A, "Debit Put Spread Cash Account Transactions," which establishes a pilot program allowing approved public customers with qualified portfolios ("spread exemption customers") to effect and maintain in cash accounts debit put spread transactions in broad-based index options with European-style exercise.[3]

The proposed rule change was published in Securities Exchange Act Release No. 33407 (December 30, 1993), 59 FR 1041. No comments were received on the proposed rule change.

Currently, § 220.8 of Regulation T under the Act precludes customers from effecting spread transactions in cash accounts. Specifically, § 220.8(a)(3)(ii) of Regulation T includes in permissible cash account transactions a creditor's issue, endorsement or guarantee of a put option for a customer if the creditor obtains cash in an amount equal to the exercise price of the option or holds in the account any of the following instruments with a current market value at least equal to the exercise price of the option and with one year or less to maturity: U.S. government securities, negotiable bank certificates of deposit, or bankers acceptance issued by a U.S. bank and payable in the United States. Because offsetting option positions fail to satisfy these criteria, spreads are not included in permissible cash account transactions and therefore must be effected in margin accounts.

On November 26, 1991, the Commission approved proposals submitted by the CBOE and the Amex which established one year pilot programs allowing approved public customers[4] with qualified portfolios of stock to effect and maintain in cash accounts debit put spread transactions in broad-based index options with European-style exercise.[5] The Commission approved proposals extending the CBOE's pilot program through December 31, 1993, and, most recently, through December 31, 1994.[6]

The pilot program defines a "debit put spread" as "a long put position coupled with a short put position overlying the same broad-based index and having an equivalent underlying aggregate index value, where the short put(s) expires with the long put(s), and the strike price of the long put(s) exceeds the strike price of the short put(s)." Under the terms of the pilot, only public customers approved by the CBOE are permitted to participate in the pilot program. To obtain the CBOE's approval, customers are required, among other things, to hold a qualified stock portfolio or its equivalent that is composed of net long positions in common stocks in at least four industry groups and that contains at least twenty stocks, none of which accounts for more than fifteen percent of the value of the portfolio. A portfolio must meet these standards at all times, regardless of trading activity in the stocks. In addition, the debit put spread positions must be carried in an account with an Exchange member organization and the qualified portfolio must be maintained with either an Exchange member organization, another broker-dealer, a bank, or a securities depository.

In conjunction with the creation of the pilot program, the Commission staff also issued no-action letters to the Amex and the CBOE stating the staff would not recommend enforcement action against the Amex and the CBOE due to the operation of the pilot program, namely the maintenance of spread positions in a cash account.[7] The staff of the Board of Governors of the Federal Reserve System ("Board") also informed the Commission staff that Board staff would not object to the Commission staff's issuance of these no-action positions in connection with the pilot

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1993).

[3] Initially, the Commission approved the pilot program on a one-year basis through November 25, 1992. See Securities Exchange Act Release No. 29992 (November 26, 1991), 56 FR 63526 (order approving File Nos. SR–Amex–91–14 and SR–CBOE–91–17) ("Debit Put Spread Approval Order"). Subsequently, both the CBOE and the American Stock Exchange, Inc. ("Amex") amended the definition of "debit put spread" to provide that the strike price of the long leg of the spread must exceed, not equal, the strike price of the short leg. See Securities Exchange Act Release Nos. 30267 (January 21, 1992), 57 FR 3234 (order approving File No. SR–CBOE–91–50) and 30419 (February 26, 1992), 57 FR 7825 (order approving File No. SR–Amex–92–07). On June 30, 1993, the Commission approved an extension of the pilot program through December 31, 1993. See Securities Exchange Act Release No. 32556 (June 30, 1993), 58 FR 32556 (order approving File No. SR–CBOE–93–13) ("Pilot Extension Order"). Most recently, the Commission approved a proposal extending the pilot program through December 31, 1994. See Securities Exchange Act Release No. 33407 (December 30, 1993), 59 FR 1041 (notice of filing and order granting partial accelerated approval of File No. SR–CBOE–93–60) ("1994 Extension Order").

[4] For purposes of its pilot program, a public customer is a customer whose orders are eligible to be placed on a CBOE limit order book under Exchange Rule 7.4(a).

[5] See Debit Put Spread Approval Order, *supra* note 3.

[6] See Pilot Extension Order and 1994 Extension Order, *supra* note 3.

[7] See Letter from Howard L. Kramer, Assistant Director, Division, Commission, to Mary L. Bender First Vice President, Division of Regulatory Services, CBOE, dated November 25, 1991, and Letter from Howard L. Kramer, Assistant Director, Division, Commission, to James M. McNeil, Assistant Vice President, Chief Examiner, Amex, dated November 25, 1991.

programs.[8] Most recently, Board staff indicated that it would not raise objections to permanent approval of the pilot program.[9]

As required by the Debit Put Spread Approval Order, the CBOE submitted a report assessing the effectiveness of the pilot program.[10] In addition, as required under the Pilot Extension Order, the CBOE has submitted a report dated as of November 10, 1993, assessing the effectiveness of the pilot program from January 1993 through September 1993.[11] In its 1993 Pilot Report, the CBOE states that no participant has operated in violation of the pilot since its inception. As it concluded in its initial Pilot Report, the CBOE states that the pilot program has provided an efficient means for investors who are limited to cash account transactions to effectively hedge their portfolios against market declines. The CBOE states that it has neither experienced or detected any problems related to the pilot program and, in addition, that no activity of any participant appeared to violate the requirements of the pilot program or other Exchange Rules. The Exchange has found no evidence of market manipulation or other negative impact on market operations arising from the pilot program.

The Commission finds that the proposal to grant permanent approval to the debit pub spread pilot program is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6.[12] Specifically, the Commission believes, as it has concluded previously,[13] that the pilot program is designed to benefit qualified public customers who are prohibited or restricted in their use of margin accounts by facilitating their purchase of index option debit put spreads. Because the purchaser of a debit put spread uses the call premium to reduce the cost of purchasing the put, index option pub spreads provide investors with an affordable means to hedge their portfolios against adverse market moves. In addition, to the extent that the pilot program has increased index options transactions, the program has benefitted all options investors by contributing to the depth and liquidity of the CBOE's options markets.

The Commission continues to believe that the economic characteristics of index option debit put spreads permit an exception to the application of Regulation T. In a debit put spread, the long put entitles the spread exemption customer to receive payment when the index reaches the pub option's strike price; because the strike price of the long put must exceed the strike price of the short put, the spread exemption customer's right to receive payment under the long put will offset any obligations he incurs from the sale of the short put. Because the short position must expire with the long position, the offset provided by the long put will last for the duration of the spread exemption customer's obligation as a short put writer. In addition, there is no risk that the short put will be exercised prior to the long put because the exemption applies solely to European-style options, which may be exercised only during a specified period prior to expiration.

In its 1993 Pilot Report, the CBOE states that no participant has operated in violation of the pilot since its inception, nor have the CBOE's surveillance procedures revealed evidence of manipulation or abuse of knowledge of impending expiration-related program trades for each expiration Friday during the review period. The 1993 Pilot Report indicates that the pilot program's 39 participants included corporations, pension/retirement plans, non-profit organizations, mutual funds, and individual or family trusts, the majority of which were prohibited by contractual agreements from using margin accounts. The debit put spreads of all of the participants were comprised of Standard & Poor's ("S&P") 500 Index ("SPX") options with one to four months remaining until expiration. During the review period the total number of spreads effected on a monthly basis under the pilot program each month ranged from 3,696 to 12,544.

On the basis of the 1993 Pilot Report, the Commission believes that the debit put spread pilot program has facilitated that needs of qualified public customers who are limited to cash account transactions by providing them with an effective means to hedge their portfolios against adverse market moves. At the same time, the 1993 Pilot Report indicates that no pilot participant has violated the pilot's parameters, nor has the Exchange discovered any market manipulation or abuse in connection with the pilot program.[14] In addition, the Commission has received no comments regarding the operation of the pilot program, and Board staff has raised no objection to permanent approval of the pilot program.[15] For these reasons, the Commission believes that the debit put spread pilot program has provided qualified public customers with additional means to implement their hedging strategies and, by facilitating index options transactions, has benefitted all options investors by contributing to the depth and liquidity of the CBOE's options markets.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[16] that the proposed rule change (SR–CBOE–93–60) granting permanent approval to the CBOE's debit put spread program is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–11798 Filed 5–13–94; 8:45 am]

BILLING CODE 8010–01–M

[8] See Letter from Laura Homer, Securities Credit Officer, Board, to Howard L. Kramer, Assistant Director, Division, Commission, dated July 12, 1991.

[9] See Letter from Scott Holz, Senior Attorney, Board, to Sharon M. Lawson, Assistant Director, Division, Commission, dated January 28, 1994 ("Board Letter").

[10] See Letter from Mary L. Bender, First Vice President, Division of Regulatory Services, CBOE, to Sharon Lawson, Assistant Director, Division, Commission, dated October 1, 1992 ("Pilot Report"). In the Pilot Report, the CBOE stated that the pilot program has been an efficient means for investors that are limited to cash account transactions to effectively hedge their portfolios against declines in the market. The CBOE represented that it had neither experienced nor detected any problems related to the pilot. Moreover, the Exchange stated that no activity of any pilot participant appeared violative of the program's requirements or other Exchange rules, nor did Exchange studies find evidence of market manipulation or other negative impact on market operations.

[11] See Letter from Mary L. Bender, CBOE, to Sharon Lawson, Assistant Director, Division, Commission, dated November 10, 1993 ("1993 Pilot Report").

[12] 15 U.S.C. 78f(b)(5) (1988).

[13] See Debit Pub Spread Approval Order, *supra* note 3.

[14] The Commission expects the CBOE to notify the Commission promptly of any problems arising in connection with the program.

[15] See Board Letter, *supra* note 9.

[16] 15 U.S.C. 78s(b)(2) (1982).

[17] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 34–34031; File No. SR–NASD–92–46]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Conflicts of Interest in the Distribution of Securities

May 10, 1994.

On November 12, 1992, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission")

a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder.[2] The NASD has amended the filing four times, most recently on April 8, 1994.[3] As amended, the proposal extends the provisions of Schedule E to the NASD By-Laws[4] to potential conflicts of interest that arise when a member participating in an offering owns debt, preferred equity, or non-voting equity of the issuer.

Notice of the proposed rule change, together with its terms of substance, appeared in the **Federal Register** on September 27, 1995.[5] The Commission received one letter commenting on the proposal. This order approves the rule change.

I. Text of the Proposed Rule Change

Following is the text of the proposed rule change. Additions are italicized, deletions are in brackets.

Schedule E to the NASD By-Laws

Distribution of Securities of Members and Affiliates

Conflicts of Interest

Section 1—General

(a) No member or person associated with a member shall participate in the distribution of a public offering of debt or equity securities issued or to be issued by the member, the parent of the member, or an affiliate of the member and no member or parent of a member shall issue securities except in accordance with this Schedule.

(b) No member or person associated with a member shall participate in the distribution of a public offering of debt or equity securities issued or to be issued by a company if the member and/or its associated persons, parent or affiliates have a conflict of interest with the company, as defined herein, except in accordance with this Schedule.

Section 2—Definitions

* * * * *

(e) Common Equity—the total number of shares of common stock outstanding without regard to class, whether voting or non-voting, convertible or non-convertible, exchangeable or non-exchangeable, redeemable or non-redeemable, as reflected on the consolidated financial statements of the company.

* * * * *

(g) Conflict of Interest—shall be presumed to exist when:

(1) a member and/or its associated persons, parent or affiliates in the aggregate beneficially own 10% or more of the outstanding subordinate debt of a company;

(2) a member and/or its associated persons, parent or affiliates in the aggregate beneficially own 10% or more of the common equity of a company which is a corporation, or beneficially own a general limited or special partnership interest in 10% or more of the distributable profits or losses of a company; or

(3) a member and/or its associated persons, parent or affiliates in the aggregate beneficially own 10% or more of the preferred equity of a company.

(4) The provisions of paragraphs (1), (2), and (3) hereof notwithstanding, the conflict of interest provisions of this Schedule E shall not apply to:

(a) an offering of securities exempt from registration with the Securities and Exchange Commission under section 3(a)(4) of the Securities Act of 1993;

(b) an investment company registered with the Securities and Exchange Commission pursuant to the Investment Company Act of 1940, as amended;

(c) a "separate account" as defined in section 2(a)(37) of the Investment Company Act of 1940, as amended:

(d) a "real estate investment trust" as defined in section 856 of the Internal Revenue Code;

(e) a "direct participation program" as defined in Article III, section 34 of the Rules of Fair Practice;

(f) an offering of financing instrument-backed securities which are rated by a nationally recognized statistical rating organization in one of its four (4) highest generic rating categories;

(g) an offering of a class of equity securities for which a bona fide independent market as defined in section 2(c) exists as of the date of the filing of the registration statement and as of the effective date thereof; and

(h) an offering of a class of securities rated in one of the four highest generic rating categories by a nationally recognized statistical rating organization.

* * * * *

(1) Preferred Equity—the aggregate capital invested by all persons in the preferred securities outstanding without regard to class, whether voting or non-voting, convertible or non-convertible, exchangeable or non-exchangeable, redeemable or non-redeemable, as reflected on the consolidated financial statements of the company.

* * * * *

[l]*(o)* Qualified independent underwriter*—a member which:

* * * * *

(6) is not an affiliate of the entity issuing securities pursuant to section 3 of this Schedule and does not beneficially own five percent or more of the outstanding voting securities, *common equity, preferred equity or subordinated debt* of such entity which is a corporation or beneficially own a partnership interest in five percent or more of the distributable profits or losses or such entity which is a partnership; and

* * * * *

(r) Subordinated Debt—includes (1) debt of an issuer which is expressly subordinate in right of payment to, or with a claim on assets subordinate to, any existing or future debt of such issuer; or (2) all debt that is specified as subordinated at the time of issuance. Subordinated debt shall include short-term debt with maturity at issuance of less that one year and secured debt and bank debt not specified as subordinated debt at the time of issuance.

* * * * *

Section 3—Participation in Distribution of Securities [of Member or Affiliate]

(a) No member shall underwrite, participate as a member of the underwriting syndicate or selling group, or otherwise assist in the distribution of a public offering of an issue of debt or equity securities issued or to be issued by the member of an affiliate of the member, *or of a company with which the member or its associated persons, parent or affiliates have a conflict of interest,* unless the member is in compliance with subsection 3(b) and subsection 3(c) below.

(b) In the case of a member which is a corporation, the majority of the board of directors, or in the case of a member which is a partnership, a majority of the general partners or, in the case of a member which is a sole proprietorship, the proprietor as of the date of the filing of the registration statement and as of the effective date of the offering shall have been actively engaged in the

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1993).

[3] The first three amendments were submitted prior to and incorporated in the notice if filing published by the Commission. Amendment No. 4, filed on April 8, 1994, was a technical amendment to reflect that the proposed standard for "conflict of interest" is a rebuttable presumption. Amendment No. 4 also responded to a comment letter on the filing received by the Commission.

[4] NASD Manual, (CCH) ¶ 1881.

[5] Securities Exchange Act Release No. 32930 (September 21, 1993), 58 FR 50373.

* In the opinion of the National Association of Securities Dealers, Inc., and the Securities and Exchange Commission the full responsibilities and liabilities of an underwriter under the Securities Act of 1933 attach to a "qualified independent underwriter" performing the functions called for by the provisions of section 3 hereof.

investment banking or securities business for the five year period immediately preceding the filing of the registration statement.

(c) If a member proposes to underwrite, participate as a member of the underwriting syndicate or selling group, or otherwise assist in the distribution of a public offering of its own, or an affiliate's securities, *or of securities of a company with which it or its associated persons, parent or affiliates have a conflict of interest,* [subject to this section without limitation as to the amount of securities to be distributed by the member,] one or more of the following three criteria shall be met:

(1) the price at which an equity issue or the yield at which a debt issue is to be distributed to the public is established at a price no higher or yield no lower than that recommended by a qualified independent underwriter which shall also participate in the preparation of the registration statement and the prospectus, offering circular, or similar document and which shall exercise the usual standards of "due diligence" in respect thereto; provided, however, that:

(i) an offering of securities by a member which has not been actively engaged in the investment banking or securities business, in its present form or as a predecessor broker/dealer, for at least the five years immediately preceding the filing of the registration statement shall be managed by a qualified independent underwriter; [or] *and*

(ii) the provision of this paragraph which requires that the price or yield of the securities be established based on the recommendation of a qualified independent underwriter shall not apply to an offering of equity or debt securities if:

a. the securities (except for the securities of a broker/dealer or its parent) are issued in an exchange offer or other transaction relating to a recapitalization or restructuring of a company; and

b. the member that is affiliated with the issuer or with which the member or its associated persons, parent or affiliates have a conflict of interest is not obligated to and does not provide a recommendation with respect to the price, yield, or exchange value of the transaction; or

* * * * *

Section 4—Disclosure

(a) Any member offering its securities pursuant to this schedule shall disclose in the registration statement, offering circular, or similar document a date by which the offering is reasonably expected to be completed and the terms upon which the proceeds will be released from the escrow account described in subsection 5(a).

(b) All offerings included within the scope of this Schedule shall disclose in the underwriting section of the registration statement, offering circular or similar document that the offering is being made pursuant to the provisions of this Schedule, that the offering is *either* being made by a member of its own securities or those of an affiliate, *or those of a company in which the member or its associated persons, parent or affiliates own the common stock, preferred stock or subordinated debt of the company,* the name of the member acting as qualified independent underwriter, if any, and that such member is assuming the responsibilities of acting as a qualified independent underwriter in pricing the offering and conducting due diligence.

* * * * *

Section 11—Suitability

Every member underwriting an issue of its securities, or securities of an affiliate, *or the securities of a company with which it has a conflict of interest,* pursuant to the provisions of section 3 hereof, who recommends to a customer the purchase of a security of such an issue shall have reasonable grounds to believe that the recommendation is suitable for such customer on the basis of information furnished by such customer concerning the customer's investment objectives, financial situation, and needs, and any other information known by such member. In connection with all such determinations, the member must maintain in its files the basis for its determination.

Section 12—Discretionary Accounts

Notwithstanding the provisions of Article III, section 15 of the Corporation's Rules of Fair Practice, or any other provisions of law, a transaction in securities issued by a member or an affiliate of a member, *or by a company with which a member has a conflict of interest* shall not be executed by any member in a discretionary account without the prior specific written approval of the customer.

II. Background

Schedule E addresses potential conflicts of interest that arise when a member participates in the public distribution of its own securities or the securities of an affiliate. The standards for determining affiliation under Schedule E are voting control through ownership of equity securities, or common control of management through interlocking officerships or directorships. Where such conflicts exist, and absent an investment grade rating for debt securities or a bona fide independent market for equity securities, Schedule E requires a qualified independent underwriter to render an opinion on the offering price of the securities, conduct due diligence, and participate in the preparation of the registration statement. The qualified independent underwriter also assumes underwriter's liability for the offering. The NASD relies on the objectivity and independence of the qualified independent underwriter to resolve the conflicts of interest present when a member distributes its own securities or those of an affiliate.

After discussions with several member firms and a review of numerous leveraged buy-out offerings, the NASD determined that a potential conflict of interest arises when a member engaged in an offering of the issuer's securities owns subordinated debt, voting or non-voting equity of the issuer. The NASD is concerned about these offerings because members and their affiliates often become holders of subordinated debt or non-voting equity as a result of their participation in leveraged buy-out transactions, which could influence the independence of members' pricing and due diligence functions in any subsequent related public offering. The proposed rule change addresses these potential conflicts by extending Schedule E to situations in which a member participating in a public offering of debt or equity securities owns debt, preferred equity, or non-voting common equity of the issuer.

III. The Proposal

The rule change prohibits members and their associated persons from participating in the distribution of a public offering of securities if the member and/or its associated persons, parent, or affiliates have a conflict of interest with the issuer. For purposes of the rule change, a "conflict of interest" would be presumed to exist if the member and/or its associated persons, parent, or affiliates in the aggregate beneficially own 10% or more of the outstanding subordinated debt,[6]

[6] The NASD has determined that subordinated debt issued in a leveraged buy-out or restructuring transaction raises the greatest potential for a conflict of interest. In these situations, the subordinated debt takes on many equity characteristics and the likelihood of repayment may be substantially based on the success of the new offering. The NASD has not observed similar levels of conflict arising with

common equity,[7] or preferred equity[8] of the issuer. In addition, a "conflict of interest" would exist if the member and/or its associated persons, parent, or affiliates beneficially owns a general, limited, or special partnership interest in 10% or more of the distributable profits or losses of the issuer.

The calculation of the 10% threshold would be based on all securities of the issuer beneficially owned by the member at the time of the filing of the offering documents, including proprietary trading accounts and other fluctuating positions, regardless of whether any of the securities are sold prior to effectiveness of the offering. With respect to the ownership of subordinated debt, the calculation of the threshold would be based on the issuer's entire subordinated debt outstanding—not just the issue owned by the member.

The rule change exempts (1) offerings by not-for-profit and charitable organizations; (2) investment companies registered under the Investment Company Act of 1940; (3) "separate accounts" as defined in the Investment Company Act of 1940; (4) real estate investment trusts; (5) direct participation programs; (6) financing-instrument-backed securities which are rated investment grade; (7) equity securities for which a bona fide independent market exists; and (8) debt securities rated investment grade.[9]

The rule change would also require disclosure of the conflict of interest in the offering document. The provision currently requires that the offering document disclose (i) that the offering is being made pursuant to the provisions of Schedule E; and (ii) the name of the qualified independent underwriter, and that such member is acting as a qualified independent underwriter. In the case of an offering subject to the conflict of interest provisions, Schedule E would require disclosure that the member or its associated persons, parent, or affiliates own the common stock, preferred stock, or subordinated debt of the company.

Finally, the rule change provides an exception from the QIU pricing requirements of Schedule E in recapitalizations or restructurings for a member who is acting solely as financial advisor but is otherwise subject to Schedule E because of a conflict of interest or because the member is participating in offerings of securities of an affiliate. The NASD believes that the more limited functions of the member acting as a financial advisor would not require the qualified independent underwriter to provide a pricing opinion where the financial advisor does not participate in the pricing opinion. The exception would not be available in the context of an offering by a member of its own securities or those of its parent.

IV. Comments

The Commission receive one letter opposing the rule change from the Securities Industry Association ("SIA").[10] The NASD responded to these comments in Amendment No. 4. The SIA's comments and the NASD's responses are discussed below.

The SIA argues that ownership of an issuer's debt or non-voting equity securities does not demonstrate a conflict of interest requiring regulation under Schedule E. The SIA recognizes the NASD's concern that an underwriter could obtain practical control of an issuer through holding a substantial amount of debt securities with "equity-type control powers." Nevertheless, the SIA argues, the concept of control in Schedule E is sufficiently broad to cover the situation where an underwriter obtains practical control through holding a substantial amount of debt securities with "equity-type control powers."

The NASD responds that it has identified situations in which a member's ownership of the issuer's debt or non-voting equity results in the absence of an arm's-length bargaining relationship, potentially compromising due diligence, disclosure, and pricing. Furthermore, the NASD disagrees that the concept of control in Schedule E is sufficiently broad to cover a situation where an underwriter might obtain practical control through holding a substantial amount of debt securities with "equity-type control powers." The NASD is not aware of any situations in which the NASD staff has based a determination of "control" on debt ownership, nor does it believe it can distinguish debt securities with "equity-type control powers."

The SIA argues further that disclosure in the offering document of a significant relationship between the issuer and the underwriter should be sufficient to address such potential conflicts of interest. The NASD responds that it relies on a number of standards of fair practice, including disclosure, to ensure the independence of members participating in offerings. The NASD does not believe that disclosure of a conflict, by itself, is sufficient to address the effects to the conflict.

The SIA also notes that concerns about conflicts arising from an underwriter's ownership of issuers' debt and non-voting equity arose as a result of the prevalence of leveraged buy-outs and bridge loans in the late 1980s and early 1990s. The SIA points out that these transactions are no longer prevalent, and argues that the rule change should be postponed until these transactions again become prevalent. The NASD, however, believes that a member's debt or non-voting equity interest in an issuer can present a conflict regardless of the structure of the transaction. The NASD notes that recently, companies once subject to leveraged buy-outs are now de-leveraging by issuing equity. In these situations, the member, who served as financial advisor and acquired subordinated debt in the buy-out, may now serve as lead manager of the equity offering. The NASD believes that these situations raise potential conflicts that warrant the protections of Schedule E.

Finally, the SIA argues that the 10% member ownership threshold for determining whether there is a potential conflict should not apply to the member's holdings in an individual class of securities but rather, to the member's combined securities holdings in the issuer.[11] For example, under the SIA's approach, a member with a 10% interest in the issuer's subordinated

respect to holders of short-term or senior debt. As a result, the rule change does not apply either to senior debt, whether secured or unsecured, or to short-term debt with a maturity at issuance of less than one year. The calculation of the 10% threshold is applicable to an issuer's entire subordinated debt outstanding. The calculation of the ownership level will not be applied to the specific issue of subordinated debt owned by the member but to the issuer's entire subordinated debt outstanding.

[7] "Common equity" includes the total number of shares of common stock outstanding without regard to class, voting rights or other distinguishing characteristics as reflected on the consolidated financial statements of the company.

[8] The term "preferred equity" would include the aggregate capital invested by all persons in the preferred securities outstanding without regard to class, voting rights, or other distinguishing characteristics as reflected on the consolidated financial statements of the company.

[9] Offerings in which the securities are being issued by a member or an affiliate of a member are subject to the filing requirements of Schedule E regardless of whether the offering is of equity securities for which a bona fide independent market exists or of debt securities which are rated investment grade.

[10] Letter from David E. Rosedahl, Chairman, Federal Regulation Committee, SIA, to Jonathan G. Katz, Secretary, SEC (December 30, 1993).

[11] The SIA also argues that the aggregation standard for measuring ownership for a conflict of interest is more strict than that for measuring control under the definition of affiliation. The NASD responds that the standards are in fact the same: the NASD will aggregate the firm's trading and proprietary accounts, the proprietary accounts of any associated persons or employees, and any accounts over which members or associated persons or employees exercise beneficial ownership as defined in Rule 13(d)(3) under the Act.

debt would not have a conflict of interest if its interest in all other classes of the issuer's securities including voting and non-voting equity, does not rise to the 10% threshold. The NASD responds that it considered this approach but determined that the potential conflict of interest occurs in connection with significant ownership of securities within an individual class.

V. Discussion

The Commission has considered the above comments and has determined to approve the NASD's proposed rule change. The Commission recognizes the NASD's obligation to ensure the objectivity and independence of members participating in a securities offering. Furthermore, the Commission recognizes that a member's holdings of subordinated debt or non-voting equity could influence the independence of the member's pricing and due diligence functions in a subsequent offering of the issuer's securities. The Commission believes that the absence of an arms-length bargaining relationship in these transactions potentially compromises due diligence, disclosure, and pricing.

Accordingly, the Commission believes that it is appropriate to extend the requirements of Schedule E to situations in which a member participating in a public offering owns debt or non-voting equity of the issuer.[12] The Commission does not believe that disclosure of the member's interest in the issuer, by itself, is sufficient to address the potential conflict of interest that arises when a member holds a substantial interest in the debt or non-voting equity of an issuer. Rather, the Commission believes that the additional protections provided under Schedule E—including a pricing opinion and due diligence by a qualified independent underwriter—are necessary to address these potential conflicts.

Finally, the Commission believes that it is appropriate to provide an exception from the QIU pricing requirements of Schedule E in recapitalizations or restructurings for members who are otherwise subject to Schedule E but are acting solely as financial advisors. The Commission understands that in these transactions, the member acting as financial advisor would not be participating in the pricing opinion. Consequently, it appears that in recapitalizations or retructurings in which the conflicted financial advisor does not participate in the pricing of the offering, an exception from the Schedule E qualified independent underwriter pricing opinion would not reduce investor protections.

For these reasons, and for the reasons stated above, 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 and, in particular, the requirements of section 15A(b)(6) of the Act.[13] Section 15A(b)(6) requires that the NASD's rules be designed to promote just and equitable principles of trade, to foster cooperation and coordination with person engaged in regulating, clearing and settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission believes that the proposed rule change will prevent manipulative acts and practices, promote just and equitable principles of trade, and otherwise protect the public interest in connection with offerings in which a member and/or its associated persons, parent, or affiliates may have a conflict of interest with the issuer.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change SR–NASD–92–46 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

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[12] The Commission also recognizes that the potential conflict of interest that arises occurs in connection with the member's interest in an individual class of securities. The Commission thus believes that it is appropriate to apply the 10% member ownership threshold for determining whether there is a potential conflict to the member's holdings in an individual class of securities, rather than to the member's combined securities holdings in the issuer.

[13] 15 U.S.C. 78*o*–3(b)(6).

[14] 17 CFR 200.30–3(a)(12).

[Release No. 34–34033; File No. SR–NYSE–94–13]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Interpretation to Rule 345 Establishing a New Category of Limited Registration for Floor Clerks of Members and the Content Outline for the Examination Module for Floor Clerks of Members Engaged in Public Business With Professional Customers (Series 7B)

May 10, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder[2] notice is hereby given that on March 28, 1994, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization ("SRO"). The Commission is publishing this notice to solicit comments on the propose rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange has filed a proposed interpretation to Rule 345 establishing a new category of limited registration for floor clerks of members engaged in public business with professional customers and the Content Outline for the Examination Module for Floor Clerks of Members Engaged in Public Business with Professional Customers (Series B). The Exchange also seeks approval of the Series 7B examination module.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1993).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

Recently, the Exchange established a new category of registration and developed a qualification examination module (Qualification Examination for Floor Members Engaged in Public Business with Professional Customers—Series 7A) for floor members who conduct a public business limited to accepting orders from professional customers for execution on the trading floor.[3] This Series 7A examination module, developed as a subset of the General Securities Registered Representative Examination ("Series 7"), was created because the level of knowledge required to perform the activities engaged in by members who conduct a professional public business limited to transactions in listed securities on the Exchange floor is narrower in content and scope than that needed to conduct an overall general securities business with retail customers.

Currently, floor clerks associated with members and who take orders from public customers must become registered representatives and pass the Series 7 examination. Floor members who conduct a public business limited to dealing with professional customers (who may satisfy the Series 7A exam requirements in lieu of the Series 7) have requested that their floor clerks who take orders solely from professional customers also be allowed to take a qualifying examination more appropriate to the level of knowledge required to serve professional customers.

The Exchange will continue to require the successful completion of the Series 7 examination for any floor clerk seeking to become a registered representative dealing with other than professional customers. In addition, any person who has successfully completed the Series 7 examination will not be required to complete the Series 7B examination.

Since the Series 7A exam was developed for members, it assumes the member's level of qualification (*i.e.*, completion of new member orientation program and/or having passed the floor member qualification examination—Series 15). Consequently, the Series 7B examination module has been developed to test the knowledge of floor clerks who accept orders only from professional customers on behalf of members qualified to conduct business with these professional customers by complementing the Series 7A examination module with questions on basic information required to perform floor functions.

A committee of floor member representatives in conjunction with the Exchange staff developed the content outline, which details the coverage of the examination module, as well as the actual examination. The committee and staff identified the knowledge areas associated with the job tasks, determined the relative emphasis to be given across the knowledge areas, reviewed examination questions and forms, and determined the passing score.

The proposed interpretation to rule 345.15 establishes a new category of registration, limited registration for floor clerks, and requires that those who conduct a public business limited to accepting orders directly from professional customers for execution on the trading floor, successfully complete the Series 7B examination.

(b) Statutory Basis

The statutory basis for the Series 7B Exam lies in section 6(c)(3)(B) of the Act. Under that section, the Exchange may bar a natural person from becoming a member or person associated with a member, if such natural person does not meet such standards of training, experience and competence as are prescribed by the rules of the Exchange. Pursuant to this statutory obligation, the Exchange has developed examinations that are administered to establish that Exchange floor members and persons associated with such members performing specific functions have attained specific levels of competence and knowledge.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–94–13 and should be submitted by June 6, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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[3] The Exchange stated that the term "professional customer" is derived from the term "designated account" as used in NYSE Rule 431. As used in this proposal, the Exchange defines "professional customer" to include a bank, trust company, insurance company, investment trust, state or political subdivision thereof, charitable or nonprofit educational institution regulated under the laws of the United States or any state, or political subdivision thereof, or any person who has, or has under management, net tangible assets of at least sixteen million dollars. For purposes of the definition of "professional customer," the term "person" shall mean the same as that term is defined in NYSE Rule 2, except that it shall not include natural persons. NYSE Rule 2 defines "person" as a natural person, corporation, partnership, association, joint stock company, trust, fund or any organized group of persons whether incorporated or not.

[Release No. 34–34032; International Series Release No. 665; File No. SR–PHLX–90–35]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Listing of Warrants Based on the Financial Times-Stock Exchange 100 Index

May 10, 1994.

On December 10, 1990, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list warrants based on the Financial Times-Stock Exchange 100 Index ("FT–SE 100" or "Index"). Notice of the proposal appeared in the **Federal Register** on January 7, 1991.[3] No comment letters were received on the proposed rule change. This order approves the Exchange's proposal.

The Exchange proposes to list index warrants based on the FT–SE 100, a broad-based, internationally recognized, capitalization-weighted stock index based on the prices of 100 of the most highly capitalized and actively traded stocks traded on the London Stock Exchange ("LSE").

The Commission has previously approved the listing of FT–SE 100 warrants by other self-regulatory organizations ("SROs").[4] The PHLX will list FT–SE 100 warrants consistent with the standards set forth in the FT–SE 100 Warrant Approval Orders. Specifically, trading in FT–SE 100 warrants will be subject to Exchange Rule 1026 (Suitability), which applies the options suitability standard to index warrant recommendations made by members and member organizations, and to Exchange Rule 1027 (Discretionary Accounts), which requires that a Senior Registered Options Principal or Registered Options Principal approve and initial any discretionary index warrant transaction on the day it is executed. In addition, Exchange Rule 747 (Approval of Accounts), which requires that member organizations obtain certain approvals prior to making brokerage transactions for customer accounts, shall apply to trading FT–SE 100 warrants. Finally, the Exchange will also distribute a circular regarding suitability requirements to its membership.

Further, consistent with the proposals set forth and approved in the FT–SE 100 Warrant Approval Orders, FT–SE 100 warrants may be American-style[5] or European-style,[6] and may have a term of one to five years. Additionally, (1) issuers must exceed the Exchange's financial listing criteria and have assets in excess of $100 million, (2) the warrants must have a minimum public distribution of one million warrants with a minimum of 400 public warrant holders, and (3) the warrants must have an aggregate market value of at least $4 million.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5).[7] Specifically, for the reasons stated in the FT–SE 100 Warrant Approval Orders, the Commission believes FT–SE 100 warrants may provide a valuable hedging vehicle for investors, allowing them to hedge against stock market fluctuations in the United Kingdom.[8] Additionally, the Commission notes the PHLX is a member of the Intermarket Surveillance Group ("ISG")[9] and that the LSE is an affiliate member of the ISG. As an affiliate member, the LSE has agreed to provide certain information to other ISG members, including the PHLX, upon request.[10] Accordingly, the Commission believes the LSE's affiliate membership in the ISG helps to ensure the effectiveness of an information sharing arrangement that will assist the PHLX in its surveillance of trading in FT–SE 100 warrants. Finally, the Commission notes that other U.S. SROs have listed FT–SE 100 warrants pursuant to the FT–SE 100 Warrant Approval Orders for several years and the Commission is not currently aware of any prior or existing problems regarding the listing and trading of these warrants. Based on the above, the Commission finds that the Exchange's proposal to list FT–SE 100 warrants as described herein is consistent with just and equitable principles of trade and the protection of investors.

It is Therefore ordered, pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change (SR–PHLX–90–35) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–11799 Filed 5–13–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34024; File No. SR–PHLX–93–51]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Excessive Trading

May 9, 1994.

On December 30, 1993, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend PHLX Rule 1015, "Excessive Dealing in Options," to delete the phrase "in view of his financial resources" from the rule and to renumber the rule as PHLX Rule 1021.

The proposed rule change was noticed for comment in Securities Exchange Act Release No. 33804 (March 22, 1994), 59 FR 14699 (March 29, 1994). No comments were received on the proposal.[3]

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1992).

[3] See Securities Exchange Act Release No. 28723 (December 28, 1990), 56 FR 543 (January 7, 1991).

[4] See, *e.g.*, Securities Exchange Act Release Nos. 28627 (November 19, 1990), 55 FR 49357 (November 27, 1990) (approval for Chicago Board Options Exchange, Inc. ("CBOE")); 28106 (June 12, 1990), 55 FR 24955 (June 19, 1990) (approval for Pacific Stock Exchange, Inc. ("PSE")) ("FT–SE Warrant Approval Orders").

[5] American-style warrants may be exercised at any time prior to expiration.

[6] European-style warrants may only be exercised during a specified period prior to expiration.

[7] 15 U.S.C. 78f(b)(5) (1988).

[8] See *supra* note 4.

[9] The ISG was formed on July 14, 1983 to, among other things coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. See Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by ISG members on January 29, 1990. See Second Amendment to the Intermarket Surveillance Group Agreement, January 29, 1990. The current members of the ISG are the American Stock Exchange, Inc.; the Boston Stock Exchange, Inc.; the CBOE; the National Association of Securities Dealers, Inc.; the PSE; and the PHLX.

[10] The LSE has agreed to provide certain trading information to members of the ISG, including information relating to: (1) component securities of the Index; and (2) the identity, trading activity, and positions of LSE members or customers of LSE members. *Id.*

[11] 15 U.S.C. 78s(b)(2) (1988).

[12] 17 CFR 200.30–3(a)(12) (1993).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1993).

[3] Originally, the PHLX also proposed to amend Exchange Rule 771, "Excessive Trading of Members," to delete the phrase "or in view of the market for such security" from the rule. Subsequently, the PHLX submitted a letter returning that phrase to Exchange Rule 771. See Letter from Gerald D. O'Connell, Vice President, Market Surveillance, PHLX, to Michael Walinskas, Branch Chief, Options Regulation, Division of

Currently, PHLX Rule 1015, "Excessive Dealing in Options," prohibits a member from effecting purchases or sales in options which are excessive in view of his financial resources or in view of the market for such security. The PHLX proposes to amend PHLX Rule 1015 by deleting the phrase "in view of his financial resources" and by renumbering the rule as PHLX Rule 1021. The PHLX proposes to delete the reference to the financial resources of a member from current PHLX Rule 1015 because this phrase is already appropriately included in Exchange Rule 771, "Excessive Trading of Members."[4] The PHLX indicates that the financial responsibility reference included in the trade practice rule (PHLX Rule 1015) was recently the source of confusion, which will be corrected by the PHLX's proposal. Specifically, under the proposed rule change, PHLX Rule 771 will govern the financial aspect of excessive options trading and PHLX Rule 1021 will govern the trade practice aspect of excessive options trading.[5]

The Exchange believes that the proposed rule change is consistent with section 6 of the Act, in general, and, in particular with section 6(b)(5), in that it is designed to prevent fraudulent and manipulative acts and practices, as well as to protect investors and the public interest.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5) in that it is designed to protect investors and the public interest.[6] specifically, the proposal will help to clarify the PHLX's rules by deleting the phrase "in view of his financial resources" from PHLX Rule 1015, so that PHLX Rule 1015 will apply solely to the trade practice aspect of excessive options trading and PHLX Rule 771 will apply to the financial aspect of excessive options trading. In its proposal, the PHLX states that the financial responsibility reference in PHLX Rule 1015 has been a source of confusion. Because PHLX Rule 771, which applies to both equities and options, contains the same financial responsibility provision as that provided currently in PHLX Rule 1015, the Commission believes that it is reasonable for the PHLX to delete the redundant financial responsibility reference in PHLX Rule 1015 in order to eliminate confusion. Because PHLX Rule 771 applies to both equities and options, the proposal to delete the financial responsibility reference from PHLX Rule 1015 will clarify PHLX Rule 1015 without affecting the substance of the PHLX's prohibition of excessive options trading. In addition, the Commission believes that the increased clarity of PHLX Rule 1015 will help to facilitate compliance with the rule.

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (SR–PHLX–93–51) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–11800 Filed 5–13–94; 8:45 am]

BILLING CODE 8010–01–M

Market Regulation ("Division"), Commission, dated April 13, 1994. This change is non-substantive.

[4] PHLX Rule 771 states that "No member, member organization, partner or stockholder therein shall effect on the Exchange purchases or sales for any account in which he or it is directly or indirectly interested, which purchases or sales are excessive in view or his or its financial resources or in view of the market for such security."

[5] Telephone conversation between Edith Hallahan, Attorney, PHLX, and Yvonne Fraticelli, Staff Attorney, Options Branch, Division, Commission, on April 26, 1994.

[6] 15 U.S.C. 78f(b)(5) (1988).

[7] 15 U.S.C. 78s(b)(2) (1982).

[8] 17 CFR 200.30–3(a)(12) (1988).

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Unimed, Inc., Common Stock, $0.25 Par Value) File No. 1–11003

May 10, 1994.

Unimed, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the Chicago Stock Exchange, Inc. ("CHX").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

According to the Company, its Board of Directors (the "Board") unanimously approved resolutions on May 2, 1994, to withdraw the Company's Common Stock from listing on the CHX. The Company is currently listed on the National Association of Securities Dealers Automated Quotations National Market System ("NASDAQ/NMS") and does not wish to be dually listed. During 1993, the trading volume on the CHX was zero.

Any interested person may, on or before June 1, 1994, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–11795 Filed 5–13–94; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Sunstates Corporation, Common Stock, $0.33⅓ Par Value; $3.75 Cumulative Preferred Stock, $25 Par Value) File No. 1–5300

May 10, 1994.

Sunstates Corporation ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing these securities from listing and registration include the following:

According to the Company, its Board of Directors (the "Board") unanimously approved a resolution on January 20, 1994, to withdraw the Company's Common Stock and Preferred Stock from listing on the Amex and, instead, list such Common Stock and Preferred Stock on the National Association of Securities Dealers Automated Quotations/National Market Systems ("NASDAQ/NMS").

The Company believes that the NASDAQ/NMS system of competing market makers will result in increased visibility and sponsorship for its Common Stock and $3.75 Cumulative Preferred Stock than is presently the case with the single specialist on the Amex.

The Company believes that the NASDAQ/NMS system will offer the Company's shareholders a broader

market, greater liquidity and less volatility in quoted prices per share than is presently available on the Amex.

The Company believes that the firms making a market in the Company's Common Stock and $3.75 Cumulative Preferred Stock on the NASDAQ/NMS system will also be inclined to issue research reports concerning the Company, thereby increasing the number of firms providing research and advisory reports.

Any interested person may, on or before June 1, 1994, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue and order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–11796 Filed 5–13–94; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2720]

Florida; Declaration of Disaster Loan Area

Volusia County and the contiguous counties of Brevard, Flagler, Lake, Orange, Putnam and Seminole in the State of Florida constitute a disaster area as a result of damages caused by thunderstorms and tornadoes which occurred May 3, 1994. Applications for loans for physical damage may be filed until the close of business on *July 7, 1994* and for economic injury until the close of business on *February 9, 1995* at the address listed below:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308

or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	7.125
Homeowners without credit available elsewhere	3.625
Businesses with credit available elsewhere	7.125
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 272012 and for economic injury the number is 826200.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 9, 1994.

Erskine B. Bowles,

Administrator.

[FR Doc. 94–11791 Filed 5–13–94; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2713]

Missouri; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on April 21 1994, and amendments on May 3, I find that the Counties of Cole, Franklin, Jefferson, Lincoln, Pemiscot, St. Charles, and St. Louis and the City of St. Louis constitute a disaster area as a result of damages caused by severe storms, tornadoes, and flooding April 9, 1994 through May 5. Applications for loans for physical damage may be filed until the close of business on June 21, 1994, and for loans for economic injury until the close of business on January 23, 1995 at the address listed below:

U.S. Small Business Administration, Disaster Area 3 Office, 4440 Amon Carter Boulevard, Suite 102, Fort Worth, Texas 76155

or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Boone, Calloway, Crawford, Dunklin, Gasconade, Miller, Moniteau, Montgomery, New Madrid, Osage, Pike, St. Francois, St. Genevieve, Warren and Washington Counties in the State of Missouri; Mississippi County in the State of Arkansas; Calhoun, Jersey, Madison, Monroe and St. Clair Counties in the State of Illinois; and Dyer and Lake Counties in the State of Tennessee.

The interest rates are

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	7.125
Homeowners without credit available elsewhere	3.625
Businesses with credit available elsewhere	7.125
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Business and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 271306 and for economic injury the numbers are 824800 for Missouri, 824900 for Illinois, 826000 for Arkansas, and 826100 for Tennessee.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: May 5, 1994.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 94–11791 Filed 5–13–94; 8:45 am]

BILLING CODE 8025–01–M

[License No. 05/07–5083]

Polestar Capital, Inc.; Issuance of a Small Business Investment Company License

On March 23, 1994, a notice was published in the **Federal Register** (59 FR 13755) stating that an application has been filed by Polestar Capital, Inc., 200 Randolph Drive, Chicago, Illinois 60601, with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1994)) for a Transfer of Ownership and Control and Capital Reorganization of Amoco Venture Capital Company.

Interested parties were given until close of business April 22, 1994 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA has approved the Transfer of Ownership and Control and Capital Reorganization of Polestar Capital, Inc., under the following terms and conditions, effective April 29, 1994.

(1) At this time, subject to number two (2) below and current regulations,

your application does not address the 3 percent Preferred Stock Buy Back Program or the Preferential Payment Distribution to Amoco Corporation ("AMOCO").

(2) No distributions, including the Preferential Payment Distribution, could be made to any shareholder or Amoco without full repayment of the accrued dividends outstanding owed to the Small Business Administration ("SBA") for your outstanding 3 percent Preferred Stock. Provided that Polestar Capital, Inc. ("PCI") is in compliance with SBA regulations, after the payment of the accrued but unpaid dividends owed to SBA, then PCI could make distributions to other shareholders and to Amoco as long as PCI had the ability to make additional distributions in compliance with all SBA regulations.

(3) Once the final regulations were completed for the Preferred Stock Buy Back, PCI would be eligible to apply under the then current existing regulations. PCI could not request terms or conditions that were utilized in the pilot program, if such conditions have been changed for the final program. Amoco Corporation has indicated that they do not desire and would not apply for the 3 percent Preferred Stock Buy Back Program prior to the actual change of ownership and control. For the purposes of the 3 percent Preferred Stock Buy Back, PCI would agree that it could not claim distressed status under the Buy Back regulations.

(4) Any future sale or conversion of a controlling interest (50 percent or more of the common stock) of the common stock of PCI would continue to be subordinated to the accrued but unpaid interest and principal of the Small Business Administration's ("SBA") outstanding 3 percent Preferred Stock, and would require under existing regulation SBA's prior approval.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 9, 1994.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 94–11792 Filed 5–13–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice 2004]

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: Department of State.

ACTION: The Department of State has resubmitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. Chapter 35.

SUMMARY: Public Law 103–94, effective February 3, 1994, authorized the garnishment of salary of Federal employees for unpaid debts. Under Executive Order 12897, the Office of Personnel Management was delegated authority to promulgate regulations to implement the commercial garnishment provisions in section 9 of that law. OPM has issued interim regulations which, among other things, specify the "minimally required" information to accompany legal process (5 CFR 582.203). The law also requires that priority be given and special treatment be provided for garnishments for child support and alimony under 42 U.S.C. 659, 661, and 662. The information proposed to be collected on the Department of State form DS–1932 includes the minimally required information and facilitates differentiation between commercial garnishments and those for child support or alimony. The following summarizes the information collection proposal submitted to OMB:

Type of request—New collection

Originating office—Bureau of Legal Affairs

Title of information collection—U.S. Department of State Garnishment Application

Form No.—DS–1932

Frequency—On occasion

Respondents—Parties seeking garnishment of employees' salary

Estimated number of respondents—500

Average hours per response—15 minutes

Total estimated burden hours—125

44 U.S.C. 3504(h) does not apply, as no rulemaking is being conducted in connection with this information collection.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents may be obtained from Gail J. Cook, (202) 647–3538. Comments and questions should be directed to (OMB) Jefferson Hill, (202) 395–3176.

Dated: April 26, 1994.

Patrick F. Kennedy,

Assistant Secretary for Administration.

[FR Doc. 94–11810 Filed 5–13–94; 8:45 am]

BILLING CODE 4710–24–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended May 6, 1994

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 49539
Date filed: May 4, 1994
Parties: Members of the International Air Transport Association
Subject: TC12 Reso/P 1581 dated May 3, 1994, South Atlantic Resolution 003m, Summary Attached.
Proposed Effective Date: June 1, 1994

Docket Number: 49546
Date filed: May 6, 1994
Parties: Members of the International Air Transport Association
Subject: TC3 Telex Mail Vote 684, China-Japan fares, Amendment to Mail Vote
Proposed Effective Date: June 1, 1994

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 94–11841 Filed 5–13–94; 8:45 am]

BILLING CODE 4910–62–P

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended May 6, 1994

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (see 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 49538
Date filed : May 4, 1994
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 1, 1994
Description: Application of American Airlines, Inc., pursuant to section 401 of the Act, and subpart Q of the Act, applies for renewal and amendment of its certificate for Route 572 to authorize scheduled foreign air transportation of persons, property, and mail

between the coterminal points Honolulu/San Francisco/Los Angeles and the terminal point Sydney, Australia.

Docket Number: 49541

Date filed: May 4, 1994

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 1, 1994

Description: Application of Skyjet, S.A., pursuant to section 402 of the Act and subpart Q of the Regulations, requests a foreign air carrier permit authorizing Skyjet to perform passenger charter service between Belgium and the United States.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 94–11840 Filed 5–13–94; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Approval of Noise Compatibility Program Gulfport-Biloxi Regional Airport Gulfport, MS

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by Gulfport-Biloxi Regional Airport Authority under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On May 21, 1993, the FAA determined that the noise exposure maps submitted by Gulfport-Biloxi Regional Airport Authority under part 150 were in compliance with applicable requirements. On April 1, 1994, the Administrator approved the Gulfport-Biloxi Regional Airport noise compatibility program. Most of the recommendations of the program were approved. No program element relating to new or revised flight procedures for noise abatement were proposed by the airport operator. The Gulfport-Biloxi Regional Airport Authority has also requested under part 150, § 150.35(f), that FAA determine that revised noise exposure maps, submitted with the noise compatibility program and showing noise contours as a result of the implementation of the noise compatibility program, are in compliance with applicable requirements of FAR part 150. The FAA announces its determination that the revised noise exposure maps for the Gulfport-Biloxi Regional Airport for years 1992 and 1997, submitted with the noise compatibility program, are in compliance with applicable requirements of FAR Part 150 effective April 1, 1994.

EFFECTIVE DATE: The effective date of the FAA's approval of the Gulfport-Biloxi Regional Airport noise compatibility program is April 1, 1994.

FOR FURTHER INFORMATION CONTACT: Elton E. Jay, Principal Engineer, Planning and Safety, Jackson Airports District Office, 120 North Hangar Drive, Suite B, Jackson, Mississippi 39208–2306. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Gulfport-Biloxi Regional Airport, effective April 1, 1994, and that revised noise exposure maps for this same airport are determined to be in compliance with applicable requirements of FAR Part 150.

A. Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act and is limited to the following determinations:

1. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

2. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

3. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

4. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in Jackson, Mississippi.

Gulfport-Biloxi Regional Airport Authority submitted to the FAA on October 16, 1991, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from October 16, 1991, through October 5, 1993. The Gulfport-Biloxi Regional Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on May 21, 1993. Notice of this determination was published in the **Federal Register** on June 7, 1993.

The Gulfport-Biloxi Regional Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 1997. It was requested that the FAA evaluate and approve this material as a noise

compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on October 5, 1993, and was required by a provision of the Act of approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective April 1, 1994.

Outright approval was granted for 2 noise abatement actions, 3 remedial land use strategies, 6 preventive land use strategies, and 5 implementation measures of the specific program elements.

Noise Abatement Actions

1. *Construct 1500' runway extension* at the north end of Runway 13/31 with a displacement of the Runway 13 landing threshold to maintain current threshold position.

2. *Establish Preferential North Flow* runway use which maximizes operations on Runway 31, consistent with wind, weather, traffic and other operating conditions as an informal runway use program.

Land Use Strategies

Remedial. It is recommended that, at the discretion of the Airport Authority, the implementation program for alleviating incompatibilities within the 70–75 DNL contour be continued by the Airport Authority rather than the land owner (as is the case for the 65–70 DNL contour)

1. *Acquisition in Fee Simple.* 39 mobile homes in the 65–70 DNL contour. In the 70–75 DNL contour, there are 13 mobile homes recommended for voluntary acquisition. In the DNL 75+ contour, fee simple, voluntary acquisition of two residential structures is recommended.

2. *Acquisition of Avigation Easements.* In exchange for sound attenuation (item 3, below) the conveyance of an avigation easement to the airport authority would be required. For those homes now participating in the sound attenuation program (and for some mobile homes (see item 1, above)), it is recommended that avigation easements be acquired. In addition, the Airport Authority should request that an avigation easement be provided if any change in zoning or land use is proposed (from compatible to noncompatible).

3. *Sound Attenuation.* In the 65–70 DNL contour, for three churches and one school, for 557 single-family and 93 multi-family homes. In the 70–75 DNL contour, for 2 churches, 2 schools, 158 single-family homes and 276 multi-family homes.

Preventive. These strategies apply to the DNL 65 and above noise contour.

1. Enactment of new zoning, including the establishment of a joint zoning board.

a. *Zoning.* The local jurisdictions (City of Gulfport, Harrison County, and the Regional Airport Authority) should work together to develop a plan for proper airport zoning ordinance to comply with Part 150 noise land use compatibility criteria.

b. *Establish a Joint Airport Zoning Board.* Recommend that Chapters of the Mississippi Code be amended to permit the Joint Airport Zoning Board to enact airport zoning regulations for areas impacted by airport noise. In addition, the GBRAA, County of Harrison, and City of Gulfport should establish a Joint Airport Zoning Board which would enact appropriate zoning in the areas surrounding the airport.

2. *Easement acquisition of undeveloped land.* These easements would be structured so that they would prohibit the establishment of any incompatible land use within the noise exposure area in the future. Because the FAA does not participate in acquisition of undeveloped land, in fee or easement, regardless of the noise level affecting the area, it is recommended that the land uses be classified in accordance with the noise levels.

3. *Real estate disclosure.* Enactment of a voluntary real estate disclosure policy notifying area residents of the potential for aircraft noise impacts within the noise exposure area. It is recommended that local developers and lending institutions inform potential buyers.

4. *Revised building codes.* Each jurisdiction should revise the building codes to require noise insulating materials be used in the construction of structures within the noise exposure area. These standards include new construction and would be imposed on existing homes being sound attenuated within the DNL 65 contour and above.

5. *Comprehensive planning.* Incorporation of the study findings into the local jurisdiction comprehensive plans.

6. *Enactment of an environmental review process.* Establish an environmental review process to ensure that proposed development within the airport noise exposure area is compatible or that appropriate measures are undertaken to achieve compatibility.

Implementation Measures

1. *Letter to Airmen.* A Letter to Airmen would be an appropriate mechanism for the FAA to use in communicating ATC-related noise abatement measures to pilots.

2. *Noise Abatement Bulletin.* A Noise Abatement Bulletin would be an appropriate mechanism to communicate the noise abatement program to pilots.

3. *Distribution of Materials.* The airport should provide copies of the Letter to Airmen and the Noise Abatement Bulletin to the military and airlines for distribution to pilots and to FBO's.

4. *Provision for Revision of Noise Exposure Maps and Noise Compatibility Program.* The NCP calls for revision to the NCP and to the NEM's.

5. *Continuation of the NCP Advisory Committee as a Noise Abatement Committee.* It is recommended that the airport continue the advisory committees as a noise abatement committee.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on April 1, 1994.

B. The FAA also has completed its review of the revised noise exposure maps and related descriptions submitted by Gulfport-Biloxi Regional Airport Authority. The specific maps under consideration are Figure 5–1, "Short-Term (1992) Noise Abatement Contours with Existing Off-Airport Land Use," and Figure 5–2, "Long-Term, (1997) Noise Abatement Contours (1500' Runway Extension and North Flow Preferential Runway Use), with Existing Off-Airport Land Use." in the submission. The FAA has determined that these maps for Gulfport-Biloxi Regional Airport are in compliance with applicable requirements. This determination was effective on April 1, 1994. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information, or plans.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise

contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the maps depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps, and of the FAA's evaluation of the maps, and copies of the Record of Approval and other evaluation materials and documents which comprised the submittal to the FAA are available for examination at the following locations:

Federal Aviation Administration, Jackson Airports District Office, 120 North Hangar Drive, suite B, Jackson, Mississippi 39208–2306

Mr. Bruce Frallic, Executive Director, Gulfport-Biloxi Regional Airport Authority, 14035–L Airport Road, Gulfport, Mississippi 39501.

Questions on either of these FAA determinations may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Southern Region, Atlanta, Georgia, May 4, 1994.

Samuel F. Austin,

Manager, Atlanta Airports District Office.

[FR Doc. 94–11852 Filed 5–13–94; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Request To Amend an Approved Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at New Orleans International Airport, New Orleans, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on a request to amend an approved PFC application.

SUMMARY: The FAA proposes to rule and invites public comment on the request to amend the approved application to Impose and Use the Revenue from a PFC at Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before May 31, 1994.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610D, Forth Worth, Texas 76193–0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Edward Levell, Jr., Director of New Orleans International Airport at the following address: Mr. Edward Levell, Jr., Director of Aviation, New Orleans International Airport, Box 20007, New Orleans, LA 70141.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to New Orleans International Airport under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Staff, ASW–610D, Forth Worth, Texas 76193–0610, (817) 222–5614.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the request to amend the application to impose and use the revenue from the PFC at New Orleans International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On April 28, 1994, the FAA received the request to amend the application to impose and use the revenue from a PFC submitted by New Orleans International Airport within the requirements of § 158.37(b) of Part 158. The FAA will approve or disapprove the amendment no later than August 26, 1994.

The following is a brief overview of the request. Amend original project financing plans to account for the issuance of tax exempt bonds secured by and payable from PFC revenues;

Proposed increase in the total estimated PFC revenue: From $77,800,382.00 to $193,889,875.00; and

Proposed charge expiration date: From April 1, 2000 to December 31, 2024 (for 30 year bond coverage). However, the actual charge expiration date is expected to be April 15, 2008.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Staff, ASW–610D, 2601 Meacham Blvd., Forth Worth, Texas 76137–4298.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at New Orleans International Airport.

Issued in Forth Worth, Texas on April 28, 1994.

John M. Dempsey,

Manager, Airports Division.

[FR Doc. 94–11853 Filed 5–13–94; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement; Benton/Hickory/Dallas Counties, Missouri

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed project in Benton, Hickory, and Dallas Counties in Missouri.

FOR FURTHER INFORMATION CONTACT: Mr. Donald Neumann, Federal Highway Administration, P.O. Box 1787, Jefferson City, MO 65102, Telephone Number 314–636–7104; or Mr. Bob Sfreddo, Design Engineer, Missouri Highway and Transportation Department, P.O. Box 270, Jefferson City, MO 65102, Telephone Number 314–751–2876.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Missouri Highway and Transportation Department (MHTD), will prepare an environmental impact statement (EIS) on a proposal to build a four lane relocation of U.S. Route 65 in Benton, Hickory, and Dallas Counties in Missouri. The improved highway would have a positive economic and social impact on the Lake of the Ozarks region by providing traffic relief, increased

mobility, and enhanced social economic opportunities.

1. The proposed highway project begins in Benton County near the Route MM Junction at Warsaw, and proceeds southward through Hickory and Dallas Counties. It ends 1.0 miles north of Route EE near Buffalo, Missouri. The total project distance is 47.9 miles. The proposal will provide partial relocation of U.S. Route 65 through the Lake of the Ozarks and Pomme de Terre Lake region. The proposed project will involve grading, paving, and bridges for a four-lane relocation with freeway right of way for the entire length of the project. Interchanges will be provided at or near major arterial crossroads.

2. Alternatives currently under consideration include "build" alternatives, the "no build" alternative, mass transportation alternatives, and upgrading of existing facilities.

3. To date, preliminary information has been furnished to local officials, legislators, and other interested parties. Presentation of the concept has been made at the local level and input received. The scoping process has been initiated with Federal, State, and local agencies. Further public hearings also will be held. To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning this proposed action and the EIS should be directed to the FHWA or the Missouri Highway and Transportation Department at the addresses provided above.

Issued on April 18, 1994.

Donald Neumann,

Program Engineer, Jefferson City.

[FR Doc. 94–11813 Filed 5–13–94; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

May 6, 1994.

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 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0805.

Form Number: IRS Form 5472.

Type of Review: Extension.

Title: Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business.

Description: Form 5472 is used to report information about transactions between a U.S. corporation that is 25% foreign owned and a foreign corporation that is engaged in a U.S. trade or business and related foreign parties. The IRS uses Form 5472 to determine if inventory or other costs deducted by the U.S. or foreign corporation are correct.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 75,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping: 17 hr., 13 min.

Learning about the law or the form: 1 hr., 41 min.

Preparing and sending the form to the IRS: 2 hr., 3 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 1,571,250 hours.

OMB Number: 1545–0996.

Regulation ID Number: EE–113–82 NPRM.

Type of Review: Extension.

Title: Required Distribution From Qualified Plans and Individual Retirement Plans.

Description: The proposed regulations provide rules regarding the minimum distribution requirements applicable to section 403(b) contracts and accounts. Such minimum distribution rules do not apply to benefits accrued before January 1, 1987.

Respondents: State or local governments, Non-profit institutions.

Estimated Number of Respondents/ Recordkeepers: 8,400.

Estimated Burden Hours Per Respondent/Recordkeeper: 36 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 8,400 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., 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. 94–11756 Filed 5–13–94; 8:45 am]

BILLING CODE 4830–01–P

Internal Revenue Service

Information Reporting Program Advisory Committee; Open Membership Application Period

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Announcement of Open Membership Application Period for the Information Reporting Program Advisory Committee.

SUMMARY: In 1991 the IRS established the Information Reporting Program Advisory Committee (IRPAC). The primary purpose of IRPAC is to provide an organized public forum for discussion of relevant information reporting issues between the officials of the IRS and representatives of the payer community. IRPAC offers constructive observations about current or proposed policies, programs, and procedures, and when necessary, suggests ways to improve the operation of the Information Reporting Program. IRPAC is currently comprised of 18 representatives from various segments of the private sector payer community. Four of these appointments to IRPAC will expire at the end of 1994. Additional members will be selected for two-year terms beginning in January 1995.

DATES: Completed questionnaires should be received by IRS no later than June 30, 1994. Applications received after this date will not be considered. An acknowledgment letter will be sent upon receipt of each application.

ADDRESSES: Internal Revenue Service, CP:EX:I:P, 1111 Constitution Avenue, NW., Room 2013, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Kate LaBuda at 202–622–3404 (not a toll-free number).

SUPPLEMENTARY INFORMATION: IRPAC reports to the Executive Director, Information Reporting Program (IRP), who is the executive responsible for information reporting and is charged with its system-wide planning and improvement. IRPAC is instrumental in providing advice to enhance the IRP Program. Increasing participation by external stakeholders in the planning and improvement of the tax system will help achieve the goals of increasing voluntary compliance and reduction of burden. IRPAC members are not paid for their time or services, but consistent with Federal regulations, they will be reimbursed for their travel and lodging expenses to attend a two-day meeting twice each year.

The IRS is interested in representation from different areas of the payer community (e.g., real estate, property & casualty insurance, small business, corporate compliance, software development, employee plans, and state & local government, etc.). Anyone wishing to be considered for membership on IRPAC should so advise the IRS. Please complete the following questionnaire and forward it to Ms. Kate LaBuda of the IRP Planning Staff, at the address below.

Dated: April 29, 1994.

Approved:

John Devlin,

Executive Director, Information Reporting Program.

Information Reporting Program Advisory Committee

Membership Application Questionnaire

The following questions must be answered by anyone interested in becoming a member of the Information Reporting Program Advisory Committee (IRPAC). Applications must be received in that office by June 30, 1994. Those received after this date will not be considered. All applications received will be acknowledged. Questions should be directed to Kate LaBuda at 202–622–3404, and your reply should be returned to: Ms. Kate LaBuda, CP:EX:I:P, Information Reporting Program Planning Staff, Internal Revenue Service, Room 2013, 1111 Constitution Avenue, NW., Washington, DC 20224.

1. Name: _____
2. Title: _____
3. Company or Organization Name: _____
4. Business Address: _____
5. Business Phone: _____
6. Fax Number: _____
7. Home Address: _____
8. Home Phone: _____
9. If you are applying on behalf of an organization or association other than your employer, please state the name, and address of that organization. Also, provide a letter of reference from that organization stating that you are nominated on their behalf. This letter should contain the name of a contact and this contact's phone number.
10. List professional credentials (e.g., Ph.D., CPA, Enrolled Agent, Attorney, Accountant, etc.)
11. Check the *one* segment of the Information Reporting Program (IRP) payer community to which the organization that you represent, and your experience, most closely relate:

____ Large Financial Institution
____ Small Financial Institution
____ Real Estate
____ Transmitter/Forms Developer
____ Software Developer
____ Insurance: Property & Casualty
____ Insurance: Life
____ Securities
____ Mutual Funds
____ Payroll
____ State & Local Government
____ Corporate Compliance
____ Small Business Compliance
____ Public Accounting
____ Employee Plans
____ Trust Company
____ Corporate Transfer Agent/Utilities
____ Other (Please specify. _____)

12. List the number of years of IRP-related experience you have, and specific sources of this IRP experience. (Account for all years of IRP experience claimed.)
13. Identify organizations to which you belong and any relevant leadership positions you have held.
14. List any previous IRS employment (please state position/s, title/s, and length of time in each position):
15. Please propose two topic ideas that you feel would be appropriate for discussion by IRPAC. Include a short description (two sentences) of each topic.

The Following Three Items Are Required for an FBI Name Check.

16. Date of Birth: _____
17. Place of Birth: _____
18. Other names ever used: _____

The Following Items Are Required for an IRS Tax Check. (Please Note That a Tax Check Is Not a Tax Audit.)

I hereby authorize the Internal Revenue Service to perform the standard Federal Advisory Committee member tax check, (pursuant to 26 U.S.C. 6103; 5 U.S.C. 1303; Executive Orders 9397, 11222, 10450; CFR 5.2; 31 CFR Part O, Treasury Department Order Nos. 82 (Revised) and 150–87) and to provide this information to the Assistant Secretary (Administration) of the Treasury Department.

I understand that the purpose of such tax check and income tax filing record check is to promote public confidence in the integrity of the Treasury Department and its administration of the Federal tax system. I have been advised that my Social Security Number is required to identify my tax records accurately. I also understand that this tax check must be completed prior to my appointment to this Federal Advisory Committee and I hereby voluntarily provide the following information:

19. Social Security Number: _____
20. Spouse's name and SSN (if married and filing jointly): _____
21. Name(s) and address(es) under which tax returns were filed for the past three years. —

The Following Item Is Required Because of the Foreign Agents Registration Act (FARA), as Amended.

22. I presently _____ am / _____ am not required to register as an agent of a foreign principal under FARA, as amended.

NOTE: Pursuant to 18 U.S.C. sec. 219, an individual who is required to register as an agent of a foreign principal under FARA is prohibited from serving on IRPAC. By executing this questionnaire, you agree that (1) if you are required to register as an agent of a foreign principal under the FARA before your term commences on IRPAC, you will terminate any and all such agencies prior to beginning your tenure and will provide appropriate verification therefor; and (2) you will immediately resign from IRPAC if you become such an agent at any time during your term.

Certification

23. I certify that, to the best of my knowledge and belief, all of my statements are true, correct, complete, and made in good faith. I also agree to the background checks set forth herein.

_____

Signature

_____

Date

[FR Doc. 94–11757 Filed 5–13–94; 8:45 am]

BILLING CODE 4830–01–U

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, "The American Indian Parfleche: A Tradition of Abstract Painting" (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 Des Moines Art Center, Des Moines, Iowa from on or about May 28, 1994 to on or about August 7, 1994, is in the national interest.

Public Notice of this determination is ordered to be published in the **Federal Register**.

Dated: May 11, 1994.

Les Jin,

General Counsel.

[FR Doc. 94–11854 Filed 5–13–94; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contracting Mr. Paul W. Manning of the Office of the General Counsel of USIA. The telephone number is 202/619–6829, and the address is room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

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, "Dali: The Early Years" (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 Metropolitan Museum of Art, New York, New York from on or about June 28, 1994 to on or about September 18, 1994, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register**.

Dated: May 11, 1994.

Les Jin,

General Counsel.

[FR Doc. 94–11855 Filed 5–13–94; 8:45 am]

BILLING CODE 8230–01–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. 59, No. 93
Monday, May 16, 1994

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).

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Amendment to Sunshine Act Meeting

SUMMARY: Pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), the Farm Credit Administration gave notice on May 4, 1994 (59 FR 23094) of the special meeting of the Farm Credit Administration Board (Board) scheduled for May 5, 1994. This notice is to amend the agenda by adding an item to the open session of that meeting.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board were open to the public (limited space available), and parts of this meeting were closed to the public. The open session of the agenda for May 5, 1994, is amended as follows:

OPEN SESSION*

C. New Business

2. Other

a. Proposed Joint MIS Venture Between AgAmerica, FCB and CoBank.

Dated: May 11, 1994.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 94–11908 Filed 5–12–94; 10:16 am]

BILLING CODE 6705–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:06 a.m. on Wednesday, May 11, 1994, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Application of Jefferson Federal Savings and Loan Association of Morristown, Morristown, Tennessee, a proposed new federally chartered stock savings association for Federal deposit insurance.

Recommendation with respect to initiating certain administrative enforcement proceedings.

Matters relating to the Corporation's corporate activities.

*Session closed—Exempt pursuant to 5 U.S.C. 552b(c)(8), (c)(9), and (c)(10).

Reports of the Office of Inspector General.

Personnel matters.

In calling the meeting, the Board determined, on motion of Director Eugene A. Ludwig (Comptroller of the Currency), seconded by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), concurred in by Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (C)(4), (c)(6), (c)(8), (c)(9) (A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2), (c)(4), (c)(6), (c)(8), (c)(9) (A)(ii), (c)(9)(B), and (c)(10).

The meeting was held in the Board Room of the FDIC Building located at 550-17th Street, N.W., Washington, D.C.

Dated: May 11, 1994.

Federal Deposit Insurance Corporation.

Patti C. Fox,

Acting Deputy Executive Secretary.

FR Doc. 94-11906 Filed 5-12-04;10:13 am]

BILLING CODE 6714–01–M

federal register

Monday
May 16, 1994

Part II

Department of Education

Notice of Proposed Funding Priority for FY 1994–1995 for the Knowledge Dissemination and Utilization Program

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research

AGENCY: Department of Education.

ACTION: Notice of a proposed funding priority for fiscal years 1994–1995 for the Knowledge Dissemination and Utilization Program.

SUMMARY: The Secretary proposes a funding priority for the Knowledge Dissemination and Utilization (D&U) Program under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1994–1995. The Secretary takes this action to ensure that rehabilitation knowledge generated from projects and centers funded by NIDRR and others is utilized fully to improve the lives of individuals with disabilities and their families.

DATES: Comments must be received on or before June 15, 1994.

ADDRESSES: All comments concerning this proposed priority should be addressed to David Esquith, U.S. Department of Education, 400 Maryland Avenue SW., Switzer Building, room 3424, Washington, DC 20202–2601.

FOR FURTHER INFORMATION CONTACT: David Esquith. Telephone: (202) 205–8801. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–5516.

SUPPLEMENTARY INFORMATION: This notice proposes a project to support the international exchange of information and experts.

Authority for the D&U program is contained in sections 202(b)(2) and 204(a) and 204(b)(6) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 760–762). Under this program the Secretary makes awards to public and private organizations, including institutions of higher education and Indian tribes or tribal organizations. Under the regulations for this program (see 34 CFR 355.32), the Secretary may establish a priority by reserving funds to support particular activities.

This proposed priority supports the National Education Goals. National Education Goal 5 calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

The Secretary will announce the final funding priority in a notice in the **Federal Register**. The final priority will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the final priority, the availability of funds, and the quality of the applications received. The publication of this proposed priority does not preclude the Secretary from proposing an additional priority, nor does it limit the Secretary to funding only this priority, subject to meeting applicable rulemaking requirements.

Note: This notice of a proposed priority does *not* solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following publication of the notice of a final priority.

Priority

Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet the following priority. The Secretary proposes to fund under this program only applications that meet this absolute priority:

Proposed Priority: International Exchange of Information and Experts

Background

Since 1973, NIDRR has had statutory authority to conduct international research and development and to exchange rehabilitation and special education experts with other nations. International research and development activities significantly can change the perspectives of service providers and researchers, provide data for the evaluation of domestic programs, and offer new insights and new practices that can solve some of the old rehabilitation problems. Learning about the technical and cultural aspects of other countries' rehabilitation practices may assist U.S. rehabilitation practioners to improve the effectiveness of the the services they provide, especially for minority and immigrant populations.

In the past, NIDRR approached international activities in two ways. NIDRR funded two projects to facilitate fellowships of non-governmental experts to other countries to gather data on practices, legislation, and policy. NIDRR also engaged in international activities on a government-to-government basis, participating in international policy and data generation through international organizations such as the U.N., Federal agencies such as the Department of State and the Peace Corps, direct grants to foreign research agencies, participation in foreign research consortia and conferences, and facilitation of site visits and study tours for foreign visitors.

In order to enhance the impact of international activities on the rehabilitation field, NIDRR now seeks to fund a single project that will facilitate the exchange of both domestic and foreign experts in rehabilitation research and technical assistance; facilitate international conferences; disseminate useful information to rehabilitation personnel and researchers, independent living centers, and families; assist in relevant site visitations by foreign government officials; and develop training modules that increase participation in international activities by rehabilitation practitioners, policymakers, and individuals with disabilities.

Proposed Priority

A project on the international exchange of information and experts shall—

- Gather information on international rehabilitation issues, legislation, and programs, and maintain a library of such information for use by NIDRR and other researchers;
- Facilitate small annual conferences to explore international issues or to share rehabilitation information and data with other governments;
- Assist both foreign and domestic professionals or consumers to plan trips of particular policy and programmatic value through the development and listing of potential sites;
- Establish an international exchange of research and technical assistance experts between foreign nations and the U.S.;
- Share information with other Federal government agencies in order to assist them in the development of their research priorities in the area of disability;
- Publish and disseminate data and information to relevant target audiencies on relevant policy issues and legislation, which are identified in conjunction with NIDRR;
- Develop training activities and materials to sensitize rehabilitation personnel, including special education personnel, to cultural differences that can affect rehabilitation needs and approaches; and
- Develop training activities and materials on comparative research techniques, bilateral consultation and technical assistance, utilizing the different international perspectives.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding this proposed priority.

All comments submitted in response to this proposed priority will be available for public inspection, during and after the comment period, in room 3423, Switzer Building, 330 C Street

SW., Washington, DC between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Applicable Program Regulations

34 CFR parts 350 and 355.

Program Authority: 29 U.S.C. 760–762.

(Catalog of Federal Domestic Assistance Number 84.133D, Knowledge Dissemination and Utilization Program)

Dated: May 10, 1994.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 94–11758 Filed 5–13–94; 8:45 am]

BILLING CODE 4000–01–P

federal register

Monday
May 16, 1994

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

Fair Housing Initiatives Program; FY 1994 Competitive Solicitation; Notice of Funding Availability

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N–94–3755; FR–3622–N–01]

NOFA for Fair Housing Initiatives Program; FY 1994 Competitive Solicitation

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of funding availability (NOFA).

SUMMARY: This NOFA announces the availability of up to $14,881,000 of 1994 Fiscal Year (FY) funding for the Fair Housing Initiatives Program (FHIP). This program assists projects and activities designed to enforce and enhance compliance with the Fair Housing Act and substantially equivalent State and local fair housing laws. In the body of this document is information concerning the purpose of the NOFA, eligibility, available amounts, selection criteria, how to apply for funding, and how selections will be made.

DATES: An application kit for funding under this Notice will be available following publication of the Notice. The actual application due date will be specified in the application kit. However, applicants will be given at least 60 days from today's date, until July 15, 1994, to submit their applications. Applications will be accepted if they are received on or before the application due date, or are received within 7 days after the application due date, but with a U.S. postmark or receipt from a private commercial delivery service (such as, Federal Express or DHL) that is dated on or before the application due date.

ADDRESSES: To obtain a copy of the application kit, please write the Fair Housing Information Clearinghouse, Post Office Box 6091, Rockville, MD 20850 or call the toll free number 1–800–343–3442. Please also contact this number if information concerning this NOFA is needed in an accessible format.

FOR FURTHER INFORMATION CONTACT: Jacquelyn J. Shelton, Director, Office of Fair Housing Assistance and Voluntary Programs, room 5234, 451 Seventh Street, SW., Washington, DC 20410–2000. Telephone number (202) 708–0800. A telecommunications device (TDD) for hearing and speech impaired persons is available at (202) 708–0455. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

Application requirements associated with this program have been approved by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3054(h)), and assigned OMB control number 2529–0033.

I. Purpose and Substantive Description

(a) Authority

Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601–19 (Fair Housing Act), charges the Secretary of Housing and Urban Development with responsibility to accept and investigate complaints alleging discrimination based on race, color, religion, sex, handicap, familial status or national origin in the sale, rental, or financing of most housing. In addition, the Fair Housing Act directs the Secretary to coordinate action with State and local agencies administering fair housing laws and to cooperate with, and render technical assistance to, public or private entities carrying out programs to prevent and eliminate discriminatory housing practices.

Section 561 of the Housing and Community Development Act of 1987, 42 U.S.C. 3616 note, established the Fair Housing Initiatives Program (FHIP) to strengthen the Department's enforcement of the Fair Housing Act and to further fair housing. This program assists projects and activities designed to enforce and enhance compliance with the Fair Housing Act and substantially equivalent State and local fair housing laws. Implementing regulations are found at 24 CFR part 125.

Three general categories of activities were established at 24 CFR part 125 for FHIP funding under section 561 of the Housing and Community Development Act of 1987: The Administrative Enforcement Initiative, the Education and Outreach Initiative, and the Private Enforcement Initiative. Section 905 of the Housing and Community Development Act of 1992 (HCDA 1992) (Pub. L. 102–550, approved October 28, 1992), amended section 561 by adding specific eligible applicants and activities to the Education and Outreach and Private Enforcement Initiatives, as well as an entirely new Fair Housing Organizations Initiative.

More significantly, section 905 has established FHIP as a permanent program. As originally promulgated by section 561, FHIP was a demonstration program authorized to expire on September 30, 1992. Since this demonstration period has passed, and FHIP is now a permanent program, the Department has determined that the requirements specifically tied to the demonstration period, namely, the testing guidelines at § 125.405, are no longer applicable to FHIP. Accordingly, the use of these testing guidelines is not required under this NOFA. The Department has executed a waiver of § 125.405 for the purposes of this NOFA, pending the elimination of this provision in the revision of 24 CFR part 125. Because section 905 does not eliminate any FHIP provisions other than those related to its status as a demonstration program, the Initiatives and activities currently eligible under 24 CFR part 125 remain eligible under this NOFA.

This NOFA further incorporates the HCDA 1992 section 905 FHIP additions to the extent of including the new eligible applicants and activities, and the new Fair Housing Organizations Initiative. For the purpose of future funding rounds, the Department is soliciting in a separate proposed rule comments on the amendment of 24 CFR part 125 by section 905. The proposed rule will be published shortly in the **Federal Register**. However, applications for FY 1994 funds will be subject to the requirements and deadlines in this NOFA. Eligible applicants should not wait for the rule's publication to prepare and submit their FY 1994 applications in response to this NOFA.

Two of the new eligible applicants, fair housing enforcement organizations and qualified fair housing enforcement organizations, are given specific definitions, which apply to this NOFA, in section 905:

Fair housing enforcement organization means any organization that—

(1) Is organized as a private, tax-exempt, nonprofit, charitable organization;

(2) Is currently engaged in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims; and

(3) Upon the receipt of FHIP funds will continue to be engaged in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims.

Qualified fair housing enforcement organization means any organization, whether or not it is solely engaged in fair housing enforcement activities, that—

(1) Is organized as a private, tax-exempt, nonprofit, charitable organization;

(2) Has at least 2 years experience in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims; and

(3) Is engaged in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims at the time of application for FHIP assistance.

The program components of FHIP are described in the Catalog of Federal Domestic Assistance at 14.408, Administrative Enforcement Initiative; 14.409, Education and Outreach Initiative; 14.410, Private Enforcement Initiative; and 14.413, Fair Housing Organizations Initiative.

(b) Allocation Amounts

For FY 1994, the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1994 (approved October 28, 1993, Pub. L. 103–124), (94 App. Act) appropriated $20,481,000 for the FHIP program. Of this amount, $2,000,000 of Private Enforcement Initiative funds will be used to fund the second year of two-year projects approved under the FY 1993 FHIP NOFA; $2,000,000 of Private Enforcement Initiative funds will be made available for special projects to be announced in a separate NOFA; and $1,600,000 of Fair Housing Organizations Initiative funds will be used to fund the second year of two-year projects to establish new organizations approved under the FY 1993 FHIP NOFA. The remaining $14,881,000 is being made available on a competitive basis to eligible organizations that submit timely applications and are selected in response to this NOFA. The funding selections will be made on the basis of criteria for eligibility, factors for award, and completeness of budget information. The Department retains the right to shift funds between FHIP Initiatives, listed below, within statutorily prescribed limitations. The amounts included in this NOFA are subject to change based on fund availability. The total amount available under this NOFA will be divided among the four FHIP Initiatives as follows:

(1) *Administrative Enforcement Initiative.* The amount of $1.5 million in FY 1994 funds is available under this NOFA for the Administrative Enforcement Initiative.

(2) *Education and Outreach Initiative.* The amount of $3 million in FY 1994 funds is available under this NOFA for the Education and Outreach Initiative. Of this amount, $1.5 million is available for national programs, of which $200,000 is designated for Fair Housing Month activities. Of the remaining $1.5 million, $1 million is available for regional and local programs, and $500,000 is for community-based programs.

(3) *Private Enforcement Initiative.* The amount of $4,981,000 in FY 1994 funds is available under this NOFA for the Private Enforcement Initiative. Of this amount, $2,981,000 will be available for two-year projects, with the commitment of second year funding, in an amount not to exceed the first year's funding, subject to annual appropriations and annual performance reviews. The remaining $2 million is for one-year projects.

(4) *Fair Housing Organizations Initiative.* This NOFA makes $5.4 million in FY 1994 funds available for activities under the Fair Housing Organizations Initiative. Of this amount, $2.5 million in FY 1994 funds is available for the purpose of the continued development of existing organizations under the Fair Housing Organizations Initiative. The remaining $2.9 million will be available for two-year projects for the purpose of establishing new organizations, with the commitment of second year funding subject to annual appropriations and annual performance reviews.

(c) Eligibility

Eligible activities, eligible applicants, and additional requirements under each Initiative are listed below. All activities and materials funded by FHIP must be reasonably accessible to persons with disabilities. The Department is particularly interested in projects that address fair housing issues confronting persons with disabilities.

(1) Administrative Enforcement Initiative

(i) *Eligible applicants.* The Administrative Enforcement Initiative provides funding to State and local fair housing agencies administering fair housing laws certified by the Secretary as providing rights and remedies that are substantially equivalent to those provided in the Fair Housing Act. A State or local fair housing agency, to be eligible to participate in the Administrative Enforcement Initiative, must be certified by the Assistant Secretary as substantially equivalent under 24 CFR part 115, or have entered into an agreement with the Department for interim referrals, as provided in 24 CFR 115.11.

(ii) *Eligible activities.* Funding will be available to support enforcement and compliance activities conducted by eligible State and local agencies. Eligible activities may include (but are not limited to) the following:

(A) Projects that focus on the areas of mortgage lending, insurance redlining, and appraisal practices;

(B) Discovering and providing remedies for discrimination in the public and private real estate markets and real estate-related transactions, including, but not limited to, the making or purchasing of loans, the provision of other financial assistance for sales and rentals of housing, including insurance redlining and appraisal practices, and housing advertising;

(C) Implementing fair housing testing and other related enforcement activity programs;

(D) Conducting investigations of systemic discrimination for further enforcement processing by State or local agencies, or for referral to HUD and the Department of Justice; and

(E) Developing new procedures to increase the efficiency of operations, such as the use of computers for case processing, tracking, and Home Mortgage Disclosure Act (HMDA) analysis.

(iii) *Additional requirements.* (A) Testers in testing activities funded with Administrative Enforcement Initiative funds must not have prior felony convictions or convictions of crimes involving fraud or perjury, and they must receive training or be experienced in testing procedures and techniques.

(B) *Term of contract.* Administrative Enforcement Initiative funding is only available for one-year projects, which may be for up to eighteen months in duration.

(C) Projects that appear to be aimed solely or primarily at research or data-gathering unrelated to existing or planned fair housing enforcement programs will not be approved. Data-gathering activities will require OMB approval under the Paperwork Reduction Act before commencement of the activity.

(D) No recipient of assistance under the Administrative Enforcement Initiative may use any funds provided by the Department for the payment of expenses in connection with litigation against the United States.

(E) *Case tracking log requirement.* Recipients of funds under the Administrative Enforcement Initiative shall be required to record, in a case tracking log (or Fair Housing Enforcement Log) to be supplied by HUD, information appropriate to the funded project relating to the number of complaints of discrimination received; the basis of these complaints; the type and number of tests utilized in the

investigation of each allegation; the time for case processing, including administrative or judicial proceedings; the cost of testing activities and case processing; and case outcome or relief provided. The recipient must agree to make this log available to HUD.

(2) Education and Outreach Initiative

(i) *Eligible applicants.* The following types of organizations are eligible to receive funding under the Education and Outreach Initiative:

(A) State or local governments;

(B) Qualified fair housing enforcement organizations (QFHO–Es);

(C) Fair housing enforcement organizations (FHO–Es);

(D) Public or private non-profit organizations or institutions and other public or private entities that are formulating or carrying out programs to prevent or eliminate discriminatory housing practices;

(E) Fair Housing Assistance Program (FHAP) Agencies—State and local agencies funded by the Fair Housing Assistance Program (FHAP); and

(F) Community Housing Resource Boards (CHRBs).

(ii) *Eligible activities.* (A) *In general.* Each application for Education and Outreach Initiative funding must identify if it proposes a national, Fair Housing Month, regional or local, or community-based program. The kinds of activities that may be funded through this Initiative may include (but are not limited to) the following:

(*1*) Projects that focus on informing persons with disabilities, and/or their support organizations and service providers, housing providers, and the general public on the rights of disabled persons under the Fair Housing Act and on the location or availability of accessible housing or the modification of non-accessible housing are particularly encouraged;

(*2*) Projects that provide guidance to housing providers on meeting their Fair Housing Act obligation to make reasonable accommodations for persons with disabilities are also encouraged;

(*3*) Projects that will provide housing, mortgage lending, appraisal, and insurance counseling services;

(*4*) Developing informative material on fair housing rights and responsibilities;

(*5*) Developing fair housing and affirmative marketing instructional material for educational programs for national, regional and local housing industry groups;

(*6*) Providing educational seminars and working sessions for civic associations, community-based organizations, and other groups;

(*7*) Developing educational material targeted at persons in need of specific or additional information on their fair housing rights;

(*8*) Developing national, regional or local media campaigns regarding fair housing;

(*9*) Bringing housing industry and civic or fair housing groups together to identify illegal real estate practices and to determine how to correct them;

(*10*) Designing specialized outreach projects to inform all persons of the availability of housing opportunities;

(*11*) Developing and implementing a response to new or more sophisticated practices that result in discriminatory housing practices;

(*12*) Developing mechanisms for the identification of, and quick response to, housing discrimination cases involving the threat of physical harm;

(*13*) Developing and implementing school curriculums for fair housing courses;

(*14*) Developing and implementing a response to community opposition to the location of residential facilities for persons with disabilities, as defined under the Fair Housing Act, where supportive health or human services are provided in connection with the housing; and

(*15*) Developing materials and providing technical assistance to support compliance with housing adaptability and accessibility guidelines contained in the 1988 Fair Housing Amendments Act.

(B) *National programs.* (*1*) Activities eligible to be funded as national programs shall be designed to provide a centralized, coordinated effort for the development and dissemination of fair housing media products that may appropriately be used on a nationwide basis, including:

(*i*) Public service announcements, both audio and video;

(*ii*) Television, radio and print advertisements;

(*iii*) Posters; and

(*iv*) Pamphlets and brochures.

(*2*) *National Fair Housing Month.* Applicants must separately indicate if they are applying for funding of activities related to the annual National Fair Housing Month. Fair Housing Month activities must be directed toward all protected class members.

(*3*) National program applications, including those for Fair Housing Month funding, will receive a preference of up to ten additional points if they:

(*i*) Demonstrate cooperation with real estate industry organizations (up to five points); and/or

(*ii*) Provide for the dissemination of educational information and technical assistance to support compliance with the housing adaptability and accessibility guidelines contained in the Fair Housing Amendments Act of 1988 (up to five points).

(C) *Regional, local, and community-based programs.*

(*1*) Activities eligible to be funded as regional, local, or community-based programs include any of the activities, to be implemented on a regional, local or community-based level, listed in paragraphs I.(c)(2)(ii)(A) and I.(c)(2)(ii)(B)(*1*), above, of this NOFA. Community-based programs include school, church and community presentations, conferences or other educational activities.

(*2*) For the purposes of this NOFA, activities that are "local" in scope are activities that are limited to a single unit of general local government, meaning a city, town, township, county, parish, village, or other general purpose political subdivision of a State. Activities that are "regional" in scope are activities that cover adjoining States or two or more units of general local government within a state. Activities that are "community-based" in scope are those which are primarily focused on a particular geographic area within a unit of general local government.

(*3*) Every regional, local, or community-based program application must include as one of its activities a procedure for referring persons with Fair Housing complaints to State or local agencies, private attorneys, or HUD and the Department of Justice for further enforcement processing.

(*4*) Projects for community-based activities proposed by community-based organizations will receive a preference of five additional points. For the purposes of this NOFA, a community-based organization is an organization whose members primarily come from a particular geographic area within a unit of general local government.

(iii) *Additional requirements.* The following requirements are applicable to all applications under the Education and Outreach Initiative:

(A) All projects must address or have relevance to housing discrimination based on race, color, religion, sex, handicap, familial status or national origin.

(B) Projects may range in length from six to eighteen months in duration.

(C) Projects that appear to be aimed solely or primarily at research or data-gathering will not be approved. Data-gathering activities will require OMB approval under the Paperwork Reduction Act before commencement of the activity.

(3) Private Enforcement Initiative

(i) *Eligible applicants.* Organizations that are eligible to receive FY 1994 funding assistance under the Private Enforcement Initiative are:

(A) Qualified fair housing enforcement organizations.

(B) Fair housing enforcement organizations with at least 1 year of experience in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims.

(ii) *Eligible activities.* Applications are solicited for one- and two-year project proposals as described in 24 CFR 125.403 and in this NOFA. Applications may designate up to 10% of requested funds to promote awareness of the services provided by the project, but such promotion must be necessary for the successful implementation of the project. Project applications may involve:

(A) Building the capacity to investigate, through testing and other investigative methods, housing discrimination complaints based upon mental and/or physical disabilities;

(C) Discovering and providing remedies for discrimination in the public and private real estate markets and real estate-related transactions, including, but not limited to, the making or purchasing of loans, the provision of other financial assistance for sales and rentals of housing, including insurance redlining and appraisal practices, and housing advertising;

(D) Conducting investigations of systemic housing discrimination for further enforcement processing by State or local agencies, or for referral to private attorneys or to HUD and the Department of Justice;

(E) Professionally conducting testing or other investigative support for administrative and judicial enforcement;

(F) Linking fair housing organizations regionally in enforcement activities designed to combat broader housing market discriminatory practices;

(G) Establishing effective means of meeting legal expenses in support of litigation of fair housing cases;

(H) Testing and other investigative activities, including building the capacity for housing investigative activities in unserved or underserved areas;

(I) Carrying out special projects, including the development of prototypes to respond to new or sophisticated forms of discrimination against persons protected under title VIII, such as in the areas of independent living and architectural barriers;

(J) Providing funds for the costs and expenses of litigation, including expert witness fees.

(iii) *Additional requirements.*

(A) Testers in testing activities funded with Private Enforcement Initiative funds must not have prior felony convictions or convictions of crimes involving fraud or perjury, and they must receive training or be experienced in testing procedures and techniques.

(B) One-year projects may be for up to eighteen months in duration. Two-year projects must be twenty-four months in duration, and funding for the second year of a project is subject to a performance review of the first year's activities and available annual appropriations.

(C) Projects that appear to be aimed solely or primarily at research or data-gathering unrelated to existing or planned fair housing enforcement programs will not be approved. Data-gathering activities will require OMB approval under the Paperwork Reduction Act before commencement of the activity.

(D) In accordance with 24 CFR 125.404, no recipient of assistance under the Private Enforcement Initiative may use any funds provided by the Department for the payment of expenses in connection with litigation against the United States.

(E) Recipients of funds under the Private Enforcement Initiative shall be required to record, in a case tracking log (or Fair Housing Enforcement Log) to be supplied by HUD, information appropriate to the funded project relating to the number of complaints of discrimination received; the basis of these complaints; the type and number of tests utilized in the investigation of each allegation; the time for case processing, including administrative or judicial proceedings; the cost of testing activities and case processing; and case outcome or relief provided. The recipient must agree to make this log available to HUD.

(4) Fair Housing Organizations (FHO) Initiative.

(i) *Purpose: Continued Development of Existing Organizations.*

(A) *Eligible applicants.* Eligible applicants for funding under this purpose of the FHO Initiative are:

(*1*) Qualified fair housing enforcement organizations;

(*2*) Other private nonprofit fair housing enforcement organizations; and

(*3*) Nonprofit groups organizing to build their capacity to provide fair housing enforcement.

(B) *Eligible activities.* Eligible activities for funding under this purpose of the FHO Initiative are any activities listed as eligible under the Private Enforcement Initiative in section I.(c)(3)(ii) of this NOFA and carried out as one-year projects.

(C) *Additional requirements.* The following requirements apply to activities funded under the Continued Development of Existing Organizations purpose of the FHO Initiative:

(*1*) *Operating budget limitation.* Funding under this purpose of the FHO Initiative may not be used to provide more than 50 percent of the operating budget of a recipient organization for any one year. For purposes of the limitation in this paragraph, *operating budget* means the applicant's total planned budget expenditures from all sources, including the value of in-kind and monetary contributions, in the year for which funding is sought.

(*2*) *Term of contract.* One-year projects may be for up to eighteen months in duration.

(ii) *Purpose: Establishing New Organizations.*

(A) *Eligible applicants.* Any applicants eligible under any of the other FHIP Initiatives in this NOFA are eligible applicants for funding under this purpose of the FHO Initiative.

(B) *Eligible activities.* Eligible for funding under this purpose of the FHO Initiative are two-year projects that help establish, organize, and build the capacity of fair housing enforcement organizations in the targeted unserved and underserved areas identified in sections I.(c)(4)(ii)(C), or other underserved areas identified by the applicant in accordance with section I.(c)(4)(ii)(D), below, of this NOFA. The Department has considered a number a factors to identify the targeted areas eligible for funding under this NOFA, including, for example, the amount of funds available; the lack of substantially equivalent state or local agencies, or private enforcement groups; and the presence of large concentrations of protected classes. In future NOFAs, the Department will consider additional targeted areas for funding.

(C) *Targeted areas.*

(*1*) A preference of ten additional points will be given for applications that propose to establish new fair housing enforcement organizations in localities within any of the following unserved areas:

(*i*) New Hampshire;

(*ii*) New Mexico;

(*iii*) Puerto Rico; and

(*iv*) Wyoming.

(*2*) A preference of five additional points will be given for applications that propose to establish new fair housing enforcement organizations in localities

within any of the following underserved areas:

(*i*) Alabama;
(*ii*) Louisiana;
(*iii*) Mississippi;
(*iv*) Nebraska;
(*v*) Oregon; and
(*vi*) Utah.

(*3*) An applicant may seek funding to establish a new organization in a locality not included in the list of target areas, above, but in such a case, the applicant must submit sufficient evidence to establish the proposed area as being currently underserved by fair housing enforcement organizations and as containing large concentrations of protected classes. An applicant may provide additional evidence of the need to establish a fair housing organization in a locality by citing data and studies that indicate the presence of housing discrimination and/or segregation in the locality. An example of evidence that may be used for this purpose is provided in (but is not limited to) the study, American Apartheid: Segregation and the Making of the Underclass, by Nancy A. Denton and Douglas S. Massey (Harvard University Press, 1993).

(D) *Additional requirements.* The following requirements apply to activities funded under the Establishing New Organizations purpose of the FHO Initiative:

(*1*) *Term of contract.* Two-year projects must be twenty-four months in duration, and funding for the second year of a project is subject to a performance review of the first year's activities and available annual appropriations.

(iii) *Additional Requirements.* The following requirements apply to all activities funded under the Fair Housing Organizations Initiative:

(A) Testers in testing activities funded with FHO Initiative funds must not have prior felony convictions or convictions of crimes involving fraud or perjury, and they must receive training or be experienced in testing procedures and techniques.

(B) Projects that appear to be aimed solely or primarily at research or data-gathering unrelated to existing or planned fair housing enforcement programs will not be approved. Data-gathering activities will require OMB approval under the Paperwork Reduction Act before commencement of the activity.

(C) No recipient of assistance under the FHO Initiative may use any funds provided by the Department for the payment of expenses in connection with litigation against the United States.

(D) Recipients of funds under the FHO Initiative shall be required to record, in a case tracking log (or Fair Housing Enforcement Log) to be supplied by HUD, information appropriate to the funded project relating to the number of complaints of discrimination received; the basis of these complaints; the type and number of tests utilized in the investigation of each allegation; the time for case processing, including administrative or judicial proceedings; the cost of testing activities and case processing; and case outcome or relief provided. The recipient must agree to make this log available to HUD.

(d) Selection Criteria/Ranking Factors

(1) Selection Criteria for Ranking Applications for Assistance

In addition to the preference points indicated in section I.(c) for particular activities, all projects proposed in applications will be ranked on the basis of the following criteria for selection:

(i) *The anticipated impact of the project proposed on the concerns identified in the application.* (25 points) In determining the anticipated impact of the proposed project, HUD will consider the degree to which a proposed project addresses problems and issues that are significant fair housing problems and issues, as explained in the application, or based upon other information available to HUD. (The clarity and thoroughness of the project description can be considered in this determination.) This criterion will be judged on the basis of the applicant's submissions in response to paragraph III. (a)(1) of this NOFA under the heading "Checklist of Application Submission Requirements."

(ii) *The extent to which the project will provide benefits in support of fair housing after funded activities have been completed.* (25 points) In determining the extent to which the project will provide benefits after funded activities have been completed, HUD will consider the degree to which the project will be of continuing use in dealing with housing discrimination after funded activities have been completed. This criterion will be judged on the basis of the applicant's submissions in response to paragraph III.(a)(6) and III.(a)(7) of this NOFA under the heading "Checklist of Application Submission Requirements."

(iii) *The extent to which the project will provide the maximum impact on the concerns identified in a cost-effective manner.* (20 points) In determining the extent to which the project will provide the maximum impact on the concerns identified in a cost effective manner, HUD will consider the quality and reasonableness of the proposed activities, timeline and budget for implementation and completion of the project. HUD will consider as well the adequacy and clarity of proposed procedures to be used by the agency for monitoring the progress of the project and ensuring its timely completion. These procedures may consist of a system for checking whether or not the milestones established by the project's timeline are being met. The applicant's capability in handling financial resources (e.g., adequate financial control procedures, accounting procedures) will be taken into account as part of the assessment. This may be evidenced by the applicant's financial management of previous FHIP or other civil rights project management, a certification from cognizant auditor, and other documentation. This criterion will be judged on the basis of the applicant's submissions in response to paragraphs III.(a)(2), and III.(a)(5) of this NOFA under the heading "Checklist of Application Submission Requirements."

(iv) *The extent to which the applicant's professional and organizational experience will further the achievement of project goals.* (20 points) In determining the extent to which the applicant's professional and organizational experience will further the achievement of the project's goals, HUD will consider the applicant's experience in formulating and carrying out programs to prevent or eliminate discriminatory practices, including the applicant's management of past and current FHIP or other civil rights projects, the experience and qualifications of existing personnel identified for key positions, or a description of the qualifications of new staff that will be hired, including subcontractors/consultants. For organizations submitting an application under the Education and Outreach Initiative, HUD will consider both fair housing experience and experience in implementing education, outreach or public information programs. This criterion will be judged on the basis of the applicant's submissions in response to paragraph III.(a)(3) of this NOFA under the heading "Checklist of Application Submission Requirements."

(v) *The extent to which the project utilizes other public or private resources that may be available.* (10 points). Both monetary and in-kind resources identified in the application are eligible for determining the extent to which other public or private resources are available. The resources that will be considered must be targeted specifically for the proposed project, and must be

over and above the resources available to the applicant as a part of its usual, non-project operations for such expenses as salaries, equipment, supplies, and rent. This criterion will be judged on the basis of the applicant's submissions in response to paragraph III.(a)(4) of this NOFA under the heading "Checklist of Application Submission Requirements."

(2) Selection Process

Each application for funding will be evaluated competitively, and awarded points based on the Selection Criteria for Ranking Applications for Assistance identified in section I.(d)(1) of this NOFA. The final decision rests with the Assistant Secretary or designee. After eligible applications are evaluated against the factors for award and assigned a score, they will be organized by rank order. The rank ordering will be done separately for: Each Initiative; each program component (national, National Fair Housing Month, regional/local, and community-based) of the Education and Outreach Initiative; each purpose (continued development of existing organizations, and establishing new organizations) under the Fair Housing Organizations Initiative, or funding cycle (one-year and two-year projects) under the Private Enforcement Initiative. Awards for each Initiative will be funded in rank order until all available funds have been obligated, or until there are no acceptable applications.

(3) Cost Factors

The Department expects to fund multiple applications as a result of this NOFA. At some point, however, two or more complete and eligible applications, after evaluation against the Selection Criteria, may be considered equal in technical merit. At that point, the project's cost will become the deciding factor. Furthermore, an applicant's proposal will not be funded when costs are determined to be unrealistically low or unreasonably high.

(e) Applicant Notification and Award Procedures

(1) Notification

No information will be available to applicants during the period of HUD evaluation, except for notification in writing to those applicants that are determined to be ineligible or that have technical deficiencies in their applications that may be corrected. Selectees will be announced by HUD upon completion of the evaluation process, subject to final negotiations and award.

(2) Negotiations

After HUD has ranked the applications and made an initial determination of applicants whose scores are within the funding range (but before the actual award), HUD may require that applicants in this group participate in negotiations to determine the specific terms of the cooperative or grant agreement. In cases where it is not possible to conclude the necessary negotiations successfully, awards will not be made.

If an award is not made to an applicant whose application is in the initial funding threshold because of an inability to complete successful negotiations, and if funds are available to fund any applications that may have fallen outside the initial funding threshold, HUD will select the next highest ranking applicant and proceed as described in the preceding paragraph.

(3) Funding Instrument

HUD expects to award a cost reimbursable or fixed-price cooperative or grant agreement to each successful applicant. HUD reserves the right, however, to use the form of assistance agreement determined to be most appropriate after negotiation with the applicant.

(4) Reduction of Requested Grant Amounts and Special Conditions

HUD may approve an application for an amount lower than the amount requested, fund only portions of an application, withhold funds after approval, and/or require the grantee to comply with special conditions added to the grant agreement, in accordance with 24 CFR 85.12, the requirements of this NOFA, or where:

(i) HUD determines the amount requested for one or more eligible activities is unreasonable or unnecessary;

(ii) the application does not otherwise meet applicable cost limitations established for the program;

(iii) The applicant has requested an ineligible activity;

(iv) Insufficient amounts remain in that funding round to fund the full amount requested in the application and HUD determines that partial funding is a viable option;

(v) The applicant has demonstrated an inability to manage HUD grants, particularly Fair Housing Initiatives Program grants; or

(vi) For any other reason where good cause exists.

(5) Performance Sanctions

A recipient failing to comply with the procedures set forth in its grant agreement will be liable for such sanctions as may be authorized by law, including repayment of improperly used funds, termination of further participation in the FHIP, reduction or limitation of further funding for administrative enforcement activities, and denial of further participation in programs of the Department or of any Federal agency.

II. Application Process

An application kit is required as the formal submission to apply for funding. The kit includes information on the Management Work Plan and Budget for activities proposed by the applicant. An application may be obtained by writing the Fair Housing Information Clearinghouse, Post Office Box 6091, Rockville, MD 20850, or by calling the toll free number 1–800–343–3442. To ensure a prompt response, it is suggested that requests for application kits be made by telephone.

Completed applications are to be submitted to Aztec Jacobs, Funded Programs Division, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, Room 5234, 451 Seventh Street, SW., Washington, DC 20410.

The application due date will be specified in the application kit. However, applicants will be given at least 60 days from today's date, until July 15, 1994, to submit their applications. Applications will be accepted if they are received on or before the application due date, or are received within 7 days after the application due date, but with a U.S. postmark or receipt from a private commercial delivery service (such as, Federal Express or DHL) that is dated on or before the application due date.

The application deadline is firm as to date. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. A transmission by facsimile machine ("FAX") will not constitute delivery.

An applicant may apply for funding for more than one project or activity, but a separate application must be submitted for each of the following categories of funding:

(1) Administrative Enforcement Initiative activities;

(2) National programs under the Education and Outreach Initiative;
(3) National Fair Housing Month activities under the Education and Outreach Initiative;
(4) Regional or local activities under the Education and Outreach Initiative;
(5) Community-based activities under the Education and Outreach Initiative;
(6) One-year projects under the Private Enforcement Initiative;
(7) Two-year projects under the Private Enforcement Initiative;
(8) Continued Development of Existing Organizations activities under the Fair Housing Organizations Initiative; and
(9) Establishing New Organizations activities under the Fair Housing Organizations Initiative.

Although a separate application is required for each funding category, an application may propose more than one type of eligible activity under each category. For example, both production and distribution of a public service message may be proposed in a single application for a national program under the Education and Outreach Initiative.

Applicants must submit all information required in the application kit and must include sufficient information to establish that the application meets the selection criteria set forth in section I.(d), above, of this NOFA.

III. Checklist of Application Submission Requirements

(a) *General requirements.* The application kit will contain a checklist of application submission requirements to complete the application process. Each application for FHIP funding must contain the following items:

(1) A description of the activities proposed for funding, and the practice or practices at the community, local, regional or national level that have adversely affected the achievement of the goal of fair housing, and that will be addressed by the proposed activities. This description must include a discussion and analysis of the housing practices identified, including available information and studies relating to discriminatory housing practices and their historical background, and relevant demographic data indicating the nature and extent of the impact of the described practices on persons seeking dwellings or services related to the sale, rental or financing of dwellings, in the general location where the applicant proposes to undertake activities;

(2) A budget—which must include $3,000 for one-year projects, and $6,000 for two-year projects—to be used for travel costs for training sponsored by the Department—and a timeline for the implementation of the proposed activities, consisting of a description of the specific activities to be conducted with FHIP funds, the geographic areas to be served by the activities, any reports to be produced in connection with the activities, the cost of each proposed activity and a schedule for the implementation and completion of the activities;

(3) A description of the applicant's experience in formulating or carrying out programs to prevent or eliminate discriminatory housing practices or in implementing other civil rights programs, the experience and qualifications of existing personnel identified for key positions, or a description of the qualifications of new staff to be hired, including subcontractors/consultants;

(4) A statement indicating the need for FHIP funding in support of the proposed project and an estimate of other public or private resources that may be available to assist the proposed activities;

(5) A description of the procedures to be used by the applicant for monitoring the progress of the proposed activities and the applicant's planned or implemented financial control procedures that will demonstrate the applicant's capability in managing financial resources;

(6) A description of the fair housing benefits that successful completion of the project will produce, and the indicators by which these benefits are to be measured, and;

(7) A description of the degree to which the project will be of continuing use in dealing with housing discrimination after funded activities have been completed;

(8) HUD Form 2880, Applicant Disclosures;

(9) A listing of any current or pending grants or contracts, or other business or financial relationships or agreements, to provide training, education, and/or self-testing services between the applicant and any entity or organization of entities involved in the sale, rental, advertising or provision of brokerage or lending services for housing. The listing must include the name and address of the entity or organization; a brief description of the services being performed or for which negotiations are pending; the dates for performance of the services; and the amount of the contract or grant. This listing must be updated during the grant negotiation period, at the end of the grant term, and for grants that will run for more than twelve months, at the end of the twelfth month.

(10) The applicant must submit a certification and disclosure in accordance with the requirements of section 319 of the Department of the Interior Appropriations Act (Pub. L. 101–121, approved October 23, 1989), as implemented in HUD's interim final rule at 24 CFR part 87, published in the **Federal Register** on February 26, 1990 (55 FR 6736). This statute generally prohibits recipients and subrecipients of Federal contracts, grants, cooperative agreements and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. If warranted, the applicant should include the Disclosure of Lobbying Activities form (SF–LLL).

(11) Prior to award execution, successful applicants must submit a certification that they will comply with:

(i) Section 3 of the Housing and Community Development Act of 1968, Employment Opportunities for Lower Income Persons in Connection with Assisted Projects (12 U.S.C. 1701u), and with implementing regulations at 24 CFR part 135.

(ii) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1; and

(iii) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR part 146, and the prohibitions against discrimination against persons with disabilities under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8.

(b) *Additional Education and Outreach Initiative requirements.* In addition to meeting the application requirements contained in section III.(a), above, all proposals under the Education and Outreach Initiative must include the following:

(1) A description of how the activities or the final products of the projects can be used by other agencies and organizations and what modifications, if any, would be necessary for that purpose.

(2) Coordination of activities. Each non-governmental applicant for funding under the Education and Outreach Initiative that is located within the jurisdiction of a State or local enforcement agency or agencies administering a fair housing law that has been certified by the Department under 24 CFR part 115 as being a

substantially equivalent fair housing law must provide, with its application, documentation that it has consulted with the agency or agencies to coordinate activities to be funded under the Education and Outreach Initiative. This coordination will ensure that the activities of one group will minimize duplication and fragmentation of activities of the other. Failure to submit the documentation required by this section will be treated as a technical deficiency in accordance with section IV., below, of this NOFA.

(3) Every regional/local/community-based program application must include as one of its activities a procedure for referring persons with Fair Housing complaints to State or local agencies, private attorneys, or HUD and the Department of Justice for further enforcement processing.

(c) *Additional Private Enforcement Initiative requirements.* In addition to meeting the application requirements contained in section III.(a), above, all proposals for testing under the Private Enforcement Initiative must include:

(1) Documentation that the applicant has at least one year of experience in carrying out a program to prevent or eliminate discriminatory housing practices, and has sufficient knowledge of fair housing testing to enable the applicant to implement a testing program successfully;

(2) A certification providing that the applicant will not solicit funds from or seek to provide fair housing educational or other services or products for compensation, directly or indirectly, to any person or organization which has been the subject of testing by the applicant during a 12 month period following the test.

(d) *Additional Fair Housing Organizations Initiative requirements.* In addition to meeting the application requirements contained in section III.(a), above, the following application submission requirements apply to proposals under the Fair Housing Organizations Initiative:

(1) Each applicant under the continued development of existing organizations purpose of the Fair Housing Organizations Initiative must submit an operating budget that describes the applicant's total planned expenditures from all sources, including the value of in-kind and monetary contributions, in the year for which funding is sought. This operating budget will be used for the purposes of determining the extent of the 50% funding limitation on operating expenses.

(2) All proposals for testing under the Fair Housing Organizations Initiative must certify that the applicant will not solicit funds from or seek to provide fair housing educational or other services or products for compensation, directly or indirectly, to any person or organization which has been the subject of testing by the applicant during a 12 month period following the test.

IV. Corrections to Deficient Applications

Applicants will not be disqualified from being considered for funding because of technical deficiencies in their application submission, e.g., an omission of information such as regulatory/program certifications, or incomplete signatory requirements for application submission.

HUD will notify an applicant in writing of any technical deficiencies in the application. The applicant must submit corrections within 14 calendar days from the date of HUD's letter notifying the applicant of any technical deficiency.

The 14-day correction period pertains only to non-substantive, technical deficiencies or errors. Technical deficiencies relate to items that:

1. Are not necessary for HUD review under selection criteria/ranking factors; and

2. Would not improve the substantive quality of the proposal.

V. Other Matters

Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (the "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative branches of the Federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients and sub-recipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with the Department's regulations at 24 CFR part 50 which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that the policies announced in this Notice would not have a significant impact on the formation, maintenance, and general well-being of families except indirectly to the extent of the social and other benefits expected from this program of assistance.

Executive Order 12612, Federalism

The General Counsel has determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, Federalism, that the policies contained in this Notice will not have federalism implications and, thus, are not subject to review under the Order. The promotion of fair housing policies is a recognized goal of general benefit without direct implications on the relationship between the national government and the states or on the distribution of power and responsibilities among various levels of government.

Drug-Free Workplace Certification

The Drug-Free Workplace Act of 1988 requires grantees of Federal agencies to certify that they will provide drug-free workplaces. Thus, each applicant must certify that it will comply with drug-free workplace requirements in accordance with 24 CFR part 24, subpart F.

Accountability in the Provision of HUD Assistance

HUD has promulgated a final rule to implement section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act). The final rule is codified at 24 CFR part 12. Section 102 contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992, HUD published at 57 FR 1942 additional information that gave the public (including applicants for, and recipients of, HUD assistance) further information on the implementation of section 102. The documentation, public

access, and disclosure requirements of section 102 are applicable to assistance awarded under this NOFA as follows:

Documentation and Public Access Requirements

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these documentation and public access requirements.)

Disclosures

HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

Section 103 HUD Reform Act

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 was published May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 (TDD/Voice). (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

Section 112 HUD Reform Act

Section 13 of the Department of Housing and Urban Development Act contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912) as 24 CFR part 86. If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in appendix A of the rule.

Authority: Section 561 of the Housing and Community Development Act of 1987 (42 U.S.C. 3616 note); Title VIII, Civil Rights Act of 1968, as amended (42 U.S.C. 3601–3619); Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: May 6, 1994.

Roberta Achtenberg,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 94–11762 Filed 5–13–94; 8:45 am]

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federal register

Monday
May 16, 1994

Part IV

Department of the Interior

Bureau of Indian Affairs

Fiscal Year 1994 Indian Child Welfare Act Grant Program (ICWA), Availability of Title II ICWA Funds for Off-Reservation Indian Organizations; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Fiscal Year (FY) 1994 Indian Child Welfare Act (ICWA) Grant Program, Availability of Title II ICWA Funds for Off-Reservation Indian Organizations

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Availability of Grant Funds.

SUMMARY: The Indian Child Welfare Act makes grant funds available to off-reservation Indian organizations from the Bureau of Indian Affairs (BIA), Department of the Interior, for the purpose of establishing and operating off-reservation Indian child and family service programs.

DATES: The closing date for the receipt of applications for all applicants is June 30, 1994.

ADDRESSES: Applications must be mailed or hand-delivered to the appropriate Area Office of the Bureau of Indian Affairs listed in Part IV of this announcement.

FOR FURTHER INFORMATION CONTACT: The Bureau of Indian Affairs' area office nearest to the applicant, or Albanita Atencio, BIA Division of Social Services, Mail Stop 310–SIB, 1849 C Street, NW., Washington, DC 20240. Telephone (202) 208–2721.

SUPPLEMENTARY INFORMATION: Title II of the Indian Child Welfare Act, Public Law 95–608, authorizes the utilization of funds for grants to Off-reservation Indian organizations. The BIA published in the January 13, 1994, **Federal Register**, Vol. 59. No. 9, regulations revising 25 CFR Part 23, the rules that govern the Title II, ICWA grant program. Pursuant to 25 CFR Part 23, the Assistant Secretary—Indian Affairs hereby announces procedures necessary for eligible off-reservation Indian organizations to apply for the FY 1994 Title II ICWA grant funds which shall be awarded competitively under the revised 25 CFR Part 23. The revised rules became effective on February 14, 1994. Copies of the revised 25 CFR Part 23 ICWA grant regulations may be obtained from the Area Social Workers listed in Part IV of this notice.

A two-year developmental plan for an ICWA grant program will be accepted under this notice. Applications received under this notice must comply with all applicable requirements and criteria specified in the revised 25 CFR Part 23. It is important that applicants carefully review all requirements detailed in this notice relative to application contents, deadlines, and other special instructions. If an application is not received by the close of business on June 30, 1994, it will not be considered.

It is incumbent upon the respective Area Director to provide the necessary technical assistance requested in accordance with 25 CFR Part 23.42. The timeframe for receipt of requests from the off-reservation applicants for technical assistance is 10 days prior to the close of the application deadline.

A national total of $1,735,000 in FY 1994 ICWA funds will be awarded competitively to off-reservation Indian organizations nationwide for grants under Title II of the Indian Child Welfare Act.

Part I. General Information

A. Background

It is the policy of the BIA to emphasize and facilitate the comprehensive design, development and implementation of Indian child and family service programs in coordination with other Federal, state, and local programs which strengthen and preserve Indian families and Indian tribes. Thus, applicants are encouraged to design their ICWA programs/activities that integrate with or complement existing child and family service programs or those administered by the applicant.

Section 202 of the Indian Child Welfare Act of 1978 (Public Law 95–608, 25 U.S.C. 1932) authorizes the Secretary to make grants to off-reservation Indian organizations to establish and operate off-reservation Indian child and family service programs for the purpose of stabilizing and preventing the breakup of Indian families and, in particular, to ensure that the permanent removal of an Indian child from the custody of his/her Indian parent or custodian shall be an action of last resort. These programs are intended to promote the Indian Child Welfare Act of 1978 (25 U.S.C. 1902; 25 U.S.C. 1932).

This notice provides information on the FY 1994 ICWA grant application process for eligible off-reservation Indian organizations to compete for FY 1994 ICWA grant funds.

B. Eligible Applicants

The Board of directors of any nonprofit off-reservation Indian organization may apply for a grant under this announcement. A new application for projects of two years duration may be submitted in response to this announcement. An applicant may not submit more than one application nor be a beneficiary of more than one grant under this or other prior notices.

C. Purpose of Off-Reservation Grants

The purpose of every Indian child and family services program shall be to prevent the breakup of Indian families, and ensure that the permanent removal of an Indian child from the custody of his/her Indian parent or custodian shall be a last resort. Off-reservation Child and family service programs may include, but are not limited to:

(a) A system for regulating, maintaining, and supporting Indian foster and adoptive homes, including a subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligible as Indian foster children, taking into account the appropriate state standards of support maintenance and medical needs;

(b) The operation and maintenance of facilities and services for the counseling and treatment of Indian families and Indian foster and adoptive children with the goal of strengthening and stabilizing Indian families;

(c) Family assistance (including homemaker services and home counselors), protective day care and after school care, employment support services, recreational activities, and respite care with the goal of strengthening Indian families and contributing toward family stability; and

(d) Guidance, legal representation and advice to Indian families involved in state child custody proceedings.

Part II

A. Available Funds

In FY 1994, off-reservation Indian organizations will compete for a national allocation of $1,735,000. Grants will be awarded competitively to approved off-reservation Indian organizations on the basis of service area population within the following categories:

(a) A maximum of up to $27,500 for eligible applicants with a total service area population of 500 or less;

(b) A maximum of up to $35,000 for eligible applicants with a total service area population greater than 500 but less than 1,500;

(c) A maximum of up to $45,000 for eligible applicants with a total service area population greater than 1,500 but less than 3,000;

(d) A maximum of up to $55,000 for eligible applicants with a total service area population greater than 3,000 but less than 5,000;

(e) A maximum of up to $65,000 for eligible applicants with a total service area population greater than 5,000 but less than 8,000;

(f) A maximum of up to $80,000 for eligible applicants with a total service area population greater than 8,000 but less than 20,000;

(g) A maximum of up to $110,000 for eligible applicants with a total service area population greater than 20,000 but less than 40,000;

(h) A maximum of up to $140,000 for eligible applicants with a total service area population greater than 40,000 but less than 60,000;

(i) A maximum of up to $175,000 for eligible applicants with a total service area population greater than 60,000 but less than 90,000;

(j) A maximum of up to $250,000 for eligible applicants with a total service area population greater than 90,000 but less than 140,000;

(k) A maximum of up to $350,000 for eligible applicants with a total service area population greater than 140,000 but less than 180,000; and

(l) A maximum of up to $500,000 for eligible applicants with a total service area population over 180,000.

Under no circumstances may any off-reservation Indian organization receive Indian Child Welfare Act grant funds greater than the maximum grant amount of $500,000 either through a direct grant or through subgranting procedures with approved applicants.

No ICWA grant funds will be withheld at the Central Office for appeals related to off-reservation funding levels; therefore, approved applications will be funded strictly on the basis of funds available to each area office and in accordance with the funding amounts published in this grant notice. The respective Area Director has final funding authority.

B. Service Eligibility

The service area population is the total number of Indians eligible for services under 25 CFR 23.50(b) in the geographical area to which an off-reservation Indian organization can realistically provide the services proposed in the application. The service area population is used only to determine the maximum grant amount for which an applicant may be eligible.

For purposes of eligibility for services provided under 25 U.S.C. 1932 and 1933 of the Act, any person meeting the definition of Indian, Indian child, Indian custodian, or Indian parent of any unmarried person under the age of 18 as defined in 25 CFR Section 23.2, or the definition of Indian as defined in 25 U.S.C. 1603(c), shall be eligible for ICWA services.

These service area population figures must be based upon substantiated, identifiable statistical sources. Applicants must submit copies of recent statistical data from sources which support their service area figures, such as off-reservation population information, U.S. Census data, or off-reservation service area population data maintained by the Indian Health Service for urban Indian populations.

Part III. Application Selection Criteria

A. Statutory Authority

The BIA's Indian Child Welfare Act grants program is authorized by Title II of Public Law 95–608, the Indian Child Welfare Act (25 U.S.C. 1901 et seq., 25 CFR part 23). All grant applications submitted under this notice shall be scored individually and recommended for grant awards in accordance with the mandatory application requirements and the application selection criteria specified in 25 CFR part 23.33.

B. Closing Date for Receipt of Applications for All Applications

The closing date for receipt of applications under this grant notice is the close of business on June 30, 1994, for all applicants. All applications for off-reservation Indian Child Welfare Act grants must be received by the appropriate BIA Area Director, as specified in 25 CFR 23.31(c) on or before 5:00 p.m. or the official close of business for that office on the closing date of the application period. Hand-delivered applications will be accepted during normal work hours Monday through Friday. Postmarks will not be considered as meeting the deadline. Applicants which do not meet the deadline criteria will be considered late applications, and will not be considered in the competition. The names and addresses of all BIA area offices are listed in Part IV of this notice.

C. Mandatory Application Requirements for All Applicants

Pursuant to 25 CFR 23.33(a), an application for a two-year competitive grant under this subpart shall be submitted to the appropriate Area Director as specified in 25 CFR 23.33(c). Mandatory application requirements for Indian organization applicants shall include:

(1) An official request for an ICWA grant program from the organization's board of directors covering the duration of the proposed program;

(2) A completed Application for Federal Assistance form, SF 424;

(3) Written assurances that the organization meets the definition of Indian organization at 25 CFR Section 23.2;

(4) A copy of the organization's current Articles of Incorporation for the applicable grants years;

(5) Proof of the organization's nonprofit status;

(6) A copy of the organization's IRS tax exemption certificate and IRS employer identification number;

(7) Proof of liability insurance for FY 1994–1995;

(8) Current written assurances that the requirements of Circular A–128 for fiscal management, accounting, and recordkeeping are met; and

(9) Pursuant to the Drug-Free Workplace Act of 1988, all grantees under this subpart shall comply with the mandatory Drug-Free Workplace Certification, a regulatory requirement for Federal grant recipients.

An application missing any of the above mandatory requirements will not be reviewed.

In addition to the foregoing requirements, existing ICWA grantees must submit a copy of a satisfactory program evaluation for the current year of operation from the appropriate area office in order to be considered for funding in FY 1994 (25 CFR 23.33(e)).

In accordance with 25 CFR 41, grantees must adhere to and comply with all the general and uniform grant administration provisions and requirements specified at CFR part 276 and those identified in Subpart E of 25 CFR 23. Failure to meet and comply with these regulatory requirements may result in suspension, cancellation and/or termination of program funds.

The grant application shall be no longer than 40 pages, double spaced, excluding the appendix. The table of contents and appendices will not be counted toward the maximum length. It is recommended that the appendix be no longer than 20 pages. If an application is longer than the established page limitation, only the first 40 pages will be reviewed. All applicants must submit one original application and three copies of the complete application.

Information included in the appendix should relate specifically to the application. The appendix may include, but is not limited to the following: Resolutions, support letters, position descriptions, current/recent fiscal management/accounting certification, operational internal monitoring systems, and non-profit status documentation.

D. Competitive Application Selection Criteria

The Area Director or his/her designated representative shall select those proposals which will in his/her judgement best promote the proposes of

the Indian Child Welfare Act of 1978. Selection shall be made through the area review committee process in which each application will be scored individually and ranked according to score, taking into consideration the mandatory requirements as specified above and the following selection criteria:

(1) The degree to which the application reflects an understanding of the social services problems or issues affecting the resident Indian population which the applicant proposes to serve;

(2) Whether the applicant presents a narrative needs assessment, quantitative data and demographics of the client Indian population to be served;

(3) Estimates of the number of Indian people to receive benefits or services from the program based on available data;

(4) Program goals and objectives to be achieved through the grant;

(5) A comprehensive developmental two-year (FY 1994 and FY 1995) narrative plan describing what specific services and/or activities will be provided each program year and addressing the above-identified social problems or issues. At a minimum, the plan must include a narrative description of the program; the program goals and objectives, stated in measurable terms, to be achieved through the grant; and the methodology, including culturally defined approaches, and procedures by which the grantee will accomplish the identified goals and objectives;

(6) An internal monitoring system the grantee will use to measure progress and accomplishments, and to ensure that the quality and quantity of actual performance conforms to the requirements of the grant;

(7) Documentation of the relative accessibility which the Indian population to be served under a specific proposal already has to existing child and family service programs emphasizing the prevention of Indian family breakups, such as mandatory state services. Factors to be considered in determining accessibility include:

(i) Cultural barriers;

(ii) Discrimination against Indians;

(iii) Inability of potential Indian clientele to pay for services;

(iv) Technical barriers created by existing public or private programs;

(v) Availability of transportation to existing programs;

(vi) Distance between the Indian community to be served under the proposal and the nearest existing programs;

(vii) Quality of services provided to Indian clientele; and

(viii) Relevance of services provided to the specific needs of the Indian clientele.

(8) If the proposed program duplicates existing Federal, state, or local child and family service programs emphasizing the prevention of Indian family breakups, proper and current documented evidence that repeated attempts to obtain services have been unsuccessful;

(9) Evidence of substantial support from the Indian community or communities to be served, including but not limited to:

(i) Tribal support evidenced by a tribal resolution or cooperative service agreements between the administrative bodies of the affected tribe(s) and the applicant for the duration of the grant period, or

(ii) Letters of support from social services organizations familiar with the applicant's past work experience;

(10) A staffing plan that is consistent with implementation of the above-described program plan of operation and the procedures necessary for the successful delivery of services. The plan must include proposed key personnel, their qualifications, training or experience relevant to the services to be provided, responsibilities, Indian preference criteria for employment and position descriptions. In accordance with 25 U.S.C. 3201 et seq. (Pub. L. 101–630), Title IV, the Indian Child Protection and Family Violence Prevention Act, grantees shall conduct character and background investigations of those personnel identified in that statue prior to their actual employment.

(11) The reasonableness and relevance of the estimated overall costs of the proposed program or services and their overall relation to the organization's funding base, activities, and mission;

(12) The degree to which the detailed annual budget and justification for the requested funds are consistent with, and clearly supported by, the proposed plan and by appropriate program services and activities for the applicable grant year;

(13) The applicant's identification of any consultants and/or subgrantees it proposes to employ; description of the services to be rendered; the qualifications and experience of said personnel, reflecting the requirements for performing the identified services; and the basis for the cost and the amount to be paid for such services;

(14) Certification by a licensed accountant that the bookkeeping and accounting procedures that the applicant uses or intends to use meet existing Federal standards for grant administration and management specified at 25 CFR 23.46;

(15) The compliance of property management and recordkeeping systems with subpart D of 43 CFR Part 2 (the Privacy Act, 5 U.S.C. 552a), and with existing Federal requirements for grants at 25 CFR 276.5 and 276.11, including the maintenance and safeguarding of direct service case records on families and/or individuals served by the grant;

(16) A description of the proposed facilities, equipment, and buildings necessary to carry out the grant activities; and

(17) Proof of liability insurance coverage for FY 1994 and FY 1995.

E. Scoring and Grant Application Selection Criteria

Upon receipt of an application for an off-reservation grant under 25 CFR 23.33 which requires the approval of the Area Director, the Area Director shall:

(1) Establish and convene an area review committee, chaired by a person qualified by knowledge, training and experience in the delivery of Indian child and family services.

(2) Review the area office certification form required in 25 CFR 23.33(a).

(3) Review the application in accordance with the competitive review procedures prescribed in 25 CFR section 23.33. An application shall not receive approval for funding under the area competitive review and scoring process unless a review of the application determines that it:

(i) Contains all the information required in 25 CFR section 23.33 which must be received by the close of the application period. Modifications of the grant application received after the close of the application period shall not be considered in the competitive review process; and

(ii) Receives at least the established minimum score of 80 points in an area competitive review, using the application selection criteria and scoring process set out in section 23.33.

(4) Approve or disapprove the application and promptly notify the applicant in writing of the approval or disapproval of the application. If the application is disapproved, the Area Director shall include in the written notice the specific reasons therefore. The actual funding amounts for the initial grant year shall be subject to appropriations available nationwide and the continued funding of an approved off-reservation grant application under subpart D of this part shall be subject to available funds received by the respective area office for the applicable grant year. Initial funding decisions and subsequent decisions with respect to

funding level amounts for all approved grant applications under 25 CFR subpart D shall be made by the Area Director.

(5) Based on the competitive scoring process, priority funding consideration will be given as follows:

(i) Bonus points for past successful program performance, will be awarded one point per year up to five years (from FY 89–FY93), upon certification by the Area Director.

(ii) An application receiving the highest rated score will receive priority funding consideration at a higher funding level than the remaining approved applicants. In case of a tied score, the applicant with the largest service area population will receive priority funding consideration.

(iii) At least one approved applicant per area will be funded at a higher level than the rest. The remaining approved applicants will share proportionately the balance of available ICWA grant funds.

F. Grant Review and Award Process

The Area Director shall review each application through a competitive process and take the appropriate course of action on all off-reservation ICWA grant applications received in response to this notice in accordance with the established requirements and timeframes in 25 CFR Parts 23.33(a) and 23.34 respectively. Grants shall be awarded and executed in accordance with 25 CFR Part 23.43 as expeditiously as possible.

G. Appeals

A grantee or applicant may appeal any decision made or action taken by the Area Director under subpart D that is alleged to be in violation of the U.S. Constitution, Federal statues, or regulations of this part. These appeals shall be filed with the Interior Board of Indian Appeals in accordance with 25 CFR 2.4(e); 43 CFR 4.310 through 4.318 and 43 CFR 4.330 through 4.340. An applicant may not appeal a score assigned to its application or the amount of grant funds awarded.

A notice of appeal must be filed within 30 days of the appellant's receipt of the decision being appealed. The notice must be filed in the office of the official whose decision is being appealed. The date of filing is the date the notice of appeal is postmarked or the date it is personally delivered to the official's immediate office (25 CFR 2.9(a); 25 CFR 2.13(a)). The burden of proof of timely filing is on the appellant. No extension of time will be granted for filing a notice of appeal (25 CFR 2.9(a) and 2.16).

Within 30 days of the filing of the notice of appeal, a statement of reasons must be filed in the office of the official whose decision is being appealed. The statement of reasons may, however, be in or filed with the notice of appeal (25 CFR 2.10). Appeals will be handled in accordance with provisions set forth at 25 CFR 2.20.

No ICWA funds will be withheld at the Central Office for purposes of appeals related to funding appeals.

Part IV. BIA Area Offices—Area Social Workers

All application materials must be submitted in person or mailed to the appropriate Bureau of Indian Affairs Area Director. The following is a listing of the 12 BIA Area Social Workers designated by the Area Directors to receive ICWA grant applications from off-reservation Indian organizations.

Aberdeen Area Office: Peggy Davis; 115 4th Avenue, S.E.; Aberdeen, SD 57401; 605/226–7351.

Albuquerque Area Office: Joseph Naranjo; 615 1st Street; P.O. Box 26567; Albuquerque, NM 87125–6567; 505/766–3321.

Anadarko Area Office: Retha Murdock; 1½ mile North Highway 281; WCD Office Complex; P.O. Box 368; Anadarko, OK 73005; 405/ 247–6673 ext. 257.

Billings Area Office: Louise Zokan-Delos Reyes; 316 North 26th Street; Billings, MT 59101; 406/657–6651.

Eastern Area Office: Evelyn S. Roanhorse; 3701 N. Fairfax Drive; Suite 260; Arlington, VA 22201; 703/235–2353.

Juneau Area Office: Jimmie Clemmons; 9109 Menden Hall Mall Road; P. O. Box 25520; Juneau, AK 99802–5520; 907/586–7628.

Minneapolis Area Office: Rosalie Clark; 331 South Second Avenue; Minneapolis, MN 55401; 612/373–1182.

Muskogee Area Office: Alice A. Allen; Federal Courthouse Building; 101 North 5th Street; Muskogee, OK 74401–6206; 918/687–2507.

Navajo Area Office: Vivian Hailstorm; 300 West Hill Avenue; P.O. Box 1060; MC–440, Gallup, NM 87301; 602/871–5151.

Phoenix Area Office: Stephen J. Lacy; 1 North First Street; P.O. Box 10; Phoenix, AZ 85001; 602/379–6785.

Portland Area Office: Robert C. Carr; 911 N.E. 11th Avenue; Portland, OR 97232–4169; 503/231–6783.

Sacramento Area Office: Kevin Sanders; Federal Office Building; 2800 Cottage Way; Sacramento, CA 95825; 916/978–4705.

Dated May 6, 1994.

John W. Tippeconnic,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 94–11674 Filed 5–12–94; 8:45 am]

BILLING CODE 4310–02–P

federal register

Monday
May 16, 1994

Part V

Department of the Interior

Joint Tribal/BIA/DOI Advisory Task Force on Bureau of Indian Affairs Reorganization; Public Meeting; Notice

DEPARTMENT OF THE INTERIOR

Joint Tribal/BIA/DOI Advisory Task Force on Bureau of Indian Affairs Reorganization, Public Meeting

ACTION: Notice of meeting.

SUMMARY: The Office of the Assistant Secretary—Indian Affairs is announcing the forthcoming meeting of the Joint Tribal/BIA/DOI Advisory Task Force on Bureau of Indian Affairs Reorganization (Task Force).

DATES: May 24–26, 1994, 9 a.m. to 5:30 p.m.; the Sheraton Century Center Hotel, 1 North Broadway, Oklahoma City, Oklahoma, 73102, (405) 235–2780. Work Groups of the Task Force will meet from May 21 through May 23, 1994, just prior to the general session. The meeting of the Task Force is open to the public.

FOR FURTHER INFORMATION CONTACT: Sam Adams, Designated Federal Officer, Office of the Assistant Secretary — Indian Affairs; MS 320 SIB; 1849 C Street NW.; Washington, DC 20240; Telephone number (202) 208–2631.

SUPPLEMENTARY INFORMATION: The Joint Tribal/BIA/DOI Advisory Task Force on Bureau of Indian Affairs Reorganization will discuss organizational impacts of budget decisions including the National Budget Hearings for FY 1996 held in Washington, D.C. Information will be provided on policy directions resulting from the meeting between tribal leaders and President Clinton and from the listening conference jointly sponsored by the Departments of Justice and Interior. The Task Force will also discuss the direction future restructuring of the BIA should take and will begin preparing the final report of the Task Force to the Congress and the Secretary of the Interior. Each of the Work Groups of the Task Force will present reports of activities and a draft of their portion of the final report. Public attendance and participation in this meeting are encouraged, and time for public comments has been scheduled.

Dated: May 11, 1994.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 94–11930 Filed 5–13–94; 8:45 am]

BILLING CODE 4310–02–P

federal register

Monday
May 16, 1994

Part VI

Department of Commerce

National Oceanic and Atmospheric Administration

Oyster Disease Research; Financial Assistance; Availability of Funds; Notice

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 94–0528–4128, I.D. 031894A]

RIN: 0648-ZA02

Financial Assistance for Oyster Disease Research

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of funds.

SUMMARY: A total of $1.3 million in Fiscal Year (FY) 1994 funds is available through the NOAA/NMFS Chesapeake Bay Office to assist interested state fishery agencies, academic institutions, and other nonprofit organizations relating to cooperative research units, in carrying out research projects to provide information on oyster diseases through cooperative agreements. NMFS issues this notice describing the conditions under which eligible applications will be accepted and how NMFS will determine which applications will be selected for funding.

DATES: Applications for funding under this program will be accepted between May 16, 1994 and 6 p.m. eastern standard time on June 30, 1994. Applications received after that time will not be considered for funding. No applications will be accepted by facsimile machine submission.

Successful applicants generally will be selected approximately 90 days from the date of publication of this notice and the earliest date for awards will be about 180 days after the date of publication of this notice.

ADDRESSES: Send applications to: M. Elizabeth Gillelan, Division Chief, NOAA Chesapeake Bay Office, NMFS, 410 Severn Avenue, suite 107A, Annapolis, MD 21403.

Questions of an administrative nature should be referred to: Grants Management Division, Attn: Jean West, Chief, Grants Operations Branch, NOAA, SSMC2, OA321, 1325 East-West Highway, Silver Spring, MD 20910, at 301/713–0926.

FOR FURTHER INFORMATION CONTACT: M. Elizabeth Gillelan, 410/267–5660.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Fish and Wildlife Act of 1956, as amended, at 16 U.S.C. 753 (a), authorizes the Secretary of Commerce (Secretary), for the purpose of developing adequate, coordinated, cooperative research and training programs for fish and wildlife resources, to continue to enter into cooperative agreements with colleges and universities, with game and fish departments of the several states, and with non-profit organizations relating to cooperative research units. The Departments of Commerce (DOC), Justice, State, the Judiciary, and Related Agencies Appropriations Act of 1994 makes funds available to the Secretary.

The research to be funded is in support of the Oyster Disease Research Program, which provides information on American oyster disease-related research and management concerns in the northeastern United States. The program investigates selected aspects of the life cycle of oyster pathogens, physiological and genetic factors that influence disease resistance in the American oyster, *Crassostrea virginica*, and management strategies that would enhance survival of the public fishery and prospects for resource rehabilitation.

Oyster disease research is essential, given the recent devastating effect of oyster diseases on the Maryland and Virginia oyster fisheries. Oyster harvests from the Chesapeake Bay reached record lows in 1992–1993. Fishery management approaches that manage around the diseases have not been able to guard against widespread disease outbreaks. New research into the diseases should provide new knowledge and new tools for managing and restoring these oyster populations.

II. Areas of Special Emphasis

A. Proposals should exhibit familiarity with related work that is completed or ongoing. Where appropriate, proposals should be multidisciplinary. Coordinated efforts involving multiple eligible applicants or persons are encouraged. Eligible women and minority scientists, associated with eligible applicants, are encouraged to submit applications. While the areas for special emphasis are listed below, proposals in other areas will be considered on a funds-available basis. Primary consideration for funding will be given to applications addressing the specific priorities listed in this section. These priorities are not listed in any implied order. NMFS will accept proposals that address other significant areas of research on *C. virginica;* however, consideration cannot be guaranteed.

Consideration will be given to applications that address the following American oyster disease research and management priorities for the northeastern United States:

1. Technical Priorities

a. Investigate the basic mechanisms (physiological, genetic, immunological, biochemical, etc.) that may make *C. virginica* resistant/susceptible to the diseases currently affecting the Northeast Region's oyster populations. This includes the genetic basis for disease resistance and the possible development of gene transfer techniques that could lead to improved native oysters.

b. Investigate selected aspects of the life cycle and natural history of *C. virginicus* pathogens, with emphasis on transmission dynamics; identification of intermediate hosts; and determination of the time/age when young oysters first become susceptible to *Haplosporidium nelsoni*, commonly known as MSX, or *Perkinsus marinus*, known as Dermo.

c. Utilize *P. marinus* cultures and isolated cells to investigate the biochemistry and physiology of this pathogen, with emphasis on osmotic tolerance of cells *in vitro* and the role of virulence factors in pathogenicity.

d. Investigate juvenile oyster mortalities occurring in the Northeast Region, including the identification of the definitive disease agent, its range, and impact on the oyster industry.

2. Management-Related Priorities

a. Develop and test new management strategies that would enhance survival of a fishery in the continuous presence of disease, such as the establishment of brood stock sanctuaries, genetic selection programs, aquaculture techniques, and oyster reef research and development.

b. Develop resource survey techniques that can be adopted to manage disease-affected oyster populations effectively and provide background data to support development of management options for resource rehabilitation.

c. Evaluate the potential of a Geographic Information System approach for characterizing the transmission dynamics of oyster diseases throughout the Chesapeake Bay.

B. Applications addressing the priorities should build upon, or take into account, any related past or current work. During FY 92 and FY 93, funds under this program were awarded for the following projects, at a total cost of $1.3 million, for each year.

1. FY 93:

a. Role of Oyster Lysosomal Enzymes in Disease Resistance.

b. Field and Laboratory Study of the Process and Dynamics of *Perkinsus marinus* Infection of the Eastern Oyster, *Crassostrea virginica*.

c. Extracellular Protein from *Perkinsus marinus*: Analysis of Pathogenic Mechanisms and Development of Enhanced Diagnoses.

d. Population Genetic Structure of *Perkinsus marinus*.

e. Intertidal Oyster Reefs as a Tool for Estuarine Environmental Rehabilitation and Rejuvenation of the Virginia Oyster Fishery.

f. Replenishment Strategies in the Continuous Presence of Disease.

g. Infectivity of Cultured *Perkinsus marinus*: Effects of Parasite Life Stage and Delivery Method.

h. Development of *Haplosporidium nelsoni* (MSX)-Specific DNA Probes for Diagnostic Applications and Life Cycle Studies.

i. Hybridization of Eastern and Pacific Oysters Using Bridging Taxa.

j. Development of Culture Strategies to Reduce Losses Due to Juvenile Oyster Mortalities in the Northeast.

k. Physiological Responses of the Oyster *Crassostrea virginica* to Infections of *Perkinsus marinus*: Effects of Environmental Variables on Acid-base Status.

l. ELISA Assay for Detection of *Perkinsus marinus* in Oyster Tissue.

m. American Oyster Stock Assessment in Maryland.

n. Technical Support for Maryland's Oyster Recovery Action Plan.

o. Flow Cytometric Enumeration of *P. marinus* Cells in Chesapeake Bay Waters.

p. Development and Evaluation of Nucleic Acid Probes for Diagnosis and Detection of Genetic Polymorphisms of *Perkinsus marinus*.

q. Utilization of Genetically Selected Lines to Reduce the Impact of Juvenile Oyster Mortality.

2. FY 92:

a. Use of Immuno-Stimulants to Augment the Resistance of the Eastern Oyster *Crassostrea virginica* to Infection by *Perkinsus marinus*.

b. A Stock-Recruitment Model of the James River Oyster Fishery.

c. Studies of Genetic Variation Between and Within Strains of the American Oyster Selected for Disease Resistance II. Analysis of Anonymous Nuclear Loci.

d. Development of a Microcomputer-Based Geographic Information System (GIS) for the Visualization, Interpretation, and Analysis of Maryland Chesapeake Bay Oyster Disease and Population Information.

e. American Oyster Stock Assessment in Maryland.

f. *In vitro* Propagation of *Perkinsus marinus*.

g. Resistance of *Crassostrea virginica* Races to *Perkinsus marinus* Isolates: A Foundation for Breeding and Management.

h. Life Cycle Studies of *Haplosporidium nelsoni* (MSX) Spores and Non-Oyster Hosts.

i. Relative Effects of Harvest Pressure and Disease Mortality on the Population Dynamics of the Eastern Oyster in Delaware Bay.

j. Development of a DNA Probe to Investigate the Life Cycle of *Haplosporidium nelsoni* (MSX).

k. Life Cycle Studies of *Perkinsus marinus*-Host Specificity.

l. Flow Cytometric Quantification and Analysis of *Perkinsus marinus* Cells Present in Estuarine Waters.

m. Integrated Physiological Investigation of the Effects of Protozoan Parasitism in the Oyster, *Crassostrea virginica*.

III. How To Apply

A. Eligible Applicants

The cooperative agreement has been determined as the appropriate funding instrument because of the substantial involvement of NMFS in (1) developing program research priorities, (2) performing cooperative research jointly with eligible applicants through the NMFS unit at the Cooperative Oxford Laboratory, (3) evaluating the performance of the program for effectiveness in meeting national and regional goals for Chesapeake Bay oyster conservation and restoration, (4) monitoring the progress of each funded project, (5) holding periodic workshops with investigators to encourage inter-disciplinary dialogue and forge synthesis of results, and (6) working with recipients in preparation of annual reports summarizing current accomplishments of the Oyster Disease Research Program.

Applications for cooperative agreements under the oyster disease research program may be submitted, in accordance with the procedures set forth in this notice, by any state game and fish department, college or university, or other nonprofit organizations relating to cooperative research units. Eligible applicants outside the northeastern United States (Maine to Virginia) may submit proposals, as long as their objectives support the technical and management priorities of the Northeast Region, as defined in sections II.A.1. and II.A.2. above. All solicited proposals received by the closing date will be considered by NMFS. Applicants will be expected to identify the principal investigators who will be conducting the research. Curricula vitae should also be provided for all essential personnel.

Investigators submitting proposals in response to this announcement are strongly encouraged to develop interinstitutional, inter-disciplinary research teams in the form of single, integrated proposals or as individual proposals that are clearly linked together. Such collaborative efforts will be factored into the final funding decision. These efforts may be among external eligible applicants, as well as with NMFS scientists at the Cooperative Oxford Laboratory. NMFS personnel may participate in joint efforts with non-NMFS persons or groups in these projects, as long as these non-NMFS persons or groups have applied and successfully competed for oyster disease research funds through the process outlined in this announcement and as long as these applications refer to, or include, an internal NMFS proposal that details how NMFS personnel plan to cooperate. Any activities to be undertaken by NMFS personnel under such cooperative agreements will be funded by direct transfer of oyster disease research funds or regular appropriated funds within NMFS. No such NMFS activity is to be funded by non-NMFS persons or groups using oyster disease research funds other than those who have successfully competed for funds under this announcement.

B. Amount and Duration of Funds

Under this solicitation, NMFS will fund American oyster disease research projects under this program for 1-year cooperative agreements. Project dates should be scheduled to begin on December 1, 1994. Cooperative agreements are approved on an annual basis but may be considered eligible for continuation beyond the first project and budget period subject to the approved scope of work, satisfactory progress, and availability of funds at the total discretion of NMFS. However, there are no assurances for such continuation. Publication of this notice does not obligate NMFS to award any specific cooperative agreement or to obligate any part of the entire amount of funds available.

C. Cost-Sharing Requirements

Applications must reflect the total budget necessary to accomplish the project, including contributions and/or donations. Cost sharing is not required under the oyster disease research program. However, cost sharing is encouraged to enhance the value of a project, and in case of a tie in considering proposals for funding, cost-sharing may affect the final decision. The appropriateness of all cost-sharing will be determined on the basis of

guidance provided in applicable Federal cost principles. If an applicant chooses to share cost, and if that application is selected for funding, the applicants will be bound by the percentage of cost sharing reflected in the grant award.

The non-Federal share may include funds received from private sources or from state or local governments or the value of in-kind contributions. Federal funds may not be used to meet the non-Federal share of matching funds, except as provided by Federal statute. In-kind contributions may be in the form of, but are not limited to, personal services rendered in carrying out functions related to the project, and permission to use real or personal property owned by others (for which consideration is not required) in carrying out the project.

The total cost of a project begins on the effective date of a cooperative agreement between the applicant and an authorized representative of the U.S. Government and ends on the date specified in the award. Accordingly, the time expended and costs incurred in either the development of a project or the financial assistance application, or in any subsequent discussions or negotiations prior to the award, are neither reimbursable nor recognizable as part of the recipient's cost share.

D. Format

1. Applications for project funding must be complete. Applicants must identify the specific research priority or priorities to which they are responding. For applications containing more than one project, each project component must be identified individually using the format specified in this section. If an application is not in response to a priority, it should be so stated. Applicants should not assume prior knowledge on the part of NMFS as to the relative merits of the project described in the application. Applications are not to be bound in any manner and should be one-sided. All incomplete applications will be returned to the applicant. Applicants must submit one signed original and two copies of the complete application.

2. Applications must be submitted in the following format:

a. *Cover Sheet:* An applicant must use OMB Standard Form 424 (revised 4/92) as the cover sheet for each project. Applicants may obtain copies of these forms from the NOAA Grants Management Division or the NOAA Chesapeake Bay Office (see **ADDRESSES**).

b. *Project Summary:* Each proposal must contain a summary of not more than one page that provides the following:

(1) Project title.

(2) Project status (new).

(3) Project duration (beginning and ending dates).

(4) Name, address, and telephone number of applicant.

(5) Principal Investigator(s).

(6) Project objectives.

(7) Summary of work to be performed.

(8) Total Federal funds requested.

(9) Cost-sharing to be provided from non-Federal sources, if any. Specify whether contributions are project-related cash or in-kind.

(10) Total project cost

c. *Project Description:* Each project must be completely and accurately described. Each project description may be up to 15 pages in length. If an application is awarded, NMFS will make all portions of the project description available to the public for review; therefore, NMFS cannot guarantee the confidentiality of any information submitted as part of any project, nor will NMFS accept for consideration any project requesting confidentiality of any part of the project.

Each project must be described as follows:

(1) *Identification of Problem(s):* Describe the specific problem to be addressed and the area of emphasis to which the project responds (see section II above).

(2) *Project Objectives:* This is one of the most important parts of the Project Proposal. Use the following guidelines for stating the objective of the project.

(a) Keep it simple and easily understandable.

(b) Be as specific and quantitative as possible.

(c) Specify the "what and when;" avoid the "how and why."

(d) Keep it attainable within the time, money, and manpower available.

(e) Use action verbs that are accomplishment oriented.

(3) *Need for Government Financial Assistance:* Demonstrate the need for assistance. Any appropriate database to substantiate or reinforce the need for the Project should be included. Explain why other funding sources cannot fund all the proposed work. List all other sources of funding that are or have been sought for the project.

(4) *Benefits or Results Expected:* Identify and document the results or benefits to be derived from the proposed activities.

(5) *Project Statement of Work:* The Statement of Work is the scientific or technical action plan of activities that are to be accomplished during each budget period of the project. This description must include the specific methodologies, by project job activity, proposed for accomplishing the proposal's objective(s). If the work described in this section does not contain sufficient detail to allow for proper technical evaluation, NMFS will not consider the application for funding and will return it to the applicant. Each Statement of Work must include the following information:

(a) The applicant's name.

(b) The inclusive dates of the budget period covered under the Statement of Work.

(c) The title of the proposal.

(d) The scientific or technical objectives and procedures that are to be accomplished during the budget period. Devise a detailed set of objectives and procedures to answer who, what, how, when, and where. The procedures must be of sufficient detail to enable competent workers to be able to follow them and to complete scheduled activities.

(e) Location of the work.

(f) A list of all project personnel and their responsibilities.

(g) A milestone table that summarizes the procedures (from item III.D.(c)(5)(d)) that are to be attained in each month covered by the Statement of Work.

(6) *Participation by Persons or Groups Other Than the Applicant:* Describe the level of participation required in the project(s) by NOAA or other government and non-government entities. Specific NOAA employees should not be named in the initial proposal.

(7) *Federal, State and Local Government Activities:* List any programs (Federal, state, or local government or activities, including Sea Grant, state Coastal Zone Management programs, NOAA Chesapeake Bay Stock Assessment Committee, the state/Federal Chesapeake Bay Program, etc.) this project would affect and describe the relationship between the project and those plans or activities.

(8) *Project Management:* Describe how the project will be organized and managed. Include resumes of principal investigators. List all persons directly employed by the applicant who will be involved with the project, their qualifications, and their level of involvement in the project.

(9) *Monitoring of Project Performance:* Identify who will participate in monitoring the project.

(10) *Project Impacts:* Describe the impact of the project in terms of anticipated increased production, sales, product quality and safety, improved management, or any other values that will be produced by this project. Describe how these products or services will be made available to the fisheries and management communities.

(11) *Evaluation of Project:* The applicant is required to provide an evaluation of project accomplishments at the end of each budget period and in the final report. The application must describe the methodology or procedures to be followed to determine technical feasibility, or to quantify the results of the project in promoting increased production, product quality and safety, management effectiveness, or other measurable factors.

(12) *Total Project Costs:* Total project costs is the amount of funds required to accomplish what is proposed in the Statement of Work, and includes contributions and donations. All costs must be shown in a detailed budget. Cost-sharing must not come from another Federal source. Costs must be allocated to the Federal share and non-Federal share provided by the applicant or other sources. Non-Federal costs are to be divided into cash and in-kind contributions. A standard budget form (SF–424A) is available from the offices listed (see **ADDRESSES**). NMFS will not consider fees or profits as allowable costs for grantees. To support the budget, the applicant must describe briefly the basis for estimating the value of the non-Federal funds derived from in-kind contributions. Additional cost detail may be required prior to a final analysis of overall cost allowability, allocability, and reasonableness. The date, period covered, and findings for the most recent financial audit performed; as well as the name of the audit firm, the contact person, and phone number and address; must be also provided.

d. *Supporting Documentation:* This section should include any required documents and any additional information necessary or useful to the description of the project. The amount of information given in this section will depend on the type of project proposed, but should be no more than 20 pages. The applicant should present any information that would emphasize the value of the project in terms of the significance of the problems addressed. Without such information, the merits of the project may not be fully understood, or the value of the project may be underestimated. The absence of adequate supporting documentation may cause reviewers to question assertions made in describing the project and may result in lower ranking of the project. Information presented in this section should be clearly referenced in the project description.

IV. Review Process and Criteria

A. Initial Evaluation of Applications

Applications will be reviewed to assure that they meet all requirements of this announcement, including eligibility and relevance to the Oyster Disease Research Program.

B. Consultation With Experts in the Field of Oyster Disease Research

For applications meeting the requirements of this solicitation, NMFS will conduct a technical evaluation of each project prior to any other review. This review normally will involve experts from non-NOAA as well as NOAA organizations. All comments submitted to NMFS will be taken into consideration in the technical evaluation of projects. Reviewers will be asked to comment on the following evaluation criteria:

1. Problem description and project conceptual approach toward resolution, especially the applicant's comprehension of the problem(s), familiarity with related work that is completed or ongoing, and the overall concept proposed to resolve the problem(s) (30 points).

2. Soundness of project design/technical approach, especially whether the applicant provided sufficient information to technically evaluate the project and, if so, the strengths and weaknesses of the technical design proposed for problem resolution (35 points).

3. Project management and experience and qualifications of personnel, including organization and management of the project, and the personnel experience and qualifications (15 points).

4. Justification and allocation of the budget in terms of the work to be performed (20 points).

C. Review Panel

NMFS will convene a review panel of nationally or regionally recognized experts in the scientific and management aspects of oyster disease research who will review each proposal as follows:

1. Review field review responses.

2. Provide their own reviews based on the same criteria as the field reviews.

3. Discuss all review comments as a panel.

4. Provide individual panelist scores and suggestions for modifications (i.e., budget, personnel, technical approach, etc.).

D. Funding Decision

1. Applications will be ranked by NMFS into two groups: (a) Recommended, and (b) not recommended. As previously stated (section III.A.1:, above), collaborative proposals are strongly encouraged, and therefore will be given added weight in the selection process. Numeric ranking will be the major consideration for deciding which of the "recommended" proposals will be selected for funding. Because NMFS will seek to balance technical and management priorities of the program, the highest-ranked "recommended" proposals may not necessarily receive funding.

2. After projects have been ranked for funding, the Chief of the NOAA/NMFS Chesapeake Bay Office, in consultation with the Assistant Administrator for Fisheries, NOAA, will ascertain which projects do not substantially duplicate other projects that are currently funded by NOAA or are approved for funding by other Federal offices, determine the projects to be recommended for funding, and determine the amount of funds available for the program. The exact amount of funds awarded to each project will be determined in pre-award negotiations between the applicant, the Grants Office, and the NOAA/NMFS Chesapeake Bay Office staff. A project must not be initiated by a recipient until a signed award is received from the Grants Officer.

V. Other Requirements

A. Deliverables

In addition to quarterly status and budget reports, and at the time of submission of the final report of results of funded projects, recipients must submit a four-to-five page summary of project work and results that will be compiled in a report of oyster disease research program results. Projects that produce non-experimental data must have copies of these data transferred to the NOAA/NMFS Chesapeake Bay Office in both compiled, hard copy format, and as a verified, electronic data file. Full, clearly stated documentation of the contents of such data files must be submitted with these data.

B. Periodic Workshops

Investigators will be expected to attend periodic workshops with other Oyster Disease Research Program researchers to encourage inter-disciplinary dialogue and forge synthesis of results.

C. Administrative

Recipients and subrecipients are subject to all Federal laws and Federal and DOC policies, regulations, and procedures applicable to Federal financial assistance awards.

The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award, or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less.

Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding. In addition, any recipient and/or researcher who is past due for submitting acceptable progress reports on any previous project funded under this program may be ineligible to be considered for new awards until the delinquent reports are received, reviewed and deemed acceptable by NMFS.

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

1. The delinquent account is paid in full;

2. A negotiated repayment schedule is established and at least one payment is received; or

3. Other arrangements satisfactory to DOC are made.

Primary Applicant Certifications—All primary applicants must submit a completed FORM CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and the following explanations are hereby provided:

1. *Nonprocurement Debarment and Suspension*—Prospective participants (as defined at 15 CFR 26.105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension," and the related section of the certification form prescribed above applies;

2. *Drug-Free Workplace*—Grantees (as defined at 15 CFR part 26.605) are subject to 15 CFR part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)," and the related section of the certification form prescribed above applies;

3. *Anti-Lobbying*—Persons (as defined at 15 CFR 28.105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

4. *Anti-Lobbying Disclosure*—Any applicant who has paid or will pay for lobbying using any funds must submit an SF-LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

Lower Tier Certifications—Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form SF-LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF-LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Potential recipients may be required to submit an "Identification-Application for Funding Assistance" (Form CD–346), which is used to ascertain background information on key individuals associated with the potential recipient. All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing, criminal charges such as fraud, theft, perjury, or other matters that significantly reflect on the applicant's management honesty or financial integrity. Applicants will also be subject to credit check reviews.

A false statement on the application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Applications under this program are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

If an application is selected for funding, DOC has no obligation to provide any additional funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DOC.

If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of DOC to cover preaward costs.

Cooperative agreements awarded pursuant to pertinent statutes shall be in accordance with the Fisheries Research Plan (comprehensive program of fisheries research) in effect on the date of the award.

Applicants are hereby notified that any equipment or products authorized to be purchased with funding provided under this program must be American-made to the maximum extent feasible in accordance with Public Law 103–121, sections 606(a) and (b).

Classification

This action has been determined to be "not significant" for purposes of E.O. 12866.

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for this notice concerning grants, benefits, and contracts. Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act.

This notice contains collections of information subject to the Paperwork Reduction Act, which have been approved by OMB under OMB control numbers 0348–0043 and 0605–0001.

Dated: May 12, 1994.

Charles Karnella,

Acting Program Management Officer, National Marine Fisheries Service, National Oceanic and Atmospheric Administration.

[FR Doc. 94–11949 Filed 5–12–94; 1:03 pm]

BILLING CODE 3510–22–P

Reader Aids

Federal Register

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S. 1930/P.L. 103–248

Farmers Home Administration Improvement Act of 1994 (May 11, 1994; 108 Stat. 619; 1 page)

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This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

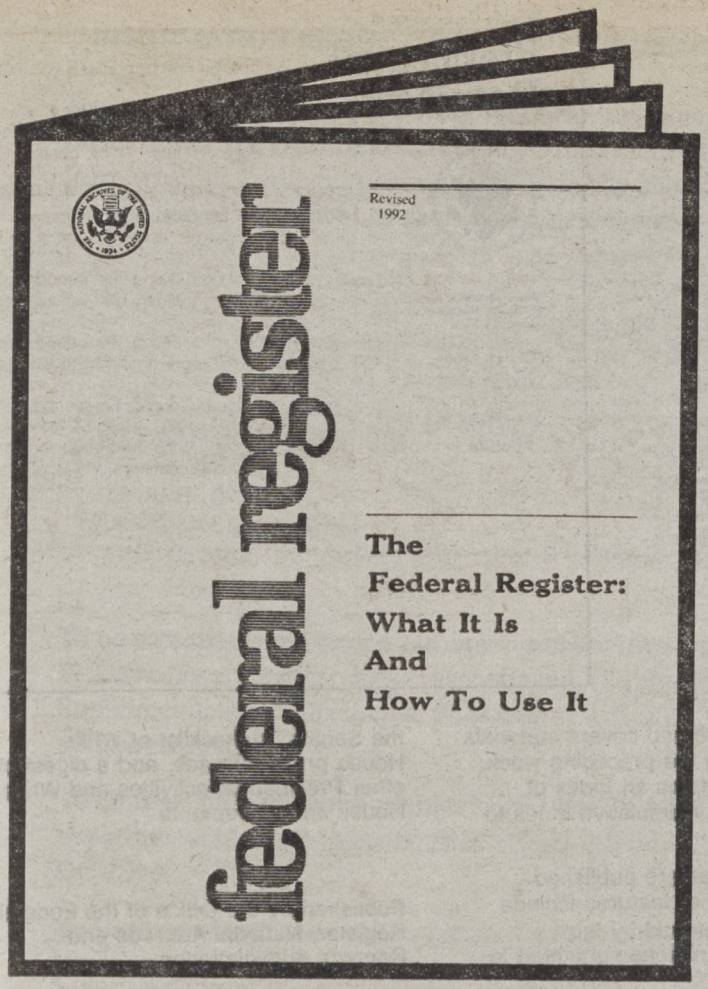
[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1994. The CFR volume issued April 1, 1990, should be retained.

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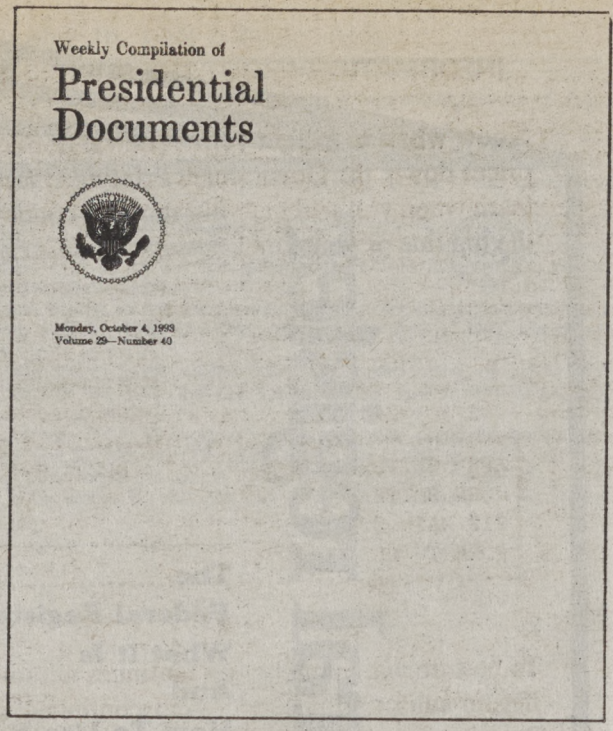
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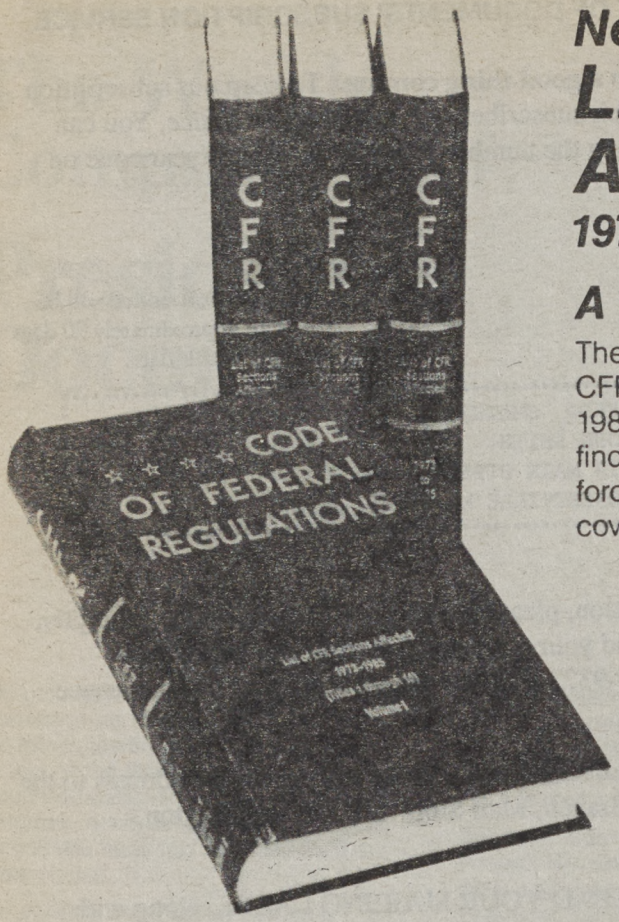
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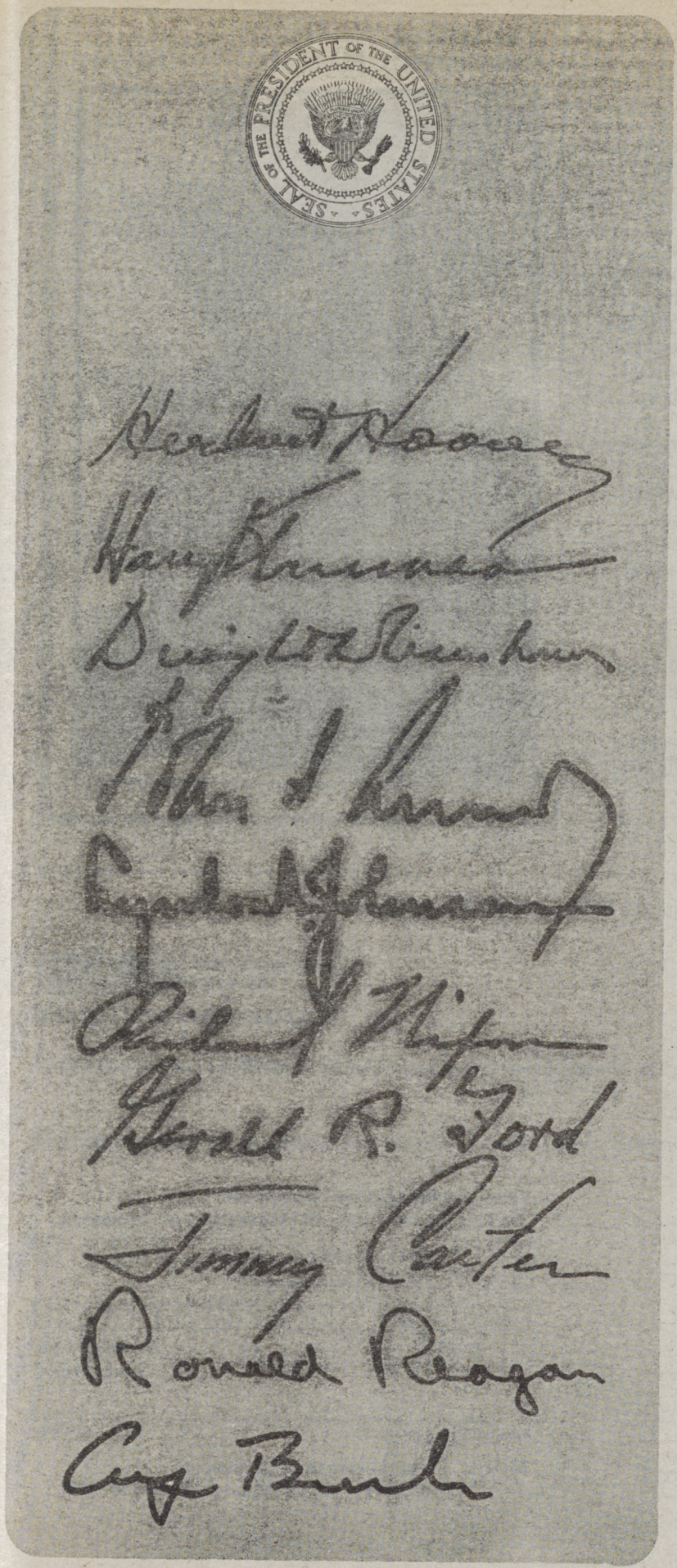
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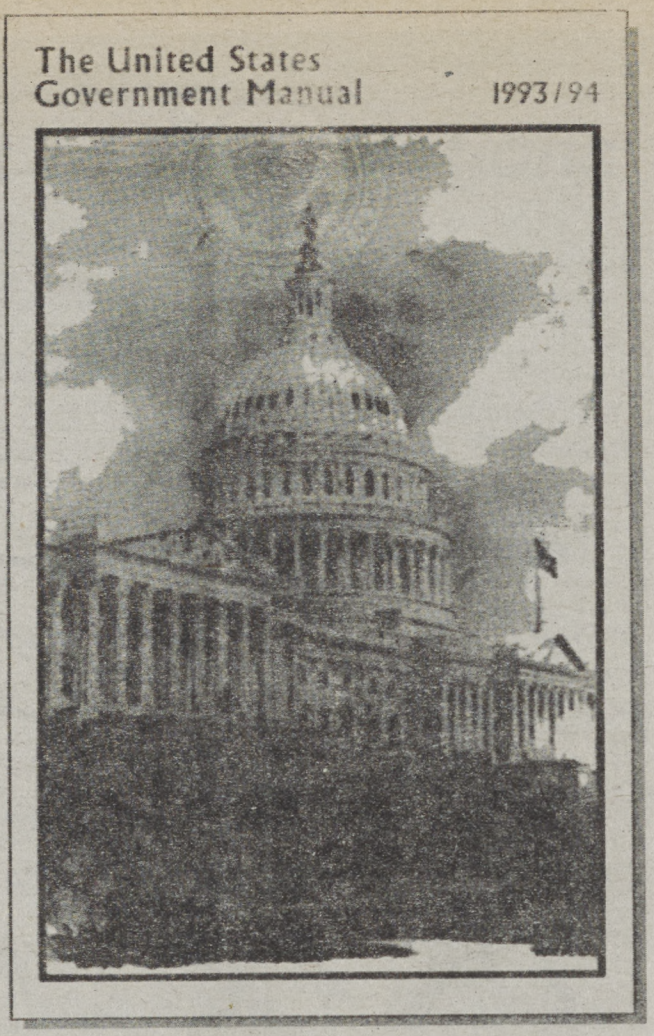
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